Which issues would you most highlight to someone new to your country?

Dutch employment law can be rather complex, in particular the dismissal laws. In 2015 the Work and Security Act came into force, which radically amended Dutch dismissal and unemployment laws. The majority of the legislative changes introduced by the act came into force on July 1 2015 and aim to:

- introduce pre-determined procedures for termination which depend on the grounds for dismissal and, as such, abolish the previous system, whereby the employer was at liberty to choose between different types of procedure;
- increase income protection for employees on flexible contracts (eg, agency workers, zero-hours workers and workers on fixed-term contracts);
- reduce the disparity between permanent and fixed-term employees;
- simplify dismissal laws; and
- increase incentives for unemployed persons to seek re-employment.

Thus far, in practice the act has made the dismissal system more complex and challenging, resulting in employers focusing even more on flexible employment relationships whose termination is governed by the law in order to avoid difficult dismissal procedures with uncertain outcomes.

In addition, the status of independent contractors has been substantially affected by the introduction of the Deregulation of Assessment of Independent Contractor Status Act. This act replaced the previous system in which the ‘declaration of independent contractor’ status was used. This system was in place for about five years and offered a guarantee to the company engaging the contractor that the Dutch tax authorities considered the independent contractor an entrepreneur instead of an employee. Consequently, the company could not be held liable for payroll taxes and social security contributions. With the new act in place, both the contractor and the engaging company (principal) are responsible for assessing whether the relationship constitutes a contractor/client relationship or an employer/employee relationship and can no longer rely on a written guarantee from the tax authorities. This may result in a serious wage tax and social security premium burden for the engaging company; if so, this may also affect the legal status of the relationship.

Also, the Artificial Constructions Act came into force in three phases (the first part became effective on January 1 2016). The act envisions strengthening the legal position of employees – in particular, employees assigned to third parties – by providing the possibility for employees to claim the agreed wage from the employer’s principals if the employees do not receive this in full from the employer. As of July 1 2015, ‘chain liability’ applies to the payment of wages that have been agreed between an employer and employee. This means that if there is a chain of employers (not necessarily in the same group of companies), the employee can hold all principals in the chain liable for payment of the wage to which he or she is entitled.

As of January 1 2016, the statutory minimum wage may no longer be paid in cash. In order to avoid fraud or forgery, the part of the wage equal to the statutory minimum wage must be paid by bank transfer.

Also as of January 1 2016, it is no longer permitted to withhold expenses relating to real costs (eg, housing, work clothes and travel expenses) from the minimum wage. To promote compliance, employers are required to specify on payslips all elements which make up the wage, including expense allowances. Failure to do so could lead to a penalty being imposed by the Dutch Social Affairs and Employment Inspectorate.

Lastly, as of 2016 the state pension age will be increased from 65 in three-month steps. As of 2018, the state pension age will be increased by four months per year. In 2021 the state pension age will be 67.
The Netherlands has a thriving start-up scene. The surge of successful entrepreneurial endeavours has made the region one of Europe's hottest start-up hubs. Young, well-motivated employees want to be flexible and are open to entering into short-term contracts with less dismissal protection and high severance pay, but with much more flexibility and room for development.

Is there any general advice you would give in the employment area?

The Work and Security Act entered into force on July 1 2015 and there is still relatively little case law on dismissal grounds and severance payments under this new legislation. Therefore, foreign companies and investors are advised to engage employment counsel when employment law issues arise and in particular where dismissals of employees are envisaged.

Emerging issues/hot topics/proposals for reform

Are there any noteworthy proposals for reform in your jurisdiction?

On November 7 2016 a number of changes to the Work and Security Act were announced, within 18 months of its introduction. The bill is expected to be enacted on January 1 2018, but will have retroactive effect with regard to paid transition allowances as from July 1 2015. The bill proposes measures regarding the payment of a transition allowance in the event of dismissal for economic reasons or on the grounds of long-term incapacity for work.

