# THE CHANGES AND LEGAL EFFECTS OF THE LABOR CONTRACT ACCORDING TO THE NEW LABOR LAW

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Dedicated to my parents.

# APPROVAL PAGE

I certify that this thesis satisfies all the requirements as a thesis for the degree of Master of Arts.

Asst. Prof. Dr. Şammas SALUR
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This is to certify that I have read this thesis and that in my opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Arts.

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# AUTHOR DECLARATIONS

1. The material included in this thesis has not been submitted wholly or in part for any academic award or qualification other than that for which it is now submitted.

2. The program of advanced study of which this thesis is part has consisted of:

    i. Research Methods course during the undergraduate study

    ii. Examination of several thesis guides of particular universities both in Turkey and abroad as well as a professional book on this subject.

Turgay ÇAVDAR

June, 2009

## ABSTRACT

**Turgay ÇAVDAR** **June 2009**

## THE CHANGES AND LEGAL EFFECTS OF THE LABOR CONTRACT ACCORDING TO THE NEW LABOR LAW

In this study, the general features of the labor contracts and the applications of the labor contracts according to the 4857 numbered Labor Law in effect in Turkey and what kind of changes the labor contracts faced according to the Labor Law numbered 4857, the concepts of employee, employer and labor contract available in various laws are examined. In addition to this, the relationships between the employee and the employer and detailed information about the labor contracts will be given in this section.

We will scrutinize our study in three sections. Definitions of the concepts about employee, employer and labor contract available in various laws will be examined in the first section. Moreover, the relationships between the employee and the employer and detailed information about labor contracts will be given. In the second section, the applications came to the field of labor law by the law numbered 4857 and their effects to labor contracts and the annulments of the labor contracts will be examined. In the third section, the recent changes and changed articles of the law numbered 4857 by the law number 5763 published on the 26887 numbered Official Newspaper dated 26 May 2008 and hence put into effect will be discussed.



**Key Words:** 4857 numbered Labor Law, contract, employee, employer, annulment, labor contract.

## KISA ÖZET

**Turgay ÇAVDAR** **Haziran 2009**

## YENİ İŞ KANUNA GÖRE HİZMET AKİTLERİNDE YAPILAN DEĞİŞİKLİKLER VE HUKUKİ SONUÇLARI

Bu çalışmada Türkiye'de yürürlükte olan 4857 sayılı İş Kanununa göre ve iş akitleri ve iş sözleşmelerindeki uygulamaların genel özellikleri ve 4857 sayılı İş Kanununa göre iş akitlerinin ne gibi değişikliklere uğradığı iş akitlerinde geçen işçi, işveren ve iş akdi kavramları hakkında çeşitli kanunlarda yer alan tanımlamalar irdelenecektir. Bu bölümde ayrıca işçi ve işveren arasındaki ilişkiler ve iş akitleri hakkında da ayrıntılı bilgiler verilmeye çalışılacaktır.

Çalışmamızı üç bölümde inceleyeceğiz. Birinci bölümde işçi, işveren ve iş akdi kavramları hakkında çeşitli kanunlarda yer alan tanımlamalar irdelenecektir. Ayrıca işçi ve işveren arasındaki ilişkiler ve iş akitleri hakkında da ayrıntılı bilgiler verilmeye çalışılacaktır. İkinci Bölümde 4857 sayılı kanunla iş hukuku alanına giren uygulamalar ile bu uygulamaların iş akitlerine ve iş akdi fesihlerine etkileri incelecektir. Üçüncü Bölümde ise 4857 sayılı İş Kanununun 2003, 26 Mayıs 2008 tarih ve 26887 nolu Resmi Gazete'de yayınlanarak yürürlüğe giren 5763 sayılı kanunla değiştirilen maddeleri ve son yenilikler verilmeye çalışılacaktır.



**Anahtar Kelimeler:** 4857 sayılı İş Kanunu, sözleşme, işçi, işveren, fesih, iş akdi.

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## INTRODUCTION

Within the framework of adjustment efforts executed with European Union, previous Labor Law no 1475 was replaced with new Labor Law no 4857 as of May 23, 2003. The new Labor Law brought along remarkable innovations in the field of labor law. The newly made innovations consisted of deficiencies in implementation, and appending the jurisprudences of the Court of Appeal to articles and their being approximated to international agreement and legislation.

The first basic change of Labor Law is corresponding some basic concepts and definitions in the part of general conditions. Some of these definitions have been changed and some have been enlarged.

According to the article 2 which is related to definitions, laborer is defined as; the real person working on the basis of labor agreement, employer is the real person or legal entity who employs laborer, or institution or organizations without legal entity, the definition of work place has been enlarged in the positive sense and it is defined as the unit which is founded by the employers with the aim of producing goods and service, and the unit in which employers and employees are in cooperation. No change has been made in the definitions of representative of employer and places considered to be workplaces.[1]

Especially the changes regarding the definitions of labor contract and employer were not only in appearance, they displayed the necessity of the rearrangement of employers' relationships with laborers. These changes aimed also at the accommodation of our labor law to international norms. Labor Law no 1475 became not able to meet modern needs and advancing technological developments sufficiently.

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[1] 4857 sayılı İş Kanunu, 2003.

The difficulties encountered in the implementation of Labor Law, the necessity to make labor law more flexible, the demand of the provision of new rights, job security, occupational health and safety for laborers entailed the enaction of a new Labor Law no 4857.

# FIRST SECTION

## 1.1. LABORER, EMPLOYER, KINDS AND CONDITIONS OF LABOR CONTRACT

### 1.1.1. Introduction

Definitions regarding laborer, employer and labor contract in various laws will be analyzed in this chapter. Moreover, I will attempt to give detailed information about the relations between employer and employee, and labor contract.

Labor law is actually a branch of law which regulates job relations of laborers. In this sense, for a laborer to be considered a laborer requires that he has personal adherence to the employer; in other words, he must act in accordance with the orders of the employer and fulfill his job under the supervision and administration of the employer.

In our study, it is possible to see by what means a labor contract is made and that it can be made as fixed term or indefinite period concerning article 313 of the Code of Obligations and article 2 of the previous Labor Law in the era preceding the accepting of Labor Law no 4857. However, there is no decree regarding the restriction of this kind of contracts which automatically expire by the expiry date as well as any definition of fixed term labor contract is not available in the legislation. The fact that there was no restriction relating to this kind of contracts which create relatively negative situation for laborers was harshly criticized and in this sense, the Court of Appeals attempted to solve this problem by means of accepting some of the principles. Upon the acknowledgement of Labor Law no 4857, fixed term labor contract attained a legal definition by means of article 2 of the law, and forming this kind of contract was restricted to the presence of an objective reason.

### 1.1.2. The Concepts of Laborer and Employer

Detailed definitions of laborer and employer as they are designated in the labor law and other related laws are examined in the following chapters:

### 1.1.3. The Concept of Laborer

Laborer is defined as “someone who works in return for a wage based on the service contract” by Labor Law no 4857.[2] Bearing this definition in mind, it is possible to say that “a laborer is someone who works on the basis of a valid work relation.”

