



**BUREN EMPLOYMENT
BASICS | PART 4:**

**DRAFTING EMPLOYMENT
AGREEMENTS UNDER
DUTCH LAW**

APRIL 2021

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In this alert we will elaborate on the form and legal requirements for employment agreements under Dutch law.

Key elements Dutch employment agreement

Under Dutch law, if the three conditions for an employment agreement are met - (i) the (personal) performance of services (ii) under the authority of the company, (iii) in return for remuneration - in principle an employment agreement is deemed to exist.

Orally or in writing?

An employment agreement can be concluded orally or in writing. However, to avoid evidence issues, it is highly advisable to enter into a written agreement with employees. A collective labour agreement (if applicable) may determine that the employment agreement, or certain provisions, must be agreed upon in writing. Moreover, under Dutch law, certain provisions are valid only if concluded in writing:

- The probation clause: An employment agreement may include a probation period during which each party may terminate the employment agreement with immediate effect, without prior permission of the Employee Insurance Agency (UWV) or Court being required. The probation period has a maximum length of (i) one month for fixed-term employment agreements entered into for a period of more than six months but less than two years and (ii) two months for fixed-term employment agreements entered into for a period of two years or more and for employment agreements for an indefinite period. It is not permitted by law to agree upon a probation period for a fixed-term employment agreement with a maximum duration of six months.





- The non-competition clause: An employment agreement for an indefinite period may contain a non-competition clause restricting the employee's right to work in a certain way after the end of the employment agreement. It is not permitted by law to include a non-competition clause in a fixed-term employment agreement, unless the employer clearly substantiates that it is necessary to include such a clause due to interests of the company.
- The penalty clause: It is common and recommended to attach a penalty clause to restrictive provisions in the employment agreement, stating that the employee has to pay a penalty in case of a breach of the obligations as mentioned in the restrictive provisions.

Mandatory information

Even though an employment agreement can be concluded orally, the employer must provide the employee with certain information in writing within one month after the commencement of the employment agreement, including (but not limited to): the name and domicile of both parties, the work location, the position of the employee, if the employment agreement is entered into for a fixed term: the duration of the agreement, the entitlement

to holiday, the amount of wages and the usual working hours per week, whether or not the employee will take part in a pension scheme (article 7:655 of the Dutch Civil Code). This entails many aspects of an employment agreement and encourages the drafting of an employment agreement.

Language requirements

It is not mandatory to provide the employee with an employment agreement in Dutch under Dutch law - in fact, it is common practice to enter into employment agreements in English in international employment relationships. However, it is advisable to verify whether the employee fully understands the terms of employment. In case of doubt, it would be advisable to provide a translation.

Key contacts



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