PAYROLL SPECIAL

2022

FINANCIAL ENGINEERING

The 2022 Payroll Special is a handy reference work for you as an employer or HR professional.

It contains up-to-date figures for the minimum wage, contribution percentages for employee insurance schemes, the income-related healthcare insurance contribution, unemployment insurance contributions and employed person's tax credits, the low-income allowance and wage expense allowance, and the customary salary for directors/major shareholders (DGAs), amongst other things.

In this edition you will also find information relating to company cars, the homeworking allowance, the work-related expenses scheme and the transition payment.

Sections 7 to 10 of the special deal with various coronavirus-related measures.

Please note:
We are keen to ensure we provide up-to-date information. As we are writing, however, new additions to the coronavirus schemes may be announced by the government. The overview in this special is based on the information available as at 8 a.m. on 31 January 2022.

ESJ FINANCIAL ENGINEERING

088 0 320 600
www.esj.nl/en
info@esj.nl

TABLE OF CONTENTS

1 PAYROLL TAX AND NATIONAL INSURANCE CONTRIBUTIONS – MISCELLANEOUS

1.1 Changes to income tax

The basic rate of income tax has been cut to 37.07% in 2022 (37.10% in 2021). This rate applies to income up to € 69,398. People in work and benefit recipients will both benefit from this reduction.

Table 1. Box 1 tax rates in 2022 for people without a state pension

Taxable income	Rate for 2022
€ 0 to € 69,398	37.07%
€ 69,398 or more	49.50%

Employed person's tax credit

In addition to the general tax credit, the employed person's tax credit is also going up in 2022. The maximum employed person's tax credit in 2022 amounts to € 4,260. This compares with € 4,205 in 2021. This rise will also benefit the purchasing power of people on lower incomes in particular.

1.2 Statutory minimum wage

The statutory minimum wage is increasing by 1.41% from 1 January 2022. This means the monthly minimum wage amounts to € 1,725. The minimum wage applies to employees aged 21 and above and is adjusted in line with wages under collective labour agreements on 1 January and 1 July each year. It is applicable to a full working week. How many hours per week this amounts to differs from sector to sector. It can be 40 hours, although some sectors employ a shorter working week of 38 or 36 hours, for example.

Minimum youth wages also rising

The minimum youth wages are a fixed percentage derived from the minimum wage and are therefore also increasing by 1.41%. Details of the statutory minimum wage that applies from 1 January 2022 for each age group are presented in the table below.

Age	Scale	Per month	Per week	Per day
21 and above	100%	€ 1,725.00	€ 398.10	€ 79.62
20	80%	€ 1,380.00	€ 318.50	€ 63.70
19	60%	€ 1,035.00	€ 238.85	€ 47.77
18	50%	€ 862.50	€ 199.05	€ 39.81
17	39.5%	€ 681.40	€ 157.25	€ 31.45
16	34.5%	€ 595.15	€ 137.35	€ 27.47
15	30%	€ 517.50	€ 119.45	€ 23.89

Work-based learning pathway (BBL)

For apprentices who are following the work-based learning pathway (BBL) and are aged between 15 and 17 the same amounts apply as are applicable to other young workers. However, different statutory minimum youth wages apply to BBL apprentices in the 18-20 age group. The details for each age group are presented in the table below.

Age	Scale for BBL	Per month	Per week	Per day
21	100%	€ 1,725.00	€ 398.10	€ 79.62
20	61.50%	€ 1,060.90	€ 244.85	€ 48.97
19	52.50%	€ 905.65	€ 209.00	€ 41.80
18	45.50%	€ 784.90	€ 181.15	€ 36.23

1.3 Contributions for employee insurance schemes in 2022

The new contributions for national insurance and employee insurance schemes have been announced. These are the percentages you will need to apply from 1 January 2022 when completing the payroll tax return for your employees.

Invalidity Insurance Fund (Aof) contribution

From 1 January 2022 the contribution to the Invalidity Insurance Fund (Aof contribution) is becoming a differentiated contribution. A distinction will be made between a low contribution for small employers with a wage bill not exceeding 25 times the average wage on which contributions are payable and a high contribution for medium-sized and large employers whose wage bill is more than 25 times the above wage.

The calculation contribution for the Return to Work Fund (Whk) has been raised slightly. In addition, the maximum wage assessable for contributions has been set at a higher level for 2022 than in 2021.

An overview of these contributions can be found in the table below.

Contributions		2021	2022
AOW	Old age pension fund	17.90%	17.90%
ANW	Surviving Dependants Fund	0.10%	0.10%
AWf	General Unemployment Fund		
AWf low		2.70%	2.70%
AWf high		7.70%	7.70%
Ufo	Implementing Fund for the Government	0.68%	0.68%
Sfn/Ufo	Uniform childcare supplement	0.50%	0.50%
Aof	Invalidity Insurance Fund	7.03%	
Aof low			5.49%
Aof high			7.05%
Whk	Return to Work Fund (average percentage)	1.36%	1.52%

Maximum wage assessable for contributions in 2022

The maximum wage assessable for contributions is increasing in 2022 and will amount to € 59,706 on an annual basis. This compares with € 58,311 in 2021. As an employer you do not have to pay contributions on an employee's earnings above this amount. This maximum amount is also used when calculating the income-related healthcare insurance contribution.

1.4 Percentages for income-related healthcare insurance contribution in 2022

The new percentages for the income-related contribution under the Healthcare Insurance Act (Zvw) have been set. In 2022 the contributions will fall by 0.25 of a percentage point.

Employees

As a result of the reduction, in 2022 employers will owe a contribution of 6.75% of the assessable wage for their employees instead of 7% in 2021. This represents a 3.57% decrease in the contribution.

Self-employed persons and directors/major shareholders

In the case of self-employed persons and directors/major shareholders (DGAs) the healthcare insurance contribution will amount to 5.5% from 2022 instead of 5.75% (2021). This represents a 4.35% decrease in the contribution.

The above changes are also shown in the table below.

Contribution	2021	2022
Employer levy under Zvw	7%	6.75%
Employee contribution under Zvw	5.75%	5.5%

Maximum assessable income going up

A maximum assessable income also applies under the Zvw. In 2022 this maximum is increasing from € 58,311 to € 59,706. The healthcare insurance contribution is payable on income up to this maximum level. This means that in 2022 employers will pay a maximum of € 51.62 less in healthcare insurance contributions for their employees than they did in 2021.

1.5 Practical learning subsidy scheme

The subsidy is an allowance for the costs that employers incur for supporting an apprentice, participant or student. Approved work placement companies at upper secondary vocational level (MBO) in the agricultural, hospitality and recreation sectors are due to receive an additional supplement until the end of 2024. The current arrangements under the practical learning subsidy scheme will remain in place until the end of this calendar year. At present it is not yet known exactly what the scheme will look like for the 2022-2023 and 2023-2024 academic years.

1.6 SLIM subsidy scheme in 2022

In 2022 SMEs will again be able to receive a subsidy for certain types of training, via the Learning and Development at SMEs Incentive Scheme (SLIM). Applications under the subsidy scheme can be submitted during the same periods as in 2021. The first application period runs from 1 to 31 March

2022 and the second application period from 1 to 30 September 2022. A sum of € 15 million is being made available for the first application period in March, while a budget of € 15.3 million will be set aside for the second round of applications in September.

Agricultural, hospitality and recreation sectors also eligible

Larger companies within the agricultural, hospitality and recreation sectors will also be eligible for the subsidy, due to the fact that they frequently employ seasonal workers.

The application period for large companies and alliances in the hospitality, agricultural and recreation sectors has been reduced significantly. The maximum subsidy per employer amounts to € 25,000 (max. € 20,000 for agricultural businesses). For alliances of several organisations the maximum level has been set at € 500,000. The eligible costs must amount to at least € 5,000.

Please note:

The SBI code from the CBS (Statistics Netherlands) must be used to demonstrate that a company operates in the agricultural, hospitality or recreation sector.

Which companies are eligible?

A company is regarded as an SME for the purposes of the SLIM subsidy if it employs fewer than 250 people and has an annual turnover not exceeding € 50 million and/or an annual balance sheet total not exceeding € 43 million.

Third learning pathway for upper secondary vocational education (MBO)

SMEs that make use of the subsidy scheme for practical training contracts need to keep the start date of the work-study programme in mind. This is because contracts that have already started before 1 September 2022 cannot be subsidised via the SLIM scheme. If the learning and development programme starts on 1 September 2022, it is important that the application is submitted on 1 September.

1.7 Changes to R&D tax credit (WBSO)

You can apply for the R&D tax credit if you carry out research and/or development projects, but only for future activities. This means that an application is always submitted in advance. To log into the application portal of RVO.nl, you can only use eHerkenning level eH3. Make sure you apply for eHerkenning in good time. You should take a lead time of around two weeks into account.

Decrease in percentages for R&D tax credit

The percentages for the R&D tax credit are decreasing this year. In 2022 an entrepreneur will receive a subsidy of 32% on the first € 350,000 of expenses incurred for innovative activities, compared with 40% in 2021. Above this level the subsidy is remaining at 16%.

Also applicable to start-ups

Start-ups will also receive less support for innovation in 2022. For this group of businesses the R&D tax credit percentage is being cut from 50% in 2021 to 40% in 2022 on the first € 350,000 of expenses

incurred for innovative activities. In this case too the subsidy of 16% of costs will continue to apply above this level.

Please note:

In 2022 the latest date for submitting an R&D tax credit application is 30 September 2022. This is the deadline for R&D tax credit applications for the last quarter. This deadline applies both to companies with staff and self-employed persons.

Changes in 2022

In 2022 a number of changes are also being made to the legislation governing the R&D tax credit, compared with the situation that applied last year. The application process is being made more flexible and more straightforward, for example. From 2022 it will therefore be possible to apply for an R&D certificate relating to a period that has already been (partially) included in an earlier R&D certificate.

In addition, the method used to offset the tax advantage is changing. As a result, it will be possible to decide for yourself in which period the advantage resulting from the R&D tax credit should be offset, after the R&D certificate has been issued. This will reduce the administrative burden.

Lastly, the legal text is being clarified. This will specify that only costs and expenses that are covered by an application made in advance and for which an R&D certificate has been granted will be eligible for the tax deduction for R&D work.

1.8 Standard amounts for highly skilled migrants in 2022

Employers who want to apply the highly skilled migrants scheme for a foreign employee may only do so if this employee receives a certain minimum gross salary every month. From 1 January 2022 the salary requirements are as follows:

- highly skilled migrants under the age of 30: € 3,549
- highly skilled migrants from the age of 30: € 4,840
- highly skilled migrants who enter employment in the Netherlands within three years of completing an approved bachelor's, master's or postdoctoral course: € 2,543
- holder of an EU Blue Card: € 5,670.

The amounts all exclude the holiday allowance to which the employee is entitled.

What counts towards the salary criterion?

The Immigration and Naturalisation Service (IND) counts expense allowances and fixed bonuses (such as thirteenth-month pay) towards this. The following conditions apply here:

- The allowances and bonuses are included in the contract.
- The allowances and bonuses are transferred every month to a bank account in the name of the highly skilled migrant or the holder of an EU Blue Card.

The following salary components are not counted:

1. holiday allowance;
2. the value of benefits in kind;
3. irregular salary components that are not certain to be paid out. These may include: overtime payments, gratuities and payments from funds.

