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THE RIGHT TO AVOID WORKING DUE TO THE CORONA VIRUS

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Abstract
The relevance of the study: In this study, firstly, starting from the legal nature of the employment contract, the responsibilities imposed on the workers and employers and the legal basis of these responsibilities will be emphasized. Then, the right of the employers who do not fulfill their obligations under the Code of Obligations No. 6098, the Labor Law No. 4857, the Occupational Health and Safety Law No. 6331 and the Regulation on Occupational Health and Safety Services, the elements and scope of this right, and the responsibility of the employer who does not protect his workers will be examined. The main problem: Employers are required to take every precaution for the continuation of their production or service activities, within the framework of the rules regulated by the relevant and authorized institutions, against Covid-19, which causes such great changes in our daily lives, including working conditions. The paper conclude: It is essential that the measures taken within the framework of all these reasons are complied with, and if the precautions are not taken or the precautions are not followed, the employees know their existing rights and use them when necessary. The novelty: the novelty of the topic is that this article will seek to reveal The methodology used included analysis of scientific literature, laws and legal acts, descriptive, analytical, comparative and logical methods. This is an obligation arising from both the Law and the employment contract. If the employer or the board provides a positive response in line with the request to avoid work, which is communicated with the notification, the right in question will become available to the employees until the necessary measures are taken. In a situation where the demand to refrain from working despite the existence of a danger is met negatively, legal and even criminal responsibilities of those who refuse the request will come to the fore within the framework of possible damages. Similarly, the employer may also be held responsible for the damages arising as a result of the employer's failure to implement the Covid-19 measures that he is obliged to protect and watch over the worker.
Keywords: Covid, Virus, Employment, Labour Law.

1. Introduction

The upper respiratory tract disease caused by Covid19, the effects of which we felt deeply with the first case seen in our country since March 2020, has led to the birth of various problems for many workers and employers in the public and private sectors.

As a result of the decision taken by the World Health Organization (WHO), Covid-19, which has the characteristics of an epidemic disease, has had wide-ranging effects on the working life and therefore on the economic system, together with the increasing number of cases in our country and around the world. Many businesses have faced the danger of closure, commercial life has come to a standstill.

However, since this is not possible in terms of the current system we are in, and the gears had to turn, so to speak, both workers and employers continued to work. During this work, it was necessary to take some measures in order not to increase the current loss and to ensure the continuity of the workers. Perhaps, although there was no need for such a danger to arise, the importance of the precautions to be taken was understood much more clearly in this period.

2. Employment contract and legal qualıty

The employment contract, which is defined in the Law No. 4857 as a contract where one party undertakes to work as a dependent and the other party undertakes to pay wages, consists of the worker on one side and the employer on the other. Although it can be said that the employment relationship between the parties will begin with the conclusion of the employment contract, which consists of three basic elements: work, wage and dependency, the Law clearly calls for actual work for the beginning of certain periods.

The most important feature of the employment contract, which is closely related to the personality of the worker and is a private law contract, is that it imposes mutual obligations on the parties. Each party incurs a debt against the performance of the other party. As it can be understood from the definition above, the employer's wage payment

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obligation against the employee's obligation to work is the reciprocal essential acts of the employment contract. However, it should not be overlooked that due to some social requirements, the worker is paid even though he does not work (Süzek, 2007).

2.1. Worker's lıabılıtıes

The basic obligation imposed on the worker by the employment contract is the obligation to work. The employee is responsible for fulfilling this obligation himself [2]. This obligation arises from the fact that the employment contract is related to the fact that it creates a personal relationship between the parties and highlights the personality of the worker based on the nature of the job. Even in the employment contracts made with unqualified workers, the worker has to comply with this obligation and fulfill the act of performing the job himself. The worker has to show the utmost care while performing his duty of work.

The duty of care means that the worker shows all the necessary attention during the performance of the work, which is his main performance obligation, and uses his professional knowledge, intellectual and physical abilities as necessary. If the worker does not perform this essential act, he may have to bear the consequences such as the termination of the employment contract for a just or valid reason, and the liability for compensation for this damage if it has caused a loss against the employer.

