IN THE CORONAVIRUS OUTBREAK PERIOD

REMINDER FOR THE EXECUTIVE

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FAQ and answers by 02.04.2020 about

- Labour Law
- Law of Protection of Personal Data
- Judicial activities
- Commercial Lease Contracts

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Labour Law

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1. Responsability of employer

Under the Regulation of Occupational Health and Safety, the employer is obliged to take all measures necessary, provide tools and equipment and the provision of the organization; including preventing occupational risks and providing information and training to protect the health and safety of the employees. The responsibility of the employer is not only limited by legal legislation, but it also requires taking the highest-level scientific measures that can be reached at the moment. Therefore, it is recommended that necessary information is given by the employer using methods such as, hanging the information note prepared by The Turkish Ministry of Family, Labour and Social Services on safety measures to be taken in workplaces due to the new type of coronavirus (COVID-19) outbreak, to places like cafeterias, dormitories, toilets and notice boards, where the workers can see.

2. Responsability of employee

According to Article 19 of Law No. 6331, The Occupational Health and Safety Law, employees are obliged to take care of their health and safety and that of other employees who are affected by their acts or doings under the instructions of the employer and the training they received related to occupational health and safety. Therefore, the employees also have obligations such as paying attention to individual cleanliness, following the quarantine periods and notifying the employer when an illness is detected in or around them.

3. Can the employer send the employee for a meeting to a country without a foreign travel ban?

Under Article 417 of The Turkish Code of Obligation, while the employer is obliged to take all measures necessary to ensure occupational health and safety at the workplace; the employees are obliged to comply with the precautions regarding occupational health and safety. We believe that the employer should not send employees to overseas meetings due to the current worldwide outbreak.

4. What is the employer's obligation to employees who come from abroad for business purposes in the past 14 days?

These employees cannot be forced to work at the workplace. In our opinion, if possible, the employee should be able to work from home during the 14 (fourteen) day quarantine period; if not, the employer should give the employee paid leave. If the employee receives a health report, the usual report procedure will be applied.

5. Is it possible for the employee to refuse to attend to domestic meetings and business trips?

Under the Article 417 of The Turkish Code of Obligation, the employer is obliged to take measures to protect and respect the personality of the employee in the employment relationship and maintain an order under the principles of honesty in the workplace; in particular to prevent further psychological suffering. We believe that the employer cannot force the employee to go out of the city in cases where it is understandable that travelling out of the city will psychologically harm the employee.

However, in the case that all necessary precautions are taken by the employer and the employee does not fulfil the requirements of the job in a way that cannot be accepted as well-intentioned, despite being warned; the employment contract of the employee can be terminated by applying subparagraph (h) of Article 25/2 of The Turkish Labour Law ("If the employee refuses, after being warned, to perform his duties").

We believe that employers should evaluate carefully whether there is any risk for the employee according to the current situation.

6. Should the death of an employee at the workplace because of Coronavirus be notified as a work accident?

It will be correct to report the death as a work accident, since the death of the insured employee takes place at the workplace.

In the case of a truck driver with H1N1 (swine flu), the 21st Civil Chamber of the Supreme Court of Appeals has accepted H1N1 as a work accident with its 15.04.2019 dated, 2018/5018 E.-2019/2931 K. numbered decision. In this case the truck driver died of H1N1 following his return from abroad. So it is highly likely that he picked up the virus during duty. In such a case, the defect rates of the parties need to be discussed to consider the employers' obligation of indemnity

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7. Does the employer pay compensation if the employee dies at the workplace because of Coronavirus?

Evaluation will be required according to the concrete case. If there is a precautionary measure that the employer has to take but has not been taken (Continues to make the employee work even though he knows that the employee is sick, etc.), the obligation for compensation may arise. However, the amount of compensation will be determined by considering the employer's and / or employee's fault regarding the occupational health and safety measures. *Even if the employer has not taken all the precautions, the employer will not pay compensation if the employee has a serious defect.*

8. Does the employer have to shut down the entire workplace because of the Coronavirus?

There is no obligation at this stage for workplaces that have not yet been officially shut down. However, the Employer is obliged to take all reasonable precautions that can be taken.

9. What are the obligations of the employer if he/she temporarily shuts down the workplace without the legal obligation?

In the case that the employer abides the recommendation and temporarily shuts down the workplace, the main rule is that the obligation to pay the employees wage continues. Since the employer shutting down the workplace on his initiative can't be considered as a compelling reason, the obligation to pay the employees wage continues. However, in this case, we are in the opinion that the employer does not have to pay the employees fringe benefits such as fare, food, etc. which depends on the employee to be present at the workplace or the employees' actual work. Since the obligation to pay wages continues in the case that the workplace is temporarily shut down, there is no need to obtain the approval of the employee,

10. What are the legal rights of the employer if he/she has to shut down the workplace due to compelling reasons?

Compelling reason, according to the established jurisprudence of the Supreme Court, are circumstances that occur around the employee and prevents the employee from working by making it impossible (For example, the curfew of people over 65, employees in quarantine, etc.).

