



Turkey: Employment & Labour Law

 www.inhouselawyer.co.uk/index.php/practice-areas/employment-labour-law/turkey-employment-labour-law/

This country-specific Q&A provides an overview to employment and labour law in [Turkey](#).

It will cover termination of employment, procedures, protection for workers, compensation as well as insight and opinion on the most common difficulties employers face and any upcoming legal changes planned..

This Q&A is part of the global guide to Employment & Labour. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/employment-labour-law/>



1. **Does an employer need a reason in order to lawfully terminate an employment relationship? If so, what reasons are lawful in the jurisdiction?**

According to the Turkish Labour Law numbered 4857 (the "Labour Law"), termination of an employment contract by the employer can be conducted in two separate ways as: (i) termination on valid grounds (Article 18) (ii) termination for just cause (Article 25).

Article 18 of the Labour Law provides that the dismissal of employees is required to be made on the basis of "an objective valid reason" relating to (i) the efficiency or (ii) behaviour of such employee or (iii) the necessities of the enterprise (e.g. economic, technological or organizational reasons), to the extent the employee concerned is subject to the job security provisions of the Labour Law (i.e. the employee concerned has at least 6 months of employment term at a workplace where 30 or more employees are being employed). In such case, termination requires compliance with applicable notice periods and payment of legal and contractual rights (e.g. seniority indemnity, paid leave, additional benefit or bonus if any). Employer representatives, who are entitled to manage the entire enterprise and/or are authorized to recruit and dismiss employees on behalf of the employer (i.e. executives and top managers), are not subject to job security and therefore employers will not be obliged to comply with the above-mentioned provisions while terminating their labour relationship with this category of employees.

Pursuant to Article 25 of the Labour Law, in the event of the existence of certain grounds, the employer can terminate the employment contract with immediate effect without observing any notice period. The grounds listed under Article 25 comprise the following:

1. Health reasons (e.g. sickness or disability leading to three consecutive days of absence or five days in a month; determination by the Health Committee that the workplace could be hazardous to the employee),
2. Reasons relating to ethics and principle of good faith (e.g. persistent failure to comply with duties, acts in violation of trust and loyalty such as breach of confidence or confidentiality, theft; unjustified absence from work for two consecutive days or twice on business days after a holiday or three days in a month),
3. Compelling reasons (e.g. arrest or detention of the employee causing absence exceeding the notice period; arising of a reason compelling the employee to be unable to work at the workplace for longer than a week).

In such case, termination can occur without need to comply with any notice period and does not require either payment of legal or contractual rights.

2. **What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned?**

In case of collective redundancies, employers are obliged comply with Article 29 of the Labour Law which provides that employers can proceed with collective redundancies to the extent dismissal is based on either:

1. Economic reasons,
2. Technological development,
3. Re-organization of the work.

Pursuant to the Article 29/2, dismissals are considered collective if they extend to:

1. 10 employees if the total number of employees is between 20 and 100,
2. 10% of the employees if the total number of employees is between 101 and 300,
3. At least 30 employees if the total number of employees is 301 or more.

In the case of collective redundancy, employers must according to the Article 29/1 notify the trade union representatives, the regional directorate of the Ministry of Labour and Social Security and the Turkish Labour Authority 30 days prior to initiating a collective dismissal. In case a collective labour agreement is in force in relation to the relevant workplace, a meeting must be held between the trade union representatives and the employer following completion of the above notification for the purpose of preventing the collective dismissal decision or reducing the number of employees to be dismissed and adverse effects of the collective dismissal on the employees.

3. **What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?**

Pursuant to Article 6 of the Labour Law, in the case that workplace or a part of workplace and/or business is transferred to another legal entity by a business sale or any transaction whatsoever, the employment contracts that are in relation with the workplace and/or business will be automatically transferred to the new employer/owner along with the sale or transfer of the workplace, business and assets. Thus, the sale or transfer of the business itself does not constitute a valid reason or just cause to terminate the employment relationship.

