When to call a lawyer about work

for expats living in the Netherlands

GMW

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Introduction

Work is the foundation of the international (expat) life. It takes us to new places and gives us new opportunities. It's not surprising then that problems at work can cause a great deal of stress.

In order to make good decisions it is essential to understand your rights and obligations – and to know when to call in specialist help.

Whether you are facing dismissal, dealing with burnout, or just trying to understand what your employment contract means, this resource is for you. In it, we'll examine some of the most challenging situations you may face in the workplace, share legal considerations and tips, as well as offer guidance on the actions that you can take at each stage.

About the author

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Godelijn Boonman is a partner and head of the Employment, Pension & Immigration law division at GMW lawyers.

For 20 years, Godelijn has specialised in employment law, with international employment law playing an increasingly important role in her practice. She represents both organisations and private individuals.

Godelijn supports her clients with advice, negotiation and representation in litigation, always aiming to achieve the best possible solution.

A bilingual expat raised in Africa and England, Godelijn can understand the needs of internationals and represent these within the context of Dutch law.

1. Starting a new job

The excitement of a new job offer can be overwhelming – but in fact, this is the ideal moment to take your time. Before signing a new employment offer, read it thoroughly. It is much easier to prevent problems before they happen than to solve them afterwards.

If you work in the Netherlands, Dutch employment law will often apply (in full or in part) to your employment, even if the law of another country is declared applicable in your employment contract.

This is important as the applicable law determines your rights, and employees enjoy very strong legal protection under Dutch law.

Tip If your employment contract stipulates that the law of another country applies to your employment, consult with a lawyer before signing to check how this may affect your rights.

1.1. New employment contract

An employment contract should contain the names and addresses of both parties, the title of the job, starting date, the salary that is to be paid, and the terms and conditions of employment.

Your employment contract should also contain a job description. Pay particular attention to what this description says; when you sign the contract, you are legally committing yourself to performing this work.

Your job description may be used for appraisals, performance improvement or – in case of a future conflict or dispute – as evidence of the duties and responsibilities that you have agreed to perform.

Tip If your employment contract does not include a job description, ask your prospective employer to include one. If you do not agree with a point in this description, discuss it with the employer and try to find a mutually acceptable solution.

1.2. Fixed term / permanent

Is your contract an offer for permanent employment, or is it an offer for temporary employment during a fixed period?

If your contract has no end date, or states that the offer is for an undetermined duration ("onbepaalde tijd"), then it is an offer for permanent employment. Dutch law offers a great deal of protection to permanent employees. An employer cannot terminate a permanent contract unilaterally. They require either consent from the employee or permission from the cantonal judge or UWV (Employees Insurance Agency) - and for an employer to get that permission is not easy. In fact, there are only 8 reasonable grounds that an employer can use to justify dismissing an employee on a permanent contract.

If your contract includes an end date then it is for a fixed period, so it is a temporary employment contract. This means that on the end date of your contract, your job will terminate automatically. Your employer does not have to give you notice and you do not have to give notice to the employer either.

The maximum duration for a temporary contract is 3 years and a maximum of 3 consecutive temporary contracts (from the same employer) are permitted within that time. If the duration of the contracts or the number of contracts exceeds either legal limit, the contract of employment will automatically become a permanent contract. However, an interval of 6 months between contracts breaks the chain of consecutive temporary contracts.

Important change:
An important change in Dutch law came into effect in January 2020: the Wet Arbeidsmarkt in Balans or WAB. From now on, the legal limits on fixed term employment contracts have changed. A maximum of 3 consecutive fixed term contracts will still be allowed and the interval to break the chain of successive contracts will remain at 6 months, but the total duration of these contracts has increased to 3 years.

If possible, choose for a permanent employment contract; this offers the greatest protection under Dutch law.

1.3. Trial and notice periods

If your contract includes a trial period, then during this time both you and your employer have the right to terminate your employment contract with immediate effect.

Trial periods in an employment contract for less than 6 months are invalid. If the contract is for less than 2 years, the trial period cannot be longer than 1 month. The maximum duration of a trial period is 2 months for a permanent employment contract.

