

LEGAL UPDATE

New Implementation Rules of UWV for Dismissals published

Date: 16 August 2018

As of 1 August 2018, the new Implementation Rules of the UWV apply to dismissals for economic reasons (i.e. redundancies) and because of long-term work incapacity. This Legal Update covers the most important changes.

If an employer wishes to terminate an employment contract for economic reasons or because of long-term work incapacity of the employee, permission must be obtained from the Employee Insurance Agency (UWV). The UWV will assess the application for dismissal on the basis of the 'Implementation Rules for Dismissals for economic reasons' or the 'Implementation Rules for Dismissals because of long-term work incapacity', respectively. The UWV has amended these rules with effect from 1 August 2018 and published them on its [website](#). The following is a summary of the main changes:

Implementation Rules for Dismissals for economic reasons

- Definitions of group, company and business location: These terms have been redefined. This makes it clear, among other things, that the economic reasons are in principle assessed within the employer's company and not within the group or business location. The company is the legal entity that has concluded an employment contract with the employee.
- Employee participation: Under the new Implementation Rules, a company that has wrongfully omitted to set up a Works Council must discuss the planned restructuring decision with the employees' meeting and ask for advice from the employees' meeting or consult the employee participation body if this decision could result in 25% of the employees losing their job or experiencing a job change.
- International situations: It has been clarified in which order redundancies must be implemented and how redundancies must be apportioned to the various job roles by applying the 'reflection principle'. In principle, employees with an employment contract under foreign law are not to be included when determining in which order redundancies must be implemented and when applying the reflection principle.
- Interchangeable job roles: It is stressed in the new Implementation Rules that the actual work activities are irrelevant when it comes to determining which job roles are interchangeable. The actual work activities of employees are only considered if there is no job description or the job description deviates significantly from the work they do in practice.
- Reassignment: With regard to reassignments, the new Implementation Rules confirm that the employer is expected to adopt an active attitude and that any suitable positions in foreign entities of the group should also be considered, all of which was already known in practice. The UWV expects, among other things, that reassignment interviews are held in which the job roles for which employees will make themselves available will be agreed in view of the maximum commuting distance/time, the minimum salary (scale), and in which it is discussed whether the employee is prepared to work at another business location or entity of the group.

Implementation Rules for Dismissals because of long-term work incapacity

- Reassignment: This obligation largely corresponds to the obligation that applies to dismissals for economic reasons. On the date on which the UWV decides on the dismissal application, it will assess whether reassignment is possible. It considers the possibilities at that time and the possibilities expected within the applicable reasonable period. The employee must be actively informed about the reassignment possibilities, even if the employee only carries out work as part of a 'second track' return to work process.
- Employees employed through a payrolling company: The new Implementation Rules explain that if employees are employed through a payrolling company, it will be assessed based on the hirer's circumstances whether there is a reasonable ground for terminating the employment contract of such employees in the case of long-term work incapacity.
- Concurrent WIA objection proceedings: The fact that an employee objects to the decision on the granting of occupational disability (WIA) benefits during the dismissal proceedings may be a reason to suspend the dismissal proceedings. Such a suspension is only possible if the decision on the objection may be relevant to the question as to whether the employee will possibly recover sufficiently to return to their job, with or without adjustments being made, or can be reassigned to another appropriate job role. If an employee objects to a decision by the UWV not to impose a wage sanction on the employer requiring the continued payment of the employee's wages, this does not lead to a suspension of the dismissal proceedings.

For further details about this matter, please contact us.

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