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LABOUR AND SOCIAL SECURITY LAW BULLETIN

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REGULATİON AMENDİNG THE REGULATİON ON THE SALE OF SOCİAL SECURİTY INSTİTUTİON REAL ESTATE İN ELECTRONİC FORM

The amendments made by the Regulation on Amendments to the Regulation on the Sale of Social Security Institution Real Estate in Electronic Environment, published in the Official Gazette dated October 9, 2025 and numbered 33042, are as follows:

- The following clauses have been added to the first paragraph of Article 3 of the Regulation on the Electronic Sale of Real Estate Belonging to the Social Security Institution, published in the Official Gazette dated April 15, 2023, and numbered 32164.

“m) Specifications: The document indicating the administrative and technical details specifying all characteristics of the real estate subject to the tender and the transactions to be performed on this real estate.

n) Specification fee: The fee to be determined each year by the Institution's Board of Directors in a manner that does not prevent competition and does not exceed one thousandth of the estimated sale price of the real estate.”

- The following paragraph has been added to Article 4 of the same Regulation.

“(2) The tender document to be provided to bidders regarding the property subject to tender shall be determined annually by the Institution's Board of Directors in a manner that does not restrict competition, with the fee not exceeding one thousandth of the estimated sale price of the property. The tender document fee shall not be refunded after payment, regardless of whether the bidder participates in the tender.”

- Paragraph (e) of the first clause of Article 5 of the same Regulation has been amended as follows.

“e) The specifications related to the real estate subject to the tender can be accessed free of charge from the Electronic Sales Portal, but participation in the tender is subject to payment of the specification fee determined by the Institution's Board of Directors.”

- The title of Article 11 of the same Regulation has been amended to read “Amount of guarantee and specification fee and procedure for depositing the guarantee,” and the phrase “the guarantee fee” in the first paragraph of the same article has been amended to read “the guarantee fee and the specification fee in the amount to be determined by the Institution's Board of Directors.”

- The seventh paragraph of Article 12 of the same Regulation has been amended as follows.

"(7) If a new bid is submitted within the last ten minutes of the auction period, the auction shall be extended by five minutes. If a new bid is submitted during the extension period, the auction period shall be extended by five minutes from the submission of each new bid. If no new bid is submitted during the final extension period, the real estate shall be auctioned to the highest bidder. The total duration of the extension periods shall not exceed one hour."

The full text of the relevant regulation can be accessed <u>here</u>.

COMMUNİQUÉ ON AMENDMENTS TO THE SOCİAL SECURİTY INSTİTUTİON HEALTH IMPLEMENTATİON COMMUNİQUÉ

The amendments made by the Communiqué on Amendments to the Social Security Institution Health Implementation Communiqué, published in the Official Gazette dated October 17, 2025, and numbered 33050, are as follows:

- The following points have been added to the fifth and sixth paragraphs of Article 2.3.1 of the Social Security Institution Health Implementation Circular published in the Official Gazette dated March 24, 2013, and numbered 28597:

"5) When procedures are performed from the list in Annex 2/C of the SUT, health services provided during periods considered as diagnosis-based procedures in the third paragraph of Article 2.2.2.B-1-Scope of Diagnosis-Based Procedures are also covered under emergency cases and are not billed separately.

(6) If persons receiving emergency health services request that the cost of the health service provided be paid by the Institution to the relevant health service provider, the written consent of the persons (or, for persons who die during the treatment period at the health service provider, that of their spouse or first-degree relatives) shall be obtained, and the invoice shall be sent to the Institution by non-contracted health service providers via the MEDULA system. If the costs of health services provided under emergency circumstances are covered by the individual, the invoice issued by non-contracted health service providers on behalf of the individuals is sent via the MEDULA system. It is mandatory to enter the information required by the Institution's regulations regarding the health services provided into the MEDULA system, except for the specified exceptions. A single invoice is issued based on the fees determined for contracted healthcare providers.