After the trial period is over, if you wish to give notice to leave your job then you will need to do so in accordance with the notice period stipulated in your employment contract.

An employee's notice period is, in principle, always 1 month.

An employer must give twice the notice period of the employee, up to a maximum of 6 months. The employer's statutory notice period depends on the employee's years of service to the company, as shown below:

Employee's years of service	Employer's notice period
Less than 5 years	1 month
Between 5 and 10 years	2 months
Between 10 and 15 years	3 months
More than 15 years	4 months

If parties decide to deviate from this standard through contractual agreement (for example that the employee has a 2 month notice period), then the employer's notice period must be double that of the employee, up to a maximum of 6 months.

Tip Always give notice in writing, either on paper or by email. Ensure you give notice at the correct time and according to the terms of the employment contract.

1.4. Non-competition clause

An employment contract will often include a non-competition clause. This clause means that you will not be able to work for a company that competes with your employer's company for a certain length of time after the employment contract has ended.

The contract may also include a relations clause (also called a client relations clause or a business relations clause). This clause prohibits you from working for or maintaining contact with your employer's clients or business contacts after the end of your employment.

Both of these clauses may include specific time frames and/or geographical limits.

Once you have signed an employment contract, the non-competition clause is generally valid – but not always. For various reasons this clause can be at least partly invalid.

If you have a temporary employment contract, then non-competition and client relations clauses are not permitted – unless the employer can explicitly explain, in writing and for each position, the need for such a clause due to urgent business or service interests. If such an explanation is lacking, the clause is null and void.

No matter your situation, do not violate your non-competition or client relations clauses. Doing so will incur heavy penalties. Instead, try to negotiate these clauses upfront, or seek legal advice on your options.

Tip

Check your non-competition clause carefully before you sign your contract; it will affect your future employment opportunities.
If you are uncertain if your existing non-competition clause is valid, or if it is preventing you from accessing reasonable employment opportunities, call a lawyer.
Do not violate the clause.

1.5. Holidays and vacation money

Your employment contract will stipulate how many holidays (paid vacation days) you will be granted. The legal minimum number of holidays per year is four times the weekly working time. So if you are working 40 hours per week, you may expect a minimum of 20 days' vacation per year, in addition to national holidays and company holidays. This is a significant point for your attention.

Note that under Dutch employment law, your holidays will expire within 6 months after the year in which they were accrued. If you do not use your holidays on time, they will lapse without any compensation or payment. This does not apply to extra holidays above the legal minimum; such holidays only expire after 5 years.

Planning a summer vacation? It is standard in the Netherlands to get extra wages, usually 8 percent of your annual salary, paid out annually as a holiday allowance. This vacation money ("vakantiegeld") is paid every year, often in May or June, or at the end of your contract.

Some companies choose to pay out their employees' holiday allowance each month, as opposed to paying it as a lump sum each year. The terms of your holiday allowance will always be stated in your employment contract. Payment of your holiday allowance will be shown on your payslip.

The calculation for your holiday allowance takes into account: your basic wage plus the holiday allowance, as well as (where applicable) a 13th month or year-end bonus, weekend services and, in general, any bonuses. Your pension premium and car allowance may also be included, though this is not guaranteed.

Please note that your holiday allowance is subject to tax.

Tip Pay attention to the number of holidays detailed in your employment contract. If your employment contract does not mention a holiday allowance (vacation money), seek advice from a lawyer.

2. Trouble at work

No matter how hard we try, sometimes things go wrong. Trouble at work can come in many forms: from employment changes, illness or burnout to performance issues, unequal treatment and discrimination, or even harmful behaviour such as harassment or bullying.

In this chapter we will discuss some common problems and share advice on when it is reasonable to involve a lawyer.

Tip

If trouble at work is escalating and you are unsure of how to proceed, contact a lawyer for guidance.
Talking to a lawyer does not mean you have to go to court.
A lawyer can explain all the rights and choices you have under Dutch law. Once you know all the options that exist, you can decide how you wish to proceed.

2.1. Employment conditions

Your employment contract states the conditions under which you agree to work as an employee. These conditions may include, among others, your vacation days, benefits, salary and working hours.

