

European (& the GCC) Employment Law Update

Jurisdiction: The Netherlands

Date: May 2019

Impact date	Development	Impact
<p>1 January 2019 & 1 July 2020</p>	<p>Extension of parental leave after childbirth</p>	<p>The Government has introduced a bill which regulates the extension of the parental leave entitlement (following the birth of a child) for the spouse, the registered partner, the person with whom he/she cohabits without being married or the person who has acknowledged the child ('the partner').</p> <p>Since 1 January 2019, partners have the right to paid parental leave of 1 working week instead of the previous 2 working days. From 1 July 2020, partners will also receive an additional 5 weeks of unpaid leave, during which they are entitled to a benefit of 70% of their salary, capped at 70% of the maximum daily wage (for social security purposes). This amounts to 6 weeks of parental leave in total for partners as of 1 July 2020.</p> <p>Furthermore, since 1 January 2019, adoptive and foster parents have the right to 6 weeks of unpaid adoption leave instead of 4 weeks. During this period they are entitled to a benefit.</p> <p>Aside from the above new rules, it is expected that July 2022 will be the deadline for the implementation of new European rules on parental leave.</p>
<p>1 January 2020 & 1 April 2020</p>	<p>Measures concerning the transition payment with respect to long-term incapacity for work and dismissal on economic, technical or organisational grounds</p>	<p>In July 2018 the bill passed the House of Representatives and subsequently the Senate. The bill enters into force on 1 January 2020, with the exception of certain parts, which enter into force on 1 April 2020.</p> <p>The bill concerns two topics:</p> <ol style="list-style-type: none"> 1. It introduces the right for employers to ask for compensation for transition payments upon dismissal due to long-term incapacity for work (a period of more than two years) from 1 April 2020 onwards.

2. In addition, the legislative proposal provides that in the case of dismissal on economic, technical or organisational grounds a provision contained in the collective bargaining agreement (CBA) no longer needs to be equivalent to the transition payment (the compensation can therefore be lower than the transition payment).

Both measures are discussed below in more detail.

1. Dismissal in the case of long-term incapacity for work

Employers often feel that the obligation to pay the transition payment in the case of dismissal due to long-term incapacity for work is unjustified, because the employer has usually already paid its sick employee two years' wages up to that point and has often incurred reintegration costs.

This new law provides that where an employee is dismissed due to long-term incapacity for work the transition payment paid (and any transition and employability costs deducted from this) will be compensated by the Employee Insurance Agency (UWV). This compensation will be charged to the General Unemployment Fund (*Algemeen werkloosheidsfonds – "Awf"*), which will mean that the Awf premium will rise.

a) Not important how the employment contract is ended

Although the transition payment is as a rule only due if the employment contract is terminated by giving notice, dissolved by the court or not renewed, the compensation scheme will also apply if a transition payment is paid after the employment contract is terminated by mutual consent.

b) Maximum amount of the compensation

The amount of compensation is limited as follows:

- i. The compensation will not be higher than the transition payment to which an employee would be entitled at the

moment the obligation to continue to pay wages in the event of illness ends. This is generally after a period of two years.

- ii. The recently published draft bill 'The balanced labour market' furthermore regulates that employers will only receive compensation for employees who have been sick for two years or longer.
- iii. The period in which a wage sanction is imposed (where the period of continued payment of wages during illness is extended because the employer has not met its reintegration obligations) will not be compensated.
- iv. The compensation will not be higher than an amount equal to the gross wage paid during the period of the employee's illness (therefore excluding employer's contributions).

c) Filing for compensation

From 1 April 2020 employers can apply for compensation. From this date, compensation can be applied for, for both new and old cases. Old cases are those where transition payments have been paid by employers between 1 July 2015 and 1 April 2020. An application period of six months applies for both new and old cases. Applications for the old cases must therefore be submitted no later than 30 September 2020.

The moment of payment (the moment at which the payment is made by the employer to the employee) is the moment when the payment is debited from the employer's account. If the transition payment is paid in instalments, the last payment will be regarded as the moment of payment.

		<p>2. Dismissal on economic, technical or organisational grounds</p> <p>At present, an employer does not have to pay a transition payment if compensation is included in a CBA that is 'equivalent' to the transition payment.</p> <p>The requirement that there must be an equivalent provision can be a hindrance to arriving at collective agreements in the case of dismissal on economic, technical or organisational grounds that reflect the situation of the business or sector. For this reason, the proposal provides that in the case of dismissals on economic, technical or organisational grounds a provision included in the CBA (such as a 'from work to work' arrangement or financial compensation) no longer needs to be equivalent to the transition payment.</p> <p>The CBA parties can decide for themselves whether this compensation will be paid by the employer or, for example, by a fund into which employers pay an annual contribution.</p>
<p>1 January 2020 (expected date)</p>	<p>Act on the balanced Labour Market</p>	<p>The bill "Act on the balanced Labour Market" (<i>Wet arbeidsmarkt in balans</i>) passed the House of Representatives in February 2019. The bill now needs approval of the Senate. The bill introduces several changes to varying employment laws. The bill is expected to be approved by the Senate before 1 July 2019, and should enter into force on 1 January 2020.</p> <p>The main measures mentioned in the bill are the following:</p> <p>1. Provisions on succession of fixed-term contracts</p> <p>The maximum term for successive fixed-term employment contracts will be extended from two to three years.</p> <p>In addition, the bill will introduce the ability to reduce the allowed interval between two employment agreements from six to three months in collective bargaining agreements in case of recurrent temporary for periods not exceeding nine months. This exception is broader than the existing exception for seasonal labour.</p>

Also, an exception will be introduced for substitute teachers in primary education in the event of replacement due to illness.