However, the employer may terminate the employment relationship provided that the dismissal of the

employees is required due to necessities of the enterprise (e.g. organizational and operational amendments made within the enterprise or workplace), which requires compliance with applicable notice periods and payment of legal and contractual rights (see also Question 1).

4. **What, if any, is the minimum notice period to terminate employment?**

The party wishing to terminate an employment agreement with indefinite term is required to provide the other party with prior notice.

Minimum termination notice periods are set out as follows under Article 17 of the Labour Law:

Notice Period	Duration of Employment
2 weeks	less than 6 months
4 weeks	from 6 to 18 months
6 weeks	from 18 to 36 months
8 weeks	more than 36 months

These minimum periods may be extended contractually under individual or collective labour agreements to the benefit of the employee.

5. **Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?**

Turkish Law allows the employer to terminate the employment agreement with immediate effect by making payment of the salary corresponding to the applicable notice period (even in the absence of just cause).

6. **Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?**

Turkish Labour Law does not specifically regulate garden leaves and does not provide for other provisions which would expressly prevent the structuring of such an arrangement. However, to the extent the main purpose of the garden leave would be to set-up a specific contractual arrangement preventing the employee from working with a competitor and/or possibly sharing with a competitor sensitive business information, Turkish law provides for the possibility of contractually agree on a non-compete period of up to 2 years (extendable under certain conditions) which can be subject to compensation (see Question 17). In practice, this way of contractually arranging the garden leave might prove to be more secure from a legal standpoint since maintaining the employee on the payroll of the company for a given period of time while he/she is not actually working for the company might give rise to other legal issues (e.g. risk of challenging of the validity of the arrangement by the employee on the ground that the labour relationship is fictitiously maintained).

7. **Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, what are the requirements of that procedure or procedures?**

The employer is obliged follow the procedures governed by the Labour Law in the event that the employee in question is subject to the job security provisions of the Labour Law (please see Question 1 for the details of

job security term).

Under the provisions of job security, the employer has to provide either valid reason or just cause for the duly termination of employment contract (please see Question 1 for the examples of valid reasons and just causes) along with a termination notice that must be sent to the employee in compliance with notice periods set forth under Article 17 (please see Question 4 for the notice periods).

In the event of termination with just cause, the employer is not required to either notify the employee with a written notice or obtain the employee's defence.

However, if the employment contract is terminated based on valid reason relating to the efficiency or behaviour of such employee, the employer must according to Article 19 of the Labour Law give a chance to employee to defend him/herself, reassess the termination grounds and then only notify the employee if the employer is still convinced of the existence of a valid reason for termination.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

If the employer does not follow the procedural requirements prescribed under Article 19 of the Labour Law in a context where the job security provisions of the Labour Law are applicable, the employee may apply to the labour court claiming lack of valid reason and reinstatement to work. In the event the Labour Court confirms that the employment contract has been terminated without an objective valid reason, the Court may decide on the following:

1. Payment of up to four months' wages and other benefits of the employee for the time they are not reinstated to work,
2. Reinstatement compensation, to be not less than four months' and not more than eight months' wages (if the employee is not reinstated to work upon his/her timely application to the employer).

9. How, if at all, are collective agreements relevant to the termination of employment?

Termination of the employment relationship of an employee who is benefiting from collective labour agreement is subject to a process that is usually similar to the one applicable to the individual labour agreements (please see Question 7 and 8). However, parties may agree on terms that slightly differ from the principal regulations of the Labour Law and define termination grounds or extend notice periods in favour of the employee. If any additional procedural requirements are foreseen in the collective agreements, the employer will also be obliged to fulfill such procedures.

10. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

According to Turkish Labour Law, the employer is not obliged to obtain permission from a third party or government authority to terminate the employment contract.

However, in the case of collective redundancy, the employer must notify and inform the trade union representatives, the regional directorate of the Ministry of Labour and Social Security and the Turkish Labour Authority 30 days prior to initiating a collective dismissal. The collective dismissal will become effective within

one month following the notification made to the regional directorate of the Ministry of Labour and Social Security.

