Chambers
AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Employment 2022

Definitive global law guides offering comparative analysis from top-ranked lawyers

Netherlands: Law & Practice
and
Netherlands: Trends & Developments

Klaas Wiersma, Maureen te Poel,
Laurie Kuijpers and Youssef el Harchaoui
Loyens & Loeff

practiceguides.chambers.com

NETHERLANDS

Law and Practice

Contributed by:
Klaas Wiersma, Maureen te Poel, Laurie Kuijpers and Youssef el Harchaoui
Loyens & Loeff **see p.20**

Contents

1. Introduction p.3
   - 1.1 Main Changes in the Past Year p.3
2. Terms of Employment p.3
   - 2.1 Status of Employee p.3
   - 2.2 Contractual Relationship p.4
   - 2.3 Working Hours p.4
   - 2.4 Compensation p.5
   - 2.5 Other Terms of Employment p.6
3. Restrictive Covenants p.7
   - 3.1 Non-competition Clauses p.7
   - 3.2 Non-solicitation Clauses – Enforceability/ Standards p.8
4. Data Privacy Law p.9
   - 4.1 General Overview p.9
5. Foreign Workers p.9
   - 5.1 Limitations on the Use of Foreign Workers p.9
   - 5.2 Registration Requirements p.10
6. Collective Relations p.11
   - 6.1 Status/Role of Unions p.11
   - 6.2 Employee Representative Bodies p.11
   - 6.3 Collective Bargaining Agreements p.11
7. Termination of Employment p.12
   - 7.1 Grounds for Termination p.12
   - 7.2 Notice Periods/Severance p.14
   - 7.3 Dismissal for (Serious) Cause (Summary Dismissal) p.14
   - 7.4 Termination Agreements p.15
   - 7.5 Protected Employees p.16
8. Employment Disputes p.16
   - 8.1 Wrongful Dismissal Claims p.16
   - 8.2 Anti-discrimination Issues p.17
9. Dispute Resolution p.18
   - 9.1 Judicial Procedures p.18
   - 9.2 Alternative Dispute Resolution p.18
   - 9.3 Awarding Attorney's Fees p.18

1. Introduction

1.1 Main Changes in the Past Year

Act Implementing EU Directive on Transparent and Predictable Working Conditions

The Act implementing the EU Directive on transparent and predictable working conditions (*Wet implementatie EU-richtlijn transparante en voorspelbare arbeidsvoorwaarden*) entered into force on 1 August 2022. The four main points of this Act are as follows.

- The employer's information obligation contained in Article 7:655 of the Dutch Civil Code (DCC) is extended – some information has to be provided within one week after the start of employment, while other information must be provided within one month after the start of employment.
- Employers will have to offer employees mandatory training free of charge. The time spent on this training must be regarded as working time and, wherever possible, the training will have to take place during regular working hours. From 1 August 2022 onwards, a study costs clause on the basis of which the costs of mandatory training can be (wholly or partially) recovered from the employee will be null and void.
- The ban on ancillary activities is restricted.
- The Flexible Working Act is amended so that employees whose work pattern is entirely or mostly unpredictable will be able to file a request with their employer for a form of employment with more predictable and secure working conditions.

Paid Parental Leave Act

The Paid Parental Leave Act (*Wet betaald ouderschapsverlof*) entered into force on 2 August 2022. Every working parent in the Netherlands is now entitled to nine weeks of paid parental leave during their child's first year of life. During these nine weeks, parents will receive a benefit from the Employee Insurance Agency (UWV) equal to 70% of their daily wage (up to the maximum daily wage). The UWV pays the benefit to the employer, but the employer can also choose to have the UWV pay the benefit directly to the employee.

Ministry of Social Affairs and Employment (Miscellaneous Provisions) Act 2022

Since the introduction of the Ministry of Social Affairs and Employment (Miscellaneous Provisions) Act 2022 (*Verzamelwet SZW* 2022) on 1 January 2022, the involvement of flex workers (*flexwerkers*) in co-determination has increased. In order to involve flex workers more closely in co-determination, they are considered to be "working in an enterprise" after 15 months (was previously 24 months). Furthermore, persons who have been employed in the enterprise for at least three months are now eligible to vote and to be a member of the works council (these periods were longer at first).

Subsidy for Wage Costs

Also in 2022, the Dutch government published several emergency measures to support Dutch businesses in dealing with the COVID-19 crisis. Under the Temporary aid scheme to maintain employment (*Tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid* – NOW), employers could qualify for a subsidy for wage costs. From 1 January 2022 through 31 March 2022, employers could apply for the NOW-6. Employers who receive the NOW subsidy must fulfil several obligations.

2. Terms of Employment

2.1 Status of Employee

There is no distinction in the Netherlands between blue-collar and white-collar workers. There is only one employment agreement under

Dutch law, which is regulated in Book 7, title 10 of the DCC. Article 7:610 of the DCC provides a definition of the employment agreement. If a labour relation between a natural person and an organisation fulfils certain criteria, that relationship automatically qualifies as an employment agreement and, consequently, the worker has the status of an employee. Although there is only one employment agreement, there are certain sub-types to which specific rules apply with respect to certain elements of the employment agreement – temporary agency worker, payroll worker, on-call worker, etc.

2.2 Contractual Relationship

Any employment agreement can be agreed for a definite period of time, for the duration of a project or for an indefinite period of time. The parties are free to choose which contract suits their needs.

A fixed-term employment agreement between an employee and employer can be concluded for any period of time (three months, five years, etc); however, the possibility to conclude consecutive fixed-term employment agreements is restricted. In principle, the last employment agreement between the parties is converted into a permanent employment agreement (the so-called “chain regulation”) in the following circumstances:

- when more than three consecutive fixed-term contracts have been entered into and the gap between each consecutive contract is equal to six months or less; or
- when the repetition of consecutive fixed-term employment agreements exceeds three years and the gap between each consecutive contract is equal to six months or less.

Different rules apply for temporary agency workers and statutory directors.

Formal Requirements for Employment Agreements

Dutch law does not require an employment agreement to be concluded in writing. However, some terms of employment do have to be put in writing in order to be valid – eg, probationary periods and non-competition clauses. Furthermore, the employer has to provide each employee with a written or electronic statement containing a specific list of particulars, some within one week and others within one month of commencing work (Article 7:655 of the DCC), such as place of work, position, duration, notice period, number of holidays and whether or not the employee will participate in a pension scheme. Nevertheless, it is common practice to put these particulars in an employment agreement. If a collective bargaining agreement (CBA) is applicable, it is sufficient to refer to that agreement with respect to the particulars that are arranged in such agreement.

2.3 Working Hours

The Working Hours Act (*Arbeidstijdenwet*) provides, among other things, for rules relating to the maximum number of working hours, minimum rest periods, overtime, shift work and night work. The rules about working hours are specified in the Working Hours Decree (*Arbeidstijdenbesluit*), which sets out, inter alia, that most working hours regulations do not apply to workers with a salary exceeding three times the minimum wage.