The worker must also act in accordance with the duty of loyalty, which derives its source from the rule of honesty. The concept of the duty of loyalty should be understood that the work is done in the best interest of the employer. For example, the action of the worker who notices the faulty production made in the previous shift, but does not warn the authorities and continues the faulty production knowingly when he comes to his own shift, is in the nature of an act contrary to honesty and loyalty, and the employer's termination of the contract is based on a just cause. In addition, article 397 of the Code of Obligations, which states that the worker is obliged to immediately deliver the things and especially the money received from the third party for the employer during the performance of the work undertaken, and to be accountable for them, creates a debt for the worker (Ekmekçi, 2020).

2.2. Employer lıabılıtıes

Wage payment debt, whose importance cannot be ignored in terms of employment contract, will be explained in general terms for now, since it is not related to the subject of this study. Wage payment debt is the main debt of the employer arising from the employment contract, which is against the employee's debt to work. As mentioned above, since the wage is the essential performance of the employment contract for the employer, it is not possible to talk about the existence of an employment contract without wages.

So much so that the employee may even apply for termination with just cause against the employer who does not fulfill his wage payment obligation, and from this point, the conditions for termination with just cause are not sought. In addition, due to the vital importance it carries for the worker, the wage is defined in article 55 of the Constitution as "Wage is the compensation for the labor. The state takes the necessary measures for the employees to get a fair wage suitable for the work they do and to benefit from other social benefits. protected as a social right. Within the framework of the Law No. 4857, wage is defined as the amount provided to a person by the employer or third parties in return for a job and paid in money.

The employer's obligation to protect the worker, which is a comprehensive obligation, should include the employer's taking the necessary measures to protect the worker's personality, honor and dignity, against interference and rape that may come from other workers and third parties, sexual harassment, and at the same time, the protection of the worker against any interference from the employer. For example, the employer's complaint to the public prosecutor's office without sufficient evidence and without reasonable suspicion was considered as a violation of his personal rights and constituted a violation of the employer's duty of protection and surveillance. Again, psychological harassment against the employee or theft or processing of the employee's personal data can also be considered as cases of breach of the aforementioned debt (Caniklioğlu, 2012).

It is a modern labor law practice based on equity to treat workers equally and to apply equal working conditions to workers working in jobs of equal value. The obligation of equal treatment is an obligation protected by Article 10 of the Constitution for the employer. However, it should not be forgotten that the obligation of equal treatment is not an absolute obligation. Because, it is not possible to talk about the obligation of equal treatment for workers who are subject to different working conditions. That is, the obligation of equal treatment can only be applied in absolute terms, provided that it is limited

to certain situations. These limited cases also consist of prohibitions of discrimination. Inequality will not be mentioned in the presence of weaselly professional requirements, necessary and appropriate treatment to eliminate inequalities. For example, in case of termination of wage or employment contract, it is not possible for the employer to treat its workers equally. However, the employer's obligation of equal treatment should be applied in absolute terms in the granting of social benefits or in matters related to the right of management.

3. Rıght to avoıd workıng

3.1. Right to Refuse to Work as Concept

In our law, this obligation of employers has been embodied in the Occupational Health and Safety Law No. 6331. The provisions of this law are mandatory and will be applied to all works and workplaces belonging to the public and private sector, to employers and employer representatives of these workplaces, to all employees, including apprentices and interns, regardless of their field of activity.

Occupational health and safety studies aiming to eliminate possible risks that may harm the physical and mental integrity of the employees with legal, technical, medical and organizational measures are not aimed at taking measures to prevent the accident from happening again by investigating the cause of the accident after an occupational accident occurs, but by the employer. It imposes the obligation to establish the necessary system to prevent the occurrence of the disease. With the Law No. 6331, this issue has been brought to a positive basis at the legal level, and it is foreseen that the employer will create a system that constantly monitors the measures related to occupational health and safety and aims to improve it.

