FUNDAMENTAL CHANGES IN WORKING CONDITIONS AND THEIR CONSEQUENCES

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As a rule, a fundamental change in working conditions either through employment contract or workplace practice to the detriment of the employee is only possible with the **written consent** of the employee. The related regulation is included in the 22nd article[1] of the Labor Code No. 4857.

This provision of the Labor Code No. 4857 can be explained as follows:

- According to Article 22 of the Labor Code, if the employee does not accept the fundamental change in working conditions, the employer is obliged to stop applying the change which is not mandatory. However, if such fundamental change in working conditions is mandatory, the employer is entitled to terminate the employment contract of the employee who does not accept such change.

  If the employer insists on implementing a non-mandatory amendment and does not receive written consent from the employee, the employee shall be able to file claims for severance and notice payment, invalid termination, and reinstatement in accordance with the provisions of labor protection, if requirements are met. In cases where the employer intends to make a substantial change to employee working conditions, Article 22 of the Labor Code imposes responsibility on the employer.

- An employee facing such situation also has the right to unilaterally terminate the employment contract. The basis for this is the provision of Article 24 / II (e), (f)[2] of the Labor Code. The adverse changes can affect any benefit for any employee in

[1] Change in working conditions and termination of the contract
Article 22 – Any change by the employer in working conditions based on the employment contract, on the rules of work which are annexed to the contract, and on similar sources or workplace practices, may be made only after a written notice is served by him to the employee. Changes that are not in conformity with this procedure and not accepted by the employee in written form within six working days shall not bind the employee. If the employee does not accept the offer for change within this period, the employer may terminate the employment contract by respecting the term of notice, provided that he indicates in written form that the proposed change is based on a valid reason or there is another valid reason for termination. In this case the employee may file suit according to the provisions of Articles 17 and 21. By mutual agreement the parties may always change working conditions. Change in working conditions may not be made retroactive.

[2] Employee's right to immediate terminate the contract for just cause Article 24/II – For immoral, dishonorable or malicious conduct or other similar behavior
f) If, in cases where wages have been fixed at a piece or task rate, the employer assigns the employee fewer pieces or a smaller task than was stipulated and fails to make good this deficit by assigning him extra work on another day, or if he fails to implement the conditions of employment.

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the workplace. These amendments may appear in the form of lowered wages, lowered/abolished bonus rates, changed clauses of bonus, changed terms of use for weekly off days, etc. According to these provisions, the employee may rightfully terminate the employment contract **on the grounds that his or her wages have not been calculated or paid in accordance with the terms of the labor contract, or that the working conditions expressed in the contract have not been realized.** Only in this case the employee can be qualified for severance payment, provided that its conditions are met. It is unlikely that this will be preferred by the employee because in this case the contract shall be terminated by the employee him or herself, and he or she will then be unable to claim the notice payment or benefit from the provisions of labor protection.

- **Substantial changes**

There are not any exact or absolute criteria for states that constitute a fundamental change to working conditions. For this, it is necessary to determine whether there is a substantial change to the detriment of the employee, taking into account the characteristics of each concrete case. An examination of Turkish Supreme Court decisions reveals that **“aggravation of the employee's situation”** is usually the main criterion for the concept of “fundamental change” in terms of working conditions.

Any changes made against an employee in relation to his or her wages, which is one of the main elements of the employment contract, are considered as substantial changes and are the most common example of it in working conditions. As a matter of fact, the Supreme Court has also ruled that there can be no unilateral changes to an employee's wage by an employer. The criterion to be taken as a basis is, whatever the reason may be, whether there is a decrease in the total wage received by the employee compared to the previous wage. Therefore, the concept of the “wage-worker” should be interpreted broadly and should not only be considered as salary.

Other examples of significant changes to working conditions are: changing the weekly off day, taking back an allocated vehicle, changing an employee’s title, changing the bonus system, abolishing transportation reimbursement, etc. These examples are not limited as *numerus clausus* and shall be evaluated separately for each concrete case.

- **The employer's written change proposal and the implementation procedure**

The employer must make an executive order to change the working conditions by contract with a written proposal for changes. This proposal is aimed to establish

an amendment agreement that replaces the current employment contract. According to Article 22 of the Labor Code, the change proposal must be made in written form. The proposal for amendment(s) should be made to each employee individually, and not in the form of a general announcement to the employees.

The employee has a six-working day consideration period for the amendment proposal. The employer must comply with this period of consideration. Otherwise, the amendment proposal shall be considered invalid. If the employee accepts the proposal for changes in writing within this six-working day period, the employment relationship shall continue under the new working conditions in accordance with the employer's proposal. If the employee remains silent during this period, he or she is deemed to have rejected the employer's proposal for changes.

Unless an amendment is made in accordance with Article 22 of the Labor Code, an employee claim for lost wages within the statute of limitations shall not be considered an abuse of rights.

According to the provisions of the article, changes to working conditions cannot be put into effect retroactively. Any substantive amendment shall enter into force only on the date of the contract concluded by the parties in accordance with the procedure in the first paragraph of the article, or on a later date.

If the employee rejects the amendment proposal, the employer shall either abandon any changes to working conditions and the contract shall be kept as is, or the employee shall have the right to terminate the employment contract by explaining in writing his or her valid reason for termination in compliance with the notice/notification period.

Termination carried out by the employer shall be temporary, and therefore the employee's contract shall be terminated in accordance with the notification periods provided in Article 17 of the Labor Code. According to the law, the employer must exercise this right of termination after six working day consideration period has elapsed.

The employer can still implement its proposal for changes not accepted by an employee. In this case, if the employer has made unilateral changes to the conditions, there shall be legal consequences related to this and sanctions shall be applied. If the employer applies the proposal in the amendment in spite of the refusal of the employee, for example by unilaterally reducing the employee's salary or abolishing the bonus he pays to the employee, the employee may

request that the wage gap or bonus be paid together with the highest interest applied to the deposit, refrain from further work in the position, or terminate the employment contract by justified reason in accordance with Article 24/II of the Labor Code. If the employee uses this right of termination and meets the conditions, he or she is entitled to severance payment. However, since he or she has willfully terminated the employment contract, he or she cannot demand notice indemnity and cannot benefit from the provisions of labor protection.

➢ **Consequences of termination based on the amendment**

Regarding the employer's termination based on the amendment implementation, if an employee meets the conditions, he or she may file a reinstatement lawsuit by claiming invalid termination based on the provisions of labor protection. In this case, the Court shall consider whether the amendment termination is valid or not. In other words, the employer shall have to prove that the termination was due to the requirements of the business, workplace or job, or to the competence or behavior of the employee. In the absence of a valid reason for termination, the consequences of invalid termination shall arise and a provision shall be made for the employee's reinstatement. The employee must be employed under the previous working conditions because reinstatement does not constitute consent to the change. Otherwise, the employer shall bear the financial burden that arises from the conclusion of a reinstatement lawsuit.

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