LABOUR AND LABOUR CONTRACTS

KNOW YOUR RIGHTS AND OBLIGATIONS

Advisory Handbook 2025

The rules for employment contracts are subject to frequent updates. Are you still up to date? For those who might have lost track, here is a summary of the most important changes:

1. **Be mindful of your notification requirement and avoid compensation for failure to provide notification.**
2. **The current chain regulation (rules for consecutive temporary contracts).**
3. **Prohibition of probation periods for short temporary contracts and subsequent contracts.**
4. **Prohibition of non-competition clauses in temporary contracts.**
5. **Obligation to continue salary payment for on-call workers.**
6. **Strengthening the rights of payroll employees.**

1. BE MINDFUL OF YOUR NOTIFICATION REQUIREMENT AND AVOID COMPENSATION FOR FAILURE TO PROVIDE NOTIFICATION

For temporary contracts with a duration of six months or more, you must inform the employee in writing (via letter, email, or other written format), at least one month before the agreed end date, whether you wish to extend the contract and, if so, under what conditions. This requirement ensures that the employee knows in good time what to expect and can, if necessary, begin looking for a new position.

Tip!
The notification requirement does not apply to contracts shorter than six months or contracts without a specified end date (e.g., project-based contracts).

If you inform the employee that you wish to extend the temporary employment contract but do not specify the conditions, the new temporary contract will be identical to the previous one. The new contract will have the same duration but will not exceed one year.

Compensation for Failure to Provide Notification

If you do not comply with the requirement to provide notice, the employee is entitled to one month's gross salary. If you notify late, you must pay compensation proportionate to the delay. The temporary contract will still end on the agreed date.

In your payroll administration, you must record the compensation for late notification as wages from previous employment, even if the compensation is claimed while the employment contract continues. The basis for calculating the compensation is the basic hourly or piece wage. Overtime or shift allowances, holiday pay, end-of-year bonuses, and profit-sharing are not included.

To determine the amount of compensation for late notification, consider the number of calendar days in the month when notification should have occurred. For example, if the month has 31 days and you notify two days late, you owe compensation equivalent to 2/31 of the salary.

Important!
The right to compensation for failure to provide notification expires if the employee does not request it within three months of the date the notification obligation arose. No compensation is due in cases of bankruptcy, suspension of payments, or the application of the debt rescheduling scheme for natural persons.

Important!
The Supreme Court has ruled that notification must always be in writing, even if the employee has already been verbally informed that their contract will not be extended.

2. THE CURRENT CHAIN REGULATION (RULES FOR CONSECUTIVE TEMPORARY CONTRACTS)

The chain regulation defines when consecutive temporary contracts transition into a permanent contract. Employers may offer a maximum of three temporary contracts to an employee within 36 months. If there is an interval of more than six months between contracts, they are no longer considered consecutive.

Important!
Sector-specific deviations are allowed, and the interruption can be shortened if the nature of the work requires it, such as for seasonal work. This option now includes other recurring temporary work that can be performed for a maximum of nine months if specified in collective labour agreements (CAOs).

A permanent contract is created:

- After more than three consecutive temporary contracts.
- When using consecutive temporary contracts for more than 36 months, with intervals of six months or less counting as consecutive.

Under strict conditions in a CAO, deviations in the number of contracts or total duration are allowed, but no more than six contracts within a four-year period.

It is permitted to reduce the standard interruption period of up to six months to a maximum of three months in a collective labour agreement (CAO) for roles:

- Where the work is seasonal due to climatic or natural conditions; and
- Where this work can be performed for no more than nine months per year (it must genuinely be seasonal work).

This provides employers who work with seasonal employees with greater flexibility in using temporary employment contracts.

If you exceed the maximum number of temporary contracts or the maximum duration, you must offer the employee a permanent contract if you wish to continue the employment relationship.

Tip!
The chain regulation does not apply to employees under 18 years old with a small contract (12 hours or less).

Tip!
For AOW-eligible employees, you can agree in writing to provide up to six temporary contracts within four years. After more than six temporary contracts or four years, the contract automatically becomes permanent. Only the temporary employment contracts entered into after you have reached the AOW (state pension) age count towards the chain.

The government plans to extend the interruption period of the chain regulation from six months to five years. An online consultation has already been conducted, and the relevant bill is expected to be submitted to the House of Representatives in 2025.

3. PROHIBITION OF PROBATION PERIOD IN SHORT TEMPORARY CONTRACTS AND SUBSEQUENT CONTRACTS

It is prohibited to include a probation period in temporary employment contracts of six months or less. It is also prohibited in any subsequent contract.

Tip!
A new probation period with the current employer is allowed if the employee is offered a new position with fundamentally different skills and responsibilities, and the new contract exceeds six months.

Duration of Probation Period by Contract Length

Duration of Temporary Contract	Maximum Probation Period
0 to 6 months	Not applicable
More than 6 months, but less than 2 years	1 month (extendable to 2 months in a CAO)
2 years or longer	2 months

4. PROHIBITION OF NON-COMPETITION CLAUSE IN TEMPORARY CONTRACTS

A non-competition or non-solicitation clause in a temporary contract is prohibited. This is only permitted if there are compelling business interests, such as the protection of specific or confidential company information. If you explicitly justify this compelling business interest in the fixed-term employment contract, a non-competition or non-solicitation clause can still be allowed. For the non-competition clause to be effective, the compelling business interests must exist both at the time of agreeing to the clause and when you wish to enforce it.