The amounts determined after the review by the Institution are paid to the individuals or the healthcare provider in exchange for the invoice. In order for the fees for the healthcare services they provide to be paid, non-contracted healthcare providers using the MEDULA hospital system issue a single invoice for the healthcare services they provide between the first and last day of each month. Health services that cannot be invoiced during the period for any reason shall be sent to the Institution within a maximum of 2 months following the period in which they should have been invoiced, as of the date on which the service was completed."

- The following amendments have been made to Article 2.4.4.F of the same Circular:

"The phrase 'and procedure codes indicating that they can also be billed when applied to patients over 65 years of age by geriatric specialists, as specified in the explanatory section' has been added after the word 'services' in the seventh paragraph of sub-clause 2.4.4.F-2."

- The second paragraph of Article 3.3.5 of the same Circular has been amended as follows.

"(2) The costs of insulin pen needles shall be covered by the institution when prescribed together with or alone with insulin cartridges or drugs containing the active ingredient exenatide."

The full text of the relevant regulation can be accessed here

CONSTİTUTİONAL COURT DECİSİON DATED 20/03/2025, APPLİCATİON NO. 2022/18821 - APPLİCATİON BY HÜLYA ŞİMŞEK

Subject

The application concerns the allegation that the presumption of innocence was violated due to the wording used in the regional court of appeal's decision overturning the labor court's decision to accept the request for reinstatement.

Facts

The applicant's employment contract was terminated on the grounds that he had entered into a pyramid scheme-style organization with the aim of engaging in indirect trade, thereby incurring a high debt burden relative to his income, and that this situation posed a potential risk.

The applicant filed a declaratory action seeking reinstatement. The Giresun Labor Court (the Court) ruled on March 13, 2020, to grant the applicant's request for reinstatement.

In the grounds for the decision, the Court stated that the investigation file contained a complaint made by the applicant in his capacity as a customer, that there was no evidence other than a witness statement that the applicant had involved the bank's customers in the aforementioned pyramid scheme using the name of the defendant bank, and that the termination was not made within the prescribed period.

The employer appealed the court's decision. The Trabzon Regional Court of Appeals, 5th Civil Chamber (Regional Court of Appeals) ruled definitively to overturn the court's decision and dismiss the case.

After learning of the final judgment on October 18, 2025, the applicant filed an individual application on November 10, 2020.

Consideration

The applicant argued that the language used in the Regional Court of Justice's decision violated the presumption of innocence.

The presumption of innocence means that a person accused of a crime cannot be considered guilty until a final judgment of guilt is established after a fair trial, and it is also a requirement of the principle of the rule of law (Constitutional Court, E.2013/133, K.2013/169, December 26, 2013). This presumption guarantees that a person shall not be considered guilty without a final court decision establishing that they have committed a crime. Furthermore, no one may be labeled as guilty by judicial authorities or public authorities or be treated as guilty until their guilt has been established by a final judgment (Kürşat Eyol, B. No:2012/665, 13.06.2013, S.26).

The guarantee provided by the presumption of innocence, which is an element of the right to a fair trial, has two aspects: The first aspect of the guarantee relates to the period until the conclusion of the criminal proceedings against the person and prohibits early statements about the person's guilt and actions until a judgment of guilt is established. The second aspect of the guarantee comes into play when a verdict other than conviction is reached as a result of the criminal trial and requires that, in subsequent trials, there be no suspicion of the person's innocence in relation to the crime punishable by law and that public authorities refrain from actions and practices that would create the impression of the person's guilt in the eyes of society (Galip Şahin, p. 40).

It has been observed that the criminal and civil proceedings concerning the applicant were conducted simultaneously, but the civil lawsuit filed against the termination of the employment contract was concluded while the criminal proceedings were ongoing; in other words, at the time the labor court's decision was rendered, the applicant's guilt had not been established by a final judgment. Therefore, in this case, it is necessary to act in accordance with the guarantee provided by the first aspect of the presumption of innocence.

