

LEGAL UPDATE

Are dormant employment contracts finally waking up?

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Since the Dutch Work and Security Act came into force on 1 July 2015, employers can no longer terminate the employment contract after two years of illness without the employee being entitled to a transition fee. Employers find this unjust because they have already paid the long-term sick employee two years' wages. To alleviate this 'financial pain', some employers chose to keep their long-term sick employee's employment contract 'dormant'.

In March 2017, a legislative proposal was submitted to the House of Representatives to compensate employers for the transition fee they have to pay when a long-term sick employee is dismissed. This compensation scheme will apply retroactively from 1 July 2015. The aim of the scheme is that the individual employer no longer bears the costs of the transition fee. Instead, the employer will be compensated by the UWV employee insurance agency for the costs of the transition fee. The contributions to the General Unemployment Fund, on the other hand, are increasing.

The compensation applies both to fixed-term contracts that are not renewed where the worker is ill and to permanent contracts that are terminated due to long-term illness. Termination arrangements also fall within the scope of compensation. The payment does not apply to the part of the employment contract that has been kept 'dormant' for some time. The compensation is therefore limited to the compensation to which the employee is entitled if they are dismissed immediately after two years of illness. The period during which a wage penalty is imposed on the employer is also not taken into account in the calculation of the compensation. It is up to the employer to demonstrate that there is a right to compensation and the amount thereof.

The legislative proposal is included in the coalition agreement. Minister Wouter Koolmees of Social Affairs and Employment has announced that he strives to have the act enter into force by 1 January 2020. Although this will take some time, it is already less attractive – assuming that the act will actually enter into force – to keep employment contracts dormant any longer. Employers who now have to pay a transition fee because of the dismissal of a sick employee can be compensated retroactively after the new act has come into force.

This is a Legal Update from Lisa Schouten.

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