Economic dismissals in the Netherlands

A high level outline of the obligations that apply in relation to economic dismissals in the Netherlands.

Submitted 31 August 2015
Reviewed 10 November 2015
Applicable Law Netherlands
Topic Employment, Pensions & Incentives > Redundancy & restructuring, International overviews
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Definition of an economic dismissal

A dismissal of an employee is by reason of redundancy, if it is attributable to business reasons such as: bad financial circumstances, reduction of work, changes to the organisation, technological changes, termination of company activities or company relocation.

Procedure

The employer has two options in case of a termination due to economic reasons:

- dismissal after approval by the Employee Insurance Agency, or
- termination by mutual consent by entering into a settlement agreement.

Selection

Where economic grounds are stated as the reason for redundancies, the employer must use the so-called balancing principle when selecting the employees that should be dismissed. This means that among the employees who are in interchangeable positions, the reduction of employees should be distributed proportionally across different age ranges (ie those employees aged 15 to 24, 25 to 34, 35 to 44, 45 to 54 and 55 years and older), in which the employees with a short-term employment contract are the first to be redundant. By collective labour agreement, different rules may apply regarding the selection of redundancies, unless an independent redundancy committee has been set up.

Protected categories

In certain circumstances, an employment contract cannot be terminated by giving notice of termination. This is the case, for instance, if the dismissal is based on discriminatory grounds, if the employee is sick (during the first two years of sickness) or if the termination is because of an employee representative body or union membership. Employees must claim that the dismissal is void within two months, and they can claim reparation of the employment contract or reasonable remuneration.
Alternative job offers

The obligation for the employer to search for alternative and suitable employment (within the company and group companies) starts when the employees that should be dismissed are selected and will continue until termination of their employment agreement.

Transition payment

From 01 July 2015, the transition payment (transitievergoeding) has replaced the Cantonal Court Formula. The transition payment is a statutory severance requirement and it is designed to facilitate the transition to a new job.

Employees who have been in service for a total of two years or more will receive compensation in the form of a transition budget payable by the employer, unless the dismissal was prompted by seriously imputable conduct on the part of the employee. If, however, it is the employer who has engaged in seriously imputable conduct, the sub-district court may decide to grant the employee additional compensation. The law does not impose a maximum limit on the court's power to correct such conduct.

Employees with employment contracts for fixed periods of two years or more are also entitled to the transition payment even if their contracts have terminated by operation of law.

The amount of the transition payment is composed as follows:

- Over the first 10 years of employment, the employee will receive a remuneration of 1/6 monthly salary for every six months of the duration of the employment (this corresponds to a remuneration of 1/3 of the gross monthly salary for every year of service).
- From the tenth year of employment, the employee will receive a remuneration of 1/4 of the gross monthly salary per six months (this corresponds to a remuneration of 1/2 of the gross monthly salary for every year of service) up to a maximum of €75,000 gross or one year's salary if this is more than €75,000 gross.

To calculate the transition payment the number of service years up to the termination date will have to be taken into account. When determining the termination date the applicable notice period will have to be taken into account, which will be the statutory notice period, the notice period the parties have agreed upon in the employment agreement or the notice period included in an applicable collective labour agreement.

In the monthly salary the following payments should be included:

- the gross monthly salary
- holiday allowance (commonly 8%, depending on employment agreement and/or collective labour agreement)
- the average of the paid bonuses over the last three years (ie the amounts that have been paid divided by 36 months)
- any additional structural payments such as a yearly thirteenth month.

The gross monthly salary should be multiplied on the basis of the calculation per year of service. Exceptions to the rules for the transition payment can be made in collective labour agreements.

Until 01 January 2020 employees over 50 with at least 10 years of service, unless employed by an employer with less than 25 employees, will be entitled to a higher transition payment, given their position on the labour market.
arrangement the transition payment is also subject to the maximum amount referred to above.

**Appeal**

If the request for permission to give notice of termination has been denied by the Employee Insurance Agency, the employer may initiate proceedings for the subdistrict court to terminate the employment contract. If the permission to give notice has been granted by the Employee Insurance Agency, the employee can request the subdistrict court for reinstatement and/or a higher termination severance.

**Risks**

If an employer does not follow the procedure set out above, this can result in the Employee Insurance Agency refusing the dismissal permit.

**Other costs**

In the case of a redundancy due to economic reasons it is common practice for employers to provide employees with an outplacement budget and a compensation of (a part of the) legal costs.

**Settling claims**

An employer and employee can always enter into a settlement agreement to terminate the employment by mutual consent due to economic reasons. These agreements usually include a waiver in which parties agree that everything has been discussed and finalised between the parties and there are no further subjects that the parties, whether or not brought into the negotiations by one of them, would like to exclude from the agreement. This means that the parties, except in so far as relating to the performance of the rights and obligations laid down in the agreement, grant each other a final discharge. Parties contract out of their statutory entitlements by signing a settlement including such waiver.

Further information on economic dismissals in the Netherlands is available from our International Employment Issues microsite [here](#).

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