On the other hand, a valid labor contract is required for one to be considered a laborer. Even while a legally valid labor contract does not exist between laborer and employer, a valid work relation might emerge. Accordingly, what is important in the definition of laborer is that a work relation must be established.[3]

In this case, employer must inform laborer about the rules of workplace, starting and finishing hours of work and all the information related to the regulations of workplace, and hang this information over somewhere where all laborers can see.

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[2] 4857 sayılı İş Kanunu, 2003.

[3] Demircioğlu M.-Centel T., İş Hukuku, Beta Yayınları, 7. Basım, İstanbul, 1999.

### 1.1.4. The Concept of Employer

According the Labor Law No 4857, employer is defined as "someone who employs laborers in return for a wage based on the service contract." As it is seen, the Law relates the definition of employer with the principles in the definition of laborer. Besides being a real person, an employer could be a corporation, an association, a cooperative, a union, a state, a legal entity of a private or public law.

### 1.1.5. People Who Function As Employer

As a consequence of the concept of employer's being related with the principles in the definition of laborer, while a laborer has the obligation to work in accordance with the orders of an employer, an employer has the right to ask a laborer to fulfill a job and to give necessary instructions for this. However, it is also possible that the same person owns both of the rights. The right to ask to have the work done and to give instructions generally belongs to the owner of a workplace. Nevertheless, there might be some situations in which someone who is not the owner of the workplace but acts as an employer.

### 1.1.6. The Concept of Representative of Employer

According to Labor Law No 4857, "the person who acts on behalf of the employer and serves in the administration of work and workplace is called representative of employer." Employer is directly responsible for the attitudes and obligations of representative of employer towards laborers. All kinds of responsibilities and obligations of employer as designated in the law are valid for the representative of employer as well. The role as the representative of employer does not justify that they don't have the rights and obligations of laborers. We have to accept that the responsibilities designated

by the law for the representatives of employer are only confined to the authority and responsibility of representative of employer, they do not include all the responsibilities of employers.

As we see apparently, according to the Labor Law, the concept of representative of employer is rather inclusive and the law regards people who act on behalf of employer, serve in the administration of work and workplace as representative of employer. For instance, a manager of a factory, a personnel director, a workshop chief and etc… are all representatives of employer. The condition that they must act on behalf of employer demonstrates that representative of employer must have the power of attorney. Either representation authority could be announced to laborers or it could be understood from the behaviors of representative of employer.[4]

### 1.1.7. Labor Contract

Contract is all the agreements made with the purpose of forming a legal result between people acting for different goals and expectations, establishing a mutual debt relation, or replacing the present debt relation with a new one or abolishing it completely. Labor contract is a service agreement which obliges one side to do a job and the other side to pay in return for this, and on account of this, the same as in other labor contracts but unlike instant act debt relations, the fulfillment of act is extended to a period in time.[5] This period in which mutual acts are performed may be either definite or indefinite.

According to article 338 of the Code of Obligations, fixed term labor contracts are the agreements made for a particular time period or the period of which could be inferred from the quality of the work. In respect of Labor Law No 4857, fixed term labor contract is a written agreement between

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[4] Nuri Çelik, İş Hukuku Dersleri, Beta Yayınları, 15.Basım, İstanbul, 2000, s.34.

[5] Cevdet Yavuz, Türk Borçlar Hukuku, Özel Hükümler, 5. Baskı, İstanbul 1997, s. 410.

employer and laborer based on objective conditions like the completion of a particular work or the emergence of a specific fact.

First clause of article 11 of Labor Law no 4857 defines fixed term labor contract. As to this definition, “If a work relation is formed not on the basis of a particular period, then this contract is considered indefinite term. fixed term labor contract is a written agreement between employer and laborer based on objective conditions like the completion of a particular work or the emergence of a specific fact.” By this definition, fixed term labor contract attained a legal definition for the first time. If we pay attention to the definition in the law, what is emphasized regarding fixed term labor contract is that an objective condition is required in order to be able to make a fixed term labor contract.[6] However, only the presence of objective conditions is not enough for a labor contract to be regarded as fixed term labor contract.[7]

In order to be able to talk about the existence of fixed term labor contract, the expiry date of contract must be determined by both sides or it must be predictable.[8] However, the condition that the period of a fixed term labor contract must be determined by both sides is not included in the definition of Labor Law.

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[6] Can Tuncay, “İş Sözleşmesinin Türleri ve Yeni istihdam Biçimleri”, İstanbul Barosu-Galatasaray Üniversitesi İş Hukuku ve Sosyal Güvenlik Hukukuna İlişkin Sorunlar ve Çözüm Önerileri 2003 yılı Toplantısı:2, Yeni İş Yasası Sempozyumu, s. 128 ; Gülsevil Alpagut, “4857 Sayılı Yasa Çerçevesinde Belirli Süreli Hizmet Sözleşmesi”, Mercek, Ocak 2004, s. 74.

[7] Nuri Çelik; İş Hukuku Dersleri, 18. Baskı, İstanbul 2005, s. 82.

[8] Hamdi Mollamahmutoğlu, İş Hukuku, 2. Baskı, Ankara 2005, s. 251 ; Gülsevil Alpagut, 4857 Sayılı Yasa, s. 74 ; Gülsevil Alpagut, Belirli Süreli Hizmet Sözleşmesi, Doktora Tezi, TÜHİS Yayını, Ankara 1998.

### 1.1.8. Types of Contract

#### 1.1.8.1. Permanent-Temporary Service Contracts

If a labor lasts for more than 30 days, a permanent service contract; if a labor lasts for less than 30 days, a temporary service contract is made.

#### 1.1.8.2. Periodic–Indefinite Period Service Contracts

This distinction is made on the basis of whether the expiry date has been determined or not. If starting and ending dates are designated, it is called periodic; if initiation date is clear but ending date is uncertain, this kind of service contract is called indefinite period service contract.

#### 1.1.8.3. Full Time-Part Time Service Contracts

If a laborer works through all the working hours fixed legally and according to the rules of that workplace, then a full time service contract is made. If a laborer works on specific days of the week or every week day at specific hours, or at specific hours on specific days, then part time service contract is made.

#### 1.1.8.4. Team Contract

Team contract in the Labor Law is defined as “the contract made between employer and one of the laborers in a team acting as the representative and guide of that team.” This kind of contracts is common in the field of construction, loading, unloading and seasonal jobs.

### 1.1.9. Implementation

#### 1.1.9.1. Qualification and Freedom to Make Contract

Service contract is made of both sides' free will. Our laws give laborers and employers the rights to make contract, sign up contract with whoever they wish, determine the type, form and content of contract the way they prefer. However, as free will of both sides is a must, both sides must have qualification to make contract without any restriction.

#### 1.1.9.2. Conditions of Contract Form

Fixed term service contracts the period of which is 1 year and more than 1 year, and team contracts regardless of their duration must be written. The contracts except for these two don't have to be written.

