

## Brief introduction to Dutch labour law

This brochure provides a brief overview of the most important rules of Dutch labour law. It also covers the termination of employment as this is an important topic that often leads to questions from international companies doing business in the Netherlands.

Employment relationships in the Netherlands are primarily regulated by laws and regulations such as the Dutch Civil Code and other statutes. Case law has an important role in the interpretation of these laws and regulations. The contractual freedom of parties regarding employment agreements is limited. Although European law increasingly influences Dutch labour law, it still has many Dutch peculiarities.

A driving principle behind Dutch labour law is the protection of employees which protection goes further than in many other countries. For instance, in matters of sickness. In such cases, an employee retains a right to continued payment up to 70% of the last paid remuneration for, in principle, a maximum of two years. Many employers supplement this to 100%.

Dutch employees are generally well informed of their rights regarding employment, which is enhanced by Works Councils and trade unions. An employer is obliged to install a Works Council when it has 50 employees or more. The Works Council has certain information, advice and consultation rights. When these rights are not duly respected, the Works Council can go to court to obtain an injunction preventing a corporate process, such as a merger or a reorganization, from moving forward until the employer complies with its consultation obligations.

### Collective bargaining agreements

In several sectors of industry, employment relations are also regulated by Collective Bargaining Agreements ('CAO' is the Dutch acronym). These agreements are negotiated between representatives of the employers and the trade unions. CAO's can be negotiated for an entire sector of industry or services, or be limited to a single large company. There are more than 1,000 Collective Bargaining Agreements in force in the Netherlands and more than 80% of the Dutch workforce falls within the scope of a CAO.

Although the influence of trade unions in the Netherlands has diminished over the past several years, trade unions are still well organized in the manufacturing industry and the semi-public and privatized sectors.

## Working conditions and employer's liability

The Working Conditions Act covers both the private and public sector. The Act is the basis for a more detailed and stringent decree on working conditions that set out health and safety issues. To make sure that employers comply with these rules, the Dutch Labour Inspectorate conducts on-the-spot inspections and, if necessary, can order the employer to observe specific regulations. If an employee suffers injuries or damages otherwise and the employer has not taken sufficient safety measures, this will generally lead to employer's liability.

## Employment agreement

In the Netherlands, there are several alternative contractual employment relations. The most common employment agreements are for a fixed period of time and for an indefinite period of time. Regardless of the form, according to the Civil Code, a Dutch employment agreement consists of each of the following elements:

- a. the obligation of the employee to perform the work himself;
- b. the obligation of the employer to pay wages;
- c. the employer exercises a certain measure of authority over the employee.

Although an employment agreement may be entered into orally, some provisions that impact the rights of employees are only valid if concluded in writing. The most important provisions regard a trial period, a non-competition clause and a clause that allows for certain unilateral changes of the agreement by the employer. Unilateral amendment of the employment contract by the employer is possible, but only under limited circumstances. If the parties to a labour contract have agreed on a unilateral amendment clause, this will help, but to change terms or conditions of employment the employer would still have to bring forward major business reasons that outweigh the employee's interest in keeping the employment conditions unchanged.

## English language for Dutch employment documents

There is no statutory obligation under Dutch law to provide an employee with employment documents in the Dutch language. However, an employer should ensure that an employee understands the content of the documents, which are provided to the employee. Therefore, if an employee does not understand the English (or another) language, the employer will not be allowed to provide the employee with documents in this language. There are no further formalities as to translation of employment documents for the benefit of the employee.

## Consultancy agreement

Under certain circumstances, an alternative to an employment agreement could be a consultancy agreement on a self-employed basis. In the Netherlands, this is often also called a management agreement. A consultant has less protection with regard to the termination of the assignment contract than an employee and the assignor does not have to withhold wage taxes and social security. However, a consultancy agreement will only 'hold' if the agreement is - in reality - not an employment agreement, i.e. it does not meet all the above elements (see under employment agreement, a, b and c). If a labour agreement is merely disguised as a consultancy contract, the employee may be able to claim regular termination protection. And the employer may be held liable for Dutch payroll withholding tax.

## Foreign employees

If an employer in the Netherlands wishes to hire an employee from outside the European Union (EU), it may be necessary to apply for a work permit and a residence permit. If such permits are required, the employer will have to apply for a combined residence and work permit to the Dutch Immigration Service ('IND'). It may take some time to acquire such permits: the requirements are quite strict, it involves significant paperwork and there are many variations regarding the regulations on permits.

Special permits with less stringent conditions may apply for so-called "highly skilled migrants" and their employers in the Netherlands. Such employers need to be recognized by the IND as an employer of highly skilled migrant workers.

For expatriate employees, the so-called 30%-ruling for Dutch tax purposes is relevant. The 30%-ruling aims at attracting foreign employees with specific skills or expertise to work in the Netherlands. The 30%-ruling provides a tax-free allowance (30%-allowance) which is deemed to cover the extra costs related to living abroad. It causes to reduce the maximum effective personal income tax rate considerably.

## Termination of employment in the Netherlands

Dutch law offers a high degree of protection to employees working in the Netherlands. An employer who intends firing an employee is required by Dutch law to comply with several strict rules and regulations. The employer has generally five ways to terminate an individual employment agreement for an indefinite term:

1. termination by mutual consent
2. termination proceedings before the Employee Insurance Agency ('UWV')
3. termination proceedings before the cantonal court
4. immediate termination for urgent cause
5. termination with consent of the employee

Every employee who has been employed for at least 24 months and whose employment agreement is terminated or not extended at the employer's initiative is entitled to a statutory severance called transition payment. Effective January 1, 2020, an employee is entitled to a transition payment from the start of the employment agreement.

This brief overview covers several of the basic aspects of Dutch labour law. Of course there are more relevant aspects. We are happy to receive your call to elaborate further on this and to answer your questions. You can contact us via email ([info@penrose.law](mailto:info@penrose.law)) or telephone +31 (0)20 240 0710.