Currently, workplaces such as theatre, cinema, show centres, bars, sports halls, Turkish baths, indoor playgrounds are shut down with the Ministry of Internal Affairs Circular. Therefore, there is a compelling reason in these workplaces. Our opinion is that compelling reason rules cannot be applied to workplaces that have not yet been shut down by official authorities.

In this case, Article 40 of the Turkish Labour Law No. 4857 shall be applied. Briefly, the regulation is as, "If compelling reasons occur that cause work to stop in the workplace or prevent the employees from working for more than 1 (one) week, the employment contract is suspended for this 1 (one) week and the employee is paid half salary during this period. ... ".

According to paragraph (3) of Article 25 of the Labour Law No. 4857, "the employer may terminate the employment contract for just reason in the event of a compelling reason preventing the employee from working at the workplace for more than a week." However, we believe that this article should be applied carefully by employers. Employees may apply to the jurisdiction against employers who turn this period into an opportunity, within the framework of the provisions of Articles 18, 20 and 21, claiming that the termination is not under The Turkish Labour Law. Furthermore, we would like to point out that it is possible for the employee to terminate the employment contract for a just reason, according to the 3rd paragraph of Article 24 of the Turkish Labour Law No. 4857, if there are compelling reasons for the work to stop more than a week in the workplace.

Under Articles 24/3 or 25/3 of The Turkish Labour Law, rightful termination for compelling reasons, it is necessary to pay the employee severance pay and unused annual leave. However, notice pay is not paid.

11. Which measures can the employer take on?

We believe that evaluations in terms of the continuation of work, should be done in accordance to Labour Laws protection of employee, interpretation in favour of the employee, termination being last resort principles, with equitable, objective and good faith practices for both the employer and the employee. In this context, our opinion is that it would be appropriate for employers to implement the following practices considering the concrete situations in the workplaces, if possible, by following the priority order stated:

- Remote working
- Paid leave
- Unpaid leave
- Compensatory work
- Short-term work
- Implementation of article 40 of the Labour Law no. 4857
- Unpaid leave
- Termination of employment contract

- Remote working

Due to the extraordinary period that is being experienced, at the extent that the nature of the work allows, it may be possible for the employee to work from home for a temporary period. However, this is not a vested right; following the end of the extraordinary period, employees must start working at the workplace again. The opinion that the employer can implement remote working without written consent from the employee in this period, is dominant. However, it will undoubtedly be a more accurate approach to put the situation in writing.

- Paid leave

In line with the principle of using paid annual leaves within the year that the employee deserves, it is equitable that the employees use paid annual leave, leaving at least 10 days out for every year of the employees future paid annual leave right (for example, in a way that the next 3 years paid leave cannot be taken) and especially from the past years. In the current situation, our opinion is that within the scope of his/her management right, the employer may make the employee use paid annual leave and the employee does not have the right to refuse.

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- Unpaid leave

It can be used regarding the employees written request and at the extent that the nature of the work allows. However, the employer cannot make the employee use unpaid leave without their direct request and/or malicious intent. Otherwise, it allows the employee to terminate the employment contract with good reason. It is also possible to count this as an employment termination.

- Short-term work

Under Annex 2 of the Unemployment Insurance Law No. 4447, if weekly working hours at the workplace is reduced temporarily or ceased completely due to general economic, sectoral or regional crisis or compulsory reasons, employers can have short term work done by the employees, not exceeding (three) months. The employer must give written notice to the General Directorate of Turkish Employment Agency (İŞKUR) and collective labour agreement party labour union if any.

- Compensatory work

It is work that is to be compensated by the employee, which he/she hasn't performed due to compulsory reasons or when the time that has been worked is considerably lower than normal working time or the operations have ceased entirely or on the days before or after the national and public holidays or where the employee is granted time off upon his/her request, except for permissions foreseen in The Turkish Labour Law No. 4857, employment contracts and collective labor agreements and legal permissions. The employer who will have the compensatory work done, must clearly state the reason for which this work is based on (a significant decrease in work, operations being stopped entirely, etc.) and inform the relevant workers of the date to start work. Compensatory work is carried out within 4 months following the end of the compulsory reason and start of the normal working period in the workplace. (This period has been extended to 4 months within the scope of the latest measures. However, the President has been given the authority to double this period. The law no. 7226, which is the legal regulation, was adopted on 24.3.2020 and not yet published in the Official Gazette when we prepared this article.) Compensatory work cannot exceed 3 hours a day, provided that maximum working hour of eleven (11) hours per day is not exceeded. Compensatory work cannot be done on holidays.

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- Implementation of Article 40 of the Labour Law no. 4857

Under this article, if compelling reasons occur, which causes the work to cease or prevent the workers from working for more than 1 (one) week, the employment contract is suspended for this period and the worker is paid half salary during the period.

- Termination of employment contract

Termination is a situation that can be considered when economic conditions push hard, businesses start to take serious risks, other measures for employees have been taken (such as removing overtime, partial work, substantial change in salary reduction, paid leave, unpaid leave, etc.) and the situation becomes last resort economically and actually.

