

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 the Netherlands created the Emergency Measure on the Bridging of Employment (in Dutch: *de Noodmaatregel Overbrugging Werkgelegenheid*) ("NOW") 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. One of the solutions in this respect is reducing the workforce. Therefore, we have summarized the most relevant and frequently asked questions in this document regarding the dismissal procedure at the Labor Department.

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 the Labor Department?

An employer is only able to terminate the employment agreement by giving notice after receiving the approval of the Director of the Labor Department to do so. If the employer has the approval of the Labor Department to terminate the employment agreement, the employer (still) needs to adhere the conditions as set forth in the Civil Code. No approval of the Labor Department 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. Is it correct that the Labor Department didn't give its approval for termination of the employment agreement based on business reasons which are a result of the corona crisis during NOW 1.0 and 2.0?

Yes. In article 21 of the relevant regulation of the NOW 1.0 and 2.0 is incorporated that the Labor Department will not approve a request of terminating an employment agreement based on business reasons if those reasons are a result of the corona crisis or the related (governmental) measures.

3. Will the Labor Department grant its permission to may terminate the employment agreement based on business reasons which are a result of the corona virus during NOW 3.0?

Yes, in the explanatory notes of NOW 3.0 is incorporated that the Labor Department will start approving such requests as off October 13, 2020.

4. Which documents are necessary for the dismissal application for business reasons at Labor Department?

The employer must provide the Labor Department 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.



5. 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 the Labor Department 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.

6. Am I obliged to first consult with the (representatives of the) employees in case I wish to file a dismissal application at the Labor Department?

We suggest that, in any case, you do so as there is a fair chance that the Labor Department 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 the Labor Department.

7. 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.

8. Is it possible to file a dismissal application for business reasons at the Court of Instance of Bonaire instead of the Labor Department?

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 the Labor Department. 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 the Labor Department. Our employment law attorneys can of course advise you further in this regard. In this Q&A we will further discuss filing dismissal applications at the Labor Department.

9. What is the dismissal procedure at Labor Department?

If the dismissal application is accepted by the Labor Department it will be sent to the employee. The employee has five (5) working days to submit a defense. If necessary, the employer can respond the employee's defense which is followed by the possibility for the employee to comment on the employer's response. Within two (2) weeks of receiving the last documents, the Dismissal Committee will give its advice to the Director of the Labor Department. The Director of the Labor Department



then has to (2) weeks to take his/her decision with regards to the dismissal. In principle, the Labor Department must take its decision with regards to the dismissal within eight (8) weeks of receiving the dismissal application. However, this time frame can be extended.

10. 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 the Labor Department at least two (2) months prior to terminating the employees' employment contracts. According to article 5, paragraph 2 of the Termination of Employment Contracts Act BES, the employer must provide the Labor Department with a redundancy plan within eight (8) days after informing them regarding the collective redundancy.

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

Yes, it is required.

12. 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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