INVESTIGATION OF DIGITAL HUMAN RESOURCES APPLICATIONS IN LEGAL CONTEXT

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Abstract

After the developments in information technologies, internet has become very frequently used in business applications. The increase in the processes in which technology was used in business also affected human resources and after this change, human resources departments started to perform their activities in digital platforms. In this study, digital recruitment and digital performance management functions will be discussed. Digital human resources practices are a new concept in our country and the legal solutions that can be brought to these practices have not been investigated sufficiently. In this respect, digital recruitment and digital performance management from digital human resources functions will be examined in the legal context, especially in the context of Turkish Labor Law.

Key Words: Digital Recruitment, Digital Performance Management, Labor Law

INTRODUCTION

Human resources, it is an extremely fundamental element in the production of goods and services by meeting the expectations of the customers in the best way. Businesses can continue their lives by making a profit when they have the right competencies placed in the right jobs. In this direction, the recruitment process, which is one of the functions of human resources, is critical for organizations. Individuals placed in work are expected to realize their potential during the period they work and thus contribute to organizational efficiency. This shows the need for performance management, which is another function of human resources.

Today, with the developments in information technologies, organizations have begun to transition to digitalization in human resources applications as in many processes. In this process; collecting, storing, processing and sharing the data in a digital environment can cause some legal problems. In this direction; the purpose of this study is to explain the effects of digital recruitment and digital performance management practices in the context of labor law. Thus, problems that may arise in digital recruitment and digital performance management processes are revealed. In addition, in this study, legal solutions related to these problems are presented.

In the study, digital recruitment and digital performance management processes will be mentioned firstly in the theoretical context. In the study, legal problems that may occur in digital recruitment and digital performance management processes are included.The study will be finalized with the solutions proposed to the legal problems that may occur in the functions of digital human resources examined within the scope of this study.

CONCEPTUAL FRAMEWORK

The Concept of Digital Recruitment

Human resources functions include human resources planning, recruitment, training, and learning, performance management, charges and reward management, career management, industrial relations, occupational health and safety (Bingöl, 2014: 28). Digital human resources management aims to add value to the organization and potential employees by integrating all these human resources functions with the help of internet technologies (Bondarouk and Ruel, 2009: 507). In this context, digital recruitment in digital human resources functions will be studied in this section.

Human resources recruitment processes start with the demands of the departments within the organization. During the search of the appropriate candidate to work in the organization, both the employees working in the organization and people who exist in outside of the organization are involved in the evaluation. The important thing here is; rather than filling in vacancies within the enterprise, it is the right job to meet the right person, that is, to provide the person-work harmony.In other words, organizations want the harmony of the capabilities of individuals with the requirements of the job (Byars and Rue, 2008: 114-115; Sabuncuoğlu, 2005: 78).

When the stages of the digital recruitment process are examined, it is possible to say that it is similar to traditional recruitment methods. The digital recruitment process starts with the demand of the employees as well as the traditional methods. However, the digital recruitment process distinguishes itself from traditional methods by its ability to perform in an electronic environment. In this direction; after the organization demands new employees, organizations try to attract candidates to the institutions that use internal and external resources (Doğan, 2011: 56; Foster, 2003: 4-5).

The methods used by organizations to procure employees using internal and external resources can be expressed as traditional recruitment methods. Organizations can access the human resources they need by using these internal and external resources. Internal resources are one of the sources that companies apply to fill their open positions. The promotion method is the internal resources used in recruitment, which is called the employees take on more responsibility and take part in a higher position and apart from that, the transfer method is another internal resources used in recruitment, which is called the voluntary pass to another position because the organizations offer better opportunities for their employees (Ertürk, 2012: 91). Another method of finding the most suitable person for the organization is to apply to external sources. These external resources; newspaper advertisements, government agencies, employee references, career days organized in universities, and consultancy companies specialized in human resources (Ployhart et al., 2006, 244). The use of outsourcing public institutions in Turkey is carried out by IS-KUR.

Nowadays, the traditional recruitment processes have transformed with the changes in computer technologies. Studies show that individuals in the 16-35 age group actualize job search processes via the internet (Güler, 2006: 22). In this respect, it is critical for organizations to integrate recruitment strategies, an important process of human resources, into online processes through information technologies (Waddill, 2018: 192). Looking at today's business world; ıt is seen that job and internship opportunities are almost suitable for individuals in this age range. So, this is one of the important points that make the use of internet technologies unavoidable for human resources.