Work permit not required

For highly skilled migrants it is not necessary for employers to obtain a combined residence and work permit (GVVA) or work permit (TWV). The same applies to employees with an EU Blue Card. In this case, however, there is an additional requirement that the employee has completed a course of study at a Dutch university or university of applied sciences or an equivalent course of study abroad. In addition, the monthly salary of employees with an EU Blue Card must amount to at least € 5,670 (excluding holiday allowance) in 2022.

Becoming a recognised sponsor

A highly skilled migrant is a foreign worker from outside the European Union (EU) who is employed by your organisation on account of his/her technical or scientific knowledge. To bring a highly skilled migrant to the Netherlands, your organisation must be designated as a recognised sponsor by the Immigration and Naturalisation Service. The employer then has a specific obligation to provide information and keep records, as well as a duty of care, is entered in the public register of recognised sponsors and is able to apply for residence permits for the highly skilled migrant.

1.9 Standard amounts for 30% scheme in 2022

Under certain circumstances, foreign workers who come to the Netherlands to work on a temporary basis qualify for the 30% scheme. This scheme allows the employer to pay the employee a tax-free allowance to cover the additional costs of his/her stay in the Netherlands (extraterritorial costs). The allowance is capped at 30% of his/her salary, including the allowance.

The following conditions apply to qualify for the 30% scheme:

1. the employee has a permanent position; and
2. the employee has specific expertise that is scarce or not available at all on the Dutch labour market. This is referred to as the scarcity and expertise requirement. The legislator has introduced a salary standard for this specific expertise; and
3. in the 24 months preceding his/her first working day in the Netherlands the employee lived more than 150 km from the Dutch border.

An employee is considered to satisfy the condition relating to specific expertise if his/her pay is above a set salary standard. This salary standard is indexed annually. For 2022 the salary standard has been set at a taxable annual salary of € 39,467 (2021: € 38,961). This salary standard of € 39,467 excludes the final-levy components and therefore excludes the 30% allowance. In most cases the scarcity of the expertise is no longer subject to specific checks, but it is checked if, for example, all workers with certain expertise meet the salary standard.

No salary standard applies to scientists or employees who are doctors training to become a specialist. In the case of incoming employees who are under the age of 30 and have obtained a master's degree a salary standard of € 30,001 applies in 2022 (2021: € 29,616). The master's degree must be comparable with a master's degree from a Dutch university.

Make sure your employees comply with the new indexed amounts each year.

1.10 Customary salary for directors/major shareholders

For 2022 the fixed amount for the director/major shareholder and his/her partner under the customary salary scheme is € 48,000. Under certain conditions directors/major shareholders can set their customary salary in 2022 at a lower level than € 48,000. This is made possible by a rebuttal scheme in relation to the general rule that the salary of a director/major shareholder is the highest of the following amounts:

- 75% of the salary for the most comparable position;
- the highest salary received by the other employees of the company or affiliated companies (legal entities);
- € 48,000.

Please note:

To set the salary at a level lower than € 48,000, you need to plausibly demonstrate that the salary received for the most comparable position is lower than € 48,000. If you are unable to do so, the customary salary will amount to a minimum of € 48,000.

Tip:

The customary salary of a director/major shareholder is taxed in box 1 and this rate quickly rises to 49.5%. It is therefore usually beneficial to keep your customary salary as low as possible. Taxed and untaxed expense allowances can be deducted from it. However, these must be clearly attributable to the director/major shareholder. The customary salary can also be reduced by the amount of the addition to taxable income for private use of a company car.

Customary salary lower than minimum wage

In 2021 the district court in Arnhem ruled that, under certain circumstances, it is also possible to have a customary salary that is lower than the minimum wage. In this case the company's turnover was very low and a loss would have been incurred if the customary salary to be taken into account on the basis of the general rules had applied.

Consultation possible

The Tax and Customs Administration has indicated that a customary salary that is lower than the minimum wage is possible under certain circumstances, for example if a company is suffering structural losses and in the case of start-ups. In the event of doubt it is possible to contact the Tax and Customs Administration.

Lower customary salary for start-ups

In 2022 start-ups and innovative start-ups can also opt to pay a customary salary that is lower than that which a director/major shareholder would normally have to receive. Paying a lower customary salary improves the company's liquidity position.

1.11 eHerkenning compensation payment

Employers who submit their payroll tax return themselves are now only able to do so via the new portal of the Tax and Customs Administration. They are required to use eHerkenning for this purpose, which means they incur costs.

A compensation scheme has been introduced to support organisations. All organisations that require eHerkenning solely to file their tax returns (eH3 login tool of the Tax and Customs Administration) can take advantage of this scheme. The above does not apply to sole traders and self-employed persons. They can file their return free of charge using DigiD. Under the scheme compensation can be received for the costs of one eHerkenning tool per organisation per year. The cost of authorising an intermediary will not be compensated.

For the period from 1 September 2021 to 30 September 2022 it is possible to apply for compensation until 30 September 2022. RVO will pay the compensation of € 24.20 including VAT directly to the entrepreneur who has incurred costs to acquire the eH3 login tool of the Tax and Customs Administration. The amount of the compensation is based on the lowest price on the market. It is possible to apply for the compensation online via RVO.nl.

1.12 Temporary relaxation of early retirement levy

Since 1 January 2021 a temporary threshold-based exemption has been in place for early retirement schemes. This means that as an employer you will be exempt, temporarily and subject to certain conditions, from the 52% early retirement levy provided that the payments made under the early retirement scheme remain below the amount of the threshold-based exemption.

The intention of this temporary relaxation is to allow employers to support older employees who could not have anticipated the increase in the state-pension age and cannot continue working up to state-pension age for health reasons.

The conditions that apply to the exemption are as follows:

- the payment under the early retirement scheme is granted in (at the most) the 36 months immediately preceding the date on which the employee reaches state-pension age.
- the amount of the exemption is calculated each month.
- the early retirement exemption applies to the period of no more than 36 months immediately preceding state-pension age. If the payment starts less than 36 months before state-pension age, the exemption applies only for the remaining months.
- the employee reaches an age that is (no more than) 36 months before state-pension age by 31 December 2025 at the latest.

- the early retirement exemption does not exceed an amount that, after deduction of payroll tax and national insurance contributions, is equal to the net state-pension payment for single persons that applies on 1 January of the year in which payment is made.

If, as an employer, you make a payment under an early retirement scheme prior to the 36-month period immediately preceding the date on which the employee reaches state-pension age, you will owe the regular early retirement levy of 52%. You will also owe this regular levy on the portion of the amount above the threshold for the early retirement exemption.

Example

In this example an exemption of € 1,874 per month is taken as a basis. An employee reaches state-pension age on 20 June 2025. On 1 July 2022 the employee receives a one-off early retirement payment from the employer. The period between receipt of the payment and the employee reaching state-pension age is 35 months and 19 days. This period can be rounded up to whole months, meaning that 36 months are taken into account for the purposes of the exemption. The exemption amounts to € 67,464 (36 months times € 1,874).

NB If the one-off early retirement payment is received before 20 June 2022, no exemption applies, as the payment is received more than 36 months before the employee reaches state-pension age.

The early retirement exemption applies over the period from 1 January 2021 to 31 December 2025. On the basis of the transitional arrangements, a grace period applies under the conditions described below for 2026 to 2028. If an early retirement scheme has been agreed in writing by 31 December 2025 at the latest and the employee has reached an age that is (no more than) 36 months before state-pension age, on the basis of the transitional arrangements further payments can be made under this scheme from 2026 to 2028 while benefiting from the early retirement exemption.

You should use code 53 (‘Payment within the context of early retirement’) for a payment under an early retirement scheme. You use this code regardless of whether the exemption from the pseudo final levy applies. The green special remuneration table is and remains applicable to the regular levy.

2 TRANSPORT

2.1 Company car

In 2022 there will be no changes to the addition to taxable income for new cars with carbon emissions of more than 0 grams per kilometre. As in previous years, this will remain at 22%. There will, however, be changes to the addition to taxable income for electric cars.

Electric cars

The addition for a fully electric car is being increased from 12% to 16% for the portion of the list price up to € 35,000. In the case of a car that costs more than € 35,000, an addition of 22% applies to the excess amount.

The impact of the increase in 2022 is explained below with the help of an example.

Example:

An employee has an electric car with a list price of € 90,000. The addition on the first € 35,000 of the list price is 16%, with 22% applying to the remaining € 55,000, or € 17,700 per year. In 2021 the same employee would have paid a 12% addition on € 40,000 and 22% on the remaining € 50,000, or € 15,800 per year. This is a difference of € 1,900 per year.

Further increase in addition to taxable income

The addition to taxable income for electric cars will increase further over the coming years. In addition, the list price to which the lower addition applies will be reduced. See the table below. From 2026 onwards the regular addition of 22% will apply to an electric car. This will be applied to the full list price.

Year	Discount percentage	Addition after applying discount	List price
2022	6%	16%	€ 35,000
2023	6%	16%	€ 30,000
2024	6%	16%	€ 30,000
2025	5%	17%	€ 30,000
2026 onwards	0%	22%	N/A

Please note:

The addition is fixed for 60 months from the first month after that in which the car is first registered.

After the 60-month period has ended an annual assessment will be performed to determine whether a discount applies to a fully electric car based on the legislation in force at that time.

Exception for hydrogen-powered cars

The change that will result in the addition percentage of 22% being applied to the portion of the list price above € 35,000 (2022) will not apply to hydrogen-powered cars. However, for these cars too the

addition will increase to 16% in 2022, although this will apply to the whole of the list price. The government is encouraging use of these vehicles due to their innovative nature.

Consequences for cars dating from 2017

For cars dating from 2017 the 60-month period will expire in the course of 2022. This means that cars that were first registered in 2017 may be subject to a new addition to taxable income in 2022 (if the car was not registered until December 2017, this will not apply until 1 January 2023).

2.2 Higher private motor vehicle and motorcycle tax (bpm) from 2022

The rate of tax (bpm) to be paid on purchasing a new car is increasing over the next four years.

Lower CO2 emissions

New cars are becoming increasingly environmentally friendly. This means that the amount of CO2 they emit is also falling. As private vehicle and motorcycle tax is linked to CO2 emissions, the revenues generated from this tax will also decline unless other measures are taken.

CO2 threshold lowered and rates increased

To prevent a loss of revenues from private vehicle and motorcycle tax, the CO2 thresholds for cars are therefore being lowered by 2.3% per year from 2022 to 2025. The rates are also being raised by 2.35%. These measures will ensure the basis for taxation is better aligned with the expected reduction in CO2 emissions from new cars. The changes will also apply to diesel cars.

Research by TNO

The measure outlined above has been taken on the basis of research carried out by TNO (Netherlands Organisation for Applied Scientific Research). TNO studied the expected reduction in CO2 emissions, taking into account the fact that the weight of new cars is increasing.

Electric cars excluded

Electric cars and hydrogen- and solar-powered cars are not affected by the increase in the rates. These cars are exempt from private vehicle and motorcycle tax until the end of 2024.

2.3 Company bicycle

The government is keen to encourage people to cycle to work, which is why in 2020 it introduced a tax-friendly scheme for company bicycles made available by the employer. An addition to taxable income amounting to 7% of the list price must be regarded as salary each year if a bicycle is made available.