When you sign your contract, you and your employer agree to these working conditions.

In principle, an employer cannot change the employment conditions (such as your salary or working hours) unilaterally.

If your employer does not abide by the employment conditions you have agreed in your contract, or they want to change your employment conditions, get legal advice.

Tip

If your employer proposes a change to the employment conditions you originally agreed in your contract, or if they do not abide by these conditions, call a lawyer.

2.2. Illness and burnout

Should you become ill and be unable to work, a variety of problems and obligations arise, both for you as an employee and for your employer.

From the first day of sickness, it is very important that you and your employer strictly follow the applicable regulations. If either of you do not follow these procedures, you could be fined.

In general, if you are sick for longer than 1 week, then the company doctor ("bedrijfarts") will be called upon. It is this company doctor alone, not the employer's doctor nor your own personal doctor, who will assess whether you are unable to work due to sickness.

If your sickness persists, then you and your employer must draw up a plan of action to reintegrate you in your job. Getting you back to work is the joint goal of both you and your employer.

If you are not able to carry out your own work, but you are able to carry out other work, both parties must accept that you will be offered "suitable work" by the employer. You may be reintegrated in the employer's company itself or outside it.

If you are not able to carry out the work that has been negotiated as a result of your sickness, your employer is obliged to continue to pay you 70% of your salary during the first 104 weeks of sickness.

Your employer may not terminate your employment or dismiss you via UVW procedure during this period (the first 104 weeks of sickness).

If, after 104 weeks of sickness, you are still not able to resume your former job or to perform an alternative function for your employer, and if your employer has fulfilled their reintegration obligations, then your employer's obligation to continue paying your salary comes to an end. In that case, the employer can ask the UWV for permission to terminate your employment agreement.

Tip

Your employer may not terminate your employment contract during a period of sickness, nor may they dismiss you using the UVW procedure during the first 104 weeks. If you have been dismissed during illness, contact a lawyer.

2.3. Performance improvement

Your employer may inform you that they are unsatisfied with your performance and that they therefore wish to implement a Performance Improvement Plan (PIP).

A PIP is a formal document that outlines specific, recurring issues with your performance, a time frame in which you need to improve these points, and the goals you'll need to meet.

While a PIP can be used to help an employee succeed, it can also be used for demotion or dismissal.

As such, it is a signal that your employment may be at risk.

Tip If your employer mentions performance improvement, call a lawyer immediately. A lawyer can help you to understand the consequences of a PIP, your rights within the process and the steps an employer must take before dismissal is possible.

2.4. Demotion

A potential demotion is one of the most challenging situations you may face at work. Demotion is the opposite of promotion. When you are promoted you are given a higher function, but when you are demoted you are given a lower function. You may face demotion, for example, because of poor performance or due to a reorganisation in the workplace.

Should this situation arise, it is important to know that an employer may not just demote an employee unilaterally. They must meet certain criteria before they can do so.

Tip If you do not know if the demotion proposed by your employer fits these criteria (or you do not know about these criteria), call a lawyer. A lawyer can advise you if the proposed demotion is fair and legal, helping you make a better decision on how to proceed.

2.5. Harmful behaviour

Due to the hierarchical inequality between employee and employer, as well as the employer's power to influence working conditions, the Dutch legislator imposes a legal duty of care upon the employer. This duty of care makes the employer responsible for creating a healthy work environment and eradicating degrading behaviour at the workplace.

Employers are required to take all reasonable measures in the workplace to prevent damage to their employees caused by (sexual) harassment, aggression, violence, bullying and unreasonable work pressure. Many employers have policies and procedures in place to prevent such problems, or to deal with complaints when needed.

Tip

If you experience sexual harassment, violence, bullying or other harmful behaviour at work, find a safe location and contact a lawyer immediately.
They can advise you on your legal rights in the situation, whether to file a complaint and how to take legal action.
When possible, write down exactly what happened or was said.
If there were any witnesses, make a note of their details.

2.6. Discrimination

In the Netherlands, making a distinction (discrimination) on grounds of religion, race, gender, nationality or sexual orientation is prohibited by law. If your employer makes an unjustified distinction, you can hold them liable.