One of the areas where candidates can apply for jobs on digital platforms is the corporate web page of the company to be contacted. Corporate web pages contain a page of the open positions prepared by the human resources units of the organizations. This page contains job vacancies and job application forms. One of the most used tools in digital recruitment is career sites. The companies that perform the search for employees through these career sites can publish job advertisements at any time they wish. Companies can also evaluate candidates through career sites (Güler, 2006: 21). In Turkey, through web pages like kariyer.net, secretcv.com, yenibiris.com employers can publish jobs. employers can publish jobs. Apart from websites that publish such job advertisements, there are also web pages that can work for those who want to work in a niche area. Candidates can search for jobs through social media networks

such as LinkedIn, Facebook, Twitter. In addition to all these channels, students and new graduates are applying for a job with virtual career fairs.

Thanks to these electronic tools, the most suitable candidate is provided to apply for the job. Organizations take advantage of digital environments to reduce physical distances and pull the right candidates away. Applicants who are not eligible for work are eliminated in the next phase after the application for the job is provided. Organizations benefit from keywords in the elimination phase. Interviews are carried out with the candidates who have successfully passed this elimination stage. At the stage of the online interview, some candidates are eliminated. The candidates who successfully pass this process have electronic reference controls. Finally, job offers of candidates who successfully complete all these processes are sent in the form of letters in the online environment. The follow-up of the job proposal sent to the candidates is also carried out through various programs developed online (Doğan, 2011: 56-57; Foster, 2003: 5-11).

Along with the developments in internet technologies, changes in job search processes have begun. In this respect, employers need to know how candidates use online recruitment processes. Thus, businesses can create effective online candidate pools. Because digital recruitment activities will contribute a lot to businesses, employers often focus on this online process. As a benefit of e-recruitment activities, the reduction of costs related to recruitment advertisements and the acceleration of the recruitment process can be exemplified. As a result, organizations are able to select the most appropriate candidate for their work from within a larger candidate pool by means of digital recruitment (Pearce & Tuten, 2001: 9-10). With the inclusion of computer technologies in recruitment activities, business managers and human resources specialists are able to reach information about candidates at the time and place they want (Güler, 2006: 17).

The Concept of Digital Performance Management

Although organizations have been observing the performances of their employees for centuries, the developments in computer technologies, as well as observations on performance, have begun to transform (Alder and Tompkins, 1997: 259). The fact that organizations perform their performance management on digital platforms such as other functions in human resources shows that this issue should be pointed out.

Digital performance management refers to collecting, storing, analyzing and reporting data on the performance of individuals and/or groups within the organization by computer-aided systems. Employee performance is recorded through audio and visual tools in digital performance management using computer systems (Phillips et al., 2008: 199-200; Stanton and Barnes-Farrell, 1996: 738). Thanks to digital performance management, organizations can easily access data on both individual and organizational performance. Thus, organizations provide quick feedback on the shortcomings of employees (Benson et al., 2002: 398).

The determination of the performances of the employees on digital platforms is a process consisting of various stages. This process starts with the determination of the performance criteria on the computer systems. Employees can reach the specified criteria and the action plans assigned to them at any time. Thus, employees can evaluate the planned situation and the current situation at any time during the activity period.In this respect, in case of large differences between expected and actual performance, the employee and the manager can change the performance criteria previously defined by the manager. The digital performance evaluation process ends with the meeting of the employees with the managers on the online platforms and the performance data achieved is maintained on online platforms (Doğan, 2010: 63-65).

Digital performance management has many benefits for employees and organizations. The performance results of the employees in traditional performance management were kept in reports. This situation caused the employees to see their performance only in a certain period of time and to make great efforts to storage the performance results by organizations. Organizations have begun to use digital performance management, which is an inexpensive system to prevent this. By this means, employees

can reach their performance results from the company's online databases whenever and wherever they want (Ngai et al., 2007: 69; Andersen and Fagerhaug, 2002: 116). In addition, the criteria for evaluating the performance of employees in digital performance management are predetermined. Thus, subjective performance evaluations that can be made to employees are prevented (Alder and Tompkins, 1997: 265). All these are important elements that increase accuracy, objectivity, and transparency in digital performance management.

Digital performance management has all these positive aspects as well as some negative aspects. Employees in digital performance management are aware that their performance is evaluated continuously. The fact that employees are constantly checked and monitored is likely to cause stress to employees. In addition, continuous control of employees can damage employees' privacy (Moorman and Wells, 2003: 3).