The bill proposes using government funds to compensate the employer for all the costs of the transition allowance paid to long-term ill employees.

Under the current arrangement, employees are not entitled to the transition allowance if similar agreements have been made in a collective agreement or in the individual employment contract; however, the arrangement in the collective agreement must then be equivalent. Under the new scheme, the capitalised value of the arrangement under the collective agreement need no longer be equivalent to the transition allowance. Parties to a collective agreement are therefore given more flexibility. The scheme may even comprise no more than a work-to-work arrangement without any financial compensation.

What are the emerging trends in employment law in your jurisdiction?

Independent contractors and indefinite-term employees are better protected due to the entry into force of the Work and Security Act and the Deregulation of Assessment of Independent Contractor Status Act, whereas fixed-term employees are less protected.

Given that up to three contracts for a fixed term in a period of two years are allowed, and that an employee is entitled to a severance payment in the event of termination after an employment term of at least two years, employers switch from 12-month employment contracts to contracts of seven or eight months, as in such case three employment contracts can be offered which all expire by operation of the law without any severance payment being due.
What laws and regulations govern the employment relationship?

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Employment contracts are mainly governed by Book 7 of the Civil Code while the EU Rome I Regulation applies to international employment contracts with Dutch elements. Other important Dutch acts that apply include the Collective Labour Agreement Act, the Notification of Collective Redundancy Act, the Works Councils Act, the Working Conditions Act and the Unemployment Act.

Who do these cover, including categories of worker?

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The acts cover regular employees, but also temporary workers and managing directors.

Misclassification

**Are there specific rules regarding employee/contractor classification?**

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The employment contract has been defined in Section 7:610 of the Civil Code and the services contract has been defined in Section 7:400 of the Civil Code.

The essential elements for establishing an employer/employee relationship are that the employer provides the employee with remuneration in exchange for the latter personally performing work activities, subordinated to the authority of the employer. Where this occurs for the same employer every week for three months or for at least 20 hours a month, an employment contract is deemed to exist, whether or not such a contract has expressly been concluded; in the event of any dispute, it is up to the employer to prove that there is no employment contract.

A services contract is defined as an agreement whereby one party, as an independent contractor (either directly or through a company owned by him or her), agrees to perform specific services for the principal. There is no master and servant relationship between the independent contractor and its principal and there is no obligation for the independent contractor to perform his or her services personally.

Contracts

**Must an employment contract be in writing?**

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No, an employment contract may be concluded either verbally or in writing. However, the employer must inform the employee in writing of the conditions applicable to his or her employment.

Are any terms implied into employment contracts?
The employer must inform the employee in writing of at least the following conditions that apply to the employee within one month of the start of employment:

- the parties' identities and places of residence;
- the place of work;
- the function of the employee or the nature of his or her work;
- the length of the employee's normal working day or week;
- the initial base salary and any other pay components, holidays and applicable notice periods;
- the pension arrangement in place, if applicable;
- the starting date of the employment;
- the duration of the contract (if fixed term);
- the daily or weekly working hours;
- the duration of any probationary period;
- the amount of paid annual leave or how leave entitlement is calculated; and
- any collective agreement applicable to the employment.

Are mandatory arbitration/dispute resolution agreements enforceable?

Yes, subject to specific requirements; however, these are not commonly included in employment contracts.

How can employers make changes to existing employment agreements?

The terms and conditions of the employment agreement can be changed with the employee's consent or by including a unilateral change clause in the employment agreement. The employer is entitled to enforce this clause if serious circumstances arise from not changing the terms and conditions which prevail over the interests of the employee. Without such a clause in place, changing the terms will be more difficult and will require the employee's prior consent. However, when contemplating a change to the employee's terms, the employer could refer to 'the principles of acting as a good employee' and require the employee's acceptance of the employer's reasonable proposal (relating to the changed terms), unless this could reasonably not be expected of the employee. This is quite a strict test.

Is a distinction drawn between local and foreign workers?

