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LEGISLATION SECTION

Law

Law concerning the amendment of the Labour Act, the Unions Act and the Act Governing Employer-Employee Relations in the Press Sector

Act no. 4773

passed on 9.8.2002

Section 1. The heading of Article 6 of Labour Act no. 1475 of 25/8/1971 and subsection III of that Article have been amended and a subsection IV has been added as follows:

“Industrial, commercial and agricultural works:”

“III. The following works shall be classed as agricultural works for the application of the present Act:

a) all types of work involved in the cultivation, production, improvement and researching of fruit-bearing and non-fruit-bearing plants, tea, cotton, tobacco, fibred plants, citrus fruits, rice, legumes, trees, saplings, vine-stocks, seeds/grains, seedlings, shoots, vegetables and horticultural commodities, fodder and ornamental plants; all types of work related to these activities – soil tillage, sowing, planting, grafting, pruning, watering, fertilising, harvesting, threshing, picking, cleaning, preparing and sorting; work to combat plant diseases and pests, and works involved in soil improvement and the protection of meadows and pastureland, soil and water;

b) works involved in nursery gardening and afforestation, natural and artificial “tensil”, forest protection (including forest fires) and maintenance, forest development and improvement, seed collection, forestry research (irrigation, planting, cultivation, maintenance), the construction and repair of secondary forest tracks, forestry management, silviculture, production of forestry products, transport to the primary depots, stacking and classification in the final depots, construction, maintenance and development of national parks;

c) all types of work involved in the breeding, production and improvement of working and income-generating animals (including bees, silkworms etc.) and in the related care, management, training, shearing, and milking activities as well as in the obtaining, collection and preservation of their products and in the activities for combating the diseases and parasites affecting those animals;

ç) without prejudice to the provisions of Maritime Labour Act no. 854, the works involved in hunting on land and on water and in the preservation, transport and production of the products thus obtained.”

“**IV.** The Ministry of Labour and Social Security shall, after consulting the Ministry of Industry and Trade and the Ministry of Agriculture and Village Affairs, have the authority to determine whether a form of work which is not included in the works listed above is to be considered industrial, commercial or agricultural for the application of the present Act.”

Section 2. Article 13 of Act no. 1475 has been amended as follows, and the following articles have been inserted after that article:

ARTICLE 13. The other party shall be given notice prior to the termination of a permanent open-ended employment contract.

The employment contract shall be deemed to have been terminated as follows:

a) in the case of persons who have been employed for less than six months: two weeks after notice has been given to the other party;

b) in the case of persons who have been employed for a period of six to eighteen months: four weeks after notice has been given to the other party;

c) in the case of persons who have been employed for a period of eighteen months to three years: six weeks after notice has been given to the other party;

d) in the case of persons who have been employed for more than three years: eight weeks after notice has been given to the other party;

These terms of notice are the minimum terms and may be extended by agreement.

A party who fails to comply with the notice requirement shall pay compensation to the other party amounting to the wages due for the term of notice.

The employer may terminate an employment contract by paying the wages due for the term of notice in advance. The fact that an employer fails to comply with the notice requirement or the fact that he pays the wages due for the term of notice in advance shall not prevent the application of Articles 13/A, 13B, 13/C, 13/D, or 13/E.

Pursuant to the first paragraph of Article 13/A, where the employment contracts of workers employed in fields falling outside the scope of Articles 13/B, 13/C, 13/D, and 13/E are terminated in a manner which abuses the right to terminate a contract the worker shall be paid compensation amounting to three times the wages due for the terms of notice. And failure to comply with the requirement to give notice of termination shall furthermore require the payment of compensation pursuant to the fourth paragraph.

Valid grounds for termination of contract

ARTICLE 13/A

In places of employment employing ten or more workers, an employer who terminates the open-ended employment contract of a worker who has at least six months' service and who is not acting in the capacity of employer representative in charge of the management and administration of the entire undertaking must base

that dismissal on a valid ground concerning either the worker's competence or conduct or necessities of the undertaking, place of employment, or work.

The following matters shall not constitute a valid ground for dismissal:

a) membership in a trade union or participation in union activities outside working hours or, with the consent of the employer, within working hours;

b) the fact that the worker has been or is a shop steward or worker representative or has stood or is standing as a candidate for election to such office;

c) the fact that the worker has applied to the administrative or judicial authorities against the employer with a view to pursuing rights deriving from legislation or an agreement or is participating in a procedure initiated in that connection;

d) race, colour, gender, marital status, family obligations, pregnancy, religion, political opinions, ethnic or social origin;

e) absence from work during the periods in which it is prohibited to employ female workers pursuant to Article 70;

f) temporary discontinuation of work during the waiting period for which provision is made in Article 17, subsection I, paragraph b) because of illness or accident.