Please note:

The scheme only applies if a bicycle is ‘made available’, which means that it remains the employer’s property. If the cost of the bicycle is reimbursed to the employee or the bicycle is purchased by the employer and supplied as a benefit in kind to the employee, who then becomes the owner, the scheme does not apply and the actual value is taxed.

Accessories that are reimbursed by the employer or supplied as a benefit in kind are considered by the Tax and Customs Administration to be exempt from tax if they relate to a bicycle that has been made available. Such accessories may include an extra lock or the reimbursement of repair costs, for example.

Insurance

The above also applies to bicycle insurance. The Tax and Customs Administration assumes that such insurance is an 'intermediate cost' (cost incurred in advance by the employee and reimbursed by the employer), as the bicycle remains the employer's property.

Rainwear

The Tax and Customs Administration has also indicated that, in principle, the reimbursement, supply as a benefit in kind or making available of rainwear is taxable and that you can avoid this by allocating the rainwear to the work-related expenses scheme.

3 WORK-RELATED EXPENSES SCHEME

The fixed budget under the work-related expenses scheme has been reduced again in 2022. It had been expanded in 2020 and 2021 as a result of the coronavirus crisis.

Work-related expenses scheme

The work-related expenses scheme allows employers to grant their employees all kinds of allowances and benefits in kind free of tax. If the employer remains within the 'fixed budget' in a particular year, the employer also pays no tax. If this fixed budget is exceeded, the employer has to pay 80% tax via the final levy. The standard-practice test has to be taken into account.

Standard-practice test

The standard-practice test means that an allowance or benefit in kind must not deviate by more than 30% from what is customary in comparable circumstances. The tax authorities have no problem with amounts up to € 2,400 per employee per year. Up to this threshold it is assumed, in principle, that the allowances and benefits in kind granted to an employee are customary.

Level of fixed budget

This year the fixed budget stands at 1.7% (2021: 3%) of the wage bill up to € 400,000. It amounts to 1.18% on the excess amount of the wage bill.

Other changes in 2022

Otherwise, few changes have been made to the work-related expenses scheme. In 2020 the reimbursement of the cost of obtaining a certificate of good conduct (VOG) was introduced as a new specific exemption. This year the specific exemption of the homeworking allowance is a new feature of the scheme and the calculation of the fixed travel allowance has been adapted.

3.1 2022 group scheme

If you have a number of companies and make use of the work-related expenses scheme, under certain conditions it is possible to apply the group scheme. For purposes of the work-related expenses scheme a group is considered to apply if:

- An employer has a stake of at least 95% in another employer.
- Another employer has a stake of at least 95% in an employer.
- A third party has a stake of at least 95% in an employer and, in addition, a stake of at least 95% in another employer.

Group scheme

The group scheme under the work-related expenses scheme allows a group to add the fixed budgets of all group companies together. Tax only has to be paid if the value of all the group's allowances and benefits in kind exceeds the total fixed budget of the group.

Please note:

The group scheme is therefore advantageous if not every company within the group is using the whole of its fixed budget. After all, the unused portion can then be used by another group company.

Disadvantage for groups

For the group as a whole the fixed budget is set at 1.7% (2021: 3%) on the first € 400,000 of the group's total wage bill and at 1.18% on the excess amount. The fixed budget of each part of the group cannot be taken as a basis.

Example for 2022

A group made up of five companies each with a wage bill of € 1,000,000 has a total fixed budget of 1.7% x € 400,000 + 1.18% x € 4,600,000 = € 61,080. The fixed budget of each company individually amounts to 1.7% x € 400,000 + 1.18% x € 600,000 = € 13,880. For all the companies together the total fixed budget, without application of the group scheme, is therefore 5 x € 13,880 = € 69,400, i.e. € 8,320 more.

Tip:

Check first whether the group scheme would be beneficial for you. You do not need to make a definitive decision until the second return period of 2023.

3.2 Specific exemption for homeworking expenses

Working from home has become widespread as a result of the coronavirus crisis. From 2022 you can grant your employees an untaxed allowance for homeworking expenses. On the other hand, the existing generous allowance for commuting expenses is being cut back.

Homeworking allowance of € 2 per day

Since 1 January 2022 the allowance that you can pay to homeworkers free of tax has been € 2 per day. This amount is exempt and is also not charged to the fixed budget under the work-related expenses scheme.

Please note:

€ 0.95 of the exempted allowance of € 2 per day is subject to restrictions on deductibility. That is because this portion of the allowance is regarded as an allowance for mixed expenses, such as coffee. For entrepreneurs who are subject to income tax this portion of the allowance can in principle be deducted at a level of 80%, while entrepreneurs subject to corporation tax can in principle deduct it at a level of 73.5%.

Fixed homeworking allowance

You need to make agreements with your employee on the number of days on which he/she will work from home. These agreements form the basis for determining the travel and homeworking expenses that you will reimburse free of tax. If, for example, you and your employee agree that he/she will work from home on two days a week and in the office on three days a week, you can grant him/her a fixed allowance for both homeworking and commuting expenses on the basis of this ratio. A fixed allowance

for homeworking and travel expenses can be granted subject to application of the so-called 214-day scheme.

3.3 Travel allowance

Unlike in 2021, from this year onwards you can only grant your employees a travel allowance for days on which they actually travel to a regular place of work. This allowance can be paid on the basis of the kilometres actually travelled, but you also have the option of granting a fixed allowance subject to application of the 214-day scheme.

214-day scheme

The 214-day scheme has been restricted with effect from this year. From 2022 a fixed homeworking and/or travel allowance based on 214 working days must be recalculated if the employee generally travels to a regular workplace or works from home on four days, three days, two days or one day per week.

Adjust allowances

It is advisable to consult your staff or works council in good time to examine how the homeworking allowance and travel allowance could be adjusted to the satisfaction of all parties. If you continue the commuting expenses allowance scheme even though employees have been working from home, from this year onwards these expenses will be taxed or must be designated as salary for final levy purposes.

3.4 Exemption for health and safety facilities

A desk, an office chair and lighting for a home office can continue to be reimbursed or supplied free of tax in 2022 on the basis of the exemption for health and safety facilities if:

- the health and safety facilities are linked to your obligations under the Working Conditions Act, and
- your employee uses the facility (in part) in his/her home workspace, and
- your employee does not pay a personal contribution for these health and safety facilities, and
- the organisation of the home workspace complies with the requirements of the Working Conditions Decree.

If you satisfy these conditions, a so-called specific exemption applies under the work-related expenses scheme (WKR). This means that you can reimburse the cost of these facilities to your employee free of tax. They are then not charged to the fixed budget under the work-related expenses scheme.

Tip:

A health and safety facility could be an office chair, a desk, a desk lamp or a monitor, but also headphones, for example. This naturally depends on the job your employee carries out.

Higher-end model

Imagine that your employee needs headphones costing € 100 to comply with the conditions of health and safety legislation. You can reimburse the cost of them to your employee free of tax. What if your

employee wants to purchase a higher-end model costing € 250, for example? In that case the first € 100 remains untaxed, as this is necessary to comply with the conditions of health and safety legislation. The remainder (€ 150) does not fall under the specific exemption, however.

Tip:

If the portion of the cost of the health and safety facility that is incurred to purchase a higher-end model is paid for by your employee out of his/her net salary, this does not breach the condition that the employee may not make a personal contribution towards the facility. The specific exemption therefore remains applicable to the portion of the cost necessary to purchase the health and safety facility.

Allocation to fixed budget

There is one way in which the portion of the cost of the health and safety facility that is incurred to purchase a higher-end model can also be reimbursed free of tax. You can allocate this portion to the fixed budget under the work-related expenses scheme as salary for final levy purposes. As long as you have enough of your fixed budget remaining, this portion will then also remain untaxed.

Please note:

If it becomes apparent at the end of 2022 that you have exceeded the fixed budget, you will pay a final levy of 80% on the surplus amount.

4 SALARY COSTS (INCENTIVE ALLOWANCES) ACT

In 2022 the Salary Costs (Incentive Allowances) Act will also consist of three parts:

1. the low-income allowance (LIV),
2. the youth low-income allowance (youth LIV) and
3. the wage expense allowance (LKV).

4.1 Payment of incentive allowances

The LIV, youth LIV and LKV for 2021 will be paid automatically in 2022 if it is apparent from the payroll tax returns that an employer is entitled to them. This will take place as follows:

1. The employer will receive a provisional calculation of the LIV, youth LIV and LKV from the Tax and Customs Administration before 15 March. This calculation will be based on the returns and corrections for 2021 that have been submitted up to 31 January 2022.
2. You can submit corrections for 2021 until 1 May 2022. These will then be taken into account in the definitive calculation. Although corrections received after 1 May will be accepted, they will no longer be taken into account for calculating the various incentive allowances.
3. The Tax and Customs Administration will send a decision containing the definitive calculation of the LIV, youth LIV and LKV to the employer. This will take place before 1 August 2022 on the basis of the information known. It is possible to lodge an objection against this decision.
4. The amounts will be paid out within six weeks of the date of the decision. This will be 12 September 2022 at the latest.

4.2 The low-income allowance in 2022

The low-income allowance (LIV) was reduced on 1 January 2021. It will continue to be lowered in the future and the youth LIV will even be withdrawn altogether with effect from 2024 (2025 payments). These measures are being taken to cover the costs of a slower increase in the state-pension age.

The amounts that will apply in 2022 are as follows:

Average hourly wage in 2022	LIV per employee per hour	Maximum LIV per employee per year
> € 10.73 ≤ € 13.43	€ 0.49	€ 960 per year

Tip:

You can influence the hourly wage of your employees yourself to make sure you benefit as much as possible from the LIV. For example, you could grant employees who are just above the hourly wage threshold an expense allowance under the work-related expenses scheme in exchange for a slightly lower wage. Naturally, you can only do this within the limits of what is possible under the applicable tax legislation.

Conditions applicable to the LIV

The conditions you must meet to be eligible for the LIV are unchanged in 2022:

- The employee satisfies the average hourly wage requirement (based on a minimum of 100% and a maximum of 125% of the statutory minimum wage).
- The employee is insured under the employee insurance schemes.
- The job in question can be regarded as substantial (at least 1,248 paid hours per calendar year).
- The employee has not yet reached state-pension age.

No action needed for LIV applications

You do not need to take any action to apply for the LIV. This is because the UWV assesses whether you meet the conditions on the basis of your payroll tax returns. The UWV then passes on the information to the Tax and Customs Administration, which makes the final decision. You will receive a provisional calculation by 15 March and have until 1 May to submit corrections relating to the previous year. You will always receive the definitive LIV calculation by 1 August.

4.3 The youth low-income allowance in 2022

The youth low-income allowance (youth LIV) is an annual incentive allowance for employers linked to the increase in the minimum youth wage resulting from a reduction in the age at which a person is entitled to the adult minimum wage. From 2020 the amounts of the youth LIV were halved and the allowance will be abolished altogether with effect from 2024 (2025 payments). This means that you will receive a lower contribution for employees aged 18 to 21 and from 2024 will no longer receive any contribution to compensate for the higher wage costs resulting from the increase in the minimum youth wage. New hourly wage thresholds will be announced on 1 July 2022.

