
COVID-19 and Labour Law: The Netherlands

Beryl ter Haar*

Abstract

The Netherlands is in an “intelligent” lock down, which means that social and economic activities are limited, but not to the extent that people are locked in their houses. The main labour law related measure, NOW, aims to protect jobs by compensating the costs of wages when the employer suffers a loss of turnover of more than 20%. Self-employed can apply for a relaxed regime on income support (TOZO). The regular labour law measures have not been altered, with the exception of the driving time for truckdrivers delivering essential goods. Via the Labour Foundation social partners work closely together with the government.

Key words: Covid-19; Labour law; NOW; TOZO; Preservation of jobs; Income protection.

The first confirmed COVID-19 infected person was reported on 27 February 2020 and the first patient who died due to COVID-19 was reported on 6 March 2020. From that moment things changed very fast in the Netherlands. First people were told to take good care of their personal hygiene with extra cleaning in workplaces. Per 12 March 2020 this changed radically and economic and social life were sort of put on hold. There is no total lock down, but what is called an “intelligent” lock down. This means that we have to stay at home as much as possible, including working from home, social distancing (1,5 meter apart at least), no big gatherings or events of more than 100 persons, etc. Schools and universities are closed and education is done remotely. Restaurants, cafes, gyms, concert halls, etc. are also closed. And professions that involve direct contact between persons have also been stopped, this includes hairdressers, physiotherapy, etc. Initially these measures would last till 6 April 2020, but as per 31 March 2020 they have been extended to 28 April 2020, schools stay closed till 4 May 2020, and gatherings of 100 persons or more are forbidden till 1 June 2020¹. The aim of these measures is “to flatten the curve” of the rise of the number of infected persons in order to prevent that the healthcare system cannot

* Assistant Professor and Academic Coordinator Adv. LL.M. Global and European Labour Law at Leiden University and Visiting Professor at the University of Warsaw, ORCID 0000-0002-3401-1272.

¹ See for a full overview of all the measures at: <https://www.government.nl/topics/coronavirus-covid-19/tackling-new-coronavirus-in-the-netherlands>

deal with it anymore. Given that there are first signs the “curve is flattening”² the measures seem to have effect.

On 17 March 2020 the Dutch Government announced an ‘Emergency Package Jobs and Economy’. The Package holds three types of measures: 1) safeguarding income and salaries; 2) postponement of taxpaying; and 3) relaxation of credit provisions. A full overview of these measures can be found at www.business.gov.nl.

With regard to labour law the most relevant measure falls within the first category of measures and is called “NOW”, which is the abbreviation of the Dutch title “Noodfonds Overbrugging Werkgelegenheid”, in English translated as “Temporary Emergency Bridging Measure for Sustained Employment”³. The NOW provides financial support for businesses when it suffers a loss in the turnover of at least 20% due to the government’s measures on COVID19. The higher the loss in turnover, the higher the financial support - with a 100% loss of turnover 90% of the wage costs will be compensated. The wage compensated is the wage for social insurance purposes as it is known by the UWV⁴, up to a maximum of €9538,- per employee per month. To this wage sum 30% is added for pension premiums, holiday allowances and other costs/benefits.

An advance of 80% will be paid upon the application for the scheme and will be followed by a calculation of the actual loss of turnover afterwards, which may lead to a correction. The compensation can be requested for a period of three months within the period March-July 2020 and, under certain conditions, can be extended once for another three months. The measure applies to a wide range of workers, including all kinds of flexible workers, such as part-timers (including zero-hour contracts), fixed term employees and other workers employed by other forms of temporary contracts⁵. The measure also applies to temporary works agencies⁶ and staffing agencies⁷.

An interesting condition of the NOW is that when the employer applies for it he commits to not terminate employment contracts for economic reasons. If the employer does nonetheless the wage compensation will be claimed back plus fifty percent of the

² A specialized agency of the Government is registering the number of positive tested persons, how many have been hospitalized and how many people have died due to COVID19. No statistics are available about how many patients have recovered. The information is available at: <https://www.rivm.nl/en/novel-coronavirus-covid-19/current-information-about-novel-coronavirus-covid-19>

³ See for more details about NOW: <https://business.gov.nl/subsidy/corona-crisis-temporary-emergency-measure-now/>

⁴ The Employee Insurance Agency, an administrative body responsible for, among others, social security payments, such as unemployment benefits, sick pay, etc..

