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# How to use right to seek new employment during notice period

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## Introduction

Indefinite-term employment agreements can be terminated by complying with notice periods, unless either party has a just cause for termination.

Article 27 of the Labour Law regulates the right for employees to seek new employment during their notice periods:

*Within the notice periods, the employer is obliged to grant the employee the leave to seek new employment within the work hours and without making any salary deduction. Time of the leave to seek new employment cannot be less than two hours a day and the employee may use collectively the leave hours for seeking new employment by combining them together, if they want to. However, the employee who wants to use the leave to seek new employment collectively must do so on the days prior to the termination day and notify this situation to the employer in advance. If the employer does not grant the leave to seek new employment or grants lesser time, the salary corresponding to that period is paid to the employee. If the employer makes the employee work during the time granted for seeking new employment, in addition to the compensation of the time granted for seeking new employment without working, the employee must be compensated with a hundred percent raised salary for the time worked.*

## How can the right be used?

Once the notice period starts, employees must use the leave to seek new employment at least two hours a day during their working hours. Employers may determine when these hours are taken. Alternatively, employees may collectively use the hours granted for seeking new employment. The employer cannot make any deductions from the employee's salary for this leave.

Permission to seek new employment can be designated only during an employee's working days. It is not necessary to grant leave to seek new employment during days off, such as weekends and national and official holidays.<sup>(1)</sup>

The employer may increase the time granted for seeking new employment. Provisions of employment agreements decreasing or removing the employer's obligation to give permission to the employee to seek new employment are invalid, whereas provisions increasing the time to seek new employment are valid.

It is debated whether employees can benefit from the permission to seek new employment if they have already secured a new job, but the majority opinion on the doctrine is that employees must be in need of new employment to be granted the permission. However, the Court of Cassation has handed down decisions stating that leave to seek new employment must be granted to the employee even when the employee has already found a new job because the employee may still find a better offer of employment.<sup>(2)</sup>

The Court of Cassation emphasises that giving permission to employees to seek new employment would not affect the validity of their notice period.<sup>(3)</sup> However, if an employer makes an employee work during the time granted to seek new employment, the employee must be compensated for the time worked in addition to the compensation for the time granted to seek new employment without working.

The right to seek new employment must be granted by the employer regardless of the employee's request in this regard. In a recent Court of Cassation decision<sup>(4)</sup> rendered about a dispute where an employee had worked full time until the end of their notice period despite the employer granting them permission to seek new employment collectively or daily, the Cassation Court stated that seeking new employment did not depend on the employee's request. Therefore, the employer must grant this right to the employee even in the absence of the employee's request and cannot require them to carry out any work duties during the job-seeking leave periods. A declaration that the permission has been granted, as was given in this case, would not relieve the employer from the obligation to reduce work duties. The Cassation Court also decided that the salary corresponding to the time that the employee had worked (including the leave periods in which he had continued to work) had to be paid in full.

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## Endnotes

(1) As it is not necessary to give permission to the employee to seek new employment during their days off, the employee will not be entitled to receive payment as compensation for not being granted the right to seek new employment in these days (Court of Cassation, 9 Civil Chamber, 2020/4142 E, 2021/433 K ve 12 January 2021 T).

(2) Court of Cassation cases:

- 7 Civil Chamber 2015/8862 E, 2015/7426 K ve 28 April 2015 T;
- 7 Civil Chamber 2014/3100 E, 2014/11103 K ve 22 May 2014 T;
- 9 Civil Chamber 2012/32958 E, 2014/21253 K, 23 June 2014 T; and
- 9 Civil Chamber 2011/53725 E, 2014/3399 K ve 05 February 2014 T.

(3) Court of Cassation 9 Civil Chamber 2016/16373 E, 2020/5009 K ve 08 June 2020 T.



EZGI KUT



MEHMET BERK  
DEMİR



BERIL YAYLA  
SAPAN

