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Netherlands: Effects of non-compliance with dismissal regulations

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Netherlands

Phase:

Management

Type:

Effects of non-compliance with dismissal regulations

Last modified: 10 December, 2021

Native name:

Wet melding collectief ontslag; Wet op de ondernemingsraden; Burgerlijk Wetboek

English name:

Collective redundancy notification act; Works council act; Civil code

Article

Articles 5 and 7 Collective redundancy notification act; Article 26 Works council act; Article 7:681 and 7: 671b Civil code

Description

Consequences of non-compliance

The Collective redundancy notification act establishes rules for notifying staff and others affiliated with an enterprise of a pending collective dismissal of employees. The act is related to the Act on collective dismissal (Wet Collectief Ontslag). The Act on collective dismissal applies when 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. There are 6 such regions in the Netherlands within a period of three months due to reorganisation for economic reasons, and regions in this case are defined by the public employment service, the UWV.

The Collective redundancy notification act was last updated in 2018. The act states that when the conditions for a collective dismissal are in place, the employer has a legal obligation to notify the employees to be dismissed. Specifically, an employer must inform the works council and the UWV of the dismissal in a timely manner. In practice, this often entails that an employer must inform the works council for the enterprise as well. Article 4 of the act stipulates exactly which information needs to be provided to whom.

The Act on collective dismissals must also be accompanied with a new plan for the business and who many employees will be needed in which positions. In this way, an enterprise legitimises the reasons for the collective dismissal. This plan (afspiegelingsbeginsel) must be submitted when collective dismissal is planned for economic or financial reasons.

The act also contains two sanctions of non-compliance with the act.

According to article 5, the public employment service postpones the procedure to issue the required dismissal permits in case of collective dismissals (within 3 months, 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), until the moment that both the notification of collective dismissal by the employer has been received, and the employer has stated to have consulted the unions and the works council.

According to article 7, the court, at the request of the employee, may void the termination of the employment relationship by the employer, or a possible agreement between employer and employee to end the employment relationship, in case the core articles of the Collective dismissal act have been violated. These core articles consist of:

- the duty of the employer to notify the public authorities of the intended dismissal;
- the duty of the employer to inform and consult the unions and the works council;
- the duty of the employer to comply with a waiting period of one month after notifications, unless all unions consulted declare that they have been consulted and agree with the redundancies or in case of bankruptcy and debt settlement.

Instead of voiding the termination by the employer or the termination agreement, the judge may, at the employee's request, oblige the employer to pay a fair compensation. The employee request can be made up to two months after the date on which he/she could reasonably be informed of the fact that the employer has not fulfilled one or more of the obligations, but no later than six months after the termination of the employment contract or of the commencement date of the termination agreement. Both article 5 and 7 above only apply to collective dismissals.

According to article 26 of the Works council act, the court may block restructuring if there have been serious flaws in the information and consultation procedure, included in articles 25, 27 and 35. Examples of these flaws include absence of (timely) information and consultation,

insufficient information, absence of sufficient motivation for the decision, absence of measures to deal with the consequences of the restructuring decision.

A recent adjustment to the Works council act, which applies since January 2019, is that now employers are obliged to have an annual meeting with the works council for their enterprise to discuss salaries, and the ratios in salary scales across the different occupations in the enterprise.

In case of individual dismissals, the employee may go to court to annul the termination of the employment relationship, if the employer has breached the statutory dismissal regulations. Based on article 7:681 Civil code and article 7 of the Collective redundancy notification act, the employee may then demand redeployment or financial compensation. In case of a dissolution request, the court must check whether the Collective redundancy notification act is applicable and whether the obligations arising from it are complied with. If afterwards it appears that obligations have not been complied with, circumstances under which revocation of the dissolution may be applied and enforced.

Comments

When the Collective redundancy notification act was changed and made stricter in 2012, employer organisations raised concerns regarding the legal uncertainty for employers. They argued that it would become unacceptable when employees can contest their dismissal for up to six months after it occurs, as it may result in great financial risks and the obligation to re-hire an employee.

Cost covered by

Employer

Involved actors other than national government

Public employment service

Trade union

Works council

Other

Involvement others

Cantonal courts; Enterprise chamber of the Amsterdam court

Thresholds




Company size by number of employees:

20

Number of affected employees:

20

Sources

-  [Works council act \(Wet op de ondernemingsraden\)](#)
-  [Collective redundancy notification act \(Wet melding collectief ontslag\)](#)
-  [Article 681 book 7 Civil code](#)

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