The points a written service contract must include:

1. Name and identities of employer and laborer (separately for each laborer in team contracts)
2. Work to be done
3. Wage (separately for each laborer in team contracts)
4. The address of workplace
5. The duration of contract in fixed term contracts
6. Type and time of payment
7. Special conditions (if there are) asserted by both sides
8. Day of service contract, and signature of both sides.

# SECOND SECTION

# REFORMS BROUGHT TO THE FIELD OF LABOR LAW BY THE LAW NO 4857 AND THEIR EFFECTS TO THE LABOR CONTRACTS

## 2.1. CHANGES BROUGHT BY THE LABOR LAW NO 4857

The following changes entered to the applications of Labor Law by the Labor Law number 4857

### 2.1.1. Transfer of the Office

In condition of transferring an office or a part of office, all the valid labor contracts with all its rights and debts passes to the one who takes over in the time of transition. The continuous success of the employer who is transferring will be limited with two years from the date of transferring. The one who takes over or the one who transfers can not annul the labor contract because of the transfer of the office. But, the annulment rights needed for the economic and technologic reasons or the organizations of the office, the annulment rights of the laborer and the employer will immediately remain as reserved (legally guaranteed).

### 2.1.2. Work on Call

"Work on call" which is a special procedure of the labor contract is brought with the law. If the parties do not designate the period of work will be considered as 20 hours a week in condition of work on call. If the daily period of working is not decided in the contract, employer will have to have laborer work four consecutive hours a day.

### 2.1.3. Trial Periodic Labor Contract

If a condition of trial put in the labor contract, the period can be 2 months at most. But the trial periods can be extended to 4 months with the mass labor contracts. During the trial period, the parties can annul the labor contract without any period of notification and with no compensation.

### 2.1.4. Labor Guarantee

In labor guarantee, the limit extended to 30 laborers from 10 laborers and its scope was narrowed. The labor guarantee which was supposed to be applied to the places where 10 laborers work is changed as places where 30 or more laborers work.

### 2.1.5. Objection to Annulment Notice

According to the law, a labor contract can not be annulled because of the attitude and productivity of the laborer without taking the defense of the laborer against the claims concerning him/her. The laborer whose labor contract is annulled can fill a case at the labor court within a month from the date of annulment. The case will be resulted in two months. It is the liability of the employer to prove that annulment is made based on valid reasons. If the court or a special referee decides that annulment is made with no valid reason, the employer will have to have the laborer start the work in a month. Otherwise, the employer has to pay labor guarantee compensation to the laborer. The amount of the compensation to be paid to the laborer who was not started the work despite the court decision varies from 4 months to 8 months.

### 2.1.6. Annulment of Labor Contract

Employer has to make annulment of the labor contract written and state the reason clearly and certainly.

### 2.1.7. Working on Saturday

Half day permission on Saturday is removed by the law and it is considered as normal working day. The weekly working hour is determined to be 45 hours maximum. The working hours exceeding 45 hours is considered as extra working and the laborer will be paid 50 % extra wages or the laborer will have 1.5 hour permission for every extra working hour.

### 2.1.8. Weekly Holiday

Labors can have 24 hours permission weekly. According to the law, within the 7 days, at least 24 hours uninterrupted weekly holiday can be had. For the weekend holiday, full payment will be applied.

### 2.1.9. Concordat Announcement of the Employer

"Payment Guarantee Fund" is to be formed within the scope of Unemployment Insurance Fund to be valid in case of having difficulties in wage payments by taking bankruptcy or distains document. Fund is to be 1 % of the payments done by the employers as the unemployment insurance incentive payment.

This article, with the changes done later, was annulled by being published on the Official Newspaper no 26887 on 26 May 2008 with Article 37 of the law number 5763 by which it was brought into force.

### 2.1.10. Time of Wage Payments

If the payment is not done in 20 days without any obliged reason, laborer has right to avoid the work. This action is not considered as strike even if it is done as a mass. The laborer cannot be dismissed from the work in this condition. For the wages not paid in time, the highest deposit interest is applied.

### 2.1.11. Extra Working Time

According to the article 41 of the Law no 4857, extra working time is the time exceeding 45 hours a week. For every extra working hour, the payment will be made by increasing the normal working hour fifty percent.

In conditions that the total weekly working hours are designated to be less than 45 hours, within the principles mentioned above, the extra working hours exceeding applied weekly working hours and the workings until the 45 hours are the workings with the extra times. In the workings with extra working hours, for every hour 25 percent increased normal hour payment is made.

If the laborer with extra working or working with extra times wants, instead of having increased payments in return to these workings, for every hour of extra working the laborer can use one hour and thirty minutes and for every hour of extra time working, he can use fifteen minutes as free time.

Laborer can be able to use deserved free time within six months within the working times and with having no deduction in his payments.

Based on the health reasons mentioned in the article 63 of the Labor Law no 4857, in the short or periodical works and according to the article 69 of the same law, no extra working can be made.

A written approval of the laborer is to be taken to work as extra hours. The total extra working hour can not be more than two hundred seventy hours a year.

### 2.1.12. National Festival and Official Holidays

Whether to work in the national festivals and official holidays will be decided by mass labor contract or labor contract. In case there is no such rule in the contract, the approval of the laborer is to be taken for works in these days.

### 2.1.13. Type of Payments

The payment of the laborer is to be made by currency of TL. The payments to be made by foreign currency can be paid by TL with the rate of the day of the payment.

### 2.1.14. Annual Leaves

Annual leaves have been increased by the law. In accordance with the EU norms, 2 days are added to the annual leave. According to this, for the people having a working period between 1-5 years can have 14 days, those with between 5-15 years can have 20 days and those with more than 15 years can have 26 days paid annual leave. That the right of having Annual Leave cannot be ‘enunciated’ is added by the Law no 4857.

National Festival, weekly holiday and leave of illness which coincide with the annual leaves are not to be included in the annual leave.

### 2.1.15. Labor Health and Security Committee

All the work places where continuous works are done for more than 6 months and considered to be Industry and have more than 50 laborers are obliged to form Labor Health and Security Committee.

### 2.1.16. Finding Labor and Laborer (Laborer exchange)

Placing the laborers searching for a job to suitable jobs and finding suitable laborers for various works are the duties of Turkey Labor Institution and private employment institutions that were authorized for that.

### 2.1.17. Working Peace and Industrial Relations

To observe the subjects under discussion about the work life in the development of the work peace and industrial relations, government will form a strong trio committee of solidarity from the employer and laborer confederations.

### 2.1.18. Seniority Compensation

A Seniority Compensation Fund is to be formed for Seniority Compensation. Until the Law about Seniority Compensation Fund be in effect, article 14 of the Law No 1475 will be in effect about seniority compensations of the laborers.

