

# Termination of Employment Contracts



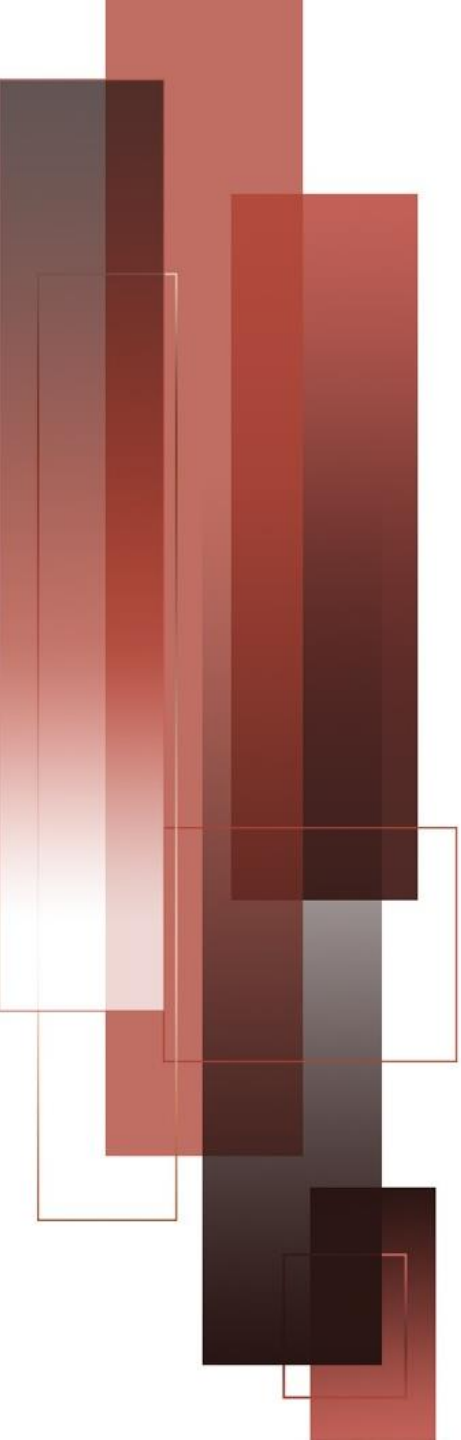
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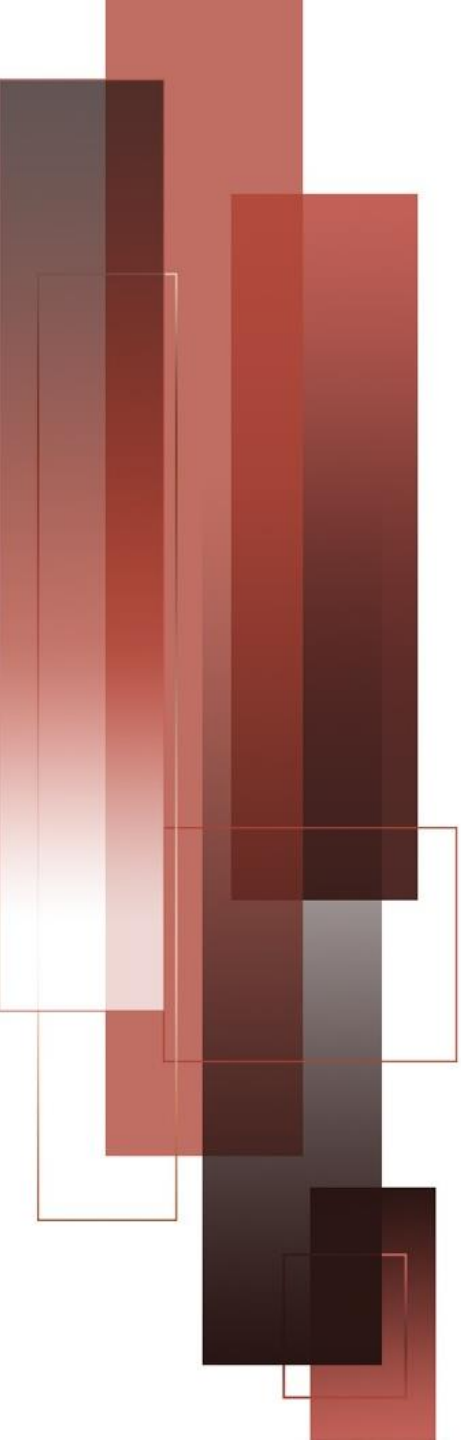
LAW FIRM