Furthermore, the Working Hours Decree provides additional regulations with regard to healthcare, mining and a number of other sectors. If employers do not comply with some of the rules, this may result in the imposition of administrative fines or criminal sanctions.

Maximum Working Hours

All companies need to act in accordance with the Working Hours Act, which stipulates, inter alia, the mandatory daily and weekly rest, working on Sunday, maximum working hours, work-

ing at night and on-call duties. The Working Hours Act provides for specific rules regarding pregnant employees.

According to the Working Hours Act, employees are allowed to work for a maximum of 12 hours per day or 60 hours per week (overwork included); the average working hours per week over a 16-week period may not exceed 48 hours, or 55 hours over a four-week period. The normal weekly hours usually vary between 36 and 42. Deviation from these rules shall only be valid if such is provided for in a CBA or agreed with the relevant employee representation body (in most situations the works council).

In general, employees must have 11 successive hours of rest in each successive period of 24 hours. The Working Hours Act allows companies to deviate from this rule slightly if the nature of the work or the company's circumstances require this (eg, for companies that work in shifts where it is not possible to interrupt the production process, due to technical reasons).

Shift Work and Overtime Work

Overtime or shift work pay is not regulated; rules on additional compensation can usually be found either in a CBA, if applicable, or in the employment agreement. If no such agreement has been made, employees are entitled to the statutory minimum rate of pay for overtime work or additional time off from work with pay in accordance with, at a minimum, the statutory minimum rate of pay.

It is common practice for the remuneration of higher paid employees to be inclusive of compensation for overtime. Contracts for highly paid employees generally include a clause in the employment agreement that expressly states that the employee is not entitled to compensation for overtime work.

Part-Time Worker

There is no specific legal definition of a part-time worker. There are no specific limits on the use of part-time workers and also no mandatory requirements for employment agreements that are specific to part-time employees. Employers are not allowed to discriminate between employees based on differences between working hours, unless such discrimination can be objectively justified.

Conditions of employment have to be applied pro rata, unless it is infeasible or discriminatory to do so (eg, the working hours an employee is allowed to spend on obligatory training); therefore, part-time workers are entitled to pro rata equal pay, social benefits, paid holidays and leave.

2.4 Compensation

Minimum Wage

Each employee aged 21 or older is entitled to receive a salary that equals at least the minimum wage rate as set under the Minimum Wage and Minimum Holiday Allowance Act. The minimum wage rates are reviewed twice a year, in January and July, and are based on full-time employment. Certain elements, such as holiday allowances and year-end bonuses, are not included when determining whether or not the employer has complied with the obligation of paying the minimum wage.

For employees aged between 15 and 20, the statutory minimum youth wage applies.

The statutory minimum wage can only be paid by bank transfer; cash payments are not allowed. If the employer fails to do so, they may incur a fine.

Holiday Allowance

All employees are entitled to a statutory minimum holiday allowance of 8% of their gross annual wage, regardless of their age. Benefits

such as year-end bonuses and other bonuses are not included when calculating the employee's holiday allowance. Overtime payments are included when calculating the employee's holiday allowance, since overtime payments have to be paid in accordance with the minimum wage.

If the employee's salary exceeds three times the minimum wage, the employer and the employee can agree that the holiday allowance is included in their salary and will not be paid on top of the salary.

Thirteenth Month and Bonuses

Next to salary and holiday allowance, CBAs and individual employment agreements can provide for a 13th month allowance and/or some other form of bonus/profit scheme. However, there is no statutory right for a 13th month pay and/or bonus/profit scheme payment.

Government Intervention in Compensation

The ability to remunerate employees is limited in the public and semi-public sector and the financial sector. Salaries of senior officials working in the public sector or for certain organisations in the semi-public sector cannot exceed those of government ministers.

The exact amount is set each year – eg, in 2022 the limit is EUR216,000. Furthermore, these employees are not allowed to receive a severance payment exceeding the annual salary, with a maximum of EUR75,000.

The legislation for the financial sector prescribes, among other things, that:

- a 20% bonus cap applies to all employees and other persons working for financial institutions (including contractors and secondees), notwithstanding certain exceptions;
- only severance payments of up to one year's annual salary are allowed; and
- guaranteed bonuses are not allowed.

2.5 Other Terms of Employment

Holidays

According to Dutch law, employees are entitled to a minimum annual vacation period, which is calculated by multiplying the number of working days per week by four. Public holidays are not included in the amount. It should be noted that employees are often granted more vacation days under a CBA or based on individual employment agreement provisions.

Public Holidays

The Netherlands has a number of generally recognised public holidays: New Year's Day, Good Friday, Easter, King's Day, Liberation Day, Ascension Day, Whitsun, Christmas Day and Boxing Day.

Although it is common in practice, there is no legal right to extra pay for working on a public holiday. Whether employees are entitled to public holiday leave is indicated in the individual employment agreement, the CBA or the personnel manual. If this is the case, these days may not be deducted from the total number of statutory holidays.

Other Types of Leave

There are various types of leave, some of which are fully or partially paid (either mandatory or agreed in the CBA or individual agreements), such as pregnancy leave, maternity leave, adoption and foster care leave/paternity/partner leave, parental leave, sick leave, short-term care leave and leave with respect to an emergency. Long-term care leave is unpaid. As of 1 August 2022, the employer is obliged to inform its employees of their rights to paid leave.

Confidentiality and Non-disparagement

Dutch employment law contains a provision (Article 7:611 of the DCC) which states that the

employee must behave like a "good employee" during the course of their employment. This standard may lead to a duty of confidentiality, whereby an employee may not disclose or use confidential information belonging to the employer; the scope of this article is broad and applies to all information that may cause damage to the employer if disclosed. Even if the employer and employee have not explicitly agreed to this, this obligation also applies after the termination of employment, as demonstrated by case law.

It is common practice to include confidentiality clauses in individual employment agreements. This enables employers to claim contractual damages in the event of a breach of confidentiality obligation. To that end, employers may establish a confidentiality policy that lays down the rules governing the use and disclosure of information.

In addition to standards of good employment practice, the duty of confidentiality is also derived from Article 7:678(2)(i) of the DCC, from which it follows that a violation of this obligation may provide a valid ground for immediate dismissal in certain situations. According to Article 6:162 of the DCC, a violation of this obligation could also be seen as a wrongful act in certain situations.

The Trade Secret Protection Act contains several ways in which to obtain recovery from those who unlawfully contravene trade secrets, such as allowing trade secret holders to take legal action and to claim compensation subject to certain circumstances.

