

Dutch Employment Law Changes in 2020

IN SHORT

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

allowance in the event of dismissal due to long-term incapacity for work will enter into force. This new legislation will make it possible as of April 1, 2020, for an employer to apply to the Employee Insurance Administration Agency ("UWV") for compensation in respect of a paid or to-be-paid transition allowance.

Duration of Successive Fixed-Term Employment Contracts Extended to 36 Months

Under current law, the maximum duration of successive fixed-term employment contracts is three consecutive fixed-term employment contracts within 24 months. The Act extends the period of time to 36 months. Consequently, after 36 months or the fourth fixed-term employment contract, the contract is converted into an indefinite employment contract. This is a reversal of the reform in the Dutch Work and Security Act.

Notification for On-Call Employment Contracts

Current legislation does not regulate the length of time between when an employer calls the employee and when the employee must report to work. Under the Act, employers must provide on-call employees at least four days' advance notice, and must pay on-call employees if work is cancelled within those four days. The notice may be reduced to 24 hours by way of a collective labor agreement. Also, after one year, employers are obligated to offer the on-call employee guaranteed working hours, which must be based on the average number of hours worked in the past 12 months.

Adequate Pension Plan for Payroll Employees

Payroll employees will be entitled to the same primary and secondary employment conditions as the employees of the principal, including an "adequate" pension plan. Consequently, this likely will increase the cost of payroll employees. The new legislation on payroll employees will become applicable on January 1, 2021 and is not applicable to temporary workers and seconded employees.

Lower Unemployment Insurance Contributions

With the Act, unemployment insurance contributions are no longer differentiated according to sector. Instead, unemployment insurance contributions for employees on a permanent employment agreement will be lower than contributions for employees on a fixed-term contract.

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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