Youth LIV amounts for 2021

If an employee falls within the hourly wage thresholds and meets the other conditions, an employer is entitled to the youth LIV for the employee in question. The exact level of the allowance depends both on the number of paid hours and the employee's age. The amounts have been cut back slightly compared with previous years.

Age on 31 December 2020	Youth LIV per hour in 2021	Maximum youth LIV per employee in 2021
20	€ 0.30	€ 613.60
19	€ 0.08	€ 166.40
18	€ 0.07	€ 135.20

Please note:

An employer who makes use of apprentices as part of the work-based learning pathway (BBL) can also be eligible for the youth LIV. The employer will receive this incentive allowance if it pays the apprentice on the basis of the statutory minimum youth wage appropriate for his/her age. The employer may pay the apprentice less than the statutory minimum youth wage, but in this case is not entitled to the youth LIV.

Please note:

If the employer has included incorrect information in its payroll tax return (it is important for the application of this Act that the information is correct), an administrative fine amounting to a maximum of € 1,319 per item of information per employee per year may be imposed.

Conditions applicable to the youth LIV

An employer is entitled to the youth LIV for each employee who meets these three conditions:

- The employee is insured under the employee insurance schemes.
- The employee has an average hourly wage that complies with the statutory minimum youth wage for his/her age.
- The employee was 18, 19 or 20 years old on 31 December of the previous year.

The average hourly wage is the wage received from employment over a year, divided by the number of paid hours during that year.

Hourly wage thresholds for 2021

The hourly wage thresholds for the different ages for the youth LIV are announced on 1 July each year. The figures for 2022 will follow at a later date. The amounts that apply as at 1 July 2021 are as follows:

Age on 31 December 2019	Lower limit	Upper limit
20	€ 8.43	€ 10.48
19	€ 6.32	€ 9.38
18	€ 5.27	€ 7.04

End of youth LIV

It seems at the moment that the youth LIV will be abolished with effect from 2024. However, the previous government was working on a solution in response to the withdrawal of this allowance. For example, agreements were made with employers on the future of the LKV and (youth) LIV. The previous government was keen to use the LIV in a more targeted way and transform it into a wage expense allowance (LKV) for potentially vulnerable young people. Together with the agreement to make the LKV permanently available for individuals who fall within the target group of the job arrangement for persons with an occupational disability (banenafspraak), this should ensure that employers continue to be incentivised to hire and retain people in a vulnerable position on the labour market.

4.4 Wage expense allowances in 2022

Since 2018, employers who take on older benefit recipients, persons with an occupational disability and persons who fall within the target group of the job arrangement for persons with an occupational disability and the target group of persons with an interrupted education due to illness or disability (scholingsbelemmerden) have been entitled to so-called wage expense allowances (LKVs). The conditions applicable to these will remain the same in 2022.

Amounts for 2022

LKV	Amount per paid hour	Maximum amount per year	Duration
Older employee	€ 3.05	€ 6,000	3 years
Employee with an occupational disability	€ 3.05	€ 6,000	3 years
Persons within target group of job arrangement and persons with interrupted education	€ 1.01	€ 2,000	3 years
Redeployment of employee with occupational disability	€ 3.05	€ 6,000	1 year

4.5 No extra correction options if error made when applying for wage expense allowance

If an employer hires an employee who has difficulty gaining access to the labour market, a wage expense allowance is available. If you make errors when applying for this incentive allowance, there are ample opportunities to correct them. Extra correction options are therefore not needed.

If you apply for the allowance, you require a target group declaration. The wage expense allowance can amount to up to € 6,000 per employee per year.

Payroll tax return

You must indicate in your payroll tax return that you are entitled to the wage expense allowance for a particular employee. If you make an error, you can correct this easily yourself.

Correction possible until 1 May

You can rectify your mistake by submitting a correction report, including in relation to previous months. This can be done on a monthly basis in the calendar year for which you are applying for the incentive allowance. It is also possible to submit correction reports in the year following that calendar year. These can be submitted until 1 May of that year at the latest. Corrections received after 1 May will not be taken into account in the definitive calculation.

5 ASSESSMENT OF EMPLOYMENT RELATIONSHIPS (DEREGULATION) ACT

5.1 Current situation

The previous government was keen to replace the Assessment of Employment Relationships (Deregulation) Act, but has passed this task on to a new government. The reason for replacing it is that the Act is causing too much anxiety and uncertainty amongst self-employed persons and their clients.

Instead the government will focus on combating undesirable competition between employees and self-employed persons in the area of employment conditions in order to tackle bogus self-employment. It has also been agreed that self-employed persons will have a statutory obligation to insure themselves against the risk of occupational disability and the participation of self-employed persons in pension schemes will be examined.

5.2 Enforcement

The moratorium on enforcement by the Tax and Customs Administration will continue to apply. This means that for the time being the Tax and Customs Administration will only enforce the rules to a limited extent. Enforcement measures will only be taken if there is malicious intent or if instructions have not been complied with within a reasonable period.

When does malicious intent apply?

An employer is deemed to have acted with malicious intent if it 'intentionally allows a situation of obvious bogus self-employment to arise or continue, as it knows – or ought to have known – that an employment relationship actually applies'. Here it is necessary to demonstrate that the following three situations apply:

- a (fictitious) employment relationship
- obvious bogus self-employment
- intentional bogus self-employment

Instructions

It is also possible that an inspection does not directly reveal any malicious intent, but that there is nevertheless a (fictitious) employment relationship. In such a case enforcement measures will not yet be taken, but the Tax and Customs Administration may issue instructions. The employer must then take steps to implement these instructions in order to:

- structure the working relationship in such a way that work is carried out outside an employment relationship, or
- include the working relationship as employment in its tax return.

An employer will generally be given three months to comply with the instructions. If, after these three months, it is concluded that the instructions have not been complied with sufficiently, enforcement measures may then be taken.

Tip:

The general model agreements dating from 2016 were valid for a period of five years. These have now expired and have been replaced by a 2021 model. You should therefore consider using the new model when renewing an agreement or entering into a new agreement with a self-employed person. If a special sector-specific model dating from 2016 was used, this may also have expired. The sector may have made a new model available.

6 EMPLOYMENT LAW AND SOCIAL SECURITY LAW – MISCELLANEOUS

6.1 New name for Social Affairs and Employment Inspectorate

Due to the large number of people now working across borders and the fact that a European Labour Authority has been established, as well as to avoid confusion about the tasks of the Social Affairs and Employment Inspectorate ('Inspectie SZW'), the decision was taken to change the name of this body to 'Nederlandse Arbeidsinspectie' (and to 'Netherlands Labour Authority' in English) with effect from January 2022. The acronym NLA will be used in both Dutch and English.

6.2 Transition payment

An employee is entitled to a transition payment if he/she is made redundant at the employer's initiative. The level of the transition payment depends on the employee's salary and the number of years of service. In 2022 the maximum transition payment is € 86,000, or a year's salary if higher.

6.3 Transition Payment Compensation Act

Since 1 April 2020 employers have received compensation for the transition payment they are required to make if employees who are sick for a long period of time (two years or more) are made redundant. The transition payment has to be made in these cases too.

As of January 2021 an employer who discontinues his/her business due to retirement has also been able to claim compensation for the transition payments made to his/her employees. This scheme will be expanded in mid-2022. From that point on it will also be possible to obtain compensation from the UWV for the transition payment received by employees who have been made redundant if a business is discontinued due to the sickness or disability of the employer.

6.4 Unemployment insurance contribution

The level of the unemployment insurance contribution depends on whether the person concerned has a permanent or flexible employment contract. The government hopes that this measure will encourage the use of permanent employment contracts and make them more attractive for employers.

When does the low unemployment insurance contribution apply?

The low unemployment insurance contribution is payable in the case of written contracts for an indefinite period in which the scope of the work is clearly defined. This low contribution is also due for employees under the age of 21 who have been paid for a maximum of 48 hours (per four-week return period) or 52 hours (per return period of a calendar month). In addition, the low contribution applies to apprentices following a work-based learning pathway (BBL) and to employees whose employer is paying an employee insurance benefit in the form of an employer's payment or as a self-insurer.

Please note:
If the employment contract is terminated within two months of the start of the employment relationship, the employer is required to pay the high unemployment insurance contribution with retroactive effect. Whether the employee claims unemployment benefit is irrelevant.

Higher contribution to General Unemployment Fund (AWf) if overtime exceeds 30%
This requirement was suspended for a two-year period. As far as we know, however, with effect from this year employers will have to pay the high AWf contribution with retroactive effect if:

- the overtime worked by an employee in a calendar year exceeds 30% of his/her contracted hours, and
- he/she has a permanent employment contract for fewer than 35 hours a week on average.

Temporary increase in hours
In the autumn of 2021 the report 'Possibilities for achieving flexibility within the low unemployment insurance contribution' was published. This revealed that (repeatedly) changing the scope of an employee's work in terms of the contracted hours could be a way to absorb peaks and troughs in the workload and in this way achieve a high degree of flexibility. The report stated that up to the end of 2021 a second employment contract would apply in the event of a temporary increase in hours. Since 1 January 2022 this has no longer been the case, unless the employer and employee have explicitly agreed this or the job or employment conditions have changed. For the time being, until 1 January 2023, it is therefore possible to apply the low AWf contribution in the event of a temporary increase in hours.

Tip:
Employers who have applied the high AWf contribution for a certain time since 2020, as they have temporarily expanded an employment contract for an indefinite period or concluded a second employment contract, can correct the high AWf contribution with retroactive effect.

6.5 Offer of fixed hours in 2022

After a period of twelve months an employer is obliged, within one month, to offer on-call workers an employment contract with a fixed number of hours. These hours must be based on, as a minimum, the average number of hours worked over the previous twelve months. Only hours that follow on from one another within a six-month period are counted.

Example
An on-call worker started on 1 January 2021. From January to the end of May 2021 he was paid for an average of 36 hours per week, but did not work in June or July. He was then paid for an average of 32 hours per week from August through to 31 December 2021. June and July are not counted, as no work was carried out in these months. In January 2022 the on-call worker has to be offered an employment contract for at least 34 hours per week.

The offer must be made within a month of the end of the twelve-month period. From that date the worker will have a month at the most to decide whether or not to accept the offer. If it is accepted, the new scope of work will become effective on the first day of the 15th month at the latest.

Right to pay if no offer made

If a contract with a fixed number of hours is not offered, the on-call worker is entitled to be paid for the average number of hours worked per week over the previous twelve months, irrespective of whether he/she is called to perform work. This is a regular pay claim that is subject to a limitation period of five years.

Tip:

It is therefore important that the employer makes an offer, as there is a risk that the employee – often in cases where he/she has left the company – may claim pay retrospectively on the basis of the offer that should have been made.

6.6 Call period

An employer must call a worker to carry out work at least four days in advance, in writing or electronically. This period may be reduced to at least 24 hours in an applicable collective labour agreement. If the employer withdraws the offer within the above period, the worker is entitled to be paid for the hours withdrawn. It is therefore important to indicate clearly in advance what the duration of the work for which the worker is called will be: a few hours, a day, a week, etc.