## INTRODUCTION

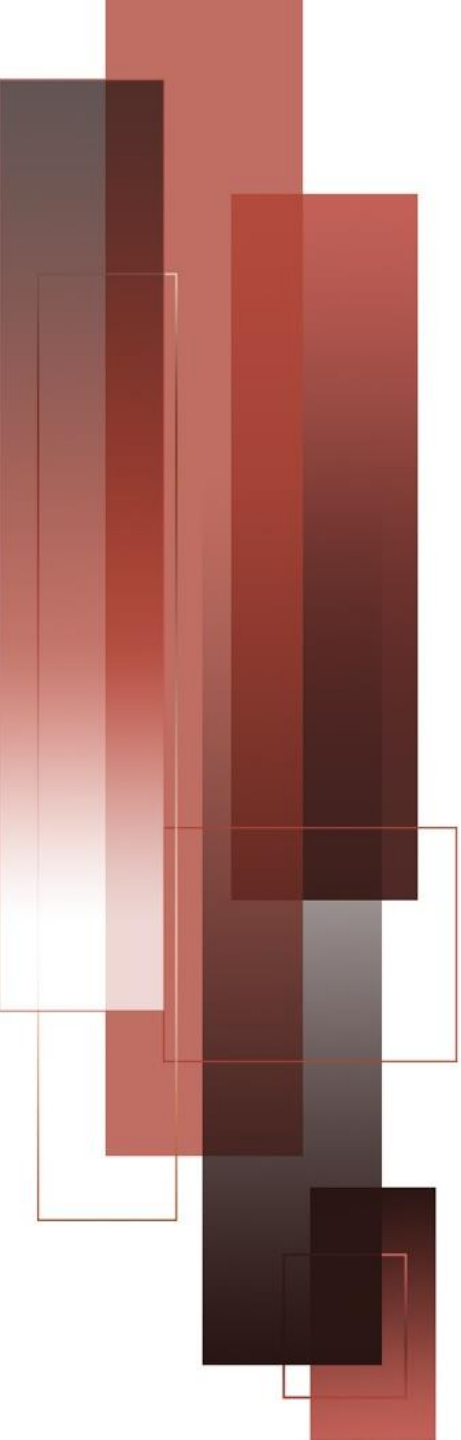
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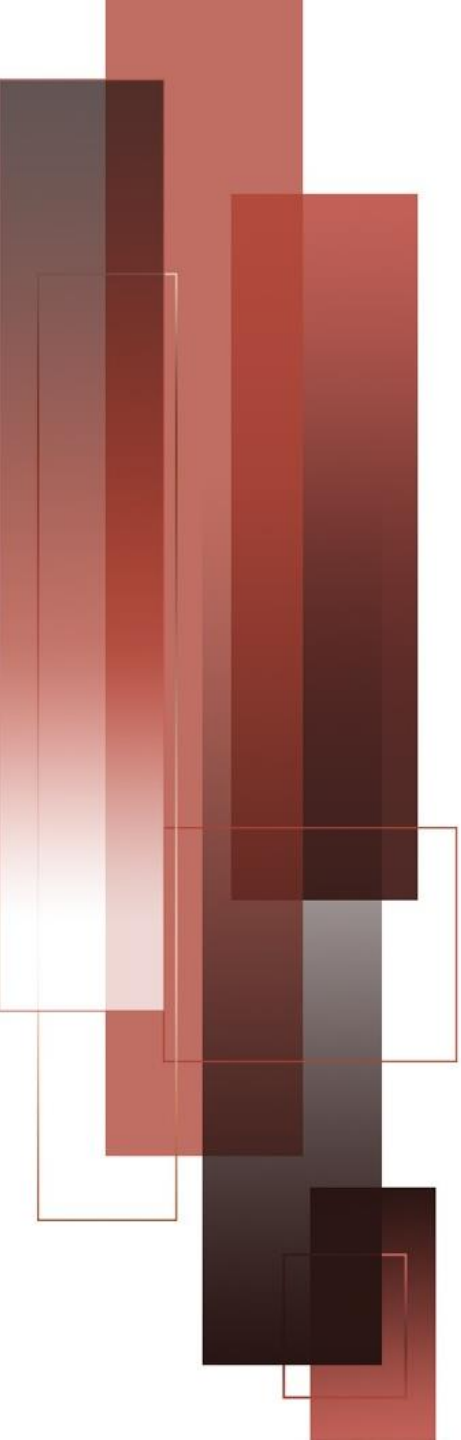
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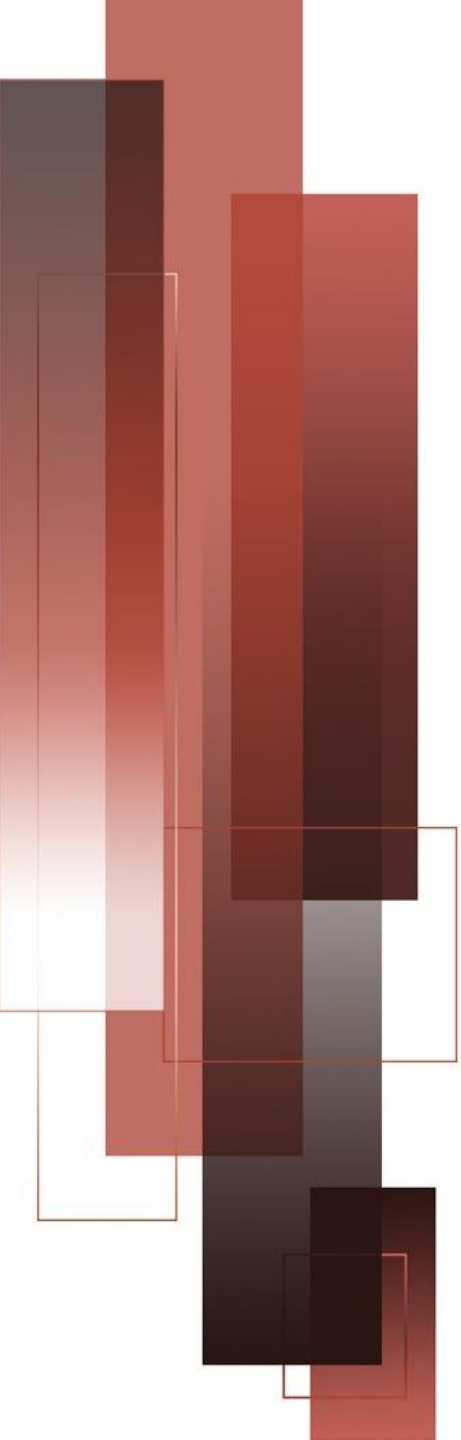
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- ∅ Please be informed that the Labour Code numbered 4857 (“**Labour Code**”) regulates the working conditions and also rights and obligations of the employees and employers. The Labour Code shall apply to all employers, employer representatives, employees and workplaces except those listed under Article 4 of the Labour Code.
  - ∅ Further to Article 4 of the Labour Code, certain activities such as sea and air transport activities and employment relationships such as apprentices and sportsmen are excluded whilst all activities related to aviation ground facilities or loading and unloading operations to and from ships at ports and landing stages are included.

