

Changes to Dutch dismissal system

The legislative proposal providing for changes to the Dutch dismissal system and the position of flex workers (*Wet Werk en Zekerheid*) was adopted by the Senate on 10 June 2014. Implementation will be as follows (please appreciate that the below is a selection of relevant changes).

Per 1 January 2015

Changes to provisions relevant to the (hiring and employment of) flexible staff, including but not limited to:

- the prohibition to include a probationary period in fixed-term contracts of up to six months;
- the prohibition to include a non-compete clause in a fixed term contract unless the employer can prove that this is required due to compelling company interests;
- an obligation for the employer to notify the employee at least one month before expiry of a fixed-term contract for six months or more, whether or not it will extend the contract, and if so on what terms. If the notification (*aanzegverplichting*) is not made, or not timely made, a penalty corresponding to one monthly salary (or a prorated part thereof) will be payable to the employee. In addition, if in such case the employment will be continued after lapse of the fixed-term, it will be deemed to be continued for a similar period (with a maximum of one year) and on the same terms as the initial fixed-term contract. Please note that the notification obligation is also relevant for fixed-term contracts of six months or more, entered into before 1 January 2015 that lapse after 31 January 2015.

Per 1 July 2015

Changes to the Dutch dismissal system, including but not limited to:

- the reason for the dismissal shall determine the termination route (dismissal permit via UWV or termination through the court) as follows:
 - UWV is authorised in matters where the termination is requested for: 1) business economical circumstances, including termination of activities, or 2) long-term incapacity;
 - the Court is authorised in matters where the termination is requested for 1) frequent absence as a result of illness or other incapacity, 2) non-performance, 3) culpable acts or negligence of the employee, 4) the employee's refusal to perform activities as a result of conscientious objections, 5) a disturbed working relationship or 6) other circumstances as a result whereof the continuation of employment by the employer can no longer be expected;
- introduction of a statutory obligation for the employer who considers terminating an employee, to assess whether the

employee, possibly with additional training, can be placed in an alternative position within a reasonable period;

- introduction of a new termination route: termination with the employee's consent (*opzegging met instemming*), which consent can be revoked by the employee within 14 days;
- introduction of a so-called transitional allowance for employees whose employment is terminated or not extended provided their employment has lasted at least two years, with a limited possibility for the court to award additional compensation;
- introduction of the possibility to appeal a termination decision of either UWV or the Court;
- introduction of further formalities with regard to termination

Key issues

- With effect from 1 January 2015, there will be numerous changes affecting fixed-term employment agreements. This may require an update of your standard employment agreements.
- The Dutch dismissal system will change substantially with effect from 1 July 2015.

agreements, including the requirement to include in the written termination agreement the possibility for the employee to cancel the termination agreement out-of-court and without giving reasons, within 14 days of the execution of the termination agreement;

- extension of the possibility to deviate from certain statutory provisions by collective labour agreement, including the possibility to install a committee that will deal with termination requests for business economical circumstances (thus taking over the role of UWV), and, in such case also including the possibility to deviate from the statutory selection principles.

With effect from 1 July 2015, the possibility to renew fixed-term contracts will be more limited: consecutive fixed-term contracts exceeding a two-year period will automatically convert into a

permanent contract, and therefore, not terminate automatically after lapse of the agreed term. Fixed-term contracts will for this purpose be deemed consecutive where the interval between two fixed-term contracts is at maximum six months (rather than the three-month interval under current law).

Clifford Chance's Amsterdam employment, pensions and benefits team is happy to help you assess the impact of the above changes for your company.

Contacts



Sara Schermerhorn
Counsel

T: +31 20 7119 332
E: sara.schermerhorn@cliffordchance.com



Hein van den Hout
Associate

T: +31 20 7119 586
E: hein.vandenhout@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, Droogbak 1A, 1013 GE Amsterdam, PO Box 251, 1000 AG Amsterdam

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