Employee Liability

The general rule for employee liability is laid down in Article 7:661 of the DCC: an employee who, in the performance of the employment agreement, causes damage to the employer or to a third party to whom the employer is obliged to compensate such damage shall not be liable to the employer for this unless the damage was a result of their intent or deliberate recklessness. Article 7:661 of the DCC has to be read in conjunction with Article 6:170 of the DCC, which stipulates that the employer is liable for the fault of subordinates who cause damage to a third person, provided that the fault was made during the performance of the subordinate's duties.

3. Restrictive Covenants

3.1 Non-competition Clauses

Contract for Definite Period of Time

Employment agreements for a definite period of time may not include a non-competition clause, unless the employer has a compelling business interest to include one. If an employer wishes to include a non-competition clause in an employment agreement for a definite period of time, it is obliged to explain in writing the reasons why this clause is necessary for this employee. This explanation must state as extensively as possible why precisely this employee, in view of their position with the employer, could prejudice the employer's market position if they were to take up employment with a competitor (or if they were to maintain contact with clients and/or business relations).

If the explanation is absent, the non-competition clause is null and void. If a reason is stipulated but the employee is of the opinion that the reason is insufficient to substantiate the necessity for the non-competition clause, they may request the court to annul the clause in whole or in part. For a non-competition clause to be valid, it must be in writing (signed by both parties) and the employee must be 18 years or older.

Contract for Indefinite Period of Time

A valid non-competition clause in an indefinite period of time employment agreement must be

made in writing and signed by both parties. In addition, the employee has to be 18 years or older.

However, a court may (partly) annul a non-competition clause on the ground that the employee is unfairly prejudiced by the restraint, having regard to the interests which the employer is seeking to protect by the non-competition clause. To determine whether or not the employee is unfairly prejudiced, the court will weigh the interests of both parties. Typical interests of the employer are the protection of sensitive business information, a reasonable fear that the employee may damage the company if they would work for the competitor, and the time and money the employer invested in the development of the employee.

In principle, an employer does not have to pay any form of compensation during the period the non-competition clause is in force after the termination of the employment agreement. Nevertheless, a court may order an employer or ex-employer to pay damages to the employee upon their request if the effect of the restraint is such that it restrains the employee from working to a significant degree.

In most cases, an interlocutory injunction is awarded in respect of violations of restrictive covenants by employees. The court may, for instance, restrain the employee from taking up a job with a competitor of their former employer, or from soliciting their clients. In addition, the employer can claim compensation from the employee, although it is not easy to prove that financial losses were caused by the employee's violation of the covenant.

Therefore, it is quite common for employers to agree on a damages clause with the employee, which is triggered by a breach of the restrictive covenant (the employer does not have to prove that actual damage occurred).

3.2 Non-solicitation Clauses – Enforceability/Standards

Non-solicitation of Customers

Non-solicitation of customer clauses are deemed to be a form of non-competition clause, so the rules mentioned in **3.1 Non-competition Clauses** apply to the non-solicitation of customers. A restraint period of a maximum of 12 months will usually be deemed acceptable.

Subject to the circumstances, non-solicitation of customer clauses may also cover prospective customers. It is not necessary for the employee to have effective contact with the customers for the clause to be enforceable.

Non-solicitation of Employees

Non-enticement/non-solicitation restraints are capable of enforcement and, moreover, are customary. In general, Article 7:653 of the DCC does not apply to this type of restraint as it is not deemed to impact the employee's freedom to work. As such, in principle, employers have reasonably wide discretion to enforce the restraint.

However, in exceptional cases, a court may come to the conclusion that the restraint does in fact impact the employee's freedom to work; case law shows the restraint may nevertheless fall within the scope of Article 7:653 of the DCC – eg, when the employee is a recruiter (in which case the rules outlined in **3.1 Non-competition Clauses** apply). In principle, no compensation is chargeable in relation to this type of restraint.

4. Data Privacy Law

4.1 General Overview

The General Data Protection Regulation (GDPR)

The GDPR applies to the processing of personal data in the context of the establishment of a data controller or a data processor in the European Union (EU). In the Netherlands, additional national derogations apply, which follow from the GDPR Implementation Act (*Uitvoeringswet AVG* – UAVG).

Under Article 88 of the GDPR, Member States may provide for further specific rules on privacy in the context of employment. However, Dutch legislators have not yet availed themselves of this provision. Although the introduction of a bill introducing such provisions has been expected, none were included in the draft bill amending the UAVG published on 20 May 2020.

The GDPR requires that personal data is processed in an accountable manner, which entails the controller being able to demonstrate that it acts in compliance with the GDPR, for instance through the means of policies, agreements and other documentation. Under the GDPR and the UAVG, the processing of personal data must be in accordance with the following key principles set forth in Article 5 of the GDPR:

- lawfulness, fairness and transparency;
- purpose limitation;
- data minimisation;
- accuracy;
- storage limitation; and
- integrity and confidentiality.

Compliance

Compliance with the GDPR and the UAVG is monitored by the Dutch Data Protection Authority (*de Autoriteit Persoonsgegevens* – Dutch DPA), which is authorised to impose administrative (enforcement) measures and fines. Pursuant to the GDPR, the maximum fines are EUR20 million or 4% of the annual worldwide turnover, whichever is higher.

In relation to fines, the Dutch DPA has adopted Fining Guidelines that set out four categories of fines with different ranges, with a maximum fine of EUR1 million. The Dutch DPA may deviate from these guidelines if motivated to do so. In addition to administrative enforcement and fines, acting in breach of the GDPR or the UAVG may also result in (collective) civil claims and damages.

Compliance with the GDPR and the UAVG follows from the factual circumstances and is based on relevant documents, procedures and practice within an organisation. As such, compliance must be addressed on a case-by-case basis and is considered to be an ongoing process.

5. Foreign Workers

5.1 Limitations on the Use of Foreign Workers

As a rule, both a work permit and a residence permit are required for foreign workers, although this requirement does not apply to EU Member States, the European Economic Area (EEA) and Switzerland. The application procedure for the work permit and the residence permit are combined in most cases and shall generally be applied for by the employer (the organisation for which the work is actually being carried out) and issued by the *Immigratie- en Naturalisatiedienst* (IND).

A residence permit will be granted after several conditions have been met and, usually, after a work permit has been granted. A residence permit is obligatory for foreign nationals who want to

reside in the Netherlands for a period exceeding 90 days in any period of 180 days for a specific purpose, such as work, study or family reunification. In most cases, an employee who wishes to obtain a residence permit must first apply for an entry visa (*Machtiging voorlopig verblijf* – MVV), although this is not required for nationals of EU Member States, the EEA States, Switzerland, the USA, Canada, Australia, New Zealand, Japan, South Korea, Monaco and Vatican City.

Obtaining a Work Permit

The employer must at least prove that there are no EU/EEA/Swiss workers to do the job before a work permit can be granted. There are additional conditions to be met. A work permit is not required for foreign workers who have to attend business meetings (short periods), nor for employees who are eligible for a residence permit under the highly skilled migrant programme. In the latter case, two requirements have to be met:

- the employee must earn a salary, in line with market conditions, of at least EUR4,840 gross per month or EUR3,549 gross per month for employees under 30 years old, excluding holiday allowances (2022 numbers); and
- the employer has to obtain recognised sponsor status from the IND.

