

Labour Law in The Netherlands: Ready for a Challenge?

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When starting a business or conducting business in The Netherlands and hiring employees (no matter whether they are Dutch nationals or not) foreign entrepreneurs should not underestimate the Dutch labour law obstacles they may encounter. Employees are highly protected in The Netherlands, which makes hiring and firing someone a challenge; a challenge that can be overcome by knowing the rules...

International market

The Netherlands is known as the gateway to Europe. The harbour of Rotterdam is one of the world's largest harbours and Schiphol Airport is among the top five largest airports in Europe. The Netherlands is a trading nation and Dutch multinationals are important players in the European and international market. Actually, The Netherlands is one of the founding members of the EU.

Stock market

While Dutch companies are important for the international market, the Dutch market is also very international. When looking at the stock market, Dutch companies altogether

represent a value of 290 billion Euros. Following Dutch investors (32 billion), the United States are the second-largest investors in The Netherlands. The biggest American investor in The Netherlands is the American asset management corporation Capital Research and Management (at least 6.3 billion shares in Dutch companies). Other American top ten investors in Dutch companies are BlackRock (3.1 billion), Fidelity Fund (2.7 billion) and AllianceBernstein Corporation (2.6 billion).

Legal advantages

Dutch tax law can result in pleasant conditions for foreign companies, which makes it relatively cost-efficient to locate their holdings in The Netherlands. Apart from its favourable central location in Europe, being part of the European Union also leads to a stable legal climate. European directives govern the national laws of the member states to improve uniformity in the common market. This also applies to Dutch labour law, which is highly regulated.

This article provides you with succinct advice on how to overcome the main challenges of Dutch labour law.





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1. Applicable law

First of all, it is important to know that Dutch labour law is mandatory with regard to employees performing their duties in The Netherlands. This also means that e.g. an American company, which solely employs American nationals but is located in The Netherlands must obey the rules of Dutch labour law. Moreover, the Dutch court is the competent court in labour law cases.

2. Protective legislation

There are many legal provisions that protect the interests of the employee. These are, among others, provisions regarding holidays, minimum wages, working hours and employment of disabled employees. As a consequence, employers are not entirely free in concluding employment agreements.

3. Definite or indefinite employment agreement

An employment agreement can be entered into for a definite period (fixed term) or for indefinite duration. If no fixed term is agreed upon, the agreement is considered to be for an indefinite period. In addition, there are two situations in which the employment agreement for a definite period of time is legally regarded as an agreement for an indefinite period of time. This is – in short – the case if:

- a fourth consecutive employment agreement for a definite period of time is concluded with no intervals of more than three months between them; or,
- two or more consecutive employment agreements are concluded and (together) exceed a period of 36 months, the intervals taken into account.

4. Preventive dismissal assessment

One of the most striking features of Dutch labour law is the preventive dismissal assessment. In short, this means that the termination of an employment agreement by the employer can only be effected after preventive assessment of the reason of dismissal. This assessment is generally made by the public employment service or the court (see paragraph 5). The Dutch system significantly differs from many other legal systems, e.g. the American one, where the at-will employment doctrine applies. Under this doctrine, conclusion as well as termination of the employment agreement is effected 'at will': both the employer and the employee can decide to terminate the employment agreement at any time for any reason.

5. Termination of the employment agreement

There are several ways to end an employment agreement. A distinction is made between the termination of an employment agreement for a fixed term and the termination of an employment agreement for indefinite duration.

5.1 Fixed term

The employment agreement for a fixed term or a fixed project ends on the final date as mentioned in the employment agreement or upon completion of the project. Termination upon notice before the end of the definite period is not possible, unless parties have agreed otherwise.

5.2 Indefinite period

There are various possibilities to terminate an employment agreement for an indefinite period: upon notice, for urgent cause, by court decision or by mutual consent.

5.2.1 Termination upon notice

Both the employer and the employee can terminate the employment agreement by giving notice (taking into account a notice period). The employer requires a permit from the public employment service for this, which will only be granted if the employer has a valid reason.

5.2.2 Termination for urgent cause

The employment agreement can be terminated with immediate effect by both parties due to an urgent cause, such as theft, fraud or crimes involving a breach of trust. No permit is required, but a termination for urgent cause can only be effected if strict criteria are being met.

5.2.3 Termination by court decision

The employment agreement can also be dissolved by the District Court. The employer or employee can request the court to terminate the employment agreement for serious cause. A serious cause can consist of an urgent cause that has not been previously invoked or of a change in circumstances. In the latter case, the court often awards the employee compensation, which is to be paid by the employer.



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5.2.4 Termination by mutual consent

The last option to terminate the employment agreement is by mutual consent, preferably in writing. Usually the employee only agrees to the termination in exchange for a severance payment.

6. Collective dismissal

For collective dismissals special rules apply, based on the European directive on collective dismissals. Any employer intending to terminate the employment agreement of at least 20 employees within a period of three months is required to give written notification of this to the public employment service. The notification must contain the reasons for the intended collective dismissal and the number of employees to be dismissed, subdivided according to function, age and sex. Trade unions and the Works Council (see paragraph 8) need to be consulted regarding the necessity and the extent of the collective dismissal.

7. Illness

If an employee becomes unfit to work due to illness, the employer is obliged to continue to pay 70% of the salary for a maximum period of two years. Both the employer and employee must do everything in their power to ensure that the employee can resume his or her work.

8. Transfer of business

In The Netherlands, employees are protected if the company they work for is transferred. This legislation is based on the European transfer of undertakings Directive. With a transfer, the employees and their rights and duties under their employment agreements, follow the transfer to the new company. No new employment agreement needs to be concluded.

9. Employee participation

Employees have a legal right to participate in company affairs in The Netherlands. Employee participation is the process whereby employees or their representatives can influence the decision-making process of the company they work for. There are two types of employee participation: direct and indirect. Direct participation stands for participation within the company, indirect participation means through a trade union.

9.1 Trade Union

Trade unions usually represent employees of several companies within a specific branch of industry. An important tool for trade unions is the conclusion of collective agreements. Many aspects of the employment, such as wages, working hours, overtime, holidays, pension schemes and rules on health and safety, are governed by a collective agreement.

9.2 Works Council

Direct participation is often realised through Works Councils. Entrepreneurs who have 50 or more employees are obliged to establish one. These Works Councils can be powerful. According to the law they have the right to render advice, the right of approval and the right to information, consultation and initiative. It is important for employers to maintain a good relationship with the Works Councils, since they have the power to influence important decisions of the company; they even have the power to stop or reverse decisions of the company with respect to mergers or to selling the company.

Conclusion

The above topics show that Dutch labour law is highly regulated. Dutch employee protection is far-reaching, which can impose severe restrictions on (foreign) employers. A striking example is the termination of the employment agreement. However, it is appealing to conduct a successful business in The Netherlands, and even more appealing if a Russell-lawyer navigates you successfully through the rules and regulations of Dutch labour law. Russell Advocaten (www.russell.nl) can pre-eminently assist you in preventing obstacles and finding prompt and high quality solutions to all Dutch labour law issues. For more information, please contact Reinier Russell (reinier.russell@russell.nl).