According to the EU Posted Workers Directive and the Dutch Terms of Employment Act, employees that are temporarily assigned to the Netherlands are entitled to a minimum level of Dutch protection, including with regards to minimum wage, safety and health and maximum working time. If the Netherlands qualifies as the country where the foreign worker is deemed to normally carry out work, the mandatory rules under Dutch employment law apply, including any applicable industry-wide collective labour agreement and participation in an industry-wide pension plan.
What are the requirements relating to advertising positions?

There is no general statutory framework governing recruitment and selection. However, employers should always guard against discrimination. Discrimination (direct and indirect) in access to employment is prohibited on the grounds of:

- sex;
- race;
- age;
- disability or chronic illness;
- marital or civil status;
- sexual orientation;
- religion or beliefs;
- political orientation; and
- nationality.

The prohibition against discrimination covers all stages of the recruitment and selection process, including:

- the wording of job advertisements and job descriptions;
- selection criteria;
- the conduct of interviews, including questions and comments made during interviews; and
- the final selection decision.

Notwithstanding the lack of laws on recruitment, some general recruitment guidelines are in place (eg, candidates must be treated equally and information supplied by candidates must be treated confidentially and with care). Job advertisements may specify only requirements that are necessary to carry out the work involved. Only gender-neutral words may be used in advertisements. If age limits are specified, the grounds for these must be clearly stated.

Background checks

What can employers do with regard to background checks and inquiries in relation to the following:

(a) Criminal records?

Employers can ask the potential employee for a certificate of conduct. This is a document in which the state secretary for security and justice declares that the applicant has committed no criminal offences that are relevant to the performance of his or her duties. However, this is allowed only for certain functions and positions.

Reference is made to the Dutch Association for Personnel Management and Organisational Development (NVP) Recruitment Code, which contains the basic rules that (in the NVP’s opinion) should be observed by recruiting companies and job applicants during recruitment and selection process. These rules also relate to the wording of recruitment campaigns and psychological and medical assessments, among other things.

(b) Medical history?

The rules on this are governed by the Medical Examinations Act. The employer can ask the potential employee for a medical record. However, this is allowed only under certain conditions. The nature, content and scope of the examination must be limited to the purpose for which it is performed.

(c) Drug screening?
This is possible only for very specific positions (e.g., a position with the police).

(d) Credit checks?

This is possible only for very specific positions (e.g., a high-level financial position).

(e) Immigration status?

If the potential employee is an immigrant, he or she must submit his or her relevant immigration information (e.g., a residence and work permit).

(f) Social media?

This is not regulated as such, although it is advisable to use social media in moderation in terms of background checks, given the limited value of social media postings.

(g) Other?

N/A.

Wages and working time

Is there a national minimum wage and, if so, what is it?

The statutory minimum wage is reviewed twice a year, on January 1 and July 1. The current gross minimum wage rate for full-time workers aged 23 and above is €1,537.20 a month (the equivalent of €354.75 a week and €70.95 a day, based on an eight-hour working day).

Are there restrictions on working hours?
Working hours are codified in the Working Hours Act. Weekly working time (including overtime) may not exceed 48 hours on average over a 16-week reference period and 55 hours on average over a four-week reference period. Different arrangements are possible by collective agreement (or an agreement with the company works council, if no collective agreement applies), but are subject to absolute limits of 60 hours a week and 12 hours a day. There are specific restrictions on night shifts as well.

What are the requirements for meal and rest breaks?

An employee can work only up to five-and-a-half hours before he or she is entitled to a break of at least 30 minutes (it can also be split into two breaks of 15 minutes). An employee who works more than 10 hours is entitled to a 45-minute break. As with the working hours, there is a possibility to make different arrangements in a collective agreement.

How should overtime be calculated?

There is no specific Dutch act on overtime. The rules on overtime are mostly included in collective or individual agreements.

What exemptions are there from overtime?

N/A.

Is there a minimum paid holiday entitlement?

All employees have a statutory paid annual leave entitlement of four times their weekly working days or hours (e.g., 20 days for a five-day week). Many collective agreements provide for five weeks or more of annual leave.

