
MEMORANDUM

Date: December 2019
From: Vestius Attorneys at Law
Subject: Employment law changes NL in 2020

The Balanced Labour Market Act 2020

The Balanced Labour Market Act (Wet Arbeidsmarkt in Balans, "WAB") will enter into force on 1 January 2020. The main changes are:

1. Extension of the chain of succession (art. 7:668a DCC)
 - The chain of succession scheme ("*ketenregeling*"), will be changed back to the scheme that applied prior to the introduction of the WWZ. This means that the period after which successive temporary contracts are converted into indefinite contracts will be extended from two to three years.
 - The period for breaking through a chain remains unchanged: six months. However, this can be reduced by CLA to three months if the nature of the work requires so (e.g. seasonal work).
 - The new chain of succession scheme will apply as soon as the WAB is introduced, meaning that no transitional law applies. An employment contract concluded before 1 January 2020, but that exceeds the duration of two years after this date, therefore remains a fixed-term employment contract (provided that no more than 3 contracts are concluded).
2. Transition allowance (art. 7:673 DCC)
 - Employees will be entitled to the statutory transition allowance from day 1, instead of after 2 years.
 - In addition, the accrual of the transition allowance will be reduced to a third monthly salary for each year of employment. The increased

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accrual for employment contracts longer than ten years and/or the 50+ employees will lapse.

3. Exceptions transitional allowance small employers

As of 1 January 2020, the Temporary Arrangement Transition Allowance for Small Employers (<25 employees) in a poor financial situation ("*Overbruggingsregeling*") will lapse. This will be replaced by two other compensation schemes:

Compensation transitional allowance termination small business

If a small employer dismisses employees as a result of closing the business due to reaching the retirement age, illness or death, the transition allowance will be compensated to the employer as per 1 January 2020.

Compensation transitional allowance in the event of long-term illness

- As per 1 April 2020, employers will be compensated for the transition allowance paid in the event of the dismissal due to long-term illness of the employee.
- This compensation scheme has retroactive effect from 2015. Applications for compensation of allowances paid between 1 July 2015 and 31 March 2020 must be submitted between 1 April 2020 and 1 October 2020 at the latest.

4. Introduction of the i-ground (art. 7:669/671b DCC)

- The i-ground is introduced as a new ground for dismissal; if multiple grounds for dismissal related to the person of the employee separately have not been met, but together can be considered a full ground for dismissal, then the cumulation of these grounds can provide a valid i-ground for dismissal.
- If the court decides to dissolve the employment agreement on the i-ground, an additional compensation of up to 50% of the transition allowance may be granted, in addition to the transition allowance (and possibly a fair compensation in case of seriously culpable acts of the employer).

5. Payrolling (art. 7:692(a) DCC)

- There will be a statutory definition for payrolling: a temporary employment contract without an allocation function under which the employing company is only authorized to place the employee at the service of another party with the consent of the hiring third party.
- Payrollers are given the same legal status and are entitled to at least the same terms and conditions of employment as employees working in the same or equivalent positions in the service of the borrowing third party.
- As far as pension is concerned, from 1 January 2021 payroll employers will be given the choice of either joining the pension scheme of the hiring third party or setting up their own pension scheme that must meet various conditions.

6. On-call contracts (art. 7:628a DCC)

The below applies to zero-hours contracts, min-max contracts and temporary employment contracts without a fixed scope of work or wherein continued payment of wages is excluded. On-call duty and standby duty are not covered by the term 'on-call contract'.

- A minimum duration of 3 hours per call will apply to all on-call contracts.
- The call term will be four (calendar) days. A shorter-term call may be refused by the on-call employee.
- If the employer changes or withdraws the call within four days prior to the call, the employer is obliged to continue to pay the wages that the on-call worker would have earned if he had worked.
- After twelve months, the employer is obliged to make an offer for a contract with fixed hours equal to the average hours worked in the preceding twelve months. Infringement of this obligation leads to a claim for salary pay on the basis of that average number of hours worked.

NB If an employee has been working for 12 months or more on the basis of an on-call contract in January 2020, the employee must be offered a fixed number of hours by 31 January 2020 at the latest. The employee may also refuse the offer, in which case he will continue to work on the basis of the on-call contract.

