

# The Effects of Coronavirus Measures on Workplace Lease Contracts

As a result of the spread of Coronavirus (COVID-19) all over the world, Turkey has also started to see the effects of this pandemic, which brings along new precautions taken by the Turkish government in order to stop the spread of the disease and maintain companies' continuity. In conjunction with the new regulations regarding lease contracts, many legal questions arise in terms of the obligations of lessees and lessors.

The frequently discussed questions and their answers are as follows:

## **1. Which workplaces' activities have been suspended?**

By means of the circular of the Ministry of Internal Affairs, it was decided to suspend the activities of more than two hundred thousand workplaces.

Accordingly, the activities of nightclubs, bars, discotheques, theaters, movie theaters, show centers, concert halls, engagement/wedding venues, restaurants and cafés with music, casinos, beerhalls, tavernas, coffeehouses, cafeterias, public gardens, shisha bars and cafés, internet halls, internet cafés, all kinds of game arcades, all kinds of indoor playgrounds (including those located in shopping malls and restaurants), tea gardens, association locales, amusement parks, swimming pools, bathhouses, saunas, thermal springs, massage parlors, SPA's and sport centers are temporarily suspended.

## **2. Are the workplaces whose activities have been suspended within the scope of the precautions obliged to pay their rents?**

The provisions of the lease contracts concluded between the parties will be primarily executed. In case there is a provision regarding force majeure and its consequences, the parties should find a solution accordingly. Under these circumstances, force majeure provisions will be applied in accordance with the below mentioned precautions regarding execution proceedings, termination and evacuation prohibitions.

Additionally, if the leased property is perceptibly allocated as a "workplace" in the lease contract, and in case that the allocated activity is suspended within the scope of the precautions, it is possible to benefit from the provisions of the Turkish Code of Obligations pertaining to objective performance impossibility.

However, it is important to determine whether the performance impossibility arising from the COVID-19 precautions is temporary or permanent at this stage. In our opinion, the performance impossibility arising from the COVID-19 precautions should be interpreted as temporary performance impossibility, since the precautions will be applied rigorously for a temporary period of time and it seems possible to return to normal life gradually.

The Turkish Court of Appeals' decisions regarding temporary performance impossibility become crucial at this point, since the Turkish Code of Obligations regulates only permanent performance impossibility but not temporary performance impossibility. According to the decisions of the Turkish Court of Appeals, in the event of temporary performance impossibility, the date of performance should be postponed to the date when the circumstances leading to the impossibility have lifted. In other words, it seems legally possible to postpone the rental payments until the COVID-19 precautions are lifted. However, it is important to bear in mind that the lessor may apply for extraordinary termination pursuant to Article 331 of the Turkish Code of Obligations in this case.

To emphasize again, postponing the date of performance is only possible for the workplaces whose activities have been suspended by the Circular. Additionally, the leased property must be explicitly allocated for the suspended activity of the workplace pursuant to the lease contract. The only legal opportunity for workplaces that don't meet these conditions is the amendment of the rental price.

## **3. Is it possible to amend the rental price for workplaces which do not meet the conditions of the Circular?**

We are of the opinion that the lessee may request amendment of the rental price pursuant to the hardship provisions of the Turkish Code of Obligations if there is no performance impossibility and the lessee is not discharged from her payment obligation as stated above.

Accordingly, the lessee will be able to request the amendment of the rental price and its adaptation to the new conditions before the court by claiming that the reason for failing to meet her payment obligation is due to an extraordinary situation, which aggravates the terms of the contract against her to the extent that she cannot be expected to pay the rent and which could not be foreseen at the time of signing of the contract.

**4. Is it possible to subject the unpaid rental fees to enforcement proceedings or to evacuate the lessee for this reason?**

Execution proceedings have been suspended until 30 April 2020 by Presidential Decision. Moreover, Provisional Article 2 of the Law numbered 7226 stipulates that the workplace rental prices that are not paid between 01 March 2020 and 30 June 2020 will not constitute a reason for termination of the lease contract and evacuation of the lessee.

Within this framework, the lessor cannot commence execution proceedings until 30 April 2020 for unpaid rental payments. However, since only new execution proceedings are suspended, the lessor reserves the right to file a lawsuit for the collection of rental fees.

Nevertheless, the lessor cannot terminate the lease contract and request the evacuation of the lessee based upon the unpaid rental fees between 01 March 2020 and 30 June 2020. Therefore, the warning, termination and evacuation notices to be made to lessee by the lessor within the specified time period will not have any legal consequences.

However, the above mentioned precautions do not remove the lessee's obligation to pay rent. The only aim of these precautions is to postpone the lessee's obligations during these difficult times. Otherwise, the lessee's obligation of paying the rental fee and default interest (in case of delay) continues.



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