

## **EMPLOYMENT UPDATE DECEMBER 2018**

### **Further revision dismissal system and other changes to Dutch employment laws**

Following relevant proposals in the Dutch government's Coalition Agreement of 2017 and the related public consultation in the Spring of 2018, the legislative proposal "Labour market in balance (*arbeidsmarkt in balans*) (the "Bill") has now been published and sent to Dutch Parliament.

The Bill provides for changes to the Dutch dismissal system that is in place since 1 July 2015 and other elements relevant to the employment agreement. It is intended that the majority of the new legislation will be enacted as per 1 January 2020.

#### **Proposed changes to dismissal system**

At this moment a dismissal will need to be justified by one of the so-called 'fair grounds' for dismissal as exhaustively described in the law. It is not possible to combine multiple dismissal grounds to jointly constitute a fair dismissal ground. The Bill provides for the introduction of a new dismissal ground that allows for the combination of grounds that do not individually justify a dismissal. If the employment is subsequently terminated based on the new dismissal ground, the court may award an additional compensation of up to half of the statutory transition allowance. This compensation is payable on top of the statutory transition allowance.

#### **Proposed changes to transition allowance**

Currently, the transition allowance will in principle be due when an employment agreement that has lasted for at least 24 months is terminated or not extended after expiration of the fixed term. This means that no transition allowance is payable if the two-year threshold is not met. The Bill provides that the entitlement to the transition allowance starts from the first day of employment. In addition, the Bill provides that the transition allowance will accumulate per day and amounts to 1/3 of the monthly wages per year of service. There is no longer an increase in the accumulation of the transition allowance for years of service after 10 years of employment.

Per 1 January 2019 the transition allowance is maximized at EUR 81,000, or the relevant employee's wages over a 12-month period if this results in a higher amount.

### Further changes

The Bill provides for the following further changes:

- **Trial period** - a trial period of five months will be possible for permanent employment contracts, and three months for fixed-term employment contracts of two years or more. Currently, the trial period is maximized at two months for permanent employment contracts.
- **Non-compete undertaking** - if the employment is terminated during the trial period the employer can in principle not invoke the non-compete undertaking. This is only different if the employer has important business reasons 1) that make it necessary to uphold the relevant restrictions, and 2) provided that the employer has notified the employee thereof in writing or electronically directly after the termination thereby substantiating its relevant interests.
- **Successive fixed-term agreements** - it will be possible to renew fixed-term employment agreements during a three-year maximum rather than the current two-year maximum. This means that a second or third fixed-term agreement that exceeds a three-year period (currently: a two-year period) will automatically convert into a permanent contract, and therefore not terminate automatically after lapse of the agreed term. The chain of fixed-term agreements can be stopped if the interval between two fixed-term agreements is six months or more. The Bill provides that this interval may be shortened to three-months for recurring work of a temporary nature that does not last more than nine months. It will be up to the parties to collective bargaining agreements to decide which positions qualify for the exception to the general rule.
- **On-call workers - measures:**
  - On-call workers (employees who do not have a fixed number of working hours) cannot be required to respond to a call for work, if the employer has not notified the employee of the working times at least four days in advance. Similarly, if the employer (partly) withdraws the call for work, or changes the working times within the four-day window prior to the start time, the employee is entitled to the hours of the original call for work;
  - In the thirteenth month of the on-call contract, the employer must offer the on-call worker an employment agreement based on the average working hours of the on-call worker over the past 12-months (the reference period). The on-call worker is free to accept the offer or not (and may therefore elect to continue to work based on variable working hours). If no offer is made, the on-call worker may claim salary over the average working hours as from the date the offer had to be made.
- **Payroll** - the concept of payrolling will remain in place, however the payroll employee (who is formally employed with the payroll agency) should be provided with employment terms as if he/she were an employee of the company where the payroll employee in practice works. This also sees to e.g. termination payments, only for pensions an exception may apply. Payrolling can no longer be used by employers to compete on employment conditions.