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- ⌘ An employment contract is a contract that one party (the employee) undertakes to perform a work and the other party (the employer) undertakes to pay salary for such services.
  - ⌘ Employment contracts with a period of one year or over shall be made in writing. These documents are exempt from stamp tax and all kinds of charges.
  - ⌘ In the case that a written contract is not executed between the parties, the employer shall provide a document to the employee within two months at the latest, indicating the general and specific working conditions, daily or weekly working hours, the salary and additional payments (if any), payment periods and the provisions to be complied in case of a termination. This provision shall not apply for definite term employment contracts with a period less than a month.

- ⌘ Please note that as per Article 109 of the Labour Code, all of the notifications stipulated under the Labour Code shall be made in writing and against a signature.
- ⌘ In the event that the person in question refuses to sign the notification, a statement evidencing such situation shall be taken down. In practice, during the preparation of such statement the relevant steps should be followed very carefully.
- ⌘ There are two types of termination of the employment contract stipulated under the Labour Code; **1) Termination with notice period** and **2) Immediate Termination due to justified reasons.**

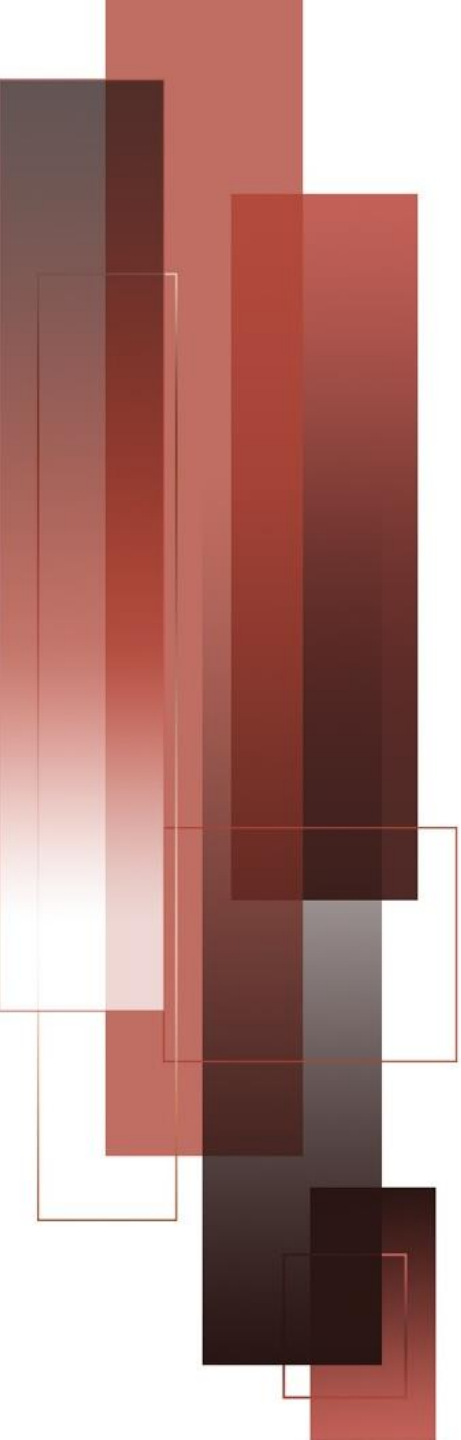
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- ⌘ Please note that termination with notice period is a type of a termination where the employer or employee serves a notification to the other party and the termination takes effect after expiration of a certain period to be determined as per the Labour Code.
  - ⌘ The notice periods stipulated under the Labour Code constitutes the minimum and such periods may only be increased in favour of the employees. In other words, if the notice periods are increased by an employment contract or collective bargaining agreement, the employer will be obliged to comply with such increased notice periods whilst the employee will still be bound by the notice periods stated under the Labour Code.

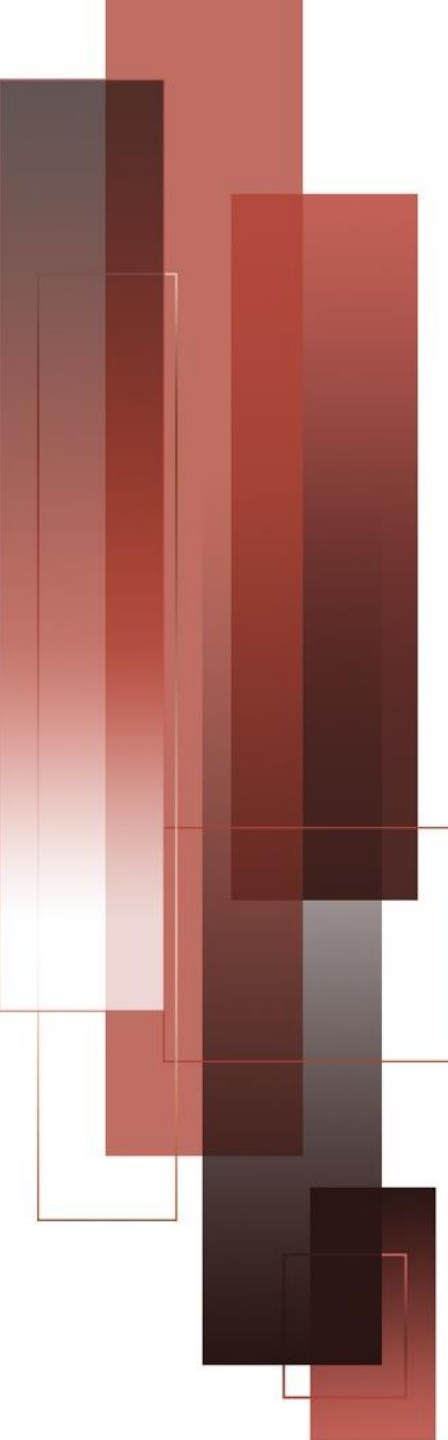
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- ⌘ The employer who does not wish to employ the employee during the notice period may terminate the agreement without adhering to the notice periods provided that the employer pays the amount equal to the salary that the employee would receive for the applicable notice period.
  - ⌘ As an additional note, during the notice periods, the employer is obliged to grant a leave period to the employee within the working hours in order for such employee to seek a new job and shall not deduct any amount from his/her salary. Such leave period shall not be less than two hours in a day and the employee may use this type of leave at once under certain circumstances.