Conclusion

For all these reasons, the Court unanimously accepted the claim that the presumption of innocence had been violated and decided by a majority vote that the presumption of innocence guaranteed by Articles 36 and 38 of the Constitution had not been violated.

CONSTİTUTİONAL COURT DECİSİON DATED 13/03/2025, APPLİCATİON NO. 2020/8869 – MUZAFFER COŞKUN AND OTHERS APPLİCATİON

Subject

The application alleges that the right to a reasoned decision was violated because lawsuits filed to demand payment of labor claims were dismissed on grounds contrary to the decisions rendered in other lawsuits of the same nature.

Due to the legal connection between the cases, it was decided to combine certain individual application files with individual application file No. 2020/8869.

The Case

The applicants worked as employees under a collective labor agreement at Türkiye Demiryolu Makinaları Sanayi Anonim Şirketi (Employer), a subsidiary of the General Directorate of Turkish State Railways, and have since retired. The applicants filed separate claims for payment of the difference in severance pay with the Sivas 2nd Labor Court (Court), reserving their rights to any excess amount, on the grounds that the period of service prior to military service was not included in the calculation of their final severance pay.

The Court included the applicants' service records, workplace files, payrolls, documents containing their military conscription and discharge dates, salary account statements, and documents related to the collective labor agreement from the DEMİRYOL-İŞ Union in the case file, and the documents in the file were submitted to the expert.

The examination, which ended on June 28, 2019, resulted in the partial acceptance of the claims for all applicants. The reasoning behind the decisions stated that the 5th and 6th period collective labor agreements applicable to the applicants as of the date they were drafted into military service, Article 148/IV, and the 7th period collective labor agreement, Article 139/IV, contained the same provision. The relevant provision stated, "Those who leave due to active military service shall be paid statutory seniority compensation. The seniority bonus shall not be paid. For employees who return to the administration and acquire retirement rights, the calculation of severance pay and the seniority bonus shall commence from the date of first employment. However, the total severance pay paid upon enlistment shall be deducted from the last severance pay amount paid." Stating that this regulation does not contain any elements contrary to public order or the law, the Court ruled that the applicants were entitled to the difference in severance pay.

Stating that all periods of service listed in the applicants' service records should be taken into account in calculating the severance pay and that the amount owed should be determined by deducting the severance pay paid upon leaving for military service, the Court ruled on the basis of expert reports and decided to accept the case in respect of a portion of the claim. The reasoned decision also emphasized that similar considerations had been made in various cases with the same subject matter and nature, and that these decisions had been finalized after appeal review.

The applicants and the defendant employer appealed the decision. In its appeal petition, the defendant employer argued that the collective labor agreements on which the ruling was based related to the period before 1980, that severance pay was paid to everyone upon leaving work due to military service, and that therefore the claim for residual severance pay was unfounded.

Following the review conducted by the 9th Civil Chamber of the Ankara Regional Court of Appeal, the proceedings were concluded on December 10, 2019, for all applicants, and with the acceptance of the appeals filed by the employer, it was definitively decided to overturn the court decisions and dismiss the cases.

Consideration

The applicants stated that the calculations regarding severance pay were incorrect, that the provisions in the collective labor agreements in force during the period they were in military service should be applied, and that in this context, the courts had ruled in the same way in the series of lawsuits filed, awarding the difference in severance pay.

The applicants stated that thirty-eight employees, including themselves, who retired from the employer company, filed a series of lawsuits claiming the difference in severance pay, and that some of these lawsuits were decided against them by the 5th, 6th, and 8th Civil Chambers of the Ankara Regional Court of Appeals. The applicants, claiming to have been victimized due to the different decisions rendered by the judicial authorities, alleged that their claims and objections were not examined, that the evidence was incorrectly assessed, and that the judgment was rendered based on an incomplete examination. They further alleged that the principles of legal certainty, equality, legality of crimes and penalties, the right to a reasoned decision, and the right to a fair trial were violated. A copy of the application documents has been sent to the Ministry of Justice for information.

