L&E GLOBAL
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Memorandum

General Overview Employment Law/Netherlands

1. General

1. Brief Introduction

Dutch employment and labour law is elaborate and relatively complex. Dutch employment law is divided into individual and collective law and is closely related to social security law.

2. Legal Framework

Dutch employment law is not consolidated into a single code. The employment relationship under Dutch law is governed by the compulsory statutory regulations laid down in (for example) the Dutch Civil Code. The relationship can furthermore be governed by (among other things) the conditions laid down in a Collective Labour Agreement (if applicable), internal regulations (if applicable) and the individual employment contract. Many labour and employment law matters are influenced by case law so that judicial precedent is an important part of the legal framework.

3. New or Expected Developments

New developments are the Dutch rules concerning the accumulation of holidays and the expansion of the Collective Redundancy Act from 1 March 2012.

2. Employment Contracts

1. Minimum Requirements

An employment contract under Dutch law may be concluded orally or in writing. Pursuant to Article 7:655 of the Dutch Civil Code, the employer will nonetheless need to inform the employee in writing with respect to (among other things):

- the name and residence of the parties;
- the place where the work is to be carried out;
- the position and a job description;
- the hiring date;
- if the employment contract is for a fixed period of time, the time period;
- the vacation rights or the method of calculating vacation rights;
- the salary and the payment intervals and, if the remuneration depends on the results of the work to be performed, the amount of work to be performed per day or per week, the price per item and the time that will be involved in performing the work;
- the customary number of working hours per day or per week;
- the employee's pension rights (if applicable).

2. Fixed/Unlimited Time Contracts

An employment contract can be agreed upon for a fixed period of time (fixed-term contract) or for an unspecified period of time (open-ended contract/permanent). If the identity of the employment has not changed (for example, with respect to the work to be performed, salary and secondary employment conditions), a fixed-term employment contract that follows an open-ended employment contract will become an open-ended employment contract by operation of law (Article 7:667 of the Dutch Civil Code).

Pursuant to Article 7:668a of the Dutch Civil Code, a fixed-term employment contract will automatically convert into an open-ended employment contract if:

- a chain of temporary employment contracts covers 36 months or more; or
- a chain of three fixed-term employment contracts is continued.

A chain is a series of fixed term employment contracts that succeed each other with less than three months in between. This rule is also applicable in the case of employment contracts between an employee and various employers that must reasonably be deemed to be each other's successors with regard to the work performed.

3. Probationary Period

A probationary period must be laid down in writing. In the case of an open-ended employment contract or in the case of an employment contract fixed for a period of two or more years, the maximum probationary period is two months. In others cases, the maximum probationary period is one month. The probationary period for both the employer and the employee should be equal, in default of which the probationary period is null and void. A probationary period is not valid if the employee involved will be carrying out more or less the same work that he/she has done elsewhere within the company.

4. Restrictive Conditions in Employment Contracts

Confidentiality
Employment contracts often contain a confidentiality clause which stipulates that the employee is not allowed to disclose any confidential information about his or her employer's business during or after employment. The clause has to be in a language the employee understands. There are no other requirements as to form.

The employer can enforce the confidentiality clause in court. The employer can also claim damages from the employee. In practice, usually a penalty clause is agreed upon between the parties on the basis of which the employee has to pay an agreed amount to the employer if the employee breaches the confidentiality clause.

Non-competition
Non-competition clauses, effective for a certain scope of activities, a certain geographical area and for a certain number of years, must be agreed to in writing. Furthermore, the employee

must be at least 18 years old at the time of signature.

The prohibition must be limited to what is reasonably necessary to protect the employer's business interests. Typically, a duration of one year is considered reasonable. Limitations as to territory and nature of activity depend on the branch in which the employer operates and the position of the employee.

The employer can enforce the non-competition clause in court. The employer can also claim damages from the employee. In practice, usually a penalty clause is agreed upon between the parties on the basis of which the employee has to pay an agreed amount to the employer, if the employee breaches the non-competition clause. The employer might also take the new employer to court as the new employer might act unlawfully by hiring an employee while knowing that the employee breached the non-competition clause with the previous employer.

