

Alert | Labor & Employment



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The Act Implementing the EU Directive on Transparent and Predictable Working Conditions: An Overview

This GT Alert covers the following:

- Act implementing EU Directive on Transparent and Predictable Working Conditions likely to take effect 1 August 2022.
- Mandatory training will be deemed working time, with all costs borne by employer.
- Absolute prohibition on ancillary activities is no longer possible.
- Increased information duty towards employees.
- Employees can request a more predictable work pattern.

On 1 August 2022, the Act implementing the EU Directive on Transparent and Predictable Working Conditions (the **Act**) likely will enter into force, as EU Member States have until that date to implement the directive into their own national laws. As a result, employers will have to revise standard employment agreements and employee handbooks.

The Act will implement the EU Directive on Transparent and Predictable Working Conditions in the European Union (the **Directive**) adopted 20 June 2019. The Act and the Directive promote more

transparent and predictable working conditions and patterns while ensuring adaptability in the labor market. This GT Alert summarizes the Act's key elements.

Mandatory Training Will Be Deemed Working Time, with All Costs Borne by Employer

Employers will no longer be able to recover mandatory training costs if the employer is required to offer such training by law or by an applicable collective labor agreement. Therefore, any study-costs clause under which an employee could become responsible for (re-)payment of mandatory training will be void. Further, employees should be given the opportunity – as far as possible – to complete the training during working hours, and the hours spent on the training will count as working time.

Absolute Prohibition on Ancillary Activities No Longer Possible

Currently, an employment agreement may contain a prohibition on ancillary activities. Under the Act, however, an absolute prohibition to perform ancillary activities outside of working hours is not permitted because employees should in principle be allowed to engage in other (paid) activities unless an employer has a justified objective ground to prohibit such activities.

The Act does not specify what a justified objective ground is. However, the Directive lists a number of circumstances that may qualify as objective grounds, such as: the health and safety of employees, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interests. These examples are non-exhaustive, and there may be other objective grounds such as a foreseeable breach of the Dutch Working Hours Act. Because one cannot anticipate all future circumstances that could constitute an objective ground, it is not required to list all possible objective grounds in the employment agreement. Employers may also invoke an objective ground at a later time. However, it may be useful to inform an employee in advance (in the employment agreement or an employee handbook) on possible objective grounds and the fact that the employer might invoke a prohibition to perform ancillary activities if such ground is present.

Increased Information Duty Towards Employees

The Act will expand the list of essential aspects about which employees must be notified in writing. Under the Act, employees should be informed (in writing) about the following elements:

- If the labor is not performed at a fixed location or not predominantly at a fixed location, the employer should state that the employee is free to determine the location of work him/herself, or that the employee will perform work at different locations.
- Employers were already required to inform employees about the term of the employment agreement. According to the Act, it will be possible to state either the term or the termination date of the employment agreement.
- The procedural aspects of termination of the employment agreement, including the applicable notice term and the period within which an employee must appeal against a dismissal.
- The duration of all types of paid leave (i.e., vacation days, maternity leave, parental leave, etc.).
- All salary components, if any, should be stated separately. This concerns, e.g., all paid expenses, cash or non-monetary contributions, payment of overtime, variable remuneration, or other (in)direct rights which the employee receives in connection with the employment.
- Method of payment (in addition to its frequency).

- In the event that an employee's work pattern is fully or largely predictable, the employee should be informed as to the duration of normal working hours (by week or day), the arrangements for working outside the daily or weekly working time (i.e., overtime) including compensation for overtime, and the arrangements for exchanging shifts or receiving a different schedule.
- If an employee's work pattern is entirely or largely unpredictable (i.e., if the majority of the working time is not known in advance and the working times are largely determined by the employer), the employee should be informed on the reference days and reference hours during which an employee may be asked to work. If an employee is asked to work outside of the indicated reference period, the employee is not obliged to perform any work. Further, if the employee is asked to work less than four days before the work commences the employee is also not obliged to perform work.
- The name of the pension insurer or pension fund (if applicable).

Employees Can Request a More Predictable Work Pattern

Employees will be able to request a more predictable work pattern (and working conditions) after 26 weeks of employment. Employers are not obliged to agree to such request. However, employers are obliged to respond in writing within one month of a predictable work pattern request (or within three months if an employer employs less than 10 employees). If the employer does not respond to the request within the prescribed timeframe, the request will be deemed approved and the work pattern will be adjusted in accordance with the request. Employees may file a predictable work pattern request once a year and may not be disadvantaged for filing such request.

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