A different arrangement may apply to people working in seasonal sectors. This is because, for seasonal jobs, it can be agreed in a collective labour agreement that a shorter call period will apply or that the interruption period – the period after which a new series of contracts starts to run – can be reduced from six to at least three months. In the latter case this must concern jobs that can be carried out for a maximum period of nine months per year due to climatological or natural conditions and cannot be carried out consecutively by the same worker for a period of more than nine months per year. This will therefore depend on the collective labour agreement that applies to you as an employer.

Please note:

The rules on successive fixed-term contracts (ketenregeling) have been relaxed and up to 3 temporary employment contracts are now permitted within a period of 36 months. In the event of an interval that exceeds 6 months, a new chain takes effect upon re-employment. The employer is also required to call the worker no later than 4 days before the work will begin. If the employer cancels the call within 4 days or changes the working hours, the worker is entitled to be paid for the hours for which he/she was called.

6.7 Risk assessment & evaluation

Many smaller employers in particular do not have a risk assessment & evaluation (RI&E). The Netherlands Labour Authority (formerly the Social Affairs and Employment Inspectorate) subjects companies to rigorous checks to determine whether they have an RI&E in place. If they do not have an RI&E, including action plan, this can result in substantial fines. Information on the RI&E is also available from the website: www.routenaar.rie.nl. Every year a special RI&E week is also organised during which

attention is focused on drawing up an RI&E and an associated action plan. For more information please see: www.weekvanderie.nl.

RI&E for small employers exempt from assessment

Smaller employers with up to 25 employees do not have to have their risk assessment and evaluation assessed. This exemption only applies if you use an approved RI&E tool for your sector. Larger employers must always have their RI&E assessed.

Conditions applicable to an approved sector RI&E

Approved RI&E tools for the various sectors need to meet certain conditions. Employers and employees from the same sector must have developed the tool jointly, for example. The tool must also have been assessed by a person certified as a key occupational health and safety expert (company doctor, safety expert, labour and organisational expert or occupational hygienist). In addition, it must have been registered with the RI&E Support Centre (Steunpunt RI&E) and made available digitally on the website (www.rie.nl).

Co-determination bodies have right of approval

After they have been assessed by the certified key occupational health and safety expert the RI&E and action plan must also be sent to the works council or employee representative body. They have a right of approval. The Working Conditions Act also stipulates that employees have a right to inspect the RI&E. The more employees are aware of the risks, the better they can take them into account.

6.8. Ban on smoking areas

Up to the end of 2021 it was permitted to smoke at work in a designated smoking area. Since 1 January 2022 a ban on smoking areas has applied in the private sector. Company vehicles are also regarded as workplaces.

The ban is being enforced by the Netherlands Food and Consumer Product Safety Authority. If staff are smoking where this is not permitted, the employer will be fined for breaching the smoking ban. The amounts of this fine vary from € 450 to € 4,500 depending on the breach.

An employer can also offer an employee support with stopping smoking. Since 1 January 2020 employees have not had to pay an excess if they take advantage of programmes to help them quit smoking. Three conditions apply here:

1. The employee must participate in a ‘stop smoking’ programme arranged through a general practitioner, midwife or company doctor.
2. The treatment must be combined with a ‘behavioural programme’, which means the approach is based both on medication and on changing behaviour.
3. The removal of the requirement to pay the excess only applies to medication and methods that are generally acknowledged to be effective.

6.9 Partially paid parental leave

From August 2022 (both) parents are entitled to nine weeks of partially paid parental leave. This applies during the child's first year and is on top of the existing leave schemes for parents. The payment is made via the UWV.

At present, parents can take 26 weeks of parental leave in the first eight years of their child's life. This leave is unpaid, although employers and employees can make alternative agreements within a company or sector.

What is the situation from August 2022?

From August of this year partially paid parental leave is being introduced. During the child's first year the parents will be entitled to nine weeks of paid parental leave. This is a payment under the Work and Care Act (Wazo payment), which they will apply for through their employer. The parental leave will also apply if parents had a child before the Act was introduced, provided that this child is less than 1 year old. The parents must also be working (be an employee) at that time and must not yet have taken the full parental leave entitlement (26 times their working hours per week).

During the parental leave they will continue to receive a partial salary payment at a level of 50%. This is relatively low, which means that taking this leave remains less attractive for low-paid workers. Because of this concern, the previous government added a further provision to the legislative proposal. This states that the percentage of the payment should be increased to 70% even before the Act is introduced, if the new government agrees to this and is able to free up the necessary budget. This motion, asking the government to increase the percentage from 50% to 70%, was passed by a majority of members in the Upper House (in Dutch: 'Eerste Kamer'). It is therefore possible that this will now happen.

6.10 Legislative proposal to make company doctor's opinion decisive when reintegration report is assessed

The intention of this legislative proposal is to ensure the company doctor's opinion on the employee's workload capacity is decisive in future when the UWV assesses the reintegration report (RIV).

The insurer's medical advisor will no longer assess this opinion from the company doctor. His/her role will therefore also change. This should lead to greater certainty for employers. As a consequence of this measure, the assessment of the reintegration report will be based solely on an assessment of the report by an occupational health and safety expert. The UWV's occupational health and safety expert will assess whether the employer and employee have complied with their reintegration obligations and made sufficient efforts that are in keeping with the company doctor's opinion on the employee's workload capacity.

Please note:

Due to the caretaker status of the government, this legislative proposal has been declared controversial and will therefore not be placed on the parliamentary agenda until a new government has taken office.

The possibility for employers and employees to apply to the UWV for an expert opinion during the 104-week period will be retained, as will the possibility for the employee to request a second opinion at the employer's expense from another company doctor contracted by the employer. It will still be possible for the UWV to impose a penalty due to insufficient reintegration efforts on the part of the employer, although this will no longer be based on a medical difference of opinion between the insurer's medical advisor and the company doctor – a change that will greatly please many employers.

6.11 Which collective labour agreement applies to your company?

In practice, it is not uncommon for companies to change their business activities. However, the fact that such changes can affect the applicability of the collective labour agreement is often forgotten. Make sure you are applying the right collective labour agreement to avoid any unpleasant surprises.

If you run a business, the activities that your company is engaged in may change from time to time. This can be the case if a company divests or expands certain business activities or starts new activities, but also following a takeover, for example. In such situations you should make sure you are applying the right collective labour agreement. Checking the scope of the agreement in good time will help you avoid claims based on the wrong collective labour agreement being applied. The same applies if a new collective labour agreement is concluded.

Which activities are covered by the agreement?

An integral part of every collective labour agreement is a clause setting out the business activities to which the agreement applies. This is also referred to as the 'scope'. If your business activities change, it is therefore particularly important to check whether the collective labour agreement still actually applies.

Tip:

Also check the scope if a new collective labour agreement is concluded within the sector. It is possible that developments in the sector have resulted in the scope being changed. The same applies if you join a different employers' organisation or if collective labour agreements are combined.

Claims

If the scope is not checked in good time, an employer will usually only find out that it has changed if an employee, social fund or pension fund gets in touch with a claim, for example because a salary paid was too low or the obligation to deduct contributions on the basis of the applicable pension scheme has not been complied with.

Please note:

Claims based on application of the wrong collective labour agreement only expire after five years and can therefore build up substantially.

Action plan

To avoid any unpleasant surprises, it is a good idea to always check the scope of the agreement you are applying after changes are made within your organisation or if a new collective labour agreement takes effect. It is important to examine with a critical eye the hours spent on the various business activities

within your organisation. This is a key criterion in many collective labour agreements. Pension funds and social funds in particular also use the company description included in the commercial register of the Chamber of Commerce. You should therefore ensure that this reflects your actual activities. If it is unclear whether a collective labour agreement applies, it makes sense to ask an external party to look into this.

Conflict situation

In practice, a company sometimes falls under two collective labour agreements. In some cases the agreements themselves may then help you determine which one applies through a provision indicating that one agreement takes precedence over the other. The employers' organisations involved in the agreements can also often tell you what to do in such a situation.

6.12 Sector classification can be corrected retrospectively

Previously, if an employer had overpaid contributions due to being classified in the wrong sector, it was impossible to change the classification to the correct sector. The Supreme Court has brought an end to this situation and made it possible once again to change the sector classification retrospectively.

Employers are automatically classified in a particular sector on the basis of their activities. The withholding entity, i.e. the employer, can ask the Tax and Customs Administration to change the sector classification if there are good arguments for doing so. Previously, however, it was not possible to request a change to the sector classification retrospectively. This was based mainly on the argument that the Tax and Customs Administration had insufficient capacity to do so.

Overpaid contributions

Consequently, if a withholding entity had overpaid contributions due to an incorrect sector classification, it was impossible to claim back the overpayment afterwards. There was not a level playing field, however, as the Tax and Customs Administration had the option of making such a change retrospectively if the incorrect sector classification had resulted in insufficient contributions being deducted.

Supreme Court ruling

The Supreme Court has therefore ruled that this constitutes an infringement of the right to property that cannot be justified by the reasons put forward relating to insufficient capacity. The statutory system involves companies being allocated to a sector automatically.

Correction

This implies that, where possible, the tax inspector must correct inaccurate sector classifications. He must also reverse the consequences of an incorrect sector classification as far as possible. The alleged risk, i.e. that a large number of employers may request a change retrospectively, does not constitute a reason to infringe the right to property. The fact that an employer may already have been aware of the incorrect sector classification and could therefore have requested the change at an earlier time does not change this.

6.13 Alternative regime for persons of state-pension age adjusted

The Act on Continued Employment After State-Pension Age (in effect since 1 January 2016) provides for a lighter employment-law regime for employed persons of state-pension age. The previous government announced that the Act would be subject to an assessment, following which the continued payment of salary to persons of state-pension age in the event of sickness may be reduced from thirteen weeks to six weeks.

The assessment of the Act has now been completed and a study has revealed that no parties are being demonstrably squeezed out of the labour market. Consequently, the previous government announced that the transitional arrangements would be ending. According to the previous government, these could not end any earlier than 1 January 2022. To date, however, the timing has not yet been confirmed.

Due to the withdrawal of the transitional arrangements, the period of thirteen weeks is being reduced to six weeks for:

- the continued payment of salary in the event of sickness;
- the prohibition of termination of employment in the event of sickness;
- the reintegration obligation in the event of dismissal due to sickness.

6.14 Enquire about no-risk policy promptly

The no-risk policy is intended to make it more attractive for employers to hire employees who are detached from the labour market as a result of physical/intellectual disabilities. If the employee to whom the no-risk policy applies becomes sick, he/she is entitled to a sickness benefit from the UWV, which is paid regularly via the employer. If the employee subsequently falls under the Return to Work (Partially Disabled) Regulations (WGA), the associated benefit payments are also not borne by the employer.

However, it is possible that in the past the employer did not ask the employee after two months of employment about whether the no-risk policy applies to him/her and that consequently no sickness benefit has been granted. This would mean that the employer has been disadvantaged twice: on the one hand, because it has been unable to apply the sickness benefit and, on the other, because it is required to pay the benefit under the WGA. Case-law has repeatedly stated that the right to sickness benefit does not actually need to have been claimed. It is sufficient for this right to have existed. In practice, the UWV determines a ‘fictitious’ sickness benefit entitlement with retroactive effect. This fictitious sickness benefit claim may be attractive for an employer who is a self-insurer, as it means that the employer does not have to pay the subsequent benefit under the WGA itself. It may also be attractive for a publicly insured employer, as it allows an increase in the differentiated Return to Work Fund (Whk) contribution to be avoided.