The essence of the applicants' complaint relates to the fact that, although other chambers of the same Regional Court of Justice ruled in favor of persons in the same legal situation as themselves regarding the same material event, their own trial resulted in an unfavorable outcome.

The right to a fair trial, as stipulated in Article 36 of the Constitution, also includes the guarantee of the right to a reasoned decision. Indeed, the third paragraph of Article 141 of the Constitution states that “All decisions of all courts shall be written with reasons,” imposing on courts the obligation to write their decisions with reasons.

The aforementioned obligation of the court cannot be understood as requiring the court to provide a detailed response in the reasoning of its decision to every claim and defense put forward during the trial. However, if the judicial authority reaches a different conclusion from that reached by another judicial authority regarding the same factual or legal circumstances, it must indicate the grounds for this in its reasoned decision.

The principle of the rule of law, established as a fundamental principle to be observed in the interpretation of all fundamental rights and freedoms guaranteed by the Constitution, requires that judicial bodies avoid, as far as possible, issuing conflicting decisions on the same factual or legal circumstances.

Conclusion

For all these reasons, the Court has decided that the claim regarding the violation of the right to a reasoned decision is admissible, that the right to a reasoned decision, which is guaranteed under Article 36 of the Constitution as part of the right to a fair trial, has been violated, and that the applicants' claims for compensation are rejected.

CONSTİTUTİONAL COURT APPEAL APPLİCATİON DATED 08/01/2025, CASE NO. 2024/157, DECİSİON NO. 2025/121
Subject

The request is for the annulment of paragraph (15) of Article 3 of the Labor Courts Law No. 7036 dated 12/10/2017 on the grounds that it violates Article 36 of the Constitution.

Facts

In a reinstatement case filed against a subcontractor, the Court concluded that the contested provision was unconstitutional and applied for its annulment.

Paragraph (15) of Article 3 of the Law, which is the subject of the objection, reads as follows:

"(15) Where there is a principal employer-subcontractor relationship, when applying to the mediator with a request for reinstatement, the employers must participate in the mediation discussions together and their intentions must be compatible with each other for the agreement to be reached."

The Constitutional Court began its consideration as follows: Article 2, paragraph 1 of the Labor Law No. 4857 dated 05/22/2003 defines an employee as a natural person working under an employment contract; an employer as a natural or legal person or an institution or organization without legal personality that employs workers; and an employment relationship as the relationship established between the employee and the employer.

The sixth paragraph of the aforementioned article defines the principal employer – the relationship between the principal employer and the subcontractor, which is defined as the relationship established between the employer who assigns work to another employer for auxiliary tasks related to the production of goods or services carried out at the workplace, or for tasks requiring expertise due to the nature of the business and the work or for technological reasons, and the employer who assigns work to the subcontractor, who employs workers specifically for this work at this workplace. In this relationship, it is stipulated that the principal employer is jointly liable with the subcontractor for the obligations arising from the aforementioned Law, the employment contract, or the collective bargaining agreement to which the subcontractor is a party, in relation to the subcontractor's employees at that workplace.

The first paragraph of Article 20 stipulates that an employee whose employment contract has been terminated must apply to a mediator within one month of the date of notification of the termination notice, claiming that no reason was given for the termination or that the reason given was not valid, and requesting reinstatement. If no agreement is reached at the end of the mediation process, a lawsuit may be filed in the labor court within two weeks of the date of the final record.

The third and fourth sentences of the aforementioned paragraph state that if the case is dismissed on procedural grounds due to the direct filing of a lawsuit without applying to a mediator, the dismissal decision shall be notified to the parties ex officio, and an application may be made to a mediator within two weeks from the date of notification of the final dismissal decision.

In its decisions, the Court of Cassation has accepted that in lawsuits filed with a request for reinstatement, there is a formal joint liability between the principal employer and the subcontractor, and therefore, in a reinstatement lawsuit, the dispute must be directed against both the principal employer and the subcontractor.

