

Employment protection in the Netherlands – 2008

Item 1 Notification procedures in the case of individual dismissal of a workers with a regular contract	Dutch dismissal law is governed by a dual system. Termination via PES: where a private sector employer wishes to terminate an employment contract and the parties do not agree about ending the contract, the employer requires prior permission from a public administrative body, the Centre for Work and Income (CWI). This procedure acts as a preventive check to determine the reasonableness of any intended dismissal. It is financially less onerous than the alternative but takes much longer. In fact, if the dismissal is not sufficiently founded on reasonable grounds the employer is denied a permit to dismiss; if dismissal nonetheless follows, the employee has legal grounds to contest its validity. Termination via courts: instead of turning to the public employment service, both employers and employees can file a request to Court to dissolve the employment contract "for important reasons". This is more expensive (see items on severance pay) but is shorter and administratively less onerous. Courts are used in 50% of the cases and the reduction in procedural inconveniences is meant to reflect the simplicity of this procedure over the use of the PES system. On the other hand, the higher cost is reflected in the increase in average severance pay and compensation for unfair dismissal.
Item 2 Delay involved before notice can start	Termination via PES: Authorisation procedure normally takes 4-6 weeks. Termination via courts: The delay in cases which proceed to court varies from 1-30 days.
Item 3 Length of notice period at different tenure durations	Termination via PES: 1m in the first five years of service, extended by one more month for every additional 5 years of service, up to a maximum of 4 months. In practice, the maximum is closer to 3 months since time spent for the prior authorisation procedure is compensated by lowering the notice period by one month. Termination via Court: decision is effective immediately, i.e. there is no notice period in this case (and labour courts are used in 50% cases).
Item 4 Severance pay at different tenure durations	Termination via PES: no severance pay. Termination via Court: The court may determine severance pay, roughly according to the formula: 1 month per year of service for workers <40 years of age; 1.5m for workers between 40 and 50; 2m for workers 50 years and over (judges may apply a correction factor taking into account particulars of the case).
Item 5 Definition of unfair dismissal	Fair: Dismissals on grounds of employee conduct or unsuitability, and for economic redundancy. In the latter case, data on the financial state of the company and proof that alternatives to redundancy have been considered must be given, and the selection of dismissed employees be justified (age/sex balance of the workforce, for example). Unfair: Unfair are "obviously unreasonable" terminations, and dismissals of pregnant women, the disabled, new mothers and works council members.
Item 6 Length of trial period	1 month for contract of < 2 years duration; 2 months for contract of >2 years duration.
Item 7 Compensation following unfair dismissal	Termination via PES: The employee can still file a claim at the court for unfair dismissal. If the court comes to the conclusion that the dismissal was unfair it usually grants financial compensation according to the same formula mentioned at Item 4 minus the salary paid during the processing time of the CWI and during the notice period. Termination via court: If the court thinks that termination is unfair, but upholds the contract as not feasible, then the correction factor will be more than one. Recent research documents the average compensation for dissolving a contract is equivalent to about 7 months pay.
Item 8 Reinstatement option for the employee following unfair dismissal	The option of reinstatement is rarely made available to the employee.
Item 9 Maximum time period after dismissal notification up to which an unfair dismissal claim can be made	6 months.
Item 10 Valid cases for use of fixed term contracts	No restrictions.
Item 11 Maximum number of successive FTCs (initial contract plus renewals and/or prolongations)	Three successive fixed-term contracts not exceeding a period of 3 years. A fourth renewal or a renewal exceeding a total period of 3 years will alter the fixed-term contract automatically into a contract of indefinite time. The number of renewals (3) and/or the time (3 years) can be changed (more/less) by collective agreement.
Item 12 Maximum cumulated duration of successive FTCs	No limit for first fixed-term contracts, but 3 years in case of renewals.
Item 13 Types of work for which temporary work agency (TWA) employment is legal	General, with the exception of seamen.
Item 14 Are there restrictions on the number of renewals and/or prolongations of TWA contracts?	Legally not in the first half year. This period has been extended by collective agreement to 78 weeks. Then a maximum of 8 renewals of TWA-contracts each for a period of 3 months. After that period a further renewal will change a TWA-contract into a contract for an indefinite period with the Temporary Work Agency.

Item 15 Maximum cumulated duration of TWA contracts	Unlimited. After 3.5 years of continuous TWA-contracts, the last fixed-term contract will be altered into a contract for an indefinite period with the TWA.
Item 16 Does the set-up of a TWA require authorisation or reporting obligations?	No.
Item 17 Do regulations ensure equal treatment of regular workers and agency workers at the user firm?	Yes, equal treatment on pay and conditions, but can deviate from this regulation by collective agreement.
Item 18 Definition of collective dismissal	Over 3 months, 20+ workers dismissed by one employer in one employment service region.
Item 19 Additional notification requirements (compared to Item 1) in cases of collective dismissal	Notification of employee representatives: Duty to inform and consult with Works Council and trade union delegation. Notification of public authorities: Notification of regional employment office.
Item 20 Additional delays involved (compared to Item 2)	30 days waiting period to allow for social plan negotiations (unless the social partners have agreed in writing to refrain from the waiting period).
Item 21 Other special costs to employers in case of collective dismissals	Type of negotiation required: Consultation on alternatives to redundancy and ways to mitigate the effects ; social plan will normally be agreed outlining transfers, re-training, early retirement measures and financial compensation. Selection criteria: "Mirror-image" of existing workforce (age balance of the workforce). Severance pay: No legal entitlement, but social plans often contain severance pay or top-ups to unemployment benefits. Severance pay through social plans is often lower than the formula mentioned at Item 4.

This summary was produced by the OECD based on responses to a questionnaire submitted by authorities in OECD member countries. It describes the situation current as at 1 January 2008 and is the basis for calculating the OECD employment protection indicators. To find out more about the methodology used to calculate the OECD employment protection indicators, see www.oecd.org/employment/protection.