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Netherlands: Obligation to consider alternatives to collective dismissals

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Netherlands

Phase: Management

Type: Obligation to consider alternatives to collective dismissals

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Native name:	**Wet melding collectief ontslag (WMCO); Wet op de ondernemingsraden (WOR); Wet Werk en Zekerheid (WWZ)**
English name:	**Collective Redundancy (Notification) Act; Works Council Act; Work and Security Act**

Article

Article 3, paragraph 2, article 4 and article 7a of Collective Redundancy (Notification) Act/Wet melding collectief ontslag (WMCO); Articles 25, 26, 31, 35b, and 35c of Works Council Act/Wet op de ondernemingsraden (WOR); Article 4 of Work and Security Act/Wet Werk en Zekerheid (WWZ)

Description

Obligation to notify the public employment service

In case of intended collective redundancies (within 30 days dismissals of at least 20 employees in one or more plants of the same company employed within one and the same region of the public employment service), the employer has to notify the relevant unions and the public employment service or the social agreement committee (if installed). The aim of the notification to the unions is consultation aiming to avoid or mitigate the restructuring plan.

The public employment service will not start the procedure to issue the necessary dismissal permits if there has been no consultation with the unions (unless there is an immediate threat to the continuity of the enterprise or employment). In notifying the public employment service (UWV), the employer has to show to have considered alternatives that diminish the number of dismissals or alleviate the consequences of dismissal for employees. These alternatives have to include the possibility to provide education opportunities or placement in other companies. If the UWV does not accept the reasons or the scope of the collective dismissal, it can refuse to provide the necessary dismissal permits and thereby prevents the collective

Trade unions and work councils must be consulted on the need, the size of collective dismissals, and on the social assistance measures provided for the employees to be dismissed.

The term 'consultation' means that there must have actually been consultation unless these unions or councils (as specified in article 7a):

- do not respond to the written request by the employer, provided that the association has received the request at least two weeks before the date of the consultation; or
- has indicated in writing that they refrain from consultation. Consultation does not imply that agreement must also be reached. The term social assistance measures usually implies a social plan, which is drawn up by enterprises and usually supplements the sectoral or business collective labour agreement. In that social plan or prior to developing one, the employer considers possibilities for relocation and retraining.

Obligation to notify the works council

All major strategic decisions with potential consequences for the employees are included by article 25 of the Works Council Act (Wet op ondernemindsraden). This article refers to the rights and obligations of enterprises towards their works councils. A key theme is the obligation to inform the works council so that the council may provide a formal reflection and advice on the proposed changes or dismissals. In the event that the council's advice is not entirely or not followed, the enterprise must provide a formal response as to why the advice from the works council was not (fully) applied to the planned changes for the enterprise. The changes referred to in this article include both restructuring and business transfers (transfer of undertaking), but also major investments, closures and mergers and acquisitions. In case of restructuring, the employer has to consult the works council. The works council is entitled to at least one consultation meeting with the employer. In principle, a works council should be installed if there are 50 or more employees.

Furthermore, if the works council has given a negative advice on the intended dismissals after being consulted, the employer must abide by a

one month waiting period before a permit for collective dismissal is given by the public employment service. A negative advice from the works council could also lead a court to invalidate any dismissals retroactively if employees contest their dismissal in the legal arena. If this happens, employees are entitled to reemployment or (additional) financial compensation.

In case of a disagreement, the employer has to postpone the decision for one month, during which the works council may go to court. If the advice is not followed by the employer, the works council can challenge the restructuring decision (and possible implementation measures already undertaken). Jurisprudence over the last 35 years shows that employers that have not taken their information and consultation duties seriously run the risk that the court rules the restructuring operation invalid. However, given sufficient care, the managerial prerogative prevails.

The employer has to motivate his/her intended decision and show that he/she has considered possible alternatives. These may include, for example, a reduction in the number of dismissals, starting up new production lines, mergers, sale of the company. In the consultation process, the works council may ask about alternatives or bring up alternatives of its own. If the employer does not answer the relevant questions on alternatives, the regional court, who together with the UWV are also involved in checking plans for collective dismissals, might rule that the restructuring plan is invalid.

The works council in smaller companies

In smaller companies employing between 10-50 employees, the Works Council Act obliges the employer to consult the workers' representatives (which may be a works council, but not necessarily so), or the staff meeting on any decision that could lead to job loss or a significant change in the employment, labour conditions or working conditions of at least one-fourth of the persons employed in the company. Contrary to the situation with works councils, decisions cannot be challenged in court. The articles do not specify the need to present alternatives.

Comments

Although employer organisations generally maintain that current rules regarding dismissal permits and considering alternatives are acceptable, they stress the importance of simplifying the dismissal process for small and medium enterprises. Furthermore, it is stressed that the process should be swift to ensure the continuity of the enterprise's activities. Currently, the employee is well protected within Dutch employment law, and collective dismissals require acceptance from the regional courts, the public employment service (UWV in the Netherlands), and an enterprise's works council or body of employee representatives in the case of smaller enterprises. For small enterprises the requirements appear to be less stringent than for enterprises with 50 employees or more.

Cost covered by

Not applicable

Involved actors other than national government

- Public employment service
- Trade union
- Works council
- Other

Involvement others

- Enterprise Chamber of the Amsterdam Court

Thresholds

Company size by number of employees:

10

Sources

- Collective Redundancy Notification Act (Dutch) Wet melding collectief ontslag - Overzicht van wijzigingen voor de regeling
- Works Council Act (Wet op de ondernemingsraden)
- Employer organisations viewpoint on dismissal law (Dutch)
- TK II, 32 718, No. 6, p. 10 and 11

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