- Unpaid leave

Unpaid Leave is a special implementation of the suspension of an employment contract. Especially in times of economic crisis, employers aim to mitigate the negative effects of the economic conjuncture on the business by taking workers on unpaid leave.

Thus, the Supreme Court also states that the employer cannot go to termination of the employment agreement directly due to temporary setback of acceptance performance, mild measures that can prevent termination should be tried under the principle of termination being the last resort (ultima ratio).

In the justification of Article 22 of The Labour Law No. 4857, attention is also drawn to targeting the continuation of the contract by making changes in the working conditions of the worker, even if valid just causes are available, "in the presence of certain negative conditions, instead of direct termination of the contract of the worker, by making certain changes in the working conditions, to maintain the business relationship".

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12. What is short-term work and short-term work allowance?

It is an implement which provides an allowance to insured employees for the period that they could not work, up to 3 (three) months (can be extended up to 6 months with President's decision), if weekly working hours at a workplace is reduced temporarily by at least a third of its activities are ceased completely or partially for at least four weeks, without any continuity condition, due to general economic, sectoral, regional crisis or compulsory reasons.

Compelling reasons are periodic situations arising from external effects or situations such as earthquake, fire, flood, landslide, epidemics, mobilization; that are not caused by the employer's administration, that cannot be predicted priorly, as a result, cannot be averted, resulting to temporarily reducing working hours or cessation of the activity completely or partially.

Within this scope, The Turkish Employment Agency (İŞKUR) pays short term work allowance and the General Health Insurance premiums for employees.

The employer must apply to The Turkish Employment Agency (İŞKUR) that working periods at the workplace has decreased significantly or ceased and evaluation to be done by labor inspectors concerning that the workplace has been affected by a compelling reason. Employers can apply for short term work in electronic and written environment by filling out the short work request form and the list of information about the employees who are to do short term working. The result of the compliance audit of the labour inspectors is notified to the employer by The Turkish Employment Agency (İŞKUR). The employer announces the result in a place at the workplace where employees can see and informs the labour unions party to the collective bargaining agreement if any. In cases where announcements could not be done, workers subject to short term work are notified in writing. The employer whose apply is deemed suitable, updates and sends the short-term work notification list within the period notified by the Authority.

For the employee to benefit from the short-time work allowance, the employer's short-time work application is to be found suitable with the examination of the labor inspectors, the worker should be entitled to unemployment benefits in terms of the number of days of work and the duration of the unemployment insurance premium (those who have been subject to a service contract for the last 60 days before the start of the short term work, which has paid unemployment insurance premium for at least 450 days in the past three years depending on the Law No. 7226, which was accepted on 25 March and published in the Official Gazzette), the information of the worker should be included in the list of those who will participate in the short term working, following the result of the labor inspectors examination.

The following provisional article is expected to be added to the Law No. 4447. Accordingly, “TEMPORARY PROVISIONAL ARTICLE 23- For short term work applications made for compelling reasons originating from the new Coronavirus (COVID-19), valid for until 30/6/2020, the provision of fulfilling the conditions of entitlement to unemployment insurance, excluding the termination of the service contract prescribed in the third paragraph of the additional article 2, is to be implemented in the form of having an unemployment insurance premium paid for 450 days within the last three years from those who have been subjected to the service contract for the last 60 days before the short working start date. Those who do not meet this condition will continue to benefit from the short-time working allowance for the period remaining from the last unemployment benefit entitlement, in order not to exceed the short working period.

To benefit from the short-term work implements within the scope of this article, no employee should be dismissed by the employer, except for the reasons set out in the Subparagraph (II) of Article 25/1 of The Turkish Labour Law No. 4857. Applications for short term working allowance made under this article are concluded within 60 days from the date of application.

The President is authorized to extend the application date made under this article until 31/12/2020 and to differentiate the days specified in the first paragraph."

Daily short-term work allowance; It is 60% of the insured employees average daily gross earnings, calculated based on taking into account the earnings of the employee for the last twelve months. The amount of short-term work allowance calculated in this way cannot exceed 150% of the gross amount of the monthly minimum wage. Within this scope, short term work allowance can be paid between TL 1.752.40 and TL 4.380.99. The short-term work allowance is paid to the employee himself and monthly for the periods that the employee does not work.

13. If the employee is infected with Coronavirus, can the employer terminate the employment contract with good reason

Under subparagraph (b) of Article 25/1 of The Turkish Labour Law No. 4857, if Health Board determined that the illness the employee is suffering is incurable and it is incompatible to work at the workplace, the employer has the right to terminate the employment contract for good reason. If it is determined that the illness of the worker reaches an advanced level and cannot be cured, the employer's right of termination will arise. The employer has to pay severance pay.

14. If an employee is infected with Coronavirus, can other employees terminate the employment contract with good reason?

According to subparagraph (b) of Article 24/1 of The Turkish Labour Law No. 4857, if the employer or another employee, who the employee constantly meets closely and directly, is suffering from an infectious disease or from a disease that is incompatible with the work of the employee; the employee has the right to terminate the employment contract for good reason. The employer has to pay severance pay.

