

Coronavirus

Q&A



Employment

1. What measures does the government recommend to avoid spreading the coronavirus?

The last days additional more far-reaching measures have been announced. Important measures are: everyone in the Netherlands must stay at home in case of complaints of rhinitis, coughing, sore throat or fever. Social contacts must be avoided. Furthermore, everyone in the Netherlands is called upon to work from home as much as possible or to spread their working hours. As of March 16 until the 6th of April all schools (including childcare centers and universities) are closed. The same applies to restaurants (excluding take-away), pubs and sport clubs. Meetings with more than 100 people must be cancelled. In addition everyone is asked to stop shaking hands and to keep a distance of 1,5 meters from each other where possible.

2. Can an employer prohibit employees to travel abroad?

On 17 March 2020, the Government announced that until 6 April 2020 all holiday trips abroad are advised against. Only if it is strictly necessary, Dutch citizens should travel outside the borders. This question is therefore less relevant at the moment, but may arise again after 6 April 2020.

Employers must take proportionate action to protect employees from infection with the coronavirus, which may include cancelling business trips to destinations where governments and insurance guidelines advise not to travel to. Though they may advise against it, employers are not allowed to prohibit employees from travelling abroad in their private life. This being said, an employer has a legitimate aim to protect all its staff and – as indicated under question 3 – may ask its employees to notify them if the employee travelled abroad.

3. Can an employer require employees to tell whether they have travelled abroad?

On the basis of the Dutch Civil Code (DCC) an employer may instruct its employees to notify the employer of any trips made abroad. However, if the employee fails to mention a stay abroad, the employer cannot impose any sanction unless the employer can prove that the employee acted in violation of a specific policy.

From a privacy perspective, it is worth noting that simply asking for the information *without* documenting the answers, is not subject to the applicable privacy laws in the Netherlands. Privacy requirements (including the General Data Protection Regulation (**GDPR**)) only become relevant when the employer decides to record, document, store, share or otherwise process the obtained information about travel destinations. Employers will then at least need to take the following into account:

- There should be a real need to document and process the information (for example because the size or nature of the organization requires that the obtained information is documented to be able to keep track of possible risks, or because the employer would be required to provide travel information to government agencies or health care providers).
- There is an overriding legitimate interest of either the employer itself or of (other) employees within the company to process the travel related information. For example where documenting the information is needed to be able to decide on preventive measures, to protect other employees within the organization, or for good employment practices.
- It is not required to ask for the employees' consent for collecting the required information and employers should refrain from doing so.

- Employers need to inform their employees (prior to collecting the information) about the fact that they will document, record or otherwise process the information and for what purposes they will do so. If the information will be shared with third parties, the employees need to be informed thereof as well.

4. Can an employer ask its employees questions about any corona related symptoms or diagnoses?

The GDPR does in general not prohibit an employer from asking such questions. Furthermore, the GDPR does not apply when the employer is only collecting information orally (without the intention to document it). Privacy related restrictions will however apply if the employer decides to record, document, store, share or otherwise process the obtained information about symptoms or diagnoses. Such information is sensitive, health related, data and under the GDPR, it is in principle prohibited to process such data. In the Netherlands, an exception to this prohibition applies for employers who have compelling business reasons to process health related personal data of their employees for the purpose of (in short) the prevention of health damage or to protect public health (for example if there is a real risk of an employee infecting others with the coronavirus).

5. Can an employer screen its employees for fever and/or oblige the employee to go to the (company) doctor before allowing them in the office?

The Dutch Data Protection Authority indicated on its [website](#) that employers should not take on the role of a (company) doctor (themselves) by drawing conclusions on individual employees, for instance based on their travel details or by asking their employees to take their temperature.

However, given that the employer has an obligation to take reasonable measures to ensure the health and safety of its employees, and also taking into account good-employership, we believe that it is a legitimate requirement to ask employees to visit the company doctor to have their temperature taken in case there is a direct threat of a coronavirus infection at the workplace (e.g. the employee has visited a coronavirus affected area or has had close contact with a person affected with the coronavirus). This will particularly be the case in the event that an employer has compelling business reasons to have established whether or not an employee has the coronavirus (e.g. to protect public health if an employee works in the healthcare sector).