Enforcement of the non-competition clause can be restricted or denied by a court. A non-competition clause may become (in whole or partly) invalid if the responsibilities ensuing from the employee's position are substantially amended.

If the non-compete clause prevents the employee from being employed elsewhere, the court may order that the employer has to compensate the employee during the period in which the employer holds the employee to the non-compete clause. The employer can unilaterally release the employee from his obligations under the non-compete clause in which case the employer will no longer be required to pay any compensation.

Non-solicitation of customers or employees
Employment contracts can also contain a non-solicitation clause which stipulates that the employee is not allowed to solicit his employer's customers or employees during or after his employment. The clause has to be in a language the employee understands. There are no other requirements as to form.

The prohibition must be limited to what is reasonably necessary to protect the employer's business interests. Typically, a duration of one year is considered reasonable. Limitations as to territory and nature of activity depend on the branch in which the employer operates and the position of the employee.

The employer can enforce the non-solicitation clause in court. The employer can also claim damages from the employee. In practice, usually a penalty clause is agreed upon between the parties on the basis of which the employee has to pay an agreed amount to the employer, if the employee breaches the non-solicitation clause. Enforcement of the non-solicitation clause can be restricted or denied by a court.

5. Notice Period

Dutch law provides for the following statutory notice periods:

- fewer than five years of service: one month;

- more than five but fewer than ten years of service: two months;
- ten or more years of service but fewer than 15 years of service: three months;
- 15 of more years of service: four months.

Unless agreed otherwise, the notice period starts running at the beginning of the month following the month in which notice is given. The notice period may be reduced under a Collective Labour Agreement. A longer notice period may also be fixed if it is laid down in writing. In that case, the notice period the employer has to observe must be twice the notice period the employee has to observe. Please note that any variance should be within statutory limitations, in default of which the statutory notice period is applicable.

3. Authorizations for Foreign Employees

1. Employment Permit

If an employer wants to hire a foreign employee on a legal manner, several requirements have to be met. First of all, the foreign employee has to be in the possession of a residence permit. Secondly, the employer is obliged to obtain an employment permit. Employee's with the Dutch nationality and employees from one of the countries of the European Economic Area and Switzerland are exempted from these rules.

2. The Employment Relationship

When an employee works in the Netherlands, Dutch law does not necessarily govern the employment relationship. A foreign employee could remain in the employ of his foreign employer on the basis of his foreign employment contract with a choice of law in favour of the laws of the foreign country and then (for example) be seconded to the Netherlands. In other words, the Employer is not obliged to offer employees from another country a Dutch employment contract when they are transferred to the Netherlands. Employees can continue to work on the basis of their current (foreign) employment contract.

The Netherlands is party to the (EU) Convention on the Law applicable to Contractual Obligations. This Convention is applicable to international labour law issues. It states that regardless of the governing law of the employment contract, the parties are entitled to the protection afforded by the compulsory regulations that would apply if no applicable law had been chosen. The more an employee is legally or socio-economically integrated in the Netherlands, the sooner a court will decide that the employment contract is linked to the Netherlands, as a result of which Dutch law would be applicable.

In the case of an international labour relationship, the Dutch tax authorities grant special tax benefits to foreign employees who are temporarily assigned to a Dutch subsidiary or branch from abroad, i.e. employees who reside in the Netherlands. Under the so-called 30% Ruling, 30% of the employee's salary may be paid out as tax-free compensation for costs, and the employee may, at his or her request, benefit from treatment as a non-resident taxpayer. In general, an

addendum should be added to the employment contract declaring the applicability of the 30% Ruling in respect of the agreed wages. If a 30% Ruling is granted, the employee can opt for treatment as a non-resident for tax purposes (except with regard to income from employment). He/she will not be taxed on passive income such as interest. The main conditions attached to the 30% Ruling pertain to:

- the employee's professional position;
- the employee's prior employment or stay in the Netherlands; and
- the status of the employer.

4. Working Conditions

1. Minimum Working Conditions

The Working Conditions Act (Arbeidsomstandighedenwet) contains the most general provisions and requirements regarding working conditions and stipulates that employer and employee are jointly liable in supporting health, safety and wellness in the work place. The employer has to set up a working conditions policy within the company. The employer must, among other things, prevent sickness and any danger to the health of employees and make an effort to reintegrate sick employees in the working process. The employer is required to use the services of a working-conditions service, an institution that assists the employer in the overview and evaluation of the risks, assists sick employees, advises the employer on reintegration of sick employees, and more.

