

Decisive actions in the field of labor

Q&A – how to amend the employment conditions in
your company

A collaboration of the Employment and Tax teams of HBN Law & Tax



Since the outbreak of the corona virus, we have received various questions with regards to the possible consequences of the Corona crisis on employment relationships. Despite the fact that the government of Aruba created *Fondo di Asistencia Social di Emergencia* and the subsidy scheme to keep businesses and jobs afloat as much as possible, the crisis will inevitably lead to a loss of turnover and therefore employment. In these difficult times, companies wish to stay sustainable in the employment field. Therefore, we have summarized the most relevant and frequently asked questions in this document regarding this matter.

If you have any questions or should you wish to receive more information, please contact the attorneys and/or tax specialists from our Employment Law team and/or Tax team.

Sincerely,

On behalf of the Employment Law team and the Tax team

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AMENDING EMPLOYMENT CONDITIONS

1. The labor costs are too high in comparison to the (expected) turnover of the company, what are my options?

Firstly, it is important to set forth the (expected) turnover and the labor costs associated with said turnover. When this becomes clear, it is advisable to discuss the adjustment of labor costs to the new reality with the employees and/or the employees' representatives. If the latter does not lead to the desired effect, you can – under certain circumstances - consider requesting the court to amend the terms of employment.

2. How do I approach the employees?

In such cases a thorough preparation is important. Employees will understand the matter if you set forth a detailed explanation of the financial situation of the company, the exact amendments with regards to the labor costs and/or other employment conditions and the expected duration thereof. It is also advisable to mention to the employees that the proposed amendments are important as they can prevent or lead to less dismissals.

3. Am I obliged to discuss the matter with the trade union if a collective labor agreement is applicable to the employment relationship?

Some collective labor agreements include an obligation to consult with the trade union. In such case, it is advisable to first discuss the matter with the trade union in any case if said trade union is party to the collective labor agreement. If there is no obligation to consult with the trade union or if the trade union is not very cooperative in this regard, then it is advisable to (also) approach each employee individually. We suggest that you contact an employment law specialist to discuss the matter in this regard before taking any further steps.

4. Does it matter which employment conditions are amended?

Yes. Amendments with regards to (for example) the basic salary of an employee will have an effect on the employee's bonus, holiday allowance, premiums etc. In addition, the taxes which apply to each employment condition can also play an important role in this regard. Our tax experts can of course provide you with more information.

5. How can I amend the labor costs without the consent of my employees?

The requirements of good employer (in Dutch: *goed werkgeverschap*) and employee practice and the principle of reasonableness and fairness form an important basis for an amendment of the contractual terms and conditions as agreed upon by and between the employer and the employees. The employee is in principle obliged to accept the proposed amendments with regards to changes in work circumstances made by the employer insofar as these amendments are reasonable. However, in some cases the employee cannot be reasonably expected to accept the proposed amendments.



Whether the proposed amendments are reasonable depends on each individual case. We suggest that you contact an employment law attorney before proceeding in this regard.

6. The employment contract includes a unilateral change clause. Can I freely make use of it?

No, a unilateral change clause is void and null in Aruba based on article 7A:1613h of the Civil Code and can't therefore be used.

7. The employment contract includes a clause with regards to unforeseen circumstances. Is this clause applicable?

This depends on how the clause is phrased in the employment contract. According to case law the Corona virus is considered to be an unforeseen circumstance for contracts which were concluded at least before January 1, 2020. In case such a clause is included in the contract, it means that parties have foreseen the circumstance and it is in fact not considered to be an unforeseen circumstance within the scope of the Aruba Civil Code. Whether said provision is applicable in this situation and whether the employees' rights must be set aside due to the applicability of said provision, must be assessed on a case-by-case basis.

8. What can I do if the consultations with the (representatives of the) employees are not successful?

You can approach the Court of First Instance. The Court will assess whether the proposed amendments with regards to the employment conditions are reasonable and fair and whether said amendments must be accepted by the employees. If this is the case, the employment conditions can be amended accordingly.

9. What is a reasonable proposal?

This depends on each individual case. As an employer you must take certain aspects into account such as:

- is the proposal to intervene in the terms of employment a last resort and proportionate, or could there be less drastic cuts elsewhere?
- Will there be less dismissals as a result of the amended employment conditions?
- If the employment conditions are not amended, will the company become bankrupt?
- Have you followed the principle of "a good employer" in the negotiation process (e.g. obligation to inform etc.)?

10. I have reached an agreement with the employees. Am I required to offer them a new employment contract?

If you have reached an agreement with the employees with regards to the amendment of certain employment conditions, we suggest that you include them in a separate agreement. If you wish so, we can send you a standard draft of such an agreement which you can use in such cases.

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