## 2.2. CONTRACTS BETWEEN THE EMPLOYER AND THE LABORER

### 2.2.1. Definition of the Labor Contract

The definition of the labor contract is made with the connection to the article 313 of the Law of Debts; it is made with plainer statements. A condition that it is to be written if made for more than a year is added. But as an important change (especially for construction work): “In condition that no written contract is made, employer has to give a written document to the laborer within two months mentioning the general and specific working conditions, daily or weekly working duration, basic payment and additional payment if there is, period of payment, the period of contract if it is definite and the rules that the parties are obliged to obey in annulments”. This rule is added. Though this regulation looks like a burden to the employer, as far as the proof is concerned, it is in favor of the employer.

### 2.2.2. Labor Contracts in Continuous and Discontinuous Works

The text of this article has not changed. The works which continue for 30 days maximum are considered as discontinuous and the ones longer than that are considered as continuous work.

### 2.2.3. Definite and Indefinite Periodical Labor Contracts and Their Differences

The definite periodical labor contracts are not defined clear enough in the Labor Law No 4857.[9] According to this opinion, by the statement “definite periodical works” of the article 11 of Labor Law, the period is wanted to be stated as time and date.[10] But it is not reasonable to say that such comment

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[9] Ekonomi, M., Belirli Süreli Hizmet Akitlerinin Hukuka Uygunluğu, s. 19.
[10] Nuri Çelik, İş Hukuku Dersleri, 18.Baskı, İstanbul 2005 s. 82.

is covered with the law.[11] No matter how the definition above is inadequate from the point of view stated above, by the fact that making definite periodical labor contract is conditioned with objective obligations it served the function of approaching to the EU standards and it also prevents employer's misuse of the right and liberty of making definite periodical labor contracts.

At the first glance, the definition of the definite periodical labor contract in the Law seems that if there are necessary conditions, definite periodical labor contracts can be made. But this is in fact incorrect. That there might be a condition to make a definite periodical labor contract is in no way an obstruct to making an indefinite periodical labor contract.[12]

For instance; to have a lounge is an objective condition as a definite periodical work, but to have an objective condition is not a barrier to having an indefinite periodic labor contract. As a mater of fact, there is no obstacle with making an indefinite periodic labor contract with the laborer who was first just a laborer in the factory but later employed in the other construction works of the factory.[13]

As we mentioned above, there was no definition of definite periodical labor contract before the acceptance of the Labor Law No 4857. In return to that in the doctrine of definite periodical labor contract is defined as such, "Definite periodic labor contracts are the ones accepted by the parties and have a fixed term of time that terminates by the end of time without notification." [14] If we are to make a definition by adding the objective conditions brought by this law, the definite periodical labor contract can be defined as "In case of the existence of definite objective conditions, the date

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[11] Hamdi Mollamahmutoğlu., İş Hukuku, s. 263.
[12] Eyrenci-Taşkent-Ulucan, Bireysel İş Hukuku, 2. Baskı, İstanbul 2005, s. 56; Mollamahmutoglu, İş Hukuku, s. 263.
[13] Gülsevil Alpagut, 4857 Sayılı Yasa, s. 74.
[14] Hamdi Mollamahmutoğlu, Hizmet Sözleşmesi, Ankara 1995, s.35; Ünal Narmanlıoğlu, İş Hukuku, Ferdi İş İlişkileri, 3. Baskı, İzmir 1998, s. 179.

of the termination of the contract is determined or presupposed by the parties at the formation of the contract."[15]

If labor relation is being made without being dependent on a definite period or made by depending some conditions such as indefinite periodic, connected with a definite period or completion of a definite work, or an appearance of a phenomenon. I mean, if the work itself is a definite periodical, for example if a bid is taken, since this is a definite periodical work, the contracts to be made are to be definite periodic and written. In condition that such determinable objectives are not available, facility to make definite periodical labor contract is removed. If such a contract is made even for once, this will have a effect of indefinite periodical contract as the law requires some objectives to make a definite periodic contract for the first time. These objective conditions (though there are some hints in the law) can be formed within the process with the legal verdicts. As it is understood from the applications by time being, the definite periodical contracts result in favor of laborer more. For example, if he is to pay compensation, once definite periodical contract is made and it is terminated, laborer can not have right to have compensation but such is not the condition with the indefinite periodical contracts. Starting from this point, law maker put some condition to the definite periodical contracts.

In definite periodical labor contracts, unless there is a "true reason" an employer can not make more than one definite periodical labor contract, otherwise from the very beginning (including the first contract) this relationship will be considered as indefinite periodical labor contract. This condition means a chained labor contract. The Supreme Court, in its earlier decision regarding this issue stated that if definite periodical labor contract is made for the second time with no true reason, it becomes an indefinite

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[15] İlhan Cevdet Günay, İş ve Sosyal Güvenlik Hukuku Dersleri, Ankara 2004, s. 77 ; Alpagut, 4857 Sayılı Yasa , s. 74.

periodical labor contract. According to the Supreme Court; there is no denunciation compensation in the definite periodical service contracts. But in specific conditions (avoiding to objective criteria such as quality, aim of the work) definite periodical labor contracts can turn into an indefinite periodical labor contract. No single penal condition can be put into labor contracts against the laborer.

#### 2.2.4. Limits of the Discrimination of Definite and Indefinite Periodical Labor Contract

First of all, it is emphasized that no discrimination can be made between the definite and indefinite periodical labor contracts "unless there is a rightful reason". This condition should be perceived as equivalence in the working condition not that absolute equivalence.

Devisable interests related to payment and money are to be given to the definite periodical laborer in proportion to laborer's working time even he is not present in the working place at the bonus date. For example, the same will be applicable for the bonus that will be given at the termination of the work. It is also applicable in equivalence in the same conditions, in the helps (aids) to the laborer, in the account of seniority or in the account of paid annul leave.

#### 2.2.5. Part-time Periodical and Full-Time Periodical Labor Contract

The contract types which were never organized but available in the Law No 1475, were organized with this article. The aim is to create legal support and widen the application and prevent some of the inequalities available in the applications.

If the working period is determined as "comparatively very low" with that of the laborer working with full time periodical labor contract, the contract is

the part time periodical labor contract. Here, what is meant by "*comparatively very low*" is less than two-third of the full time periodical, working hour of as many as 30 hours. But no part time periodical laborer will be discriminated from the full time periodical laborers. In accordance with the period of their working, they will practice their divisible right of annual paid leave, aid for heat in winter, seniority compensation, bonuses etc. In the equivalence article (5) brought by the new law, the same conditions are also valid for definite periodical and indefinite periodical labor contracts or working on call.

#### 2.2.6. Working on Call

As it is also stated by the Supreme Court and became widespread, in condition that the laborer is needed, the laborer can be invited by the employer with a written document and the determined work can have done. Under such condition if the weekly hour of the laborer is not determined, it is considered as 20. Unless the opposite is agreed on, the laborer is to be called 4 days before and the laborer is to work 4 consecutive days. But it should be mentioned here that more detailed ideas are needed regarding this issue. For example, a minimum period of which the opposite cannot be decided would have been healthier for the laborer. As a matter of fact, this type of working is extremely risky for the laborer.

#### 2.2.7. Trial Period

Trial period is extended to 2 months from the 1 month as it was so in the previous law and the decision that it can be extended to 4 months in mass contracts is put in this law. During this trial period, the parties can annul the contract without any further period or compensation.