The 2022 Collective Act on Social Affairs and Employment stipulates that the granting of a fictitious sickness benefit entitlement with retroactive effect will be restricted. The ‘retroactive effect’ period will be linked to a period not exceeding one year. This one-year period ties in with the period for granting the sickness benefit entitlement if a claim is not made under the no-risk policy until a later time. If the

one-year period after which the sickness benefit can no longer be paid has expired, the costs under the Sickness Benefits Act and WGA are at the employer's expense and risk. This means it is all the more important to ask your employee about the applicability of the no-risk policy promptly, i.e. after two months of employment.

The process used to report the sickness of employees with a no-risk policy has been simplified. In many cases the online questionnaire that an employee has to complete if you report him/her as sick is no longer required. Since 24 September 2021 a sick employee may receive a telephone call from the UWV. The employee only has to complete an online questionnaire if it is apparent from this telephone conversation that a discussion with the insurer's medical advisor is required. In all other cases this is therefore no longer necessary. If the questionnaire is needed, the UWV can help the employee to complete it.

6.15 Change to offsetting of wage expenses subsidy in the event of sickness from 1 January 2022

Local authorities can make use of the wage expenses subsidy (LKS) for individuals who are unable to earn the statutory minimum wage. This concerns individuals for whom the local authority has a responsibility when it comes to helping them find work, such as people on social assistance, people receiving a benefit under the older and partially disabled unemployed workers income scheme (IOAW) or older and partially disabled former self-employed persons income scheme (IOAZ) and people who are already working with the help of another local authority scheme, but also people without a benefit entitlement.

If the LKS is granted, the employee receives the statutory minimum wage for the hours that he/she works (or the wage that applies under the collective labour agreement, if higher). If necessary, the employee receives an additional benefit from the local authority, if the number of hours that he/she is working is not enough to reach the minimum social income. The level of the LKS paid to the employer is the difference between the statutory minimum wage and the (lower) value of the wage earned by the employee.

Changes to process for reporting sick for recipients of wage expenses subsidy

On 1 January 2022 changes were made to the process for reporting sick and to the offsetting of the wage expenses subsidy in the event of sickness. These have made it easier for you as an employer to hire someone who qualifies for the wage expenses subsidy. The new rules apply to applications for sickness benefit or maternity benefit on or after 1 January 2022.

Up to 1 January 2022 an employer who received a wage expenses subsidy for an employee had to report, in the event of this employee falling ill, his/her sickness and recovery to two separate agencies: the UWV (in connection with the no-risk policy) and the local authority (in connection with the suspension and resumption of the wage expenses subsidy). This system led to all kinds of offsetting taking place between local authorities, the UWV and employers due to the overlapping of the no-risk policy and wage expenses subsidy. The process has now been simplified.

Wage expenses subsidy to continue as normal

From 1 January 2022 the wage expenses subsidy will continue as normal in the event of sickness. Local authorities and benefits agencies will not have to claim back any wage expenses subsidy retrospectively. The UWV will adjust the no-risk sickness benefit on the basis of the wage value determined. In future, employers will have to report the sickness of someone for whom the wage expenses subsidy is received to the UWV only and will no longer also have to notify the local authority.

The UWV calculates the benefit for the employee concerned by multiplying the benefit amount by the wage value percentage that is notified to the UWV by the local authority. This calculation results in the benefit payable to the employee. The wage value percentage is the work output of an employee expressed as a percentage of the work output of an ordinary, comparable employee in the same role. It is determined by the local authority and is a percentage of the statutory minimum wage. The wage value for the calculation must be at least 30%. This has been laid down by law. Since 1 July 2021 there has been a single standardised system in place for determining the wage value.

7 CORONAVIRUS AND HOMEWORKING

7.1 Homeworking allowance

As employees are working from home a lot more as a result of the coronavirus crisis, employers may feel obliged to support them with the costs they incur at home. This section provides an overview of the tax treatment of various common allowances and benefits in kind.

PC, mobile communication equipment and internet

Computer equipment, such as laptops, printers, etc., and mobile communication equipment, such as a smartphone, can be reimbursed or supplied free of tax by an employer if, in its opinion, the employee needs it to perform his or her role properly from home. An internet contract also falls under the above.

Please note:

In the case of a contract covering various services, such as TV, the employer needs to ask the provider which portion of the costs can be allocated to the internet connection. Only this portion may be reimbursed free of tax.

Essential?

For employees who are obliged to work from home there will generally be little argument about whether a laptop, etc. is essential. Non-essential aids are also exempted if 90% or more of their use by the employee is for business purposes.

Tip:

Within this context the term 'making available' (ter beschikking stellen) means that an employee hands the equipment back at the end of the employment relationship, for example, or if he/she no longer needs it to perform his/her work. Document these agreements with an employee carefully.

If not exempted, charge to fixed budget

If the employer reimburses the cost of or makes available a non-essential item, in principle this is taxable for the employee. However, the employer can also include it under the work-related expenses scheme, which means it will remain untaxed. The employer will only pay a final levy of 80% if the fixed budget for this year is exceeded.

And when the crisis is over?

If employees no longer need to work from home after the coronavirus crisis, they will have to return the PCs, etc. that have been made available to the employer or acquire them as their own private property and pay reasonable compensation for them.

Homeworking allowance of € 2 per day

As explained in section 3.2, from this year there is a specific exemption for the homeworking allowance under the work-related expenses scheme. You can reimburse an amount of € 2 per day to homeworkers free of tax. If you want to reimburse more than € 2 per day to your employee, allocate the excess amount to the fixed budget under the work-related expenses scheme. Bear in mind that

allowances and benefits in kind are free of tax if they fall within the fixed budget. In 2022 this amounts to 1.7% of your wage bill up to € 400,000 and 1.18% on the excess amount. If the allowances and benefits in kind that you grant exceed this level in 2022, as an employer you will pay 80% tax on the surplus.

7.2 Homeworking scheme

Draw up a homeworking scheme if you want to make it possible for people in certain jobs or job groups to work from home. This should include points relating to homeworking, but also information on how inspections will be carried out, for example. Consider the following points:

- The jobs or job groups in which employees will be permitted to work from home, in view of the nature of the role.
- The number of days that an employee can work from home.
- The possibility of contacting the employee and when this should be possible.
- How the workplace inspection will take place.
- How good working conditions will be maintained and how the employer and employee should handle this.

The working conditions policy that the employer is required to pursue under the Working Conditions Act has to cover homeworking. This means that attention must be paid to homeworking in the risk assessment & evaluation (RI&E) that all employers have to draw up.

Within the context of working conditions legislation, homeworking comes under the term 'location-independent work'. This classification means that homeworking is subject to a less rigorous working conditions regime. Under this less rigorous regime certain obligations in the area of working conditions do not apply, such as those relating to the risk of fire and escape routes, but also those relating to the size of the workspace and the presence of toilets.

The Working Conditions Decree stipulates that the organisation of the workspace must comply with the following requirements:

- The homeworker's workspace must be organised in such a way that, as far as possible, the employee can carry out his/her work in a seated position and in an ergonomic manner. With this in mind, the employee must have a fit-for-purpose seat and work surface or desk at his/her disposal.
- The facilities needed for fit-for-purpose artificial lighting must be present in the workspace.

To satisfy these requirements, certain facilities or aids could be made available to help the employee organise his/her home workstation and prevent him/her from working for too long or in an incorrect manner. These may include a laptop holder, mouse or separate keyboard, for example. Costs of this nature that are incurred to comply with working conditions obligations are borne by the employer. If employees have already incurred costs that were necessary to organise their home workstation, they

can claim them back from the employer, provided that agreements on this have been made with the employer in advance.

In a specific homeworking scheme forming part of the working conditions policy the employer can indicate the roles within the organisation that are eligible for homeworking and the requirements that apply to the organisation of the home workstation, for example. The works council or employee representative body must approve the homeworking policy as part of the working conditions policy. The facilitation of homeworking can then be regulated in more detail in a homeworking agreement signed by the employer and employee and covering matters such as the number of days on which the employee will work from home, the possibility of contacting the employee and the making available of the necessary equipment.

In addition, the employer also has to pay attention to the psychosocial workload risks that apply during the work and therefore also during homeworking. These include bullying, aggression, violence, intimidation and discrimination. In this connection the employer must pursue a policy relating to undesirable behaviour as part of the working conditions policy. One element of such a policy involves designating a confidential advisor to whom employees can speak. This can be an internal or external advisor or a combination of the two. A complaints procedure and complaints committee must also be set up. The works council has a right of approval in relation to the policy on undesirable behaviour and the complaints procedure.

8 TEMPORARY EMERGENCY BRIDGING MEASURE FOR SUSTAINED EMPLOYMENT

8.1 NOW 5.0 and 6.0

In connection with the coronavirus crisis you can apply for the NOW (Temporary Emergency Bridging Measure for Sustained Employment) payroll subsidy under the NOW 5.0 and NOW 6.0 schemes.

NOW 5.0

NOW 5.0 relates to the period from 1 November 2021 to 31 December 2021. The application period for NOW 5.0 has now expired. This ran from 13 December 2021 to 31 January 2022. In contrast to previous NOW schemes, the advance was paid in a single instalment. You can apply for determination of the definitive subsidy over the period from 1 June 2022 to 22 February 2023.

NOW 6.0

NOW 6.0 relates to the period from 1 January 2022 to 31 March 2022. You can apply for this subsidy from 14 February to 13 April 2022. NOW 6.0 is almost identical to NOW 5.0.

Level of subsidy

The subsidy depends on the drop in turnover suffered, which cannot exceed 90%. This drop in turnover is calculated relative to 2019. Compensation for payroll costs is paid at a level of 85%.

Started your business after 1 January 2019?

If you started your business after 1 January 2019, you have to calculate your drop in turnover relative to a different period rather than 2019. Which period you should use depends on your start date (see uwv.nl). If you started on or after 2 October 2021, you are not entitled to the NOW subsidy for the period from January to the end of March 2022.

Change to mark-up

The subsidy is based on your wage bill in October 2021. This wage bill will now be marked up by 30% instead of the 40% that applied last year under the NOW, due to the introduction of a new calculation method. On balance the subsidy will remain the same, however.

An overview of the differences between the various NOW schemes can be found on the UWV website.

9 CORONAVIRUS AND SPECIFIC ISSUES RELATING TO EMPLOYEES

9.1 Can an employer make it compulsory to wear a face mask?

To comply with its duty of care, can an employer make it compulsory to wear a non-medical face mask? If so, who pays for it? And what happens if an employee does not want to wear a face mask?

The employer has a statutory duty of care. That means it has to ensure a safe working environment for its employees. Under the Working Conditions Act it is also obliged to pursue a working conditions policy in which attention is paid to risks in the workplace. This is based on the risk assessment and evaluation (RI&E). In this document attention should also be focused on measures associated with the coronavirus.

Complying with the duty of care

To comply with its duty of care, an employer can make it compulsory to wear a non-medical face mask. After all, the employer also has the right to issue instructions. This right implies that the employer can issue instructions regarding how and under what conditions work must be carried out. The regulations must be reasonable, however. If, for example, it is impossible to maintain sufficient distance in the workplace, e.g. in a supermarket with narrow aisles, it may be reasonable to make a face mask compulsory.