An employee may refuse to be examined if he/she is of the opinion that such a test is an invasion of privacy. The request not to enter the company premises can be considered a justified work instruction.

To avoid that privacy requirements become applicable, the employer should in any event refrain from documenting or otherwise processing personal data of its employees in this context, including the results of the screening and information about doctors' visits.

6. Can the employer notify its staff about a co-worker who has been diagnosed with the coronavirus?

On the basis of the Working Conditions Act (*Arbeidsomstandighedenwet*), the employer is obliged to ensure that workers are informed effectively of the work to be carried out, the risks arising therefrom, and of the measures intended to prevent or reduce such risks. When evaluating whether and how to notify other employees about an ill co-worker, employers should take due consideration of applicable privacy requirements. The employer should for example only notify its staff about the illness if there is a real risk of infection and even then, the employer should share as limited details of the co-worker as possible. Only in very exceptional cases it may be permitted to disclose the co-worker's name.

7. Can the employer send employees home if they show coronavirus-like symptoms and if so, must the employer continue remuneration for sick leave?

The government has called on all Dutch citizens to work from home as much as possible until 6 April 2020. If working from home is not possible, the following applies.

If an employee displays coronavirus-like symptoms, the employer may send the employee to the company doctor to establish whether the employee is indeed sick. If the employee is indeed sick, the employer may, on the grounds of being a good employer, demand that the employee stays at home until the company doctor has confirmed that the employee has recovered. An important legitimisation is that the employer is also responsible to protect the wellbeing of its entire staff.

Employees (that work from home or at the office) affected by the coronavirus outbreak will have the same protection as any sick worker. For Dutch employees this means that their salary must be continued for a maximum of 104 weeks. The salary due depends on what parties have agreed upon, but is at least 70% of the employee's gross monthly wage, capped at the maximum daily wage.

8. Must the employer continue to pay remuneration to employees who cannot work at home and who have been put in quarantine?

In case the employer instructs the employee to stay at home after traveling abroad, then this is in any event a circumstance which should be attributed to the employer and the remuneration of the quarantined employee should be continued. However, the employer may consider putting in place policies which provide that where personal holidays abroad are booked, any subsequent 14-day isolation period should, to the extent possible, be taken as annual leave. This approach would need to be handled with caution.

9. Our worksite is closed but our employees cannot work from home. Can we force them to take (unpaid) leave?

The employee who has to work from home, but cannot work from home due to the fact that the employer cannot provide the employee with the technical means to work from home or due to the nature of work, will in principle be entitled to his/her regular (full) salary and cannot be obliged/forced to take (unpaid) leave.

10. Is it legal to put people in forced holidays?

Under Dutch law it is not possible to oblige/force employees to take days holiday. In these unique times, the employer may however try to agree with employees (individually) that a small number of holidays will be taken. This approach would need to be handled with caution.

11. Schools are closing. Is an employee entitled to leave to arrange childcare?

The Dutch Work and Care Act (article 4:1) provides for contingency- and other short-term leave of absence (*calamiteiten- en ander kort verzuimverlof*). The employee is entitled to paid leave for a short period of time, to be calculated in an equitable manner, if he/she is unable to perform his/her work due to (amongst others) unforeseen circumstances which require immediate interruption of work. Meaning situations which require the employee to take leave - a few hours to a few days - without delay in order to take the necessary measures. The measure taken by the government on 15 March to close the schools (including childcare centers) as of 16 March can be seen as such an unforeseen circumstance. The employee could take contingency leave to arrange for childcare. The employee who takes this leave of absence must - if possible - inform the employer of this in advance, stating the reason. These are unique times in which more flexibility can be expected from the employer. The employee is entitled to his/her regular (full) salary. It is advisable to check whether other or additional agreements have been made in this respect.

