THE EMPLOYMENT LAW REVIEW

Fourteenth Edition

Editor
Erika C Collins

THE LAWREVIEWS

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CONTENTS

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PREFACE

For each of the past 13 years, we have surveyed milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. Every year when I update this book, I reread the Preface that I wrote for the first edition in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. I have been practising international employment law for more than 25 years, and I can say this holds especially true today, as the past 14 years have witnessed progressive shifts in the legal landscape in many jurisdictions. This 14th edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see this publication grow and develop to satisfy its initial purpose: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up-to-date reference guide.

Speaking of changes, we have now been living with covid-19 for more than three years. In 2020, we entered a new world controlled and dictated by a novel coronavirus, one that spread at a rapid pace and required immense government intervention. The ways in which governments responded (or failed to respond) shed light on how different cultures and societies view, balance and respect government regulation, protection of workers and employee privacy. Employment practitioners around the globe have been thinking about and anticipating the future of work for over a decade. But with the onslaught of covid-19, the future of work was foisted upon us. Covid-19 has expedited the next decade of technological advancement and employer–employee relations, causing entire industries and workplaces to change in real time and not over the course of years.

Unsurprisingly, this year's text would not be complete without another global survey of covid-19 that summarises some of the significant legislative and legal issues that the pandemic has presented to employers and employees. The updated chapter highlights how international governments and employers continued to respond to the pandemic during the course of 2022, from shutdowns and closures to remote working and workplaces reopening. Employers around the globe have needed to be nimble to deal with the constantly changing environment.

The other general interest, cross-border chapters have all been updated. The #MeToo movement continues to affect global workforces. The movement took a strong hold in the United States at the end of 2017, as it sought to empower victims of sexual harassment and assault to share their stories on social media so as to bring awareness to the prevalence of this behaviour in the workplace. In this chapter, we look at the movement's success in other

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countries and analyse how different cultures and legal landscapes affect the success of the movement (or lack thereof) in a particular jurisdiction. To that end, this chapter analyses the responses to and effects of the #MeToo movement in several nations and concludes with advice to multinational employers.

The chapter on cross-border mergers and acquisitions (M&A) continues to track the variety of employment-related issues that arise during these transactions. The covid-19 pandemic initially caused significant challenges to M&A. Deal activity slowed substantially in 2020, negotiations crumbled and closings were delayed. Although uncertainty remains about when M&A activity will return to pre-pandemic levels, it appears that businesses and financial sponsors once again have begun to pursue transactions. Parties already have begun to re-engage on transactions previously put on hold and potential sellers appear willing to consider offers that provide a full valuation. The content of due diligence may change because the security of supply chains, possible crisis-related special termination rights in key contracts and other issues that were considered low-risk in times of economic growth now may become more important. This chapter, and the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2022 for multinational employers across the globe. Many countries in Asia, Europe and South America have continued to develop their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation, and regulations on gender quotas and pay equity, to ensure that all employees, regardless of gender, sexual orientation or gender identity, among other factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where certain classes of individuals in the workforce remain under-protected and under-represented, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

We continue to include a chapter that focuses on social media and mobile device management policies. Mobile devices and social media have a prominent role in, and impact on, both employee recruitment efforts and the interplay between an employer's interest in protecting its business and an employee's right to privacy. Because companies continue to implement bring-your-own-device programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy. Particularly in the time of covid-19 and remote working, bring-your-own-device issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

Our final general interest chapter discusses the interplay between religion and employment law. Religion has a significant status in societies throughout the world, and the chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to them. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

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In addition to the six general interest chapters, this edition of *The Employment Law Review* includes country-specific chapters that detail the legal environment and developments of 37 jurisdictions around the world.

Covid-19 aside, in 2023, and looking into the future, global employers continue to face growing market complexities, from legislative changes and compliance challenges, to technological and societal forces that are transforming the future of work. Whether solving global mobility issues, designing employee equity incentives, addressing social media issues, negotiating collective bargaining agreements or responding to increasing public attention on harassment or equal pay issues, workforce issues can affect a company's ability to attract and retain talent, or damage its reputation and market value in an instant. These issues have created a confluence of legal and business challenges that can no longer be separated or dealt with in isolation. As a result, every company requires business advisers who can address the combined business and legal issues relating to its multinational workforce. It is my hope that this text provides legal practitioners and human resources professionals with some guidance, best practices and comprehensive solutions to significant workforce issues that affect a company's market position, strategy, innovation and culture.

A special thank you to the legal practitioners across the globe who have contributed to this volume for the first time, as well as those who have been contributing since the first year. This edition has once again been the product of excellent collaboration, and I wish to thank our publisher. I also wish to thank all our contributors and my Faegre Drinker associates, Xinyi Chen, Katherine Gordon, Caroline Guensberg, Konstantina Kloufetos, Zoey Twyford, Brooke Razor and Charlotte Marshall, counsel Emma Vennesson, and my law partners, Alex Denny, Nicole Truso and Claire Zhao, for their invaluable efforts in bringing this 14th edition to fruition.

Erika C Collins
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Chapter 29

NETHERLANDS

Dirk Jan Rutgers, Inge de Laat, Annemeijne Zwager, Ilaha Muhseni and Hanna Steensma[1]

I INTRODUCTION

i Sources of employment law

Employment is regulated in the Netherlands by three main sources: legislation, collective bargaining agreements (CBAs) and individual employment contracts.

The most important employment law regulations are set forth in Book 7 of the Dutch Civil Code (DCC). Various aspects of Dutch employment law are also governed in a number of specific statutes, such as the Works Council Act and the Collective Dismissal Act.

International law, in particular European Community law, is a significant influence Dutch employment law. Under Article 153 of the Treaty on the Functioning of the European Union, the European Union issues directives that impose minimum requirements concerning terms of employment, working conditions and informing and consulting employees, which are generally incorporated into local statutes. If they so wish, EU Member States may offer better protection to employees than the directives require.

A CBA is an agreement between one or more employers or employers' organisations and one or more employees' organisations that mainly or exclusively regulates terms of employment that must be observed in employment contracts. The agreement regulates many different aspects of the employment relationship between an employer and its employees. As a general rule, in the event of inconsistencies between the provisions of an applicable CBA and the provisions of an employment contract, the CBA will prevail.

