European (& the GCC) Employment Law Update

Jurisdiction: The Netherlands
Date: November 2017

Impact date	Development	Impact
Date of entry into force: 1 January 2018	• The scope of the Minimum Wage and Minimum Holiday Allowance Act is be amended.	With effect from 1 January 2018, the scope of the Minimum Wage and Minimum Holiday Allowance Act (*Wet minimumloon en minimumvakantiebijslag*, hereinafter WML) will be amended. This means that contractors working on the basis of a service agreement will from now on be entitled to at least the statutory minimum wage. This rule does not apply, however, to contractors carrying out work in the conduct of their business or profession. 'Business' or 'profession' is taken to mean a self-employed person for tax purposes. In other words, contractors who are classified by the Tax and Customs Administration as a self-employed worker without employees ('*zzp'er*') do not fall within the scope of the WML. The government takes the view that those persons in this group are able themselves to ensure an adequate level of income. In addition, a separate decree provides that contractors working on the basis of an agreement that is equivalent to a service agreement, such as a building contract, contract of carriage and publishing agreement, will also be entitled to at least the statutory minimum wage.

Date of entry into force: still unclear.	• Introduction of a uniform, statutory minimum hourly wage.	On 31 May 2017 the internet consultation on the draft legislative proposal for the introduction of a minimum hourly wage was concluded. Stakeholders and interested parties had the opportunity to respond to the proposal up to that date. The outcomes of the consultation round will be discussed by the new government. Following this discussion, the proposed changes as described below may yet be amended. The draft legislative proposal introduces a uniform statutory minimum hourly wage for everyone falling within the scope of the WML. At present the statutory minimum wage depends on the normal working hours, as a result of which the derived minimum hourly wage may differ between employees. The government believes that this is no longer appropriate in the current labour market, where there is, amongst other things, a variation in working hours. The introduction of a uniform statutory minimum hourly wage should lead to a fairer and more transparent minimum wage and better enforcement. It is up to the new cabinet to present the proposal for consultation as a bill, whether or not in a modified form.
Date of entry into force: 1 January 2018	• Amendment to the WML regarding to additional work and piecework pay.	**Additional work** The amendment to the WML will enter into force on 1 January 2018. The legislative change of the WML provides a legal basis for the obligation of the employer to pay for additional work. This means 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. **Piecework pay** As of 1 January 2018 piecework pay will be determined on the basis on the actual time that the employee spent on performing the work. The employee will be paid at least the minimum wage per hour worked.

Intended date of entry into force: 1 April 2018	• Maternity leave for a premature multiple birth to be extended.	**Background** Pregnant employees are in principle entitled to a minimum of 16 weeks of pregnancy and maternity leave: 6 weeks pregnancy leave before the date of birth and 10 weeks maternity leave after the date of birth. Since 1 April 2016, women expecting more than one baby are entitled to 10 weeks of pregnancy leave instead of the normal 6 weeks that apply to women expecting one baby. If pregnancy leave has been less than 6 weeks due to a premature delivery, maternity leave will be extended by the number of days that the pregnancy leave was shorter than 6 weeks. This maximum period of 6 weeks corresponds to the duration of pregnancy leave for a single birth and also applies to a premature multiple birth. Since 1 April 2016 the number of weeks of pregnancy leave has thus been increased to 10 weeks for a multiple birth, but when calculating maternity leave following a premature multiple birth a maximum period of 6 weeks applies which is the same as for a premature single birth. **Proposed changes** Since it is apparent in practice that in many cases women with a multiple pregnancy receive on balance less leave, which is an unintended effect of the earlier change in the law, the government wishes to change the law on this point. The legislative proposal therefore provides that maternity leave in the event of a premature multiple birth will be extended by the number of days that the pregnancy leave was shorter than 10 weeks, instead of the current 6 weeks. Initially this amendment was to be dealt with in the legislative proposal to amend the Work and Care Act (*Wet arbeid en zorg*) in relation to the extension of paternity leave. This amendment will now be dealt with in the SZW Collective Act 2018, so that the scheme for leave for multiple births can be introduced on 1 April 2018.

Withdrawn	• The Bill on the extension of paternity leave from two to five days	The Bill that was submitted on 25 November 2016 on the extension of paternity leave to the House of Representatives has been withdrawn. The Bill would have regulated 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, would have been extended from two to five days.
The first amendment is expected to enter into force on 1 January 2019 The second amendment is expected to enter into force on 1 January 2018.	• Changes to the transition payment	On 20 March 2017 a 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. **Dismissal on economic, technical or organisational grounds** At present, an employer does not have to pay a transition payment if a 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.