⁵ Although not included in the legislation, the accompanying letter to the NOW measure calls upon employers to keep their flexible workers employed as much as possible. <https://www.rijksoverheid.nl/onderwerpen/coronavirus-covid-19/documenten/kamerstukken/2020/03/31/tijdelijke-noodmaatregel-overbrugging-voor-behoud-van-werkgelegenheid>. Nonetheless, the trade unions report that the employment contracts of many flexible workers have been terminated: <https://www.fnv.nl/corona/verregaande-maatregelen-om-jou-door-de-coronacrisi>

⁶ In the Netherlands TWA’s can enter into a permanent employment contract with the persons they allocate to the user undertaking.

⁷ In Dutch called “pay-roll companies”.

amount of the wage⁸. Since employers have to get permission by the UWV for such dismissals a control mechanism is automatically in place.

Another interesting income preserving measure is a relaxed regime that enables self-employed to apply for financial support, the Tozo. The support is available for at least three months and will help out entrepreneurs and self-employed professionals who have a viable business but are going through a rough patch. Self-employed professionals can apply for support in the shape of additional livelihood support and/or a business capital loan⁹.

Since schools and childcare facilities are closed and parents have to work from home as much as possible, there is a serious challenge to combine work and care responsibilities. Employers have been requested to be flexible with working schemes (starting later, stopping earlier, working in the evening hours etc.). However, the employer may not unilaterally change the working time schedule. Such requires either the consent of the works council or from the employee¹⁰. In addition, a more relaxed regime of various forms of (already existing) special leaves apply, which should make it more easy for the employee to combine work and care responsibilities¹¹. With respect to annual leave rights, in general, the NOW should prevent the need for employers to force their workers to use their annual leave days¹². Nothing specific applies with respect to annual leave days that have already been booked and seem to have lost their value due to the general situation created by the COVID-19 pandemic. Based on existing rules the employer can only refuse the withdrawal of the leave for serious business reasons. Whether not having enough work due to the COVID-19 pandemic qualifies as a serious business reason is unclear¹³.

Special school and childcare support are arranged for employees who work in so called crucial professions or vital processes (as it is called in Dutch) which cannot be done from home. What qualifies as crucial profession or vital processes is defined widely. The first includes professions in healthcare, education, public transport, the food chain, transport of energy sources, trash collection, media. In this group the working time for truck drivers in the supply of essential goods, such as food and medication, has been relaxed. This means for example that the daily maximum driving time is extended from 9 to 11 hours¹⁴. The second, vital processes, includes processes that are essential in a democracy, public health and safety, and security¹⁵. The childcare support is free of charge.

Social Partners are involved in the design of the measures through the Labour Foundation which is a national consultative body comprised by the three main trade unions

⁸ Article 11, sub b NOW.

⁹ <https://business.gov.nl/the-coronavirus-faq-for-entrepreneurs/> - Tozo.

¹⁰ Article 27 Act on the Work Council.

¹¹ <https://www.fnv.nl/corona/werk-en-corona#thuiswerken>

¹² Nonetheless there are complaints filed with trade unions that employers force employees to take their leave days: <https://eenvandaag.avrotros.nl/item/dwingt-jouw-baas-je-nu-om-je-vakantiedagen-op-te-nemen-dit-zijn-jouw-rechten/>

¹³ Something which is not only the case in The Netherlands:

<https://uklabourlawblog.com/2020/04/06/furloughing-and-fundamental-rights-the-case-of-paid-annual-leave-by-alan-bogg-and-michael-ford/>

¹⁴ This is done in accordance with Article 14 of Regulation 561/2006.

¹⁵ <https://www.rijksoverheid.nl/onderwerpen/coronavirus-covid-19/veelgestelde-vragen-per-onderwerp/kinderopvang/cruciale-beroepen>

and three main employer organisations of the Netherlands¹⁶. Part of their activities is to advise the government on labour-related issues. With regard to the COVID19 situation the Labour Foundation meets weekly with the government to discuss the Emergency Package. In their support letter to the Emergency Package they call upon the employers and workers' representatives to report problems not (yet) covered by the Package, but do need action by the central government. The same applies for sector specific issues on occupational health and safety which cannot be solved due to conflicts with OSH-legislation¹⁷.

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¹⁶ <https://www.stvda.nl/en/labour-foundation>

¹⁷ <https://www.stvda.nl/-/media/stvda/downloads/publicaties/2020/coronacrisis-noodpakket.pdf?la=nl&hash=290B8F57F6BA09AD9DB26B91FC27F9DE> (p.4).