Generally, an individual contract between an employee and an employer cannot deviate from statutory employment law and CBAs to the detriment of the employee. Thus, the freedom of contract is limited. An employment contract may also regulate aspects of the employment relationship that are governed by other sources of law, provided that the agreed clauses are more favourable for the employee.

ii Relevant courts and government authorities

There are three distinct types of courts in the Netherlands for civil and commercial matters: district courts (including the sub-district courts), courts of appeal and the Supreme Court. In the public sector, individual labour disputes are regarded as administrative disputes and are consequently handled by a single judge in the administrative law sector of the court. In cases involving civil servants and social security issues, appeals are taken to a special appeals tribunal, the Central Appeals Tribunal.

1 Dirk Jan Rutgers is a partner, Inge de Laat is managing partner, and Annemeijne Zwager, Ilaha Muhseni and Hanna Steensma are attorneys, at Rutgers & Posch.

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The Employee Insurance Agency (UWV)[2] is the government authority responsible for administering employee benefits (such as social security and welfare) and helping unemployed people to find work. In addition, the UWV determines eligibility for work permits and processes requests for permission to terminate employment contracts on economic grounds or on the grounds of long-term disability (more than 104 weeks).

The Data Protection Authority[3] oversees compliance with laws relating to the protection of personal data.

The Netherlands Institute for Human Rights[4] explains, monitors and protects human rights; promotes respect for human rights (including equal treatment) in practice, policy and legislation; and increases the awareness of human rights in the Netherlands.

II YEAR IN REVIEW

In 2022, Dutch employment law was subject to several changes. Most significantly, on 1 August 2022, the Dutch Act implementing the EU Directive on Transparent and Predictable Working Conditions[5] entered into force, resulting in several important changes to Dutch employment law. First, the obligation for employers to provide information is expanded under this Act and now includes: (1) the procedure and requirements for terminating employment contracts; (2) the duration and conditions of probationary periods; and (3) other forms of paid or unpaid (statutory) leave, such as – but not limited to – care leave, parental leave and partner leave. Although it does not explicitly follow from the Act, this information obligation is most likely fulfilled when employers refer to the (statutory) regulations setting out the (statutory) leave and requirements regarding terminating employment contracts and probationary periods. Second, the Act restricts the ability of employers to prohibit ancillary activities of employees. Clauses that prohibit or restrict an employee's ability to perform work outside the hours when work must be performed for the employer are, in principle, not permitted, unless it is justified for objective reasons. Objective reasons could include protecting confidentiality of business information, ensuring the employee's health and safety or safeguarding against violation of a statutory regulation. It is not mandatory to include these objective reasons in the employment contract. The employer only needs to be able to demonstrate an objective reason at the time it invokes the ancillary activities clause in the employment contract. If no objective justification can be given, the ancillary activities clause is considered null and void. The amendments to the legislation on ancillary activities applied with direct effect from 1 August 2022, including to already concluded and pending (collective) employment contracts containing a relevant ancillary activities clause.

The temporary emerging bridging measure to maintain employment (referred to as NOW), government support for employers with substantial turnover during the covid-19 crisis to help preserve jobs, came to an end in 2022 with the NOW 6.0.

2 Uitvoeringsinstituut Werknemersverzekeringen.

3 Autoriteit Persoonsgegevens.

4 College voor de Rechten van de Mens.

5 Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

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III SIGNIFICANT CASES

On 21 January 2022, the Supreme Court rendered an interesting judgment on the relatively new concept of 'serious imputable acts or omissions' within the meaning of Section 7:671c, subsection 2 and Section 7:673, subsection 1(b)(2) of the DCC.[6] This case involved an employee's request for termination. The Supreme Court ruled that certain behaviour may be imputable, even though not in themselves serious. Therefore, when assessing whether an employee or employer has acted in a seriously imputable manner, all circumstances of the case must be taken into account. The Supreme Court describes this as multiple 'yellow cards', which together can lead to a 'red card' of serious imputability. With this, the Supreme Court seems to have slightly lowered the high threshold for serious imputability.

In a Supreme Court ruling of 24 June 2022,[7] the question arose of whether an employee's imputable behaviour in the case of sexual harassment constitutes seriously imputable conduct on the employee's part, within the meaning of Section 7:673, subsection 7(c) of the DCC. If this is the case, the employee is not entitled to a transition payment. The case involved a teacher at a drama school who had received multiple warnings from the employer between 2006 and 2010 for unwanted physical contact with students. After two more incidents in 2017 in which the teacher gave a student a massage lesson, among other things, the employer filed for termination. The employer claimed that the employee was not entitled to any compensation due to their seriously imputable conduct.

The advocate general of the Supreme Court argued that, according to current social norms, the basic principle should be that if sexual harassment is established in a dependency situation (i.e., from manager to junior or teacher to student), it constitutes serious imputable conduct within the meaning of Section 7:673, subsection 7(c) of the DCC.

However, the Supreme Court did not follow the advocate general and ruled that the grounds for exception in Section 7:673, subsection 7(c) of the DCC have a limited scope and should be applied with caution. The employee can lose the right to a transition allowance only in exceptional cases in which it is evident that the employee's acts or omissions leading to the termination of the employment contract should be considered not merely culpable, but seriously culpable. In this case, the Court found that the employee's conduct did not fit this exceptional situation. Thus, the Supreme Court remains strict in its criteria for serious culpability in exceptional circumstances.

IV BASICS OF ENTERING INTO AN EMPLOYMENT RELATIONSHIP

i Employment relationship

The law does not prescribe that employment contracts take a specific form; they may be either written or oral and can be agreed for a fixed term or an indeterminate period. This means that parties can, in principle, start an employment relationship without signing an employment contract. However, within one week of commencement of employment, the employer is obliged to provide the employee with a written or electronic statement listing the following details:

a the names and addresses of the parties;

b the place or places where the work will be performed;

6 ECLI:NL:HR:2022:63.

7 ECLI:NL:HR:2022:950.

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c the position of the employee or the nature of the work;
d the date of commencement of employment;
e whether the contract is concluded for an indefinite or fixed term (if the latter, the duration of the contract should be stipulated);
f holiday entitlement or the manner in which holiday entitlement is calculated;
g remuneration and the periodic frequency of payment; and
h the duration and terms of the probationary period (if any).