For employees who fall under the scope of the Intra-Corporate Transferees (ICT) Directive, the employer must apply for an ICT residence permit. Whenever employees fall under the scope of the ICT Directive, applications under the abovementioned programme for highly skilled workers cannot be made. The ICT residence permit requirements correspond to the highly skilled worker permit requirements, but with less strict salary thresholds.

5.2 Registration Requirements

When a foreign employee begins work in the Netherlands, the (foreign) employer is generally required to register as a withholding agent with the tax authorities for wage taxes and, if applicable, social security contributions (including the employer's contribution to healthcare insurance). If none of the employees are subject to wage taxes and/or are covered by Dutch social security legislation, such a registration is not required.

The following conditions have to be met before the employee starts to work:

- a pay-roll administration has to be set up which, inter alia, takes care of the deduction of wage taxes and, if applicable, social security contributions from the employee's employment income;
- the employee must be registered with the salary administration;
- the employee's citizen's service number (*burgerservicenummer* – BSN) must be recorded with the salary administration;
- the employee must have been identified by passport or ID-card, a copy of which must be kept with the salary administration;
- the "wage tax declaration" has to be completed and signed by the employee, and must be kept with the salary administration;
- the employer must check the tax place of residence of the employee;
- only if applicable: the employee's residency/employment status must be verified and registered. A copy of the permit(s) must be kept with the salary administration. If a permit is renewed, a copy must be forwarded to the salary administration; and
- only if applicable: the employer and employee must apply for the 30% ruling with the foreign office of the tax authorities in Heerlen. If the application is made within four months of commencing employment, the ruling will

have retrospective effect from the date of first employment by the Dutch employer.

6. Collective Relations

6.1 Status/Role of Unions

The interests of individual employees or groups of employees may be represented by trade unions. Trade unions are especially important for representing the collective interests of employees in particular industries or sectors. They negotiate with a specific (large) employer or with one or more employers' associations, and possibly other trade unions, on the collective terms and conditions of employment required to conclude a CBA, which may apply on a company level or across an entire industry.

In addition, trade unions may assist in the negotiation of redundancy schemes and advise on forced redundancies within organisations. Unions also have the power to deviate from some of the statutory employment laws in a CBA.

6.2 Employee Representative Bodies

Works Council

Companies with 50 employees or more are obliged to establish a works council comprised of elected employees. If a company fails to comply with this obligation, every interested party – whether an employee or trade union – may initiate court proceedings in order to have a works council established.

The works council has a number of rights and obligations, the most important of which include:

- the right to render their advice on each contemplated important financial, economic and organisational decision proposed by the company; and
- the right to consent to each contemplated decision proposed by the company to establish, amend or revoke regulations regarding the company's social policy in the broad sense.

A company that has established two or more works councils may set up a central works council or a group works council, provided that this is conducive to the proper application of the Works Councils Act (*Wet op de ondernemingsraden*) with regard to those enterprises.

Employee Representative Body (PVT)

A company that maintains an undertaking in which there are at least ten but fewer than 50 persons and in which no works council has been set up may be required to establish an employee representative body consisting of at least three persons directly elected by secret voting.

6.3 Collective Bargaining Agreements

The Collective Agreements Act (*Wet CAO*) stipulates what is to be understood by a CBA and who is authorised to conclude one. CBAs are agreements made between one or more trade unions and one or more employer organisations. CBAs regulate many different aspects of the employment relationship, such as wages, working hours, pension schemes, holiday entitlements and social issues.

There are two different types of CBA. If the CBA has a minimum character, it is permitted to differ from the CBA in a company scheme or individual employment agreement in a way that is favourable to the employee. However, deviating agreements that are disadvantageous to the employee will be declared null and void. If the CBA has a standard character, any deviating terms are null and void.

If the employer is a member of an employers' union that concludes a CBA, it has to apply the

terms of the CBA to its own employees. Furthermore, a CBA can be declared binding by the Minister of Social Affairs and Employment upon the request of the parties to a CBA. This means that the CBA is declared applicable to the entire sector, regardless of whether or not the employer is a member of an employers' association that was party to the CBA. If the activities of the employer fall under the scope of the CBA, the employer has to apply the terms of the CBA within the company.

7. Termination of Employment

7.1 Grounds for Termination

Termination of an Employment Agreement

The termination of an employment agreement must comply with certain statutory rules, which provide far-reaching protection for employees. Dutch law provides for a system of a priori control of dismissals.

A fixed-term employment agreement terminates, in principle, by operation of law, as per the expiration of the agreed period, without notice being required. However, the employer must inform an employee with a fixed-term contract in writing whether the contract is to be continued or not and on what terms, at least one month before the contract expires. If the employer does not do so, the employee is entitled to compensation equal to one month's salary.

In principle, indefinite term employment agreements may only be terminated if the employer has a reasonable ground for dismissal. An employer also needs a reasonable ground for dismissal if they wish to terminate a fixed-term employment agreement prematurely. An indefinite term contract can be terminated by:

- giving notice of termination with permission from the Employee Insurance Agency (UWV);
- a court decision;
- summary dismissal for urgent cause;
- dismissal during the probationary period; or
- mutual consent through a settlement agreement.

UWV Proceedings

In the case of dismissal for economic, technical or organisational reasons or long-term illness (more than two years), the employer has to submit a request to the UWV to obtain permission to dismiss the employee. The employer has to prove to the UWV that a ground for termination exists and that it has fulfilled its reinstatement obligations in order to be granted permission by the UWV.

In the application for the UWV permission, the employer has to explain the reason for dismissal. If the reason for dismissal is, for instance, a poor financial situation, the employer should be able to demonstrate this with financial data.

The UWV will give the employee the opportunity to respond to the application made by the employer. In principle, the UWV procedure takes four weeks; however, the UWV may ask questions and take more time to decide. If the UWV grants permission, the employer may terminate the employment agreement. Notice must be given at the end of the month, unless the parties have agreed otherwise in writing. The time taken for the procedure at the UWV may be deducted from the notice period, as long as a one-month notice period remains. In addition, the employee is entitled to the statutory severance (see **7.2 Notice Periods/Severance**).

Employers have to apply the so-called "balancing system" (*afspiegelingsbeginsel*), under which they are required to divide employees performing interchangeable positions equally between five age categories (15–24 years, 25–34 years, 35–44 years, 45–54 years and 55 years and old-

er). In turn, the last-in-first-out system must be applied within each age category: the employees with the shortest employment will be the first to be dismissed. The balancing system is applied per company, unless the functions to be made redundant relate to one branch office of the employer's company, in which case only the branch office will be considered.

