European (& the GCC) Employment Law Update

Jurisdiction: The Netherlands
Date: April 2018

Impact date	Development	Impact
1 July 2018	Increases to occupational health and safety requirements	As of 1 July 2017, the Health and Safety Act has been amended as follows: • Employees now have a statutory right to consult the company doctor concerning health matters in relation to the work. All employees must be made aware of this facility. In addition, employees must be able to use this service without the employer's permission, and without the employer being informed about the consultation. • Employees now have the right to a second opinion. This second opinion must be given by a company doctor who does not work at the same company. The company doctor may refuse to give a second opinion if compelling reasons prevent him or her from doing so. This could be if there are no grounds whatsoever for the request, or if there is a danger of repeated unnecessary or spurious use being made of the second opinion. • To promote the independent position of the company doctor, the role of the company doctor with regard to managing the absence of employees is merely advisory in nature. In practice, absence management is often left to the company doctor. This risks the interests of the employer being given greater weight, whereas the company doctor should in fact put the health of the employees first. • The works council now has a right of consent in the choice of the person taking on the role of prevention officer and his or her position in the company. • The prevention officer now has the statutory right to consult the company doctor. • The contract between the employer and the company doctor must contain a number of basic elements. This 'basic contract' must explain how the company doctor puts his 'old' statutory tasks into effect, as well as the following new rights/obligations:

		– the right to effective access to the company doctor; – the right of the company doctor to visit the workplace; – the obligation of the company doctor to offer the employee a second opinion; – the obligation of the company doctor to have a complaints procedure; – the right of the company doctor to consult the prevention officer and the works council; and – the right of the company doctor to advise the employer on preventive measures as part of its working conditions policy. Sanctions If the employer and the company doctor have not concluded a contract, the Social Affairs and Employment Inspectorate (Inspectorate SZW) may impose a penalty straight away. Currently, a warning is given if the Inspectorate SZW establishes that there is no contract. If there is indeed a contract, but it does not contain the requisite basic elements, the Inspectorate SZW can give a warning or demand compliance. Transitional law Employees have one year in which to adjust the existing contract with the company doctor. The works council has the right of consent concerning the contents of the contract and any changes to it or its withdrawal. Employers have until 1 July 2018 to amend their contracts.
During 2018	Extension of the powers of the works council with regard to the remuneration of directors	On 13 June 2016, the Dutch Minister for Social Services and Employment submitted a Bill to the House of Representatives on the extension of the powers that works councils have in relation to the remuneration of directors. This Bill introduces the obligation for large companies (companies that employ a minimum of 100 people) to discuss employment conditions, agreements and developments in pay ratios, including those for the board, in an annual meeting with the works council. Under the current Works Councils Act, works councils already have the right

		to receive information about the level and nature of employment conditions and agreements on an annual basis. Now by also including the obligation to discuss employment conditions in the consultation meeting, works councils no longer need to raise this sensitive subject for discussion themselves. The government believes that this will encourage directors to actively render an account of the pay ratios. The Bill has passed the House of Representatives in January 2018 and now needs to be approved by the Senate.
Unknown	Equal terms of employment granted to payroll employees	On 23 November 2017, a Bill was submitted which, if passed, will grant payroll employees terms of employment which are equal to those of employees with a regular employment agreement. The coalition agreement, published before the Bill was submitted, shows that the new Dutch government agrees with this legislative initiative undertaken by the three opposition parties. On 6 April 2018 the Council of State published its advice on the Bill, which was negative. The Council of State criticised the bill because it only addresses a part of the problem. Payroll companies hire out employees to other companies but which, contrary to a temporary work agency, are not responsible for recruitment and selection of the employee as the hirer searches for the employee. The payroll employees do not have the same terms of employment as the other employees that work directly for the hirer. The political parties who have introduced this Bill aim to change this situation by adding a provision to the Placement of Personnel by Intermediaries Act ("Waadi"), and to declare the flexible employment law regime for temporary agency workers inapplicable to payroll employees. Article 8a would be added to the Waadi, which would stipulate the equal treatment of payroll employees. A broader category of terms of employment would be included in the scope of Article 8a, and there would be no possibility to deviate from this provision in a collective bargaining agreement. At this moment, Article 8 of the Waadi does provide this possibility, and the scope of application is limited to the most important terms of employment, e.g. pay, working hours, and holidays.