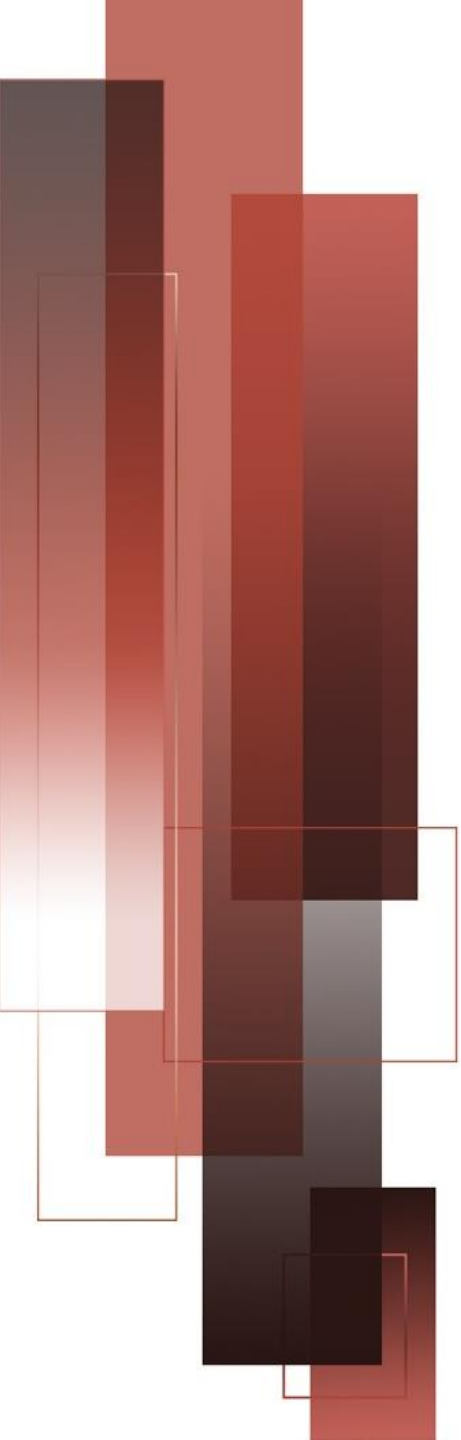
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- ⌘ Please be informed that job security provisions are regulated under the Labour Code. As per Article 18 of the Labour Code in work places where 30 or more employees are employed, the employer shall provide a valid reason for termination of an indefinite term employment contract of an employee with at least six months of seniority. Moreover, in case of a termination by an employee, the employee in question shall not be protected by job security provisions.
  - ⌘ Kindly note that valid reasons are not listed under the Labour Code, however reasons which shall not be deemed valid for termination are clearly stated under Article 18.
  - ⌘ In practice, it is very important to evaluate the “valid reason” by considering the specific conditions of each case. As explained below, post termination issues are strictly related to the “valid reason”.