Important!
As an employer, you cannot derive any rights from a non-competition or non-solicitation clause if there is evidence of serious misconduct or negligence on your part.

The Supreme Court has ruled that a non-competition clause is not intended to bind employees.

The government has announced plans to modernise the non-competition clause. The proposed changes include:

- A statutory limit on the duration of the non-competition clause to a maximum of one year after the end of the employment contract.
- Specifying and justifying the geographical scope of the non-competition clause.
- A mandatory requirement to provide a justification of the 'compelling business interest' in an open-ended employment contract.
- A mandatory advance payment of 50% of the monthly salary if the employer wishes to enforce the non-competition clause. If the employer does not pay the compensation, they cannot enforce the clause. For example, if the employer wants to enforce the non-competition clause for 12 months, they must pay six months' salary in compensation by the last day of employment. If the employer fails to pay on time, the clause will not apply, but the employer will still be obligated to pay the compensation.
- At least one month before the end of the employment contract, the employer must inform the employee whether they wish to enforce the non-competition clause and, if so, for how long. The corresponding compensation must be paid for that duration.

An online consultation was held in March 2024. The proposed legislation is expected to be submitted to the House of Representatives in 2025.

5. LOONDOORBETALINGSVERPLICHTING BIJ OPROEPKRACHTEN

If you employ on-call workers, such as through a zero-hours contract or a minimum-max contract, you are generally required to continue paying wages if the worker cannot work due to reasons for which you are responsible. This includes situations where you do not call the worker despite available work. The worker is also entitled to pay for the guaranteed hours (the minimum number of hours agreed upon). This means that each time the worker is called, they are entitled to at least three hours of pay, even if they only work one hour.

In the employment contract, you may exclude the wage payment obligation for the first six months, but this must be done in writing. However, you cannot exclude the right to pay for the guaranteed hours. After the first six months, the wage payment obligation can only be excluded in a CAO for roles with 'incidental nature' and without a 'fixed scope'. Examples include substitute workers and temporary agency workers.

Minimum Four Days' Notice for On-Call Workers!

The government aims to prevent zero-hours contracts from leading to permanent availability where the nature of the work does not require it. In some sectors, there are undesirable situations where unnecessary availability affects workers' ability to accept other (part-time) jobs.

To address this, it is legally required that you, as an employer, must provide on-call workers with at least four days' written or electronic notice. This period is calculated in calendar days, excluding the scheduled workday. The four-day notice period can be reduced to a minimum of 24 hours in a CAO.

If you withdraw the call in writing or electronically within this period, the on-call worker is still entitled to payment for the scheduled work.

Fixed employment hours offer for on-call workers

After twelve months of employment with an on-call worker, you must provide a written or electronic offer within one month, based on the average number of hours worked over the past twelve months. This is known as a 'fixed employment hours offer'. This ensures that an on-call worker is not indefinitely retained on an on-call basis.

If the offer is accepted, the fixed working hours must take effect at the latest on the first day of the 15th month. An earlier start is permitted. The on-call worker is free to accept or decline the offer.

From 1 August 2022, there is an additional requirement for employers of on-call workers whose working hours are largely unpredictable. If most of the hours are unpredictable, the employee can only be required to work during the hours specified in writing in the employment contract, including:

- The specified variable hours;
- The guaranteed number of paid hours;
- The pay rate for hours worked beyond the guaranteed hours;
- The days and times the employee can be required to work (reference hours and days);
- The notice period for calling an employee (four days for on-call contracts).

In such cases, you must clearly specify in the employment contract the days and times the employee can be called to prevent them from refusing a call.

Government plans for on-call contracts

The government intends to replace on-call contracts with fixed base contracts. These contracts will specify a minimum number of hours that the employee is scheduled to work. If the employee consistently works more than this, you must offer an adjustment to the contract hours after one year. This ensures that employees always know their minimum income and working hours.

Students and school pupils can continue to work on an on-call basis, provided it is a part-time job of no more than sixteen hours per week, they are under 18, or they are enrolled in an educational institution. For other workers, flexibility is possible through the base contract or, for example, an annual hours system. The base contract has a range of 130%. This means that if a one-hour contract is agreed, the employee can be scheduled for 1.3 hours.

6. STRENGTHENING THE RIGHTS OF PAYROLL EMPLOYEES

Payroll employees are individuals who are legally employed by a payroll company but perform their duties for your business as the client. They are provided to you through a payroll agreement.

Since 1 January 2020, the legal rights of payroll employees have been strengthened. Although a payroll agreement is considered a special form of a temporary agency work agreement, the 'relaxed' employment law regime no longer applies. This means:

- The exclusion of wage payment is limited to a maximum of 26 weeks.
- The standard chain regulation applies.

To qualify as a payroll agreement, the employee must be exclusively provided to the client, and the payroll employer must not be involved in recruitment and selection. Payroll is intended as a service to relieve employers, not as a means of competing on employment terms.

Pension Obligations

From 1 January 2021, the payroll employer must provide a pension scheme for payroll employees that is equivalent to that of a permanent employee in a similar role within the same company or sector. This is considered adequate if the payroll employee is included in the client's pension fund. If this is not possible, the payroll employer must provide an equivalent scheme.

In practice, this means that the payroll employer must offer a pension scheme that includes old-age and survivor's pension benefits without any waiting period. For 2025, the standard premium for an adequate pension scheme for payroll employees is set at 15.0%, a reduction of 0.4% from the 2024 premium (15.4%). This percentage is aligned with the average employer's contribution in the Netherlands and is adjusted annually.

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