



## Employment law in Europe, the need-to-know guide This month – the Netherlands

By **Donall Breen** - 31 January 2018

*This is part three in a series of articles exploring the employment law regime in jurisdictions where businesses may be considering moving some of their staff post-Brexit. It is intended to provide a high-level overview of the local regime, drawing out the main legal requirements to consider. This month's focus: the Netherlands.*

**Verdict** - The stand out aspect of Dutch employment law to a UK business is the convoluted termination procedure. Many times, permission from a district court or government body will be required to give notice to an employee. There is also an automatic right to a termination payment. Further, many companies and organisations are also caught by Collective Labour Agreements. These agreements, negotiated with trade unions, can regulate labour conditions for all employees in certain sectors. If your business operates in one of these sectors you will need specific advice as to what rules will be applicable. Nonetheless, below is an overview of the basic employment law provisions of the Netherlands.

### Quick Facts

- Language - Dutch
- Legal System - Civil Law
- Currency - Euro
- Population - 17.1 million (Amsterdam - 0.82m)

### Overview - Employment Relationship

#### *Probationary periods*

During a probationary period either party can terminate without notice. Probationary periods are not allowed for agreements of less than 6 months. For agreements between six months and two years, the probationary period may be a maximum of one month. For

agreements longer than two years (including indefinite agreements), the probationary period may be two months at most. Probationary periods agreed in violation of these rules will be null and void.

#### *Contracts of employment*

The employment agreement itself is not subject to rules as to its form (oral agreements are perfectly valid). However, the employer is under the obligation to provide certain information in writing to the employee such as place of work, job title, the date the employment agreement enters into force, remuneration, working hours, terms and conditions relating to holidays, the applicability of any collective labour agreement, the non-competition clause and the probationary period.

#### *Minimum wage requirements*

The statutory minimum wage for employees aged 22 or over is €72 per day. There is a lower minimum wage for employees aged 22 and younger, which varies according to age.

#### *Holiday pay*

Besides the minimum wage, all employees are entitled to holiday pay. The statutory minimum holiday pay is 8% of the gross annual salary. If an employee's salary exceeds three times the minimum wage, the employee is not legally entitled to vacation pay on the excess amount, although the employee and the employer may agree otherwise (normally all employees receive 8% holiday pay).

#### *Overtime*

Overtime pay is not regulated under Dutch law. The question of whether overtime is payable, depends on the contractual arrangements between the parties or on a collective labour agreement if one is in place. In most cases, an applicable collective labour agreement will contain rules stating when overtime must be paid.

#### *Registration with authorities*

Before hiring an employee, an employer must register with the tax authority.

#### *Taxes and employment related charges*

On average, the total employee insurance contributions amount to approximately 10.8% of salary and is only due on income up to a certain amount per employee (€53,701 in 2017). Furthermore, the employer must pay health insurance contributions of 6.65%, also only due on incomes up to a certain amount per employee (€53,701 for 2017).

The employer must also withhold income tax and social security contributions. The Netherlands has a beneficial tax facility for qualifying employees coming from abroad to work in the Netherlands. This regime enables the employer to pay 30% of the gross salary as a tax-free allowance.

### **Overview - Termination**

#### *Dismissal law in the Netherlands*

Employment agreements can end by operation of law (agreements for a definite period of time) or by mutual consent. If parties cannot reach mutual consent about the termination of the employment agreement, it can be ended by dissolution by the court or by giving notice with prior permission of the UWV (a governmental body), depending on the reasonable ground for dismissal.

In any event, the grounds for dismissal must be well-substantiated with a detailed file.

#### *Termination with mutual consent*

Parties can terminate with mutual consent and can lay down the agreed terms and conditions in a termination agreement. A termination agreement is only valid if entered into in writing. The employee will have the option within 14 days to either withdraw consent or to dissolve the termination agreement.



## *Notice after permission of the UWV*

If the employer wishes to terminate the employment agreement because of economic reasons or for reason of long-term illness (more than 2 years), the employer must request the UWV permission to give notice to terminate the employment agreement with properly substantiated reasons. If permission is granted (usually after 6 to 8 weeks), the employer can give notice of termination.

## *Request to subdistrict court to rescind the employment agreement*

The subdistrict court is designated to review the other grounds for dismissal in termination proceedings such as:

- Frequent and disruptive sickness absence;
- Performance issues, provided the employer informs the employee in good time and takes sufficient steps to enable the employee to improve;
- Serious misbehaviour;
- Refusal to perform contractual duties; or
- Serious breakdown of the working relationship.

If properly founded, the subdistrict court then has the power to rescind the employment agreement.

## *Transitional payments*

Employees with more than two years' service and whose employment is terminated by the employer is, in principle, entitled to a transitional payment (a severance payment, based on years of service and salary). This also applies to employees with a fixed-term employment contract that is not renewed. There will be no entitlement to the transitional payment for terminations by mutual consent. Additionally, there is no entitlement to a transitional payment when the contract is terminated by the employee (save for constructive dismissal), if the employee is found guilty of gross misconduct, or if the employee has reached pensionable age. Transitional payments are capped at €77,000 or the employee's annual salary, whichever is greater.

If the termination of the employment contract was caused by serious imputable acts or omissions on the part of the employer, the court may award additional compensation to the employee.

## *Summary dismissal*

Both the employer and the employee are entitled to terminate the employment agreement with immediate effect for urgent cause (summary dismissal). Examples of urgent cause include theft, fraud, embezzlement, physical abuse, etc. If challenged, a court will ultimately determine whether urgent cause is shown. Since summary dismissal is seen as an extreme measure, courts are conservative in accepting urgent cause. If urgent cause is found, the employee is not entitled to a transitional payment.