

The Dutch Balanced Employment Market Act and other developments in Dutch Employment Law

February 12, 2019

The Dutch House of Representatives adopted the Balanced Employment Market Act (“WAB”) on Tuesday February 5. Now that the House of Representatives has passed the WAB, the bill will go to the Senate. If the Senate also passes the bill, the changes will take effect from January 1, 2020.

According to the Ministry of Social Affairs and Employment, the WAB forms part of a broader package of measures designed to improve the balance in the employment market. These include reducing the gap between permanent contracts and flexible working. To achieve this, the current law is being adapted on several points, including the provisions on a succession of fixed-term employment contracts, changes to the calculation of severance payments and the introduction of a cumulation ground for dismissal.

It became apparent recently - during the plenary debate on the WAB - that a majority of the House of Representatives was opposed to the plan to allow a probationary period of five months. This measure was therefore not passed, along with the plan to allow a probationary period of three months for temporary contracts for longer than two years.

The proposed changes to be introduced by the WAB:

- The period after which a succession of fixed-term employment contracts is automatically converted into a permanent employment contract (the ‘ketenregeling’) will revert to three years. The maximum number of fixed-term employment contracts will stay at three: if the employment contract continues after this, it will be a permanent employment contract, even if the three-year period specified for this has not yet elapsed.
- Changes to the calculation of the transition payment. For example:
 - Abolition of the two-year period before an employee qualifies for the transition payment. Soon, an employee will be entitled to this from the start of the employment contract.
 - The employer will soon have to calculate the transition allowance over the actual period of the employment contract. The payment will no longer be rounded to the nearest half-year’s service.
 - The transition payment will amount to one third of the monthly salary per year of service. The higher payment currently applying after ten years’ service will be abolished.
- Introduction of the cumulation ground for dismissal. Employers will soon be able to combine several grounds for dismissal and it will be easier for employers to dismiss employees (the ‘i ground’). However, if the employer dismisses an employee based on this ground, the court may award the employee an extra payment (in addition to the statutory transition payment and any fair compensation for dismissal) of a maximum of half of the statutory transition payment.
- The Act contains a new definition: the “on-call contract”. Once an on-call contract has been in force for one year,

the employer must offer the employee a contract of employment. This offer will be based on the average hours worked during the previous twelve months. Soon, the employer will also have to call up an on-call worker at least four days in advance (it is possible to deviate from this where there is a collective agreement).

- Changes to the rules for payrollers. Payroll workers will be entitled to the same terms of employment as employees of the client, as well as an “adequate” pension scheme.
- Changes to the unemployment insurance contribution. Employers will pay a lower unemployment insurance contribution for employees with a permanent contract (with specified working hours) and a higher unemployment insurance contribution for employees with a temporary contract. For the purposes of the differentiation of contributions, the higher contribution does not apply to contracts for young people aged under 21 who work for up to twelve hours a week;
- As from July 1, 2019, employees aged 21 or over will be entitled to the full minimum wage. The minimum wage for 18, 19 and 20-year-olds will also increase.

Further expected developments

- The government is also committed to tackling bogus self-employment. In 2019, the government is working on measures to replace the Dutch Assessment of Employment Relationships (Deregulation) Act (“DBA”), to combat bogus self-employment and competition on employee benefits, particularly at the lower end of the labour market. The measures are also designed to reassure self-employed persons and their clients that there is no question of an employment relationship. The enforcement of the DBA is suspended until January 1, 2020.
- The Posting of Workers Directive has been revised. Implementation of the new directive in Member States must be completed by July 30, 2020. The revised directive gives employees - after being posted for 12 months - the right to the terms of employment applying in the host country, except for the regulations regarding dismissal and supplementary pensions.
- The reporting obligation for EU service providers comes into effect in 2019. This obligation will apply to service providers from other Member States who have their employees work in the Netherlands. The expectation is that the obligation will take effect as from April 1, 2019.

We will be sure to keep you informed of future developments.

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