The Situation: On May 28, 2019 the Dutch Senate adopted new legislation to bring the labor market into balance effective January 1, 2020. The new legislation aims to reduce the gap in legal protection and monetary differences between fixed- and indefinite-term employees.

The Result: The new legislation includes additional termination grounds, changes in statutory severance payments, and extension of duration of fixed-term contracts to 36 months, among other legal protections.

Looking Ahead: Companies will need to consider how this new legislation will affect their Dutch operations.

Only five years after the introduction of the Dutch Work and Security Act, which overhauled Dutch dismissal law significantly, Dutch employment law is undergoing additional reforms. The legislative proposal for the Labor Market in Balance ("Act," Wet arbeidsmarkt in balans) will enter into force on January 1, 2020. The Act aims to reduce the gap in legal protection and monetary differences between fixed- and indefinite-term employees.

The Dutch government intends to encourage employers to offer longer-term or permanent employment agreements.

Additional Termination Ground
The Dutch Civil Code provides eight statutory reasonable grounds for dismissal (i.e., a–h grounds). Under the current legislation, in order for a court to terminate an employment agreement, one of the eight grounds has to be fulfilled. As a result, the threshold for termination is rather high. The Act introduces one additional ground for dismissal, also known as the cumulation, or i-ground, which enables employers to combine different grounds for dismissal—for example, unsatisfactory performance (d-ground) and a damaged working relationship (g-ground). This new ground may offer a solution to employers who cannot make their case based on only one of the current statutory reasonable grounds. If the court terminates the employment contract based on the i-ground, it may grant employees additional compensation on top of the transition allowance (statutory severance, Transitievergoeding), up to a maximum of half of the transition allowance.

Transition Allowance Changes
The Act also changes the transition allowance in two ways. First, employees will be entitled to a transition allowance from their first day of employment, including the trial period. Currently, employees are entitled to the transition allowance only after two years of employment. Second, the transition allowance is retrenched. The calculation method changes into one-third of a monthly gross salary for each full year of service and pro rata for each month or day of service, regardless of the age or years of service of the employee. The differentiation between the first 10 years of employment (one third of monthly salary) and the period afterwards (half of monthly salary) disappears. The more expensive temporary regulation for employees 50 years or older will lapse on January 1, 2020. Also, in 2020 the compensation scheme for the transition
FOUR KEY TAKEAWAYS

1. The Dutch employment law changes discussed above are effective January 1, 2020.

2. Companies could consider the new termination ground in the event of a convergence of dismissal circumstances.

3. Although all employees are entitled to the transition payment from the first day of employment, the overall statutory severance entitlement is retrenched.

4. Companies could consider the duration of new fixed-term contracts to maximize the allowed time period, which can be up to 36 months.
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Companies Faced with Far-Reaching Dutch Employment Laws

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