LEGAL UPDATE

Five most frequently asked questions about the Transparent and Predictable Employment Conditions Act (*Wet transparante en voorspelbare arbeidsvoorwaarden*)

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Next Monday, 1 August 2022, the new Transparent and Predictable Employment Conditions Act enters into force. The purpose of this Act is to make the content of work more transparent and predictable before it begins. We have received many questions about this new Act. In this Legal Update, we will discuss the five most frequently asked questions. It is clear that employers have some homework to do as of the first of August.

1. When is training mandatory?
The key question is whether it is training that the employer must provide to the employee. This can be training required by law, such as company emergency response training, but it also covers what is known as the 'general obligation to follow training'. This includes the training required to be able to perform or continue to perform the job (e.g. due to the implementation of a new computer system or as part of an improvement plan). Employees should also be given the opportunity to follow training if their position becomes redundant or if they are no longer able to perform the job, where this can reasonably be required of the employer. However, the employer is not obliged to provide training necessary to obtain a diploma or certificate that the employee should already have, when first starting work, in order to be permitted to do the job by law.

It is not always easy to determine whether a course is classified as mandatory training. And this is likely to become a point of discussion in the coming period.

2. What happens to existing study cost clauses?
Study cost clauses for mandatory training are no longer permitted under the new Act and will therefore be void as of 1 August 2022. However, if training is completely separate from the job and is not required by law, the employer and employee can still validly agree on a study cost clause. Those types of existing study cost clauses will continue to be effective, even after the new Act comes into force.

3. What is the difference between a predictable and an unpredictable work pattern?
The new Act distinguishes between predictable and unpredictable work patterns. Both work patterns create different information requirements. For example, if there is a predictable work pattern, an employer must let an employee know if he or she must work overtime, how it will be paid, and whether the employee must work alternating shifts. In the case of an unpredictable work pattern, the employer must state that the hours during which an employee must work are variable and must specify reference days and hours and the applicable on-call periods.

A predictable work pattern exists if the hours during which an employee must work are largely predictable. For example, legislative history states that alternating schedules or shifts do not, as such, detract from the largely predictable nature of the work pattern.

An unpredictable work pattern exists when most of the hours during which an employee must work are not known beforehand. For example, if the employer and employee have agreed on a fixed number of working hours, but have not specified the hours during which the employee must work beforehand. On-call workers have, by definition, an unpredictable work pattern.

The rules that already applied to on-call workers will cover all unpredictable work patterns, such as on-call periods of in principle four days and the rule that if the call is withdrawn or changed within those four days the employee must still be paid for the hours of the original call.

4. Do existing employment contracts need to be amended?
The employer does not have taken immediate action to amend current employment contracts if the work pattern is *predictable*. Employers do not have to provide the required information until the employee requests it (after which they must provide the information within one month).

For employees with an *unpredictable* work pattern, employers must, however, record the employee's reference days and hours in writing for existing employment contracts too, with effect from 1 August 2022. These are the days and hours when the employee may be required to come to work. It does not have to be incorporated in the employment contract, but may also be communicated by sending a letter or e-mail, or otherwise. The employee does not have to sign the new arrangements, but for the avoidance of doubt, it is recommended that the employee confirm them.

5. Should objective reasons be included in the ancillary activities clause?
The employer must have an objective reason for invoking this clause or rejecting a request for permission to perform outside ancillary. It is only when that happens that an employer must communicate the objective reason to the employee. The objective reason does not therefore need to be included in the ancillary activities clause.

For an overview of all changes, please refer to the podcast (in Dutch only) and Legal Update (in Dutch only) by Anne Haverkort and to the Legal Update (English translation) by our team Employment & Pensions.

We are currently running numerous checks on existing employment contracts. Do your employment contracts comply with the new Act?

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