One of the rights granted to the worker is the right to abstain from work with these regulations, which are generally aimed at prevention and for the protection of the worker both physically and spiritually. Avoidance of work can be defined as a right that the employee can use as a result of the decision of the occupational health and safety committee or the employer upon the necessary applications, in line with the employee's request.

3.2 Positive Basis of the Right to Avoid Work

In our law, before the Labor Law No. 4857, it was accepted that workers could be given the right to abstain from work based on general provisions, in parallel with the regulations in European Union countries. After the relevant regulation of the Turkish Code of Obligations, the right to refrain from work, which has a positive basis with the Labor Code article 83 for the first time, has also strengthened its place in our legislation with the abolition of the relevant law article and the enactment of the Law No. 6331.

In this context, Article 417 of the Code of Obligations No. 6098 states that "The employer takes all necessary precautions to ensure occupational health and safety in the workplace, and to keep the tools and equipment in full; Workers are also obliged to comply with all measures taken regarding occupational health and safety." In the framework of the provisions of the provisions of the service contract, the obligations regarding the subject are included. However, Article 417 of the Law No. 6098 did not clearly specify the scope of these obligations, and it was content to talk about the measures for the physical and mental protection of the worker in general terms. In this context, it is also within the scope of this obligation to take all measures to protect the physical integrity of the worker, to respect the material and moral values, but not to limit them, to protect the information included in the private life of the worker due to the employment relationship and not to share it with others, which should be considered within the scope of personal rights.

3.3 Right to Avoid Working Under Occupational Health and Safety Law

3.3.1 In General

The regulations in the repealed article 83 of the Labor Law have been preserved in article 13 of the Law No. 6331 with some additions. According to the relevant regulation, employees who are faced with a serious and imminent danger shall apply to the board, or if there is no board, to the employer in accordance with the necessary form conditions, and request that the situation be determined and the necessary measures be taken. If the board or the employer does not take any action despite an application that meets the requirements, the employee may choose not to work until measures are taken. In this context, firstly, the concept of serious and imminent danger will be examined, and then the procedure to be followed in order to obtain the right to avoid working, except for unavoidable situations, will be emphasized. Finally, the consequences that the employer may encounter in case the employer does not allow its employees to exercise their right to abstain from work will be mentioned, despite the conditions being met (Caniklioğlu, 2012).

3.3.2 Concept of Serious and Imminent Danger

Unlike the Law No. 4857, the Occupational Health and Safety Law has left the criterion of serious

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and close instead of the criterion of urgent and vital in article 13. Although there are opinions in the doctrine that the danger should be both serious and imminent, there are also those who argue that the expression in the article should be understood as serious or close. Even if a danger is not imminent, it can be serious (Kılkış, 2013). Because it is also possible that a serious danger will show its results in the long run. In this respect, it would be appropriate to give the employee the right to refrain from working in order to prevent possible harm if the employee is exposed to a serious danger. E.g; If the expression in the law is interpreted narrowly, employees will not have the right to refrain from working within the scope of article 13, in case the employees are employed without taking the necessary precautions in a working environment with the risk of pneumoconiosis or silicosis.

The imminent danger must be understood as the danger that has not yet occurred, but may occur in a very short time. The seriousness of the hazard indicates the potential of the hazard to cause significant harm or damage. That is, the hazard must outweigh the normal risk of the job so that it can be considered serious. In this context, the imminent and serious danger does not have to be due to the work, and the fault of the worker is not sought in order to meet the close and serious criteria of the danger. As a result of the evaluation of each concrete event according to its own characteristics, every danger that has the potential to harm the employee's right to life and bodily integrity should be included in this scope (Çelik, Caniklioğlu, & Canbolat, 2020).