If the UWV or a redundancy committee (if applicable) does not grant permission for dismissal, the employer can still ask the sub-district court to set aside an employment agreement. The sub-district court's decision may, in turn, be appealed.

Court Proceedings

Employers can submit a request to the sub-district court to set aside an employment agreement in cases of dismissal for personal reasons. The most common dismissal grounds include poor performance, a disturbed employment relationship or a culpable act/omission committed by the employee. The employer has to prove that there is a reasonable ground for dismissal.

An employer can also request the court to dissolve the employment agreement if there is a combination of several reasonable grounds for dismissal that do not qualify as a reasonable ground if they are looked at individually, but do if they are viewed in conjunction. If the dismissal is based on such combination of grounds, the court may award an extra payment to the employee, up to a maximum of 50% of the transition payment to which the employee is entitled (see **7.2 Notice Periods/Severance**). Even if a reasonable ground is deemed to be the case, the employer must also show that it has fulfilled its obligation to investigate reinstatement possibilities.

In principle, the prohibitions on dismissal (see **7.5 Protected Employees**) apply to court proceedings as well. The procedure takes six to eight weeks on average.

Collective Dismissal

If the employer contemplates the termination of at least 20 employees who work within one of the regions of the UWV within a period of three months, the provisions of the Dutch Notification of Collective Dismissal Act (*Wet melding collectief ontslag*) and certain provisions of the Dutch Works Councils Act (*Wet op de ondernemingsraden*) apply.

The employer must notify the UWV in writing of its intention; simultaneously, the trade unions must be sent written notification of the employer's proposed action, with a view to consultation. If the employer does not know whether trade unions are involved, it has a duty to investigate whether such is the case. In addition, the employer is required to consult the works council (if any) and keep the UWV updated on the progress made in the conversations with the trade unions and the works council.

The employer will often negotiate and agree on a social plan with the trade unions. However, there is no obligation to actually reach an agreement.

In general, a one-month waiting period will start from the date of notification to the UWV of the employer's intention to make employees redundant. During this period, the employment agreements of the employees who will be made redundant cannot be validly terminated.

If the UWV or a redundancy committee does not grant permission for dismissal, the employer may still ask the sub-district court to set aside the employment agreements. The sub-district court's decision may, in turn, be appealed.

7.2 Notice Periods/Severance

The notice periods for employers and employees are usually defined in the employment agreement or in a CBA. The statutory minimum notice periods for employers are:

- one month if the length of continuous service is less than five years;
- two months if the length is more than five, but less than ten years;
- three months if the length is more than ten years, but less than 15 years; and
- four months if the length is more than 15 years.

The notice period for employees is one month.

Employment agreements and CBAs may provide for longer notice periods if several rules are taken into account – eg, the notice period for the employee cannot exceed six months and the employer's notice period has to be twice as long as the notice period for the employee if the notice period of the employee is more than one month.

In circumstances where the sub-district court dissolves an employment agreement, it will, in principle, provide that the employment agreement will end on the date on which the contract would have ended following proper observance of the notice period. The time taken for the proceedings can be deducted, in full, from the notice period. However, a notice period of at least one month should remain.

If the employer fails to observe the notice period, the employee can request the court to award compensation equal to the value of the salary they would have been entitled to for the period of notice that the other party failed to observe. The concept of pay in lieu of notice is not recognised under Dutch law, but can be agreed upon between the employer and employee if the employment is terminated by way of mutual consent.

Severance Payment (Transition Payment)

Employees (temporary or permanent) are entitled to a statutory transition payment upon termination of employment (except in certain cases, such as seriously culpable behaviour or if the employee voluntarily terminates the employment agreement).

The amount of the payment depends on the duration of employment and the applicable monthly salary, boiling down to one-third of a monthly salary for each service year. The transition payment is capped at EUR86,000 (2022 figures) or an annual salary, whichever is higher.

For the calculation of the transition payment, salary should include base salary, holiday allowance, fixed fringe benefits (such as overtime pay and shift allowance) and variable fringe benefits (such as average bonus, profit distribution and year-end bonus for the last three years).

A higher severance amount can be agreed in the employment or settlement agreement.

7.3 Dismissal for (Serious) Cause (Summary Dismissal)

A "serious or urgent cause" means conduct by the employee on the basis of which the employer cannot reasonably be expected to continue the employment. Dutch law provides several examples of urgent cause circumstances, such as theft and sexual harassment. What qualifies as an urgent cause depends on the facts and circumstances of the case.

It is good practice to include a non-exhaustive list of seriously culpable acts and omissions in the personnel manual or policies. Overall, a dismissal for urgent cause is deemed to be an ultimum remedium (also given the severe con-

sequences for the employee, amongst others, in respect of the employee's entitlement to unemployment benefits) and a court (if the dismissal is appealed by the relevant employee) will conduct a thorough review (see below) as to whether the employer, taking into account the circumstances of the case, indeed had good reason to immediately terminate the employment agreement.

Procedure of Dismissal for Serious Cause

If a situation arises that qualifies as an urgent cause, prior permission from the authorities to terminate the employment agreement is not required. If it turns out that the dismissal for urgent cause was not justified, the dismissal can be annulled by the court upon a request thereto within two months by the employee. The judge will take several aspects into account.

First, the urgent cause had to be material. All relevant circumstances of the specific case must be taken into account in determining whether an urgent cause existed. For example, the nature and gravity of the urgent cause, the nature of the employee's position, the existence of policies and prior warnings, the duration of the employment relationship, the way in which the employee has performed their duties and the employee's personal circumstances (eg, age, private situation and the impact that the summary dismissal would have on the employee).

Second, the employee will need to have been informed by the employer and offered the possibility to respond as soon as possible upon discovery of the urgent cause situation. If the termination for urgent cause is not immediately communicated to the employee followed by the termination of employment, it can be argued that the cause for termination was apparently not urgent. The above-mentioned communication may be delayed, but only if such delay relates to a prompt ongoing investigation by the employer to get a better view on all relevant circumstances.

Seriously Culpable Behaviour

If the dismissal for urgent cause is justified and the employee's actions qualify as seriously culpable behaviour (case law confirms that this does not necessarily have to be the case), the employee is not entitled to the transitional payment. If the dismissal for urgent cause is not justified, the employee will need to be reinstated or alternatively may opt to receive an additional fair payment (*billijke vergoeding*) to be set by the court, taking all circumstances into account on top of the statutory transitional payment.

Employers are generally careful due to the high threshold for a dismissal for urgent cause to be justified and the potential risk of the award by the court of a significant additional payment to the employee if the dismissal turns out not to be justified, and do not readily decide to terminate an employment agreement for urgent cause.

7.4 Termination Agreements

In addition to the UWV and court proceedings, the parties may also terminate an employment agreement by mutual consent – ie, by entering into a settlement agreement in which the terms for the mutual settlement are laid down. Termination by mutual consent is the most common way to terminate an employment agreement in the case of a (possible) employment conflict. In such a case, the approval of the UWV or subdistrict court is not required.

