Termination of employment

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1. Introduction

This whitepaper gives a general overview on the termination of an employment contract in the Netherlands. It can be used as a guide to give you a first impression of what can be expected when a question on terminating a Dutch employment contract arises.

2. Dutch employment contracts

In The Netherlands there are two types of employment contracts:

1. Temporary employment contract; and
2. Permanent employment contract.

Temporary employment contracts

Temporary employment contracts will terminate automatically by law on the agreed ending date. A dismissal procedure is not required. Prior notice has to be given if this is a requirement of the employment contract.

A different situation occurs if one (or both parties) wants to end the employment contract before the agreed ending date. In this case, the option for termination of the contract before the ending date has to be part of the employment contract. If the employer wants to end the contract before the date agreed, the employer must follow a legal dismissal procedure.

If more than three temporary contracts with the same employer have been agreed within less than a three-month break between each contract, the latest employment contract will become permanent. This means that the rules for a permanent employment contract will start to apply.

Permanent employment contract

A permanent employment contract is one concluded for an indefinite period of time. A permanent employment contract has no ending date. A permanent employment contract is terminated by notice. Such a notice requires authorization from the Employment Office (UWV-WERKbedrijf). This is a governmental body.

3. Termination of employment contract

An employment contract can be terminated in four ways:

1. By mutual consent;
2. By operation of law;
3. By notice;
4. By judicial rescission;

4. Termination by mutual consent

An employment contract may be terminated by mutual consent. The termination must be confirmed in a written document signed by both parties. Termination by mutual consent is possible at any time. It is important for the employer to check if the employee has understood the consequences of termination and is really willing to terminate the employment contract. Should this not be the case, a judge may conclude that the employee has been dismissed unilaterally.

The legal consequences of a termination by mutual consent are that both parties will lose the right to cancel the dismissal and the right to claim for wrongful or manifestly unfair dismissal. Parties will not be able to claim for compensation on these grounds.

5. Termination by operation of law

As I have noted above, a temporary employment contract will terminate automatically on the agreed ending date. A dismissal permit is not required and the prohibitions to dismiss do not apply. A notice is only required if it is agreed.

Employments contracts may terminate automatically when the employee reaches the statutory retirement age, which is no set at the age of 65. An employment contract will also terminate when the employee dies. Please note that an employment contract will not necessarily terminate with the death of the employer.

Employment contracts may contain clauses which bring about an automatic end to the contract if a certain event occurs. An employment contract may not end automatically due to a marriage or pregnancy of the employee.

6. Termination by notice

Notice of termination of a permanent employment contract

Notice by the employer of termination of the employment contract requires a permit from the Employment Office. Any notice given to an employee without the permit is null and void. Thus, it does not terminate the employment contract.

A request for dismissal by an employer can be justified if it is based on:

1. Incapability of the worker;
2. Redundancy;
3. Other substantial reasons; such as very bad relationship between the employer and the worker.

The Employment Office will issue the permits on average within six weeks. Once the permit has been granted, notice of termination may be given to the employee. Please not that it is not possible to give notice to employees who fulfill certain requirements or for whom certain conditions apply. This means that an employee who is pregnant or ill may not be given notice. If notice is given under such circumstances, the dismissed employee may nullify the notice by writing a letter to that effect.

An employee, who disagrees with the granting of the permit, can turn to the civil judge and complain about manifestly unreasonable dismissal. If the judge agrees, he may reinstate the employee or grant the employee financial compensation. Reinstatement can be opposed by the employer. In this case the judge will increase the financial compensation.

Trial period

The trial period is a very common part of a (temporary) employment contract with the employer. A trial period will apply for both parties and needs to be agreed in writing. If the duration of the temporary employment contract is less than two years, the maximum trial

period is one month. The legal maximum trial period is never any longer than two months. During the trial period, either party may terminate the employment contract without prior notice and without a permit from the Employment Office. Termination may take place with immediate effect. Termination during a trial period does not give any party any claim on the basis of obviously unreasonable dismissal.

Obviously unreasonable dismissal

The employee may seek redress in court if the termination of employment contract is obviously unreasonable. The employee may claim severance payment or request reinstatement. If the request for reinstatement is granted by the judge, the court may be requested to establish a lump sum payment to buy off the reinstatement.

Obviously unreasonable dismissal may the case if:

- no (motivated) reason for the termination is given;
- if the hardship endured by the employee is disproportionate to the interest of the employer considering the financial arrangements made for the employee and his prospect of finding a new job;
- termination deviates from a seniority rule in the particular company.

Termination for urgent cause

An employment contract may be terminated without notice and with immediate effect if an urgent cause occurs. A permit of the Employment Office is not required in this case. Examples of an urgent cause for the employer:

- Misleading or false statements made in the application for employment;
- Intimidation;
- Serious lack of competence in performance;
- Theft, fraud, or other crimes.

The employee may also have an urgent cause to terminate the employment immediately. Examples for an urgent cause are:

- The wage is not received timely;
- Due to illness, the employee is not able to execute the employment contract;
- Continuation of the employment contract causes serious harm to life, health, morality or good name;
- The employer gravely insults or threatens the employees or his family.

The cause must be serious and sufficiently urgent to warrant immediate termination. The cause must also be communicated as soon as possible to the employee or the employer. Any delay in the communication will be regarded as evidence that the cause was not urgent.

7. Termination by judicial rescission

It is also possible to terminate the employment contract by the Cantonal Section of the District Court.

Court termination for breach of contract

An employment contract can be terminated by the court in case of breach of contract. This procedure it not used that much because the employment contract can be terminated by the court in case of a serious cause. This is a much simpler and faster way to terminate the employment contract

Court termination for serious cause

Either party may request the court to terminate the employment contract on the basis of a "serious cause". A serious cause may be a change in the circumstances of such a serious nature that the employment contract should reasonably be terminated as soon as possible. This procedure is used as an alternative to the termination through the Employment Office. A permit or period of notice is not required in this procedure. The court may grant the employee compensation if it deems this fair due to the particular circumstances. Appealing the decision of the court is not possible.

Termination by judicial rescission

Judicial rescission is another way to terminate the employment contract. This alternative can be used in case of serious reasons. Either party may request the court to terminate the employment contract. A serious reason may be:

- an urgent cause that has not previously been invoked to terminate the employment contract;
- a change in the circumstances of such serious nature that the employment contract should reasonably be terminated.

All relevant facts must be presented to the judge. The judge will set a termination date if the termination is granted. If the judge grants the termination on the grounds of a change in circumstances, financial compensation may be granted to the employee.

The judge will set the amount of the financial compensation based on the so called Cantonal Court Formula.

Contact:

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