Who pays for the face mask?

If the employer makes it compulsory to wear a non-medical face mask, the employer must make face masks available or offer the possibility of claiming back these expenses. The employer must also provide clear instructions on how they should be used.

If an employee does not want to wear a face mask

If the employee does not comply with the employer's request to wear face masks in the workplace, the employer can require him/her to work from home. In the case of an employee who is unable to work from home due to the nature of his/her work, the employee's conduct may constitute grounds for the employer to take disciplinary action, e.g. to issue a warning or suspend the payment of wages. This is obviously a last resort. It is important that the parties enter into discussion in all cases.

Medical impediments to wearing a face mask

Some employees are unable to wear a face mask (or wear one for long periods) due to health reasons. This may include people with respiratory conditions, such as asthma or COPD. Employees may also suffer panic attacks as a result of wearing a face mask. Making face masks compulsory at work would actually mean that these employees were no longer suitable for their work. An obligation to wear a face mask should therefore be introduced in a tailored manner.

Right of approval of works council/employee representative body

As making face masks compulsory in the workplace is a measure that relates to working conditions, the works council or employee representative body has a right of approval. Without the approval of such a body it will be difficult to introduce an obligation to wear face masks.

Tip:

Check whether there is an (approved) RI&E or a coronavirus protocol for your sector. In this you may find guidance that is relevant to your business situation.

9.2 Can an employer require an employee to be vaccinated?

Can an employer oblige an employee to receive a vaccination? Are you allowed to ask a candidate whether he or she has been vaccinated during a job interview? Can you include an obligation to be vaccinated in the job requirements? Is the answer to this last question different in the case of healthcare personnel?

Can an employee be obliged to receive a vaccination?

Can an employer oblige an employee to receive a vaccination? The answer to this question is 'no'. An employee has a right to physical integrity. This is enshrined in the Constitution. It is therefore up to the employee to decide whether or not to be vaccinated. Vaccination takes place on a voluntary basis.

On 22 November 2021 the government submitted a legislative proposal under which the coronavirus entry pass (CTB) could also be used in the workplace. A distinction is made between sectors in which the CTB is compulsory and those in which it is not. The legislative proposal gives an employer the option of pursuing a policy under which anyone wishing to access a workplace, as part of a profession or occupation or as a volunteer, is obliged to hold a CTB. This will apply to sites that, in view of the epidemiological situation, are considered to present a high risk, given the nature of the activities or the circumstances in which these activities are carried out. On a practical level, this means that an obligation to hold a CTB is unlikely to apply in office environments, but the situation may be different in production environments where homeworking is not possible or it is difficult to maintain social distancing.

The employer's CTB policy must give the company doctor a role, as he/she has to keep track of which employees have or have not been vaccinated and which have agreed to or have not agreed to take a coronavirus test. For privacy reasons the employer is not allowed to keep a record of this data itself. In consultation with the occupational health and safety service the employer will have to draw up a policy outlining how safety will be ensured within the context of the risk of coronavirus infection.

Please note:

This is a legislative proposal that is yet to be debated. We will, of course, keep you up to date with any further developments.

Continued payment of salary?

An employer cannot therefore oblige his or her employees to receive a vaccination. Although the employer has a duty of care with regard to an employee's health and safety and his or her working conditions, for the time being this does not extend to being able to force the employee to be vaccinated. It is also not permitted to put the employee under pressure to receive a vaccination. After all, we are talking here about health data and this is subject to privacy legislation.

Please note:

If an employee who has not been vaccinated falls ill, the employer also has an obligation to continue paying his or her salary in this situation.

Job interview

During a job interview it is also not permitted to ask the candidate whether he or she has been or plans to be vaccinated. After all, this is also health data. Health data is a specific item of personal data whose processing is prohibited, unless a statutory exemption applies. The explicit consent of the employee is insufficient, as – in view of the relationship of dependency – it is possible to question whether the consent was given voluntarily.

Vaccination obligation as a job requirement

An obligation to be vaccinated can only be included as a job requirement if there is a legitimate aim and the means of achieving that aim are appropriate and necessary. After all, this means that a distinction is being introduced between staff who have and staff who have not been vaccinated. As mentioned above, the principle of physical integrity and the right of self-determination apply. Including an obligation to be vaccinated in a job requirement is not justified by a legitimate aim.

Vaccination essential for a candidate for a healthcare role?

If vaccination is essential to be able to carry out the work in question safely, as in the case of a candidate for a healthcare role, the employer can demand that the candidate undergo a medical examination. On the basis of the Medical Examinations Act, it is permitted for the company doctor to ask the candidate whether he or she has been vaccinated. The company doctor will subsequently indicate whether or not the candidate is suitable for the role. The reason for this conclusion is not given.

Vaccination of employed healthcare workers

Can an employer oblige healthcare workers on permanent contracts to receive a vaccination? This is a difficult question to answer, as everything is new when it comes to the coronavirus and there is no case-law in this area. We can infer from past case-law, however, that in such cases the court will often weigh up the individual and collective interests.

9.3 Can an employee be obliged to take a coronavirus test?

Can an employer oblige an employee to take a coronavirus test? Is an employer allowed to send home an employee who has coronavirus symptoms? And is it permitted for an employer to take an employee's temperature? These are questions that are arising in the workplace and for which we provide an answer below.

Can an employer oblige an employee to take a coronavirus test?

No, this is not allowed. As the employee has a right to physical integrity, it is not permitted for an employer to oblige an employee to take a coronavirus test. The right to physical integrity means that every individual can decide him/herself what happens with his/her body.

Naturally, the employer can refer the employee to the recommendation of the National Institute for Public Health and the Environment (RIVM) to make an appointment for a test if you have cold-like symptoms, a high temperature or fever, a sore throat or a cough.

Can an employee be sent home?

If the employer notices in the workplace that an employee has symptoms related to the coronavirus, the employer can send this employee home. This is permitted on the basis of the employer's right to issue instructions and its duty of care towards the company's other employees in terms of ensuring a safe working environment.

Rapid test

Various rapid tests are now in circulation. An employer can, of course, offer employees a rapid test, but in this case too the test must be taken voluntarily. A reluctant employee cannot therefore be penalised. The rapid test must be taken voluntarily after the employee has given his/her explicit consent. In view of the hierarchical relationship between the employer and employee, it is possible to question whether there can be such a thing as explicit consent.

The test may only be performed by a healthcare professional. The result of the test is privacy-sensitive information that may not be shared with anyone other than the employee. Any costs associated with the test are borne by the employer. If the test is not performed by a healthcare professional, the employer is in breach of the rules and may be fined.

The Dutch Data Protection Authority (DPA) has now taken a position with regard to rapid tests and has aimed for consistency with what it has stipulated in relation to taking a person's temperature. In the case of rapid tests, privacy legislation (the GDPR) therefore also does not apply if the result of the rapid test is merely read off. However, the following three conditions must be met:

1. The test result may not be entered in a file, e.g. an Excel list containing names and test results obtained.
2. The rapid test may not be automated, e.g. using certain electronic analysis equipment.
3. The processing may not result in any automated actions.

Temperatures

What is the situation with regard to taking an employee's temperature? This is permitted under certain conditions. Body temperature is an item of personal data if this temperature can be traced back to a specific individual. In this case the GDPR applies. As your body temperature provides information about your health, it is also health data. Health data is a specific item of personal data whose processing is prohibited, unless a statutory exemption applies. Such an exemption can apply if explicit consent has

been given. In view of the hierarchical relationship between the employer and employee, it is possible to question whether there can be such a thing as explicit consent.

Three conditions

The DPA states that the GDPR does not apply if the temperature is merely read off and is therefore not processed as personal data. The following three conditions apply, however:

1. The temperature may not be entered in a file, e.g. an Excel list containing names and the temperatures obtained.
2. The measurement may not be automated, e.g. using a thermal imaging camera.
3. The processing may not result in any automated actions. Here we are talking, for example, about gates that open automatically after a temperature has been taken or a light that turns green automatically if a person's temperature is not too high.

If these conditions are not met, personal data is being processed and the GDPR applies.

Please note:

The DPA has now fined companies for processing data about employees whose temperature had been taken.

9.4 Failure to comply with hygiene rules? Both employer and employee may be fined

Both an employer and an employee may be fined if they seriously breach the hygiene measures put in place to deal with the coronavirus. In very serious cases work may even be suspended temporarily. This is a consequence of a temporary amendment to the Working Conditions Decree.

Duty of care

An employer has a duty of care to ensure the health and safety of its employees and to this end must pursue an appropriate occupational health and safety policy. Taking measures or making arrangements to prevent or mitigate the risk of infection follows from this general duty of care. Within the context of ensuring protection against the coronavirus, the employer has an obligation to take the necessary measures or make the necessary arrangements in the workplace.

Suspension of work

Employers who intentionally commit serious breaches of the hygiene measures will now face sanctions under administrative law. By means of the Temporary Act on COVID-19 Measures a provision has been incorporated into the Working Conditions Act that makes it possible for the Netherlands Labour Authority to suspend work if insufficient measures are being taken.

Administrative fine

In addition to the measure of last resort involving temporary suspension of work, immediate action can also be taken against employers who fail to observe the measures prescribed to combat the coronavirus in their workplaces. The labour inspector can impose an immediate fine in such cases.

In the event of an infringement being identified, the inspector will draw up a fine report if the employer has taken no action in relation to:

- hygiene measures, information and training;
- monitoring of compliance to prevent or mitigate the risk of employees and third parties becoming infected with the coronavirus.

Personal responsibility of employees

Employees are also expected to ensure their own health and safety and that of other persons concerned in the workplace. That means they can be held accountable for improper conduct too. In this way the importance of employees taking responsibility themselves is also being emphasised. Although, when it comes to enforcement, attention is generally focused on the employer, there is also guidance for situations in which employees intentionally and seriously fail to comply in the workplace with the desired measures and arrangements aimed at combating the spread of the coronavirus.

Level of the fine

The administrative fine that can be imposed on the employer is € 3,000. The maximum fine for an employee amounts to € 450. These fines are based on the Policy Guidelines on the Imposition of Fines under Working Conditions Legislation.

9.5 Employees working across the border

As a result of the coronavirus crisis, it is not uncommon for employees to be working or to have carried out work in a country other than their normal country of employment. In accordance with the general rules, in such cases the country where tax and/or national insurance contributions are normally payable may change. Various countries have agreed that until at least 31 March 2022 the obligation to pay tax or contributions will not be transferred. These arrangements may be extended, depending on the coronavirus measures in place. It is therefore a good idea to keep an eye on the relevant arrangements and the periods for which they apply.

9.6 Employee on holiday in spite of advice to the contrary: who continues paying his/her salary?

At present travelling abroad is strongly discouraged, but what if one of your employees goes on holiday to a yellow-list country? What does it mean if this employee becomes sick or has to self-isolate while on holiday?

Do you want to find out which countries are on the yellow, orange and red lists? Visit the 'Nederland wereldwijd' website, a Dutch government site, to find out the current status (www.nederlandwereldwijd.nl). However, as was the case last winter, the government advises staying at home as far as possible this winter too.

Sick in a yellow-list country?

If an employee becomes sick during a stay in a yellow-list country – irrespective of whether he/she is suffering from an ordinary illness or coronavirus – he/she must call in sick and is then considered to be on sick leave, which means there is an obligation to make continued salary payments.

