

2019 Employment horizon: dismissal laws tweaked, and independent contractor rules sharpened

January 15, 2019

Although the dust has barely settled on the Dutch employment and dismissal rules created by the Work and Security Act in 2015 and 2016, more changes are on the horizon. The Labour Market in Balance bill, currently being reviewed by parliament, could mark the introduction of much needed repairs. These include a cumulative ground for dismissal, which allows dismissals based on a combination of grounds. The bill could also mark a return to former legislation, such as the previous rules on successive employment agreements.

2019 may also be a make-or-break year in the Netherlands for pending legislation on the position of independent contractors replacing the Deregulation of Working Relationships Assessments Act (*Wet Deregulerend Beoordeling Arbeidsrelaties*), which has proven to be ineffective. The new legislation should clarify when the relationship between contractors and their clients qualifies as an employment agreement. One of the key elements is determining if parties have a relationship of authority.

Labour Market in Balance

Like its name suggests, this bill aims to introduce a number of measures that will restore balance in the labour market between permanent and temporary work. The proposal that all employees be entitled to the statutory transition payment from the first day of employment – rather than after two years of employment – may actually help to accomplish that aim. It could make temporary agreements less attractive for employers. Another proposed amendment is to expand the rules on successive employment agreements (a “chain of agreements”) from two to three consecutive temporary contracts, which can be entered into for a maximum of three years. This change allows employers to offer their employees an additional temporary contract before the relationship is deemed permanent. Although this reverses the reform introduced by the Work and Security Act, we do not believe that this measure will contribute to making temporary work less attractive for employers.

A new ground for dismissal, the “cumulative ground”, will enable employers to combine different, incomplete reasons for an employee’s dismissal – such as employee underperformance or damage to the working relationship – into one full ground for dismissal. Employees can be entitled to an additional 50% on top of the “regular” transition payment if the employment ends on the basis of this new cumulative ground. Under current legislation, it is only possible to dismiss an employee based on one of eight dismissal grounds, which must be fully met. This has resulted in Dutch courts rejecting a much greater number of termination requests since the introduction of the Work and Security Act. We

believe that a new cumulative dismissal ground may well become the “great escape” for employers who cannot make a case based on one of the other statutory dismissal grounds, while it remains to be seen if the additional payment of 50% will prove to be fair compensation for an incomplete dismissal file.

A much criticised amendment is the proposal to extend the maximum trial period for employees on a permanent contract from two months to five months. This longer trial period makes it less attractive for employees to enter into a permanent contract, and it affects employee protection, as employers can dismiss employees at any moment during their trial period without giving a reason. We do not expect this amendment to make it through parliament.

Independent contractors

On 1 January 2019, a new handbook on income tax and social insurance contributions entered into force. An annex to the handbook specifies which aspects are relevant in assessing whether a relationship of authority exists and if an independent contractor qualifies as an employee. In addition, new legislation will introduce a client declaration form for individual contractors, which should further clarify if an employment relationship exists or not. The Dutch tax authorities are developing a web module to facilitate this, which should be ready by the end of 2019.

In the meantime, the suspension of the Deregulation of Working Relationships Assessments Act until 1 January 2020 leaves clients with substantial freedom to hire independent contractors, without running the risk of those contractors being qualified as their employees by the Dutch tax authorities.

Works council

An amendment of the Works Councils Act took effect on 1 January 2019 extending the right of works councils at large companies to receive information on the level of remuneration within the company, including top executives’ salaries. This means that the pay ratio and differences in income must be discussed at least once a year during the consultation meeting with the works council. Companies do not have to provide salary information on individual top executives or employees.

We will keep you updated on these and other developments in the course of 2019.