2. Salary

In principle, employer and employee are free to agree to the wages to which an employee shall be entitled. However, the Act on Minimum Wages and Minimum Holiday Allowances (Wet minimumloon en minimumvakantiebijslag) contains certain minimum wages and minimum holiday allowances, which are normally adjusted each year. A Collective Bargaining Agreement may also contain salary scales that are binding on individual employees.

3. Working Hours

The legislation on working hours and working conditions is based on the Working Hours Act (Arbeidstijdenwet). The amount of working hours depend upon the sector of industry and the kind of labour performed. In general, an employee is only allowed to work a maximum of 12 hours per day, for a maximum of 60 hours per week. Over a period of 4 weeks the maximum number of working hours is 55 per week. Over a period of 16 weeks the maximum number of working hours is 48 hours per week. The arrangements on working hours included in an individual employment contract, which are not in conformity with the Working Hours Act, can be declared null and void.

4. Vacations and vacation allowance

Pursuant to Article 7:634 of the Dutch Civil Code, employees are entitled to a statutory minimum

number of vacation days equivalent to four times the weekly working hours. In other words, a full-time employee is statutorily entitled to a minimum of 20 vacation days per year.

As from 1 January 2012, days' holiday will lapse if they are not taken within six months after the year in which they were accrued, unless the employee was not reasonably able to take them. The scheme applies only in respect to the statutory minimum of days' holiday. In addition, as from 1 January 2012, ill employees will be entitled to accrue the same full number of days' holiday as employees who are not ill.

In general, the vacation period is fixed according to the employee's wishes. If weighty business reasons would not allow the employee to take vacation during that specific period, the employer should inform the employee (in writing) within two weeks after the employee informed the employer (in writing), in default of which the period is fixed according to the employee's wishes.

In addition to vacation days, employees are entitled to a vacation allowance. In general, the vacation allowance equals 8% of the annual salary, insofar as the annual salary does not exceed three times the annual equivalent of the minimum wage. If an employee's salary exceeds three times the minimum wage, the parties can agree in writing that the employee is not entitled to vacation allowance or is entitled to a lower percentage.

5. Payment During Illness

Pursuant to Article 7:629 of the Dutch Civil Code, employers are obliged to continue paying the salaries of sick employees for the first two years of illness. The employer is obliged to pay 70% of the employee's salary and may not pay less than the minimum wage for the first 52 weeks. For the second period of 52 weeks, the minimum-wage lower limit is not applicable. The 70% is not calculated on the amount of salary that exceeds the maximum daily wage (as of January 1, 2012: EUR 191,82 gross). Most employees in the Netherlands are bound to a diverging clause laid down in either an individual employment contract or a Collective Labour Agreement. Such clauses are often more favourable to the employee.

5. Right of Employees in Case of a Transfer of Undertaking

1. General

The Directive on employee rights and obligations in connection with a transfer of undertaking is implemented in Articles 7:662 – 666 of the Dutch Civil Code. According to these articles, a transfer of undertaking is "a transfer resulting from an agreement, merger or split of an economic entity, which entity maintains its identity." It is explicitly stipulated that a part of a company may also be regarded as an economic entity.

In other words, the applicability of Articles 7:662 - 666 of the Dutch Civil Code depends on whether the identity of the transferred entity remains the same. A direct contractual relationship between the transferor and the transferee is not required for the Directive to be applicable: the

transfer may take place through the mediation of a third party, such as the owner or the person putting up the capital.

It is necessary to assess the facts in order to conclude whether or not the identity of the entity will transfer. According to case law, the identity of (part of) a company can be determined by various factors, including but not limited to: (a) the type of business; (b) whether or not its tangible assets, e.g. buildings and movable property, are transferred; (c) the value of its tangible assets at the time of the transfer; (d) whether or not the majority of its employees are taken over by the new employer; (e) whether or not its customers are transferred; (f) the degree of similarity between the activities carried on before and after the transfer; and (g) the period, if any, for which those activities were suspended.

