

European (& the GCC) Employment Law Update

Jurisdiction: The Netherlands
Date: April 2017

Impact date	Development	Impact																				
<p>Expected to enter in to force on 1 July 2017.</p>	<ul style="list-style-type: none"> • The age at which an employee is entitled to the statutory adult minimum wage to be lowered; • The minimum youth wage is to be increased; and • Regulations regarding piecework pay and additional pay is to be amended. 	<p>On 24 January 2017, the Senate approved a Bill that will amend the Minimum Wage and Minimum Holiday Allowance Act (WML) and a number of related laws.</p> <p>Lowering the age for adult minimum wage and increasing the minimum youth wage</p> <p>First and foremost, the Bill regulates that the age at which an employee is entitled to the statutory adult minimum wage (currently the age is 23) is lowered step-by-step to the age of 22, and then to 21. If there are no substantial negative effects on employment, the second step will take place automatically two years after the first step. In addition, the minimum youth wage of employees aged between 18 and 20 is to be raised. For example, a 20 year-old currently earns 61.5% of the adult minimum wage. This is going to be increased in two stages to 80% of the adult minimum wage. The changes are as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Age</th> <th style="text-align: center;">Current structure of minimum youth wage</th> <th style="text-align: center;">Initial change to minimum youth wage</th> <th style="text-align: center;">Final minimum youth wage after changes</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">18</td> <td style="text-align: center;">45.5%</td> <td style="text-align: center;">47.5%</td> <td style="text-align: center;">50%</td> </tr> <tr> <td style="text-align: center;">19</td> <td style="text-align: center;">52.5%</td> <td style="text-align: center;">55%</td> <td style="text-align: center;">60%</td> </tr> <tr> <td style="text-align: center;">20</td> <td style="text-align: center;">61.5%</td> <td style="text-align: center;">70%</td> <td style="text-align: center;">80%</td> </tr> <tr> <td style="text-align: center;">21</td> <td style="text-align: center;">72.5%</td> <td style="text-align: center;">85%</td> <td style="text-align: center;">100%</td> </tr> </tbody> </table>	Age	Current structure of minimum youth wage	Initial change to minimum youth wage	Final minimum youth wage after changes	18	45.5%	47.5%	50%	19	52.5%	55%	60%	20	61.5%	70%	80%	21	72.5%	85%	100%
Age	Current structure of minimum youth wage	Initial change to minimum youth wage	Final minimum youth wage after changes																			
18	45.5%	47.5%	50%																			
19	52.5%	55%	60%																			
20	61.5%	70%	80%																			
21	72.5%	85%	100%																			

22	85%	100%	100%
23	100%	100%	100%

Exception to minimum youth wage

Different minimum youth wages are to be set for employees who attend theoretical vocational training at senior secondary vocational education (In Dutch: MBO) level. This exception is intended to prevent an excessive increase in the wage costs for employers offering apprenticeships and thereby offer an extra incentive to employers to do so.

Compensatory measures

Part of the increase in wage costs of 22-year-olds is to be compensated by the Low Income Benefit (*Lage-inkomensvoordeel* or, abbreviated LIV) on the grounds of The Salary Costs (Incentive Allowances) Act (*Wet tegemoetkomingen loondomein* or, abbreviated: Wtl) insofar as there are more than 1,248 salaried hours per calendar year. In addition, employers can claim, for 18 to 21-year-olds, an allowance for the increase in the minimum youth wage. Employers will be informed, by means of automatic decision, as to whether they are eligible for this allowance.

Piecework pay

Under current legislation, wages in the case of piecework payments are determined on the basis of the working hours reasonably required to perform the work in question. This means that the employer will set an abstract production norm on the basis of which the employee can, 'in all reasonableness', earn the minimum wage. This point of departure no longer applies. In the future, piecework pay is to be determined on the basis of the actual time that the employee has spent on performing the work. The government intends to prevent underpayment, unfair competition between companies and exclusion.

This arrangement is subject to an exception. At the request of the Labour Foundation (*Stichting van de Arbeid*) the minister can, in fact, designate specific work to which the piecework arrangement does not