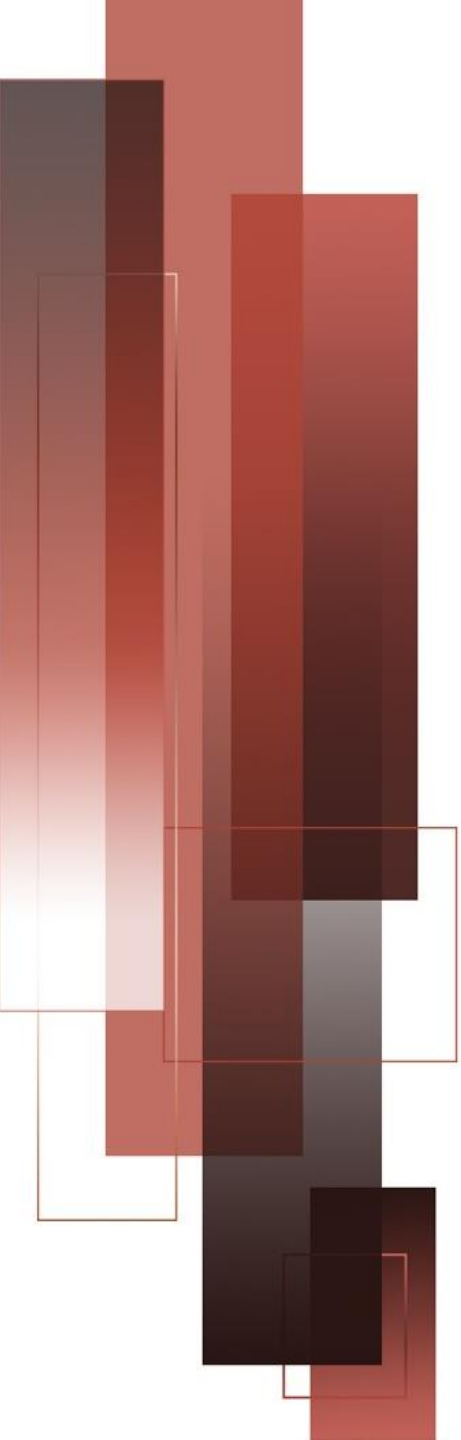


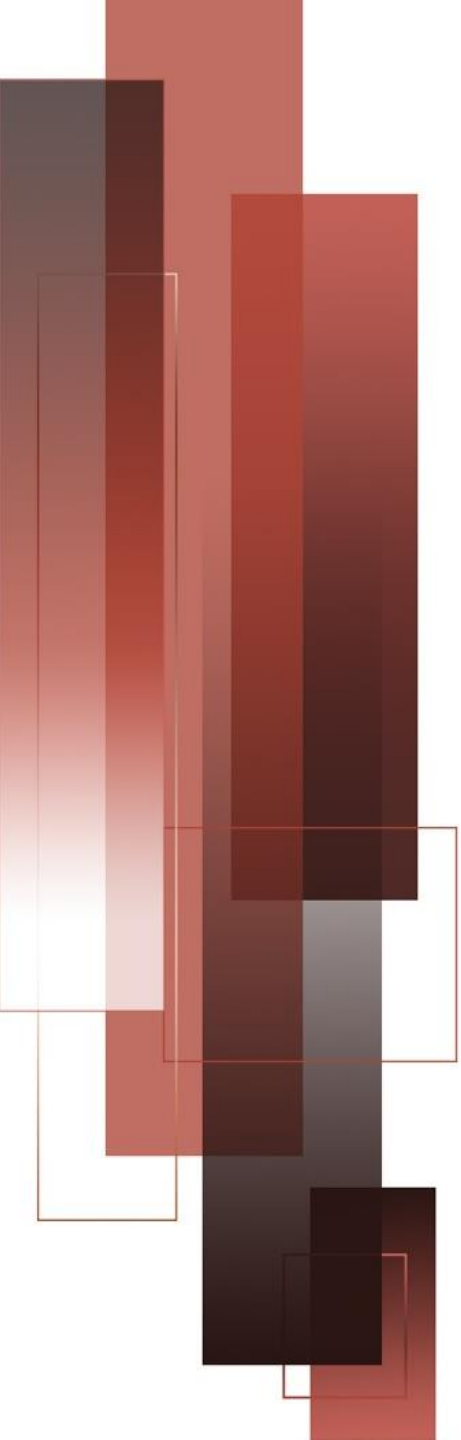
- ⌘ The employer's representatives who manages the entire enterprise and their assistants and also the employer's representatives who conduct and manage the entire workplace and who are authorized to employ or dismiss the employees are not protected by the job security provisions.
- ⌘ With respect to the immediate termination due to justified reasons, in the case that certain material reasons make the continuation of the employment relationship difficult, the employer or the employee may terminate the employment contract without complying with the notice periods or before the expiration date of a contract.
- ⌘ Kindly note that Article 24 of the Labour Code stipulates the justified reasons for termination by the employee and Article 25 of the Labour Code stipulates the justified reasons for termination by the employer.