What are the rules applicable to final pay and deductions from wages?

Employers must deduct from employees’ wages statutory wage tax, national insurance and employee insurance.
Stricter conditions will apply to the range of permitted deductions when the second part of the Artificial Constructions Act comes into force on January 1 2017. For example, deductions from the statutory minimum wage will be subject to a maximum amount or percentage and it is expected that deductions for housing costs will be possible only in respect of communal apartments or certified private landlords.

**Record keeping**

**What payroll and payment records must be maintained?**

The employer must provide the employee with a payslip for every payment made to him or her, including tax-exempt reimbursements. Further, the employer must give an annual statement at the end of each year which states the total wage the employee has earned, as well as the total amount of social security and tax that the employer has withheld.

**Discrimination, harassment & family leave**

**What is the position in relation to:**

**(a) Age?**

Under the Dutch Equal Treatment Act, discrimination on the grounds of religion, personal beliefs, political opinion, race, sex, nationality, illness and civil status is explicitly prohibited, except for situations which are explicitly set out in law. Indirect discrimination (which occurs when a neutral policy results in discrimination based on one of these grounds) is also prohibited, unless it can be justified by a legitimate aim and is proportionate to achieve that aim.

Distinction on the grounds of age is prohibited unless there is a justification for making this distinction. This is deemed to be the case if the distinction is based on statutory arrangements intended to enhance the labour participation of certain age groups and where it relates to termination of employment on reaching the statutory retirement age.

Aside from these circumstances, distinction on the basis of age is permitted only if there is a specific justification for doing so. For this, a company must have a legitimate purpose for making the distinction which fulfils an actual need of the company and must do so with no aim to discriminate.

**(b) Race**

Discrimination is prohibited on the grounds of race, skin colour, nationality or ethnic origin. The prohibition against discrimination on the grounds of race does not apply:

- where a person's racial appearance is a genuine and determining requirement, provided that the aim is legitimate and the requirement is proportionate to that aim; or
- if the discrimination concerns a person's racial appearance and constitutes, by reason of the nature of the particular occupational activity or the context in which it is carried out, a genuine and determining occupational requirement, provided that the aim is legitimate and the requirement is proportionate to that aim.
(c) Disability?

Discrimination on grounds of disability or chronic illness is in general prohibited. However, it can be permitted under the following circumstances:

- It is necessary to protect health and safety;
- It relates to a regulation, standard or practice aimed at creating or maintaining specific provisions and facilities for the benefit of people with a disability or chronic illness; or
- It concerns a specific measure that has the aim of granting people with a disability or chronic illness a privileged position in order to neutralise or ameliorate existing disadvantages, and the discrimination is proportionate to the objective.

Employers of people with disabilities or a chronic illness must take measures according to the needs of the specific employee.

(d) Gender?

Discrimination on the grounds of gender (men, women and transsexual) and pregnancy or childbirth and maternity is in general prohibited. However, it can be permitted under the following circumstances:

- The position is gender specific (e.g., model work) or certain physical requirements are set; or
- It concerns a specific measure intended to grant women a privileged position in order to neutralise or ameliorate existing disadvantages and the discrimination is proportionate to the objective.

(e) Sexual orientation?

Discrimination based on sexual orientation is permitted only if this is objectively justified by a legitimate aim and the means used to achieve that aim are appropriate and necessary.

(f) Religion?

An institution founded on religious principles may impose requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a position. This could mean that the prohibition against discrimination on the grounds of religion does not apply to the legal relationships within religious communities. Also, an educational establishment founded on religious or ideological principles may impose requirements in relation to a position which, in view of the institution's purpose, are necessary to comply with its principles. Such requirements may not lead to discrimination on the sole grounds of political opinion, race, sex, nationality, sexual orientation or civil status.

(g) Medical?
In relation to medical, only in case of disability or chronic illness.

(h) Other?

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N/A.