Repatriation from a yellow-list country

The government is no longer repatriating people as a result of the coronavirus. If someone travels to a yellow-list region, they do so at their own risk. It is also important to check the terms and conditions of the health insurance policy to find out what is reimbursed.

Travelling to an orange-list country

Travel to an orange-list country is only permitted for necessary journeys. Holidays to orange-list countries are not considered necessary journeys.

Repatriation from an orange-list country

The government will therefore also not assist with repatriation from an orange-list country. Tour operators must, however, provide such assistance. They are obliged to look after travellers who have booked a package holiday with them. This means that if the country in question moves from the yellow to the orange list, people must be repatriated. The above only applies to package holidays offered by tour operators and not, therefore, to holidays that you have booked yourself.

Self-isolation: from yellow to orange list

If a country is moved from the yellow to the orange list while an employee is on holiday, meaning that he/she has to self-isolate while on holiday or after returning home, in principle this is outside the employee's control. That may not be the case if there were prior indications that the country could be moving from the yellow to the orange list.

Self-isolation

If an employee travels to a country outside the EU/Schengen area that is also considered an area of very high risk, he/she must self-isolate at home for 10 days. If he/she tests negative for coronavirus at the municipal health service (GGD) on day 5, the duration of the self-isolation period can be reduced. Employees who make the conscious decision to go on holiday to a country outside the EU/Schengen area that is also considered an area of very high risk therefore know that they will have to self-isolate on their return. If they can work from home, that is not a problem. If that is not the case, however, they will be unable to work. As they were aware of this in advance, it can be argued that the cause of their inability to work was within their control. This may mean that they are not entitled to payment of their salary during their period of self-isolation. Another option is for employees to take holiday while self-isolating.

Inform your employees in writing in advance about what the consequences will be if they go on holiday to an orange-list country and then have to self-isolate. They will then know where they stand beforehand and can adapt their behaviour accordingly.

Please note:

From 1 February the international QR code will only remain valid if you have had a booster jab within nine months of your last coronavirus vaccine dose.

9.7 Impaired working relationship due to enforced pay cut as a result of coronavirus crisis

Are you an employer who wants to implement a pay cut as a result of the coronavirus crisis? If so, your employees must agree to this voluntarily. You may not enforce this salary proposal in any way by putting pressure on your staff through other measures.

Dismissed from the team

There is a case of one employer who had asked its employees to agree to a 25% pay cut in connection with the coronavirus crisis. One of the employees did not agree to this. He not only received an official warning from his employer, but was also dismissed from the team.

Pay cut implemented

The proposed pay cut was also implemented without the employee in question having given his approval. Almost all of his colleagues agreed to the pay cut. The employment contract was due to run until 7 January 2021. In the end the working relationship had become impaired to such an extent that the employee approached the subdistrict court to apply for termination of the employment contract.

Punishment

The court described the employer's actions as punishment for the fact that the employee had not agreed to the pay cut and ruled that the employer was guilty of serious imputable acts by 'shutting out' the employee. The employment contract was terminated on 1 August 2020. The employer has been ordered to make a transition payment and pay fair compensation for its serious imputable acts. In addition, it has to pay the employee's full salary, plus the statutory interest and a statutory increase of 20%.

Level of fair compensation and transition payment

When the level of fair compensation is determined the remaining term of the contract should normally be taken as a basis. As the employee worked in the IT sector, the subdistrict court considered it likely that he would be able to find other work within two months, as a result of which the fair compensation was limited to a loss of two months' pay (in this case approx. € 20,000).

The gross transition payment of € 6,725.66 may be deducted from this, given that it compensates for part of the damage. This results in a gross rounded amount of € 13,275.

If you want to make agreements about pay cuts with your employees, it is important to confirm them and the employee's consent in writing. You can also make agreements on the temporary exchange of salary components, if any applicable collective labour agreement allows this.

10 OTHER CORONAVIRUS NEWS FOR EMPLOYERS

10.1 Deferment of payments

Various entrepreneurs are experiencing financial difficulties as a result of the coronavirus crisis. Many have been unable to pay their payroll taxes, VAT and/or company pension fund contributions by the payment deadline for the period that has now ended.

The deferment of tax payments for entrepreneurs was initially due to end on 1 October 2021, but has been extended until 31 March 2022.

What does this mean?

Entrepreneurs who are already taking advantage of the deferment of payments do not need to take any action. Those who have not yet made use of this facility or have already settled their tax debt in full can apply for a deferment of payments until 31 March 2022.

Please note:

The deferment relates to taxes with a payment deadline before 1 April 2022.

All taxes for which a return is filed on or after 1 April 2022 must be paid on time. Entrepreneurs must also settle any tax assessments with a payment deadline on or after 1 April 2022.

Exceptional deferment

Until 31 March 2022 an exceptional deferment is possible for:

- income tax
- corporation tax
- payroll tax
- VAT
- gambling tax
- excise duties
- consumption tax on non-alcoholic drinks
- insurance tax
- the landlord levy
- energy tax
- other environmental taxes

Please note:

Entrepreneurs who are subject to corporation tax no longer have to submit notification of their inability to pay payroll taxes and VAT if they have not paid these or have not paid them on time. It is, however, important that they apply for a deferment of payments.

Entrepreneurs must continue to submit their tax return on time, as they can only apply for a deferment of payments after they have received an assessment or additional assessment from the Tax and Customs Administration.

10.2 One deferment application

After submitting the initial deferment application the entrepreneur will immediately be granted a three-month deferment of payments. This application only has to be submitted once for all assessments relating to income tax, health insurance contributions, corporation tax, payroll taxes and VAT. If the entrepreneur needs to apply for a deferment of payments for other taxes, this must be done separately.

10.3 Generous payment scheme

From 1 April 2022 all assessments that are imposed must be settled on time, irrespective of the period to which they relate. It is important to file your returns and settle your assessments promptly with effect from 1 April 2022. If you do so, you will be entitled to take advantage of a generous payment scheme.

Accrued debts will only have to be repaid from 1 October 2022, instead of 1 October 2021. Entrepreneurs will be given five years to repay their tax debts.

Please note:
The government has decided that a generic waiver of tax debts will not be granted.

10.4 What if you experience payment problems from 1 April 2022?

Once the deferment period has expired, any new obligations relating to the filing of returns and the payment of taxes will have to be fulfilled. If this is not the case, the deferment may be withdrawn and it will not be possible to take advantage of the staggered payment scheme.

If the deferment of payments granted as a result of the coronavirus crisis ends and new taxes due cannot be paid on time, a deferment of payments can be applied for or a payment scheme can be agreed under the ordinary rules. In this case too it is important to give prompt notice of any inability to pay.

10.5 Late payment interest

As a result of the coronavirus crisis, the rate of late payment interest has been temporarily reduced to 0.01%. This low rate will be maintained until 1 July 2022. From 1 July 2022 onwards it will rise to 1%, after which it will increase incrementally to 4% from 1 January 2024.

To avoid having to pay tax interest, companies can always repay (part of) their tax debt earlier, of course.

10.6 Pension contributions

It is not only the Tax and Customs Administration that is trying to alleviate the financial distress that entrepreneurs are experiencing as a result of the coronavirus crisis. The same can be said of pension administrators. They are doing so in a variety of ways.

We therefore advise entrepreneurs experiencing acute problems with the payment of their pension contributions to consult the website of their pension administrator and, if necessary, to contact their pension fund, insurer, contributory pension institution (PPI) or financial advisor.

If you are unable to pay your contributions and are considering giving notice of inability to pay, always submit this notification in writing. Doing so by telephone is not sufficient.

10.7 G-account

If an employer works with an employment agency or subcontractor, part of the payment will often be deposited in a g-account. In this way the employer is indemnified against any taxes that the employment agency or contractor does not pay. Such an arrangement is usually less attractive for the employment agency or contractor, as it is harder for them to access their money.

However, the advice is to continue making these payments into the g-account as normal. If the company the employer is working with can no longer pay its payroll taxes, the risk then remains limited. At present, the rules on withdrawing funds from the g-account have been relaxed, which means there is less of a disadvantage for the employment agency or contractor. This relaxation of the rules will end on 1 January 2023.

10.8 'NL leert door' programme | free training

For 2022 the government has again made funds available for the retraining and development of workers. In this way it wants to help people improve their chances of finding new work. Free online training activities are therefore available and soon it will once again be possible to follow a development programme.

Free online training

The career or development advice forms part of the programme 'NL leert door' ('The Netherlands keeps learning'), which is linked to the coronavirus crisis. This programme aims to help employees, self-employed persons and jobseekers to prepare for changes on the labour market. Through 'NL leert door' the government is not only financing development advice, but also free online training.

Some 50,000 to 80,000 pathways had been previously made available, with another 45,000 or so added at the end of 2021. It is possible to take advantage of these free (online) training pathways until the end of 2022. This can be done without intervention on the part of the sector or an employer. For an overview of all training options visit the website HoewerktNederland.nl.

Introduction of STAP budget

On 1 March 2022 the STAP budget (learning and development budget intended to enhance a person's labour market position) will be introduced as a successor to the study allowance tax deduction, which was abolished on 1 January 2022. The STAP budget will give everyone aged between 18 and state-pension age and who has a link to the Dutch labour market the opportunity to take advantage of training to support their own development and long-term employability. By developing a public learning and development budget, a future-proof scheme can be put in place that will make it possible to respond to developments on the labour market. The STAP budget forms part of the government's Lifelong Development measures. The UWV will be responsible for implementing the scheme and is developing a digital portal.

Anyone wanting to claim the STAP budget can only do so if he/she has no other way of funding the desired training. For this purpose the UWV will examine the criteria that existing educational institutions employ to qualify for a subsidy for different types of education. Many young people under the age of 30 will often still be able to take advantage of study grants and will therefore not be entitled to the STAP budget.

An individual can apply for the STAP budget to finance a training activity that he/she wishes to follow. The budget amounts to a maximum of € 1,000 per year. Only one application per year can be submitted.

The training activities that are eligible for a subsidy are included in a training register. The Education Executive Agency ('DUO') will act as administrator and technical manager of the training register. Payment will be made to the training provider once the person concerned has submitted proof of registration with an accredited STAP provider.

10.9 Information on payments to third parties from 2022 must include BSN

The legislation relating to payments to third parties has changed with effect from 2022. In addition to the information that already had to be provided, from now on it is also necessary to notify the Tax and Customs Administration of the BSN (citizen service number) of the third party you have hired in.

Payment to third parties

Payments to third parties are payments made to persons who:

- are not employed by the party who has ordered the work;
- are not an entrepreneur;
- do not issue a VAT invoice themselves.

Examples include people who give talks relating to their specialist field and freelancers such as cleaners.

Providing information

The information you have to provide is as follows:

- the name and address of the third party engaged;
- his/her date of birth;
- his/her BSN (citizen service number);
- the amounts paid, including expense allowances.

Payments in 2022

The change relating to payments to third parties takes effect from 2022, but amounts paid in that year do not have to be notified to the Tax and Customs Administration until the first month of 2023. The final deadline for submission is 31 January 2023. It is no longer possible to provide these details via the Tax and Customs Administration's information portal. The procedure to be used to submit them digitally is yet to be announced.