A social plan, if applicable, generally provides for the termination of an employment agreement by mutual consent. Parties have flexibility in the arrangements they wish to reflect in the settlement agreement.

Settlement agreements are only valid if they are concluded in writing. Furthermore, an employee

may dissolve the executed settlement agreement within 14 days without giving reason(s) by recalling the settlement agreement out of court. If the employer did not indicate the recall option to the employee, the termination period of 14 days extends to 21 days.

7.5 Protected Employees

An employer is not allowed to give notice of termination in the following circumstances:

- during pregnancy or maternity leave (and up until six weeks after the end of an employee's maternity leave);
- during membership of an employee participation body (eg, the works council);
- during prospective membership (eg, candidates) or former membership (less than two years ago) in an employee participation body;
- during the first two years of illness (unless the employee has deliberately slowed their recovery);
- during compulsory military service;
- because the employee has applied for or taken up care leave – eg, parental leave, adoption leave, short-term leave or long-term leave;
- because the employee is a trade union member;
- because of leave for political activities;
- because of a refusal to work on Sundays; or
- because of the transfer of an undertaking.

These prohibitions apply to both UWV and sub-district court procedures. The "during" prohibitions, however, do not apply if the employee's contract is terminated by mutual agreement during the probationary period because of an urgent cause, because the employee has reached the retirement age or state pension age and in specific, limited situations regarding dismissals for commercial reasons. The "because" prohibitions are not subject to any exceptions.

Further Exceptions

Notwithstanding the above-listed general exceptions, the sub-district court may dissolve the employment agreement if:

- the termination request is unrelated to the circumstance to which the prohibition pertains; or
- the circumstances are such that the employment agreement should end in the interests of the employee (eg, for health reasons).

However, these two specific exceptions will only apply to a "during" prohibition, such as pregnancy or membership of the works council. These specific exceptions are not applicable in the event of a dismissal for economic reasons, unless it concerns a full termination of the company's activities.

8. Employment Disputes

8.1 Wrongful Dismissal Claims

Grounds for a Wrongful Dismissal Claim

If an employee believes they have been unfairly dismissed, they can take action on several grounds, depending on the situation, with examples including the following:

- the employment agreement was terminated without intervention by the UWV or the sub-district court, although such intervention was required;
- the employment agreement was terminated contrary to a prohibition on giving notice;
- the job position of the employee who was dismissed for economic, technical or organisational reasons was subsequently filled by someone else within 26 weeks of the termination date without the position first being offered to the dismissed employee;

- the UWV wrongly granted permission for termination (eg, if there was no reasonable ground for the dismissal); or
- the court has wrongly dissolved the employment agreement (eg, if there was no reasonable ground for the dismissal).

Consequences of a Wrongful Dismissal Claim

In the case of a wrongful dismissal, the employee has two options:

- they may file a request with the sub-district court to declare the termination null and void; or
- they can request that the sub-district court awards them fair payment instead (also referred to as fair compensation).

This request must be filed with the sub-district court within two months of the employment agreement ending. In the case of a wrongful dismissal because the reinstatement requirement was breached, the limitation period will not start running until the date that the employee is aware or could reasonably have been aware of the situation, but in any event no later than eight months after the employment agreement was terminated.

If the employee claims fair compensation, there is, in principle, no standard for calculating that compensation. The calculation of fair payment is highly dependent on the circumstances of the case and the assessment of the court. The Supreme Court has provided a non-exhaustive list of points of view for determining the amount of the fair payment, such as:

- the employee's earnings if the employment agreement had continued;
- the degree to which the employer acted seriously culpably; and
- whether the employee has found other employment or is expected to find any employment in the future and the expected income received therefrom.

8.2 Anti-discrimination Issues

Employees are protected against discrimination during the recruitment process, employment (eg, remuneration, dismissal) and post-employment activities (eg, references).

Claims of discrimination are common in the Netherlands, especially claims filed with the Netherlands Institute for Human Rights (*College voor de rechten van de mens*), which protects, monitors and provides information on human rights in the Netherlands, including the right to equal treatment. The Institute assesses individual cases to determine whether the equal treatment legislation has been violated.

It determines whether discrimination has taken or is taking place, and may issue a recommendation to prevent discrimination against the complainant in the future. This decision is not legally binding, but in practice most companies follow the Institute's decision. All decisions are published in a database on the Institute's website, including the name of the organisation involved. Court proceedings regarding this issue are relatively unusual.

Grounds for Claims on Anti-discrimination Grounds

The ban on discrimination is laid down in several specific equal treatment laws, such as the General Act on Equal Treatment (AWGB), the Equal Treatment of Men and Women Act (WGB), the Equal Treatment of Disabled and Chronically Ill People Act (WGBH/CZ) and the Equal Treatment on Age in Employment Act (WGBL). The DCC also provides for a number of provisions on equal treatment.

The rules on equal treatment prohibit both direct and indirect discrimination. Direct and indirect

discrimination regarding working hours, temporary employees and age are only permitted if such discrimination can be justified objectively. This means that the difference in treatment must be justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Burden of Proof

If an employee believes that they have been a victim of discrimination, they must demonstrate that the discrimination was based on prohibited grounds. The employer must prove that no discrimination took place or that the discrimination can be justified by an objective goal and the means applied to achieve that goal were justified, proportionate and necessary.

9. Dispute Resolution

9.1 Judicial Procedures

Employment Law Proceedings

Legal disputes that arise from an employment relationship are resolved before the competent sub-district court (*kantonrechter*) at first instance, but can be appealed before the competent Court of Appeal (*gerechtshof*). The case may subsequently be referred to the Supreme Court (*Hoge Raad*), but only on a point of law.

If the parties have not agreed on which court is competent, the court in the district where the work is usually carried out shall be declared competent. Sub-district court judges hear cases on their own, but appeal cases are heard by a multi-judge panel.

Contrary to appeal proceedings, the parties are not obliged to be represented by a lawyer before the sub-district court.

With respect to employee participation law (ie, the Works Councils Act), some claims have to be filed with the Netherlands Enterprise Court at the Amsterdam Court of Appeal (*Ondernemingskamer*).

Class Action Claims

A provision of the DCC makes it possible for an interest group to seek a declaratory judgment stating that a party acted unlawfully by causing mass damage – ie, the so-called collective action. If liability is established and the parties cannot agree on compensation for the damage caused, the extent of the (individual) compensation must be decided in a separate procedure.

9.2 Alternative Dispute Resolution

According to Dutch employment law, arbitration may be used in employment disputes, although this process has not often been used. Pre-dispute arbitration agreements are enforceable. However, the condition for arbitration is that both parties must agree to submit the case to the arbitration court. If only one party applies to the court, it is up to the court to examine whether the other party is prepared to co-operate in the arbitration procedure.

