

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 Sint Maarten created the Stimulus Support & Relief Plan 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 to 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. Can I, as an employer, apply to dismiss an employee for business reasons at the Labor Department despite the fact that I am using the benefits of the Stimulus Support & Relief Plan?

No, employers who receive the benefits under the Stimulus Support & Relief Plan are obliged to pay all their employees who are registered with SZV as long as said plan is being used. They may not file any application to dismiss their employees.

3. Can I, as an employer, file a dismissal application at the Labor Department if I am not eligible to receive the benefits of the Stimulus Support & Relief Plan?

Yes.

4. Can I file a dismissal application at the Labor Department in case I am eligible to receive the benefits of the Stimulus Support & Relief Plan without in fact applying for it?

In our opinion, if you choose not to apply for the Stimulus Support & Relief Plan, there is no impediment to file a dismissal application at the Labor Department and receive a dismissal permit. However, please note that you must provide the Labor Department with a detailed explanation of the reasons for not applying for the Stimulus Support & Relief Plan and that this financial support could not have prevented the dismissal application.

5. Is it advisable to set aside the Stimulus Support & Relief Plan and already start reorganizing the company instead?

Yes, this might be advisable. 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 plan.



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

The employer must provide the Labor Department with a detailed explanation of the 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. Based on the regulations of the Labor Department, the employer is 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 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.

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 Sint Maarten 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.

11. What is the dismissal procedure at the 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. The Labor Department has the discretionary power to decide whether the employer will be given the possibility to respond on employee's defense. Please note that the employer therefore might not get the possibility to respond. However, if the employer can respond on employee's defense, the employee can thereupon comment on 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 six (6) weeks of receiving the dismissal application. However, this time frame can be extended to a maximum period of twelve (12) weeks.

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 the Labor Department 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 the Labor Department 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 special 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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