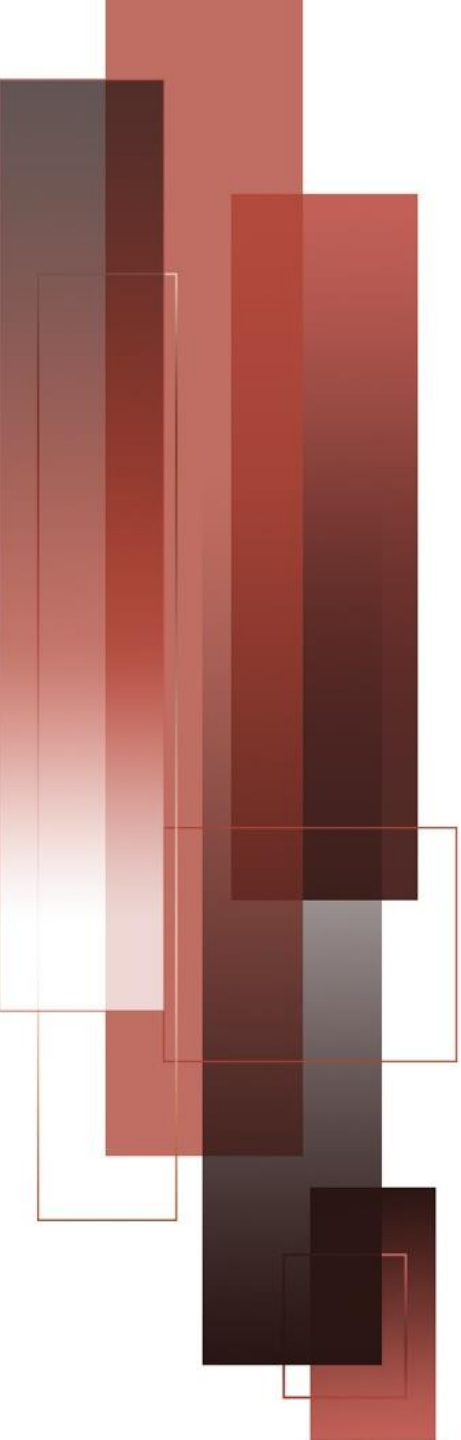
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- ⌘ The general titles of the justified reasons stipulated under Article 24 and 25 of the Labour Code are reasons such as health reasons, events contrary to ethical rules and to good faith and others, compelling events etc.
  - ⌘ As a separate note, an indefinite term employment contract of an employee may not be terminated due to the behaviour or productivity of an employee without obtaining the written defence of the employee in question.
  - ⌘ Further to Article 19 of the Labour Code, the employer shall terminate the employment contract in writing and shall clearly state the reason of termination therein.

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- ⌘ The employee, whose employment contract is terminated, may file a lawsuit on the grounds that the reason for termination is not indicated in the termination letter or invalidity of the reasoning stated therein. The employee in question shall file such a lawsuit within one month as of the receipt of the termination notification.
  - ⌘ In the case that the employee is protected by job security provisions and employer fails to provide valid and/or justified reason for the termination or the court decides the invalidity of the reasons stated in the termination notification, the employer shall re-employ (reinstate) the employee within the period of one month.
  - ⌘ Moreover, the employee shall make application to the employer within 10 business days as of the finalized court or arbitrator decision, otherwise the termination by the employer shall be deemed valid and consequences of termination due to the valid grounds shall apply.

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- ⌘ In the event that the employer does not re-employ the employee within such period, the employer shall be liable to pay a special compensation regulated under the Labour Code in addition to the termination related payments.
  - ⌘ In the case that the employee is not protected by job security provisions, the employer is not under obligation to state a valid reason during the termination of the employment contract.
  - ⌘ However, if the termination of the employment contract constitutes an abuse of the termination right, then the employer will be obliged to pay a compensation in the amount of three times the salary to be paid during the notice periods.