Consideration

In paragraph (15) of the court's objection, it is stipulated that when applying to the mediator with a request for reinstatement in the presence of a principal employer-subcontractor relationship, the employers must participate in the mediation meetings together and their intentions must be compatible for the agreement to be concluded.

Accordingly, if there is a principal employer-subcontractor relationship, the employee, who is obliged to initiate the conciliation process jointly against the principal employer and the subcontractor within one month from the date of notification of the termination notice, is obliged to determine the principal employer relationship and the parties to this relationship before applying to the conciliator.

The application decision summarizes that: it is a legal obligation for an employee whose employment contract has been terminated to apply to the mediator within one month with a request for reinstatement, that this application constitutes a condition precedent for filing a reinstatement lawsuit, that the contested rule, by requiring the application for mediation to be made to both the principal employer and the subcontractor if such a relationship exists, imposes the burden on the employee to investigate the principal employer, that it may not be possible to determine the existence of such a relationship in some cases, if this relationship is determined during the trial phase, the case will be dismissed on procedural grounds because the requirement to apply to the mediator has not been met, and it is argued that this situation constitutes an unreasonable interference with the right to a fair trial, and that the rule is contrary to Article 36 of the Constitution.

Pursuant to Article 13 of the Constitution, the mere existence of a law restricting the right of access to court is not sufficient; legal rules must be specific, accessible, and predictable in nature, not allowing for arbitrariness.

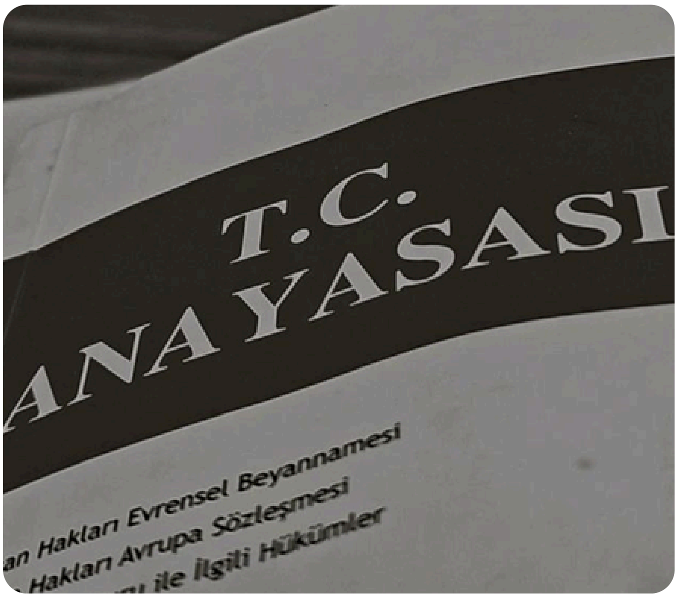
The principle of proportionality guaranteed in the aforementioned constitutional article consists of three sub-principles: suitability, necessity, and proportionality.

- In terms of suitability, the proposed restriction must be suitable for achieving the objective
- In terms of necessity, the proposed restriction must be necessary to achieve the objective
- In terms of proportionality, a reasonable balance must be maintained between the proposed restriction and the objective.

Considering the aim of eliminating negative possibilities that may arise against the employee, such as missing the one-month lawsuit period, if it is understood that the defendant participating in the mediation process is not the actual employer, and ensuring that the actual employer and the subcontractor whose interests are affected participate in the mediation process, it has been concluded that the rule is suitable for achieving this aim.

Under Article 13 of the Constitution, in order to impose a restriction on a right, the least restrictive measure necessary to achieve the intended purpose must be envisaged. In this context, Article 124(1) of the Code of Civil Procedure No. 6100 (1) stipulates that a change of party in a case is only possible with the express consent of the opposing party, while paragraph (3) stipulates that a request for a change of party arising from a clerical error or not contrary to the principle of good faith shall be accepted by the judge without the consent of the opposing party.