Family and medical leave

What is the position in relation to family and medical leave?

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Employees are entitled to certain leave periods, including the following:

- Pregnancy and maternity leave – pregnant employees are entitled to pregnancy leave from six weeks before the expected date of childbirth and up to at least 10 weeks after giving birth.
- Parental leave – employees are entitled to 26 weeks of parental leave (calculated as 26 times weekly working hours) during the period until their child reaches the age of eight. Both parents are entitled to take parental leave.
- Care leave (short or long term) – employees are entitled to take short-term care leave to look after a sick child, partner or parent. The entitlement amounts to two weeks (calculated as twice weekly working hours) in any 12-month period. During this leave, the employee is entitled to receive 70% of his or her normal wage from the employer, subject to a ceiling and floor of the national minimum wage.
- Force majeure leave – employees are entitled to take force majeure leave for urgent personal reasons, such as the birth of a child or the death of a close relative. The employer should be notified of the leave as soon as possible. Employees receive their normal salary during this leave. The leave can take up to a few days. Where the force majeure leave relates to the illness of a child, partner or parent, short-term care leave is to be taken if the situation lasts beyond one day.

Harassment

What is the position in relation to harassment?

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Harassment is defined as any conduct related to any of the statutory grounds that has the purpose or effect of undermining the dignity of a person and creating a threatening, hostile, degrading, humiliating or offensive environment. Harassment of employees is prohibited in the workplace and during the course of employment and is considered discrimination by the employer. Employers must actively prevent harassment among their employees. This may lead to the requirement to dismiss a harassing employee.

Whistleblowing

What is the position in relation to whistleblowing?

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N/A.
On July 1 2016 the House for Whistleblowers Act came into force. The act extends legal protection to whistleblowers and creates an authoritative body, the House for Whistleblowers, which advises on and conducts inquiries into deemed social abuse.

The act includes the following provisions:

- Employers that employ at least 50 employees must adopt whistleblowing regulations. Such regulations must set out:
  - the manner in which an internal notification is dealt with;
  - when suspicion of abuse arises;
  - which responsible person must be notified of the abuse;
  - the confidential treatment of a notification; and
  - the right of the employee to consult an adviser on a confidential basis.
- The employer must provide information about the circumstances under which suspicion of abuse may be disclosed externally.
- The whistleblowing regulations must be approved by the works council before their implementation.

Privacy and monitoring

What are employees' rights with regard to privacy and monitoring?

The processing of employees' personal data (under the Data Privacy Act) is permitted if required for adequate execution of the employment contract. Employers are responsible for the accuracy of data held. The data must be adequate, relevant and not excessive in light of the purpose for which it is processed. Adequate technical and organisational measures must be taken in order to protect personal data against loss or unlawful processing.

Employers must inform employees about the purposes for which their personal data is collected. Employees must be given the opportunity to access their data and, if need be, to correct, supplement or delete their data. They are entitled to request information on data held and may object to specific uses of their data. Personal data may not be kept longer than necessary for the completion of the purpose for which it is subsequently used.

With regard to specific employee privacy issues, there is a general legal right of privacy of email correspondence and the employer's reading of the employee's email is in principle not allowed. However, the courts tend to recognise that personal misuse of email carries the added risk for companies of computer viruses spreading. Also, internet use by employees can be monitored without employee consent, as long as it cannot be traced back to individual visits. Data becomes 'personal' and therefore covered by data protection law only when it can be associated with an individual. If general surveillance reveals staff visits to unauthorised websites, the company must notify staff that monitoring will take place in order to trace, identify and possibly discipline individuals who persist in making unauthorised visits.

In relation to telephone use, legislation permits the monitoring of telephone calls if there are legitimate operational reasons for doing so, such as:

- for training purposes;
- for individual assessment;
- as evidence of telephone transactions;
- to control telephone costs and discourage personal calls; or
- to trace fraud.

To what extent can employers regulate off-duty conduct?

