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European Monitoring Centre on Change

## Netherlands: Reemployment obligation after restructuring

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Netherlands

Phase:

Management

Type:

Reemployment obligation after restructuring

Last modified: 10 December, 2021

Native name:

Burgerlijk Wetboek, Ontslagregeling UWV van 1 januari 2020

English name:

Civil code, Royal decree on dismissals of 1 January 2020

### Article

7:681 and 7:682 Civil code, 4 and 9 of the Royal decree on dismissals

### Description

#### Conditions for annulment of dismissal

The court may annul the termination of the employment relationship by the employer if, within a period of 26 weeks after the termination of the employment relationship, the same position is given to someone else, or a new vacancy is created which is almost the same or comparable, and the employee has not had the chance to get this job (either directly by the employer or through a temporary work agency). The employee can choose between reemployment or financial compensation.

#### Assessing the possibility of reemployment

In assessing whether a collective dismissal permit shall be granted by the public employment service, it has to be checked whether to-be-dismissed employees can be placed in suitable positions elsewhere in the company. These positions include positions that are currently vacant, or are expected to be vacant within 26 weeks, as well as positions that are currently filled by workers with a form of flexible contract that expires within 26 weeks, or workers who will reach the retirement age within that period. If the employer is a subsidiary of other companies, positions in those enterprises will also be considered. A position is considered suitable if it is compatible with the employee's education, experience and competencies. If one of these conditions were present and a permit was granted, an employee can apply for reemployment or financial compensation retroactively.

The maximum number of employees (measured in working hours) that can be dismissed is the number of full-time equivalent positions that is removed. The employer has an obligation to offer one or more redundant employees a continuation of their labour contract for the remaining working time if the working hours of the redundant employees exceeds this maximum. This is only the case when the remaining vacant positions fit employees' competencies.

### Comments

Employer organisations have expressed that it is not always possible for employers to assess whether positions are suitable for current workers, or whether positions are expected to be vacant in the coming 26 weeks, especially in sectors with strongly fluctuating demand. Consequently, according to employer organisations, reemployment obligations are sometimes difficult to execute for some employers in some sectors.

#### Cost covered by

Employer

#### Involved actors other than national government

Public employment service

Other

#### Involvement others

Cantonal court and after appeal, higher courts

## Thresholds

Company size by number of employees:

20

Number of affected employees:

20

## Sources

 [Article 7:681 Civil Code](#)

 [Royal Decree on Dismissals of 1 January 2020](#)

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## Contact us

Eurofound, Wyattville Road, Loughlinstown, Co. Dublin, D18 KP65, Ireland

Phone: (00) 353 1 2043100

E-Mail: [information@eurofound.europa.eu](mailto:information@eurofound.europa.eu)

Press: [media@eurofound.europa.eu](mailto:media@eurofound.europa.eu)



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