Paragraph (4) stipulates that if the incorrect or incomplete indication of a party in the petition is based on an excusable mistake, the judge may accept the request for a change of party without seeking the consent of the opposing party. Therefore, considering that it is possible to make a voluntary change to the party under the regulation in Article 124 of the aforementioned Law and direct the request for reinstatement to the correct party or include the party that was incorrectly indicated in the lawsuit, it cannot be said that the rule is necessary in terms of its legitimate purpose of preventing the problem of party status.



It must also be assessed whether the rule, which has been determined to be necessary, is proportionate. The rule requires the worker to apply to the conciliator jointly against the principal employer and the subcontractor if there is a relationship between them, while imposing an obligation on the worker to investigate the principal employer and the subcontractor. It is possible for the employee to be aware of the relationship between the principal employer and the subcontractor, but it is also possible for them not to be aware of it.

The rule does not allow an employee who is unaware of the relationship and therefore applies for mediation against the person they identify as the real employer and subsequently files a reinstatement lawsuit to continue the lawsuit if there is a principal employer-subcontractor relationship. The rule fails to strike a reasonable balance between the public interest in preventing the problem of party status in the proceedings and ensuring that the principal employer and the subcontractor are included in the mediation process, and the individual interest of the employee in exercising their right of access to the courts. Accordingly, it has been concluded that the rule violates the principle of proportionality in terms of the sub-principle of proportionality.

Conclusion

It was decided by a majority vote that paragraph (15) of Article 3 of the Labor Courts Law No. 7036 dated 12/10/2017 is unconstitutional and should be CANCELLED.

INCLUSİON OF INSURED EMPLOYEES UNDER THE AGE OF 18 İN THE AUTOMATİC BES SYSTEM

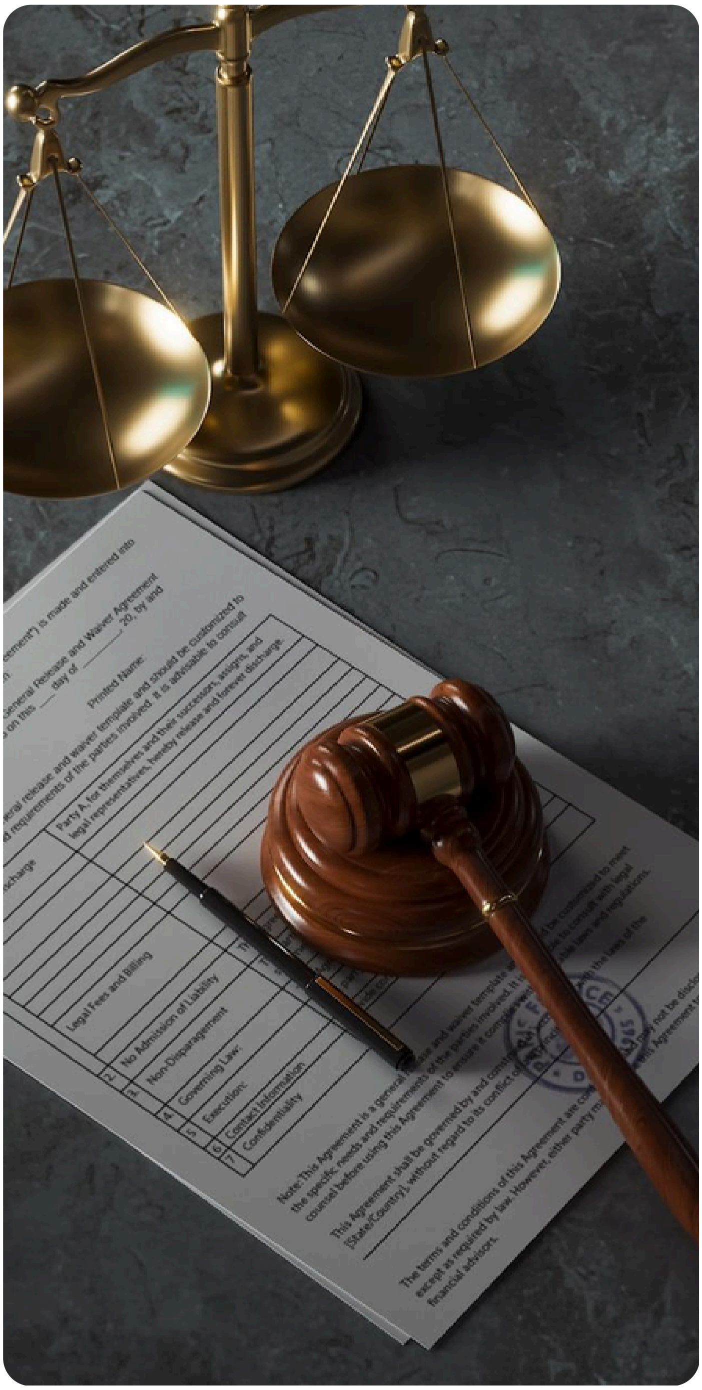
The Automatic Participation System (APS) is a practice that provides for the automatic inclusion of employees in the public and private sectors in the Individual Pension System (IPS) through their employers. Pursuant to the Individual Pension Savings and Investment System Law No. 4632, the system only applies to Turkish citizens or blue card holders who have reached the age of 18.