The employer can set rules on the use of social media and mobile phones during working hours, but some employers also regulate off-duty behaviour (eg, no offensive postings on social media or no games to be installed on a company laptop). Authority in this regard is limited but nonetheless exercisable, and depends on the nature of the job and the owner of the device.
### Trade secrets and restrictive covenants

#### Intellectual Property

**Who owns IP rights created by employees during the course of their employment?**

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Generally, such IP rights are owned by the employer.

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**Restrictive covenants**

**What types of restrictive covenants are recognised and enforceable?**

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There are different types of restrictive covenant. The most common is a covenant imposing confidentiality, non-solicitation and non-compete obligations on employees. Since the Work and Security Act came into force, a distinction exists between non-compete clauses in employment agreements for an indefinite term and those for a fixed term. If an employment agreement is entered into for an indefinite term, the non-compete clause will in principle be valid (if the formal requirements are met). However, in principle it is not possible to include a non-compete clause in fixed-term employment agreements, unless the employer can demonstrate in writing that a non-compete clause is necessary for substantial business reasons. Such substantial business reasons must be stipulated in the fixed-term employment agreement.

Even if a valid non-compete clause is agreed, a court has the right to annul it, either completely or partially, if an employee is unfairly prejudiced by the clause in relation to the interest which the employer intends to protect. In the case of a partial annulment, the court can, for example, reduce the scope of the clause in geographical and duration terms.

If, because of the interests of the employer, the non-compete clause remains completely or partially intact, but the employee is seriously restricted from accepting employment elsewhere, the court may decide to award compensation to the employee.

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**Non-compete**

**Are there any special rules on non-competes for particular classes of employee?**

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No; however, for fixed-term employees non-competes are not allowed unless the employer can demonstrate in writing that important business circumstances require a non-compete clause. These circumstances should be clear on entering the fixed-term employment agreement.
Discipline and grievance procedures

Are there specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

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No.

Industrial relations

Unions and layoffs

Is your country (or a particular area) known to be heavily unionised?

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Currently, around 18% of employees in the Netherlands are members of a trade union. Union membership levels vary across the different sectors, but are highest in large enterprises. There are two main general union confederations: the Dutch Trade Union Federation (the larger of the two) and the Christian Trade Union Federation. These confederations are mostly involved in collective bargaining at sector and company levels.

What are the rules on trade union recognition?

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There are no specific rules, with one exception: the union must stipulate in its articles of association that its purpose is to represent employees and enter into collective bargaining agreements on behalf of the employees who are members. An employer may refuse to enter into negotiations with trade unions, but practice shows that larger unions generally do not accept this situation and try to compel negotiations by obtaining a court order.

What are the rules on collective bargaining?

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Collective agreements are defined by law as agreements between one or more employers or one or more organisations with the full legal right to represent employers and one or more organisations with the full legal right to represent employees. The signatories to collective agreements are therefore trade unions (in most cases, affiliates of the Dutch Trade Union Federation or the Christian Trade Union Federation) and either employers’ associations or individual firms. The legal definition of ‘collective agreement’ also provides that they are agreements that principally or exclusively regulate terms and conditions of employment which must be taken into account in contracts of employment. Collective agreements may also govern contracts for groups (eg, freelance or agency employees) and can exclude certain employee categories (eg, senior managers).
Minimum conditions laid down in collective agreements can be improved on, but may not be lowered, in individual contracts of employment. Standard conditions may not be departed from at all.

Collective agreements are binding on the signatory parties and their members. Most collective agreements are concluded nationally at sector level. With regard to individual employers within sectors covered by such agreements, the following provisions apply:

- If the employer and employees are members of the signatory parties, the agreement is binding on both sides;
- If only the employer is a member of a signatory party (ie, the relevant employers' organisation), it must apply the agreement to all employees, irrespective of whether they are members of the signatory union(s);
- If only the employees are members of a signatory party, they are bound only by any provisions in the agreement relating to employees' obligations; and
- If neither the employer nor employees are members of a signatory party, the agreement is not binding.