In addition to the above, within one month of commencement of employment, the employer is obliged to provide the employee with a written or electronic statement to include the following information:

a holiday entitlement or the manner in which holiday entitlement is calculated;
b the procedure, including the requirements and notice periods, that the employer and employee must observe if the employment contract is terminated;
c whether the employee will join a pension plan;
d if the employee is to work outside the Netherlands for a period in excess of one month, further information, as required;
e any applicable CBA or scheme made by or on behalf of a competent authority or applicable employment conditions as set forth in Section 8 or Section 8a of the Placement of Personnel by Intermediaries Act;
f whether the employment contract is a temporary employment contract as defined in Section 690 of Book 7 of the DCC or a payroll contract as defined in Section 692 of Book 7 of the DCC or whether the employment contract concerns an on-call contract as defined in Section 628a, Paragraphs 9 and 10 of Book 7 of the DCC;
g in the case of a temporary employment agency contract, the identity of the hiring company, if and when known;
h if applicable, the right to training provided by the employer; and
i insofar as the employer is responsible for this, the identity of the social security institutions that receive social security contributions in the context of the employment relationship and social security protection offered by the employer.

A non-compete clause, a probationary period and a unilateral amendment clause must be formalised in writing to be valid.

The employment contract or terms of employment can be amended with the employee's consent. The employer may unilaterally amend the contract only in certain circumstances. If the employment contract contains a unilateral amendment clause, this could facilitate a unilateral amendment, although to be able to implement an amendment, it must outweigh the employee's interest in keeping the terms of employment unchanged. If the parties have not agreed on a unilateral amendment clause, an amendment could be based on the obligation to be a good employer or employee, or on the principle of reasonableness and fairness.

ii Probationary periods

Probationary periods are only allowed in employment contracts that have a duration of more than six months; thus, probationary periods in employment contracts with a term of six months or less are null and void. For the remainder, employers and employees are free to agree on a probationary period, as long as it is agreed in writing. The permissible duration of a probationary period depends on the duration of the employment contract. For example,

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the probationary period in employment contracts with a duration of less than two years may not be more than one month; the probationary period for employment contracts with a term of two years or more, and for open-ended contracts, may be two months at most. If a probationary period is agreed in violation of the rules, it will be null and void.

During the probationary period, either party may terminate the employment contract with immediate effect without notice and without stating the reasons for termination.

iii Establishing a presence

Foreign companies can hire employees in the Netherlands without being officially registered in the country, although they may be required to register with the Dutch tax authorities if Dutch social security contributions are due.

Under certain circumstances, a foreign company may be required to register with the Dutch tax authorities, or may do so voluntarily, as a withholding agent. Registration is mandatory if a foreign company has a permanent establishment (PE) in the Netherlands. A PE is defined as business premises in the Netherlands that is equipped with sufficient facilities to operate as an independent business and that is used to supply goods or services to third parties. In principle, if a Dutch employee of a foreign company acts on behalf of that company, or is authorised to conclude contracts in the Netherlands in the name of the foreign company and habitually exercises that right, the foreign company is deemed to have a PE with respect to any activities undertaken by that person (permanent representative). Furthermore, a PE is deemed to exist if the foreign company makes employees available on the Dutch labour market or if the employee works on or above the Dutch part of the continental shelf for a consecutive period of at least 30 days.

If employees are hired through an agency or another third party, no registration will be required, provided that the agency or third party qualifies as an employer or a withholding agent.

A foreign company can engage an independent contractor without being officially registered, although it should be carefully checked whether the tax authorities consider that relationship to be a de facto employment relationship. If an employment relationship is deemed to exist, that will result in a withholding obligation for the foreign company (see above). A company is required to determine itself whether it has a withholding obligation for income tax and social security contributions in relation to independent contractors. However, the Dutch tax authorities will enforce the current policy regarding the use of independent contractors, in principle only in cases involving deliberate fraud or deception, or after having provided directions to the relevant parties that have not been observed.

Companies must pay their employees a statutory minimum wage. The amount of the minimum wage depends on the employee's age.

All employees are entitled to a statutory minimum amount of holiday, which is calculated by multiplying by four the number of hours they work per week. For people in full-time employment, this equates to 20 days, which is in addition to public holidays. Furthermore, employers must pay all employees a statutory holiday allowance of 8 per cent of the employee's gross annual salary, which may be included in an employee's salary provided that it is agreed in writing and the employee concerned earns more than three times the minimum wage.

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V RESTRICTIVE COVENANTS

A non-compete clause can, in principle, only be agreed to in writing in an open-ended employment contract and if the contract is concluded with adult employees. An exception to this rule is made for fixed-term employment contracts if it appears from a written statement included in the contract that the non-compete clause has been included by reason of substantial business interests. This necessity must exist not only when the employment contract is concluded, but also if and when the employer enforces the non-compete clause. A court may decide whether a non-compete clause is legally valid and should remain in force in its original form. It is ultimately up to the court to limit, or even wholly or partially annul, a non-compete clause if the employee's interest in having a free choice of work prevails over the interests that the employer has sought to protect by the clause.

A generally accepted term for a non-compete clause is six months to one year. The parties can agree that a penalty will be forfeited if the obligations arising from a non-compete clause are not fulfilled. An employer cannot rely on a non-compete clause in the case of serious imputable acts or omissions on the part of the employer.

If the employer terminates an open-ended employment contract during the probationary period, a non-compete clause can be enforced only if the employer substantiates its major business interests in writing to the employee.

Contrary to the non-compete clause, an ancillary activities clause does not have to be agreed upon in writing, can be entered into with a minor employee and is also valid in a fixed-term employment contract. However, it is now only permissible to prohibit employees from working for another employer during the time that they have to work for the employer or be available to work (see Section II).

VI WAGES

i Working time

Under the Working Hours Act, employees are permitted to work a maximum of 12 hours per day or 60 hours per week, although any given working week may not exceed an average of 48 hours over a 16-week period or an average of 55 hours over a four-week period. However, it is possible to deviate from the latter requirement in a CBA. Generally, employees must have 11 hours of rest each day, which may be reduced to no less than eight hours, and 36 consecutive hours of rest once every week or 72 hours every two weeks.