### 2.2.8. Team Contract

In this type of contract, team guide can make a contract on behalf of the team consists of employer and the laborer. This contract has to be written and it will be considered as done by the commence of the laborers to work one by one.

### 2.2.9. Periodical Annulment

There was a template of 1475 about the termination of the service contracts, annulment and compensation; according to article 13, service termination can be done by giving period of notification, if period of notification is not given, seniority compensation was also be paid. This is a natural annulment to the notification period. There is also an annulment based on right reasons; according to article 16 the laborer and according to article 17 the employer can annul the labor contract based on the righteous reasons. The result of this from the compensation point of view was arranged for the seniority compensation in article 14 of the Labor Law. This template was also protected in Labor Law No 4857 with its basic structures. Periodical annulment, which is an annulment by giving a certain period of time was arranged in the article 13 of the law no 1475, article 17 of the law no 4857, the annulment of the laborer on righteous grounds was arranged in article 16 of the Labor Law No 1475, article 24 of the Law No 4857 and the righteous reasons of the employer were arranged in article 17 of the Labor Law No 1475, article 25 of the Labor Law 4857. They were all organized similar to each other. But the most important newly brought topics related to the annulment were the filling a case in the court by claiming the invalidity of the annulment and the facility of returning back to the work.

Periodical annulment in the indefinite periodical labor contracts is to inform the other party before the annulment of the labor contract.

According to this, Labor contracts;

- For the laborer whose work continued for less than six weeks, within two weeks from the notification to the other party,

- For the laborer whose work continued from six months to a year, within four
weeks from the notification to the other party,

- For the laborer whose work continued from six months to one and a half year, within four weeks from the notification to the other party,

- For the laborer whose work continue from one and half year to three years, within six weeks from the notification to the other party,

- For the laborer whose work continued for more than 3 years, it is considered as annulled after eight weeks.

These are minimum conditions and they can be agreed on with opposite conditions. The party not obeying the notification conditions is bound to pay compensation of the total amount belongs to notification period.

Employer can annul the labor contract by paying the amount that belongs to notification period in cash, but for the laborer the rights in articles 18, 19, 20 and 21 are reserved.

The most important change in article 17 shows itself from the point of view of the reason, amount and applied person at bad will compensation. The bad will examples mentioned in the text of the previous law are removed, and a flexible concept like “in case of misusing annul right” is brought. In fact the Supreme Court was interpreting this pretty narrowly in the applications until today. (for example, it said that there is no bad will in annulling the labor

contract of a woman because she became pregnant!). From the point of view of the people to be applied to; in the previous law, every laborer whose labor contract was annulled had right to have a demand and fill a case against in the court, but a limitation was put with the new law and it was stated that the ones remaining out of the application field of the articles 18, 19, 20, 21 can ask for a bad will compensation. That means, the ones remaining out of the labor guarantee, for example work places having more than 30 laborers, the laborers having the seniority of more than six months can not claim a bad will in the annulment. They can ask for a demand about the labor guarantee. There was also a change about the amount of the bad will compensation and the argument between the doctrine and the Supreme Court decisions were resulted by making an article of the doctrine.

The Supreme Court used to state that “bad will compensation is the aggravated form of the notification compensation and a person can be given notification or bad will compensation amount multiplied by 3”. On the other hand the doctrine said “these two compensations are different”. If there is bad will and the notification compensation is not paid, the law anticipates the payment of compensation three times the amount of the notification period.

By the misuse of the annulment right, in case of the annulment of the labor contract (for example, the annulment of the contract for the reasons such as filling a case and being a witness against the employer, unproductive working, having the habits of taking alcohol outside the work etc.) the employer pays the total amount of the compensation three times multiplied notification period as a bad will compensation. Moreover, if the employer annulled the contract even without obeying the notification conditions, he/she will pay additional compensation that belongs to the notification period.

Annulment notification must be done in such a way to reach the other party, as to whether it should be written or not, the doctrine has the common opinion that it should be written, according to the Supreme Court there

should be a dual discrimination; in case of the annulment of the definite periodical contract, a verbal notification will also be valid. Since it is essential to make one or more periodic service contract written, the annulment also required to be written, this validity should also be accepted for the significant annulments.

It may be important here to mention about labor guarantee: first of all it must be mentioned that the labor guarantee decisions (i.e. 13/a, 13/b, and 13/c) brought by the Labor Law no 1475 are removed. As a matter of fact, the Labor Law 4857 abrogated the previous labor law and all the other laws that change it from the effect. On the other hand the law no 4857, article 17 instead of article 13 of the Labor Law 1475 and in addition to them instead of paragraph a,b,c articles 18, 19, 20, 21 and 22 of the previous Labor Law 1475 are brought. While such is the condition from the Law technique point of view, some differences are also formed in respect to content. For instance the new law created a concept of “annulment with a valid reason”. Annulment with a rightful reason and article 16 and 17 of the law no 1475 which have a great possibility that they can be mixed with the article 24, 25 of the law no 4857, but by the time being they may be clear discriminated from each other in respect to content with the applications of the Supreme Court. But as far as we understand from the new law, valid reason and rightful reason are not the same things. If there is a rightful reason the laborer can be dismissed from the work whereas a compensation has to be paid in case of a valid reason, if notification period is not followed, notification period compensation is also be paid. Besides, the coverage of the labor guarantee is narrowed. While according to the previous labor law the labor guarantee was applied in the work places where 10 and more laborers work, this number is increased to 30 with the new law. Moreover, laborers with minimum six months seniority can benefit from the labor guarantee and lastly laborers working with the indefinite periodical service contract can also benefit from the labor guarantee. The agents of the employer (general manager, factory director, deputies, and worksite chiefs) can not benefit from the labor guarantee.

### 2.2.10. Grounding the Annulment to A Valid Reason

By this article which can be considered as an important change of the new labor law, for the annulment condition of the indefinite periodical labor contract by the employer, the condition of a valid reason is brought by the ILO contract no 158, moreover as to what these valid reasons are determined in the article one by one.

The provision of the article states that firstly the number of the laborer must be at least 30 and it is valid for the laborer of at least 6 months seniority. The employer can annul the indefinite periodical labor contract on of these conditions only with a valid reason. The article tried to explain “valid reasons” with examples. According to this, the employer who annuls the labor contract of the laborer has to have a valid reason originating from the behaviors, sufficiency of the laborer or originating from the requirements of the workplace or work (financial reason).

The six month seniority of the laborer is calculated by the addition of the periods spent in one or more places of the same workplace (company). In condition that the employer has more than one workplace in the same type work, the number of the laborer in the workplace is determined in comparison to the total number of the laborers in the workplace.

While the insufficiency and behavior of the laborer form the reasons related to the personality of the laborer; the requirements of the company, work or work explains the conditions of the workplace. But what these valid reasons are can be defined and cleared only by the time being with the legal decisions and the contributions of the doctrine.

