

Dutch dismissal law in a nutshell

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Introduction

Dutch dismissal law contains certain distinguishing elements which make it unique within Europe. Employers that intend to dismiss employees must be mindful of these unique features. Otherwise, the dismissal attempt may fail, resulting in:

- the nominated employee remaining in the company's employment; or
- the employer paying a higher severance payment to the employee.

Dual dismissal system and preventive dismissal assessment

Dutch dismissal law is based on a dual system, which includes a preventive dismissal assessment. Under the dual system, employers can either:

- request the prior permission of the Dutch Employee Insurance Office (UWV) before terminating a specific employment agreement; or
- file a request with the court to terminate the employment agreement.

In both situations, a preventative dismissal assessment must be conducted (by a judge or the UWV) before the employment agreement can actually be terminated. Aside from dismissals on urgent grounds, employers cannot terminate an employment relationship unilaterally without undertaking a preventive assessment.

Further, employers cannot choose which dismissal path to follow; rather, these paths are prescribed. In the event that the intended dismissal is based on commercial criteria or long-term illness, the employer must go through the UWV. In the event that it is based on other (personal) reasons – such as underperformance or a damaged working relationship – the employer must go through the court.

Reasonable ground and reinstatement obligation

Requests for permission to terminate an employment agreement, as well as requests to terminate an employment agreement, can succeed only if the employer can show that:

- there is a reasonable ground for dismissal (as comprehensively enumerated in the Civil Code); and
- proven efforts have been made in order to reinstate the employee.

The abovementioned reasonable ground must be sufficiently substantiated with both arguments and evidence.

Before filing a request with either the UWV or the court, employers must investigate whether it is possible to reinstate the nominated employee in another suitable position within the company. It is not sufficient for this search to encompass only the employee's own company (ie, their legal employer); rather, it must encompass the entire group of companies. In the event that no suitable position exists, the employer must investigate whether it is possible to make an existing position suitable for the employee within a reasonable period by providing the employee with relevant training. The abovementioned reasonable period is the applicable notice period.

Transitional payments

Where there is a reasonable ground for dismissal and the employer has shown that it has done

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enough to try and reinstate the employee, the UWV will grant the employer permission to terminate the employment agreement. In that scenario, the employer can terminate the employment agreement with due observance of the applicable notice period (after deduction of the duration of the procedure, provided that the applicable notice period is at least one month).

If the court path is followed, the court will simply terminate the employment agreement.

In both scenarios, the employer must pay a so-called 'transitional payment' to the employee. This obligation follows directly from the Civil Code. In general, the obligation applies in the event that the employer has taken the initiative to terminate the employment agreement (unless the employer wants to terminate the employment agreement due to a matter of serious culpability of the employee). The amount of the transitional payment that should be paid to the employee is calculated based on a fixed formula that also follows from the Civil Code. The maximum amount of the transitional payment is €81,000 or one year's salary, whichever is higher.

In the event that the employment agreement is terminated with mutual consent, the obligation to pay the transitional fee does not apply. However, employers nevertheless often offer some kind of payment in order to provide an employee with an incentive to agree to a settlement.

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