

# Dutch dismissal system under construction

On 18 February 2014, the House of Representatives (*Tweede Kamer*) adopted a legislative proposal providing for changes to the Dutch dismissal system, the position of *flexworkers* and the system of unemployment benefits (*Wetsvoorstel Werk en Zekerheid*). It will now be up to the Senate (*Eerste Kamer*) to adopt or reject the proposal.

Below we have set forth a summary of the most important changes resulting from the proposal as well as the envisaged date that these will be implemented, should the proposal be enacted.

## Dismissal

### Valid reason

The current preventive assessment of the valid reason for a dismissal will be maintained. However, after enactment of the proposal, the reason for the dismissal will determine whether the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen* - UWV) or the court will be the authorised body to deal with the termination request. When an employee is dismissed for economic, technical or organizational reasons or due to long-term incapacity for work, the termination request will have to be submitted to the UWV. A dismissal request for personal reasons or a disturbed employment relationship must be submitted with the court. Both the UWV and the court will assess whether alternative employment is or will become available within a reasonable period.

### Consent employee

The proposal introduces the possibility for the employer to serve notice on an employee without the UWV's consent. Such notice shall then become effective if the employee accepts the termination in writing. This manner of termination is to be distinguished from a termination by mutual consent in the form of a settlement agreement. For both the employee's consent to notice and a termination by mutual consent, a two week consideration-period will be

## Proposal includes:

- Changes to the dismissal system with effect from 1 July 2015
- Changes to the position of *flexworkers* with effect from 1 July 2014 and 1 July 2015
- Changes to the system of unemployment benefits with effect from 1 July 2015 and from 1 January 2016

introduced during which the employee may decide to withdraw his consent to the settlement. It will be up to the employer to inform the employee of this right. The employer who fails to do so in a timely manner will be confronted with an extended consideration period for the employee of three weeks in total.

### Possibility to appeal

The proposal creates the possibility to lodge an appeal and an appeal in cassation against the decision of the court. Currently, this is generally not possible. In relation to an unsatisfactory decision by the UWV, both the employer and the employee will also have the possibility to appeal with the court, contrary to the current situation.

## Transition allowance

When the employer terminates an indefinite term employment contract or does not extend a fixed term employment contract that has lasted at least 24 months, a statutory transition allowance will be payable. The transition allowance is also due when the employment is terminated at the initiative of the employee following serious misconduct of the employer. The transition allowance consists of one third of the monthly salary per year of service up to ten years of service and of half of the monthly salary per year of service beyond that ten year' period. The transition allowance is maximised at € 75,000 or the employee's annual salary (whichever is higher).

Please note that for employees aged 50 years and older that have been employed for over 10 years, a transition scheme applies until 1 January 2020, resulting in a higher transition allowance for years of service after the employee's 50<sup>th</sup> birthday. This transition scheme for 50+ employees does not apply to small companies with less than 25 employees. In addition, companies with less than 25 employees may ignore years of service before 1 May 2013 when determining the transition allowance in the event of redundancies caused by poor economic and financial performance. These exceptions will also be applicable until 1 January 2020 under conditions to be further specified.

The court's discretionary power to grant compensation to the employee in addition to the transition allowance is limited to situations where the employer is found to have acted seriously culpable (or has omitted to act where this was reasonably required).

In the event of a serious absence of due of care by the employee, the court may deprive the employee of his entitlement to the statutory transition allowance.

## Deviation by collective bargaining agreement

The proposal opens the possibility that an independent committee rather than the UWV deals with a request to serve notice, if such an option has been agreed in an applicable collective bargaining agreement. This kind of collective bargaining agreement can also provide for deviating criteria to select the redundant employees.

**The currently intended implementation date for the above changes to the dismissal system is 1 July 2015.**

## 'Flexwerkers'

### Extension of fixed-term contracts

To improve the position of *flexwerkers*, (ie individuals who are not employed on a permanent basis) the proposal also contains limitations regarding the possibility to extend fixed-term contracts. Under current law, if two or more contracts exceed a period of three years, the extended contract will automatically convert into an employment contract for an indefinite period of time. The proposal provides that an extended contract exceeding a two-year period will no longer terminate automatically. Furthermore, contracts will be deemed consecutive where the interval between two fixed-term contracts is at maximum six months rather than the current three-month interval.

Deviation by collective bargaining agreement remains possible, though it is more limited and more specific than under current law.

**The currently intended implementation date for the above changes for flexwerkers is 1 July 2015.**

## Other important changes regarding *flexwerkers*

The proposal also contains other important changes for *flexwerkers* that will become effective in 2014, such as:

- the prohibition to include a probationary period in fixed term employment contracts of up to six months
- the prohibition to include a non-competition clause in a fixed term employment contract unless the employer can prove that this is required because of compelling company interests and substantiates these interests in the employment contract
- an obligation for the employer to notify the employee at least one month before expiry of a fixed term employment contract for six months or more whether or not it will extend the contract, and if so on which terms.

**The above changes for *flexwerkers* are intended to be effective from 1 July 2014. The notification obligation shall not apply to fixed term contracts that lapse ultimately on 1 August 2014.**

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## Unemployment benefits

### Duration

The Dutch Government wants to shorten the duration of the state-provided unemployment benefits. As of 1 January 2016, the maximum duration will gradually be reduced from 38 to 24 months (per 1 January 2019). It will be possible to agree to extend the period of unemployment benefits in a collective bargaining agreement at the cost of the employer.

### Suitable employment

With effect from 1 July 2015, employees receiving unemployment benefits for more than six months will have to accept all available employment, irrespective of the level or remuneration. Currently the broadening of what qualifies as suitable employment only happens after one year of unemployment.

### Further changes

In addition to the above changes to state-provided unemployment benefits, the system of accrual of relevant rights will change. Furthermore, changes will be implemented to ensure that it is financially worthwhile to start working (again) for people who are receiving unemployment benefits.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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