

January 2016

## **Collective Redundancies and Reorganisations**

### **The Netherlands**

#### **Summary**

Special provisions apply to collective redundancies and reorganisations in the Netherlands. The employer must inform the governmental authorities and must consult with representative bodies, such as trade unions and works councils, prior to making the redundancies.

#### **When do the provisions apply?**

Pursuant to the Collective Redundancy Notification Act (WMCO), an employer must notify the UWV<sup>1</sup>, and consult with trade unions, if it intends to terminate the employment contracts of 20 or more employees within a three-month period.

#### **What are the requirements?**

The employer must notify the UWV. This notification must include:

- the number of employees which the employer proposes to lay off, broken down by position, age, and gender;
- the number of employees normally engaged by the employer;
- the proposed termination date(s);
- the selection criteria for the employees to be laid off, which should take into account the “reflection principles” (see below); and
- the method by which redundancy payments are calculated.

The employer must also consult with the relevant trade unions on the need for the reorganisation, as well as the consequences for the employer and the employees. In most cases it will be required to prepare a social plan. If the employer has a works council (or other employee representative body) it must also consult with them about the anticipated redundancies.

If the employer has fulfilled its obligations under the WMCO and informed the representative bodies, the UWV will immediately review the dismissal application. After the UWV and the trade union have been consulted, the employer cannot give notice of termination until one month after the notification of the proposed collective redundancy has lapsed (the “waiting period”). In unique cases,

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<sup>1</sup> UWV (Employee Insurance Agency) is an autonomous administrative authority (ZBO) and is commissioned by the Ministry of Social Affairs and Employment (SZW) to implement employee insurances and provide labour market and data services.



such as where the trade unions declare their consent, this waiting period is waived and the employer may serve notice of termination immediately.

Taking the one-month waiting period into account, the employer has three possible methods to terminate the employment contract:

- termination by settlement agreement, which requires the employee's consent;
- termination by notice after approval from the UWV; or
- by asking the court to dissolve the employment relationship.

### **Who are “appropriate representatives”?**

If trade unions represent employees within the company, they must be consulted. If the employer has a works council, the employer must consult the works council over the anticipated redundancies as well.

It is also strongly recommended that employers consult with those employees for whom approval for dismissal is requested and any other representative (body) of those employees.

### **What sanctions apply if the process is not followed?**

If the employer fails to notify the UWV and/or trade unions, the waiting period will be increased to two months. If the employer informed the UWV and/or trade unions, but did not provide all necessary documentation, the waiting period will be prolonged until the required documentation is provided.

If the works council advises against the proposed dismissals, the employer must notify the works council in writing about its decision to deviate from that advice, and must provide the reasons for its decision. In that case the process will be suspended for one month. During this period the works council can appeal against the employer's decision at the Courts of Amsterdam.

If, in the meantime, an employment contract has been terminated by mutual consent, notification or the court, the UWV can reverse such termination, as a consequence of which the terminated employment contract will (retrospectively) become applicable again.

### **Are certain employees protected from dismissal?**

Yes. An employer may be prohibited from terminating an employment contract under certain circumstances. This applies to situations where the employee is ill, pregnant or a member of the works council. A termination that conflicts with these prohibitions is voidable. The employer does have the possibility – after the obligations under the WMCO are fulfilled – to ask the cantonal court to dissolve the employment contract with those protected employees.



### **How do I choose which employees to dismiss?**

In case of collective redundancies on the grounds of economic reasons the employer must select the employees that will be put forward for dismissal on basis of the “reflection principles”. By applying these principles the selected employees will be a balanced reflection of the workforce and the selection is performed in an objective manner.

The reflection principles apply to each business location. If the employer has a number of business locations throughout the Netherlands, each location must carry out selection on the basis of the reflection principles. The UWV has provided guidance to help distinguish what can be considered as one business location.

The reflection principles require an employer to select employees in such a way that the average age of employees within a specific category of interchangeable positions is proportionately the same before and after the dismissal. After employees are placed in a specific category, the principle of ‘last in, first out’ applies. Use of the reflection principles ensures that it is not only younger employees or those employees with less seniority that are selected.

### **Unfair dismissal**

If termination is notified to the employee with approval from the UWV, the employee may start legal proceedings afterwards claiming compensation on the basis of unfair dismissal. The UWV has no authority to impose an award of compensation against the employer.

If the employer asks the court to terminate the employment contract, the employee can ask for compensation for unfair dismissal as part of the same procedure.

### **What will it cost?**

#### *Salary during notice period*

In the case of collective redundancies, the employer must (in principle) also adhere to the notice period for termination, during which time salary is payable to the employee. The length of the notice period depends on the duration of the employment:

- for less than five years’ service, one month’s notice is required;
- for between five and ten years’ service, two months’ notice is required;
- for between 10 and 15 years’ service, three months’ notice is required; and
- for more than 15 years’ service, four months’ notice is required.

If approval for termination has been granted by the UWV, the employer may reduce the notice period by one month. A minimum notice period of at least one month is in effect at all times, however.



If the employment contract is terminated by the court, the court can deviate from the statutory or contractual termination period and can terminate the employment contract with immediate effect.

*Redundancy payments*

It is common to offer the employee a severance payment. From 1 July 2015, a new law calculating the compensation amount became effective, which uses the so-called “transition allowance”. This new method drastically decreases dismissal costs for employers in the Netherlands. The transition allowance is payable on termination of employment contracts that have lasted at least two years.

According to this new law the transition allowance (a gross amount) is calculated as follows:

0 - 10 years of employment	One sixth of a month’s salary for each six months of employment
10 or more years’ employment	One quarter of a month’s salary for each six months of employment

The monthly salary includes any holiday allowance and any other fixed element, while bonus is calculated as the average over the last three years. That means that an amount equivalent to 1/36 of the total bonuses paid over the three previous years is taken into account when calculating the monthly salary.

If the employee is aged 50 or older, and has been employed for at least 10 years, a transitional arrangement applies until the year 2020. From the age of 50, the employee is entitled to half a month's salary per six months of employment after the employee has reached the age of 50.

The transition allowance is capped at €75,000 gross, or one year’s salary if higher.

If the employer employs less than 25 employees and the collective redundancy is requested for economic reasons, the employer can under certain conditions disregard the employment history before 1 May 2013. This period will then be left out of the calculations. This temporary exemption applies until 2020.

**Are staff required to work during the consultation process?**

Yes, in principle employees are required to work until the termination date.

*This material is for general information only and is not intended to provide legal advice.*

**For more information regarding employment law in The Netherlands, please contact:  
Rachelle Mourits, Blenheim, at [rachellemourits@blenheim.nl](mailto:rachellemourits@blenheim.nl).**



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