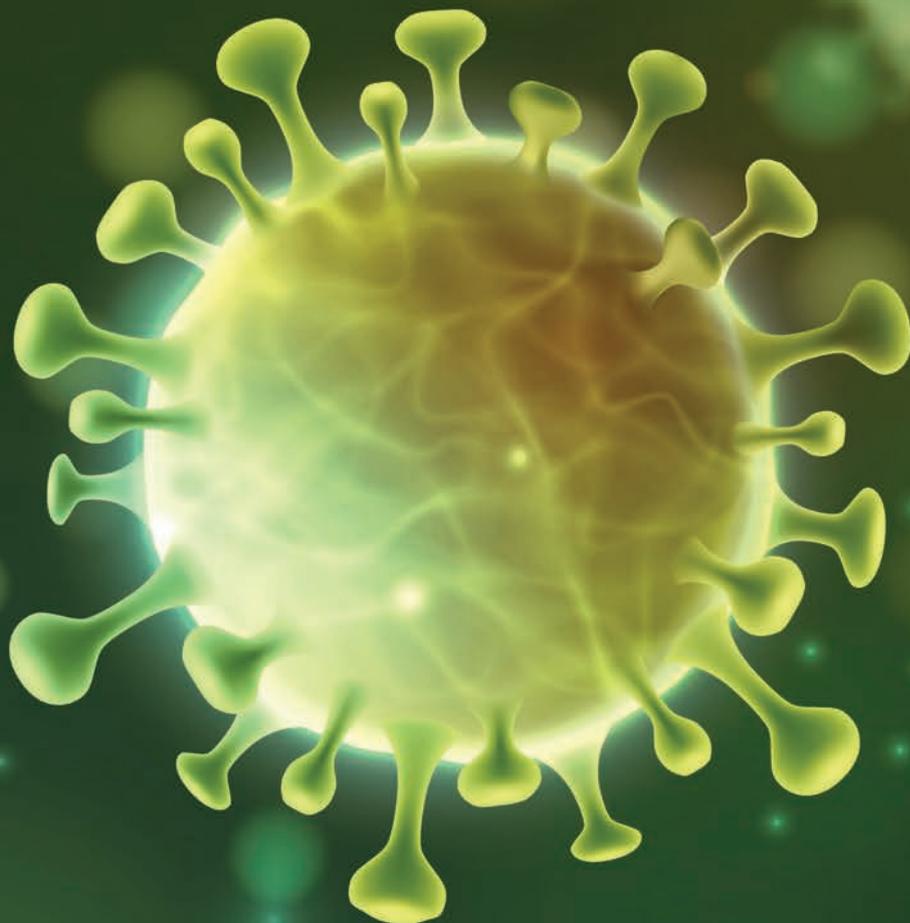


Q&A

Temporary Aid Scheme to Maintain Employment (NOW)



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On 31 March 2020 the temporary aid scheme to compensate wage costs in connection with the Corona virus was announced (Temporary Aid Scheme to Maintain Employment, in Dutch: *Tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid*). In these Q&A we discuss the principal elements of this scheme (referred to as “**NOW**”).

1. What is the purpose of the NOW?

The purpose of the NOW is to prevent unemployment resulting from a sudden drop in turnover caused by extraordinary circumstances that cannot be considered to be a normal entrepreneurial risk (e.g. the Corona virus), to the extent that the turnover drops with at least 20%.

2. In respect of which workers may aid be requested?

Employers may request aid to compensate the wage costs for those workers (i) that are employed by the employer and (ii) that are compulsory insured under worker insurance policies (insured wages for national insurance contributions purposes, or “**SV wages**”). Thus, aid may also be requested in respect of workers on flexible contracts, provided they continue to be employed by the employer during the period in which aid is granted and continue to receive wages from the employer. Temporary work agencies and payroll employers may also request aid.

Foreign employers who employ workers that are insured under the Dutch national insurance system may also submit a request under the NOW. The NOW does not apply in respect of workers that are seconded to the Netherlands but are insured under foreign national insurance systems.

Because the overall wage bill is determined on the basis of all workers who receive an SV wage, the NOW also applies in respect of workers that are what is called ‘fictitiously employed’, but not in respect of uninsured or voluntarily insured Directors-Owners.

3. How is the amount of the aid calculated?

The aid is related to the percentage-wise loss of turnover. The maximum entitlement to aid, paid in the event of a 100% loss of turnover, is capped at 90% of the overall wage bill. If the loss of turnover is less, the aid will also be proportionally less:

- 100% loss of turnover: aid equal to 90% of the overall wage bill;
- 50% loss of turnover: aid equal to 45% of the overall wage bill;
- 25% loss of turnover: aid equal to 22.5% of the overall wage bill.
- < 20% loss of turnover: no aid.