Employers' Obligations Within the Protection of Personal Data Law

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Employers have been obliged to adopt several new implementations for their employees because of the precautions of the coronavirus outbreak. After receiving questions from our clients, we think that it will be useful to clarify and remind the obligations within the scope of protection of personal data and the secondary legislation, employers' obligations to inform their employees and taking their explicit consent especially for their health data to process are continuing. That is, in the event of epidemics, it is not possible to say that the personal data can be processed indefinitely on grounds of public interest or public health considering the scope of protection of personal data.

According to Article 10 of the Law, the data managers are obliged to provide information to the personal data holder before the acquisition of personal data or at the latest, at the time of the acquisition of personal data relating to each data processing activity. Data of health is deemed of a special quality as per Article 6 and processing them are subject to explicit concern. It does not mean that the obligations which are stated in protection of personal data are suspended because of the extraordinary situation of this outbreak.

For example, within the scope of the "Curfew Circular for those aged 65 and over with Chronic Illness" issued by the Ministry of Interior on 21.03.2020, the employer will be able to request a health report to identify their employees with chronic illnesses and to implement the necessary measures. Employers have the obligation to inform while they are requesting this information and report, as a data manager according to Article 10.

In this manner, to prevent the epidemic, employers must first fulfill their obligation to provide information to their employees to question their health and to process their health data, and to obtain the explicit consent from their employees to process them. The processing of personal data of employees who do not give explicit consent is contrary to protection of personal data and may cause the employer to have imposition of administrative sanctions.

Employers' Obligations Within the Protection of Personal Data Law

The exception of the restriction that the employer cannot process health data without the employee's explicit consent is regulated under the Article 6/3 " *...Personal data relating to health and sexual life may only be processed, without seeking explicit consent of the data subject, by any persons or authorized public institutions and organizations that have confidentiality obligations for the protection of public health, operation of preventive medicine, medical diagnosis, treatment and nursing services*" Within the scope of this article the doctors, including those are working in a company, nurses and medical personnel are the persons who can be deemed as an example.

Accordingly, in case of processing health data of employees by the company doctor, the employer's obligation to inform will continue, but the obligation to obtain explicit consent will be suspended. Further, another important point is to store the health data in a secure room that is not accessible to anyone other than the company doctor, including the employer; otherwise, the employer must get explicit consent from their employees.

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What to Consider in Personal Data Sharing?

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Can health organizations inform about Covid-19 by contacting people without prior permission?

In accordance with paragraph 6 of article 6 of the Law on Personal Data Protection, public institutions and organizations may need to collect and share personal data to combat serious threats to public health. In line with the Board's statements on this matter, there is no obstacle in terms of the Law for the relevant health institutions and organizations to send messages related to public health via telephone, message or e-mail.

Can the workplace doctor share the health data of the employee with the employer?

The workplace physician should not share the employee's health data with COVID-19 symptoms or whether he has a fever. Instead, the employer can empower the workplace doctor to send the workers to work or rest at home, depending on the situation. In addition, the occupational physician may request that the employee visit a higher health institution for the purpose of protecting public health and, if necessary, inform the authorized public institutions on this issue.

Can employers measure the fever of their employees or visitors?

Employers can measure their fever during their entry into the workplace without the explicit consent of the persons concerned through the workplace physicians and keep the results in the health files kept by the workplace physicians instead of processing them into the personal files of the employees.
It is also necessary to make sure that the interventions to be made through the workplace physicians are illuminated by the Lighting Texts prepared for the employees or visitors.
On the other hand, it will be against the Law for employers who are not workplace physicians to raise questions about their health, to measure their fever and to isolate them without any illumination and explicit consent.

What to Consider in Personal Data Sharing?

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Can the employer explain that his employee is showing Covid-19 symptoms?

The employer should not share the information of employees who show Covid-19 symptoms. If absolutely necessary, it can share the number of employees who work from home or reported, without associating it with any health data.

In cases where it is difficult to disclose the name of the employee / employees infected by the virus in order to take protective measures, the relevant employees should be informed in advance.

First of all, an explanation can be made as the example: "we would like to inform you that the COVID-19 test of a friend working on the 1st floor of our Head Office building was positive. Taking into consideration the dates of our friend whose test was positive, we will identify the people who are in contact with our friends and inform them about the situation."

Can the employer request information from its employees or visitors about their recent travels to the affected countries?

Employers have legal obligations to protect employees' health and ensure a safe workplace. In this context and under the current circumstances, justified reasons will be raised to ask employers and employees to inform themselves about whether they have visited a virus-affected area and / or show signs of the disease caused by the virus.

Can the health information of the employees be shared by the employer for public health purposes with the authorities?

Within the framework of Article 8 of the Law and the provisions in other relevant laws, it is possible to share the personal data with relevant authorities related to those contagious diseases which has obligation to notify.

What to Consider in Personal Data Sharing?

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What precautions should the employer take as the data controller, prior the video conference meetings?

