

How to hire my first employee

Main legal steps to follow to hire a first employee

PERSONNEL

Dutch legislation includes various provisions to secure the rights and obligations of both employer and employee in the Dutch employment market. As a general rule, the employer and employee should behave according to the standard of good employership or employeeship respectively. The employer has a number of specific legal obligations with respect to work and rest times, leave, and working conditions.

EMPLOYMENT RELATIONSHIPS

According to Dutch law, three different general types of agreements are used to determine the rights and duties of persons performing activities in the course of a business for another party. The employment agreement ('arbeidsovereenkomst') is the most common agreement. The others are assignment agreement and contracting agreement.

Essential features of the employment agreement are

the obligation to perform labour in person in return for pay, and the authority of the other party to give instructions as to how the labour is to be performed. Other agreements lack one or more of these features.

The employment agreement itself is not subject to rules regarding its form. According to Dutch labour law the employer is under the obligation to provide certain information in writing to the employee with respect to the employment agreement. This relates among others to place of work, job title, the date the employment agreement enters into force, remuneration, working hours, terms and conditions relating to holidays, and the applicability of any collective labour agreement.

GOVERNING LAW AND COLLECTIVE LABOUR AGREEMENT (CAO)

The parties to an employment agreement are limited to negotiations of their own terms and conditions by both Dutch labour law and any applicable collective labour agreement (CAO), since these contain many mandatory rules on terms and conditions of

employment. It depends on the branch if there is a CAO. It is also possible that no CAO is applicable.

EMPLOYMENT LAW REGULATIONS

Employment relations in the Netherlands are mostly regulated by the Dutch Civil Code ('Burgerlijk Wetboek'). An important principle of the employment provisions of the Dutch Civil Code is the protection of what is known as the weakest party, i.e. the employee. Apart from the Dutch Civil Code, regulations concerning labour law can be found in several other regulations and legislative acts, such as the Works Council Act and the Workings Conditions Act.

MINIMUM WAGE

There is a legal minimum wage for employees aged from 15 till 23 (published by the government). The minimum wage for employees aged 23 or over is € 1,507.80 gross per month, excluding 8% holiday allowance).

EMPLOYMENT AGREEMENTS

Parties are free to enter into consecutive employment agreements for a fixed period of time, ending by operation of law, however two restrictions (chain provision) apply:

1. The aggregate duration of the consecutive employment agreements (with interruptions of not more than 6 months) may not exceed 24 months; if the aggregate duration is longer than 24 months (interruptions included), the last employment agreement shall be deemed to be an employment for an indefinite period of time.
2. The number of consecutive employment agreements must be less than 4. If the number of consecutive employment agreements exceeds 3 (while there are no interruptions of more than 6 months in between the employment agreements), the fourth employment agreement will be considered to be an employment agreement for an indefinite period of time.

Termination of an employment agreement
With respect to termination of an employment agreement, a distinction must be made between

an employment agreement for a fixed period of time and an employment agreement for an indefinite period of time. There are several ways for employment agreements to terminate: e.g. Parties can agree upon a probation period, Lapse of the agreed period, Summary dismissal, Dissolution by the Court.

WORKING CONDITIONS

Under Dutch law, the employer is responsible for organizing work in such a way that it protects the safety, health and well-being of the employees in accordance with a statutory set of standards and criteria. In principle, all employers are highly recommended to avail themselves of the professional assistance of a certified occupational health service ('Arbodienst') in respect of the implementation of a significant part of the applicable health and safety measures (for example the occupational health medical examination).

FOREIGN NATIONALS (EMPLOYMENT) ACT

Workers from the European Union, EEA countries (Norway, Iceland and Liechtenstein) and Switzerland do not need special permits to work in the Netherlands. Non-qualifying nationals, however, do need a 'residence permit for work' permit to work legally in the Netherlands.

As of 1 January 2014 the Foreign Nationals (Employment) Act was amended. The employer applies for the residence permit. There are different types of residence permits, including for regular employment, as a highly skilled migrant, holder of a European blue card, lecturer, (guest) lecturer, trainee doctor, or scientific researcher. For the highly skilled with no employer a residence permit for a search year is possible. This residence permit gives the right to find an appointment as a highly skilled migrant within one year.

When applying for the residence permit, the employer acts as sponsor. The sponsor is responsible for the employee complying with the conditions. A residence permit for regular employment can be applied for by any employer with a branch or commercial agent in the Netherlands. Registration of the employer with the Chamber of Commerce is required.

To be admitted as a highly skilled migrant income requirements are laid down. To be admitted as a trainee doctor or (guest) lecturer, the employer making the application must be a sponsor authorised by the IND (Immigration and Naturalisation Service of the Ministry of Security and Justice). Authorisation is carried out by the IND. The authorisation as a sponsor is in a number of cases a condition for the application for the residence permit.

Employees with a European blue card are employees who carry out highly qualified work within the European Union and meet the salary and training requirements. For scientific researchers admission to the Dutch labour market is regulated by EU Directive 2005/71/EC.

With effect from 2014 the UWV is obliged every year to check a job taken by a foreign employee (from outside the European Union, EEA countries or Switzerland) against the labour market status. The recruitment efforts of employers who wish to recruit or continue to employ foreign workers required by law issue no more than an employment permit for a maximum of one year (up to 2014 a maximum of three years). After five years (up to 2014 after three years) labour migrants gain free access to the Dutch labour market. After that a permit may be refused if an employer has in the past been sentenced for infringing labour legislation.

Questions?

Feel free to contact one of our professionals!



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