4. How is the loss of turnover calculated?

The term turnover has the meaning given in accounting law. The net turnover is taken as basis, i.e. the income from the supply of goods and services by the relevant legal person’s business after deducting discounts and the like from the tax charged on the turnover.

The loss of at least 20% of turnover must occur during a three-month consecutive period (the measurement period). Employers may calculate the loss of turnover at their own discretion over a reference period starting from 1 March, 1 April, or 1 May 2020. The effective date must be stated in the request for aid; it is not possible to alter the measurement period afterwards.

The turnover earned in the measurement period will be compared to the turnover earned in the period January through December 2019, divided by four (the reference period). The outcome of this calculation is expressed in percentage points rounded upwards.

If an employer had not yet started its business on 1 January 2019, another period will be applied to calculate the loss of turnover.

5. My company forms part of a group. How will the loss of turnover be calculated in my instance?

If a legal entity or company forms part of a group, the loss of turnover of the entire group (as consisted on 1 March 2020) is taken as basis. A group is an economic unit in which legal entities and companies are organizationally interconnected, as defined in Book 2 of the Dutch Civil Code. A group exists for instance if the annual financial accounts of several legal entities are consolidated. For the purposes of the NOW each parent-subsidiary-relationship is also qualified as a group.

This means that if the entire group suffers less than 20% loss of turnover, none of the legal entities forming part of the group is eligible for aid.

When calculating the loss of turnover all Dutch legal entities and companies of the group, plus all foreign entities and companies, provided they are covered by the Dutch national insurance scheme.

6. How long will the aid be provided?

The aid under the NOW will initially be granted in respect of the wage costs for a three-month period (from March through May 2020). The NOW may be extended for three months. However, additional conditions may apply when the NOW is extended.

7. How is the aid determined?

The maximum aid is equal to 90% of the wage bill during the three-month period of March-May 2020. The aid is calculated, in principle, on the basis of the SV wages paid to workers employed in the month of January 2020.

If the UWV benefits entitlement system does not include wage details in respect of January 2020, the wages for the

month of November 2019 are taken as basis. If no details are available in respect of November 2019 either, no aid may be requested under the NOW.

The wage bill is the aggregated wages paid to all workers under the relevant employer's withholding tax number (*loonheffingnummer*). The wage of each individual worker in respect of whom aid may be requested is capped at twice the maximum daily wage per month (recalculated for the three-month period). This means that no aid is given in respect of gross monthly wages in excess of € 9,538.

Additional charges and costs, such as employer's and employee's contributions to pension schemes and the accrual of holiday allowance will also be compensated; it has been decided to set the employer's charges at a fixed percentage of 30% for all instances.

In other words, the overall wage bill on which the aid is calculated will be equal to three times (the SV wages in January 2020 + 30%). If the actual SV wages over the period March to May 2020, inclusive, are lower (e.g. as a result of not extending employment contracts for a definite period of time), the aid will be adjusted downwards. We note that this reduction does not take into account the degree of decline in turnover; the subsidy is reduced with 100% of the amount the wage bill has decreased. This means, among other things, that the impact is proportionally (much) higher in case of a lower turnover decrease compared to a larger turnover decrease.

According to the NOW it seems that if the actual SV wages over the period March to May 2020, inclusive, are higher, the aid will not be adjusted upwards.

8. When does the employee insurance agency UWV pay an advance, and will it be paid as a lump sum?

If the request is granted, the UWV will pay an advance of 80% of the aid as calculated on the basis of the information supplied with the request regarding the anticipated loss of turnover. As has been mentioned in the response to Question 7, the UWV obtains the information regarding the wage bill from its benefit entitlement system in respect of the month of January 2020.

The UWV will decide on each request within 13 weeks of receipt. The advance will be paid in three instalments.

The aim is to pay the first instalment within 2 to 4 weeks of receipt of the request.

9. Calculation example

In 2019 the Employer achieved a turnover of € 2,500,000
The overall wage bill in January 2020 was € 300,000, or
for a three-month period (3 x 300,000 =) € 900,000
If the turnover is anticipated to fall by:

- 15% : no entitlement to aid.
- 25% : entitlement to aid: $25\% \times 90\% \times € 900,000 = € 202,500$ (advance: $x 0.8 = € 162,000$)
- 100% : entitlement to aid: $90\% \times € 900,000 = € 810,000$ (advance: $x 0.8 = € 648,000$)

10. What are the principal obligations the employer must fulfil who receives aid?

Article 13 of the NOW sums up a number of obligations the employer must fulfil. Failure to comply may have consequences for the grant, or the amount of aid to be received. The principal obligations are:

- the employer is expected to make every effort to keep its wage bill as equal as possible;
- in the period after 17 March 2020 up to and including 31 May 2020 the employer may not submit a request for permission to terminate an employment contract for business economic reasons to the UWV;
- the employer may only use the aid to pay its wage costs;
- the employer must inform the works council or employees' representatives, or if none exists, the workers directly, about the aid;
- the employer must keep verifiable records to ensure that all information relevant for calculating the aid may be inspected and must allow inspection of these records upon request for up to five years of granting the request;
- the employer must submit its payroll tax forms on the prescribed dates;
- the employer must notify the Minister immediately in writing of any circumstances that may give reason to revise, withdraw, or grant the aid;
- after the period during which aid was received the employer must submit a final statement of the loss of turnover, accompanied by an audit opinion; and
- the employer must cooperate with any audit carried out by or on behalf of the Minister during a period of five years after the date on which aid was granted, for instance by providing all necessary information,

data and records and documents, aimed at providing the Minister with information that may be important for taking the decision on whether or not to grant aid, determining whether it was justified, or for the development of the policy adopted by the Minister.

11. May I dismiss workers during the period in which I receive aid?

Employers are not permitted to submit a request for permission to terminate an employment contract for business economic reasons to the UWV in the period after 17 March up to and including 31 May 2020. If the employer does submit a request for permission to terminate an employment contract for economic reasons to the UWV, this will affect the amount of the aid; see Question 12. Furthermore, the employer will have to demonstrate that the dismissal is necessary and that the NOW aid is not a solution in his case.

It appears to be possible under the NOW to terminate an employment contract for business economic reasons with mutual consent by concluding a settlement agreement. However, it is to be wondered if this would be in keeping with the purpose of the NOW; and therefore this might affect the amount of the aid.

The NOW does not prohibit termination on other grounds, e.g. long-term sickness or inadequate performance.

12. What are the consequences if I submit an application for dismissal with the UWV during the term of the NOW nevertheless?

If a request for dismissal is submitted during the term of the NOW and it is not withdrawn, or not in time, the calculation of the amount of the aid will be modified. When determining the aid the wages earned by the workers whose dismissal was applied for are taken into account. These wages are subsequently increased by 50%; in other words, this 50% mark-up is by way of a penalty. These wages plus 50% are deducted from the aid.

13. When may I submit a request for aid?

Requests for aid may be submitted as from 6 April 2020 until 31 May 2020, inclusive.

14. How must the request for aid be submitted?

The request for aid must be submitted using a form made available by the Minister.

15. What information must I provide with the request for aid?

The employer must submit the following information:

- a. the anticipated loss of turnover, expressed in whole percentage points, rounded upwards;
- b. during which consecutive period of three calendar months between 1 March and 31 July 2020 the employer anticipates a loss of turnover;
- c. the employer's withholding tax number (*loonheffingnummer*);
- d. the bank account number on which the employer receives payments in respect of taxes and national insurance contributions from the Tax Authorities; and
- e. if the employer is part of a group or has multiple withholding tax numbers, multiple requests for aid must be submitted. The request of each legal entity and company (and each withholding tax number respectively) forming part of the group, must state the same percentage as referred to in b, above, and the same period in which a loss of turnover is anticipated as referred to in c, above.

Employers who already submitted applications for short-time working after 31 August 2019 must state the file number of this application with the request for aid.

16. Do I have to ask the works council's advice or consent?

No, but the employer is obliged to inform the works council or employees' representatives of the request for aid. If the employer has no works council or employees' representatives, the workers must be informed directly.

17. When should the final application be submitted? Do I have to submit an audit opinion?

The employer must submit an application for the determination of the final aid within 24 weeks after the

end of the measurement period referred to in Question 4. Failure to do so will result in the entire advance on the aid having to be repaid. This will in principle require an audit opinion. Most likely, smaller companies will be entitled to submit evidence in a different manner. It is presently unclear above which threshold a company will have to submit an audit opinion. The Minister hopes to provide an answer on this issue within four weeks.

The Minister will determine the final aid within 52 weeks of receipt of the request. It is possible, that the employer is entitled to extra aid, or that it has to repay aid for example in the event the turnover loss is lower than expected.

18. May repayment of advances be required or the amount of the aid be recalculated?

The advance received may have to be repaid fully or in part if no entitlement existed, or if too much was received, or if the obligations of Question 10 are not fulfilled.

The Minister may also withdraw or recalculate the aid to the detriment of the employer if it is at any time established that the employer has acted contrary to the purposes of the NOW during the period in which he received the aid.

19. Will abuse/inappropriate use of the NOW be sanctioned?

The employer is responsible for the information he supplies with his request. The information supplied by the employer will be verified on the basis of information exchanged between the Tax Authorities and the UWV. This exchange will focus first of all on the name and the account numbers supplied by the employers. The UWV may also suspend payment of the advance if there is a strong suspicion that the conditions for receiving aid are not being met.

If, when deciding on the request for aid, there is a reasonable suspicion of a criminal offence the UWV may report this suspicion to the public prosecutor's office. The public prosecutor's office may subsequently decide to start a criminal investigation and bring charges.