During the video conference meetings held by the employers with their employees, company partners, representatives and customers, the data about real persons including voice and video recording, message and documents whose identity can be determined or identified can be stored on the server of the software and / or application company (the data center will be indirectly transferred abroad if the data center is abroad) and may be shared with third parties.

According to article 12 of the Law, data controller;

a) has to prevent personal data from being processed unlawfully,

b) has to prevent personal data from being illegally accessed,

c) has to take all necessary technical and administrative measures to ensure the protection of personal data, to ensure the appropriate level of security.

In this case, the data controller employer has to work with service providers who have taken strong cyber security measures that give confidence in compliance, privacy and transparency. Providing cyber security in terms of the network used by employees participating in video conferencing, taking necessary administrative measures (such as firewall, gateway, antivirus programs), to protect information and documents shared in the video conference meeting in case of a result of unauthorized accesses of cyber attacks.

Another point that should be emphasized here is that the measures to be taken by the employees within the scope of the Law will not eliminate the responsibility of the data controller's in ensuring the security of personal data.

What to Consider in Personal Data Sharing?

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What is the responsibility of cloud service providers for the Law?

According to the "Data Controller and Data Processor's Guide" published by the Personal Data Protection Authority, cloud service providers are qualified as data processors by handling only the data determined by the data controller and not using the data for their own purposes in accordance with the contract with the data controller. Therefore, data controllers and cloud service providers are jointly responsible for taking the necessary measures.

Judicial Activities and Procedures to be Carried out in Some State Offices

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Time Barring in Limitation Periods

The periods concerning the exercising rights prescribed in the Code of Civil Procedure, Administrative Judicial Procedure Law, Code of Criminal Procedure and Execution and Bankruptcy Law shall be suspended and not run until 30.04.2020 starting from the date of 13.03.2020. As of the start date of the suspension period, the limitation periods that are fifteen days or less remaining to expire shall be deemed extended for fifteen days starting from the day following the period end date. The extended period may be prolonged on condition that it applies only once, by a Presidential decree and it does not exceed 6 months.

The following limitation periods are excluded from the scope of this regulation:

a) those are outlined in-laws for crime and punishment, misdemeanor or administrative sanction, and disciplinary incarceration or preventive detention,

b) those are outlined in Law No. 5271 regarding the protective measures,

c) those are related to the procedures completing the interim injunction regulated in the Law No. 6100.

Within the scope of Law No. 2004 and others regarding the proceedings;

a) If a date of sale announced by the enforcement and bankruptcy offices regarding the assets or rights falls within the suspension period, the enforcement and bankruptcy office shall assign a new date for the sale of such assets or rights, after the suspension period ends, with no further applications required. In such a case, the sale announcement shall be made only on the electronic platform, and no fees shall be charged for that announcement.

b) Payments by consent made within the suspension period shall be accepted, and either party may request proceedings that are in favor of the counterparty be made.

c) Concordatum term shall continue to bear consequences for the creditor and the debtor during the suspension period.

Judicial Activities and Procedures to be Carried out in Some State Offices

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Execution Proceedings and Attachment Orders

By the Presidential Decree No. 2279, to be effective from the date of 22.03.2020 (including this date), it has been ruled to suspend all the enforcement and bankruptcy proceedings -other than those that are related to maintenance receivables- until 30 April 2020 (including this date), not to file any further requests for enforcement or bankruptcy, and not to enforce or execute any preliminary seizure decisions. In this scope, it shall proceed to accept receivable payments in the enforcement offices for the attachment orders that have been finalized before the decree. The employers shall continue to make payments to the enforcement offices by deducting the salaries of their employees if there is an attachment procedure completed before 22.3.2020.

Notaries

As of 23.03.2020, all notary public offices have started to work alternately on weekdays. One day odd-numbered notaries shall give service and the following day notaries with even-number.

Land Registry and Cadastral Transactions

Within the framework of measures against the Coronavirus outbreak, The General Directorate of Land Registry and Cadastre shall not accept any requests in the provincial directorates “except transactions for sales, mortgages, sales-mortgages and land registry transactions by formal deeds” until 04.05.2020. Such transactions may only be carried out at the appointed time with the appointment system.

Restrictions to Businesses Imposed by the Central and Local Administrations

As per the circular issued by the Ministry of the Interior on 24.03.2020:

1) All markets in districts/cities shall offer service between 09:00-21:00 hours

2) The maximum number of customers in the market area at the same time may only be one-tenth of the total area (excluding warehouses, administrative offices, etc.) that is allocated directly to the customer

3) All public and intercity public vehicles (including intercity buses) in the districts/cities shall accept 50% of their passenger capacity as per the number specified in their vehicle licenses and the manner of sitting in such vehicles shall prevent the passengers from getting in contact with each other. If not, administrative sanctions shall be imposed.

Judicial Activities and Procedures to be Carried out in Some State Offices

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Judicial activities that will continue during this period

- New enforcement proceedings regarding maintenance may be commenced and filed, and already filed execution proceedings may proceed during this period. We hereby would like to note that if the maintenance is secured with judgment and other receivable items are included in the same judgment, the judgment order may be enforced as a whole, however, it will only proceed for receiving maintenance.

