

International employers – top traps in the Netherlands

A high level overview for international employers looking at the top five traps for those new to employment law in the Netherlands.

Submitted	5 November 2014
Reviewed	16 April 2018
Applicable Law	Netherlands
Topic	Employment, Pensions & Incentives > International overviews
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Set out below is a high level overview of the top employment traps that an employer might face when dealing with Dutch employment law for the first time.

- Not appreciating that employment agreements cannot be terminated by giving notice and thereby risking carrying out an invalid termination. An employer must obtain prior approval from the Employee Insurance Agency (UWV) to give notice or request the county court to dissolve the employment agreement. Which route the employer will have to take, will depend on the grounds for the dismissal. Applications for dismissal on account of business economic reasons or long-term disability are to be sent to the UWV for review. Applications for dismissal on account of a damaged working relationship or inadequate performance (personal reasons) are to be sent to the county court for review. Parties can also - instead of these two options - terminate the employment agreement by mutual consent and enter into a settlement agreement under which they agree to terminate the employment under specific conditions.
- Not appreciating that non-compete clauses must be in writing and restricted to a reasonable area and duration failing which they will most likely be reduced by a court in case of proceedings. Non-compete clauses in fixed-term employment agreements can in principle no longer be agreed upon, unless the company has a substantial business reason to agree to such non-compete and these reasons are set out in writing in the non-compete clause. Without such substantial business interests or wording, the non-compete clause in fixed term employment agreements will not be enforceable. Case law shows that courts are, in any event, reluctant to accept non-compete clauses in a fixed term employment agreements.
- Employers are required to give employees whose fixed-term agreements for six months or longer are about to end, one month's advance notice (in writing) whether or not the employment agreement will be renewed as well as the conditions upon which the employment agreement may be renewed. Failure to do so will cause the employer to forfeit a maximum of one month's salary to the employee.
- The employer can only enter into a maximum of three consecutive fixed term employment contracts within a period of two years, in order for the last consecutive fixed term employment contracts to terminate by operation of law. However, if the breaks between the consecutive fixed term employment contracts are longer than six months a new "chain" will start and parties are again free to enter into a maximum of three consecutive fixed term employment contracts within a period of two years.

- Failing to comply with the strict reintegration obligations that apply to employees who are absent due to sickness (and thereby risking that the period for which the employer is required to continue to pay the employee's salary during sickness will be extended from two to three years).
- Failing to appreciate that notice periods are set by law and that, although the parties can agree upon an alternative period, the notice required from the employer must be at least double that required from the employee (which may not exceed six months).

Comprehensive information on the employment law issues that arise in the Netherlands is available [here](#).

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