		The Bill is pending before the House of Representatives.
Unknown	Extension of parental leave after childbirth	This draft Bill is the result of the coalition agreement of the new Dutch government. It concerns an amendment of the Work and Care Act (Wet arbeid en zorg – "Wazo") and other related laws. The bill is still in the preparatory stage. The government published a draft bill on 19 February 2018 on the internet for consultation. The Ministry of Social Affairs is planning to submit the bill in the second quarter of 2018. The Bill regulates the parental leave entitlement (following the birth) for the spouse, the registered partner, the person with whom he/she cohabits without being married or the person who has acknowledged the child, would have been extended from two to five days of paid leave – paid by the government. Additionally, the partner would get another five weeks of unpaid leave, during which he or she receives a benefit of 70% of the wage, or the maximum amount (the cap), from the Employee Insurance Agency (UWV). In total this amounts to 6 weeks of parental leave for partners. The partner could be the spouse, the registered partner, the person who lives together with the mother without being married to her, or the person who has recognised the child. Furthermore, the government intends to give adoption and foster parents six weeks of unpaid leave instead of the current four weeks. The draft Bill has been published on the internet for consultation purposes.

Unknown	Changes to the transition payment	*Recent political developments* Due to the fact that a new Dutch government has been formed recently, the entry into force date has been postponed until further notice. The new coalition is continuing with the legislative process. The Bill is still pending before the House of Representatives. In the coalition agreement of October 2017 the government announced other measures with regard to the right to the transition payment, and the calculation of the transition payment. On 9 April 2018 the government published the draft bill "Balance on the labour market", which contains further details. Some of these details are discussed below. *The Bill 'Changes to the transition payment'* On 20 March 2017, the Bill was submitted to the House of Representatives, which regulates that the transition payment upon dismissal due to long-term incapacity for work (more than two years) will be compensated. In addition, the legislative proposal provides that in the case of dismissal on economic, technical or organisational grounds a provision contained in the collective labour agreement (CLA) no longer needs to be equivalent to the transition payment (the compensation can therefore be lower than the transition payment). *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. The legislative proposal provides in this regard that where an employee is dismissed due to long-term incapacity for work (including the case where a fixed-term employment contract is not renewed and the employee is sick on the end date) 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. 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 it is terminated by mutual consent. Maximum amount of the compensation The amount of compensation is limited as follows: • 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 (generally two years) ends. This will prevent the situation where the employment contract is only continued to obtain a higher level of compensation; • 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). The reason for this is that the compensation aims to prevent these costs cumulating with those of the transition payment. If continued payment of wages during illness is limited, such as in the case of a fixed-term employment contract, the government takes the view that full compensation of the transition payment is therefore not necessary; • 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. In addition, in the case of successive periods of illness, these periods will only be taken into consideration for determining the wages paid during illness if they have succeeded each other with an interruption of less than four weeks. The recently published draft bill 'Balance on the labour market' furthermore regulates that employers will only receive compensation for employees who have been sick for two years or longer. The government proposes this new rule because of another measure that is introduced in the draft bill. Every employee will have the right to a

		transition payment, no matter how long he has been employed. Under the current legislation, only employees with the minimum of two years of service have the right to a transition payment. *Dismissal on economic, technical or organisational grounds* At present, an employer does not have to pay a transition payment if compensation is included in a CLA that is 'equivalent' to the transition payment. 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 contained in the CLA (such as a 'from work to work' arrangement or financial compensation) no longer need to be equivalent to the transition payment. The CLA 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.