Netherlands: Selection of employees for (collective) dismissals

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Netherlands

Phase: Management

Type: Selection of employees for (collective) dismissals

Last modified: 10 December, 2021

Native name: **Ontslagregeling van 1 juli 2016; Burgerlijk Wetboek**

English name: **Royal decree on dismissal, 1 July 2016; Civil code**

Article

Article 2a, 4-6 and 11 of the Royal decree on dismissal; Article 7:670 paragraph 2 through 4, Civil code

Description

Principle of proportionality

Since 1 July 2016, a new decree on dismissal is in force, as an addition to the new dismissal legislation entering into force on 1 July 2015 (see New legislation on work and security). The decree mainly aims to clarify the new legislation. In case of exchangeable jobs, in principle, the last-in-first-out system applies within the five age categories (15-25, 25-35, 35-45, 45-55 and 55+). This means that in principle the age distribution of employees within a company does not change after a collective dismissal (if an employer intends to dismiss or has dismissed at least 20 employees in one or more locations of the same company within one and the same region of the public employment service within 3 months due to reorganisation for economic reasons). There are several exceptions to the basic rules, giving the employer some room for selection.

Since 2019, a government employer (the state; the provinces; the communities; the water boards; the public bodies for profession and business; the other public bodies to which regulatory powers have been conferred by virtue of the Constitution; the European groupings for territorial cooperation with a registered office in the Netherlands; the other legal entities established under public law; legal persons other than those established under public law, of which a body is vested with public authority, whereby the exercise of that authority constitutes the core activity of the legal person) needs to inform the Employee Insurance Agency (Uitvoeringsinstituut Werknemersverzekeringen UVW) of the reasons for the reorganisation and the job cuts (Royal decree on dismissal, art.2a).

Main exceptions to the principle of proportionality for the selection of employees in collective dismissals are:

- A worker who is indispensable for the company. Such an employee can be skipped over for the next employee in case of a collective dismissal. The appeal to this exception cannot result in a dismissal, if the number of workers in the 15-25 and 55+ age brackets increases by more than 10%.
- A worker who is detached to a third-party employer, perhaps through a secondment agency. In this case, a secondment agency that intends to engage in a collective dismissal is obliged to propose a replacement for the employee in secondment, and has to retain that employee if the third party does not agree to the replacement.
- Workers with disabilities.

Meanwhile, the last-in-first-out principle can be deviated from in collective labour agreements.

According to articles 4-6 of the Royal decree on dismissals, the intention to replace workers with permanent contracts with workers without permanent contracts or workers who perform similar work with lower compensations is not a legitimate ground for (collective) dismissals. This is the case even if this is considered by management as a necessity for doing business. However, replacement of workers with permanent labour contracts by sole traders that are registered with the chamber of commerce is a legitimate ground for collective dismissals, if it is necessary from a business perspective.

Different principles agreed by social partners

Under certain conditions, the employer may deviate from the cap of 10% of dismissed workers established in the principle of proportionality. This can only be done if it is included in the collective agreement. The rules of the principle of proportionality do not apply if other rules apply. Other rules can be agreed upon only if there is an independent and impartial collective labour agreement committee that tests the dismissal beforehand.

Dismissal of sick and pregnant employees

According to the Civil code, employers are not allowed to dismiss the employees who are pregnant or on sick leave. This is the case for both individual and collective dismissals, as well as when an entire department is being dismissed. In the latter case, the employer is required to attempt to find suitable work for the employee in another department when he or she returns from sick leave or pregnancy.

There are some conditions that make it possible for employers to dismiss employees on sick leave:

- If the employee is dismissed immediately due to grave misconduct or during his/her probation period.
- The employee agrees to the dismissal in writing.
- The employer has filed for bankruptcy or suspension of payments.
- The employee has reached retirement age.
- The enterprise is declared bankrupt.
- The employee refuses to comply with his or her obligations regarding re-integration in the labour market.

Comments

Employer organisation VNO-NCW stated that in improving dismissal regulation, it is important to look for opportunities to offer employers the option to deviate from the last-in-first-out principle. The organisation would prefer the condition if the selection of employees to be dismissed could increasingly take place on the basis of quality.

Cost covered by

Not applicable

Involved actors other than national government

Public employment service
Works council
Other

Involvement others

Cantonal courts

Thresholds

No, applicable in all circumstances

Sources

- Royal decree on dismissals
- Civil code
- VNO (undated), Dismissal law (Dutch)
- Can my employer deviate from the normal procedure for selecting employees for dismissal? (Dutch)
- Kan een zieke werknemer ontslagen worden op grond van bedrijfseconomische redenen? (Dutch)

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