If the employee is not able to find childcare during the granted short-term leave of absence and therefore needs to take care of his/her child himself/herself, the employee is entitled to long-term unpaid care leave (*langdurend zorgverlof*) (article 5:9 of the Dutch Work and Care Act). In this case it must concern a child who actually needs care, e.g. a small child or a child with a (serious) mental or physical disability. Duration: in a period of 12 months: a maximum of six times the working hours per week (i.e. a full-time employee is entitled to a maximum of 30 days per year). The employer is not required to continue to pay the employee's salary (unless other arrangements have been made).

12. An employee's partner has been diagnosed with the coronavirus. Is the employee entitled to (paid) care leave?

The employee is entitled to short-term paid care leave (*kortdurend zorgverlof*) in case the employee needs to take care of his/her ill child, spouse or partner (article 5:1 of the Dutch Work and Care Act). Duration: in a period of 12 months: a maximum of twice the working hours per week (i.e. a full-time employee is entitled to a maximum of 10 days per year). The employer has to continue payment of 70% of the employee's gross salary (unless other arrangements have been made).

13. One of my associates works from home and missed an important deadline. Can I discipline him?

This is a time where the employer needs to provide flexibility to its associates. If an associate is required to work from home, the manager should work to understand what meetings and deadlines may be impacted and, if appropriate, either reassign the work to another associate or look for other alternatives to address the situation.

14. An employee has asked to work from home because he is afraid of contracting coronavirus at the office. What can I do? Can I discipline him if he refuses to come to the office?

Given the new measures, employers should, as far as possible, give employees the opportunity to work from home. As a result hereof, an employer must have very good reasons to require an employee to come to the office and disciplinary measures will not soon be deemed appropriate. This could be different in case the employee has a profession that must keep our society running during the corona outbreak (e.g. in the field of healthcare, public transport, food chain, emergency assistance).

In case an employer has taken all reasonable measures to provide for the health and safety of its employees, including the measures advised by the National Institute for Public Health and the Environment (RIVM), and there is no opportunity to work from home, an employer can in principle legally require an employee to attend the workplace and in such case, non-attendance can in principle be sanctioned with appropriate disciplinary measures. Furthermore it is advisable to discuss with the company doctor where employees with delicate a health situation should perform their work.

15. What general health and safety requirements should employers observe in the wake of the coronavirus outbreak and can any preventive measures be taken?

The Working Conditions Act and the employer's general duty of care towards employees requires employers to provide a safe working environment for employees which includes protection against infectious diseases.

It also follows from the Working Conditions Act that the employer should take specific measures with respect to specific threats to the health of its employees, such as strengthened hygiene rules (i.e. good ventilation, providing hand soap and face masks when necessary etc.). It is in any event recommended to consult the company doctor and/or arbo-service (*arbodienst*) regarding appropriate company specific measures. In addition the employer could consider more general measures such as promoting teleworking, limiting unnecessary meetings and travel, eliminating business trips abroad or modifying the workplace of workers at risk in order to protect the company's staff.

16. Can I require my employees to wear protective gear?

In general, the employer should provide for a safe working environment, and provide the necessary personal protection equipment. The employee has the obligation to follow the instructions of the employer and wear the personal protection equipment provided to him/her, unless other measures can be taken by the employer to provide for a safe working environment. The RIVM only recommends (face) masks for medical personnel and does not recommend (face) masks for others because according to the RIVM a (face) mask only helps if the person uses a special mask that closes very well over the nose and mouth. The mask needs to be used very precisely and should be changed regularly. This is almost impossible in daily use according to the RIVM. It is also important to note that there is currently an acute shortage of face masks and other protective equipment. Given the aforementioned, in general a company cannot legally mandate wearing a mask.

17. Can the employer prohibit the wearing of masks?

The employer could in principle not prohibit employees wearing a (face) mask, but given the RIVM's position explained above, the employer could discourage wearing it (assuming it does not concern medical personnel).

18. Is it still possible to apply for a reduction of working hours?

Effective immediately a new regulation (*Tijdelijke Noodmaatregel Overbrugging voor Werkbehoud*) will replace the current reduction of working hours scheme.