3.3.3 Elements of the Right to Avoid Work

a. Applying to the Occupational Health and Safety Board or the Employer

In accordance with Article 13 of the Law No. 6331, the employee shall apply to the occupational health and safety committee, or to the employer in the absence of the committee. There is no difference in terms of whether the application is verbal or written, because there is no regulation on this issue in the law. However, it is obvious that a written application will provide ease of proof in terms of disputes that may arise in the future. The occupational health and safety committee will convene urgently, and if there is no committee, the employer will record the decision made in the minutes. The determination must include a conclusion as to whether a serious or imminent danger exists. The decision taken will be notified in writing to the employee. For example, if an occupational safety measure approved by the board is not taken and there is a work accident for this reason, the employer will be deemed defective due to negligence and will be liable to both the Social Security Institution and the worker.

b. Continuing Danger

In the presence of a serious and imminent danger, the employee's right to refrain from working can be mentioned as long as the said danger continues. Because in Article 13/3, it is regulated that working can be avoided until necessary precautions are taken. In this context, the right to abstain from work will end with the taking of measures that will enable the elimination of a serious and imminent danger. If the employee refrains from working after the dangerous situation is over, this situation will be considered as a justifiable reason for the employer.

Another point that should be mentioned at this point is, in Article 13/5, "In the event that the work is stopped in the workplace according to Article 25 of this Law, the provisions of this article do not apply." is the verdict. In Article 25 of Law No. 6331, it is mentioned that the work will be stopped by the administration in case of certain circumstances. Even if the danger continues, it will not be possible to talk about the existence of a work to be avoided. In addition, if the employer gives the employee a job that is suitable for his profession or situation within the scope of article 25/6, the employee will not be able to use his right to abstain from working again (Sur, 2005).

3.3.4 Restriction of the Right to Avoid Work

As mentioned above, the Occupational Health and Safety Law does not leave the use of the right to refrain from working to the employee's choice. The employee only has the opportunity to inform the establishment or the employer about the existence of a serious and imminent danger. Providing employees with the right to abstain from work is, in a way, at the initiative of the board/employer. If the Board or the employer does not make a positive decision upon the employee's application, the employee will be deprived of this right. Only in the presence of an unavoidable danger, employees will be able to go to a safe place without following the application procedure (art. 13/3). At this point, the possibility of evacuation of employees can be mentioned. It is left to the knowledge and experience of the employee to evaluate whether the serious and imminent danger is unavoidable. Since the danger is unavoidable, it should be understood that the danger cannot be prevented by any measures that can be taken in the concrete conditions of the employee. At this point, if it is reasonable for the working environment

to make the worker think that there is such a danger, the existence of the right to abstain from work can be accepted.

Employees who are faced with a serious and imminent danger will apply to the employer or the board and demand that the situation be determined and a decision to be taken to take the necessary measures. The law requires that the decision to be taken in this case be given immediately and recorded in a report.

We mentioned that the decision to be made is at the initiative of the board/employer. In case of rejection of the request of the employees in the face of serious and imminent danger, some rights in favor of the worker may arise, as well as the legal responsibility of the employer may be brought to the agenda. In cases where necessary measures are not taken despite being requested, employees may terminate their employment contracts in accordance with the provisions of the law to which they are subject (article 13/4). It can be accepted that this right granted to workers is a justifiable reason for termination. The fact that the deficiency in the workplace threatens the health and safety of the worker and that the necessary measures are not taken despite a suitable request prepares a suitable ground for the implementation of justified termination. In this context, the worker who terminates the contract may demand all the rights arising from the rightful termination from the employer (Çelik, et al., 2020).

Finally, if the employee dies, becomes disabled or has an occupational disease as a result of the employer's failure to take the necessary precautions, the employer's legal liability may come to the fore. In this context, material and non-pecuniary damages can be claimed in order to compensate for the damage caused as a result of the appropriate causal link because he did not take the necessary measures.

4. Corona vırus and the rıght to avoıd workıng

The pandemic is affecting all areas of our lives on a large scale, and this necessitates taking measures in accordance with the "new normal" order. The epidemic has greatly affected working life and workplaces, mainly due to the changes it has created in commercial transaction patterns, disruptions in supply chains, absenteeism of employees and the restrictions imposed on the sustainability of businesses. However, for the continuation of production in both the public and private sectors, the work should not stop. In addition, in order to be entitled to the wage, which is the main act of the employment contract, the workers continue to work in conditions that can be considered dangerous for themselves and their environment. In the meantime, it is not possible for the working life to pause in the world where a virus with death is at its end, although some restrictions are envisaged under the name of protection measures. In the simplest terms, as long as there are workers who have to go to their workplaces, public transport drivers will have to continue their work.