Night work is permitted subject to a maximum of 10 hours per shift, which may be extended by two hours for a maximum of five times within a two-week period and 22 times per year. After an extended night shift, employees should get a minimum of 12 hours rest. In each period of 16 weeks, an employee can work a maximum of 36 night shifts that end after 2am. If a shift ends after 2am, employees may not, in principle, work for the next 14 hours. If employees work 16 night shifts within 16 consecutive weeks, they may not accrue more than 40 working hours per week.

ii Overtime

Overtime pay is not regulated. The question of whether pay is due for overtime or if a threshold applies depends on the contractual arrangements between the parties, or in the CBA, if one is in place. In most cases, the applicable CBA will contain rules stating when overtime must be paid, for example by means of extra salary payments.

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Similarly, there are no statutory rates for overtime pay. The maximum working hours mentioned in Section VI.i also govern the maximum amount of overtime.

VII FOREIGN WORKERS

Employers have a legal duty to keep and retain various records of foreign workers. This includes obligations to verify the authenticity of their workers' identification documents and to keep copies on file for each employee. These copies must be kept for a minimum of five years after the calendar year in which the employment was terminated. The law does not limit the number of foreign workers in a workplace or company. Employers also have an obligation to provide information to the Immigration and Naturalisation Service (INS). The duty of care applies only to employers who hold the status of recognised sponsor with the INS.

Under the Employment of Foreigners Act, both a work permit and a residence permit are required for workers from outside the European Union, the European Economic Area (EEA) or Switzerland. These permits are issued by the INS, in some cases based on advice obtained from the UWV. Employers must apply for these permits. As a rule, an employer will be granted a permit only if it proves that no European Union, EEA or Swiss workers are available for the job. Exceptions exist for special categories of employment, such as the knowledge migrant scheme (KMR). After uninterrupted legal stay and employment for five years, workers from outside the European Union, EEA or Switzerland no longer need a work permit.

When a work permit and residence permit have been approved, the foreign worker must obtain a temporary residence permit (MVV) before travelling to the Netherlands. Citizens of a number of countries (Australia, Canada, Japan, Monaco, New Zealand, South Korea, the United Kingdom, the United States and Vatican City) are exempt from this MVV requirement. After the foreign worker has travelled to the Netherlands with an MVV, the work permit and residence permit are granted automatically.

A work permit and a residence permit are required for a stay of more than 90 days in the Netherlands. Shorter work assignments can be covered by a work permit, combined with a Schengen visa (unless the applicant is from a visa waiver country). Generally, the holder of a residence permit is under the same obligations as Dutch nationals (i.e., in respect of social security contributions and customs duties). If a foreign worker is subject to Dutch taxes or social security contributions, the employer will generally be obliged to withhold taxes and contributions and pay these amounts to the tax authorities. Since 1 January 2019, there has been a distinction between Dutch workers and foreign workers regarding tax credits. Only a foreign worker from the European Union, EEA, Switzerland or special municipalities Bonaire, St Eustatius and Saba, who is taxed by at least 90 per cent in the Netherlands, is entitled to the same tax credits as a Dutch worker.

If a citizen of another country comes to work in the Netherlands, they may be liable for extra costs, known as extraterritorial costs. The employer may grant the employee a free (untaxed) reimbursement of the extraterritorial costs that the employee incurs. The employer may also provide the employee with 30 per cent of their wage, including reimbursement, tax free; this is known as the 30 per cent facility. For this, it is not necessary to prove that expenses have been incurred. To make use of this facility, permission is needed from the tax

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and customs administration and the employer and employee should submit an application. The employee is eligible for this allowance if a number of conditions are met, but – since 1 January 2019 – only for a maximum of five years.

In principle, foreign workers become eligible for a permanent residence permit after five years of legal stay in the Netherlands. All foreign workers are required to pass an integration test to be eligible for a permanent residence permit.

The most common permit for highly skilled workers is the KMR, which is a combined work and residence permit. The only requirement to obtain a KMR permit is that the employee must earn a salary of at least €5,008 gross per month, exclusive of 8 per cent statutory holiday allowance or, if the employee is not yet 30 years old, at least €3,672 gross per month.[8] If the migrant has graduated from a Dutch or top 200 university no more than three years before the application for a KMR permit is submitted, they might qualify for the reduced salary criterion, which is at least €2,631 per month. Furthermore, the employer must have obtained recognised sponsor status from the INS.

Foreign workers who are transferred to the Netherlands as intra-corporate transferees and who fall under the scope of the Intra-corporate Transferees Directive[9] must apply for an intra-corporate transferees (ICT) permit. Only Turkish nationals are exempt from this restriction to apply for an ICT. The Directive applies to employees who:

a perform work as a manager, specialist or trainee;
b have an employment contract with an undertaking established outside the European Union and have been employed by this undertaking for at least three months prior to the transfer;
c are transferred to a group member within the Netherlands; and
d live outside the Netherlands at the time of submitting the application.

The requirements for an ICT permit are largely the same as for a KMR permit, although the salary thresholds are applied slightly less strictly. The most important difference is that with an ICT permit, the migrant worker remains employed by the foreign parent company, rather than the Dutch (host) entity. In addition, the host entity does not need to be a recognised sponsor to act as a sponsor for an ICT permit. An ICT permit is valid for a maximum of three years (for trainees, a maximum of one year), after which it can be converted into a KMR permit, regardless of whether the contract is transferred to the host entity. However, the salary thresholds will be applied strictly.

VIII GLOBAL POLICIES

An employer may choose to adopt a global policy or code of conduct, but is generally not required to do so. Notwithstanding the lack of a formal requirement, many companies, in both the public and private sectors, have opted to issue codes of ethics or conduct that identify the principles by which employees are expected to conduct themselves. Doing so is not only a way of attempting to ensure that their employees will act in an honest and ethical matter, but can also help to defend against an action for improper conduct. If the

8 The quoted monthly salaries are those applicable for 2023.

9 Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

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company can point to the existence of, and internal adherence to, a well-drafted code of conduct, it may assist the company in demonstrating that unethical conduct ran counter to the company's directives and operating culture.