Businesses expecting a loss of turnover of at least 20% with effect per 1 March 2020 can apply to the UWV for a wage allowance (hereafter: the **Wage Subsidy**), that compensates wage costs (up to a maximum of 90% of the wage costs, the actual percentage depending on the loss of turnover) for a period of three months with the possibility to prolong for another three months (hereafter: the **Subsidy Period**).

The Wage Subsidy is related to the expected loss of turnover. The following examples have been provided:

- loss of turnover 100% → Wage Subsidy: 90% of the wage costs;
- loss of turnover 50% → Wage Subsidy: 45% of the wage costs;
- loss of turnover 25% → Wage Subsidy: 22.5% of the wage costs.

At this stage it is not yet clear whether the Wage Subsidy will be limited to the maximum daily wage which the UWV always applies when providing social security benefits to (former) employees, such as unemployment benefits and long-term illness benefits. The maximum daily wage currently amounts EUR 219.28 per day or EUR 4,769.34 per month.

If a business already applied for the reduction of working hours scheme, this application will automatically be regarded as an application for the Wage Subsidy. These businesses will be asked to provide additional information.

The UWV will provide an advance payment of 80% of the requested Wage Subsidy which enables businesses to continue the salary payments to their employees, subject to the declaration that no employees will be dismissed for economic reasons during the Subsidy Period.

The Wage Subsidy can also be requested with regard to temporary employees, provided that they will also remain employed during the Subsidy Period. Temporary employment agencies can also apply for the Wage Subsidy. For larger requests, an auditor's report will be necessary.

19. What if I already applied for reduction of the working hours of my employees?

Requests for a permit for a reduction of working hours that have already been submitted will be considered as applications for the new Wage Subsidy; however, it should be taken into account that the government will request additional information from the applicants.

20. Any further questions?

Should you have any additional employment law questions relating to the coronavirus, please contact Hermine Voûte, Klaas Wiersma, or your regular contact of our Employment & Benefits team.

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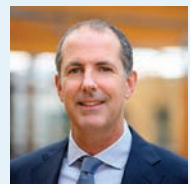


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Pensions

1. Does the new regulation (*Tijdelijke Noodmaatregel Overbrugging voor Werkbehoud*) have an impact on the pension accrual of the employees?

The answer is: no. On 17 March 2020, the Dutch government announced that the reduction of working hours regulation (*werktijdverkorting*) will be replaced with a new regulation (*Tijdelijke Noodmaatregel Overbrugging voor Werkbehoud*). Under this new regulation employers can apply for a wage allowance that compensates the wage costs up to the maximum of 90% (depending on the loss of turnover) for a period of three months, up to six months maximum. It is up to the employer to decide whether the employees will work less during this period. In any event, the employees remain entitled to 100% of their current gross salary and do not have to make use of unemployment benefits. Consequently, the new regulation does not affect the pension accrual during this period. The employees remain entitled to their regular pension accrual.

2. Can employers decide to stop or postpone the payment of pension premiums?

This question is not easy to answer as it depends on the conditions as included in the administration agreement with the pension provider. The corona situation can be qualified as a *force majeure*, but every pension provider uses different terms and conditions in such instances. It is recommended to carefully read the terms and conditions for stopping or postponing the payment of the pension premiums before acting. Furthermore, it is advisable to contact the pension provider and ask for an arrangement. In the event the employer (mandatorily) participates in a mandatory industry-wide pension fund, the non-payment of pension premiums by employers does not affect the pension entitlements of the employees. This may be different in the situation that an employer has a(n) (voluntary) insured pension scheme.

3. Can survivors claim spouses' and/or orphans' pension in case of the death of a participant due to the coronavirus?

The fact that a person dies as a result of the coronavirus does in principle not have any adverse consequences for the entitlement of survivors' pension (spouses' and orphans' pension) that has been accrued for under a pension scheme. Together with the *Verbond voor Verzekeraars* we expect that pension providers will pay out survivors' pension in case a participant of the pension scheme dies due to the coronavirus. We also expect this not to be different in the event a participant has travelled to an affected area.

