

## LEGAL UPDATE

### Bill implementing EU directive on transparent and predictable working conditions

Date: 19 November 2021

On 11 November 2021, the [bill](#) (*Wetsvoorstel*) implementing the EU Directive on transparent and predictable working conditions in the European Union was submitted to the Lower House. The proposed date for this entering into force is 1 August 2022, which is also the deadline for implementing this EU Directive. The object of this Directive - and by extension the bill - is to promote transparency and more predictable working patterns on the one hand, and to ensure employment market adaptability on the other hand.

Several key amendments proposed in the bill are set out below:

- **Free mandatory training:** training that is required by law or by a collective agreement will be free of cost for the employee and will count as working time. The employer will no longer be allowed to recover such costs from the employee. Moreover, the employee must be given the opportunity to attend such training during working hours. Any study costs clauses on mandatory training will become void.
- **Ban on parallel employment clauses:** currently, parallel employment clauses are not regulated by law. In future, any clauses under which an employer prohibits or restricts a worker from taking up employment with other employers outside the work schedule established by that employer, will be void, unless such clause is justified on objective grounds. The bill does not provide what exactly constitutes justification. The justification may be included in the employment contract itself, but the employer may also provide the justification when it actually invokes the clause.
- **Expansion of the duty to inform:** employers will be obliged to provide their employees with written information on the standard working hours and rest periods, within one week after commencement of the employment, and on the training policy and dismissal policy, including notice periods, after one month. In the case of a *predictable* work pattern, the employer will have to inform the employee of the days and hours which the latter may be obliged to work, as well as the number of guaranteed paid hours. In the case of an *unpredictable* work pattern, the employer will have to inform the employee of the days and hours which the latter may be obliged to work (reference days and hours), the minimum notice period for calling them in to work, as well as the number of guaranteed paid hours. The penalty applicable to an infringement of this expanded duty to inform remains the same: the employee may hold the employer liable for any damage arising from such infringement.
- **EU posting:** moreover, Dutch employers posting employees from the Netherlands to other EU Member States will be required to inform such employees, before their departure, on the remuneration they will be entitled to according to the applicable law of the host Member State, any allowances, any arrangements for reimbursing expenditure on travel, board and lodging, and the link to the official national website developed by the host Member State for that purpose.
- **Request for a more predictable work pattern:** after 26 weeks of employment, employees may submit a request to their employers asking for more predictable, and therefore more secure, working conditions. The employer will not be obliged to agree to the request, and the request must be feasible. Employers with more than 10 employees will have to send a reasoned written reply within one month; employers with fewer than 10 employees will have to do so within three months. If an employer does

not respond in good time, the work will be adjusted in accordance with the employee's request. If the employer denies the request in good time, the employee may initiate court proceedings.

- Prohibition on prejudice and termination: the bill also contains a general prohibition on prejudice and termination, so that employees exercising the aforesaid rights cannot be subjected to prejudice or termination as a result.

## **Transitional law**

According to the explanatory memorandum, the EU Directive does not leave any scope for a transitional law, which means that the act will have immediate effect. As a consequence, any study costs clauses or other clauses that are inconsistent with the act will become void immediately. This also applies to employment contracts concluded *before* 1 August 2022.

The Lower House has to assess the bill on the merits, after which the Senate will also have to adopt the bill. We will keep you informed of any developments.

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