



WHITEPAPER

NEW LABOUR LAW LEGISLATION

AS OF 1 AUGUST 2022



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By 1 August 2022, Dutch legislation must be adapted to the European Directive on transparent and predictable employment conditions. The Directive gives employees more rights within their employment. A bill has now been submitted to the Dutch Lower House.

Offering compulsory education free of charge

Under the current legislation an employer may agree a training costs clause with an employee. Such a study-cost clause obliges the employee to repay all or part of the study costs upon termination of the employment contract.

From 1 August 2022, it will no longer be permitted to agree such a study-costs clause in respect of training programmes which the employer is obliged to offer on the grounds of the law or the applicable CAO. Such a clause will then be null and void pursuant to the new *Section 7:611a(2)* of the Dutch Civil Code. As of 1 August 2022, employers must offer compulsory training free of charge. Only in certain cases a study costs clause is still possible. In any case, not in the case of compulsory training.

Furthermore, the bill includes the provision that the time involved in

the training is regarded as working time. If possible, the training should take place during times when work is usually performed.

Ban on ancillary activities

In the current situation, employers are free to agree that an employee may not perform ancillary activities. After 1 August 2022, the starting point will be that a prohibition on ancillary activities during employment will no longer be permitted. The new *Section 7:653a* of the BW stipulates that an ancillary employment clause is void, unless the clause is justified on objective grounds. It is not necessary that the clause itself contains the objective reason. The employer may give the objective reason if he wants to invoke the clause. This means that a clause stating that an employee must ask permission from the employer to perform work for another person (or himself) remains permitted. The employer will still have to base its refusal to give permission on an objective justification. An ancillary activities clause in the employment contract will therefore remain possible, but the wording will have to be amended in many cases.

Extension of the duty of information

The bill extends Article 7:655 of the Civil Code. Based on this article, the employer is obliged to provide certain data/employment conditions to the employee by means of a written or electronic statement. The bill adds some data/working conditions to this:

- If work is not or not mainly performed at a fixed place: the indication that the employee performs his work at different places or is free to determine his place of work;
- The entitlement to holiday or other paid leave to which the employee is entitled or the method of calculating such entitlements;
- The procedure, including the requirements and notice periods, to be observed by the employer and the employee when the employment contract is terminated (think of the applicable probationary period and how it is determined);
- More information on the payment of wages. The other components of the wage (overtime payments and bonuses) must be stated separately. In addition, information must be given on the frequency of payment of wages and the method of payment;

- When working hours are fully or mostly predictable:
 - The duration of normal daily or weekly working hours;
 - Arrangements for working outside normal or weekly working hours and the pay for this;
 - Arrangements for changing shifts;
- When working hours are wholly or mostly unpredictable:
 - The fact that the times when work must be done are variable;
 - The number of guaranteed paid hours and the pay for work done in addition to those guaranteed hours;
 - The days and hours when the employee may be required to perform work;
 - The periods of time that apply pursuant to *Section 7:628b, subsection 3*, of the Netherlands Civil Code;
- In the case of a temporary employment contract: the identity of the hiring company if and as soon as this is known (this is not a one-off obligation, but in the event of changes this obligation always applies again);
- (if applicable) The duration and condition of the probationary period;
- (if applicable) The right to training offered by the employer;
- The employer is also responsible for the choice of pension fund or

pension insurer. The employer will have to inform the employee about the details of the pension fund or pension insurer.

In practice, this change may cause employers to have to scrutinise their employment contracts and amend them where necessary. Employees who are already employed before August 2022 can request to receive the missing information. The employer does not necessarily have to amend all 'old' employment contracts.

Request for a more predictable work pattern

The employee may request the employer for a form of work with more predictable and therefore more secure working conditions. This is possible if he or she has been employed for at least 26 weeks prior to the intended time of commencement of the changes. The employer is not obliged to agree to the request, and the other form of employment must of course be possible. Employers with more than 10 employees must respond to the request in writing and with reasons within one month. For employers with less than 10 employees this period is three months. If the employer does not respond or does not respond in time, the form of



employment is adjusted in accordance with the employee's request. If the employer rejects the request in time, the employee may take the matter to court.

EU Posting

In addition, as of 1 August, a Dutch employer who posts employees from the Netherlands to another EU country must inform these employees before departure of the wages to which they are entitled according to the applicable law of the host Member State. The employee must also be informed of: any surcharges, any arrangements for reimbursement of travel, accommodation and meal costs and the link to the website specifically developed for

this purpose by the host Member State. Furthermore, the bill contains a general prohibition on prejudicing employees and a prohibition on terminating their employment, so that employees who make use of the above-mentioned rights may not suffer any disadvantage as a result, or be terminated.

Transitional law

According to the Explanatory Memorandum, the EU Directive does not provide for transitional law. The Act will therefore have immediate effect. This means that (study-cost) provisions contrary to the law will be null and void immediately, also in employment contracts entered into before 1 August 2022.

The bill is currently before the Lower House of Parliament; it is not yet certain whether the aforementioned amendments will become final. In view of the European origin, not many changes to the law are to be expected, rather some clarifications.

Of course, if you have any questions about the changes in the field of the side-employment clause, the study costs clause and the information obligations, please do not hesitate to contact us.

Legal protection

An employer may not harm or dismiss an employee if the employee invokes the above rights. To this end,



the new provisions include prohibitions on prejudicing employees and several new prohibitions on dismissal are laid down by law. Non-compliance with the new obligations by the employer can lead to a sanction in the amount of the damage suffered by the employee. In practice, this will not always be easy to establish. After all, an employee bears the burden of proof of the damage suffered.

Examples of a justification for not complying with an obligation can be health and safety, protection of confidentiality of business information, integrity of public services or avoidance of conflicts of interest. A concrete example is the case where performing work for another person (an additional activity) could lead to a breach of the Working Hours Act.



More information

For more information or questions about the changes in the field of the contingent work clause, the study costs clause and the information obligations, please contact AAme Advisors.

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