



Q&A Coronavirus

by Russell Advocaten

Coronavirus in the Netherlands: limit the damage to your business

As the coronacrisis continues, entrepreneurs and employers are facing many legal questions. Find the answers to your questions in this Q&A report!

We assist many entrepreneurs who have run into serious problems due to the coronavirus. In this Q&A report we provide you with answers to the most important questions raised by entrepreneurs regarding:

- Your company
- Your personnel
- Real estate / Corporate immigration

Does this Q&A report not answer all your questions? Please contact our legal coronacrisis team:

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Even during the coronacrisis you can easily reach us. Together we limit the damage to your business!





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Coronavirus impact on your company

How can I get more credit if my company gets into financial trouble?

BMKB

Firstly, companies that are affected by the coronavirus and therefore having liquidity problems are entitled to the SME credit guarantee scheme (BMKB) through their bank. This scheme has been extended to 30 June 2020. In this way the government is a guarantor in part if companies wish to take out a loan or increase their current account credit. This way banks can extend credits more easily and companies can borrow faster and more money. In order to be eligible for the BMKB, companies, inter alia, need to have a maximum of 250 employees and the annual turnover must be a maximum of € 50 million or the balance sheet total a maximum of € 43 million.

GO

Secondly, companies that have difficulties obtaining bank loans and bank guarantees from € 1.5 million to € 150 million can make use of the Corporate Finance Guarantee (GO). This means that the government is a guarantor for 50%.

What tax measures has the government taken for companies?

To ensure that business owners will be able to cope with liquidity problems, companies can request special deferment of payment of income tax, corporation tax, turnover tax and payroll tax. If you request deferment of payment, the Tax and Customs Administration will immediately stop the collection. In addition, default fines are temporarily not collected.

If you expect to make less profit due to the coronacrisis, you can also adjust your income in your provisional income tax or corporation tax assessment or you can submit a request for reduction of the provisional assessment. This way, less tax is paid immediately.

What does the € 4,000 one-off payment from the 'noodloket' entail?

The € 4,000 one-off payment (referred to as compensation for entrepreneurs in affected sectors scheme - TOGS), is meant for companies on whose business the governmental health measures have a major impact, such as restaurants, sports and fitness clubs, beauty professionals, and non-food companies, to ensure continued payment of their fixed costs while revenues decrease or stagnate. Since 27 March 2020, the application can be filed with the Netherlands Enterprise Agency (RVO) via eHerkenning or DigiD. You can apply for this subsidy in addition to the other governmental relief measures. The conditions you have

to comply with to apply for the one-off payment are as follows:

- Your company's main business activity must be registered with the Trade Register of the Chamber of Commerce under a SBI-code on list of the RVO. If your company is registered with more than one SBI code, the main activity will be the top SBI code;
- Maximum of 250 employees;
- You have a physical establishment in the Netherlands, at least one establishment with an address other than the private address of the owner(s) and you are not a public company;
- Your company is not bankrupt and no application for a suspension of payments has been filed with the court;
- Your company expects a loss of turnover of at least € 4,000, and at least € 4,000 in fixed costs during the period from 16 March 2020 to 15 June 2020;
- Your company has not received more than € 200,000 government aid during the current and past 2 tax years.

My supplier does not deliver anymore. Can I recover the damage from him, even if he invokes force majeure due to the coronavirus?

It is possible that not being able to deliver will be qualified as force majeure. In the event of force majeure on the part of your supplier, he shall in principle not be liable for any damage. The arrangements made or the specific circumstances of the case however may result in you being able to recover the damage from the supplier. Therefore, make sure to check your contracts and the applicable general terms and conditions to see whether you can recover the damage or if the damage is at your expense. For instance, is there a guarantee that delivery will take place? Has an exoneration clause been included?

There may also be circumstances that prevent the invocation of force majeure. For instance, if your supplier could have foreseen problems of has foreseen them but still decided to conclude the agreement with you.



Reinier Russell:

'Also during the coronacrisis, intervening at an early stage or at least knowing your legal rights, is important.'



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Coronavirus impact on your personnel

What does the emergency bridging measure for sustained employment (NOW) entail?

The Working Time Reduction Scheme (wvt) has been abandoned and is replaced by the emergency bridging measure for sustained employment (NOW). The NOW is a simplified version of the wvt that can be applied for to receive a subsidy for wages costs. The amount of the subsidy depends on the turnover loss. The maximum compensation is 90% of the wages costs for a period of three months. This period can be extended once by three months. The maximum wage that is compensated per employee is € 9,538 per month, which equals twice the maximum daily wage per month. Salaries above this amount will not be compensated. You can submit your application to the Employee Insurance Agency (UWV) based on your payroll tax number as from 6 April 2020. The conditions to apply for the NOW are as follows:

- A loss in the turnover of your concern of at least 20% since 1 March 2020. The loss in turnover is calculated by dividing the total turnover of 2019 into four equal parts. This amount is then compared with the turnover in March-April-May 2020 or a period that starts one or two months later because a lack of customers can only be seen later in the loss of turnover.
- You are not allowed to request the UWV for a dismissal permit on economic/financial grounds during the time that you receive the NOW subsidy.