The maximum duration of collective agreements is five years. In practice, most agreements have a duration of only one or two years. Sectoral collective agreements may be declared generally binding for a maximum of two years, or five years if they include joint funds for pensions and the like.

**Termination**

**Notice**

**Are employers required to give notice of termination?**

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Yes. There are different ways to terminate an employment contract:

- termination by mutual consent;
- termination during the probationary period;
- expiry and non-renewal of a fixed-term employment contract (in this case, the employer must notify the employee one month in advance);
- summary dismissal for an urgent reason;
- dissolution of the employment contract by court ruling; and
- giving notice to terminate with authorisation from the Employee Insurance Agency (UWV).

**Termination by mutual consent**

All employment contracts may be terminated at any time by mutual consent between parties, with or without observance of the statutory or agreed notice period and with or without payment of compensation to the employee. It is important for the employer to ensure that the employee's consent to the agreement is explicit and clear. Therefore, it is advisable that employees seek legal advice before entering into a settlement agreement. Since the Work and Security Act came into force in 2015, a two-week reflection period has been introduced. Within this period the employee has the right to dissolve the settlement agreement. The employer must inform the employee of this right; if the employer fails to do so, the reflection period will be extended.

**Termination during probationary period**

During the probationary period, either party may terminate the employment contract at any time without observing a notice period and without any liability for severance pay, unless the termination is, for instance, based on discriminatory reasons. At the employee's request, the employer must provide the reasons for the termination of the employment contract during the probationary period. Further, there are no conditions for terminating the agreement.

**Non-renewal of fixed-term contract**

When the employer decides not to renew a fixed-term contract, this means that the contract will automatically terminate after the contract's end date. Sometimes there is a possibility to terminate the contract before the end date, but only when this is agreed in writing. Since the Work and Security Act came into force in 2015, the employer must inform the employee at least one month in advance, regardless of whether the employment contract will be renewed – although if so, it must stipulate under which conditions.

**Dismissal for urgent reason**

In certain exceptional cases the employer or the employee may face circumstances in which one cannot be reasonably expected to continue the employment relationship. If the employee's conduct raises a so-called 'urgent cause', the employer can, under certain circumstances, terminate the employment contract effective immediately (ie, summarily dismiss the employee). The employee has a similar right if the employer's conduct raises an urgent cause. However, this form of dismissal is possible only in very exceptional cases (eg, for gross negligence in the performance of duties, theft or fraud).

**Dissolution of contract by court ruling**

If the dismissal is for reasons relating to the employee, the employer must ask the cantonal labour court to dissolve the
employment contract on the basis of one of the reasonable grounds set out in Clauses (c) to (h) of Paragraph 3 of Article 7:669 of the Dutch Civil Code. The list is exhaustive and it is not possible to combine different (incomplete) dismissal grounds to justify a dismissal. The reasonable grounds are as follows:

- Frequent sickness absence – where no improvement is expected within 26 weeks and it is not possible for the employer to arrange cover for the employee's workload during this period. The employee’s absence must have unacceptable consequences for the employer’s operations and the reason for the absence should not be connected to any failure of care by the employer.
- Poor performance – where the employee has been given sufficient opportunity to improve his or her performance and has been notified of the consequences of failure to do so.
- Culpable behaviour – the employee has committed culpable acts or omissions to the extent that continuation of the employment contract cannot reasonably be expected.
- Conscientious objections – the employee refuses to perform work under his or her contract of employment due to conscientious objections.
- Disturbed working relations – the employee's working relationship with his or her employer is disturbed to the extent that continuation of the employment contract cannot reasonably be expected.
- Other grounds – the circumstances are of such a severe nature that continuation of the employment contract cannot reasonably be expected.

Dismissal with official authorisation of UWV

The employer needs permission from the UWV before it can terminate the employment contract in the following situations:

- The employee has been absent due to sickness for more than two years.
- The employer wants to terminate the contract due to bad economic circumstances within the company (business reasons).