Although difficult to generalise because the sector or industry in which the company operates will influence the substance of its code of conduct, the following topics are often included:

a compliance with laws and regulations;
b preventing conflicts of interests;
c attention to people and the environment;
d fairness in financial reporting;
e protecting the company's assets; and
f commitments relating to human rights, freedom of association, elimination of forced or child labour and elimination of discrimination and harassment.

Some companies have extended the application of a code of conduct to their interaction with suppliers.

Codes of conduct do not have to be written in Dutch and employees do not have to confirm their acceptance and compliance with the code. The only requirement is that companies must ensure that the employees who are bound by the code understand its contents. However, the company's position will improve if its employees acknowledge in writing that they have received and will comply with the code of conduct. Most companies will include these acknowledgements in employment agreements with their employees. Some companies require their employees to acknowledge receipt and understanding of the code, including its updates, each year.

IX PARENTAL LEAVE

The Work and Care Act provides that all employees (both male and female and regardless of the number of hours worked per week) may take parental leave for up to 26 times their working hours per week when they have or care for a child under eight years of age. This leave is unpaid, in principle, unless the employer and employee agree otherwise (within the company) or if payment is regulated in a CBA. As a result, not everyone can afford to take parental leave; only one-third of parents make use of it. A multiple birth or adoption of more than one child at the same time gives the right to full parental leave in relation to each of the children. At the end of the period of parental leave, the employee should return to their original number of working hours. Except when the employer has a substantial ground to refuse, the employee is entitled to determine the specifics of their parental leave (one day per week, one day per month, a continuous period, etc.). A request to take parental leave must be made in writing at least two months in advance.

Since August 2022, parents are partially paid for nine of the 26 weeks of parental leave (taken during the child's first year). With this measure, the Dutch legislator wants to encourage parents to actually take parental leave. They will receive a payment from the UWV equal to 70 per cent of their daily wage (but up to 70 per cent of the maximum daily wage).

Within four weeks of childbirth, an employee who is the partner of a woman who has given birth is entitled to paid post-birth leave equivalent to the number of working hours in the partner's standard working week. Moreover, an employee who is the partner of a woman giving birth has the option to take additional post-birth leave of up to five times the

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number of working hours of their standard working week within the six months following childbirth. During this leave, the employee will receive compensation of up to 70 per cent of the maximum daily wage set by the UWV, which will pay this compensation to the employer.

X TRANSLATION

The law does not contain any statutory provisions that prescribe the language in which employment-related documents, such as job offers, employment contracts, confidentiality agreements and restrictive covenants, must be drafted. However, the employee must be able to understand the contents of these documents and employers should cooperate with an employee's request to have the documents translated. It is advisable that employers translate the employment documents for a non-skilled employee into that employee's native language. Documents not drafted in Dutch are often drafted in English.

XI EMPLOYEE REPRESENTATION

Workers are entitled to freedom of association and representation, based on the European Social Charter and the Dutch Constitution. Under the Works Council Act, workers can furthermore be represented by a works council or an employee representative body. Moreover, employees may be represented by trade unions, of which membership is voluntary. A worker must submit an application to a trade union to become a member.

i Works council

A company that employs 50 or more employees must establish a works council, which represents the employees in relation to the company's management. If a company does not fulfil the obligation to create a works council where required, any interested party can ask the court to order the company to establish one.

To represent a company's employees as well as possible, a works council has various rights and obligations, including the right to:

a be consulted on important decisions by the company on financial, economic and organisational matters;

b approve regulations concerning the social policy pursued by the company; and

c be consulted about the appointment and dismissal of members of the company's managing board.

If management violates these rights, the works council may seek redress in court.

Works councils consist of between three and 25 members, depending on the number of persons employed. The election procedure is established in the Works Council Act. The membership term is three years, unless the works council itself determines in its own regulations that the term will be either two or four years. Members of the works council are protected against dismissal and discrimination.

Companies must give the members of their works council a specified number of hours to meet and discuss works council matters during working hours, for which they will receive full pay.

Companies that employ between 10 and 50 employees may be under an obligation to establish an employee representative body, rather than a works council.

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ii Trade unions

A trade union represents the interests of individual employees and groups of employees and of other members. In practice, this means that the work of trade unions predominantly involves representing the collective interests of employees in a particular industry or sector. This includes:

a assisting in the negotiations about the collective terms of employment in connection with the formation of CBAs;
b drafting redundancy or social plans; and
c providing guidance in the event of forced redundancy in organisations.

CBAs dominate at industry level. Negotiations normally take place between the trade union and a company (if a CBA is in place) or the trade union and the employers' association (if a single industry-wide CBA is in place). The main purpose of CBAs is to set fixed wages. They also cover issues such as working hours, holiday entitlement, pension and social matters. At the company level, the employer's representatives negotiate directly with the workers' representatives.

XII DATA PROTECTION

i Requirements for registration

The General Data Protection Regulation (GDPR)[10] applies to the processing of personal data. The GDPR is accompanied by the General Data Protection Regulation (Implementation) Act.

When employers process personal data in an employment context, they will – as a main rule – act as a controller within the meaning of the GDPR. A controller is the party that determines the purposes and means of the processing activity.

The controller needs to comply with certain principles when processing personal data. Personal data shall be:

a processed lawfully, fairly and in a transparent manner;
b collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
c adequate, relevant and limited to what is necessary for the purposes for which they are processed;
d accurate and, where necessary, kept up to date;
e stored for no longer than is necessary to achieve the purposes for which the data are collected and subsequently used; and
f processed in a manner that ensures the appropriate security of the personal data.

Personal data may be processed only if the processing is necessary in connection with the performance of the employment contract with the employee, or the controller can rely on another lawful basis for processing set out in the GDPR. As a general rule, employers cannot process the personal data of job applicants or employees on the basis of their consent because of their dependency on the employer.

10 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

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Under the GDPR, a controller shall maintain a record of processing. This internal documentation obligation does not apply to companies or organisations employing fewer than 250 persons, unless 'the processing it carries out is likely to result in a risk to the rights and freedoms of data subjects, the processing is not occasional, or the processing includes special categories of data . . . or personal data relating to criminal convictions and offences'.[11] Employers will regularly process employees' personal data in the context of their human resources and payroll administration and the management of their daily business operations. The above-mentioned derogation does not apply to these non-occasional processing activities.