It is important to mention once again the difference between the employer’s annulment with no valid reason and the unjust annulment stated

in the article 26. Though valid reasons are not mainly as severe as the ones mentioned in the article 26, they effect the operation of the work and the workplaces negatively. Therefore the reasons which can be accounted for a valid annulment will also be the reasons that effect the working debt of the labor originating from himself or from the workplace and they are also the reasons that prevent the performance of the laborer's working debt. As a result; in conditions that labor relationships are not expected by the employer to be continued significantly and reasonably, it will be necessary to accept the annulment with valid reasons. The valid reasons originating from the sufficiency and behavior of the laborer are the ones not included in the article 26 and they effect the completion of the work negatively. In article 4 of the ILO contract, insufficiency in the capacity and skill of the laborer to fulfill the laborer's is also considered as a valid reason for the annulment.[16]

The examples given within the decision of this article and considered as valid reason by German Courts;

**Reasons originating from the insufficiency of the laborer:**

- In average, working less productive than the people doing the same work,
- Having lower performance than the qualities shown before,
- Gradual Decrease in the Concentration to work,
- No to have inclination to work,
- Insufficiency in learning and self development,
- Frequent Illness,
- Though it doesn't put in a condition to be unable to work, the illness that always prevent in performing the work,
- Insufficiency in adaptation,

[16] Etem Kara, İş Sözleşmesinin İşveren Tarafından Geçerli Nedenle Feshi ve Sonuçları, Ankara 2007, s. 29.

**Reasons originating from the behaviors of the laborer:**

- Harming the employer or causing restlessness,
- Borrowing money from the colleagues in condition to cause discomfort,
- Instigating his friends to the employer,
- Doing his work insufficiently, badly and deficiently despite the warnings,
- Having relationships with others that annoy others and the workplace,
- Having unsuitable phone calls that prevents the process of the work,
- Often late coming to work,
- Having serious discord with friends and the superiors and quarrelling very often,
- The reasons originating from the unproductively and insufficiency of the laborer,

If they are causing negativenes in the workplace in a great degree, they are considered as valid reason.

**Reasons originating from the requirements of the workplace or the work:**

It may be beneficial to evaluate these reasons in two aspects:

**Reasons originating from out of business:**

- Decrease in Demand and order of goods,
- Lack of energy,
- Economical Crisis in the country,
- General stagnancy in the market,
- Loss of foreign market,

by these reasons it becomes impossible to run a business.

**Reasons originating within the business:**

- Approach of the age of retirement,
- Narrowing the business,
- Applying new technologies,
- Removing some work types.

While evaluating all these reasons, employer is expected to see annulment as the final solution. Whereas these reasons are considered as valid, whether the employer has any chance to avoid the annulment will taken into consideration.

The representatives of the employer and their assistants who administrate the entire business are considered as exceptional to this coverage.

In this article, the matters which will not cause valid reasons for the annulment are also stated in detail. Thus, some rights and liberties guaranteed by the labor law will never form a valid reason for the annulment.

These reasons;

- Labor Union membership or taking part in union activities,
- Being the representative of business labor union,
- To apply to administrative and judicial authorities against the employer for the rights resulting from the current law and the contract or joining the process started by someone else.
- Reasons like race, gender, marital status, family responsibilities, pregnancy, birth, religion, political opinion and etc.
- Coming to work in the periods when women laborers are not allowed to work as anticipated in article 74

- For the reasons of accident and illness, temporary absenteeism to work in the waiting period (25/1/b).

In case of the annulment of the labor contract for the reason not mentioned above, the laborer has right to fill a case in the court. That the labor contract is annulled with valid reason will be proved by the employer, otherwise the employer will either employ the laborer back or pay compensation in the amount that is total of the 4 to 8 months salary.

#### 2.2.11. Method and Objection in the Annulment of the Labor Contract

If the annulment notification is made written, the employer has to mention the annulment reason clearly and certainly. This document will provide easiness in proof in whether annulment is valid. As a matter of fact, it is the responsibility of the employer to prove that annulment is done with a valid reason. Without taking the defense of the laborer for the claims put forward against him, the indefinite periodical labor contract cannot be annulled for the reasons originating from laborer’s behavior or productivity. In fact, the article 20 gives laborer right to object to the annulment notification and method. If the employer has not shown any reason or the laborer is not convinced about the reason, a case can be filled in the labor court within a month from the annulment announcement. After a period of one month no right can be claimed. The case against the annulment will be resulted in two months depend on the trial method. In case of the discernment of the court decision, the Supreme Court will decide in a month for absolute.

#### 2.2.12. The Results of the Annulment Made With Invalid Reason

If the annulment reason is found to be invalid by the judicial court or by a special referee and that the laborer’s return to work is decided, the employer has to employ the laborer in a month. If the employer does not

employ the laborer in a month, he will have the responsibility to pay the total sum of 4 to 8 month of salary as compensation. The court or the referee will also determine the total amount of the compensation to be paid to the laborer when the laborer starts the work. Conflicts will be solved according to the method of series judgment, no matter what the result is, whether the laborer is taken back to work or not, the laborer will demand maximum of 4 months total sum of salary from the employer for the period that he was not let to work. But if the laborer returns to the work, the seniority compensation and payments which are paid in cash can be paid in installment. Moreover, if the laborer is not paid in cash and not notified, no time of notification is given, the amount of the money for these periods will be paid to the laborer extra.

If the laborer wants to commence the work after the court or special referee decision, he has to apply to the employer within ten days from the announcement of the decision. If no application is done within this period, the annulment made by the employer will be considered as valid but the compensations that the laborer deserved will be paid. It is mentioned separately that no contract can be made against the text of the article.

#### 2.2.13. Basic Change in the Working Conditions and the Annulment of the Labor Contract

The employer can not make basic changes in the working conditions of the laborer by himself. If he wants to make a basic change, he has to give a written notification to the laborer; the laborer will respond it in six working days. If the laborer accepts the changes, the labor contract will continue under new conditions. If the laborer does not accept the changes, the employer will explain the condition and will annul the labor contract by obeying the notification period. Otherwise, the laborer can also demand denunciation compensation. The basic changes in the working conditions can not be done for at the past. The employer can not annul the contract for the reason that the basic change in the working condition is not obeyed. While

the Supreme Court evaluates the changing in the working conditions, making detailed research (with experts), it interprets the text of the article narrowly. For instance, in one of its decisions, the changes in the laborer's residence within the town (Istanbul-Gebze), did not consider as the hardening of the working condition.

#### 2.2.14. Responsibilities of the New Employer

If a laborer employed by an employer with a definite or an indefinite periodical permanent labor contract, gets employed in another employer's work before the end of the notification period or without obeying the notification period, because of the annulment of the contract, in addition to the responsibility of the laborer, the new employer will also be responsible in the followings:

a) If the new employer caused this behavior of the laborer.

b) If the new employer employed the laborer knowing this behavior of the laborer.

c) If the new employer continues to employ the laborer after learning this behavior of the laborer.

Though here is no basic change in the content of the article, the only change is the, for the responsibility of the new employer, the previous employer will not be responsible any more because of the behavior of the laborer.

