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FINAL AMENDMENTS ON JOB SECURITY PROVISIONS

Amendments Brought by the Labour Courts Law No. 7036 on Job Security

The new Labour Courts Law No. 7036 dated 12/10/2017 (the “LCL”), has made some important amendments on job security provisions regulated under the Labor Law No. 4857 (“LL”) dated 2003.

First of all, employees who benefit from the job security of the Labor Law, should fulfill the following conditions regulated under Articles 18 and et seq of the LL:

- (i) the employee should employ under an indefinite term,
- (ii) the employee should employ in a workplace where at least 30 employees work,
- (iii) the employee must have at least six months of seniority,
- (iv) the employee’s employment agreement is terminated without valid reason and without being duly.

If all of these conditions are fulfilled, then provisions on job security can be applied. If the employee benefit from job security provisions of the LL, the employee can file a lawsuit against the employer and claim reinstatement to work by challenging the invalidity of the termination.

Before amendment to the LL, the employee should apply to the labor court within 1 month as of the date of termination in order to file a lawsuit on reinstatement to work. If the labor court decides in favor of the employee by stating that the dismissal was invalid, it would rule that

- (i) the employee be reinstatement to work
- (ii) a compensation for job security ranging from 4 to 8 months-wage of the employee including up to 4 months’ total of his/her wages and other entitlements for the time the employee is not reinstated to work until the finalization of court’s verdict, be paid to the employee, if the employee is not reinstated to work by the employer.

The compensations were ruled on monthly basis. The employment contract of the employee is deemed to be ended when he/she was not reinstated to work by the employer, and the legal consequences of that termination such as; interest and the

statute of limitations related to the above stated compensations were accrued as of that date.

The main amendments brought by the new LCL concerning job security are as follows:

- As per new amendments; employee whose employment agreement is terminated should apply to the mandatory mediation before filing a lawsuit for reinstatement to work. In the relevant Article it is regulated that; the employee whose employment agreement is terminated shall apply to the mediator, claiming that the termination reason was not expressly indicated or the reason which is indicated was not a valid reason and shall demand for reinstatement to work, within one month as of the date of termination. In case an agreement cannot be reached at the end of the mediation process, lawsuit on reinstatement to work shall be filed before labor court within two weeks as of the date of final report of mediator. The parties may mutually agree that the dispute be resolved by private arbitrator instead of labor court, within same period.” Thus, in case lawsuit for reinstatement to work, the dispute shall be resolved by mediator before such is tried by special arbitrator or labor courts.

According to the LCL, if parties do not resort to mandatory mediation before filing a lawsuit before labor courts for reinstatement to work, the case shall be dismissed due to procedural ground. The parties may re-start the process by applying to mandatory mediator within 2 weeks as of the notification of court’s verdict on dismissal of case due to procedural ground.

At the end of the mediation process, if the parties mutually agree that the employee should be reinstated, the following must be resolved: (i) the date of commencement of the employment, (ii) the monetary amount of wages corresponding to unemployed period of the employee (iii) the monetary amount of reinstatement compensation. If the employee does not start to work at the agreed date, termination becomes valid and the employer shall be only responsible for the legal consequences of termination (i.e.; notice and severance pay).

- As per new amendments, if labor court is ruled in favor of the employee, the reinstatement compensation, wages corresponding to unemployed period of the employee and employee’s other entitlements at the date of initiation of the lawsuit shall be determined in monetary terms i.e., compensation and wages shall be denominated in figures by the court (Article 21/4 of LL). These wages shall be hereinafter denominated in monetary terms not based on months. By taking into consideration the initiation date of lawsuit in calculation of the compensation and wages, the legislator accepted the date of initiation of lawsuit, as the date of termination of the employment of employee. Accordingly, the legal consequences arising from invalid termination such as rights of employee pertaining to his/her seniority and wages shall be calculated over the

wages on which the employment of the employee deemed to be terminated. On the other hand, the denomination of rights of employee in monetary terms by the labor court has also facilitated the execution process of same. If the rights which are endowed by the court are not paid at the end of the case, employee may enforce his/her rights basing on court's verdict.

- The period for initiation of lawsuit for reinstatement to work and the process for adjudication were re-regulated. The labor court should proceed acceleratingly. Once the labor court ruled, such decision can be appealed before Regional Judicial Courts (namely Bölge Adliye Mahkemesi in Turkish). The Appeal Court shall proceed again acceleratingly, and the Appeal Court's decision is final and binding. As per the new procedural changes, the decision of the Appeal Court cannot be appealed before Court of Appeals. Thus, the Regional Judicial Court is the only appeal authority, and its decisions pertains to this case is final.

Regulation of the Tax Aspects of Job Security under the Law No. 7103

By the Law on Amendment to Tax Laws, Certain Laws and Decree Laws No. 7103 dated 21.3.2018 (the "Law No. 7103"), important regulations have been introduced regarding the tax aspects of job security.

In cases where the parties terminated the employment of employee by separation agreement on mutual understanding, the taxation of various payments made under separation agreement such as severance pay, compensation for job security and payment made under other names, was very controversial. Upon regulation of job security under the LL, parties to employment began to ever increasingly execute separation agreement on mutual understanding. The parties to avoid long lasting litigation process, choose to execute separation agreement to provide job security to the employees who will be dismissed for certain reasons, and make certain payments such as; job security compensation along with the amounts corresponding to the legal rights of the employee (i.e.; notice and severance pay).

It is regulated under the Law no. 7103 that the part of the compensations paid under separation agreements on mutual understanding corresponding to the amount severance payment to which the employee entitled to according to the applicable labor law, and similarly the payments and benefits made under various names such as; job loss compensation, end of work compensation, job security compensation shall be exempted from income tax.

In this context, under the General Communiqué of Income Tax, Serial no. 303 published on 11.6.2018, the annual amount of severance payment provided with separation agreement on mutual understanding shall not exceed the maximum retirement bonus payable to the highest civil servant subject to the Civil Servants Law, for each year of service. This amount (which is also called as statutory severance ceiling) is 5.434,42 TL until the end of 31.12.2018.

Example: After working for 10 years at (A), (B), who left the job on 20/11/2018, has been paid a severance pay in the amount of 30.000 TL over his monthly fee of 3.000 TL, which is the basis for his severance pay according to separation agreement signed between them. In addition, (A) has paid 50,000 TL to (B) as a job security compensation. (A) made a total payment of 80,000 TL to (B) under separation agreement. The taxable amount of payment made to (B) shall be calculated as follows:

Severance payment amount 30.000,00 TL
Job security compensation: 50.000,00 TL
Total amount paid: 80.000,00 TL
Amount to be exempted from income tax ($5.434,42\text{TL} \times 10 =$) 54,344,2 TL
Taxable amount ($80.000\text{TL} - 54.344,2 = 25.655,8\text{TL}$)

In conclusion, the part of payments corresponding to the severance payment calculated taking into regard the service period and the wage of the employee, and the statutory severance pay ceiling, according to the applicable labor law and other compensations; are within the scope of the exemption. Therefore, any payments exceeding the calculated amount shall be taxed as wage.