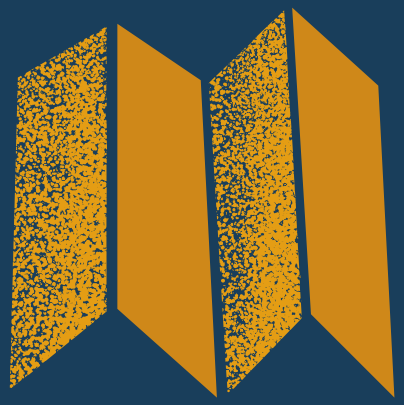
- Decisions regarding child delivery and the establishment of a personal relationship with the child have been suspended unless an interim injunction is ordered.

- It is still possible to make payments to enforcement files. If the payments do not require a degree list, they can be transferred to the creditors by completing the accounting transactions. If the receivable is paid or at the request of the creditor, attachment orders or seizure annotations may be removed and the files may be executed.

With the last amendment, we can briefly state that the practices that many courts have ruled informally since 16.03.2020 discontinued and the time barring limitation periods have been stopped retrospectively as of 13.03.2020, by adopting an official manner and preventing individuals not to lose their rights, giving the priority to human health so as not to compel people to choose between their health and rights.

In this manner, we would like to inform you that our Law Office will continue to work after 30.04.2020 for your files that are already filed or planned to be in courts or enforcement and bankruptcy offices, without losing any rights in the course of this period and process, since the judicial activities have been ceased until that day with the exceptions mentioned above.

Commercial Lease Contracts



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The following study aims to focus on the issue in the view of common knowledge. It is obvious that many theoretic discussions will take place on the issue and decisive answers will be given with comments by our First Degree Courts and the Supreme Court. Therefore, this study should be read as a general legal review based on our actual knowledge before a pandemic spread all over the country simultaneously with the rest of the world. It is our advice to review the relevant contracts and documents for the answers to questions of special circumstances.

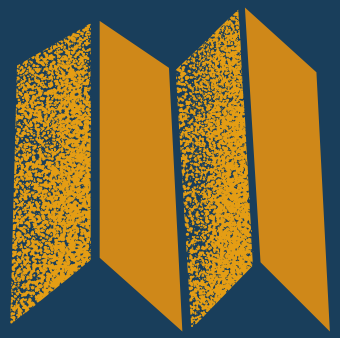
1. Determination of the Situation

The coronavirus outbreak has affected all commercial leases but no doubt the ones concluded in retail and food and beverage industries more.

In very specific circumstances, to avoid sharing misleading information about any parties contracts by making general statements, we strongly remind that our statements herein may only provide an insight, and that the final evaluation of each contract or commercial relationship must be evaluated by considering the characteristics of the contract and the concrete case in itself into account.

Another important point is that the Turkish Code of Obligation does not require lease contracts to be made in writing and verbal lease contracts are as valid as the written ones; in other words, one should consider that there is a lease contract wherever there is a lessor and a tenant for a specific premise. Therefore, even if there is no written agreement between the parties, the statements given below should be taken into account for verbal lease contracts also.

Commercial Lease Contracts



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2. Force Majeure in Turkish Law

The definition of force majeure is not stipulated in the Turkish legislation, however various legal conclusions are attributed to judicial decisions and definitions in the doctrine. The Court of Appeals defines force majeure as an extraordinary and unavoidable event that cannot be foreseen, which inevitably prevents the debtor to perform its debt.

According to this definition, for an event to be considered as force majeure:

- An event other than the business or regular activity should occur.
- This event should inevitably lead to the breach of the obligations.
- It should not be possible to foresee or avoid such an event.

3. Does the lease contract include a force majeure provision?

Force majeure provisions are regulated in most of the lease contracts in the general provisions or in the final provisions, which are not much thought over in contract negotiations or the wording. Therefore, the content of the provisions should be carefully reviewed, if circumstances such as force majeure or impossibility of performance are regulated by the contract, the rules of implementation should be determined in detail. Failure to perform the actions as defined in a contract in which these provisions are included, failure to comply with time and notification obligations force majeure shall not prevent the consequences due to failure to act, despite the existence of force majeure wording.

4. Turkish Code of Obligations and the event of hardship

By its three Articles (136, 137, 138), The Turkish Code of Obligations regulates the rules that are to be followed and the possible consequences for any kind of contract if the obligor is unable to perform its obligation in part or whole, due to force majeure reasons which are not caused and expected to be foreseen by the obligor. These regulations indicate that the legislator considers it more possible to end the obligation due to force majeure for instantaneous performance contracts, and to adapt the contract actions due to the difficulty of excessive-performance caused by force majeure for continuous performance contracts.

ARTICLE 138:

If an extraordinary situation, that was not foreseen and was not expected to be foreseen by the parties at the time of the conclusion of the contract, arises due to a reason that does not attribute from the debtor and changes the existing facts at the time against the debtor in such a way as to violate the rules of honesty and if the debtor has not yet performed its obligations and has become excessively difficult to perform, the debtor shall have the right to request from the judge the adaptation of the contract to the new conditions and to revoke the contract if this is not possible. In contracts of continuing obligations, the debtor shall terminate the contract. This article also applies to foreign currency debts.