4. Is the participant still insured for disability risks under the pension scheme?

Pension schemes commonly provide for the option of continuation of non-contributory pension accrual in case of disability (*premievrije voortzetting bij arbeidsongeschiktheid*) of a participant. In case a participant becomes sick as a result of the coronavirus we do expect that the participant is still entitled to all disability benefits under the pension scheme, regardless of the fact that the participant has or has not been travelled to an affected area.

5. Any further questions?

Should you have any pension related questions relating to the coronavirus, please contact our Pensions team, Laurie Kuijpers or Bas Dieleman, or your regular contact of our Employment & Benefits team.

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Tax

1. What measures are taking with respect to unemployment insurance contribution?

Per 1 January 2020, the lower unemployment insurance contribution is due by the employer for employees with an employment agreement for an indefinite period if the employment agreement has been captured on paper and has been signed by employer and employee. With regard to employees who were already employed for an indefinite period per 31 December 2019, the lower unemployment insurance contribution is due, if the employment agreement of these employees is captured on paper before 1 April 2020. The government extended this deadline to 1 July 2020.

Additionally, the government will introduce a relief for cases in which employees with an employment agreement for an indefinite period will make more than 30% overtime due to the coronavirus (e.g. employees in the health care sector who are required to work more hours). Without this relief, the higher unemployment insurance contribution would be due by employees with retroactive effect. The government now approves for the lower contribution to apply during 2020.

2. What measures are taken with respect to deferral of tax payment obligations and revision of provisional assessments?

The special deferral of tax payment and the revision of provisional tax assessments are existing arrangements of which the application will be temporarily simplified. In addition, these measures are boosted due to the simultaneously announced reduction of both the recovery interest and the tax interest from rates of 4% and 8% respectively to a rate of 0.01% on an annual basis.

Special deferral of tax payment obligations

Businesses facing liquidity issues as a result of the coronavirus impact, can request a special deferral of payment obligations for corporate income tax, personal income tax, wage tax, value added tax and excise duties.

The taxpayer needs to file a written request with the Dutch Tax Administration explaining in what manner the coronavirus resulted in the payment inability. In principle, a third party expert should substantiate in a statement that:

1. there is an existing liquidity issue;
2. of a temporary nature;
3. which will be solved at a certain point in time; and
4. that the business enterprise concerned remains viable.

Changes for these requirements cannot be ruled out.

A third party expert can be an external consultant, an external financing party, a sector organization, or the accountant or financial adviser of the taxpayer. Such third party statement does not need to be filed at the same time as the request, but may be submitted separately at a later stage. According to the website of the Dutch Revenue Service, extension will in any case be granted for a period of three months without the statement being submitted. For further extension, the third party expert statement still appears to be required. The government will grant deferral upon receipt of the request, the substantive review will take place later.

We like to note that if extension for payment is requested, it should be considered to also file a notification of 'inability to pay' (*melding van betalingsonmacht*) to reduce the risk of director's liability. This notification must be submitted within two weeks after the final date on which the payment of the wage tax return should have been made.

Reduction recovery interest rate to 0.01%

The recovery interest rate will be reduced from 4% to 0.01% on an annual basis. This measure will take effect on 23 March 2020 and will apply to all taxes due.

No payment default penalty

The authorities will not impose penalties for not paying taxes in time. Imposed penalties for late payments will be reversed.

Revised provisional 2020 tax assessments

Businesses that expect a lower or higher taxable profit for 2020 due to the coronavirus impact can request a revised provisional corporate or personal income tax assessment for 2020. A refund will be provided if the revised tax assessment is lower than the taxes that have already been paid in the first months of 2020.

Reduction tax interest rate to 0.01%

The tax interest rate will be reduced to 0.01% on an annual basis (currently 8% for corporate income tax and 4% for other taxes). As a result, the risk of tax interest due to a misjudged estimate of the expected taxable profit should be remote. The temporary rate reduction will be effective as of 1 June 2020 for all taxes except for personal income tax, for which it will be effective as of 1 July 2020.

3. Any further questions?

Should you have any tax related questions relating to the coronavirus, please contact Hans van Ruiten, Jan Bart Schober or your regular contact of our Employment & Benefits team.

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