

# New employment and pensions legislation for 2012 in the Netherlands

The new year will bring various new developments in the field of employment and pensions law. Three major changes are the amendments to the way in which holiday entitlements are accrued, amendments to the Mass Redundancy Act (*Wet melding collectief ontslag*) and the Act on management and supervision (*Wet bestuur en toezicht*).

Below the relevant changes and new legislation are discussed.

## New legislation on holiday entitlements

**With effect from 1 January 2012, the legislation with regard to holiday entitlements will change. As a result, employees who are absent due to illness will accrue holidays over the entire period of their illness, and no longer only over the last six months of their illness. Ill employees will, furthermore, be obliged to use their holiday entitlement for any holiday taken during their illness (ie to have a break from the ill employee's obligation to reintegrate).**

In addition, the legislation provides (with regard to entitlements that accrue from 1 January onwards) that the so-called statutory holiday entitlement (four times the agreed working hours per week) will expire within six months after the end of the calendar year in which they were

accrued. Exceptions to this short limitation period are possible if the employee cannot reasonably be expected to consume his or her holidays within this period. In such case, the current limitation period of five years will continue to apply. This will also be the case for holiday entitlements in excess of the statutory holiday entitlements, and any holidays accrued prior to 1 January 2012.

We note that current arrangements (as included in, for example, an employment agreement or personnel handbook) that differ from the new legislation will not be affected insofar that these arrangements are beneficial to employees.

If an employer wishes to change terms of employment following implementation of the new legislation, the employees' consent will in principle be required. Such change may also require the prior consent of a relevant works council.

## Key issues

- New legislation on holiday entitlements
- Amendments to Mass Redundancy Act
- Act on management and supervision clarified

## Amendments to Mass Redundancy Act

On 1 March 2012 several changes to the Mass Redundancy Act (*Wet melding collectief ontslag*) will enter into force. As a consequence of the relevant changes, the question whether or not the notification requirements pursuant to the Mass Redundancy Act apply, shall no longer depend on the termination route chosen. Currently, it is possible to stay away from applicability of the Mass Redundancy Act by terminating the employment of redundant employees by mutual consent.

Once the amendments have been implemented, the dismissal of 20 or more employees within a period of three months, shall in principle result in the obligation to notify UWV Werkbedrijf ("UWV") and the trade unions of the intended collective redundancy, independent on the way the termination is executed. If the Mass Redundancy Act applies, requests for dismissal permits will not be processed by UWV until a one month waiting period has expired.

## Act on management and supervision clarified

The Dutch Minister of Justice has recently announced that the Act on management and supervision (*Wet bestuur en toezicht*), pursuant to which for example the number of (supervisory) board positions held by an individual will be limited and the board members are presumed to no longer be employees, will enter into force on 1 July 2012.

In the meantime a number of unclear matters in the legislative proposal has been clarified, such as that a void (*nietig*) appointment of a member of the management or supervisory board because of excess of the maximum number of management or supervisory positions will not impact the validity of decisions in which the relevant individual has participated.

Furthermore, it is determined that foundations that are legally required to adopt annual accounts, for example large not-for-profit organisations, care institutions, housing associations, educational institutions and pension funds, will also be obliged to test before the appointment of new board members if they satisfy the test of the maximum numbers of board positions. Other foundations such as charity, cultural, academic and ecclesiastical institutions are exempted.

After 1 July 2012, managing directors of listed companies can no longer be engaged on the basis of an employment agreement but should be appointed on an assignment contract (*overeenkomst van opdracht*). Agreements that are in place before

1 July 2012 will not be affected. Topics such as non-competition clauses, notice period, severance, illness and death for newly appointed or reappointed managing directors must be dealt with as the relevant relationship will no longer qualify as employment.

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