The European Court of Justice has - for example - ruled that in a labor-intensive company, the group of employees who do the work constitute the economic entity. If an essential part (in terms of quantity or expertise) of these employees is employed directly by the acquirer, in principle, preservation of the identity of the enterprise can be assumed as a result of which the regulations pertaining to a transfer of undertaking are applicable. In another case, the European Court of Justice ruled that the identity of the company was not based on its employees, but on its tangible fixed assets (in that case, buses).

2. Employee representation

The employer has to consult the works council (or other employee representative body) about a proposed decision regarding the transfer of activities. The employer has to provide the works council or employee representative body with information on the grounds of the intended decision, the consequences for the employees, and the intended measures to be taken. The employer also has to inform the individual employees about the transfer of an undertaking and the consequences thereof for the employee.

3. Liability of former employer

If the criteria of the articles 7:662 – 666 Dutch Civil Code are met, upon the transfer of a business, the rights and obligations of the employer and that business under the existing employment contracts with the employees will be assumed by the acquirer of the business by operation of law. For one year after the transfer of the business, the seller and the acquirer are jointly and severally liable for the fulfilment of obligations under the employment contracts insofar as these obligations have accrued before the transfer.

4. Pension rights

In principle, the buyer has to continue to apply the pension scheme of the seller. There are two exceptions: 1) If the buyer has its own pension scheme which he offers to the transferring employees; 2) If the buyer has to apply a mandatory sectoral pension scheme.

5. Objection of employee

If an employee explicitly objects to the transfer, the employee will not enter the employment of the transferee. The employment contract of the employee will thus end by operation of law at the time of the transfer.

6. Termination of Employment Contracts

1. Termination – General

A fixed-term employment contract or a contract for a specific project ends by operation of law upon expiration of the term or completion of the project, without notice being required. Pursuant to Article 7:657 of the Dutch Civil Code, the employer is obliged to inform an employee who has a fixed-term contract about vacancies with an open-ended employment contract.

An open-ended employment contract can be terminated by:

(a) the employer giving notice after receiving permission from a governmental organization;
(b) court proceedings;
(c) mutual consent;
(d) dismissal because of an urgent reason; or
(e) notice given by the employee.

(a) Termination by giving notice

An employer can terminate an employment contract by giving notice after the Work Placement Branch of the Employee Insurance Agency *(UWV WERKbedrijf)* has given permission to do so by a dismissal permit. The UWV WERKbedrijf will grant permission only if there is a valid reason for dismissal. The UWV WERKbedrijf procedure takes approximately three months.

Notice must be given with effect from the end of the calendar month, unless another day has been designated by written agreement, internal regulations or by custom. Please see above for the notice period that has to be observed.

Unless the UWV WERKbedrijf's permission has been obtained, any notice of termination will be null and void. After permission has been granted, notice is to be given with due observance of the notice period. Due to the time involved in obtaining permission from the UWV WERKbedrijf, the employer can deduct one month from the notice period (provided that at least one month of notice remains).

This general rule applies unless a termination is impossible because of a statutory prohibition against terminating an employ¬ment contract by giving notice, for instance, during illness (unless the illness starts *after* the request for permission to give notice was received by the UWV WERKbedrijf), pregnancy, if the employee is a member of the works council or the secretary of

the works council.

If the employee does not agree with his or her dismissal, he/she can start proceedings under Article 7:681 of the Dutch Civil Code ("manifestly unreasonable dismissal") and claim damages or reinstatement to his or her duties. This may be the case if no reason, or a mere pretext, is given for the termination or if the financial effects of the termination are too harsh on the employee in comparison with the Employer's interest. Whether the effects are too harsh depends on the particular circumstances of the case, such as the reason(s) for the dismissal, the employee's years of service, age, etc. If the employer provides a reasonable severance package, in principle, the employee will not have enough grounds to initiate proceedings of this kind. There is no possibility of appeal against a decision of the UWV WERKbedrijf.

(b) Termination by Court proceedings

Alternatively, an employment contract can be terminated by court decision by filing a petition for dissolution due to an urgent reason or a substantial change of circumstances (Article 7:685 of the Dutch Civil Code). In the case of an individual termination, this is the most common termination procedure in the Netherlands.