It is important to note that making a distinction is not always prohibited. For example, while it is always illegal for an employer to say non-Dutch applicants will not be considered for a job, it may be permitted to require Dutch language skills if the company can show that the Dutch language is required for that position.

Tip

If you have experienced discriminatory behaviour, start by asking your employer to end this behaviour. If you cannot together reach a solution, contact a lawyer. They will be able to represent you in mediation and in court proceedings.

3. Losing your job

Losing your job is a worst case scenario for many expats. Nonetheless, should you have to face dismissal, you may be glad that you are in the Netherlands when it occurs, as you will start with strong legal rights.

The Dutch labour law system for dismissal is particularly unusual, as it is very protective of employees.

There are 5 ways that your employment can terminate under Dutch law: when your fixed-term contract ends, when you resign your job, via UVW/court dismissal, through a settlement agreement, or through summary dismissal.

Tip If you are facing dismissal, consider seeking legal advice before making any agreements

Tip you have been granted the 30% tax ruling, pay extra attention in cases of dismissal.
The duration of garden leave may count towards the 3 month time limit allowed between jobs on the 30% tax ruling. For example, if you have 1 month of garden leave (not working) then you may only have 2 months thereafter to enter new employment and retain the 30% tax ruling. If you are unsure about this, consult a lawyer who can check the specific wording in your contract around termination dates.

3.1. End of fixed-term contract

If you have a fixed-term (temporary) contract of employment, it will terminate automatically on the end date shown in your contract. Your employer does not have to give you notice beforehand and you do not have to give your employer notice either. There is no further procedure to be followed; your employment simply terminates at the end of the fixed-term period.

3.2. Resignation by notice

Should you decide to resign your job during the term of your employment, you will need to give written notice of your intention to leave in accordance with the notice period in your contract.

Notice should always be given in writing. This means on printed paper or via email. Avoid using channels such as WhatsApp, Slack or Skype for giving notice. A (registered) letter or email will be more appropriate, and provides you with evidence of your notice of resignation.

If you have a fixed-term (temporary) contract, then neither you nor your employer can end the employment earlier than the end date unless the contract includes a clause that provides for your earlier resignation and notice period. If your fixed-term contract has such a clause, submit your notice to resign accordingly.

No clause to resign before the end date? Try to reach a mutual agreement with your employer, or contact a lawyer for advice.

Unless your contract states differently, your notice period as an employee will be 1 month. If your contract or collective labour agreement (CAO) states a different period than this statutory notice period, observe the notice period that you have agreed.

Pay careful attention to the specific wording of your notice period in your contract to ensure you give notice correctly. Typically, you cannot end a permanent employment contract before the end of the month. This means that if you give notice to your employer on August 5th, the month of your notice period will only start on September 1st. On that basis, you would remain under contract until September 30th.

Tip

Always observe the correct notice period and give notice in writing. If you, as an employee, leave your position before the notice period ends or if you do not give a proper notice period to your employer, your employer may be able to hold you liable for damages.

3.3. Settlement agreement or UVW/court dismissal

An employer cannot terminate a permanent contract without your agreement. They also cannot terminate a temporary contract prior to its scheduled date of completion. Only the Employee Insurance Agency (UWV) or the cantonal court can (give permission to) terminate an employment contract.

If an employer wishes to apply for termination of an employment contract through the UVW or court, they must have a valid ground for their request. There are currently only 9 reasonable grounds which an employer can use to dismiss an employee on a permanent contract:

1. Headcount reduction for business reasons (redundancy)
2. Long-term disability (more than two years)
3. Frequent and disruptive absence relating to sickness
4. Incapacity to perform contracted work other than for a medical reason
5. Serious misbehaviour
6. Refusal to perform contractual duties for moral reasons (conscientious objections)
7. A working relationship that has broken down so badly that the employer cannot reasonably be required to continue the relationship
8. Other reasons such that it cannot reasonably be expected that the employer should continue the employment relationship.

Important change:

9. Since January 2020, a 9th ground for dismissal exists: the i-ground. The i-ground allows employers to combine 2 or more of grounds 3 to 8 to request termination. (Grounds 1 and 2 may not be combined.)