Digital Human Resources Applications In Turkish Labor Law

The Status of Labor Law in Digital Recruitment Process

Employers may naturally wish to learn the personal and professional characteristics of the worker to which worker will make a contract of employment and accordingly decide whether or not to contract a contract. In this framework, various questions (identity, personal characteristics, residential area, educational background, professional experience and places of work, references, military status, etc.) can be directed to the worker in the recruitment interviews (Manav, 2015: 113; Belge, 2017: 1034). It is important that the questions that can be directed to the worker during the recruitment phase are related to the job. In this context, the questioning of questions that are not related to work can in some cases lead to a violation of the employee's personal rights (Ertürk, 2002: 64-65). For example, it can be considered in this context to ask questions about the ethnic and religious origin of the worker and their family life (unless the nature of the work requires it). As a rule, the employee must provide correct information against the questions asked by the employer and should not mislead the employer (Manav, 2015: 114). However, it is difficult to point out that the worker has an obligation to respond correctly to the question that is not related to the nature of the work. In this framework, questions that are not objectively linked to the work to be performed may create an unlawful interference with the person's private sphere (Ertürk, 2002: 73-74). A balance should be established between the employer's freedom of contract and the protection of the worker's personal data. The employer's right to ask questions will determine the limit of a rule of honesty (Manav, 2015: 114; Ertürk, 2002: 65).

Nowadays, it is possible to carry out the recruitment processes in digital environments when the technology reached the stage. In fact, the processes carried out in the digital environment can provide important facilities for both employers and workers. However, recruitment practices carried out in digital environments also impose an important obligation for the protection of the confidentiality of information obtained from employers.In addition, the employer's personal status (ethnic or religious origin, etc.), family life (whether married or pregnant, etc.), health conditions (whether he/she is ill or not, etc.) or whether union member questions should not be directed. Because, unless the nature of the job is necessary, the employer's questioning on these issues may be subject to compensation cases to the extent that the employee violates his or her personal rights.

The importance of personal data in this framework and the development and change in technology also reveal a new right: the right to be forgotten. The right to be forgotten is a right arising by the transfer of data to the computer and its dissemination and storage by the internet method. Thus, the right to request that the data in the virtual environment about you be deleted from the internet can be processed with the right to be forgotten (Yılmaz, 2018: 188).

The employer has the obligation to keep the information and documents acquired in the framework of the job interviews and to protect this data against unfair use, the obligation of storage and protection in this direction can also be evaluated within the scope of the confidentiality obligation regarding the information such as employee questionnaire, medical examination reports, ability tests (Manav, 2015: 114). As a matter of fact, the Law on the Protection of Personal Data accepts "all kinds of

information about a specific or identifiable individual" as personal data and the processing of personal data (with some exceptions) depending on the open consent of the person concerned (Özkaya, 2018: 139).

The Status of Labor Law in the Digital Performance Evaluation Process

It is important for employers to accurately and objectively measure the performance of employees in a workplace or business. As a matter of fact, if the wage system in the workplace is performance-oriented, this importance becomes evident. In addition, the employer may not want to keep employees with low performance in the workplace for a long time. In this context, when there is a surplus of the workforce in the workplace, firstly people with low performance can go to a job in the form of dismissal. However, in order to be able to mention the inefficiency of the worker, it is mandatory to have a performance evaluation system based on regular and objective criteria in the workplace (Süzek, 2018: 572). Within this framework, performance evaluation standards, which are notified to the worker, must be objective, realistic, reasonable and specific to the workplace.

Like in digital recruitment applications, digital applications are applied to performance evaluation by means of the development of technology. It is also sought that the performance evaluation system mentioned above should be specific, objective, realistic and reasonable. The use of digital applications in performance evaluation systems will provide significant benefits, in particular, for the fulfillment of the "certification obligation" of the employer referred to above for performance evaluation systems.

RESEARCH QUESTION

The main motivation of the research is to explain the perspective of the labor law that emerged as a result of the transfer of human resources applications to digital platforms. Thus, in the face of technological changes, suggestions can be developed on how the law helps the process and in what way it can evolve. In this context, the basic problem of research can be expressed as digital recruitment and performance practices be evaluated in the context of labor law?

Purpose and Importance of the Research

With the developments in information technologies, organizations started to carry out their activities on digital platforms. One of the activities carried out by organizations in the electronic environment is related to human resources. In this study, digital recruitment and digital performance management from digital human resources functions are examined within the framework of Labor Law.

Digital human resources practices are a new concept in the world and also in our country, so the legal solutions that can be brought to these practices have not been investigated sufficiently. Therefore, the study attracts attention as one of the few studies. Apart from this, the study is interdisciplinary in terms of combining human resources and law.

Suggestions for Further Research

In the study, two of the digital human resource management functions (digital recruitment, digital performance management) are discussed. In later studies, it is thought that it would be useful to examine other functions of digital human resource management in the legal context.

In addition, it is deemed useful to ensure that the written consent of the person in the digital recruitment and digital performance evaluation processes, both orally and written on the digital platform, is required in order to ensure the security of personal data.

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