

Alert | Labor & Employment



October 2019

Employment and Pension Law Update 2019: The Netherlands

EMPLOYMENT (news)

Diversity in boards of larger companies

Targets (i.e., at least 30% women) imposed by Dutch law for a more balanced composition of the executive and supervisory boards of 'large' companies shall cease to exist as of 2020. A 'large' company is a company that meets two of the following requirements: (i) EUR 20 mio balance sheet total; (ii) net turnover of EUR 40 mio; and (iii) 250 employees. This does not, however, mean that diversity is no longer on the agenda of the Dutch Government.

On 20 September 2019, the Dutch Social and Economic Council (SER) advised Parliament to implement a law that will make it mandatory for listed companies to have at least 30% of the supervisory board members consist of women. The SER advice includes obligations for larger companies (5,000 in total) to which far-reaching reporting duties on diversity shall apply, including in relation to (supervisory) board member appointments. If the SER advisory is followed, new gender diversity rules will apply not earlier than end of 2020.

EMPLOYMENT

Effective 1 January 2020 – Balanced Labour Market Act (Wab)

The Wab *inter alia* is expected to have the following impact on all companies employing employees in the Netherlands:

- **Statutory severance payment.** All employees will be entitled to a statutory severance payment in case of a termination (other than for cause or by resignation). As of 1 January 2020, the statutory severance payment shall no longer have accelerators for employees with over 10 years of service, and equals (the pro-rated equivalent of) a third of the monthly structural salary per calendar year of service. Also, the years of service before 1 May 2013 shall now be taken into account in relation to the statutory severance payment calculation of employees of small enterprises (i.e., max. 24 employees).
- **Cumulative dismissal grounds.** It will become possible to cumulate dismissal grounds. In the event an employment contract is terminated on such grounds, the judge will be able to increase the statutory severance payment by 50%.
- **Payrolling.** The statutory regime that applies to temporary employment agencies will no longer be applicable to payroll companies. This effectively means that payroll employees no longer fall within the scope of the generally declared binding collective labour agreement for the temporary working agency industry (ABU CLA). Whereas in accordance with the rules of the ABU CLA payroll employees can be offered multiple consecutive fixed-term employment contracts within an aggregate period of 5.5 years, this will now be limited to a maximum of three fixed-term contracts within a three-year period (see below). As of 1 January 2020, payroll employees will be entitled to the same primary and secondary employment conditions as employees of the client. Payrolling costs will likely increase.
- **On-call workers.** On-call employees will be obliged to come to work only if an employer requests they do so at least four days in advance.
- **Unemployment insurance premium contributions.** Employers will pay a lower unemployment insurance contribution (WW-premium) for an employee with a permanent employment contract than for an employee with a fixed-term employment contract (5% difference).
- **Successive fixed-term employment contracts.** As of 1 January 2020, employers can enter into a maximum of three consecutive fixed-term employment contracts within a three-year period. Currently, this period is two years. Exceeding the set-maximum threshold will convert the fixed-term contract into an indefinite term contract by operation of law.

Effective 1 October 2019 – Amendments to restructuring rules applied by the UWV

In relation to redundancies, the Employee Insurance Agency (UWV) has amended its applicable rules. Changes are *inter alia*:

- Business economic reasons underlying a restructuring shall now (also) be assessed on a business unit basis (if such business unit is sufficiently independent) and no longer solely per legal entity.
- Specific working conditions and practices shall have an impact on the assessment if a position is interchangeable (*uitwisselbaar*).
- Replacement efforts of staff that can be expected by the employer shall be assessed on a case-by-case basis.

- A forced reduction in working hours (*deeltijdontslag*) is now explicitly regulated.

PENSIONS (news)

On 5 June 2019, the Dutch Parliament, employers, and trade unions presented an agreement in principle on the reform of the Dutch pension system. The Government aims to complete the legal framework for system reform by 2022. The most relevant foreseeable changes:

- The state pension age (AOW) and early retirement. The state pension age will rise less quickly than originally planned (i.e., to 67 in 2024), and there will be an early retirement option (up to three years) for employees doing hard physical work.
- Significant changes to pension accrual terms. Defined contribution schemes will no longer be based on average (wage-related) contributions, but on all participants paying the same. Defined benefit schemes will no longer allow for the actual value of the pension accrual to increase with age.

PENDING ACTS AND REGULATIONS

Transfer of Undertaking in Bankruptcy Act (*Wet overgang van onderneming in faillissement*)

In accordance with the legislative proposal, the rules of transfer of undertaking (TUPE) shall also apply in a bankruptcy situation. This means that in a bankruptcy scenario, in principle all employees will transfer to the acquirer of the undertaking (if it retains its identity) under similar employment terms and conditions. An exemption shall apply if job loss is inevitable for economic, technical, and/or organizational reasons. The works council (if any) shall have consultation rights.

Changes to civil servant status

In accordance with the Public Servants (Standardization of Legal Status) Act (*Wet normalisering rechtspositie ambtenaren*), most civil servants in the Netherlands will have the same legal position as employees in the private sector as of 1 January 2020.

Extended birth leave

In accordance with the Additional Leave (Introduction) Act (*Wet invoering extra geboorteverlof*), as of 1 July 2020 partners can take up to an additional five weeks of paid leave in case of child birth. A (capped) salary reimbursement is paid by the Government.

TRAINING COURSES

The following (in-house) tailor-made training courses can be provided. Please feel free to contact us (see details below) to discuss your needs.

- HR training: performance management
- HR training: amendment of employment terms and conditions
- HR training: HR policies and compliance
- HR / legal training: general aspects of Dutch employment law

- Sickness and recovery
- Restructuring scenarios and social plans
- Employment terminations and litigation
- The Dutch Pension Act
- The Dutch Works Councils Act
- Investigations and whistleblowing
- Going to court
- Monitoring / data processing / GDPR

CONCENTRATIONS

- Employment law
- Outsourcings / Transfer of Undertaking (TUPE)
- M&A
- Benefits and compensation
- Restructurings, collective redundancies, and social plans
- Employee representation (works council consultation / trade unions)
- High-level exits
- Employment litigation
- Pensions

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