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- ⌘ With respect to the release letters, kindly note that once the employment contract is terminated, the employer shall obtain a document indicating that the employee has received all of his/her rights. According to Article 420 of the Turkish Code of Obligations, a release letter shall be obtained from the employee one month after the termination date.
  - ⌘ Furthermore, the employer shall provide a document to the employee whose employment contract is terminated. Such document shall indicate the type of the work performed by the employee and the duration of the employment.

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- ⌘ Additionally, Article 5 of the Labour Code titled “Principle of Equal Treatment” prohibits any kind of discrimination during the employment relationship. If the employer violates such principle during the term or termination of the employment contract, then the employee may claim a compensation.
  - ⌘ As a separate note, Article 23 of the Labour Code regulates the responsibility of the new employer. In the case that the employee terminates his/her employment contracts without complying period or before the expiration date, the new employer shall also be responsible in certain cases.

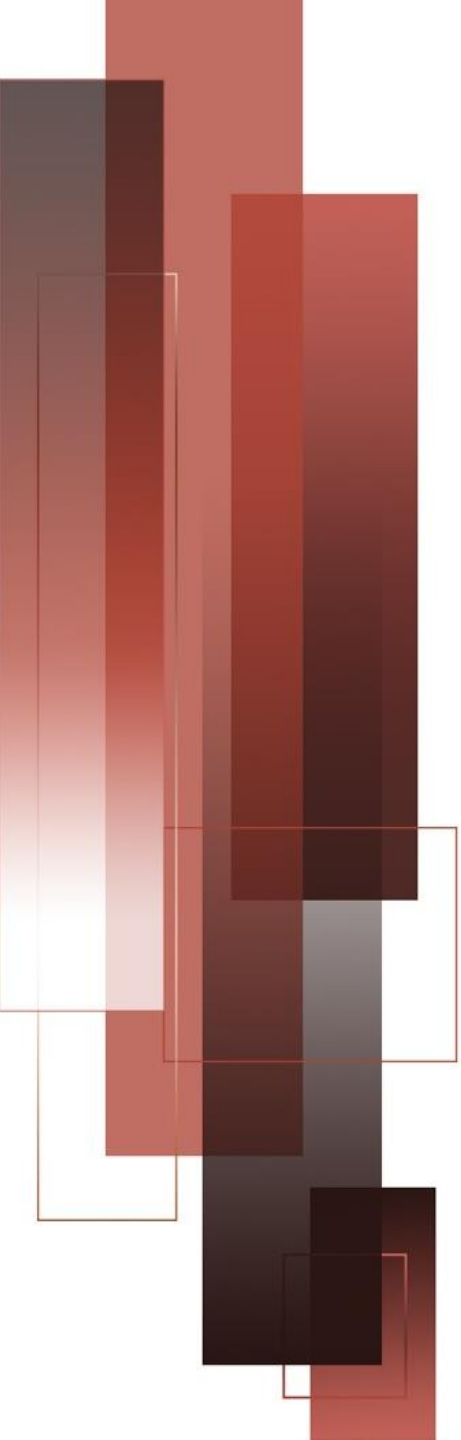


⌘ Article 29 of the Labour Code stipulates the conditions and procedures to be followed in case of a collective dismissal. Please be informed that a collective dismissal occurs where

- At least 10 employees are dismissed in a work place with the employees between 20 and 100 employees,
- 10% of the employees are dismissed in a work place e with the employees between 101 and 300
- at least 30 employees are dismissed in a workplace with the employees 301 or more.

⌘ The dismissal shall be made in accordance with article 17 of the Labour Code; on the same date or different dates within the period of one month in order to be considered as collective dismissal.



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- ⦿ Kindly note that compensation payments and termination related payments vary by each specific case. However, notice pay, severance pay and unused annual leave pay are some of the termination related payments to be made to the employees whose employment contracts are terminated by the employer. Termination related payments may differ as per the conditions of each specific case, therefore the circumstances should be evaluated carefully.
  - ⦿ Furthermore, during termination of an employment, the parties may execute a mutual termination agreement. The procedures to be followed for mutual termination are specified by the Court of Appeal decisions.
  - ⦿ Lastly, there are administrative fines regulated for certain violations of the Labour Code provisions.



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