Therefore, insured employees under the age of 18 are not automatically enrolled in the BES. No contribution deductions are made from the wages of these employees, and employers do not send automatic enrollment notifications to the pension company.

Once the individual reaches the age of 18, automatic enrollment in the system takes effect as of the following month's payroll, and a contribution deduction of 3% of the salary begins.

The 2021 regulation allows individuals under the age of 18 to voluntarily participate in BES, but this regulation does not expand the automatic enrollment system. Therefore, employers are not obligated to automatically enroll employees under the age of 18 in the system.

Consequently, it is not legally mandatory to include employees under the age of 18 in the automatic BES. These individuals can only join the system by signing a voluntary BES contract on their own behalf.



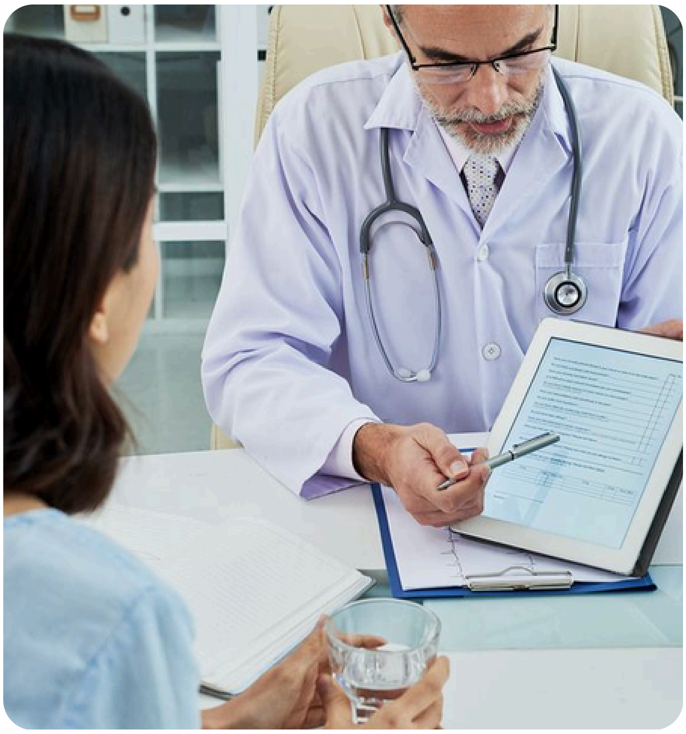
CAN AN EMPLOYER DİSMİSS AN EMPLOYEE FOR HEALTH REASONS?