After filing the petition with the competent court, the employee is offered the possibility to file a statement of defense. The court will then set a date for a hearing, during which the parties can explain their opinions. A court could grant the request for termination and dissolve the employment contract or it could deny the request. The drawback of a termination by court decision based on "a change of circumstances" is that the court might award (substantial) compensation to the employee as a condition for termination. In that case, the court would allow the petitioner a limited period of time to withdraw the termination request. The employee should be reinstated if the request is withdrawn. The employee is entitled to the awarded severance upon termination if the request is not withdrawn within the limited time period. No notice period needs to be observed in the case of termination by court proceedings.

Court proceedings take approximately eight weeks. In general, there is no possibility of appeal against the court's decision.

The advantage of termination by court decision is that it may be sought in situations where notice cannot been given (for instance during illness).

(a) and (b); Reason for termination

In order to either receive permission to give notice or successfully petition the court to dissolve the employment contract(s), the Employer must have a valid reason for the termination.

In the case of reorganization due to the relocation of services, the Employer will have to prove or show to the court or the UWV WERKbedrijf (among others) the following:

- the former and future organization chart with an explanation and reasons for the changes;

- a comparison with (or general information related to) similar businesses;
- the efforts taken to avoid the dismissal (cost-cutting measures);
- the forecast if nothing were to change;
- a list of the employees involved, including position, age and starting date;
- the correct use of the selection criteria.

The Employer must also show that bridging the problems temporarily is impossible.

(c) Termination by mutual consent

An employment contract can be terminated by mutual consent. No notice period needs to be observed and the employer and the employee can agree on a reasonable severance package. An employee is (in principle) entitled to unemployment benefits in case he accepted the proposal of the employer to terminate the employment agreement.

If the parties agree on termination by mutual consent, the Employer would of course not need to substantiate its reasons for termination to either the court or the UWV WERKbedrijf. However, the employer would still need to convince the employee to agree. If the employer does not have sufficient evidence to convince either the court or the UWV WERKbedrijf, the employee may be willing to accept a termination by mutual consent only if the Employer pays a substantial amount of severance.

(d) Dismissal because of an urgent reason

Pursuant to Article 7:678 of the Dutch Civil Code, the employer may summarily dismiss an employee if the employee has engaged in such misconduct that the employer cannot reasonably be expected to continue the employment relationship any longer. An urgent reason must exist. The employment agreement will be terminated with immediate effect. The urgent reason must be communicated to the other party immediately and the employment agreement must be terminated without notice.

2. Collective Dismissals

As of 1 March 2012, the Dutch Collective Redundancy (Notification) Act has been amended. On the basis of this act, if an employer wants to dismiss 20 employees or more within a term of three months it must notify the relevant trade unions and UWV WERKbedrijf (the work placement branch of the employee insurance agency) of its intention to do so. Until 1 March 2012 only dismissals by means of dismissal proceedings (dissolution or termination) were taken into account. As employees whose employment contracts would be terminated by mutual consent were not included, this form of termination could be used to avoid the notification requirement, which developed into a common practice. As of March 2012, employees can no longer do this. On the basis of the new legislation, it is also necessary to take into account all employments contracts that will be terminated by mutual consent. Further, it is not sufficient anymore to just notify the relevant trade unions. The new legislation stipulates that the employer has to notify and consult the unions regarding the collective dismissal. The new legislation has also introduced a new severe sanction: if the employer fails to comply with its obligation under this new act, the

employee has a right to nullify the termination of his employment contract.

3. Severance Payment

Although Dutch employment law does not contain statutory instructions on how to calculate a severance package, in dissolution proceedings (see above under 6.1.b) the Dutch courts generally apply the "Cantonal Court Formula." This formula is also often used by parties to calculate the severance payment in case of termination of the employment agreement by mutual consent. The Supreme Court of the Netherlands recently decided the Cantonal Court Formula does not apply in "manifestly unreasonable dismissal" proceedings (see above under 6.1.a). In these proceedings a severance payment has to be more related to the actual damages suffered by the employee.