If this is the case, the application is, as it were, a bilateral one and the arbitration proceedings can commence. If the other party is not willing to co-operate in the arbitration proceedings, the applicant will still have to initiate regular proceedings.

9.3 Awarding Attorney's Fees

The general principle is that each party bears its own attorney fees, regardless of who wins the case. Thus, if an employee loses a court case against the employer, they must bear their own costs but not the employer's costs. Equally, an employee will not usually be entitled to recover legal fees if they win.

However, the judge decides who has to pay the costs of the proceedings and may order the losing party to compensate the counterparty for

court and attorney fees. The attorney fees are determined on the basis of fixed rates that are generally (much) lower than the actual legal fees for the proceeding.

Loyens & Loeff has an employment and benefits practice group that is best known for its integrated and solution-oriented approach to employment law. The group covers the full spectrum of employment law, including pension law, social security, employment taxes and immigration law. With a total of around 50 experts (firmwide), the firm has one of the largest employment teams in Benelux, and stands out in the market for the integrated approach of employment lawyers and tax advisers. If offers expert knowledge on complex employment issues, including high-profile dismissals, top management contracts and compensation, restructurings and collective dismissals, international mobility and cross-border issues, and the employment aspects of M&A deals. Clients include Athora, BNP Paribas, Euronext, EY, FrieslandCampina and Nouryon.

Authors

Klaas Wiersma co-heads Loyens & Loeff's employment and benefits practice group in the Netherlands and has over 20 years of all-round experience in employment law, with a particular focus on the employment aspects of (mostly international) M&A deals, co-determination procedures, restructurings and collective dismissals, and cross-border employment. He has a strong reputation as an employment specialist for highly sensitive matters. He regularly advises and litigates on the dismissal of executive-level management, and has expert knowledge in management and employee participation structures. Klaas frequently speaks at seminars and courses designed for attorneys, and regularly publishes articles in the employment case law journals.

Maureen te Poel is a counsel in the Loyens & Loeff employment and benefits practice group in the Netherlands. She has over 24 years of experience as a lawyer and has been focusing on all-round employment law, particularly the employment aspects of M&A deals and restructurings, co-determination procedures, remuneration and participation structures. She has expert knowledge on employment law in specific sectors, including remuneration regulations in the healthcare and financial sector. Maureen is a frequent speaker at employment law seminars, teaches on courses designed for attorneys, and is the co-author of a handbook on labour law and a book on compliance in the healthcare sector.

Laurie Kuijpers is a senior associate in the employment and benefits practice group at Loyens & Loeff in the Netherlands. She has ten years of all-round experience in employment law, focusing on employee representation procedures, remuneration, collective dismissals, dismissals of managing directors and top management and the employment and pension law aspects of M&A deals and restructurings. As the head of the pensions team, Laurie is an expert in the field of pensions law and regularly advises and litigates on high-profile and contentious pension matters. She regularly publishes articles on employment and pension law matters in professional journals.

Youssef el Harchaoui is a senior associate in Loyens & Loeff's employment and benefits practice group in the Netherlands. He has nine years' experience in advising on all-round employment law, with a particular focus on the employment law aspects of M&A deals and restructurings, employee representation procedures and dismissals of managing directors and other top management. Youssef has gained vast experience in both sensitive and high-profile employment cases. He regularly (co)publishes articles and comments in various employment case law journals, and also presents at client seminars.

Loyens & Loeff

Parnassusweg 300
1081 LC Amsterdam
The Netherlands

Tel: +31 20 578 57 85
Fax: +31 20 578 58 00
Email: klaas.wiersma@loyensloeff.com
Web: www.loyensloeff.com

Trends and Developments

Contributed by:
Klaas Wiersma, Maureen te Poel, Youssef el Harchaoui and Laurie Kuijpers
Loyens & Loeff **see p.25**

Modernisation of the Dutch Labour Market

Introduction

On 5 July 2022, the Dutch Minister of Social Affairs and Employment published a letter called "general guidelines for the labour market" (*hoofdlijnen arbeidsmarkt*), in which she announced her plans to make the Dutch labour market future-proof and a legislative review in 2023.

With the reform of the Dutch labour market through a broad labour market package, the Dutch government aims to strike a proper balance. The report of the Borstlap Committee and the "Security for people, an agile economy and recovery of society" advice from the Social and Economic Council (SER) of June 2021 serve as a guideline.

In the context of making the Dutch labour market future-proof, the government identifies five main themes in the letter:

- the promotion of long-term employment relationships within agile companies and improved regulation on fixed term employment contracts and triangular relationships;
- a level playing field for employees and self-employed workers, including clearer rules and the implementation of better monitoring and enforcement thereof;
- the certainty of new employment – the government wants to give people who do not have a job or who (have to) change jobs the certainty that there is always an outlook on new employment;
- the adjustment of the legislation concerning incapacity for work – the government wants to improve the labour participation and position of people who are incapacitated for work; and
- participation as a foundation of the labour market – everyone in the Netherlands deserves a good living and should be able to participate.

All five themes are laid down in concrete measures that the government intends to implement. This article is restricted to the main topics of the first and second theme, as these will entail significant changes for Dutch employment law.

The Government's Vision on the Reform of the Dutch Labour Market

The government observes that the general level of prosperity is under pressure. The current organisation of the labour market no longer automatically leads to the socially desired results, partly due to trends such as technological developments, globalisation, the aging population and people's changing preferences for work. These developments involve shifts in employment between sectors and changes in the nature and content of work. The government recognises that these developments will not be reversed by themselves and that it must take measures to reform the labour market and make it more future-proof.

The government finds it important to create rules around work that provide more security for people and at the same time continue to ensure sufficient manoeuvrability for companies. Moreover, without reforming the labour market, the government fears that tensions in society will increase. Inequality of opportunity is increasing, as vulnerable groups of employees are facing

the negative consequences of precarious work and flexible employment contracts.

Measures to Promote Long-term Employment Relationships Within Agile Companies and Improved Regulation on Fixed-Term Employment Contracts and Triangular Relationships

The government embraces the earlier advice of the SER that structural work should, in principle, take place on the basis of a permanent employment contract. That is not to say that the Dutch labour market will no longer offer options for flexibility, but rather that such flexibility may not account for the certainty required by employees. The government notes that there is a dichotomy in the labour market between so-called "insiders" with an employment contract for an indefinite period of time and so-called "outsiders" with a flexible employment relationship.

In 2021, about 28% of the workforce worked in a flexible employment relationship (2.6 million employees). Workers with a flexible employment relationship have a weaker position on the labour market. Therefore, the government is working to reform topics such as on-call contracts, the chain-rule and agency contracts. In short, this concerns the following measures, among others.

Abolition of on-call contracts

The government indicates that it wants to abolish on-call contracts in their current form. There will be an exception for students, which still has to be worked out in more detail. The abolition of on-call contracts means that zero hours contracts and min-max contracts in their current form will no longer be permitted, and will be replaced by a so-called "basic contract". This basic contract will be worked out in more detail with the social partners (eg, trade unions and employers' organisations). With the introduction of a basic contract, the government wants to increase income security for employees.

