

FACT SHEET

Directive on transparent and predictable working conditions



With effect from 1 August 2022, Dutch labour law will be amended to follow the implementation of the European Directive on transparent and predictable working conditions. This Directive is intended to protect employees against unreasonable or unclear working conditions. It includes, among other things, new minimum rights for employees and new information obligations for employers. As a result, the working conditions and employment contracts of most employers will need adjustment. This fact sheet sets out the most important changes.

Extension of the obligation to provide information

Even though an employment contract, in principle, need not be agreed in writing, employers do have an obligation to provide their employees with certain written information, including the salary, the job description and the collective labour agreement, if applicable. This obligation to provide information will be extended under the new legislation. This entails that, as from 1 August 2022, employers must also provide information on how and when salary

instalments are made, on the right to training (insofar as applicable), all forms of paid leave, the names of social insurance institutions (including the pension provider) and special procedures and requirements for dismissing employees. Employers will need to adjust existing models of employment contracts to the extended obligation to provide information. BDO Legal's labour lawyers may be of help in this process.

Information may be provided to employees electronically. In that case, the employer must retain proof of the transfer or receipt and the employee must be able to save and print the information. Employees who are already working for the employer may file a request to supply missing information within one month, in writing or electronically. If certain information is included in a collective labour agreement, it will suffice to refer to that collective labour agreement.

Working hours

A major extension of the obligation to provide information relates to the working hours. If the work pattern is predictable, the employee must be informed beforehand on the duration of the normal daily or weekly working hours. This means that it will no longer suffice to include a clause in the employment contract that the working days and working times will be determined in mutual consultation. However, the employer and the employee may agree that the normal daily and weekly working hours may be deviated from.

Some employees, for example stand-by employees, have no predictable work pattern. Under the new legislation these employees must be informed beforehand on the reference days and hours on which they may be called to work, so as to enable these employees to adjust their private lives to this obligation.

Refusing a call to work

Also, employees with an unpredictable work pattern will be granted the right to refuse a call to work without any adverse effects if that call to work is outside the reference days and hours as determined beforehand. This goes one step further than the option under current legislation of a stand-by employee to refuse the call to work if the stand-by employee is not called in time (in principle at least four days in advance). Therefore, it is important for an employer to think in advance about the days and hours when the employee may be needed to perform work, to avoid unpleasant discussions. Additionally, it is of vital importance to inform employees correctly and appropriately.

Obligatory training

The new legislation also has far-reaching effects on the training of employees. If an employer has a duty to offer training to an employee, whether under the law or by virtue of a collective labour agreement, the employer may no longer recover the costs of such training from the employee. This applies to training that is necessary for the performance of the job, for example training in the field of competence or safety. It is already a legal obligation for the employer to enable the employee to have access to this training. Regulated jobs or professions on the basis of the Professional Qualifications Directive (e.g. seamen, crane operators, doctors and the pharmacists) are

excluded from the new legislation on offering obligatory training free of charge.

Offering obligatory training free of charge does not only apply to the actual training fees, but also to any necessary travelling costs and study materials. Furthermore, the training times must be within working hours as much as possible. If the training takes place outside working hours, the training time are to be regarded as working time.

Due to the changes set out above, it will not always be possible to make arrangements on the costs of training anymore. Moreover, the new legislation has direct effect, which means that former arrangements on the costs of training may no longer be legally valid after 1 August 2022. Employers must therefore investigate which training is affected by the new legislation, what the effects are and then adjust their training policies to the new legislation. BDO Legal's labour lawyers may be of assistance in this respect.

Ban on ancillary activities

Employment contracts often include a standard clause prohibiting ancillary activities. On the basis of such clause, employees are not allowed to perform work elsewhere (without the employer's permission) while being employed by the employer. Under the new legislation, ancillary activities may be banned only if such ban is justified by an objective reason, e.g. the protection of employees' health and safety, the protection of confidential business information and the avoidance of conflicts of interests.

A general ban on ancillary activities will no longer be tenable in practice. However, depending on the circumstances of the case, a ban on ancillary activities may be imposed to some extent after the new legislation has taken effect. Therefore, policies must be adjusted and the possibility of prohibiting ancillary activities, as well as the necessity of such prohibition, should be carefully assessed.

More predictable and certain working conditions

Under the Flexible Working Act employees may, among other things, file a request with the employer for a change of the workplace or the working time. The new legislation adds a new right: as soon as an employee has been employed by an employer for six months, the employee will be entitled to file a request for more predictable and certain working conditions, for example by means of a fixed work schedule or a permanent employment contract. The employer is required to respond to the employee's request within one month, in writing and supported by reasons. Employers with less than ten employees may take three months to respond.

It is important for employers to properly adjust their internal processes to this new right for employees. If the employer fails to respond timely, the request must be granted in accordance with the employee's wishes, which may entail a possibly undesirable adjustment of the working conditions.

BDO Legal may be of service to you

Due to the amended legislation, many employers will need to adjust their policy, employment contracts and working conditions, to avoid problems. The labour lawyers of BDO Legal will be happy to help you set out the consequences of the new legislation in your particular situation. They can also advise you on measures to be taken to tackle any bottlenecks. That way, you will stay in the lead and will not be caught off-guard.

Here are some examples of issues that we could advise you on:

- ▶ How to comply with the statutory obligation to provide information;
- ▶ How to deploy your flexible workforce so as to be able to respond to business developments on the one hand and to comply with laws and regulations on the other hand;
- ▶ How to define 'obligatory training', how to make policies for training costs and training time and which arrangements on training costs are no longer legally valid;
- ▶ How to include a ban on ancillary activities in the employment contract and how to define objective reasons for prohibiting ancillary activities;
- ▶ How to adjust your policy, working conditions and employment contracts to comply to the new legislation.

More information

If you would like a personal meeting or learn more about the implementation of the Directive on transparent and predictable working conditions, do contact us by way of your BDO contact or by sending an email to legal@bdo.nl.

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