According to this formula, severance is calculated based on the formula A x B x C, in which:

> A = years of service (up to the age of 35, multiply the years of service by 0,5; from age 35 to 45, multiply the years of service by 1; from age 45 to 55 multiply the years of service by 1,5; from age 55 multiply the years of service by 2). A partial year of service (six months or more) will be rounded up to a full year.
>
> B = fixed monthly wage payments (the basis is the fixed (gross) monthly salary, plus all fixed and agreed salary components (e.g. vacation allowance and bonus payments if those payments are regular). Other perquisites are not taken into account. Similarly, the employer's share in the pension premiums and company car, if any, usually are not taken into account.
>
> C = adjustment factor (at the discretion of the court, reflecting the special circumstances of the case).

The adjustment factor is an element for the purpose of weighing any special circumstances of the case. If a job is eliminated due to a business reorganization, this is known as a neutral dissolution. In such cases, the adjustment factor is usually set at one. Special circumstances may be taken into account if the employer is to blame for the termination of the employment relationship. The adjustment factor will then be higher. If the employee were to decline an alternative position, the adjustment factor could be lower than one, provided that the position offered was suitable. Depending on the individual employee's personal circumstance, a position in another country would most likely not be suitable.

7. Trade Unions and Employers Associations

1. Brief Description of Employees and Employers Organizations

Only in the case of a collective dismissal, is the Employer obliged to inform the trade unions when it reports its intention to implement the dismissal to the Work Placement Branch of the

Employee Insurance Agency (UWV WERKbedrijf). The dismissal can be reported to the trade unions by sending them a copy of the written notification to the UWV WERKbedrijf (provided that any applicable Collective Labour Agreement does not oblige the employer to inform the trade unions at an earlier stage).

As set out under Collective Dismissal, after the report has been made, there is a one-month waiting period that allows the employer and the trade union to discuss the possibility of preventing a collective dismissal or of reducing the number of employees to be dismissed, as well as the possibility of alleviating the consequences of the dismissal. To that end, mostly a social plan (i.e. termination packages) is negotiated. There is no legal obligation for the employer to negotiate the content of a social plan with the trade unions. Nevertheless, a social plan often forms an important part of the negotiations with the trade unions, as they will base their support on the content of that plan. If the employer and the trade unions conclude a social plan, a court will usually award the employee a severance amount in accordance with the social plan, unless application of the social plan would be clearly unfair to the employee.

8. Employee Representation

1. Work Council

According to the Dutch Works Council Act (Wet op de ondernemingsraden), an entrepreneur maintaining an enterprise in which, as a rule, at least 50 employees work, is obliged to establish a works council for the purposes of consultation with and representation of the employees employed by the enterprise. The obligation to establish a works council may also result from a provision to this effect in a Collective Labour agreement.

2. Information Right of the Works Council

The works council is entitled to receive all information which it reasonably needs to properly perform its duties. The information shall be provided in writing, if requested so. At least twice a year the employer shall inform the works council orally or in writing of expectations with regard to the activities and the results of the enterprise in the coming period, in particular with respect to matters on which the prior advice of the works council is required, and to all investments in the Netherlands and abroad. Furthermore, the employer must provide the works council with specific information concerning any proposed decision on which the prior advice of the works council is required.

3. Right of Advice

Pursuant to Article 25(1) of the Dutch Works Council Act the employer is obliged to request the advice of its works council in advance in case of an intended decision regarding the (amongst others):

- transfer of control of the company or a part thereof;

- establishment, take-over or relinquishment of control of another company, or entering into or making a major modification to or severing a permanent co-operative venture with another company, including entering into or effecting major changes of or severing of an important financial participation on the account of or for the benefit of another company;
- termination of the operations of a company or a major part thereof;
- major reductions or expansions or other changes to the company;
- major changes in the organizational structure of the company or in the division of powers within the company.

The advice must be requested within a reasonable time frame, so as to allow the works council to have a say in the decision that is to be taken. The request for advice must include a summary of the reasons for the decision, the expected consequences (if any) and the measures proposed in response. The works council cannot issue its advice until the matter has been discussed in at least one consultative meeting. If, after the advice has been issued, the employer decides to go through with its planned decision, it must inform the works council accordingly in writing.