11. **What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?**

According to the principal of equal treatment which is prescribed under the Turkish Constitution and Labour Law, employers must not show any act of discrimination based on their employees' language, race, nationality, sexuality, political thoughts, philosophical belief or religion with respect to the employment relationship.

Moreover, within scope of the Law on Turkish Human Rights and Equality Institution numbered 6701, discrimination based on gender, ethnicity, nationality, colour, language, religion, philosophical and political opinion, wealth, birth, marital status, medical conditions, disability and age is forbidden. This law is directly related with Labour Law issues and provides that employers or person authorized by employers cannot make discrimination to employees, job applicants, trainees or applying for this purpose including process for acquisition of information, job application, selection criteria, recruitment conditions, work and ending the employment relationship.

In the light of the above-mentioned regulations, employers cannot terminate the employment contracts on such grounds that may be considered as discriminatory or out of the scope of the principle of equal treatment. Therefore, discriminatory dismissals are deemed as wrongful terminations from the perspective of both individual and collective employment contracts.

12. **What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?**

If an employer acts against the principal of equal treatment and does not fulfil its obligations to protect the employee both mentally and physically and terminates the employment contract without any valid ground or just cause (see Question 1), the employee is entitled to request reinstatement along with a compensation up to four months' wages plus reinstatement compensation, to be not less than four months' and not more than eight months' wages.

On the other hand, employee who has faced discriminatory treatment or harassment has the right to terminate the employment contract for just cause pursuant to Article 24 of the Labour Law and ask for pecuniary and/or non-pecuniary damages that he/she suffered due to such discriminatory and wrongful treatment or harassment pursuant to relevant Articles of the Turkish Code of Obligations (e.g. mobbing, insult, racism) along with the notice and severance pay that he/she is entitled as per the Labour Law.

13. **Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?**

A fixed term employment contract can only be terminated before the expiration date of the contract due to valid grounds or just causes explained in Question 1.

Turkish Labour Law provides for specific protections with regards to the termination of employment contracts in the cases of short term military service, temporary sickness and pregnancy and maternity:

- Employer cannot terminate the employment contract of the employee who is on short term military service as long as the absence period of such employee does not exceed 90 days in total.

- Temporary sickness cannot be considered as a valid ground on the termination of the employment contract.
- Employer is obliged to give female employees permission to leave for a total period of sixteen weeks, eight weeks before the confinement eight weeks after the confinement.

During such periods of absence, employment contracts shall be deemed as suspended and cannot be terminated based on the above grounds.

14. **Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?**

The Labour Law does not provide for any express protection or provision in relation to whistle-blowers.

This being said, the precedents of the Court of Cassation provide for a specific protection of whistle blowers, whereby termination of the employment relationship of an employee who made disclosures in the public interest or submitted any kind of complaint against the employer (e.g. criminal or administrative complaint) due to misconducts made within the business is deemed as invalid if such disclosure or complaint is a true statement.

15. **What financial compensation is required under law or custom to terminate the employment relationship? How do employers usually decide how much compensation is to be paid?**

The statutory redundancy package for an employee in the event of termination with notice consists of the following:

1. Payment of the outstanding wages of the employee for the worked period,
2. Payment of seniority compensation, corresponding to 30 days' pay for each year of service, up to the statutory ceiling of TRY 4,426.16 (for the first half of 2017). The basis for seniority compensation is the employee's last gross wage including all kinds of additional benefits,
3. Payment for unused annual leave, extra hours, and prorated portion of the regular premium as well as any other salary the employee was entitled to for the period of work,
4. Payment in lieu of notice for the required period (please Question 4 for notice periods), in the event notice periods are not observed.