Due to how difficult it is to terminate an employment contract, an employer may instead offer you a settlement agreement.

Tip If your employer requests your agreement to terminate your employment, do not consent until you have spoken to a lawyer. Likewise, if your employer offers you a settlement agreement, do not sign it – first contact a lawyer for advice.

3.4. Summary dismissal

Summary dismissal is also called “being fired on the spot”. It is the harshest form of dismissal and is reserved for the most urgent cases. Think of situations such as when an employee is caught stealing, perpetrates fraud, threatens or assaults another person, becomes violent, or displays other serious misconduct.

Summary dismissal works differently than other forms of dismissal. Employers do not need to seek UVW/court dismissal in the case of summary dismissal. You will probably be asked to leave the workplace immediately.

If you are summarily dismissed, you will not receive unemployment benefit or a transitional allowance and your salary will stop immediately. As such, it will have serious consequences for your future.

In practice, this means that if you were summarily dismissed on 5 September, you would not be paid for the full month of September. Instead, your final salary would only be for work done until 4 September.

However, courts are very reluctant about accepting summary dismissals under Dutch labour law, and you have the right to contest a summary dismissal within 2 months.

It is therefore very important to contact an employment lawyer immediately if you are fired on the spot.

Tip

If you have been summarily dismissed (fired on the spot), contact a lawyer immediately.
Summary dismissal can be contested within 2 months.

3.5. Severance payment

If your employer wishes to terminate your employment, they are obliged to pay you compensation for the dismissal. This is known as the transitional statutory allowance or transitional allowance.

Employees are now entitled to a severance from day one of their contract. The allowance is 1/3rd of the monthly salary per worked year. The higher entitlements for older employees and for employees with an employment of more than 10 years have been cancelled.

Since January 1 2020 the maximum transition allowance is € 83.000 since and there are no exceptions any more.

In certain circumstances, your employer may offer you a different compensation in the form of a severance payment or “golden handshake”. This may be a higher amount than is prescribed by Dutch labour law or your employment contract or collective labour agreement.

Important change:
In January 2020, Dutch employment law (WAB) changed the rules around transitional allowances. From now on:

- There is no 2 year minimum for a transitional allowance; employees qualify from the start of their employment.
- Transitional allowance is calculated at 1/3 of the monthly salary per year worked regardless of the term of employment; this rate no longer increases after 10 years’ employment.
- Exceptions for employees over 50 years’ old no longer apply.

If you are concerned about the implications of WAB on your transitional allowance, consult with a lawyer for advice on your rights.

Tip If you agree to a severance payment or golden handshake, then your employer will probably not be required to pay you a transitional allowance in addition.

3.6. Non-competition clause

As you move on to your next job, reconsider your non-competition clause from the previous employment contract.

If you feel that it is unfairly restricting you from finding another job, contact a lawyer to check if the clause is valid. Do not violate this clause.

3.7. Unemployment benefits

An employee who loses their job is normally eligible for unemployment benefits, which are paid by UWV. These benefits equal 75% of last-earned salary for the first 2 months and 70% thereafter, up to the maximum “daily wage”, which equates to a salary of approximately €4717 gross per month.

For example, if you had been earning €8000 per month, then your unemployment benefit would not be 70% of €8000; instead it would be 70% of €4717.

The maximum duration of the benefits varies from 3 to 24 months, depending on how long the employee has been insured.

You will not receive unemployment benefits if you resign your job. Unemployment benefits are reserved for those who are dismissed.

Note that if you have not paid social security contributions in the Netherlands, for instance due to an international residence agreement, then you may not be eligible to receive unemployment benefits, even if you are dismissed without cause.

Tip Never resign from your job if you can avoid it. Instead, negotiate a settlement agreement (with help from a lawyer).

When the going gets tough...

GMW lawyers can help you work it out

Our team of international employment lawyers can advise you, help you reach settlement agreements, mediate and represent you in litigation. This includes issues regarding employment contracts, pensions and human resource policies. We can also advise you on issues such as dismissal, redundancy, illness, non-competition clauses, collective bargaining agreements, privacy, regular immigration and discrimination.

Contact us for further information and advice about your legal options.

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