		<p>apply. This means situations in which the employee has a certain degree of freedom to arrange the work himself, with the employer or client also being (almost) unable to supervise the execution of the work (one example would be delivering folders or newspapers). In such case, the current piecework arrangement will continue to apply (i.e. wages in the case of piecework payments will be determined on the basis of the working hours reasonably required to perform the work in question).</p> <p>Additional work</p> <p>The Bill regulates that, if more work is carried out than the agreed working hours (so-called additional work), the minimum wage must be increased proportionately or compensated in the form of paid leave. This latter option can only be used if it has been agreed in a Collective Labour Agreement. The compensation in time must be taken as (paid) leave by no later than 1 July of the year after the calendar year in which the additional work was performed. Failure to do so will mean that the wages will have to be paid out with the next salary payment. Furthermore, the WML will stipulate that normal working hours should not exceed 40 hours a week. This prevents working hours being agreed which are so excessive that the payment is proportionally too low.</p> <p>WML wage definition</p> <p>On the basis of current legislation, income from overtime is excluded from the wage definition. The idea is, in fact, that it has to be possible for an employee to earn the minimum wage on the basis of his normal working hours. This exception will no longer apply given that the minimum wage is now payable for additional work as well. Furthermore, payments which can be regarded as being intended to reduce essential costs which the employee has to incur in connection with his employment are also excluded from the wage definition. The WML will clarify that this exception applies, in any event, to reimbursement of costs for accommodation, food and travel expenses which the employee incurs in connection with his employment, for example within the framework of cross-border secondment.</p>
--	--	---

<p><i>Expected to enter in to force on 1 July 2017.</i></p>	<p>Changes to the Working Conditions Act.</p>	<p>On 24 January 2017, the Senate approved a bill on the amendment of the Working Conditions Act.</p> <p>The bill introduces the following measures:</p> <ul style="list-style-type: none"> • The works council or the employee representative body will gain a right of approval in relation to the person to be chosen to act as occupational health and safety officer; • Employees who disagree with the opinion of their company doctor will have the right to a second opinion; • Employees will have a legal right to consult the company doctor about work-related health issues. This will enable employees to consult the company doctor before complaints lead to absenteeism; • The contract entered into between the employer and the occupational health and safety service must include a number of minimum elements. This so-called basic contract must set out how the current and new statutory duties/rights, such as the obligation of the company doctor to have a complaints procedure in place and the right of the employer to give the company doctor the opportunity to visit the work place, are to be implemented. <p>Sanctions</p> <p>If the employer and the company doctor have not entered into a contract, the Inspectorate SZW can impose an immediate penalty. Currently, a warning is issued when the Inspectorate SZW observes the absence of a contract. Where there is a contract, but it does not contain the compulsory minimum elements, the Inspectorate SZW will be able to issue a warning or issue a demand for compliance.</p> <p>Transitional period</p> <p>A transitional period of one year will apply, during which contracts that are not in line with the new minimum requirements, do not need to be amended.</p>
---	---	---

<p>13 April 2017</p>	<p>Equal representation of women and men in top positions to be reintroduced.</p>	<p>As of 13 April 2017 large public limited companies (NVs) and private companies with limited liability (BVs) must strive to ensure that at least 30% of the seats on the board and the supervisory board are occupied by women and at least 30% being are occupied by men. This target figure has applied since 1 January 2013, but lapsed as of 1 January 2016. The target figure is reintroduced for the period up until 1 January 2020.</p> <p>Large enterprises</p> <p>The definition of large NVs or BVs applies if the company fulfils at least two of the following requirements on two successive balance sheet dates:</p> <ul style="list-style-type: none"> • The value of the assets according to the balance sheet with clarifying notes amounts to more than € 20,000,000. • The net turnover for the financial year amounts to more than € 40,000,000. • The average number of employees for the financial year is 250 or more. <p>The figures from group companies must be included if the company has to draw up a consolidated balance sheet.</p> <p>Apply or explain rule</p> <p>If the seats are not evenly distributed, the company has to explain why this is the case in the annual report. The requirement of a balanced representation is, therefore, not a compulsory requirement.</p> <p>Disclosure of diversity information</p> <p>In addition, the 'Decree concerning the disclosure of diversity information', implementing European Directive 2014/95/EU, has entered into force on 31 December 2016. This decree requires large listed companies to provide in its corporate governance statement a description of the diversity policy that they pursue with regard to the management board and the supervisory board. Such statement shall contain (i) the goals of this policy, (ii) the method of implementation and (iii) the results during the reporting period. This obligation therefore partially coincides with the target percentage.</p>
----------------------	---	--

Expected to enter in to force on 1 January 2019	Paternity leave to be extended from two to five days.	<p>On 25 November 2016 the Bill on the extension of paternity leave was submitted to the House of Representatives.</p> <p>The Bill regulates that the paternity 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, shall be extended from two to five days. Two days are paid leave (as is currently also the case) and for the other three days the employee can apply, via the employer, for benefits from the Employee Insurance Agency (in Dutch: UWV).</p>
<i>Date unknown</i>	Statutory minimum wage introduced for independent contractors.	<p>On 28 March 2017 the Senate approved a Bill which regulates that the statutory minimum wage and the minimum holiday allowance will also apply to people who perform work on the basis of a service agreement (unless they do so in the context of an independent practice of a profession or business). The date on which the Bill will come into force is still to be announced.</p>