As a result of this obligation, it is possible that both the employee and the employer will suffer material and moral damage. In order to minimize this material or moral damage to be encountered, some obligations have been imposed on the workers and employers. The employer should take certain measures in the workplace for the health of its employees who continue production; the worker, on the other hand, must comply with these measures taken while working in order to be entitled to the wages he needs in order to survive, so to speak. While the employer's obligation to take measures arises from the obligation of protecting and observing the worker, the obligation of the worker to comply with the measures is the equivalent of the obligation of loyalty to the employer arising from the employment contract in this period.

4.1 Additional Precautions Taken During the Covid-19 Process

Practices such as the employer creating the necessary organization within the scope of occupational health and safety measures, carrying out regular inspections, raising awareness of the workers in order to ensure the implementation of the measures, and engaging in risk management studies are the regulations stipulated by the Law No. 6331 in order to establish the occupational health and safety culture. Here, rather than these measures, the essential rules that must be followed in terms of workplaces with the suggestion of the World Health Organization and the Ministry of Health of the Republic of Turkey during the Covid-19 process will be mentioned (Pehlıvan, 2020).

In Article 4 of the Occupational Health and Safety Law, it is stipulated that the employer must "take all necessary measures" in order to ensure occupational health and safety, under the general obligation of the employer. In this context, the recommendations of authorized institutions and organizations such as the World Health Organization and the Ministry of Health should be taken into account, and the working environment should be built in accordance with the changing dynamic epidemic

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conditions. Occupational health and safety measures applied in epidemics are of great importance not only for the employee, but also for the protection of public health (Özdemir, 2020).

The symptoms of Covid-19, which causes an upper respiratory tract disease, are now clearly expressed, unlike the first days when the epidemic began to spread. For this reason, it is obvious that the measures to be taken should be determined in this direction. For example, measures such as measuring the temperature of employees with a non-contact thermometer at the time of entry to the workplace, developing working models in accordance with social distance rules, equipping the workplace with informative printing and broadcasting tools for combating the disease are simple but proven measures in terms of disease prevention. In addition, taking precautions such as teaching personal cleaning rules by occupational health and safety experts and having them enforced if necessary, employing employees from groups that pose a risk in terms of disease from home, if possible, increasing routine cleaning and disinfection works, is an effective way of combating the virus in terms of employee health and therefore public health. enables its implementation (Demircioğlu & Kaplan, 2016).

Again pursuant to article 19 of the Occupational Health and Safety Law, "Employees are obliged not to endanger the health and safety of themselves and other employees affected by their actions or work, in line with the training they receive regarding occupational health and safety and the employer's instructions on this matter." From the aforementioned provision, it can be concluded that only the employer is not responsible for the workplace and employee health. Because the obligations of the employees to protect their own and other employees' health, not to endanger them, to cooperate with the employer and not to disrupt the sustainability of the business in this direction are a natural result of the loyalty debt to the employer. For example, workers' compliance with the obligation to wear masks, their observance of social distance rules, their compliance with quarantine rules, or their reporting to the employer without delay if they become ill, are reflections of the aforementioned loyalty debt to working life during the Covid-19 process. It can be said that the failure of the workers to comply with the measures taken gives the employer the opportunity to terminate based on a just cause in terms of the Labor Law (Mollamahmutoğlu, 2014).

4.2 Employee Avoidance of Work Due to Covid-19

The conditions sought for the right to abstain from work to come to the fore were mentioned above. So, can the Covid-19 outbreak be brought forward against the employer as a valid reason for this right to come to the fore? For this, close and serious concepts that express the danger that has not yet occurred but will occur in a very short time and the potential of the danger to cause significant harm to the employee should be examined. In this context, the doctrine accepts that, contrary to the letter of the law, the danger must be serious or imminent. Since Covid-19 is a virus that spreads much faster than other upper respiratory tract diseases, it can be said that it fits the definition of near danger. On the other hand, considering the personal characteristics of the employee and evaluating each concrete case separately, the danger posed by the virus may have the potential to cause significant harm to the employee. For example, if the person has asthma or is still working despite being over the age of sixty-five, it may be enough to consider Covid-19 a serious danger (Çelik, 2020).