The worker's six-month period of service shall be calculated by totalling all of the periods in one or several places of work of the same employer.

Procedure for termination of contract

ARTICLE 13/B. The employer shall give notice of dismissal in writing and shall state the grounds for terminating the contract in clear and conclusive terms.

Except in cases which allow of no delay from the employer's point of view, a worker's open-ended employment contract cannot be terminated for reasons relating to the worker's conduct or output without giving the worker the opportunity to present his defence in response to the allegations made about him. However, this shall be without prejudice to the right of dismissal on the grounds listed in subsection II of Article 17.

Objection to notice of dismissal and procedure

ARTICLE 13/C. A worker whose employment contract has been terminated may initiate legal proceedings before a labour tribunal within one month of the date on which the notice of dismissal is served alleging that no grounds were stated in the notice of dismissal or that the grounds stated are not valid. If the collective labour agreement contains a relevant provision or if the parties come to an agreement, the dispute shall be brought before a special arbitrator within the same period of time.

The onus of proof of valid grounds for dismissal shall be placed on the employer.

The legal proceedings shall be brought to a conclusion within two months in accordance with the accelerated trial procedure. Where the court's decision is appealed, the Court of Cassation shall deliver a final decision within one month.

Consequences of dismissal without valid grounds

ARTICLE 13/D. Where a court finds that an employer has failed to give a valid ground or that the ground he has presented is not valid and rules that the termination of contract is void, the employer shall reinstate the worker within one month. Where the employer fails to reinstate the worker within one month of the latter's request, he shall be liable to pay the worker compensation amounting to not less than six months' wages and not more than one year's wages. When the court rules that the termination of contract is void it shall also lay down the amount of compensation to be paid to the worker in the event that he/she is not reinstated.

During the period when the worker is not employed pending the court's decision becoming final, that worker shall be paid any costs or other fees incurred for up to a maximum of four months.

If the wages due for the term of notice have been paid in advance, that amount shall be deducted from the payment to be made pursuant to the above provisions. Where the worker has not been given any term of notice or the wages due for the term of notice have not been paid in advance, the wages due for those periods shall be paid in addition.

The worker shall apply to the employer within six working days of the date on which the final court decision is served requesting to be reinstated. If the worker fails to apply within that time, the termination of contract effected by the employer shall be deemed valid, and the employer shall only be liable for the legal consequences of that dismissal.

The provisions laid down in the first, second and third paragraph shall not be amended by any agreement whatever; otherwise the provisions of the agreement shall be void.

Entering new employment

ARTICLE 13/E. Where a worker whose employment contract has been terminated enters new employment and the court rules that the termination of contract is void but the worker does not wish to return to his former job, he shall notify his former employer within six working days. Upon that notification, which shall be carried out in writing, the open-ended employment contract shall be deemed to have been terminated by the employer on valid grounds, and the relevant legal consequences shall ensue."

Section 3. The figure "13" occurring in the second paragraph of Article 8 of Act no. 1475 has been amended to read "13, 13/A, 13/B, 13/C, 13/D and 13/E" , and the phrase "in Article 13, subsection C" occurring in the eleventh paragraph of Article 14 of the same Act has been amended to read "in Article 13".

Section 4. The following subsection has been added to Article 17 of Act no. 1475:

"IV. A worker may take legal action in accordance with the provisions of Articles 13, 13/A, 13/B, 13/C, 13/D and 13/E on the charge that the contract was not terminated in accordance with the grounds listed in subsections I, II and III."

Section 5. The heading of Article 24 of Act no. 1475 and the article itself have been amended as follows:

"Collective dismissals

Article 24. Where an employer wishes to carry out collective dismissals or to terminate the employment contracts of at least 10 workers within one month for economic, technological, structural or similar reasons or requirements pertaining to the undertaking, the place of employment or the work involved, he shall notify the trade union or worker representatives at the place of employment, the relevant regional directorate and the Turkish Labour Institution in writing not less than 30 days in advance.

That notification shall contain information on the reasons for the dismissals, the number and groups of workers to be dismissed, and the length of time within which the procedures terminating employment will be carried out.

In the talks held between the representatives and the employer after such notification the subjects of how the collective dismissals might be prevented or how the number of redundancies might be reduced or how the negative effects which the dismissals will have on the workers might be reduced to a minimum shall be

discussed. At the conclusion of the talks a document shall be drawn up stating that the meeting has been held.

