

Highlights main Dutch employment law topics

Rob Simons

Introduction

If a company is planning to hire employees in the Netherlands, it needs to make several choices which might also have consequences for the future termination of the resulting employment contracts. This article highlights some of the main Dutch employment law topics.

Duration (fixed vs. indefinite)

Unlike an employment contract for an indefinite term, fixed-term contracts expire by operation of law on the agreed end date. According to Dutch law, an employer may offer an

employee a maximum of three fixed-term contracts in a period of no more than three years: for example three fixed-term contracts of 12 months (or shorter). As soon as this three-year period ends, if the parties continue to work together the employment contract automatically converts into an open-ended contract, i.e. for an indefinite term. The same applies if a fourth contract is agreed, unless there has been a break of more than six months between two consecutive contracts.

Trial period

If the employment contract is entered into for a period of longer than six months, a trial period of one month may be agreed at the start of employment. If the parties immediately conclude a contract for an indefinite period, they may agree on a two-month trial period. During the trial period, either party may terminate the employment contract with immediate effect.

Flexible working hours

In principle, the parties are free to agree on the hours of work. A fulltime working week in the Netherlands is 40 hours. Within the statutory boundaries, the parties may also conclude an “on call” contract, without a fixed number of working hours: the employee will then only be paid for the actual hours worked after being called up.



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Collective labour agreements

Depending on the sector of the economy in which the company operates, a collective labour agreement (“CLA”) might apply. In the CLA, representatives of employers and employees (unions) agree on various terms of employment, such as holiday leave entitlements, working hours, minimum wages (which may be higher than the statutory minimum wages), overtime rules, mandatory pension plans etc. A CLA may also contain deviations from specific statutory provisions, such as an alternative maximum number of fixed-term employment contracts or other trial period arrangements.

Termination of the employment contract

Under Dutch law, besides summary dismissal, an employment contract can be terminated: (i) by operation of law, (ii) if the employee resigns, (iii) by mutual consent, (iv) by the employer subject to prior approval by a government authority called the Employee Insurance Agency (“UWV”) or (v) after dissolution by a Dutch court.

Prior approval from UWV is required if the termination is based on an organizational or economic ground, e.g. a restructuring due to a loss-making business. If the ground for termination is related to the employee personally, such

as inadequate performance, culpable conduct or a damaged working relationship, the employer must apply to a Dutch court to dissolve the employment contract. The UWV and the court will require written substantiation of the grounds for termination. Failure to provide proper substantiation will likely lead to the permission/termination being denied.

Statutory transition fee

In 2015, the Dutch legislature introduced a statutory transition fee for termination (or non-extension of a fixed-term contract) on the employer’s initiative. The amount of that fee is relatively minor: roughly 1/3 of the employee’s monthly salary per year of service, with a maximum currently of EUR 86,000 gross or one year’s salary, if this is more than EUR 86,000 gross; this only comes into play with very longstanding employment contracts.

No transition fee is due for summary dismissal or termination on grounds of serious misconduct by the employee. However, an additional fee (billijke vergoeding: “fair compensation”) will need to be paid if the court rules that the termination of the employment contract was due to serious misconduct on the employer’s part. This is not calculated according to any predefined formula: the amount of this compensation depends on the specific circumstances of the case.

Final notes on termination of employment contracts

In general, employees are well-protected against involuntary termination of their employment contract. However, if the reasons for the termination are substantiated sufficiently, the costs of the termination (i.e. the statutory transition fee) are relatively minor.

If you have any questions about employment law in the Netherlands, please contact [Rob Simons](mailto:r.simons@dvdw.nl).

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You can also visit our [website](#) to find out more about the Employment Law team at DVDW.

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