#### 2.2.15. Immediate Annulment Right of the Laborer on Righteous Reason

The immediate annulment reasons of the laborer are classified into 3 groups like in the previous text and only small changes are done in the content. The first change is in the title of moral and good will rules, in case of

sexual harassment the annulment is widened, not only the employer but also another laborer, in case of the sexual harassment that one of the 3rd person that means one of the customers faces, a righteous annulment right will be formed for the laborer. But here the employer is given an option “to take necessary precautions”, so that the employer has to prove that he/she tried to prevent the same thing happen again. The second important change, the “in case of basic changes in the working conditions, the laborer can annul the labor contract with righteous reason” in the previous law text, is removed from the text of this article, i.e. this is not a righteous reason for the annulment anymore. But as we stated above the law maker scrutinized this text in article 22 separately. In annulment because of the health reasons, the ones originating from the characteristics of the work that puts the health and life of the laborer in danger are considered as enough, that this should be known during the signing of the contract is removed. In these circumstances, annulments with righteous reasons can be done without waiting the period of notification or the period to terminate. The Supreme Court Law General Meeting stated that whether the labor contract is definite or indefinite periodical does not effect the seniority compensation in case of the annulment of the labor contract in righteous conditions. Again in another decision of its, the health committee report of the laborer was seen as sufficient enough for the annulment due to the health reasons.

### 2.2.16. The Immediate Annulment Right of the Employer on Righteous Reason

Changes are made in 3 points in the text of this article: first; in the annulment because of the illness, it is required that the condition must be proved by a health report. Second; in condition that the laborer harms the employer, the damage that cannot be compensated by the payment of ten days is increased to thirty days. The third and the most important change; a custody or arrest condition is brought. If the laborer is taken into custody or arrested for a period that exceeds the period of notification i.e. if it exceeded

two, four, six, eight weeks, the employer can annul the labor contract. Thus, the laborer will not have the right of notification but will have only seniority compensation. Finally, if the laborer does not perform the tasks that are assigned to him/her despite the fact that he is reminded of them, the expression “insistently” is added and the condition hardened. According to the Supreme Court, during the prosecution the employer is tied to the reason he showed in the annulment notification and he cannot go beyond this. In another decision, the Supreme Court put the burden of proving that the service contract was annulled on a righteous reason to the employer. Moreover “using the vehicle of the employer while not on duty”, “hiding the record of conviction” will form a righteous reason for the annulment. The laborer’s not leaving the house allotted for him is not a righteous reason of an annulment.

### 2.2.17. Period of Using the Right Allocated by the Annulment

As for the annulment period, it should be 6 days after learning or the text that annulling in 1 year remains the same and an addition is brought, in cases that the annulment period is in favor of the laborer, the obligation of 1 year is not sought. If money is embezzled to the laborer, the employer can also annul the labor contract after 2 years without any time limit. In the Supreme Court decisions these periods are accepted as the period of deadline for the use of rights and the start of the period is the time when the employer or the authorized people learn the event. Again according to the Supreme Court, the period of using annulment right, which is the 6 day deadline period for the use of rights, starts with the learning of the decision of the disciplinary committee authorized for the annulment. If this deadline period is exceeded annulment will be considered as invalid.

### 2.2.18. Permit of Finding New Work

Permit of finding new work is a right given to the laborer in the notification and is a responsibility given to the employer originating from the law. This is related to the public order. Not to issue this permit at all or not issue it in the way needed requires a penalty, because of its ordering nature it cannot be decided with an opposite contract. In the new article text, when the laborer is given a period of notification, it is stated that the laborer is needed to be given 2 hours daily to find a work. By informing the employer, the laborer can use this period by adding it to one another rather than using it separately. This was also applicable in the previous law text in the same way but a sanction is brought to the new law text whereas it was just an idea in the previous one. But “if the employer does not permit the laborer to use this period or does not allow sufficient time, the laborer will be paid for these periods”. Moreover, “if the laborer is let to work during this period of finding work, without being against working, he will receive his payment for this period hundred percent additional”.

### 2.2.19. Work Certificate

Work certificate (certificate of good service) is the certificate given to the laborer leaving the work in the private or public sector that shows the laborers relation with the work. This is how the work of the laborer will be cleared, this will also provides easiness to the new employer in finding the laborers with the qualities he/she wants and the laborer will find a work easily. The expression in the previous text of the law “approval of the signature by the chief in the neighborhood or civil administrative or issuing directly” is removed.

### 2.2.20. Mass Dismissal from the Work

The mass dismissal of the laborers must be informed to the representatives of the trade unions, regional directorates and labor institutions with a written document at least 30 days before and what should be the content of this information is stated in another law article. The "laborer representatives" expression is removed. What the mass dismissal of the laborer is also cleared by the text of the article. According to this; dismissal of 10 laborers if there are 20-100 laborers in the workplace, about 10 % of the total number of the laborers if there are 100-300 laborers, dismissal of 30 laborers in the workplaces where more than 300 laborers work are considered as mass dismissal. In its decision, the Supreme Court stated that in case of the closure of the workplace in economical crisis the mass dismissal of the laborers can not take place thus preliminary penalty condition can not be decided. In another decision, that Labor and Laborer Finding Institution is not informed about the dismissal of more than 10 laborers ended with the requirement of administrative Fine.

According to the ratios stated above, the dismissal of the laborers will be considered as mass dismissal even if they are dismissed one by one within a month and in such cases the requirements of the law will be applied.

The dismissal of the seasonal or campaign workers is appropriate to the characteristics of the works, the requirements of this article will not be applied.

# THIRD SECTION

## 3.1. RECENT CHANGES MADE IN THE LABOR LAW NO 4857

Some changes were made in the labor law no 4857 first with the law no 5763 and then with the law no 5754. It can be said that the changes made with the law no 5763 are generally about the labor health and guarantee and the responsibilities of the employer about the announcement of the workplace and the attainment of the legal certificate to open a workplace.[17]

### 3.1.1. Changes Made with the Law No 5763

### 3.1.2. Changes Related to the Workplace

The paragraph 2, titled as “announcement of the workplace” of the article 3 of the Labor Law no 4857 was changed by the Law no 5763.[18] By this change, the sub employers are responsible for the registration of their work place. The sub employers notify the regional directorate within a month about the written sub employer contract that they receive from the main employer and the other documents in a way that is required for the announcement of the workplace for the main employer.

By this change, it is seen that the sub employers have the same requirements and the responsibilities as do main employers.

The other changes about the workplaces are made in paragraph 1 of the article 95.[19] If there is no certificate of running a workplace issued by the

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[17] Nüvit Gerek, 4857 Sayılı İş Kanununda Yapılan Son Değişiklikler, MESS Sicil İş Hukuku Dergisi, Eylül 2008, Sayı 111, s. 11.

[18] 5763 sayılı Kanun Md.1., R.G., 26.05.2008 T., No: 26887.

[19] 5763 sayılı Kanun Md.7., R.G., 26.05.2008 T., No: 26887.

