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Dismissal and redundancy

the Dutch regulations as of 2015

Dismissal and redundancy

Dutch employment law offers a high degree of protection to employees working in the Netherlands. Such protection comes to the fore in the event that an employer wishes to terminate an employee's employment contract. An employer who intends to dismiss an employee is required, by law, to comply with several strict rules and regulations.

Many rules have changed as of January 1st or July 1st 2015. Paragraphs 1. – 5. of this brochure provide an overview of six alternative methods by which an employment contract may - legally - be terminated:[1]

1. Giving notice during a probation period
2. Giving notice with immediate effect (summary dismissal for' urgent reasons')
3. Termination based on reasonable grounds
   - 3.1 Notice given with permission from the UWV, a government agency
   - 3.2 Dissolution of the employment contract by the courts
4. Termination by mutual consent
5. The agreed period of time for a fixed-term contract elapses

The rules concerning the transitional allowance and the severance pay are discussed in paragraph 6.

[1] The intention of this brochure is to provide an overview of a number of important statutory regulations concerning employment dismissal. The brochure does not seek to provide an exhaustive explanation of all the relevant regulations and exceptions. Readers of this brochure should be aware that variations to the rules mentioned may be applicable under particular Collective Labour Agreements (*CAOs*) or individual employment contracts. Readers should also be aware that regulations are subject to regular variations. This publication has been compiled with all due care however *Noordam Advocatuur* accepts no responsibility or liability for any damages incurred or which may be incurred due to the content of this brochure. We strongly advise any readers who have questions of an employment law nature to seek legal advice.

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1. Giving notice during a trial (probation) period

An employer and employee may choose to include a probation period in an employment contract at the time that the contract is drawn up. The maximum probation period depends upon the duration of the employment contract:

Duration of employment contract	**Maximum probation period ***
Indefinite contract	2 months
Contract of 2 years or longer	2 months
Contract of less than 2 years	1 month
Contract of 6 months or less than 6 months	*No* probation period allowed
Contract for the duration of a project	1 month

***** The provisions of a Collective Labour Agreement may deviate from the given maximum probation periods.

During the probation period both parties may terminate the employment contract with immediate effect. Should the employee ask to be provided with reasons for the termination the employer is required to confirm such reasons in writing. Termination during the probation period must not be discriminatory.

2. Giving notice with immediate effect

Both parties may terminate the employment contract with immediate effect for 'urgent reasons' (*dringende redenen*). The reason, or reasons, for the dismissal must be specified immediately. Examples of 'urgent reasons' include: theft, refusal to work, misrepresentation on a job application or grossly neglecting duties in any other way.

The validity of a summary dismissal depends on: the seriousness and nature of the circumstances leading to the dismissal and the personal circumstances of the employee. When summarily dismissing an employee the employer should be aware that - if the employee disputes the dismissal - the employer will be required to prove that the immediate dismissal was justified.

3. Termination based on 'reasonable' grounds

The employer may terminate the employment contract if there are (a) reasonable grounds for termination and (b) re-employment in another suitable position is impossible within a reasonable time, with or without the aid of training, or re-employment cannot be reasonably expected from the employer. Depending on the reasons for dismissal, the employer should (a) gain permission from the UWV or (b) request dissolution of the employment contract by the courts – for further details see paragraph 3.1 and 3.2 below.

3.1 Notice given with permission from the UWV, a government agency

In the event of **redundancy** or **long-term disability** of the employee the employer must gain permission to give notice from the UWV.

- If employees with interchangeable positions are made *redundant* the so-called 'principle of reflection' applies. According to this principle the employer must first divide the company's employees into age groups for each category of interchangeable positions. Subsequently, the employee who has served the shortest period of employment in each age group and category must be nominated for dismissal. In the event of a 'collective redundancy' concerning twenty or more workers the Employment Office will not examine the financial and economic reasons if the employer is able to provide the UWV with a *consenting* statement from the relevant workers' union. More detailed criteria are included in the UWV *Regulations on Dismissal (Ontslagregeling)*.

  Please note that specific rules prevent the employer from giving notice to employees during an employee's pregnancy or maternity leave, or during an employee's sick leave. However, such employees are not always protected against termination of employment on the basis of redundancy.
- In the event that an employee is dismissed for reasons relating *to long-term illness or disability* which has lasted at least two years, the UWV examines whether the employer is able to find a position for the employee elsewhere in the organization. The employer must demonstrate that it is not possible to modify a position or find a suitable alternative position for the employee (if necessary with appropriate training) within 26 weeks.

