

NETHERLANDS

Items	Regulations in force on 1 January 2013
<p>1: Notification procedures in the case of individual dismissal of a worker with a regular contract</p>	<p>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, UWV Werkbedrijf. This procedure acts as a preventive check to determine the reasonableness of any intended dismissal. It is financially less onerous than the alternative one but takes 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.</p> <p>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.</p> <p>Courts are used in 50% of the cases</p> <p>Calculation (for EPL indicators): the reduction in procedural inconveniences is meant to reflect the simplicity of court procedure over the use of the PES system. On the other hand, the higher cost is reflected in the increase in average severance pay.</p>
<p>2: Delay involved before notice can start</p>	<p>Termination via PES: Authorisation procedure normally takes 4-6 weeks.</p> <p>Termination via courts: The delay in cases which proceed to court varies from 1-30 days.</p> <p>Calculation (for EPL indicators): average of PES (5 weeks on average) and courts (15 days on average).</p>
<p>3: Length of notice period at different tenure durations (a)</p>	<p>Termination via PES: 1m for 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.</p> <p>9 months tenure: 1 month (no compensation), 4 years tenure: 1 month (no compensation), 20 years tenure: 4 months (3 months if compensation applies).</p> <p>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).</p> <p>Calculation (for EPL indicators): average of PES /courts (0)</p>
<p>4: Severance pay at different tenure durations (a)</p>	<p>Termination via PES: no severance pay.</p> <p>Termination via Court: The court may determine severance pay, roughly according to the formula: $A*B*C$ where:</p> <p>A = tenure of a person (until age 35: $0.5 * \text{years of tenure}$; age 35-45 $1 * \text{years of tenure}$; age 45-55: $1.5 * \text{years of tenure}$; age over 55: $2 * \text{years of tenure}$).</p> <p>B = monthly gross salary.</p> <p>C = correction factor (no maximum, but a correction factor above 2 is extremely exceptional).</p> <p>In this case (1 in 2 cases), 9 months tenure: 0 month, 4 years tenure: 3.2 month, 20 years tenure: 20 months (takes into account the correction factor mentioned above - as estimated by Dutch gov.).</p> <p>Calculation (for EPL indicators): average of PES (0)/courts</p>

<p>5: Definition of unfair dismissal (b)</p>	<p>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. In the former case, concerning an open-ended employment contract, employers can fire a person in one of the following situations:</p> <ul style="list-style-type: none"> - If an employee no longer fulfils his or her job in a satisfactory way or if he or she has become or is unsuitable for the job (except in case of illness). - If there is a serious conflict between employee and employer. - If the employee has conscientious objections to performing his or her job and the employer cannot offer other suitable work. - If the employee is long-term disabled for work. - If the employee behaves inappropriately for instance in case of theft or being drunk during working hours. <p>Unfair: Unfair are “obviously unreasonable” terminations, and dismissals of pregnant women, the disabled, new mothers and works council members, including, more precisely:</p> <ul style="list-style-type: none"> - On grounds concerning for instance religion, race, age, or disability (discrimination). - During the first 2 years of illness or labour disability of an employee. - Due to pregnancy or during maternity leave. - Because the employee wants to make use of his or her rights to parental leave. - Because the employee is member of a works council or association for personnel; member of a certain political party; trade union member; and in some other cases.
<p>6: Length of trial period (c)</p>	<p>It is not mandatory by law to agree upon a trial period, but most jobs contain such an agreement. The maximum duration is two months. A maximum of 1 month applies to temporary contracts which last shorter than 2 years or if it involves a temporary contract that has no end date. A maximum of 2 months applies to an open-ended employment contract and to a temporary contract that last more than 2 years.</p>
<p>7: Compensation following unfair dismissal (d)</p>	<p>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 UWV Werkbedrijf 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.</p> <p>Recent research documents the average compensation for dissolving a contract is equivalent to about 7 months pay.</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>The option of reinstatement is rarely made available to the employee.</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>6 months from the effective date of termination (Civil Code, art. 7:683).</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>No restrictions.</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>3. 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.</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>No limit for first fixed-term contracts, but 3 years in case of renewals.</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>General, with the exception of seamen.</p>
<p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>	<p>No restriction for assignments</p> <p>Legally no restriction for contracts 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.</p>
<p>15: Maximum cumulated duration of TWA assignments (f)</p>	<p>Unlimited. After 3.5 years of accumulation of TWA contracts, the last fixed-term contract will be altered into a contract for an indefinite period with the TWA.</p>
<p>16: Does the set-up of a TWA require authorisation or reporting obligations?</p>	<p>No</p>

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. In fact, Art.19, §5b of the Collective Labour Agreement for Temporary Agency Workers stipulates that deviations concerning wages are possible in the first 26 weeks of an assignment.
18: Definition of collective dismissal (b)	Over 3 months, 20+ workers dismissed by one employer in one employment service region. Terminations by mutual agreement shall also be included in the number of dismissed employees for the purpose of determining whether a collective dismissal is taking place (Act No. 197/2011 dated 17 November 2011: amendment to the Collective Redundancy Notification Act, 24 March 1976, Art. 3 (1)).
19: Additional notification requirements in cases of collective dismissal (g)	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.
20: Additional delays involved in cases of collective dismissal (h)	30 days waiting period to allow for social plan negotiations (unless the social partners have agreed in writing to refrain from the waiting period).
21: Other special costs to employers in case of collective dismissals (i)	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 in Item 4.

Legend: d: days; w: weeks; m: months; y: years. For example "1m < 3y" means "1 month of notice (or severance) pay is required when length of service is below 3 years".

Notes:

- a) Three tenure durations (9 months, 4 years, 20 years). Case of a regular employee with tenure beyond any trial period, dismissed on personal grounds or economic redundancy, but without fault (where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment). Averages are taken where different situations apply – e.g. blue collar and white collar; dismissals for personal reasons and for redundancy.
- b) Based also on case law, if court practice tends to be more (or less) restrictive than what specified in legislation.
- c) Initial period within which regular contracts are not fully covered by employment protection provisions and unfair dismissal claims cannot usually be made.
- d) Typical compensation at 20 years of tenure, including back pay and other compensation (e.g. for future lost earnings in lieu of reinstatement or psychological injury), but excluding ordinary severance pay and pay in lieu of notice. Where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment and that a court case takes 6 months on average. Description based also on case law.
- e) Maximum time period after dismissal up to which an unfair dismissal claim can be made.
- f) Description based on both regulations on number and duration of the contract(s) between the temporary work agency and the employee and regulations on the number and duration of the assignment(s) with the same user firm.
- g) Notification requirements to works councils (or employee representatives), and to government authorities such as public employment offices. Only requirements on top of those requirements applying to individual redundancy dismissal count for the OECD EPL indicators (cf. Item 1).
- h) Additional delays and notice periods in the case of collective dismissal (only delays on top of those required for individual dismissals – as reported in Items 2 and 3 – count for the OECD EPL indicators).
- i) This refers to whether there are additional severance pay requirements and whether social compensation plans (detailing measures of reemployment, retraining, outplacement, etc.) are obligatory or common practice.