

NETHERLANDS

Items	Regulations in force on 1 January 2019
<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.</p> <p>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 can require prior permission from a public administrative body, UWV Werkbedrijf (art. 7:671a Dutch Civil Code). 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 (art. 7:671b Dutch Civil Code).</p> <p>When parties do not agree about ending the contract, the route for dismissal is fixed and prescribed. Dismissal for economic reasons or in case of prolonged work incapacity due to illness will be dealt with by PES and dismissal for other reasons are dealt with by court. Both procedures act as a preventive check to determine the reasonableness of any intended dismissal. 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>As of a certain number of dismissals (see Item 18): see 19.</p>
<p>2: Delay involved before notice can start</p>	<p>Termination via PES: Authorisation procedure normally takes 4-6 weeks. Unless parties agreed otherwise, the notice period has to start at the end of the month ((art. 7:672)).</p> <p>Termination via courts: When the Court dissolves the contract, it will do so with respect to the length of the notice period (which starts at the end of the month, unless parties agreed otherwise)(art. 7:671b lid 8 sub a). When the employee has acted seriously culpable, the Court can dissolve the contract at an earlier date.</p> <p>Calculation (for EPL indicators): average of PES for economic reasons (5 weeks on average) and courts for personal reasons (15 days on average) + 15 days since notification at the end of the month</p> <p>As of a certain number of dismissals (see Item 18): 30 days waiting period to allow for social plan negotiations (see item 20).</p>
<p>3: Length of notice period at different tenure durations (a)</p>	<p>Independently from the route of dismissal: the length of the notice period is: 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 (art. 7:672 Dutch Civil Code).</p> <p>The time spent for the prior authorization procedure by PES or Court can be deducted from the notice period, as long as a notice period of one month remains (art. 7:671b lid 8 sub a Dutch Civil Code and art. 7:672 lid 5 Dutch Civil Code).</p> <p>Calculation for EPL indicators for individual dismissals (average of PES and Court): 9 months tenure: 1 month, 4 years tenure: 1 month, 20 years tenure: 3.25 (=4 months minus the average length of the authorization procedure between PES and Court).</p>

<p>4: Severance pay at different tenure durations (a)</p>	<p>Severance pay does not depend on the route of dismissal (PES or court). Every employee with at least 2 years of tenure (also employees with an atypical contract) has a statutory right to a transition allowance if the dismissal is initiated by the employer (or, in case of a temporary contract, if the employer refuses to extend the contract)(art. 7:673 Dutch Civil Code). The main rule for calculating the transition allowance is 1/3 of a month's salary for every year of tenure in the first ten years of tenure. After these ten years it is ½ of a month's salary for every year. The calculation is not dependant on the age of the employee, only on tenure (except for a temporary measure until 1 January 2020 from which small firms are exempted*, see art. 7:673a Dutch Civil Code). Until 2020 small firms (with less than 25 employees) will – under certain conditions - be allowed to pay a lower transition allowance in case they are forced to dismiss for financial reasons (art. 7:673d Dutch Civil Code).</p> <p>* 1 monthly wage (instead of ½) for each year worked after age 50 for employees with more than 10 years' tenure. At 20 years' tenure: $10/3 + 5/2 + 5 = 10.83$ months of wage.</p> <p>Calculation (for EPL indicators):</p> <ul style="list-style-type: none"> • 9 months tenure: 0 months • 4 years tenure: 1.33 months • 20 years tenure: 10.83 months
<p>5: Definition of unfair dismissal (b)</p>	<p>Fair: Dismissals on grounds of employee conduct or unsuitability, and for economic redundancy (art. 7:669 Dutch Civil Code). In the latter case, data on the financial state of the company and proof that alternatives to redundancy have been considered must be given. In particular, there must be no possibilities to relocate the employee to another suitable position within a period of 26 weeks, whether or not with the help of training. The employer will also have to make it plausible that the decision underlying the loss of jobs is necessary in the interest of efficient management, and select the employees to be dismissed based on tenure and age (art.7: 669 lid 1, 2 and 3 sub a, art. 7:681 lid 1 sub d, art. 7:682 lid 4 of the Dutch Civil Code). In the case of dismissal for personal reasons, 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>In case of dismissal for unsuitability or insufficient performance, the employer can only terminate the employment contract when it is not possible to reassign the employee to another suitable position within a reasonable period of time, with or without the help of training, see art. 7:669 lid 1 and 3)</p> <p>Unfair: Unfair are "obviously unreasonable" terminations, and dismissals of pregnant women, the disabled, new mothers and works council members, including, more precisely (art. 7:670 Dutch Civil Code):</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. Both employer and employee can terminate the employment contract for any reason within the trial period, without notice period or severance pay (art. 7:652 Dutch Civil Code).</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 Termination via court: If the court thinks that termination is unfair, but upholds the contract as not feasible, it usually grants financial compensation (art. 7:671b lid 8 sub c Dutch Civil Code) .</p> <p>Recent research documents the average compensation for dissolving a contract is equivalent to about 7 months pay.</p>