Provisions on succession of fixed-term employment contracts (the chain-rule)

Currently, three fixed-term employment contracts may be entered into during a maximum period of three years (the so-called chain-rule as laid down in Article 7:668a of the Dutch Civil Code). An employee may be out of service for six months and then be re-employed by the same employer for a fixed period (again starting three fixed-term contracts in a period of three years). The government intends to abolish this six-month interruption period in order to diminish abuse of the chain-rule. However, the government will work out an administrative expiry period. There will be an exception for students (the interruption period of six months will continue to apply). Furthermore, the government is considering a separate regulation for the interruption period for seasonal work.

Agency contracts

Several measures are being considered with respect to agency contracts, with the most important being that the government intends to introduce a compulsory certification system for posting workers (*terbeschikkingstelling*) on the labour market. On 14 July 2022, the internet consultation on the compulsory certification system for posting workers was started, with a bill entitled "Amendment of the Placement of Personnel by Intermediaries Act in connection with the introduction of a compulsory certification system for posting workers". The intended date of entry into force of the bill is 1 January 2025.

Employment Committee

Under current Dutch employment laws, employees themselves must take action if employers do not comply with the rules. Vulnerable employees, such as migrant workers, often do not go to court themselves (eg, due to high costs). The government intends to set up an Employment Committee (*Arbeidscommissie*) for these vulnerable employees to ensure better enforcement of

employment rights. This proposal will be worked out in more detail.

Long-term employment relationships within agile companies

The government aims to take further decisions on measures that should promote employership while simultaneously improving/safeguarding the agility of companies. The letter mentions the following measures in this respect:

- promoting "job-to-job" transition in case of the termination of the employment contract; and
- the introduction of a part-time unemployment benefit scheme (*deeltijd WW-uitkering*), which should enable employers to temporarily reduce the number of working hours of an employee while leaving the employment contract intact. The employees can be compensated for these reduced working hours through the part-time unemployment benefit scheme.

It should be noted that these measures will encounter implementation problems, and further research is needed in the coming period.

A level playing field for employees and self-employed workers

In the Netherlands, many workers are self-employed; also, from an international perspective, the Netherlands has a relatively high number of self-employed persons on the labour market. However, a large number of these self-employed workers should be re-qualified as regular employees (with corresponding protection), according to the applicable rules.

The government finds this situation very undesirable and aims to effect a level playing field for employees and self-employed workers by taking three separate steps, as follows.

- There should be a level playing field with regard to contract types, both from a tax perspective and in terms of social security. In that respect, the government is (for example) preparing a disability insurance for self-employed workers and aims to phase out the self-employed tax deduction (tax advantage). In addition, the Bill on the Future of Pensions proposes measures to better facilitate self-employed workers in the accrual of pensions. Finally, the government acknowledges that certain groups of (vulnerable) self-employed workers and platform workers may benefit from collective bargaining, which can help strengthen the position of these groups and achieve better terms and conditions of employment.
- The government aims to create more clarity regarding the question of qualification – ie, when does one work on the basis of an employment contract and when does one qualify as a self-employed worker. It aims to support those who want to claim their position as an employee.
- The government intends to take measures to be able to better monitor and enforce pseudo-self-employment (*schijnzelfstandigheid*).

Final Remarks

The letter of the Minister includes a clear explanation of the direction (and measures) the government intends to take in order to make the Dutch labour market future-proof. Such measures will have to be worked out in more detail, in consultation with the social partners where necessary. In its letter, the government states that it will inform the House of Representatives of its progress in the autumn of 2022. The legislative proposals of these measures are expected to be submitted to the House of Representatives from the first quarter of 2023 onwards. 2023 promises to be an interesting year in terms of employment law.

Contributed by: Klaas Wiersma, Maureen te Poel, Youssef el Harchaoui and Laurie Kuijpers, **Loyens & Loeff**

Loyens & Loeff has an employment and benefits practice group that is best known for its integrated and solution-oriented approach to employment law. The group covers the full spectrum of employment law, including pension law, social security, employment taxes and immigration law. With a total of around 50 experts (firmwide), the firm has one of the largest employment teams in Benelux, and stands out in the market for the integrated approach of employment lawyers and tax advisers. If offers expert knowledge on complex employment issues, including high-profile dismissals, top management contracts and compensation, restructurings and collective dismissals, international mobility and cross-border issues, and the employment aspects of M&A deals. Clients include Athora, BNP Paribas, Euronext, EY, FrieslandCampina and Nouryon.

Authors

Klaas Wiersma co-heads Loyens & Loeff's employment and benefits practice group in the Netherlands and has over 20 years of all-round experience in employment law, with a particular focus on the employment aspects of (mostly international) M&A deals, co-determination procedures, restructurings and collective dismissals, and cross-border employment. He has a strong reputation as an employment specialist for highly sensitive matters. He regularly advises and litigates on the dismissal of executive-level management, and has expert knowledge in management and employee participation structures. Klaas frequently speaks at seminars and courses designed for attorneys, and regularly publishes articles in the employment case law journals.

Maureen te Poel is a counsel in the Loyens & Loeff employment and benefits practice group in the Netherlands. She has over 24 years of experience as a lawyer and has been focusing on all-round employment law, particularly the employment aspects of M&A deals and restructurings, co-determination procedures, remuneration and participation structures. She has expert knowledge on employment law in specific sectors, including remuneration regulations in the healthcare and financial sector. Maureen is a frequent speaker at employment law seminars, teaches on courses designed for attorneys, and is the co-author of a handbook on labour law and a book on compliance in the healthcare sector.

Youssef el Harchaoui is a senior associate in Loyens & Loeff's employment and benefits practice group in the Netherlands. He has nine years' experience in advising on all-round employment law, with a particular focus on the employment law aspects of M&A deals and restructurings, employee representation procedures and dismissals of managing directors and other top management. Youssef has gained vast experience in both sensitive and high-profile employment cases. He regularly (co)publishes articles and comments in various employment case law journals, and also presents at client seminars.

Laurie Kuijpers is a senior associate in the employment and benefits practice group at Loyens & Loeff in the Netherlands. She has ten years of all-round experience in employment law, focusing on employee representation procedures, remuneration, collective dismissals, dismissals of managing directors and top management and the employment and pension law aspects of M&A deals and restructurings. As the head of the pensions team, Laurie is an expert in the field of pensions law and regularly advises and litigates on high-profile and contentious pension matters. She regularly publishes articles on employment and pension law matters in professional journals.

Loyens & Loeff

Parnassusweg 300
1081 LC Amsterdam
The Netherlands

Tel: +31 20 578 57 85
Fax: +31 20 578 58 00
Email: klaas.wiersma@loyensloeff.com
Web: www.loyensloeff.com

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com