KOLCUOĞLU DEMİRKAN KOÇAKLI
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Employment Relationships That Are Agreed Not To Last "Forever"

Under Turkish law, service relationships between employees and employers are governed under Turkish Labor Law numbered 4857 (the **"Labor Law"**) and service agreement provisions of Turkish Code of Obligations numbered 6098 (the **"TCO"**). The Labor Law sets out different types of employment contracts, such as:

- definite term – indefinite term employment contracts,
- on-call-work agreements,
- equip agreements,
- part-time – full-time employment agreements.

There is no doubt that definite term and indefinite term employment contracts are the most preferred types, amongst others. In fact, the general principle is to employ an employee through an indefinite term contract. Parties can agree to be bound by the contract for a definite term only if there are exceptional cases. According to Article 11 of the Labor Law, only if objective particularities of the work undertaken in the agreement require (or justify) a time limitation can the parties execute a definite term employment contract. For instance, the Court of Appeals rules consistently rules that due to the nature of the work, project-based contracts and high-level executives' *(such as general managers and CEOs)* employment contracts can be executed for a definite term.

A definite term employment contract may only be renewed for another definite term if there is a reason justifying the extension. Otherwise, if at the end of the specified term, parties continue with the contractual relationship, the definite term employment contract would be transformed into an indefinite term employment contract. Yet, if the parties mutually agree not to continue with the contract, the contract will expire automatically at the end of its term without triggering any compensation liability on the employer. Nevertheless, if the employer notifies the employee that they do not prefer carrying on with the contractual relationship once it has expired, the employer will be obligated to pay severance pay to the employee.

There is no major difference between the provisions of an employment contract with a definite term and those of a contract with an indefinite term[1]. For instance, under both types, parties can agree on a probation period during which they can terminate the employment relationship without serving a prior notice or the employee can undertake not to compete with the employer for a certain time period following the expiry of the contractual relationship.

[1] The Labor Law prohibits employers from discriminating employers with definite term contracts from the others, in terms of the labor rights provided in the workplace.

The main difference between these two types comes out in their termination methods and the statutory form required under the Labor Law. An indefinite term employment agreement can be executed either in written form or on a verbal basis, whereas Article 11 of the Labor Law requires a definite term employment contract to be in written form in order to be valid and binding upon parties.

As to the termination methods, both definite term and indefinite term employment contracts can be terminated with immediate effect by either party, if there exists one of the "just causes" set forth under Articles 24 and 25 of the Labor Law.

An indefinite term employment contract can be terminated by serving a prior notice, even when the terminating party lacks a just cause[2]. However, in a definite term employment relationship, if there is no just cause for termination, neither the employer nor the employee can terminate the contract before its expiration. If and when a party terminates a definite term employment contract without any just cause, the termination is deemed "unlawful" and the terminating party is obligated to indemnify the other party's pecuniary and non-pecuniary damages. In addition, there are a number of decisions of the Court of Appeals, which states that an employer, who terminates a definite term employment contract without just cause before its expiration, would be obligated to pay severance pay to the employee.

According to Article 438 of the TCO, if it is the employer who terminates the definite term employment contract without any just cause, the employer will be required to pay the amount that would have been paid to the employee, had the agreement not been terminated[3]. If the employer terminates the definite term employment contract unlawfully (without any just cause), the employee will not be entitled to request his/her re-employment. This is because the job security provisions, which are sought for entitlement to request re-employment, are not applicable to definite term employment relationships[4]. For the sake of protecting employees from sufferings, Article 438 of the TCO provides that, in a possible lawsuit to be initiated by the employee against the employer, the judge may order the payment of a discretionary compensation for unlawful termination, of an amount up to the employee's salary of six months.

There is a way out: Maximum Term Employment Contracts

For avoidance of such restrictions on termination, parties of employment relationships prefer executing employment contracts that are agreed to be continued until a specific date. In

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[2] If the terminating party lacks a just cause, they must serve a prior notice on the other party in compliance with the statutory (or contractual) notice periods. Unless the employment relationship in question is subject to job security provisions set forth under the Labor Law, parties are not obligated to present any reason for termination. For more information on termination by serving a prior notice, please refer to our E-bulletin of February 2014, *Process for Employers' Termination of Employment Agreements*
(Please see: http://www.kolcuoglu.av.tr/e_bulletin).

[3] Although this is the general rule, in a possible lawsuit, the employer can request the deduction of:

- the costs that would have been borne by the employee, had the employment relationship continued (e.g. fuel costs that would have been borne by the employee for his/her transportation to the workplace),
- the income that the employee earned until the expiry date of the terminated employment contract, if the employee has found a new job,
- the prospective income that the employee intentionally avoided until the expiry date of the terminated employment contract, in an attempt to prevent any reduction in the indemnification amount.

[4] Re-employment can only be requested if the employment relationship in question is subject to job security provisions stipulated under the Labor Law. Job security provisions are applicable where:

- there is an indefinite term employment relationship,
- there are at least 30 employees working in the workplace,
- length of the employment relationship exceeds six months,
- the employee is not deemed to be an employer's representative.

such contractual relationships, where there is no just cause, the parties can reserve their right to terminate the contract with notice until the contract automatically expires on the specified date. In practice, such employment contracts are referred to as "maximum term employment contracts".

Maximum term employment contracts are not governed under the Labor Law or the TCO. However, scholars opine that, just as in definite termed employment relationships, the objective particularities of the work in question must require (or justify) a time limitation in maximum term employment relationships. Scholars further opine that if the parties lack such reasoning to execute a maximum term employment contract, the employment relationship will be deemed an indefinite term one.

Maximum term employment contracts automatically terminate at the specified date, unless the parties agree to carry on with an indefinite term employment contract. In this event, the employer is not obligated to pay severance pay. However, if the employer intends to unilaterally terminate the contract before its expiration, it will be obligated to serve a prior notice on the employee, in accordance with the notice periods (or pay in advance all of the labor entitlements in lieu of the notice period) and pay severance pay.

Let's blend it up: Employment Contracts Under Which Parties Specify Both Minimum and Maximum Terms

Parties of an indefinite term employment contract can restrict their termination rights for a specific period of time, by way of an agreement. Such contracts are referred to as "minimum term employment contracts". During the specified minimum term, parties may only terminate the employment relationship if a just cause exists. Since restrictions on termination are in the employees' favor, the grounds sought for the validity of definite term employment contracts are not sought for minimum term employment contracts. During the minimum term specified by parties, the contract is treated as a definite term contract and if a party terminates the contract without a just cause, they will be obligated to indemnify the other party's pecuniary and non-pecuniary damages that we explained above. Once the minimum term specified by the parties is completed, the contract transforms into an indefinite term employment contract.

In practice, some employers prefer executing hybrid contracts, which specify both a minimum term and a maximum term. Most particularly in the employment contracts of start-up companies' high level executives, employers prefer stipulating a minimum term during which the parties are not allowed for termination in the absence of a just cause; and a maximum term, at the end of which the contract automatically terminates without triggering any compensation liability upon parties. In such hybrid contracts, once the minimum term is completed, parties will be free to terminate the contract by serving a prior notice in accordance with the notice periods.

In light of the foregoing, although parties' freedom of contract is restricted with the comprehensive regulations under the Labor Law and the TCO, this does not prevent parties from forming their contractual relationship in line with their needs and purposes.

Maral Minasyan (mminasyan@kolcuoglu.av.tr) & Pınar Bülent (pbulent@kolcuoglu.av.tr)