The employer is permitted to terminate the employment contract due to the employee's health condition under Article 25/1-b of the Labor Law No. 4857. According to this article, if the employee's health condition makes it impossible to continue the job, the employer may terminate the contract for just cause.

For the termination to be valid, the health condition must be documented by a report from an authorized health committee as permanently or long-term preventing the employee from performing their job duties. In addition, the employer is expected to explore opportunities to reassign the employee to another position before termination.

If the employee's sick leave due to illness, accident, or childbirth exceeds the notice period by six weeks based on their length of service at the workplace, the employer has the right to terminate the contract without notice.

Frequent sick leave or if this situation causes disruption to work may also lead to termination for health reasons. However, in this case, the termination must be supported by official medical reports and the opinion of the workplace doctor. The termination must be made in writing and the reason must be clearly stated.



In cases of justified termination by the employer for health reasons, the employee is paid severance pay; however, they are not entitled to notice pay. In addition, the employee must be paid any remaining annual leave fees and wages for the period worked.

On the other hand, in cases of termination not supported by a medical report or expert opinion, since there are no justifiable grounds, the employer must act within the framework of the provisions on unfair termination and terminate the contract by paying all legal rights.

DEFİNİTİON OF EMPLOYER REPRESENTATİVE UNDER LAW NO. 4857 İN WORKPLACE REGİSTRATİON PROGRAMS

The Social Security Institution published a General Letter dated September 25, 2025, and numbered 126201255, announcing new regulations regarding the definition of employer representative.

The regulation aims to resolve application issues encountered in accessing the ISG-KATIP system and registering employer representatives. In accordance with Law No. 6331, employers or employer representatives are required to register with ISG-KATIP, and these individuals must also appear as employers or employer representatives in the SGK database.

However, the concept of employer representative is defined differently under Labor Law No. 4857 and Social Insurance and General Health Insurance Law No. 5510, which has led to uncertainties in practice.

With the new regulation, changes have been made to the SGK registration programs to eliminate these ambiguities. Accordingly:

- The field “4857-Employer Representative (İSG-KATİP)” has been added to new workplace registrations made through e-Government and Workplace Registration 4A (Branch). Filling in this field is not mandatory.
- For existing workplaces, it is possible to appoint, change, and delete employer representatives under Law No. 4857. To do so, employers must submit a written request to the Social Security Center they are affiliated with.
- Only one employer representative can be designated for each workplace file. The existing record must be deleted before a new representative can be appointed.
- There has been no change in the employer representative application under Law No. 5510.

Furthermore, it has been stated that persons registered in the SGK registry through the 4857-Employer Representative (İSG-KATİP) option will not be considered employer representatives in terms of social security legislation and will not be liable for SGK debts on behalf of these persons.

TRANSFORMATİON OF THE CARE ECONOMY İN TURKEY

The work carried out under the United Nations (UN) Turkey Joint Program aims to place the care economy at the center of inclusive and sustainable growth. The program was implemented with the aim of highlighting the value of care activities for social welfare and making this area a driving force for economic development.

The program was coordinated by the UN Resident Coordinator's Office, managed by the International Labor Organization (ILO) Turkey Office, and implemented with technical support from UNDP Turkey, UN Women, UNICEF, and UNFPA. Funding was provided by the Joint Sustainable Development Goals (SDG) Fund.

During the implementation process, in collaboration with the Ministry of Family and Social Services and national partners, rights-based care policies were developed, institutional capacities were strengthened, digital transformation was supported, and national dialogue was encouraged in line with international labor standards and the Sustainable Development Goals.

The program aimed to accelerate progress, particularly towards the goals of Gender Equality (SDG 5) and Decent Work and Economic Growth (SDG 8). In this regard, it was emphasized that investments in care services are not only socially important but also strategically important in terms of economic growth and equality.

As a result, it was stated that strengthening policies aimed at the care economy is considered a transformative tool that increases women's employment in Turkey, supports social justice, and accelerates sustainable development.

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Stay tuned to our newsletter and stay informed about the latest developments in Labor and Social Security Law.

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