Working and Social Security Ministry according to the labor law, municipalities and other authorities, that means head of district officials, city health directorates and city agricultural directorates can not issue a permit of opening a work place. Thus, these workplaces can not operate.

Significant increases took place in the amount of the administrative fines paid in case of being against the responsibilities of the employers about the workplaces. But instead of paying fine, in such labor mistakes, the employers are expected to take required precautions not to be in condition of being against the laws thus paying fines.

### 3.1.3. Changes Related to the Labor Health and Security

There are also changes made in the article 78 of the Labor Law no 4857 titled as “Health and security rules and regulations”.[20] By the changes made in this law, the Working and Social Security Ministry is anticipated to take necessary precautions about the labor health and security.

The second change about the Labor Health and Security is made in the article 81 of the Labor Law no 4857. While the article 81 used to carry the title Workplace Doctors and the article 82 is that of Labor security with assigned engineer or technician, with the new arrangement article 81 is arranged under the title Labor Health and Security services and article 82 is removed from the effect.

According to this, the changes are made under three headings in connection to each other;

[20] 5763 sayılı Kanun Md.3., R.G., 26.05.2008 T., No: 26887.

a) The employers having fifty or more laborers are bound to form a workplace health unit.
b) The employers having fifty or more laborers are to employ another health official if one or two workplace doctor is needed.

c) The employers having fifty or more laborers (which is also considered as Industry) are to employ labor security specialist and Labor Health and Security Committee.

The third change made about the Labor health and security is brought by the article 85 about heavy and dangerous works.[21] By this change, it is strictly forbidden that except the young employers under the age of 16 and the children, the laborers who have not attained professional knowledge about the work they perform can not be employed in the heavy and dangerous works.

### 3.1.4. Other Changes

One of the significant changes took place in Law no 4857 made by the article 30 of the Law no 5763. The obligation of having laborer of Terror Victim is removed. Obligation of having a disabled laborer is the only thing brought for the private sector workplace. Discount in the incentive payment and encouragements are brought for the workplaces having disabled laborer where fifty or more laborers work. Employer' share of the disabled personnel working within the quota will be born % 100 by the Treasury. Thus, by not paying their share of the disabled laborer, employers are encouraged.

[21] 85. maddenin 1. fıkrasındaki "ile çalıştığı işle ilgili mesleki eğitim almamış işçiler" ibaresi 1.1.2009 tarihinden itibaren geçerli olmak üzere 26.05.2008 R.G tarihli 5763 sayılı Kanun ile Eklenmiştir.

By another change made in the Law no 4857, the decision that in the workplaces where pregnant or mother having a baby sucking her, there should be nursery or rooms where mothers can suckle their children or buying this service from outside is brought.

Another important change brought by the law no 5763 is that article 33 of the Labor Law No 4857 titled as “employer’s being in condition to be unable to pay” is removed. Detailed information is given about this title in our study.

# CONCLUSION

Upon the acceptation of the new Labor Law No 4857 in 2003, a lot of changes that we have focused on through this study started to be discussed in work life. Many articles of Labor Law No 1475 which were somewhat obscure and caused ambiguity in business trials were clarified by Labor Law No 4857.

The formation of labor contracts, improving new working conditions which are compatible with the new century and advancing technology have all penetrated through our lives with the Labor Law No 4857.

To sum up the innovations related to working life and labor contracts that have been brought along:

The definition of "laborer" in the Labor Law No 1475 was changed. Though this definition "someone who works in return for a wage based on the service contract is called laborer" existed in the previous law, the expression "works in return for a wage" was extracted from the Labor Law No 4857.

The definition of "employer" was broadened, and associations and organizations without legal entity were included to the scope of the definition of "employer." The definition of "work relation" was introduced.

The definition of "workplace" was broadened and it was defined as " the unit in which employers and all material and immaterial elements become organized with the aim of producing goods and service." Taking this definition into consideration, any place where laborers and manufacture elements come together is comprised by the definition of "workplace", and also by law. Accessories and tools which are counted as part of workplace were made more inclusive and the expression "places which have connection with the

service and good produced in the workplace in terms of quality, and places which become organized under the same administration" was appended. Workplace is a whole within the range of work organization formed by the places depending on it, accessories and tools.

The relationship between sub employer and major employer is defined. Sub employer has role only in some parts of the main work or in subsidiary works and is responsible for engaging his laborers in this work only.

In transition of a part of the workplace or completely, during the transition all the rights and debts in the labor contracts will pass on to the employer to him the workplace is transferred. The complete responsibilities of both the employers will be limited with two years starting from the date of transfer.

New working conditions are put into effect of the business life by the Labor Law no 4857. By the Law, a condition of "work on call" which is a special condition of the labor contracts is brought. If the parties do not determine the total weekly number of working hours, it will be considered as 20 hours. If the daily working hour is not decided in the contract, the employer has to employ the laborer for at least four consecutive hours daily.

If a period of Trial is put to the labor contract, this period can not exceed 2 months. But the Trial periods can be extended to 4 months with Mass Labor Contracts. During the Trial period, the parties can annul the labor contract without needing the period of notification.

According to the law, without taking their defense, no laborer's labor contract can be annulled because of his behavior or productivity. The laborer whose labor contract is annulled can fill a case in the court within a month from the annulment date. The case fill be resulted in two months. It is the sole responsibility of the employer to prove that the annulment is done with

valid reason. If the court or the private referee decides that the labor contract is annulled with invalid reason, the employer has to employ the laborer within a month. Otherwise, he has to pay bad will compensation to the laborer. The total amount of the compensation that has to be paid to the laborer who was not employed despite the decision of the court varies between 4 months to 8 months salary.

The employer has to do the annulment in written and write the reason of the annulment with clear and definite way. Without taking their defense, no laborer's labor contract can be annulled because of his behavior or productivity.

By the Law, half day holiday of Saturday was removed and it is also considered as a work day.

The laborers can have 24 hours permission weekly. According to the Law, there must be 24 hours uninterrupted weekly holiday within 7 days period. For the week holiday, full payment will be given.

If the laborer is not paid in 20 days without any obliged reason, the laborer will have the right to avoid the work.

Whether to work in the days of festivals (bariums) and holidays will be decided with the mass labor contracts. If there is no such article, the consent of the laborer has to be taken for working in these days.

The payment of the laborer will be given in TL. The payments to be done in foreign currency have to be given in TL with the rate of the day.

The annual leaves are increased by the law. The annual leaves are increased by 2 days in accordance with the European Union norms. According to this, those who have completed 1-5 years of working period can

have 14 days, 5-15 years 20 days and the ones completing more than 15 years can have 26 days paid holiday. Annual paid leave is considered as “inalienable right”. The national holiday barium, weekly holiday and illness permits coinciding with the annual leave are not added to the annual leave.

In the workplaces which are considered as industry and where more than 50 laborers work for more than 6 month period a year, the employer has to form a Labor Health and Security Committee.

The employment of the people searching for a job according to their qualifications will be done by Turkey Labor Institution and the offices given permission for it.

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