5. Termination of a lease contract for extraordinary reasons under the Turkish Code of Obligations

ARTICLE 331

Each party, in the event of significant reasons which the continuation of the lease relationship is unbearable for itself, may terminate the contract at any time under the legal termination notice period. The judge, decides the monetary consequences of the notice of extraordinary termination, taking the terms and circumstances into account.

The regulation on the left shall not be applied until 01.07.2020, where the tenant is private law and public law legal entities or a person who is considered as a merchant as per the Turkish Commercial Code.

In the current circumstances, a party of the contract shall not be able to terminate the lease contract regarding that the contract conditions becoming unbearable for him due to the existing outbreak until 01.07.2020; that is, the party will suffer the consequences of unjust termination.

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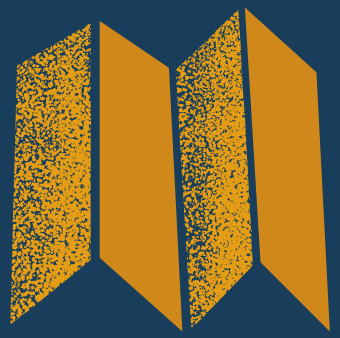

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6. Communiqué No. 518 on Tax Procedure Law

Within the scope of Article 3 of the Communiqué, published in the Official Gazette on 24.03.2020, besides those operating in other sectors that are not included here, shopping centers, retail, artistic services such as cinema and theatre, food and beverage services including restaurants and cafes, textile and apparel manufacturing, building construction services are accepted under force majeure measures between 01.04.2020 to 30.06.2020.

We believe, this regulation that is made in the context of The Tax Procedure Law, does not damage the right of parties who operate in the sectors and business fields that are not included to this regulation, to claim that they are affected by the force majeure about the lease agreements where they are a party.

In the future, this regulation may even be a reference for the consequences of force majeure or excessive performance difficulties in the settlement of disputes that will be subject to the judiciary, at least for the lessors and tenants of real estate leases for commercial purposes within the period mentioned above.

7. Provisional Article 2 of the Law No. 7226 on Amendments to Certain Laws, Dated 26.03.2020

Failure to pay the rent of a workplace between 01.03.2020 and 30.06.2020 does not constitute a reason for termination of the lease agreement or eviction.

It is necessary to emphasize that this regulation, without releasing the tenant from its obligation to pay the rent or common expenses, temporarily suspends the right to request eviction due to the failure of paying rent according to the Article 315 of the Turkish Code of Obligations.

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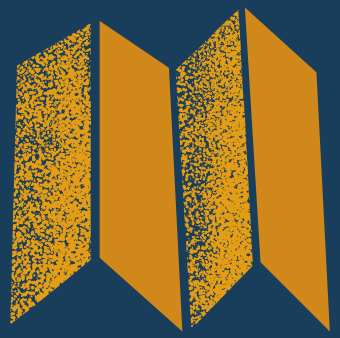

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8. Can lessors force tenants to pay their rents during the temporary conditions?

A. As stated in paragraph (V) above, the failure to pay the rent between 01.03.2020 and 30.06.2020 does not constitute a reason for termination of the lease agreement and eviction. This regulation will not, of course, abolish the right of the lessor to demand the eviction for unpaid rents for the period before 01.03.2020.

B. Is it possible to start a legal proceeding for the collection of rental fees that have not been paid since the beginning of March and for those related earlier? According to Article 1 of the Presidential Decree No. 2279, the execution of all enforcement and bankruptcy proceedings carried out throughout the country, except execution proceedings regarding the maintenance receivables, will seize until 30.04.2020 and that no new execution is to be carried out within this time frame.

In the scope, within the period between 01.03.2020 and 30.06.2020, if the tenants do not pay the rental fees arising from a commercial lease agreement, the lessor will be able to start legal proceedings on 30.04.2020 earliest. However, the payments that are not made until 30.06.2020 will not constitute a legal justification for the request for eviction.

C. Can the lessor request interest for the lease payments not made on time? There is no regulation preventing the issuing of an interest if payment is not made on the due day defined by the lease agreement. However, we consider that the interest to be requested by the lessors should be handled together with the requests for adaptation of the contract terms for those the tenants may demand "excessive-performance difficulties".

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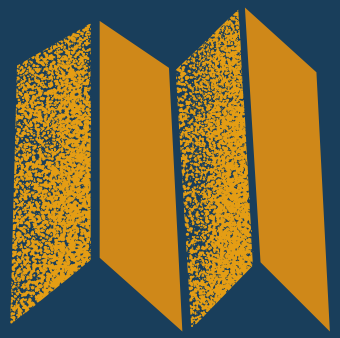

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9. Notes for the Lessors

An issue to remind the lessers is that, although some legal experts and professional organizations have different opinions, the payment of the rent is not suspended or postponed, and only the lessors right to request the eviction is temporarily suspended. For this reason, if the lessers due obligation by contract is concerning the notification of the invoice to the tenant, the lessors should continue to notify their invoices to the tenants; tenants may also have to pay some delay interest for unpaid rents in the future.