## **UWV Implementation Rules/ absence of a works council**

If a dismissal permit is requested from UWV, the employer should provide information on the involvement of the works council in the relevant decision-making process. The updated implementation rules of UWV relevant to redundancies (*UWV Uitvoeringsregels ontslag wegens bedrijfseconomische redenen*) (the "**Implementation Rules**") provide that a dismissal request will not be processed until the works council has been consulted **and that if no works council has been established** despite the requirements for such establishment (50+ employees) being met, UWV will only process the dismissal request if the company has adhered to the consultation requirements for companies with between 10-50 employees. These provide that an all employee meeting or employee representative body should be consulted in the event of intended redundancies or a change in employment affecting at least 25% of the personnel.

The updated Implementation Rules also provide for guidance on redundancies in an international context, e.g. where the selection of redundant employees is concerned.

## **Additional topics to be discussed with the works council per 1 January 2019**

The Dutch Works Council Act will be amended per 1 January 2019. The amendment relates to the mandatory topics that are to be discussed at least once a year during the consultative meeting with the works council of undertakings in the Netherlands employing at least 100 employees. Relevant topics will, as of 1 January 2019, include 1) the level and content of the arrangements providing for employment conditions (*arbeidsvoorwaardelijke regelingen*) of the various groups of employees (including the management board) within the undertaking and 2) the development of pay ratios for relevant groups compared to the situation in the previous year. Although the Dutch Work Council already provides for the obligation to inform the works council on these topics, the amendment ensures that these topics will be discussed with the works council in a meeting where the company's supervisory board (or a representative thereof) in principle will need to be present.

## **Extended paternity leave and adoption and foster care leave with effect from 1 January 2019**

Paternity leave will be extended from two to five days with effect from 1 January 2019. The (paid) leave can be taken within the first four weeks after childbirth.

In addition, a five-week parental leave entitlement, to be taken once the extended paternity leave has been consumed and within the first six months after childbirth, will be introduced with effect from 1 July 2020. This additional leave is unpaid, but the employee is entitled to 70% of the maximum daily wages to be paid by UWV.

Adoption and foster care leave will be extended from four to six weeks with effect from 1 January 2019.

## **Additional information to be provided to employees of smaller companies on pensions (as an employment condition) per 1 January 2019**

As part of the Collective Act on Pensions 2019 (*Verzamelwet pensioenen 2019*) information is to be provided on pensions to employees or their representatives in smaller companies (10-50 employees) in the Netherlands.

The Dutch Works Council Act will be amended to reflect that, when requested by the employees, the employer is to provide all information regarding pensions that the employees reasonable require for their all employee meetings. In addition, the employer is to inform the employees on any intended establishment, amendment or withdrawal of the execution agreement (*uitvoeringsovereenkomst*) or, for industry wide pension funds, execution arrangements (*uitvoeringsreglement*).

If an employee representative body (PVT) has been established, the amended legislation will provide that the employer will need to discuss pensions as an employment condition upon the relevant substantiated request of the PVT.

The information on pensions must be provided in writing unless it is not available in written form. It is intended that the relevant changes to the Dutch Works Council Act will be effective as of 1 January 2019.

## **Brexit and Brexit-related immigration/ information from the IND**

On 12 December 2018, the Dutch Immigration and Naturalization Service (IND) has issued a first Brexit newsletter for British nationals in The Netherlands. In the newsletter the IND e.g. announces that it will inform British citizens who live in the Netherlands by post about the way in which the IND will provide for a decent solution for their residence in the Netherlands after 29 March 2019. British citizens who wish to receive this letter must be correctly registered in the Personal Records Database (BRP) of the Dutch municipality where they live.

On the website of IND, there is a chapter on Brexit dealing with the residence options in the Netherlands after Brexit: (<http://www.ind.nl/en/Pages/Brexit.aspx>). In this chapter, one can also subscribe to the Brexit newsletter for migrants.

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