Upon termination of the employment with permission from the UWV, the employer will be required to pay the employee a transitional allowance if the employment lasted for at least 24 months – for further details see paragraph 6 below.

The employee may appeal against the decision of the UWV. If there are no reasonable grounds for dismissal the court can decide to restore the employment contract or, in the event that restoration is not possible due to culpable acts or omissions by the employer, the court may grant a fair compensation to the employee on top of the transitional allowance.

3.2 Dissolution by the courts

The employer may request the courts to terminate an employment contract for reasons other than redundancy or long-term disability. The reasonable causes for dismissal are listed in the statutory rules and include (1) frequent sick leave, (2) non-performance on behalf of the employee, (3) a culpable act or omission, (4) refusing to perform the stipulated work, (5) the breakdown of the relationship

between the employer and the employee or (6) other circumstances due to which the employer cannot be expected to continue the employment contract.

In the event that the employer requests permission to terminate the employment contract from the UWV and the UWV refuses to grant such permission, the employer may then petition the court to terminate the employment contract. The employee may also request that the courts terminate the employment contract.

When the courts have terminated the employment contract, the employer may be obliged to pay to the employee a transitional allowance and/or severance pay based on statutory rules and/or the court's decision in a specific case - for further details see paragraph 6 below.

Court decisions may be appealed by either party.

4. Termination by mutual consent (amicable settlement)

Parties may terminate an employment contract by mutual consent. In such case both parties agree on the termination date, a possible severance pay and other settlement conditions. The employee may reconsider within two weeks after signing a termination agreement without giving any reasons for such reconsideration. Should this occur the employment will continue. When consenting to the termination of employment it is important that the so-called '*fictive* notice period' is respected. The fictive notice period is the notice period which would apply had notice been given. The fictive notice period can delay the date from which unemployment benefits may be paid to the unemployed employee.

5. The agreed period of time for a fixed-term contract elapses

In the event that an employment contract is entered into for a fixed period of time and such time period elapses the contract ends automatically. In such situation there is no need to give notice, dissolve the contract or terminate the contract by mutual consent. However, where the contract is a fixed-term contract for a minimum of six months, the employer is required to inform the employee in writing, at least one month before the end date, whether or not the contract will be continued. If this rule is not observed the employer has to pay the employee one month extra salary.

In the event of successive fixed-term contracts the so-called *chain rule* applies. According to the chain rule a contract for an indefinite period will come into existence (a) after 24 months or (b) as of the commencement of the fourth fixed-term contract, unless there is a break of more than six months between such successive contracts.

6. Transitional allowance and severance pay

Upon termination of the employment by the employer, the employer will be required to pay the employee a **transitional allowance** if the employment lasted for at least 24 months. This also applies if a fixed-term contract is not extended after 24 months. The calculation of the transitional allowance is based on the number of years of employment. The employee is entitled to 1/6 of the monthly salary for each 6 months of employment. For employees employed for longer than 10 years the transitional allowance will amount to 1/4 of the monthly salary for each 6 months of employment. In most cases, the transitional allowance will be limited to € 77,000 or a maximum of one annual salary if the annual salary exceeds € 77,000. The transitional allowance is intended to assist the employee in finding a new job after dismissal, for example through education. It may be that an employer has incurred costs for education or outplacement prior to dismissal. These costs can be deducted from the transitional allowance under certain circumstances.

Several exceptions to these rules may apply:

- If the employer is declared bankrupt or if other insolvency proceedings apply the transitional allowance is no longer due and payable. Businesses undergoing financial distress may pay the transitional allowance in instalments.
- Part-time workers under 18 who are working 12 hours or less than 12 hours per week and workers reaching pensionable age are not entitled to receive a transitional allowance.
- Until January 1st 2020 special rules apply to employees who are over 50 and have worked at least ten years for the same employer. The transitional allowance will amount to 1/2 of the monthly salary for each 6 months of employment over the age of 50. Certain categories of businesses and small businesses with fewer than 25 employees may, however, pay lower compensation to employees over 50.
- Until January 1st 2020 other exceptions may apply for small businesses experiencing financial difficulties.
- Parties may stipulate other arrangements in the employment contract, deviating from the above. Collective Labour Agreements may also deviate from the statutory rules on the transitional allowance.
- The courts may decrease the transitional allowance where the employee has been negligent or committed a serious culpable act. In the event of serious culpable acts or negligence by the employer the court may grant an additional **severance pay**. In such cases employees who have worked less than 24 months may be awarded severance pay.