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## **AN INTRODUCTION TO DUTCH EMPLOYMENT LAW**

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### **In general**

This paper is meant to present a general global view on Dutch employment law. I have tried to be brief, rather than comprehensive. Therefore I have not mentioned specific demands which apply to specific situations. This paper therefore should only be used as a guide to give your client a first idea of what can be expected when a question arises and Dutch employment law is applicable.

### **Period of notice**

The Dutch law states that the period of notice for an employee is one month. The period of notice for the employer is also one month. If the employment has lasted over five years, the period of notice becomes two months, over ten years it becomes three months and over fifteen years the period of notice is four months.

If the employment contract stipulates a period of notice which is longer than the period stated by law, the period for the employer needs to be twice as long as the period of notice for the employee with a maximum of six months for the employee and twelve months for the employer. It is also possible that a Collective Bargaining Agreement (CAO) can provide otherwise.

In general an employer is not entitled to give notice of termination of an employment contract with an employee who is sick, pregnant, (going to be) on parental leave or member of a works council.

### **Influence of the reason for termination on the period of notice**

An employment contract can be terminated without a period of notice during a probationary period, by mutual consent and when an urgent reason (for example theft) occurs.

In all other cases the employer needs to obtain a license from the Centre of Employment and Income (CWI) before he can terminate an employment contract. Obtaining a license requires a dismissal proceeding.

If a license is granted, the notice period needs to be observed. An employee does not need permission from the CWI to terminate the contract, a written notice, observing the period of notice is enough. A party can also request the court to terminate the employment contract. I will refer to this proceeding hereunder.

### **The remedies for an employee**

An employee whose contract is terminated can object by starting proceedings in

front of the "kantonrechter", the judge in employment cases. The lawsuit starts with a writ of summons.

The employee can do so when for example he feels that he was pressed to agree on a mutual consent or when an urgent reason has occurred, which he couldn't avoid occurring.

This proceeding is even possible after the employer has obtained permission by the CWI and has respected the period of notice.

If the kantonrechter finds that the employer has neglected or violated one of the obligations of the employer by Dutch employment law, the judge will order reinstatement or payment of compensation to the employee. This proceeding can take six to nine months (without possible appeal).

Rather than risking being brought into this proceeding, the employer mostly tries to settle the case or files a request with the kantonrechter to terminate the contract. This is a brief proceeding, it takes about two months for a request, statement of defence, hearing and verdict.

In most of the cases the kantonrechter will terminate the contract, but the compensation, which needs to be paid to the employer, depends on the circumstances. Only in exceptional events it is possible to appeal.

Even if the contract has been terminated for urgent cause it is advisable to file a request to the kantonrechter asking him to terminate the contract. In that case the request is filed "as far as termination is still necessary". Only by starting such proceedings it is possible to avoid the risk of being obligated to pay the wage for a long period, when the employer wins and is reinstated.

### **Jurisdictional court**

The kantonrechter has jurisdiction in all employment law cases. However in cases where the employee is a statutory managing director, then the "rechtbank" is the competent court, but further – in general - the same rules apply.

### **Compensation**

There is no maximum compensation. Most kantonrechters use a formula to calculate the compensation, but the formula is not stated in the law and according to a directive the judge has the freedom to grant a compensation which is deemed to be justified in the specific circumstances of the case.

### **Calculation of the compensation**

The directive used by kantonrechters leads to the following calculation of compensation:

(A) number of years of employment x (B) wage per month x (C) correction factor

A)

The number of years that the employment has lasted is rounded off to whole numbers. An employment that lasts two years, five months and 21 days, counts

as two. However every year that the employee was younger than 35 counts for 0,5, every year the employee is in the age between 35 and 45 counts for 1, every year between 45 and 55 counts for 1,5 and every year after 55 counts for 2.

B)

The gross salary per month, including regular bonuses and vacation bonus.

C)

This is the correction factor the kantonrechter can fill in. The factor is one if both parties are to blame for the situation which occurs. The factor will be zero, if the situation is for risk of the employee, and can go up to two, when an employer has no actual reason to file the request.

In exceptional matters, for example very short employments, serious misconduct or severe negligence by the employer, the judge can set the C factor on six and we have even seen a C factor of twelve.

Extra sensitive matters as discrimination and termination of a contract during pregnancy are also brought under this C factor.

### **Reinstatement**

In the rather short proceedings in which the employer requests the kantonrechter to terminate the contract, it is theoretically possible that the judge will refuse to terminate the contract and reinstatement will have to take place.

However this seldom happens, because the kantonrechter has to examine whether a good cooperation between parties is still to be expected and if not, he will have to terminate the employment.

This means that in general it is possible for an employer to avoid reinstatement, even if there is no justified reason to terminate the contract. Off course it will cost the employer, because the kantonrechter will compensate the employee by using C factor which will be higher than one.

In a lawsuit started by a writ of summons after a wrongful termination of the contract, the court can order reinstatement. As stated before, the employer can file a request "as far as termination is still necessary", to decrease the risks.

### **Mediation**

Mediation in the event of an employment conflict is not obligatory by law. However if an employee offers his cooperation to mediation and an employer refuses, this will be calculated in the C factor and therefore will increase the compensation.

### **Written contract**

There is no obligation for contracts of employment to be in writing. However if there is no written contract between parties, the law states that if an employee has worked for a certain period of time, being instructed by the employer and the employee has received wages for his activities, there is supposed to be a contract.

This means that all laws that apply on contracts apply as well. In doubt all applicable laws will be interpreted in favour of the employee. Therefore if there is no contract for example there is no probation period and the employee will be

deemed to be appointed for an indefinite period of time.

### **Transfer of (a part of) the business**

The position of the employees in case of a transfer of (a part of) a company to another company is laid down in a complex system of laws and lots of legal precedents.

In general all obligations concerning employments from the selling company or component will pass to the buying company according to EC directives implemented in Dutch law.

The selling company however is responsible for the fulfilment of the (payment) obligations of the buying company for a year after the agreement.

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