Small and medium-sized enterprises, therefore, will also need to maintain a record of these processing activities. The record must include:

a the name and contact details of the controller and (where applicable) the name and contact details of any joint controller, the controller's representative and the controller's data protection officer;

b a list of the purposes of the processing;

c the categories of data subjects and the various types of categories of personal data that are processed;

d the categories of recipients to whom personal data have been or will be disclosed;

e whether the personal data will be sent to countries outside the European Union; and

f where possible, the retention periods that apply and the security measures that have been taken.

The controller needs to make the record available to the supervisory authority on request.

The GDPR requires controllers to implement appropriate data protection policies when this is proportionate in relation to their processing activities. Even when the implementation of these policies is not strictly required by the GDPR, an employer will usually implement them as part of its data protection compliance programme and its efforts to document and demonstrate GDPR compliance.

As set out above, the controller must implement appropriate technical and organisational measures to protect personal data against loss and any form of unlawful processing. These measures shall guarantee an appropriate level of security, such as taking into account the risks associated with the processing and the nature of the personal data to be protected, among other things. The measures must also aim to prevent any unnecessary collection or further processing of personal data. Access to personal data about job applicants or employees should be limited to those persons who require access for the performance of their duties.

In the event of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data, the controller shall notify the supervisory authority about the breach within 72 hours of becoming aware of it, unless the breach is unlikely to result in a risk to the rights and freedom of natural persons. However, if the breach is likely to result in a high risk to the rights and freedom of natural persons, the controller shall also notify the breach to the data subject without undue delay.

The controller shall provide data subjects such as job applicants and employees with information, in clear and plain language, about the processing of their personal data. This information must include the identity and contact details of the controller, the contact

11 id., at Article 30, Paragraph 5.

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details of the data protection officer (if applicable), the purposes of the processing of the personal data, the recipients of the personal data, the applicable retention periods and the data subjects' rights.

In principle, the data subjects have a right of access to their personal data. Consequently, data subjects may ask, at reasonable intervals, whether personal data relating to them is processed and, if so, the controller shall provide a copy of their personal data and information about the processing. Furthermore, data subjects can, under certain circumstances, request an employer to rectify, supplement or erase personal data, to restrict the processing of their personal data or can object to certain processing of personal data. In specific cases, data subjects also have a right to data portability. The data subject rights set out above are not absolute and restrictions may apply, for example where necessary to protect the rights and freedom of others. The data subject also has the right to lodge a complaint with a supervisory authority.

The Dutch Data Protection Authority supervises compliance with legislation on the use of personal data. The controller does not need to register with the Dutch Data Protection Authority. If the controller has designated a data protection officer in accordance with the GDPR, the contact details of that officer need to be communicated to the data protection authority.

ii Cross-border data transfers

Personal data may not be transferred to countries outside the European Union unless the receiving country guarantees an adequate level of protection. This also applies to transfers of personal data within a group of companies. The European Commission (EC) has decided that the following countries provide an adequate level of protection: Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Isle of Man, Israel, Japan, Jersey, New Zealand, Switzerland, the United Kingdom (excluding information that falls within the UK immigration exemption) and Uruguay. The countries belonging to the EEA are also deemed to guarantee an adequate level of protection.

On 12 July 2016, the EC adopted the EU–US Privacy Shield adequacy decision, which became operational on 1 August 2016. The European Court of Justice invalidated this adequacy decision in its ruling of 16 July 2020. Therefore, as of 16 July 2020, personal data may no longer be transferred to organisations in the United States on the basis of the EU–US Privacy Shield. This decision was incorporated by the European Data Protection Board (EDPB) in its new recommendations on the use of binding corporate rules. These recommendations are currently open for consultation.

In the absence of an adequacy decision, personal data may also be transferred to third countries if appropriate safeguards are implemented as set out in Article 46 of the GDPR, such as approved binding corporate rules or approved standard contractual clauses, to the extent that in the circumstances of the specific transfer the safeguard that is used ensures an essentially equivalent level of protection as provided under European Union law. Where this is not the case, the data exporter shall implement additional measures to guarantee protection with respect to the envisaged transfer. If no additional measures are available, the safeguards cannot be relied on as a transfer tool.

Finally, in the absence of an adequacy decision or appropriate safeguards, personal data may be transferred if one of the exceptions of Article 49 of the GDPR applies. If the controller relies on the compelling legitimate interest exception of Article 49 of the GDPR, they shall inform the data protection authority of the transfer.

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iii Sensitive data

The processing of special category personal data (namely data regarding racial or ethnic origin, political opinions, religious or philosophical beliefs, membership of a union, genetic data, biometric identification data (for identification purposes), health or data concerning a person's sex life or sexual orientation) is, in principle, prohibited. The same applies to personal data relating to criminal convictions or offences. The GDPR and the Data Protection Regulation (Implementation) provide for certain circumstances based on which the processing of sensitive personal data is allowed, for example if the data subject has given their explicit consent or if the data subject has manifestly made the data public. The Data Protection Regulation (Implementation) Act also provides specific derogations to these prohibitions. An employer may, for example, process health data where this is necessary for the reintegration of employees in a case of incapacity for work.

iv Background checks

It is not uncommon for a company in the Netherlands to perform background checks when it intends to hire a new employee. This could be done by asking the job applicant for extra background information or by checking references. From a privacy law perspective, it is important to tailor screening activities to the position and qualifications needed. In this respect, the interest of the future employer should be weighed against the applicant's privacy interest. Furthermore, discrimination on the grounds of age, race, gender, religion, philosophical belief, political conviction, nationality, sexual orientation, marital status, disability or chronic disease is prohibited.

Employers may request information about credit records only through the applicant or employee, through a public source or with the applicant's or employee's permission. Applicants or employees are not obliged to answer questions about their credit records, unless this is relevant for the performance of the job. Similarly, whether processing of this type of data is permitted will depend on the position. Information about an applicant's or an employee's criminal record qualifies as sensitive personal data. Processing this type of data is prohibited unless a statutory exception applies. However, if a person's criminal record is relevant for the performance of a job, an applicant or an employee must duly inform the employer (e.g., an accountant who has been convicted of fraud or a primary school teacher who has been convicted of child abuse). The employer may ask an applicant or employee to provide a certificate of conduct issued by the Judicial Agency for Testing, Integrity and Screening of the Dutch Ministry of Security and Justice if this is relevant for the position.