Should the employer's decision deviate from the advice given by the works council, the employer must give a full account of the reasons why (in writing). The execution of the decision must be postponed for one month. During that month, the works council may lodge an appeal with the Companies Chamber of the Court of Appeal in Amsterdam (Ondernemingskamer van het Gerechtshof Amsterdam). An appeal may also be lodged if the employer fails to request advice. An appeal may only be lodged if, in weighing the interests involved, the employer in all reasonableness could not have arrived at the decision. The Companies Chamber can reject the decision only if the decision was "manifestly unreasonable."

Except for the one-month waiting period, there are no statutory terms for the works council consultation. The Dutch Works Council Act only requires that the advice be requested within a reasonable time frame, so as to allow the works council to have a say in the decision that is to be taken. In general, approximately two months pass between submitting the request for advice to the works council and receiving the works council's advice. The decision to reorganize can only be taken and implemented if the works council renders a positive recommendation or, if it issues a negative recommendation or no advice, after a one-month waiting period.

9. Social Security

1. Legal Framework

Social security in the Netherlands is laid down in a number of laws and decrees. The social security rules can be subdivided into social insurance benefits (sociale verzerzekeningen) and social welfare benefits (sociale voorzieningen). The difference between these two can be found in the funding: Social insurance is funded from the contributions paid by employees. This system is compulsory. All employees are automatically insured and pay a contribution. Social welfare benefits are financed from central governmental funds.

2. Contributions

Dutch law requires employers to make certain withholdings from the employee's salary for purposes of income tax and the employee's national insurance contributions. An employer is furthermore required to pay certain social security premiums for its employees.

3. Insurances

There is no obligation for the employer to provide for a life insurance policy.

4. Maternity Leave

Employees have the right to 16 weeks of maternity leave. During this maternity leave, the employee will receive certain minimal benefits from the Employee Insurance Agency (UWV). The employer will have to pay at least 70% of the last earned wages (Article 7:629 Dutch Civil Code), but can deduct the aforementioned benefits. Collective labour agreement or individual employment contract may provide for better terms.

5. Pension

In general, an employer is not obliged to provide pension benefits unless it has promised the employee that it would provide for a pension scheme, or if a collective labour agreement or government initiative so requires. If the employer has offered a pension scheme to one of his employees, it is obliged to offer the same pension scheme to all of the other employees.

10. Discrimination laws

In the Dutch constitution, discrimination on any ground whatsoever is prohibited.

In the Dutch Equal Treatment Act, discrimination on the following grounds is explicitly prohibited: religion, personal beliefs, political opinion, race, sex, nationality, hetero- or homosexual orientation and civil status.

In addition, in specific employment laws, discrimination on the following grounds is explicitly prohibited: age, sex, handicap and chronic disease, temporary/ permanent employment contracts and working hours (part-time/full-time).

In principle, discrimination directly based on the grounds mentioned above is never permitted, except for some situations in which discrimination is explicitly allowed by law.

The discrimination laws also cover indirect discrimination. Indirect discrimination occurs when a neutral behaviour (e.g. a policy or practice) results in discrimination based on one of the grounds mentioned above.

Indirect discrimination – and direct discrimination with respect to age, temporary/permanent employment contracts and working hours – can be justified if objectively necessary to achieve a legitimate aim and proportionate to the aim sought.

Agreements between employers and employees contrary to discrimination laws can be void or voidable. The employee can also hold the employer liable for damages resulting from discriminating behaviour of the employer.

In employment relationships in the Netherlands discrimination claims are not that prominent. In practice, the employer and employee as well as Dutch courts tend to search for reasonable, pragmatic and practical solutions.

11. Release of liabilities

The employer and employee can agree upon a release of liabilities. The employer has to make sure the employee is aware of the consequence of signing such a release. Employers can either advise their employees themselves or make sure they are being advised by a legal expert.

Signing a release can be contrary to mandatory provisions of employment law. However, agreements contrary to mandatory law can be legally binding to the parties if they are agreed upon in a so-called settlement agreement within the meaning of Article 7:900 of the Dutch Civil Code.

In practice, releases are almost always signed as part of a settlement agreement by which the employment contract is terminated.

Palthe Oberman

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