7. Unemployment benefit (WW) premium differentiation

- The sector classification of companies will lapse for the WW premium. For the ZW/WGA this will remain in place for the time being.
- The WW premium will henceforth be determined by the type of employment contract. Employers will have to pay a considerably higher percentage for the WW-premium for employees with temporary contracts. This percentage will be 7.7%. For employment contracts for an indefinite period of time (confirmed in writing by both parties) and with a fixed number of hours, a premium of 2.7% will apply. Employees up to the age of 21, who do not work more than twelve hours a week and employees following a vocational training course are covered by the low WW-premium.

Act on the introduction of additional birth leave ("*wet WIEG*")

As of 1 July 2020, partners can, after taking the first week of birth leave, take up to five additional weeks of birth leave within the first six months after the birth of the child. During these additional 5 weeks, the employee is entitled to continued payment of up to 70% of the maximum daily wage. These additional weeks of leave are paid for by the UWV.

Changes to salary specification

As of 1 January 2020, the salary specification will have to state whether the employment contract is based on a written employment contract for an indefinite period of time or on an on-call contract.

Mitigation obligations in the event of sickness

- Employers will get a better grip on the second track ("*tweede spoor*"). The employee will be given a bigger role in the reintegration process.

There will also be room for experiments to increase the chances of reintegration with other employers.

- As of 1 January 2020, it will be possible for SME-employers to opt for care insurance policy (*verzuim-ontzorg-verzekering*).
- The company doctor's medical advice on reintegration will be leading in the RIV test as of 1 January 2021. The UWV insurance doctor will no longer form his own medical opinion, but will follow the medical advice of the company doctor.

Replacement of the DBA Act

- The enforcement moratorium will be extended until 1 January 2021.
- However, the possibilities for enforcement during the moratorium will be increased as of 1 January 2020. From that moment on, the Tax Authorities will also be able to enforce the moratorium if principals fail to comply with instructions given by the Tax Authorities, or fail to do so sufficiently, within a reasonable period of time.
- Other measures with regard to the employment relationships of self-employed persons are due to come into effect on 1 January 2021, but are still receiving a great deal of criticism at the moment.

Expansion of the Work-related Costs Scheme (WKR)

- The percentage will be increased from 1.2% to 1.7% for the first 400,000 euros of the total fiscal salary as of 1 January 2020. For the amount above 400,000 euros, the percentage of 1.2% continues to apply. The intention is that SMEs in particular will benefit from this.
- The costs for a VOG application will be exempted from the WKR.

Retirement date

The AOW age will remain fixed at 66 years and 4 months in 2020 and 2021. After 2021, the state pension age will rise again, but more slowly than before the pension agreement.

Company bicycle simpler, electric car more expensive

- From 1 January 2020 it will be easier to ride a 'company bicycle'. Employees who receive a bicycle from their employer will only have to

pay an additional tax rate ("*bijtelling*") of 7% per year. This can also be a more expensive electric (lease) bicycle. Employees no longer have to keep complex records for private kilometers driven.

- The additional tax rate for electric cars will increase to 8%, provided that the catalogue value of the car does not exceed 45,000 euros. For all other cars the addition remains 22 percent.

RI&E and occupational diseases

The employer is obliged to make an inventory of health and safety risks, to take measures and to evaluate them. The government will focus more on compliance with these obligations. In addition, the government has set up a committee to advise on how to make claims handling for occupational diseases more efficient.

Mandatory smoking policy

From 2020 onwards, organisations will be obliged to implement HR policies that are intended to make the organisation smoke-free. Company doctors will take smoking behaviour into account in every contact and will discourage smoking by offering tools to stop smoking.

Low Income Benefit (LIV)

From 2020, the allowance for employers per employee with an hourly wage between 100 and 125% of the minimum wage will be EUR 0.51 per hour with a maximum of EUR 1,000 per calendar year. This halves the high rate. The Youth-LIV will also be halved with effect from 2020 and abolished with effect from 2024.

Introduction of the revised Posting of Workers Directive

The revised Posting of Workers Directive will be implemented by 30 July 2020 at the latest. The aim of the directive is to strike a new and better balance between, on the one hand, promoting the free movement of services in the EU and, on the other, protecting the rights of posted workers.