The basis is the wage for social insurance purposes plus 30% for employer's contributions such as the accrual of holiday pay and pension. The total wage bill is calculated as follows: wage bill January (according to the payroll tax from you submitted to the Tax and Customs Administration) x 3 x 1.3.

You will receive 80% of the amount you requested as an advance. The first of the three instalments will be paid within two to four weeks after submission of the application. Within 24 weeks from the end of the period that you received the NOW subsidy, you will have to indicate the actual drop in turnover. For this, in principle, an accountant statement will be required.

I have already applied for working time reduction. Do I have to submit another application for the NOW scheme?

No, you do not have to submit a new application. If you have already submitted an application for working time reduction which has not been dealt with yet, it will be considered as a an application for the NOW scheme. You will receive information from the UWV about this. Your request for working time reduction will now also be subject to the guidelines of the NOW scheme. Therefore, the UWV may ask you to provide

additional information. Have you already received a working time reduction permit? It remains valid. Would you like to extend this permit? Then, the extension will fall under the NOW scheme.

Can I oblige employees to take days off in the event of temporary closure of the business?

It is not possible to oblige employees to take days off. Holidays can only be taken with the employee's consent or if this has been agreed in the collective agreement or the employment contract. However, you can point out to employees that the [statutory holidays](#) must be taken within six months of the year in which they have accrued.

My employees want to work from home. Do I have to allow that?

Yes, if the work so permits, you have to allow it. The government's advice is to work from home where possible. However, if the employee does not have a cold or there is no situation as referred to by the RIVM and it is impossible to work from home, the employee in principle must go to work. If the employee refuses this, for instance out of fear of being infected where there is no concrete reason, you can consider that as refusal to perform work.

My employees are working from home. What possibilities do I have to check whether they actually perform work?



Priscilla de Leede:

'During the coronacrisis we keep you constantly updated regarding your legal rights and the possibilities to make use of the governmental relief measures.'

It is not prohibited to monitor employees. However, in doing so, the privacy of the employee and the conditions applicable to monitoring under the General Data Protection Regulation (AVG) must be taken into account. That means you have to have a legitimate ground for monitoring them and there is no other way to achieve the objective, which is less intrusive to the privacy of the employees. You are not allowed to monitor your employees all day and you have to inform your employees in advance of the possibility that they may be monitored. If you have a works council, you need the works council's consent for the monitoring of employees.

You can also agree with your employee that you come to check if the workplace at home meets the requirements of the health and safety service. However, in that case a picture of the workplace would be sufficient.



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Coronavirus impact on real estate and corporate immigration

My landlord says I must close my shop. Am I entitled to rent reduction?

That depends on the arrangements you made in the tenancy agreement. In turnover rent, the amount of the rent (in part) matches the turnover. In many cases, however, the tenancy agreement will be based on the ROZ model for retail space. According to this model, in the event of a defect – such as forced closure – the tenant is entitled to have the defect repaired, but generally not to rent reduction. In addition, it will be difficult to hold the landlord liable when he is only carrying out measures of recommendations by the government. However, you can try to get (temporarily) a lower rent in consultation with the landlord. After all, the landlord too has no interest in your not being able to pay the rent at all.

Can my landlord oblige me to stay open now that I have (almost) no more customers?

As a good tenant, you are obliged to exploit your shop during the normal opening hours. An exception is made if, in the given circumstances and in view of the mutual interests, you can not be required to continue the exploitation. Whether the landlord can oblige you to stay open therefore strongly depends on the circumstances of the case. The coronavirus crisis qualifies as a special circumstance, but whether you may close your shop also depends on the implications for the landlord. If half of the shops are closed, this will also have consequences for the turnover and liquidity of other shops, for instance. Keep in mind that you will continue to pay the rent during the temporary closure to avoid fines.

I want to change the office building or store I rent to prevent spread of the coronavirus. Do I have to pay for this myself or does my landlord have to pay for this?

If the lessee wishes to change the building to limit the risk of infection for employees and customers, the costs must be borne by the lessee. In principle, the lessee requires (prior) consent from the landlord for changes to the leased property. There is a statutory exception for adjustments which will be undone or removed – at the latest – at the end of the lease period without any notable costs. An example for this exception are, for instance, the perspex screens currently used in supermarkets for the protection of customers/staff at tills to ensure that people keep sufficient distance.

Are my employees from outside the European Union allowed to travel to the Netherlands?

In principle, that is not permitted. Europe's external borders have been closed because of the coronavirus pandemic. This closure does not apply to holders of a Dutch residence permit or a long-stay visa (MVV). As it concerns only a closure of the external borders, individuals with the nationality of an EU Member State, Switzerland, Norway, Liechtenstein or the UK and diplomats are allowed to enter the Netherlands for the time being. Incidentally, the Dutch government urgently advises to only travel if it is absolutely necessary and you have to take into account limited availability of flights and (international) public transport.

Will my employees' visa be automatically extended if they are not able to use it due to the coronacrisis?

Because of the current closure of the external EU borders, your employees cannot make use of their short stay visa. Short stay Schengen visa which are not used become invalid and cannot be renewed either. If your employees cannot use their visa in time, they will have to apply for a new one. It would be wise to do so in good time as there is likely to be a temporary peak in the number of applications after the expiry of the restrictive measures.



Jan Dop:
'We can assist you with applying for the governmental corona relief measures and all kind of other personnel related issues.'



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