Based on the letter of the law, an employee who is faced with an imminent and serious danger may immediately report the situation to the Board or to the employer in workplaces where the Board is not present. If the board or the employer gives the impression that the Covid-19 epidemic is or will be seen in the workplace and responds positively to the employee's request, necessary measures will be taken to prevent the danger immediately. The most reasonable measure that can be taken in this context is to stop working at the workplace, which will create a situation of avoidance from working anyway, and to quarantine the workplace. However, employees with employment contracts may terminate their employment contracts in accordance with the provisions of the law to which they are subject, in cases where the necessary measures are not taken despite their requests. Public personnel working under a collective agreement or collective bargaining agreement are deemed to have actually worked when they are not working according to this article (İSGK.m.13/4). E.g; If the worker applies to the employer for a mask at the workplace but is not provided with a mask, he may first refrain from working, and if his request continues to be not met within a reasonable time, he may terminate the employment contract with just cause (Öztürk, 2013).

The imminent and serious danger sought need not arise from work. It is necessary and sufficient that

the danger to arise in this respect will affect the worker. Likewise, since the probability of the danger is sufficient, the occurrence of a damage is not sought. In this regard, the employee who encounters the danger of Covid-19 at the workplace may request the determination of the situation from the employer or the Board in order to take the necessary measures. However, considering the spread and transmission rate of Covid-19, the employee regarding the epidemic disease in question will already find himself in imminent and serious danger (Akın, 2020). The measures to be taken after this point may not be sufficient to protect the employee. It may be too late for possible damages to arise. For this reason, instead of the employee's right to refrain from working in Article 13/1 of Law No. 6331, it is stated in Article 13/3 that "In cases where a serious and imminent danger cannot be avoided, the employees leave the workplace or the dangerous area without having to comply with the procedure in the first paragraph. goes to safety" (Akın, 2020). Implementation of the provision may yield much more beneficial results (Engin, 2003). Because the employee is now in a situation where urgent measures and decisions must be made. At this stage, operating the application procedure in order to comply with the law will not only be a waste of time, but may also cause unfair situations (Türkşen, Ceysu, 2021).

5. Conclusıon

These new rules that came into our lives with Covid-19 naturally raise current questions in business life in terms of all business lines. The measures to be taken by the employer in order to protect and watch over his workers and the practices that must be put into practice, the Labor Law No. 4857 and the Law No. 6331 within this framework, appear as secondary acts of the employment contract. In this context, the employer not only pays wages, but also needs to consider the benefits of the worker while performing the job he expects from the worker. This is indispensable not only for the protection of the worker, but also for the continuity of the work to be done. Because, if the employer cannot protect his worker as a result of acting in breach of this obligation, the unfinished job will be the employer's own job.

On the other hand, the worker should not only be satisfied with the act of working. This action must be carried out in accordance with the instructions of the employer or those authorized by the legislation. Because, if the given instructions are not followed, not only will the work not be able to continue, but also he will be faced with the risk of material or moral damage in the face of the dangers that arise. For these reasons, the employer is obliged to protect and watch over his worker, and the worker is obliged to fulfill the instructions received from the employer while working and to act in accordance with these instructions. These obligations will gain meaning to the extent that they are mutually realized.

It is obvious that expecting the worker to work unconditionally will be contrary to the ordinary flow of daily working life and will create situations that are contrary to equity. Because, even though the purpose of the said employment contract is to perform a job, asking the worker to do this job at the expense of his life will lead to futile results.

One of the situations in which the employer cannot expect the worker to work is the worker's right to refrain from working. In the event of a serious and imminent danger that continues in general terms, the right to abstain from work in accordance with the Law No. 6331 will arise if a request is made to stop the work and this request is rejected by the relevant authorities. At this point, employees may refrain from fulfilling their business obligations, which are the essential acts of the employment contract to which they are bound. With this right granted, the law has ruled that even a contract whose binding is not disputed cannot be made obligatory in certain situations. However, it should not be forgotten that all the conditions mentioned in detail above must be fulfilled for the birth of this right. Otherwise, the employer will be able to use his rights arising from the breach of the contract.