This dismissal permit must be obtained before notice is given to the employee. Termination in these cases without the UWV's prior permission is void. The employer must apply for a dismissal permit to the UWV (regional employment office) covering the location where the work is normally carried out or where the employee is employed, giving reasons for the proposed dismissal. It usually takes around six weeks for the UWV to respond. It assesses the reasonableness of the proposed dismissal, consulting an advisory committee made up of representatives of trade unions and employers' organisations. Sometimes these representatives will ask for more information from one or both parties.

After obtaining the dismissal permit from the UWV, the time spent on the UWV proceedings may be deducted from the applicable notice period, although the remaining notice period must be at least one month.

Severance payments

Before the entry into force of the Work and Security Act, severance payments beyond the right to paid notice were either at the discretion of the employer or awarded by the courts under the 'cantonal judge formula'. This position changed with the introduction of the statutory transition payment scheme. Now, on non-renewal of a fixed-term contract of two years or more or a dismissal after two years' employment, an employer must pay transitional remuneration (unless the dismissal results from seriously culpable conduct).

Transition payments are linked to length of service and age, as follows:

- For the first 10 years of employment, the payment is one-sixth of monthly wages for each completed six months of service;
- From the 10th year of employment onwards, the payment is one-quarter of monthly wages for each completed six months of service; and
- For employees aged over 50 and employed for more than 10 years, the payment is one-half of monthly wages for each completed six months of service (this is a transitional arrangement until 2020 that does not apply to small employers with fewer than 25 employees).

An employee is not entitled to a transition payment if the dismissal resulted from his or her seriously culpable conduct. However, the court may award additional compensation to an employee where the employer's conduct has been seriously culpable.

Monthly wages, for the purposes of calculating a transition payment, include holiday pay, overtime, shift allowances and bonus payments. Transition payments are capped at €76,000 or one year’s salary, whichever is the greater.

The costs incurred by employers for employees' training and development may be deducted from transition payments where the costs were incurred to assist the employee in finding alternative employment.

The calculation of transitional payments may be varied by a collective agreement, provided that employees receive equivalent severance compensation.
Pursuant to the Collective Dismissal Notification Act, in case of collective redundancy – which involves at least 20 employees within a period of three months – specific information and consultation rules apply. Employers initiating a collective redundancy must inform or consult the trade unions, notify the UWV, involve the works council (if any), observe a one-month waiting period, apply for dismissal permits or terminate the employment contracts with mutual consent and give notice. More specifically, the notification and invitation of trade unions must be made at such time as to allow for timely consultation. The employer must give its works council the opportunity to give advice on any decision that it proposes to make concerning (among other things) a significant reduction in the workforce. The advice must be requested in writing and sought in sufficient time for the works council to have a significant impact on the decision to be taken.

Failure to comply with the redundancy process may result in the UWV’s not issuing dismissal permits or unfair dismissal proceedings.

Are there particular rules for collective redundancies/mass layoffs?

See above.

What protections do employees have on dismissal?

The employer may terminate an employment agreement only when the dismissal is based on solid grounds. Dismissal is void when:

- it is based on discrimination or one of the statutory grounds;
- the employee is pregnant or on maternity leave;
- the employee is a member of the works council; or
- the employee is absent from work due to sickness.

Which tribunals or courts have jurisdiction to hear complaints?

In general, the labour departments of the district courts have jurisdiction over employment disputes. In cases regarding discrimination, for example, employees can file a complaint with the Netherlands Institute for Human Rights.
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Proceedings at the district court are initiated by filing a petition which includes the grounds for the claim or request. The defending party may submit a statement of defence before an oral hearing at the court takes place. After trial, it takes around four weeks for the court to publish its ruling.

Appeals

What is the route for appeals?

Netherlands

Decisions of the Employee Insurance Agency are subject to appeal and can be taken to the cantonal court. Cantonal court rulings are subject to appeal to the court of appeal. Rulings of the appeal court are (with some exceptions) subject to review by the Supreme Court.