In addition to the above, it is important for employers to realise that it is generally prohibited to request medical tests, ask questions about the use of illegal narcotics (in the person's spare time) and to process health data. In the Netherlands, drug or alcohol tests are regarded as medical tests and the related data as health data.

v Electronic signatures

In the Netherlands, there are three different types of recognised electronic signatures: a 'simple' electronic signature, an advanced electronic signature (AES) and a qualified electronic signature (QES). A QES has the same legal effect as a wet ink signature. Under Dutch law, a simple electronic signature and an AES can have the same legal effect as a wet ink signature, but it is a question of how reliable the electronic signature is. This depends on all facts and circumstances at hand. If an AES or simple electronic signature is used instead of a QES, it would, in principle, be legally recognised, although a court could deem the method used to be

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unreliable and disregard it as evidence. There have been cases in which documents that have been signed with a simple electronic signature have been recognised as legally enforceable in court, as well as cases in which they were not.

More specifically for employment documents, any electronic signature can be used if it meets the requirements. However, some elements of employment documents must be constituted 'in writing' (e.g., non-compete, business relationship, penalty, unilateral amendment, early termination and probationary period clauses). There is ongoing discussion on whether 'in writing' would include electronically established documents. It is not (yet) clear how (higher) courts will deal with the enforceability of one or more of the aforementioned clauses if they have been agreed electronically (whether by QES, AES or simple electronic signature) in an employment agreement.

XIII DISCONTINUING EMPLOYMENT

i Dismissal

Employees may be dismissed only if the employer has a reasonable ground for dismissal. Depending on the grounds for dismissal, an employment contract can be terminated with proper notice, with prior permission from the UWV, or if it is rescinded by the sub-district court. In addition, the parties may terminate an employment contract by mutual consent and record their terms in a settlement agreement.

Termination by mutual consent

Settlement agreements are valid only if they are concluded in writing. Employees have the option to terminate settlement agreements within 14 days, either by withdrawing their consent (without giving reasons) or by rescinding the settlement agreement out of court. Employers are obliged to point out this option to employees; failure to do so extends the 14-day time limit to three weeks.

Notice after permission from the UWV

Employers have to request permission from the UWV to terminate an employment contract on economic grounds or on the grounds of an employee's long-term illness (i.e., more than 104 weeks).

If permission is granted, the employer may deduct the time the UWV or the collective dismissal committee needed to process the application from the applicable notice period to a minimum of one month. In employment contracts, the parties often refer to the statutory notice period, which is one month for the employee. The employer's statutory notice period depends on the length of employment: one month for employment contracts with a duration of less than five years; two months for contracts with a duration of between five and 10 years; three months for contracts with a duration of 10 to 15 years; and four months for contracts with a duration of more than 15 years. The parties can also agree on a different notice period, to a maximum of six months for the employee, but in that case the employer's notice period must be twice as long as that of the employee. Payment in lieu of notice is not permitted.

If an employer acts in violation of the rules for giving notice of termination, the employee may seek annulment of the notice of termination, or ask for fair compensation. If the UWV or the collective dismissal committee has given the employer permission to terminate the

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employment contract and the employer has done so, the employee may also request the sub-district court to restore the employment contract or to award fair compensation. These proceedings are initiated by submitting an application.

Even if a dismissal permit has been granted, a dismissal will be prohibited if it occurs during the first two years of illness, concerns an employee who is pregnant or on maternity leave or ill as a result of pregnancy or childbirth, is based on the employee's membership of a trade union, or the employee's attendance of meetings held by political organisations, or the employee exercising their right to parental leave, or involves any discrimination.

Requesting the sub-district court to rescind the employment contract

The sub-district court is designated to review the other grounds for dismissal in termination proceedings. In these cases, employers are not entitled to follow the UWV procedure. The requests concern termination on the grounds of, among other things, the employee repeatedly calling in sick, unsuitability, imputable acts, refusal to perform work and damaged working relationships. Furthermore, the sub-district court is the designated dismissal route in situations involving fixed-term employment contracts that do not include a clause on giving early notice of termination, or if the employment contract is terminated on economic or long-term illness grounds. Employers can also apply to the sub-district court if the UWV has refused to grant permission to give notice of termination.

The application on which a termination request is based, must, in principle, fully substantiate at least one of the reasonable grounds for the court to rescind the employment contract, which will be terminated on the date ordered by the court. Employers may also combine two (or more) uncompleted grounds for dismissal (cumulative dismissal ground). When terminating the contract, the court will take the applicable notice period into account and deduct the time taken by the court proceedings. After these court proceedings, it is possible to file an appeal with the appeal court and subsequently with the Supreme Court.

Reassignment

Employers must substantiate that it is not possible to reassign an employee – even after training – to a suitable alternative position within the company or the group. If a suitable alternative position is available, the employer must offer it to the employee. In this case, the employer does not have the right to terminate the employment contract.

Transition payment and fair compensation

All employees whose employment contracts end are generally entitled to a transition payment from the first day of employment. This also applies to employees with fixed-term employment contracts that are not renewed. As a rule, employees are not entitled to a transition payment if their employment contracts are terminated by mutual consent, but this will naturally be relevant when arrangements are made regarding the termination. In addition, employees are not entitled to a transition payment (1) if the employment contract is terminated at the employee's initiative (except in the event of serious imputable acts or omissions on the part of the employer), (2) if the employee has committed serious imputable acts or omissions, or (3) in the case of termination on or after the employee has reached state retirement age or a different retirement age.

The transition payment is not age-related and amounts to one-third of the monthly salary for each year of service (including extra days or months pro rata). Monthly salary means one month's gross salary plus monthly average variable pay and benefits during the

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36 months before notice of dismissal. The payment is set at a maximum of €89,000 gross or one year's salary for employees who earn more than this amount. When entering into an employment contract, employers and employees may agree on a higher payment, but not a lower payment.

The court may grant an employee additional compensation of a maximum of half the transition payment if the termination is based on cumulative dismissal grounds. In the situation that the employment contract was terminated on the grounds of serious imputable acts or omissions on the part of the employer, the sub-district court may award additional compensation to the employee. This additional compensation is not capped and is based on all relevant circumstances.