The first condition sought to be able to talk about the right to abstain from work within the scope of the Law No. 6331 is the existence of a serious and imminent danger and that this danger continues throughout the use of the right. The doctrine mainly argues that the conjunction in the Law should be understood as or. In this context, the fact that an existing danger is serious or imminent is necessary and sufficient for employees to claim the right to abstain from work.

Since Covid-19 is a virus that spreads much faster than other upper respiratory tract diseases, it can be said that it fits the definition of near danger. On the other hand, considering the personal characteristics of the employee and evaluating each concrete case separately, the danger posed by the virus may have the potential to cause significant harm to the employee. However, in order to reach an appropriate conclusion

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in terms of this evaluation, it is useful to take a look at not only the serious and imminent danger element, but also other conditions.

After an epidemic caused by Covid-19 is accepted as an imminent and serious danger within the framework of Article 13 of Law No. 6331, employees should immediately notify the employer or the board if they encounter symptoms of an epidemic disease caused by Covid-19 in other employees working in the workplace.

This is an obligation arising from both the Law and the employment contract. If the employer or the board provides a positive response in line with the request to avoid work, which is communicated with the notification, the right in question will become available to the employees until the necessary measures are taken. In a situation where the demand to refrain from working despite the existence of a danger is met negatively, legal and even criminal responsibilities of those who refuse the request will come to the fore within the framework of possible damages.

Similarly, the employer may also be held responsible for the damages arising as a result of the employer's failure to implement the Covid-19 measures that he is obliged to protect and watch over the worker.

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ПРАВО НА ВТРАТУ РОБОТИ В УМОВАХ КОРОНАВІРУСУ

Анотація

Актуальність дослідження. У даному дослідженні, по-перше, виходячи з правової природи трудового договору, буде наголошено на обов'язках, які покладаються на працівників і роботодавців, та на правовій основі цих

обов'язків. Тоді право роботодавців, які не виконують свої обов'язки, передбачені Кодексом зобов'язань № 6098, Законом про працю № 4857, Законом про охорону праці № 6331 та Положенням про охорону праці, у контексті елементів яких розглянуто обсяг цього права та відповідальність роботодавця, який не захищає своїх працівників. Основна проблема: роботодавці зобов'язані вживати всіх запобіжних заходів для продовження своєї виробничої чи сервісної діяльності, в рамках правил, регламентованих відповідними та уповноваженими установами, проти Covid-19, який спричиняє такі великі зміни у нашому повсякденному житті, у тому числі в умовах праці. У статті робиться висновок: Важливо, щоб заходи, вжиті в рамках аналізу всіх цих причин, були дотримані, і якщо запобіжні заходи не вжито або не дотримано, працівники знають свої наявні права і користуються ними, коли це необхідно. Новизна: новизна теми полягає в тому, що ця стаття прагне розкрити нову проблему. Використана методологія включала аналіз наукової літератури, законів і нормативно-правових актів, описовий, аналітичний, порівняльний та логічний методи. Висновок. Це обов'язок, що випливає як із Закону, так і з трудового договору. Якщо роботодавець або адміністрація надасть позитивну відповідь на прохання про ухилення від роботи, про що повідомляється в сповіщенні, це право стає доступним працівникам до вжиття необхідних заходів. У ситуації, коли вимога утриматися від роботи, незважаючи на наявність небезпеки, задовольняється негативно, на перший план виходить юридична і навіть кримінальна відповідальність тих, хто відмовляється від прохання у рамках можливого відшкодування збитків. Так само роботодавець може нести відповідальність за збитки, що виникли внаслідок невиконання роботодавцем заходів щодо Covid-19, які він зобов'язаний захищати та стежити за працівником.

Ключові слова: Covid, вірус, зайнятість, трудове право.

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