Another practical issue has arisen regarding the chain store tenants, whether risk provisions for delay interest are to be set aside due to unpaid rents. Our view is that the tenant company manager who will answer this question has the right to demand the adaptation of the rental price under Article 138 of the Turkish Code of Obligations, and that there is no need to set aside a risk because the delay interest can be offset by swapping in this context.

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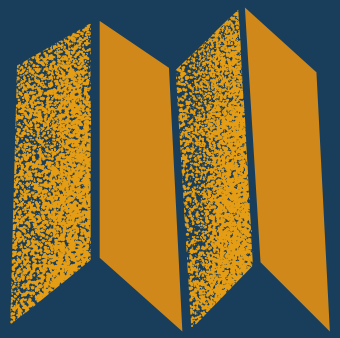

10. Can the tenants end the lease agreement?

Before starting to think about the answer to this question, it would be more appropriate to search for answers such as the date on which the lease contract concluded between the parties, whether the real estate subject to the contract has yet been delivered to the tenant, the duration of the lease contract and whether the field of activity where the leased premise will be used is restricted by the contract. As a simple and basic principle, if the premise is delivered to the tenant, it should be considered that the lessor has fulfilled the principal obligation committed by the contract and therefore the tenant's commitment to act under the commitments undertaken by the contract has not removed.

However, the tenant will be able to request the implementation of Article 138 of the Turkish Code of Obligations, due to the performance of the rent payment becoming extremely difficult because of the epidemic and self-isolation.

It should be evaluated separately for each contractual relationship whether the conditions of Article 138 of the Turkish Code of Obligations have been met, if so, at what level they have occurred. Of course, the tenant of a children's playground should be subject to different agreements or judicial decisions comparing to a tenant that continues to provide takeout service in the same shopping center.

Besides, if the agreement was concluded at a time when the epidemic was seen or expected to be seen in our country and the debtor becomes unable to fulfill its obligations, the lessor will be able to claim that the tenant committed the obligations already knowing the conditions.

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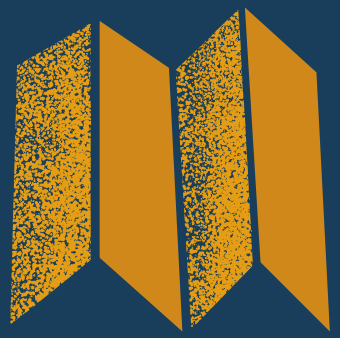

11. Can the lessor and the tenant demand the adaptation of the conditions in the lease agreement due to the outbreak?

We hope that this question will be answered positively in the future by judicial decisions. Because it is indisputable that the conditions causing excessive-performance affect both parties of the contracts. Therefore, our opinion is that the parties may request not only the reduction of the rent amounts but also the adaptation of other contract terms, for example, the extension of the contract period. However, as mentioned earlier, the conditions of the adaptation may be different even for tenants in two workplaces side by side. Each adaptation will be made by evaluating different factors such as the contract, the actions taken by the tenants and the lessor, the date of the contracts, the field of activity, the duration.

12. Fulfillment of Performances

It seems that today different stakeholders are taking steps considering the total benefit in daily life and commercial life. There are two issues to remind here. First of all, it is to review the contract terms, how your obligations are described in it and the terms defining your rights. On the other hand, it should not be neglected to include clauses of reservations, such as “all our rights arising from the contract and laws are reserved; and will not be considered as an implied acceptance of waiving our rights or changing the contract”, when notifying other parties of existing contracts of a situation or implementations that creates changes to the contract. Such clauses will be of great importance in the judicial processes in the future, where demands for adaptation of the contract are argued due to excessive-performance difficulties.

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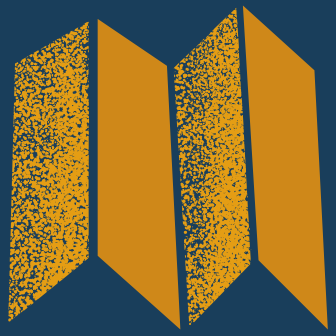

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13. To benefit from the results of the favor due to force majeure

A constructive and quick solution for the parties will be reached through the decisions without self-reservations. The contracting parties, who try to turn this situation into an opportunity and disregard the damage caused to the other party for the same reason, will remain in the uncertainty of the judicial processes that will last for years, while making a new investment, production or operational decisions.

Finally, in any case, it should be reminded that any party that thinks their field of activity and business is affected by the coronavirus epidemic and therefore cannot fulfill their contractual obligations; whether or not there is a written lease agreement, should notify the lessor or lessee of,

- the situation and why they are affected,
- how long they expect to be affected,
- what their contractual obligations are, even if they are not included in the contract or the contract that cannot be fulfilled partially or completely because of the effect

with a written notification without a delay and also serve notifications in the same way for new developments, regarding that the notifications will be beneficial in the process of resolving possible disputes.

We wish you healthy days.

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