2. On-call contracts

For employees with employment contracts with a deferred duty of performance, and without fixed working hours (zero-hours and 'min-max' contracts), a new rule will be introduced. The employer must notify the employee of the times at which the work is to be performed at least four days in advance. In the event of shorter notice, the employee will not be under the obligation to comply with the call. A term of less than four days may be agreed in the collective bargaining agreement ("CBA").

Furthermore, it is proposed that, if the call is withdrawn within four days of commencement of the work, the employee will be entitled to payment of wages for the period for which he was called.

Also, employees with zero-hours contracts will be able to terminate their employment contracts subject to a notice period of four days (or such shorter term as agreed in the CBA), without any liability to pay a compensation to the employer. At the moment, these employees have a one-month notice period.

Finally, employers will be obliged to offer employees a fixed number of working hours after 12 months have passed. The offer must take into account the average working hours over the last 12 months.

3. Payrolling

The government intends to further regulate payrolling. Payrolling should still be possible because it lightens the administrative burden of employers. However, payrolling will be submitted to other rules than it has been so far.

A separate equal treatment requirement will be included in the Dutch Placement of Personnel by Intermediaries Act (*Wet allocatie arbeidskrachten door intermediairs* - "Waadi"), comprising the primary and secondary terms of employment that are also being used by the client, including an adequate

		<p>pension scheme. It will not be possible to deviate from this requirement in a CBA.</p> <p>Also, it will no longer be possible to use the exceptions for agency work in case of payrolling. This means that for payroll workers it will be not be possible anymore to conclude six successive employment agreements for a maximum period of four years (before being converted into a temporary employment contract for an indefinite period of time).</p> <p>4. Reasonable grounds for dismissal</p> <p>A new ground for dismissal will be added to the reasonable grounds for dismissal of Article 7:669, paragraph 3, sub i DCC, also referred to as the 'i-dismissal ground'.</p> <p>This ground means that there must be a combination of circumstances consisting of two or more grounds for dismissal (c-h) to such an extent that the employer cannot reasonably be required to continue the employment contract. This may be offset by a higher maximised compensation in addition to the transitional compensation for the employee.</p> <p>Such compensation cannot exceed fifty per cent of the transitional compensation to which the employee is entitled in the event of termination of the employment contract.</p> <p>5. The transition payment</p> <p>The formula for calculating the transition payment will be changed, with as a consequence that a larger group will be entitled to a transition payment and the differences between employees will be smaller. This will take place by introducing two measures. Firstly, it is proposed to provide for entitlement to transition payment from the start of the employment contract, rather than only after two years. This first measure will be offset by the second measure: abandonment of the increase of the transition payment after the employment contract has continued for ten years. In the current situation, employees receive a higher transition payment for the years of service after ten years</p>
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		<p>(1/4 monthly salary per 6 months rather than 1/6 monthly salary per 6 months).</p> <p>Furthermore, an entitlement to compensation for employers who have made transition payments will be introduced in the situations where it concerns a small-sized employer who dismisses employees in view of discontinuation of his business to retire, or on account of sickness.</p> <p>6. Contributions differentiation</p> <p>The Government proposes to replace the sectoral differentiation in the Unemployment Benefits (WW) contributions by differentiation according to the nature of the agreement.</p> <p>This means that the sector classification will no longer be relevant to the WW contributions, and that, for the future, two WW contributions will be introduced that will apply to all employers: the low contribution for permanent contracts and the high contribution for flexible contracts.</p> <p>An exception will be made for employees with temporary employment agreements who are younger than 21 and who work no more than 12 hours per week.</p>
Unknown	Equal pay for men and women	<p>On 7 March 2019 four political parties from the opposition submitted a bill that aims to bring an end to unequal pay for men and women.</p> <p>Unequal pay is already prohibited under the Equal Treatment Act (<i>Algemene wet gelijke behandeling</i>), but the four political parties feel that the number of cases where women are paid less is not falling fast enough. Therefore, the initiators have introduced a bill to bring an end to unequal pay for men and women. The initiators want to compel employers with more than 50 employees to demonstrate that men and women receive equal pay for the same work. To do this, the employer must apply to the Inspectorate of Social Affairs and Employment (SZW) each year for a certificate, submitting the salary details of its employees. If unequal pay is found, the employer will first</p>

		<p>be given the opportunity to improve the situation. If it does not, penalties may be imposed.</p> <p>The bill is still in the preparatory stage. We await the advice from the Council of State and the initiators' response to it.</p>
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