



BUREN BASICS EMPLOYMENT | PART 3: TERMINATION OF EMPLOYMENT CONTRACTS UNDER DUTCH LAW

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Under Dutch law, the dismissal of employees is governed by mandatory statutory dismissal provisions.

Fixed-term contracts end by operation of law on the agreed end date, and can only be terminated prematurely if the right to do so has been agreed upon in writing, and if both parties have that right. If fixed-term contracts are concluded for six months or longer, employers have to inform their employees in writing at least one month before the end date whether or not their fixed-term contract will be renewed and, if so, on what conditions.

Employers may terminate indefinite contracts by giving notice of termination. The most striking difference to other jurisdictions is that, in that scenario, employers must, in principle, apply for a dismissal permit from the Work Placement Branch of the Employee Insurance Agency (*UWV Werkbedrijf*) before they can give notice, or they must request the court to terminate the contract. The manner of termination for employers is prescribed by law, depending on the reason for termination: termination for economic reasons or due to long-term incapacity for work must be effected through the UWV procedure, while dismissal on other grounds has to take place through termination by the court.



Unlike employers, employees do not require a permit from the UWV or have to go to court to terminate their employment contract. The statutory notice period for employees is one month. The statutory notice periods for employers are as follows:

- one month for employees who have been employed for less than five years;
- two months for employees who have been employed for between five and ten years;
- three months for employees who have been employed for between ten and 15 years; and
- four months for employees who have been employed longer than 15 years.

Several dismissal prohibitions apply. For example, sick employees may not be dismissed during the first two years of sickness.

Both fixed-term contracts and indefinite contracts can be terminated by mutual consent between the parties. Employers usually offer financial compensation, based on the ‘transition payment’ (see below), and it is common to confirm the termination in a settlement agreement by which the parties grant each other full and final discharge.

Indefinite contracts and fixed-term contracts longer than six months may include a probationary period during which each party may terminate the employment contract with immediate effect, without the prior permission of the UWV or the court.

Employment contracts may be terminated with immediate effect and without prior permission from the UWV or the court if there is an ‘urgent cause’ (*dringende reden*) to do so – ie, the parties cannot reasonably be expected to continue the employment relationship. The Dutch Civil Code provides a non-exhaustive list of acts that may qualify as an ‘urgent cause’, such as fraud and theft. Whether or not there is ‘urgent cause’ is assessed on a case-by-case basis, taking into account all relevant facts and circumstances. The ‘urgent cause’ must be communicated to the other party immediately, and the agreement must be terminated without notice.

However, case law accepts a brief delay to the extent that such is necessary – for example, to consult a lawyer. Employees can also terminate their



employment agreement with immediate effect for urgent cause.

Employers are required to make a ‘transition payment’ (*transitievergoeding*) to employees if one of the following applies:

- the employment contract is terminated by the employer by giving prior notice of termination;
- the court terminates the employment contract at the employer’s request; or
- the employer decides not to renew the employment contract after the expiration of the agreed fixed term.

Transition payments are equal to one third of the monthly salary for every full year of employment. The payment never exceeds EUR 83,000, or one annual salary for employees earning more than EUR 83,000. Only employees who are seriously culpable for termination are not entitled to a transition payment.

Employers who intend to dismiss at least 20 employees within a period of three months (in one region) are subject to the Collective Redundancy (Notification) Act (*Wet Melding Collectief Ontslag*).

Under that legislation, employers must notify the UWV and the relevant trade unions of the intended dismissals, and must first discuss the proposed decision and its social consequences with these trade unions. The UWV takes applications for individual dismissal permits under consideration one month after notification of the proposed collective redundancy, unless the trade unions have stated (in writing) that they have been informed and that they agree. Again, employers can validly dismiss the individual employees concerned only with the prior approval of the UWV. In addition, the proposed decision to proceed with collective redundancy may require the prior advice of the works council.

Key contacts



Suzan van de Kam
Partner | Lawyer
s.vandekam@burenlegal.com
T +31 (0)70 318 4297



Christel Prevoo
Associate | Lawyer
c.prevoo@burenlegal.com
T +31 (0)20 237 11 15