

## Decisive actions in the field of labor

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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## DISMISSAL PROCEDURE

**1. Is it possible to terminate the employment agreement by giving notice without the approval of DAO?**

An employer is only able to terminate the employment agreement by giving notice after receiving the approval of the Director of DAO to do so. If the employer has the approval of DAO to terminate the employment agreement, the employer (still) needs to adhere the conditions as set forth in the Civil Code. No approval of DAO is needed in the following situations:

- a. instant dismissal;
- b. termination by mutual consent;
- c. termination during the trial period;
- d. termination as a result of the bankruptcy of the employer;
- e. termination of the employment agreement for a definite period of time at the end date;
- f. while using a resolutive condition;
- g. termination by the courts.

**2. Can I, as an employer, apply to dismiss an employee for business reasons at the Labor Department (“DAO”) despite the fact that I am using the benefits of the subsidy scheme?**

No, employers who receive the benefits under the subsidy scheme are obliged to pay all their employees who are registered with SVB as long as said scheme is being used. They may not file any application to dismiss their employees.

**3. Can I, as an employer, file a dismissal application at DAO if I am not eligible to receive the benefits of the subsidy scheme?**

Yes, but the Minister of Labor and Social Affairs has announced that no dismissal permits will be granted at this moment of time. However, the expectation is that the Minister will start granting its permission for dismissal permits on a relative short term. This will possibly happen with additional conditions to the granting of such permission.

**4. Can I file a dismissal application at DAO in case I am eligible to receive the benefits of the subsidy scheme without in fact applying for it?**

After the Minister starts granting its permission for dismissal, then there is in our opinion, if you choose not to apply for the subsidy scheme, no impediment to file a dismissal application at DAO and receive a dismissal permit. However, please note that you must provide DAO with a detailed explanation of the reasons for not applying for the subsidy scheme and that this financial support could not have prevented the dismissal application.

**5. Is it advisable to set aside the subsidy scheme and already start reorganizing the company instead?**

Yes, might be advisable as soon as the Minister of Labor and Social Affairs issues instructions that dismissal permits can be



issued again. This is mainly the case if you already know that the consequences of the crisis will affect your business operations for a longer period of time, even after the disappearance of or despite the subsidy scheme.

**6. Which documents are necessary for the dismissal application for business reasons at DAO?**

The employer must provide DAO with a detailed explanation of the (bad) financial situation of the company which is considered the main reason to lay off the employee(s) in question. It is advisable to provide the annual accounts, orderbooks, turnover data and audit reports of the company and the financial expectations of the company to prove its (weak) financial position.

**7. Is it possible to submit the necessary information and supporting documents (as requested in the application form) at a later stage in the dismissal procedure?**

No. The employer is based on the regulations of DAO obligated to submit the necessary information and supporting documents in the initial request. The dismissal request is not considered to be submitted in case the necessary information and supporting documents (as requested in the application form) have not been added to said request.

**8. Am I obliged to first consult with the (representatives of the) employees in case I wish to file a dismissal application at DAO?**

We suggest that, in any case, you do so as there is a fair chance that DAO will inquire with the employees whether you have consulted with them or their representatives already. Such obligation is also incorporated into the regulations of the Labor Department. In addition, it may be mandatory in the collective labor agreement to first consult with the trade union. If all employees (mutually) agree to your proposal regarding the reorganization of the company, then it is not necessary to file a dismissal application for a mass layoff at DAO.

**9. Which grounds are valid for dismissals based on business reasons?**

- A bad or worsening financial situation of the company;
- Reduction of work;
- Organizational and/or technical developments within a company;
- (Partial) cessation of business activities or operations;
- Company relocation.

**10. Is it possible to file a dismissal application for business reasons at the Court of Instance of Aruba instead of DAO?**

Yes, that is possible. In such case, you can file a petition to terminate the employee's employment contract. In principle, most dismissal applications for business reasons are filed at DAO. However, there are various reasons which make it more feasible for an employer to file the dismissal application at the Court of First Instance instead of DAO. Our employment law



attorneys can of course advise you further in this regard. In this Q&A we will further discuss filling dismissal applications at DAO.

**11. What is the dismissal procedure at DAO?**

The employer must first submit a reasoned request for permission to grant dismissal to DAO. There are special forms for this, available from DAO. A DAO official then calls on the employee to put forward a defense against the request. After this, the employer will be approached to comment on the defense. Finally, the employee gets another chance to respond to the employer. The “adversarial process” phase takes place in writing. The officer handling the case draws up a file. DAO sends this file to the dismissal committee. This committee, which is made up of 3 employer and 3 employee representatives, usually meets once a week to advise the Director of DAO on the requests for permission to grant dismissal. The latter can then issue a dismissal permit or refuse the dismissal permit. The decision is communicated to the employer and employee (s) by means of a written decision.

**12. Are the same terms applicable in case of collective redundancy?**

No. If an employer wishes to apply for a collective redundancy, then he/she is obliged to inform DAO at least two (2) months prior to terminating the employees’ employment contracts. According to article 5, paragraph 2 of the National Ordinance on the Termination of Employment Contracts, the employer must provide DAO with a redundancy plan within eight (8) days after informing them regarding the collective redundancy.

**13. Is a redundancy plan required in case of a collective redundancy or mass lay off?**

Yes, it is required.

**14. What are the requirements of a redundancy plan?**

The redundancy plan must include dismissal regulations with possible specific arrangements with regards to temporary contracts and relocation schemes for expat employees. Furthermore, it must include a new job application procedure in case old functions are set aside and new functions are created which are better suited for the structure of the company and its financial situation in the future.

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