Instant dismissal

Both employers and employees are entitled to terminate the employment contract with immediate effect for urgent cause, without having to observe the statutory or contractual notice period and without having to seek a permit from the UWV, or have the employment contract rescinded by the relevant court. Employees who are instantly dismissed are not entitled to any unemployment benefits. Examples of urgent causes that may justify an instant dismissal include theft, fraud, embezzlement and physical abuse. In an adjudication to determine the existence of urgent cause for termination, all relevant circumstances of the situation, including the personal circumstances of the employee, must be considered. A court will ultimately determine whether the urgent cause has been shown.

Instant dismissal is an extreme measure and courts are conservative in adopting an urgent cause.

ii Redundancies

It is possible to make employees redundant for economic reasons. In these cases, employers must follow the UWV procedure or try to reach a settlement with the employee or employees in question. The rules described in Section XIII.i (e.g., notification period, severance payment, categories of employees protected against dismissal) also apply to redundancy.

In the event of a mass lay-off, additional rules apply. A mass lay-off occurs when a company decides to dismiss 20 or more employees within three months and within an area of activity of the UWV. Companies must notify both the UWV and the relevant trade unions of mass lay-offs, and state the following: the reasons for the lay-off; whether the works council was consulted; and the number of employees affected, including details about the employees' functions, ages and length of service.

After it has notified the UWV accordingly, the employer can choose to follow the individual termination procedures with the UWV or try to settle with each individual employee affected.

The UWV may not consider a request for a permit until one month after the date of notification, unless this statutory waiting period would hinder the re-employment possibilities for the employees who will be dismissed or the employment of other employees by the company. If a statement from the trade unions affirming that the employer consulted them on this matter is attached to the employer's notification to the UWV, the UWV will consider the request for a permit immediately, without observing the one-month waiting period.

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If an employer does not give the required advance notification but ultimately requests permission from the UWV to dismiss 20 or more employees within three months, the statutory waiting period is increased to two months. The purpose of the statutory waiting period is to facilitate consultations between the employer and the trade unions.

If a company has a works council, the works council should be given the opportunity to advise on the intention to reorganise the organisation. The employer is obliged to submit its intended decision in written form (a request for an advice) to the works council at a time where the works council can still have a significant influence on the intended decision. A request for advice must, as a minimum, include a statement of the grounds for the intended decision, the consequences anticipated for the people who work for the company and the proposed measures that will be taken in that respect. If and when requested by the works council, the employer is obliged to provide the works council with all information and data that it reasonably requires to perform its duties, in a timely fashion and in written form if so required. In general, the works council may decide what information is reasonably necessary for it to perform its duties.

Before it issues its advice, the works council will deliberate on the matter concerned with the employer at least once in a consultative meeting, which means that the employer is obliged to join the meeting and to provide the works council with the requested information. The employer has to give the works council a reasonable amount of time to issue its advice. Although one month is considered to be reasonable, it is likely that the works council will request more time. Therefore, it is not uncommon for the whole consultation procedure to take six to eight weeks.

If the works council's advice is not followed, or not followed in its entirety, the employer must inform the works council of its reasons. This will delay the process and, as a consequence, the employer will have to suspend the implementation of its decision until one month after the date on which the works council was notified of the decision. If the decision is fully in line with the advice, the employer may implement the decision immediately.

When dismissals are the result of a reorganisation, the employer can provide for financial compensation in a social plan. Employers have no obligation to draw up or negotiate a social plan. However, in the event of a mass lay-off, the employer will benefit from setting a standard for the financial compensation in a social plan and the works council will require a social plan as part of the mandatory advice procedure. If trade unions are not involved in the matter, a social plan is sometimes agreed with the works council, or simply drafted unilaterally by the employer.

XIV TRANSFER OF BUSINESS

Article 7:662 et seq. of the DCC applies when an undertaking is transferred in whole or in part from one employer (transferor) to another (transferee). The DCC implements the Transfer of Undertakings (Protection of Employment) Regulations (generally known as TUPE) regarding the safeguarding of employees' rights in the event of a complete or partial transfer of an undertaking. If a transfer qualifies as a transfer of undertaking under TUPE, the people employed by the transferor, including all their rights and obligations, are automatically transferred to the transferee. This means that the employment contracts, including the existing terms of employment, non-compete clauses and the provisions of CBAs, become the transferee's responsibility. Whether a transaction qualifies as a transfer

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of an undertaking depends on the facts and circumstances of the case. The transferor and transferee remain jointly and severally liable for obligations towards the employees for one year after the transfer date.

If employees object to the transfer and do not wish to continue the employment contract with the transferee, the employment contract with the transferor will end by operation of law on the transfer date. Neither the transferor nor the transferee has any obligations towards the employee in this termination.

The respective rules do not apply to the transfer of an undertaking by receivers in the event of the insolvency of the transferred business. Moreover, the transfer of an undertaking is not considered a valid reason for terminating an employment contract.

XV OUTLOOK

Currently high inflation is expected to have a significant influence on employment law in 2023. This is already visible in the 2023 minimum wage amendment, as well as in the negotiations for several new collective labour agreements.

The government has announced that certain aspects of (long-awaited) new employment legislation will be dealt with in 2023 (for example, replacement of the existing Deregulation of Assessment of Independent Contractor Status Act). The legislative proposal for this new Act has been rescheduled multiple times, but aims to provide independent contractors and their clients with more certainty on the qualification of their contractual relationship and to prevent pseudo self-employment.

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Appendix 1

ABOUT THE AUTHORS

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Dirk Jan Rutgers is co-founder and partner at Rutgers & Posch. He specialises in employment law and advises national and international clients on mergers, reorganisations, dismissals, employee representation and statutory board membership. Dirk Jan also works as a boardroom adviser on organisational issues and strategic collaborations between institutions. Many of Dirk Jan's clients are active in the financial and public sectors, as well as in media and healthcare.

INGE DE LAAT

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Inge de Laat, as managing partner, oversees the daily management of Rutgers & Posch. Inge specialises in employment law. She advises on collective and individual dismissal cases, remuneration policy, privacy issues, and mergers and acquisitions. Inge has considerable experience in healthcare and employment law, and in related areas such as privacy. She also has years of international experience, including remuneration policy, and the legislation and regulation of bonuses in different countries.

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