16. **Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply.**

Turkish case law allows the employer and the employee to agree on the terms of a protocol on mutual termination of the employment agreement under certain conditions. Despite the fact that the Labour Law does not set forth any specific provisions with respect to the mutual termination of the employment relationship, however, such transaction is accepted before the Court of Cassation of Turkey. According to the precedents of Court of Cassation, a mutual protocol signed among the parties to an employment relationship shall be deemed as valid if the employer grants an "additional benefit" which should be equal to at least 4 month's salary to employee along with the applicable statutory redundancy package (see Question 15).

Even if a protocol is executed among the parties and the employee waived his/her rights, the employee may still claim its reinstatement to employment and compensation under the Labour Law.

17. **Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.**

Post-employment non-compete obligations against employees can be contractually agreed subject to compliance with the provisions of the Turkish Code of Obligations. According to Articles 444 et seq. of the said Code, covenants to non-compete can be regulated within the employment agreement or by a separate undertaking letter. Although such covenants are deemed as valid, the following cumulative requirements must be complied with;

- Non-complete obligations shall only be valid in the case the employee was in a position to obtain information regarding clientele, manufacture secret or commercial activities of the employer, and usage of such information by the employee is likely to cause significant damages to the employer.
- Non-compete obligations can be foreseen for a maximum period of 2 years (apart from special conditions)
- Non-compete obligations must be limited with a specific geographical area and scope of activity (e.g. products, service).

In the event that above-mentioned legal limitations are exceeded by the employer, Labour Courts have the discretion to completely annul or partially restrict the validity of such non-compete obligations.

18. **Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?**

The Labour Law does not specifically regulate non-disclosure agreements within the scope of the employment relationship but such agreements are deemed valid according to the precedents of Court of Cassation of Turkey provided that they are reasonably limited in time. The length of such period is to be assessed by the Court on a case-by-case basis taking into consideration the importance of the role and responsibility of the employee along with the access of the employee to confidential and important information of the enterprise.

19. **Are employers obliged to provide references to new employers if these are requested?**

The Labour Law does not prescribe any obligation to provide references to new employers.

20. **What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?**

Most common difficulties that are experienced by employers are the identification of legitimate reasons for the termination of the employment relationship and documentation of the workplace practices (e.g. performance evaluation system, bonus & premium system) and previous acts (e.g. underperformance, faults or misconducts) of the employees.

Termination of the employment contract is a complex process as the employers will be bound with the termination grounds in the scope of any future proceedings. Therefore, determination of legal grounds for the termination should be carefully managed as the burden of proof regarding the compliance with laws lies with

the employer.

In case of possible dispute before the Labour Courts, apart from the termination reasons and their legal background, Courts will also examine whether termination methods and procedural requirements were duly observed and realized in compliance with the Labour Law (please see Question 8 for the procedural requirements) thereof. Thus, preparation of the termination notice and notification thereof to the employee are also other critical issues to be considered by the employees.

21. **Are any legal changes planned that are likely to impact on the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?**

In the first quarter of the year of 2016, the draft law on Labour Courts ("Draft Law") which introduces an alternative dispute resolution method to be applied just before the initiation of employment lawsuits has been published. The concept of the mandatory mediation has been created by the amendments in order to reduce the workload of Labour Courts and to accelerate the judicial procedures. According to the Draft Law, application for mediation shall be a prerequisite to initiate a lawsuit regarding any claim arising from the employment relationship. In the case that the employment contract is terminated without any valid ground or just cause, the employee shall apply for mediation within one month from the termination notice. If the parties cannot come to an agreement at the end of the all procedures before the mediator, related lawsuit may be initiated before Labour Courts within two weeks from the date of issuance of the final minutes. It is expected that the Draft Law will be at the agenda of the Grand National Assembly of Turkey within coming months.

Other notable expectations on labour law related legislations is about the severance payment of employees. Establishment of a fund regarding the severance payment of employees has become a long-debated issue in Turkey. Although any draft law is yet to be published, the debate and the issue have been reawakened recently as one of the plans of the Turkish Government. Severance payments are expected to be made by employees to a fund which will be established specifically for this purpose. It is intended that all employees would obtain severance payment regardless of the reasons of termination and the term of the employment contract.