The notices of termination of employment shall take effect thirty days after the employer has notified the regional directorate of his intention to carry out collective dismissals.

Where a place of employment is to be closed down completely and its activity is to come to a definitive end on a permanent basis, the employer shall only be required to notify the relevant regional directorate and the Turkish Labour Institution of the situation at least thirty days in advance and to make an announcement at the place of employment.

Where dismissals are carried out concerning seasonal workers and/or workers employed at harvest time for reasons connected with the nature of that work, the provisions applying to collective dismissals shall not apply.

Employers shall not use the provisions governing collective dismissals to prevent the application of the provisions of Articles 13/A, 13/B, 13/C, 13/D or 13/E; otherwise the worker can take legal action pursuant to those articles."

Section 6. The phrase "in Article 13, subsection A" occurring in Article 98, subsection A, point 3 of Act no. 1475 has been amended to read "in Article 13", and the phrase "an employer or employer representative who has dismissed a worker or recruited a new worker in violation of the provisions of Article 24 [*shall be liable to a fine of.....*]" for every worker who has been dismissed or recruited" occurring in subsection B of the same article has been amended to read "an employer or employer representative acting in violation of the provisions of Article 24 [*shall be liable...]*".

Section 7. The following article has been added to Act no. 1475:
"SUPPLEMENTARY ARTICLE 4. The provisions pertaining to the employment conditions of workers performing works that are considered to be agricultural works and issues relating to their employment contracts, wages and organisation of work shall be laid down in regulations to be issued within six months. "

Section 8. The following provisional article has been added to Act no. 1475:
"PROVISIONAL ARTICLE 13. Where there are no trade union representatives at a place of employment, worker representatives, who shall be elected by the workers at that place of employment pursuant to Article 34 of the Unions Act, shall hold office until new regulations are introduced pertaining to workplace representatives, the number of such representatives being provided in that Act."

Section 9. Article 30 of the Unions Act (no. 2821) of 5.5.1983 has been amended to read as follows:
"Article 30. Where an employer terminates a shop steward's open-ended employment contract, the provisions of the Labour Act (no. 1475) shall apply.

Where that shop steward's employment contract has been terminated solely because of his/her trade union activities, compensation shall be awarded amounting to not less than one year's wages pursuant to Article 13/D of Act no. 1475.

The employer shall not change a shop steward's place of work or make any fundamental change in his/her work unless the shop steward agrees to this in writing. Otherwise any change shall be void."

Section 10. The sixth paragraph of Article 31 of Act no. 2821 has been amended as follows, and the following paragraphs have been added at the end of that article:

"Where, apart from termination of the employment contract, an employer acts in violation of the provisions of the third and fifth paragraphs, the worker shall be awarded compensation amounting to not less than one year's wages. Where an

employment contract is terminated because of a worker's trade union membership or activities, the provisions of Articles 13/A, 13/B, 13/C, 13/D and 13/E of Act no. 1475 shall apply. However, the compensation to be paid pursuant to the first paragraph of Article 13/D of Act no. 1475 shall not amount to less than the worker's annual wage.

In the case of workers who fall under the provisions of the Maritime Labour Act (no. 854), the Act Governing Employer-Employee Relations in the Press Sector (no. 5953) and the Debts Act (no. 818) as well as workers performing work classed as agricultural work and workers who, pursuant to the first paragraph of Article 13/A of Act no. 1475, do not fall within the scope of Articles 13/A, 13/B, 13/C, 13/D and 13/E of that Act, in the legal proceedings initiated on the charge that an employment contract has been terminated on account of the worker's trade union membership or activities, the onus of proof shall be placed on the employer and the general provisions of the Labour Tribunals Act (no. 5521) shall apply. The provision laid down in the sixth paragraph shall apply with regard to the amount of compensation to be paid to the worker. There shall be no prejudice to the rights which the worker enjoys by virtue of labour and other legislation.

Section 11. Subsection 2 in the first paragraph of Article 5 of the Labour Act (no. 1475) of 25.8.1971 has been amended to read as follows: "in places of employment employing less than 50 workers (including those employing 50) where agricultural works are performed".

Section 12. The following paragraph has been added to amended Article 6 of the Act Governing Employer-Employee Relations in the Press Sector (no. 5953) of 13.6.1952:

" Articles 13/A, 13/B, 13/C, 13/D, 13/E and 24 of Act no. 1475 shall apply by analogy."

Section 13. The present Act shall apply as of 15 March 2003 and shall enter into force on the date of its publication.

Section 14. The provisions of the present Act shall be enforced by the Council of Ministers.

14/8/2002