8: Reinstatement option for the employee following unfair dismissal (b)	The option of reinstatement is rarely made available to the employee.
9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)	Termination via PES: 2 months from the effective date of termination (Art. 7:686a lid 4 sub a). Termination via court: Systematic, no need to file a complaint. Calculation (for EPL indicators): average between PES (2 months) and court (maximum score)
10: Valid cases for use of standard fixed term contracts	No restrictions.
11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)	Three successive fixed-term contracts not exceeding a period of 2 years. A fourth renewal or a renewal exceeding a total period of 2 years will alter the fixed-term contract automatically into a contract of indefinite time. The number of renewals (3) and/or the time (2 years) can be changed (more/less) by collective agreement (art. 7:668a Dutch Civil Code).
12: Maximum cumulated duration of successive standard FTCs	No limit for first fixed-term contracts, but 2 years in case of renewals (art. 7:668a Dutch Civil Code)..
13: Types of work for which temporary work agency (TWA) employment is legal	General, with the exception of seamen (art. 7:690-7:694 and 745 Dutch Civil Code).
14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)	No restriction for assignments (Article 7:691 Dutch Civil Code). 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.
15: Maximum cumulated duration of TWA assignments (f)	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 (Article 7:691 Dutch Civil Code).
16: Does the set-up of a TWA require authorisation or reporting obligations?	No
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. The existing collective agreements for TWA in the Netherlands stipulate that basis pay is equal, but deviations could apply to extra's, such as thirteenth month's salary, sick pay and certain surcharges (art.19 of the Collective Labour Agreement for Temporary Agency Workers).
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. The dismissal needs to be approved by the Public Employment Service (art. 7:671a Dutch Civil Code).
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.
22: The worker alone has the burden of proof when filing a complaint for unfair dismissal	No
23: Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints	Dismissals should be approved by the Public Employment Service (art. 7:671a Dutch Civil Code) or the court. Collective dismissals should be approved by the Public Employment Service (art. 7:671a Dutch Civil Code).

<p>24: Pre-termination resolution mechanisms granting unemployment benefits</p>	<p>An employer and employee can terminate an employment contract by mutual agreement, which is expressed in a termination agreement, or settlement agreement. In case of a termination agreement the employee is entitled to unemployment benefits. However a fictional notice period has to be taken into account, equal to the notice period that would have had to be taken into account when the employment contract would have been terminated by the employer (= maximum of 4 months, depending on the tenure). If the employer and the employee observe the notice period applicable to the employer there is no waiting period (art. 7:670b Dutch Civil Code). The employee is not entitled to unemployment benefits if he terminates his employment himself. When the employee takes the initiative to terminate the employment contract, the PES will assess whether or not continuation of the employment contract can reasonably be expected. If this is the case, then the employee is culpably unemployed and will not receive unemployment benefits. (art. 24 lid 2 WW)</p>
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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 Versions 1 to 3 of 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.