



TRANSITIONAL ALLOWANCE IN CASE OF DISMISSAL AND OTHER ALLOWANCES

Advisory Handbook 2025



If you wish to terminate an employment contract with an employee, you are likely required to pay a transitional allowance. When is this the case? What are the relevant rules? And what is the amount of this allowance?

TRANSITIONAL ALLOWANCE

When are you required to pay a transitional allowance? You must pay a transitional allowance when the decision to terminate the employment contract is initiated by you as the employer. Termination of the employment contract on the employer's initiative occurs in the following situations:

- Termination by the employer after obtaining permission from the Dutch Employee Insurance Agency (UWV).
- Dissolution of the employment contract by the court.
- Termination by the employer with the employee's consent (not to be confused with a termination agreement).
- Non-renewal of a fixed-term employment contract.

WHEN IS A TRANSITIONAL ALLOWANCE NOT REQUIRED?

You are not obliged to pay a transitional allowance if the employment contract ends under the following conditions:

- Before your employee turns 18 years old, and they have worked an average of no more than 12 hours per week (auxiliary workers).
- Upon the employee reaching the statutory retirement age.
- As a result of serious culpable behaviour or misconduct by the employee.

SERIOUS CULPABILITY

An employee is not entitled to a transitional allowance in the event of dismissal due to their serious culpability. Examples include:

- Theft, embezzlement, or fraud.
- Breach of trust.
- Repeated failure to comply with sick leave control regulations.
- Frequent tardiness.
- Manipulation of production figures.

Note!

If the employer is found to be seriously at fault, the employee is entitled to a transitional allowance and may also be eligible for a fair compensation determined by the court. This may apply in cases of discrimination, (sexual) harassment by the employer, or gross negligence in fulfilling reintegration obligations.

A transitional allowance is also not due if:

- You have been declared bankrupt.
- Suspension of payments has been granted to you.
- The Dutch Debt Restructuring for Natural Persons Act (Wsnp) applies to you.

This prevents the UWV, which takes over the employer's wage payment obligations under the wage guarantee scheme of the Unemployment Insurance Act (WW) in such cases, from being required to pay these transitional allowances. However, if there is a restart after bankruptcy, the succeeding employer must include the years of service prior to the bankruptcy in the calculation of the transitional allowance.

No Right to Transitional Allowance in Case of Income Reduction Due to Reassignment

In the SIPOR ruling of April 2020, the Dutch Supreme Court determined that there is no entitlement to a partial transitional allowance in the event of an income reduction due to reassignment to a lower-paid position. Reassignment to another role cannot be equated with a partial termination of the employment contract. Consequently, a salary reduction resulting from reassignment does not entitle the employee to a transitional allowance. Such reassignment may occur in the context of a reorganisation or after prolonged illness.

CALCULATING THE TRANSITIONAL ALLOWANCE

Since 2020, the transitional allowance is calculated at one-third of the gross monthly salary per year of service. For incomplete years, the allowance is calculated proportionately. The formula is as follows:

$$(\text{Gross Salary}/\text{Monthly Salary}) \times ((1/3 \times \text{Monthly Salary})/12)$$

In 2025, the maximum transitional allowance is €98,000 gross or one year's salary if that is higher. This amount is indexed annually. In cases of serious employer misconduct, the subdistrict court may award an additional fair compensation to the employee.

Tip!

You can determine whether an employee is entitled to a transitional allowance and the amount using the calculator at rekenhulptransitievergoeding.nl.

Example

An employee with a gross all-in salary of €3,000 has a right to a transitional allowance. The employee's employment contract, lasting 9 years and 4 months, is terminated by the employer on 01/07/2025. The calculation is as follows:

- $9 \times (1/3 \times €3,000) = €9,000$
- $(€12,000 / €3,000) \times (€1,000 / 12) = 4 \times €83.33 = €333.33$
- Total: $€9,000 + €333.33 = €9,333.33$

Note!

Only periods during which the employee actually worked are counted when determining the amount of the transitional allowance.

Important!

If the court terminates the employment contract on the so-called cumulative ground (also known as the i-ground), it may increase the transitional allowance by up to 50%. This is in addition to the existing option of awarding fair compensation.

WHAT ARE FIXED AND VARIABLE SALARY COMPONENTS?

Fixed Salary Components

These are components that do not depend on employee performance or company results, such as shift allowances and overtime pay. They must be agreed upon in writing. Acquired rights do not count unless they are set out in writing.

Variable Salary Components

These depend on the company's results and/or the employee's performance, such as bonuses, profit-sharing, and year-end bonuses. These are only counted if they are agreed upon in writing.

WHAT CAN YOU DEDUCT?

From the transitional allowance payable, you can deduct:

- Any previously paid transitional allowance for the termination of a prior employment contract.
- Transition costs, such as outplacement costs, and wages for the extended notice period, provided the employee is exempted from work during this period.
- Employability costs, such as training costs not specifically related to the employee's position but promoting broader employability within or outside the organisation, provided these are agreed upon in writing in advance.

Note!

Under successive employment, you cannot deduct employability costs incurred by your predecessor from the transitional allowance.

Important!

Costs incurred for fulfilling the employee's current role cannot be deducted.

The transitional allowance is classified as wages from previous employment, subject to the green tax table. This means no employment tax credit is applied, as it is intended for active workers. The transitional allowance is not offset against any subsequent benefits.

SLEEPING EMPLOYMENT CONTRACTS

You must pay the transitional allowance if you wish to terminate an employment contract after two years of illness and apply for dismissal at the UWV. Some employers keep a contract 'dormant' to avoid paying the transitional allowance upon dismissal of a sick employee.

In November 2019, the Supreme Court ruled in the Xella ruling that in the case of termination due to long-term incapacity for work, employers are obliged, in good faith, to agree to an employee's proposal for termination by mutual consent, with payment of the statutory transitional allowance.

EXCEPTIONS TO THE SUPREME COURT'S POSITION

An exception to this principle applies if the employer has a legitimate interest in maintaining the employment contract. Such an interest may exist in the case of realistic reintegration opportunities for the employee. Furthermore, if the employer demonstrates that pre-financing the transitional allowance

would result in severe financial problems, the court may decide that payment to the employee can be made in instalments.

The amount of the transitional allowance should not be linked to the amount the employer can claim back from the UWV through the compensation scheme. The UWV compensates the transitional allowance calculated up to the end of the standard waiting period of 104 weeks.

THE PRO-RATA TRANSITIONAL ALLOWANCE: WHAT IS IT AND WHEN DOES IT APPLY?

Under the Kolom ruling of September 2018 by the Supreme Court, an employee is entitled to a pro-rata transitional allowance in the case of a substantial and structural reduction in working hours. This refers to a reduction of working hours by at least 20%, which is expected to be permanent. If the employment contract is adjusted and the conditions are met, the employee has the right to a pro-rata transitional allowance, which may be partially compensated by the UWV.

COMPENSATION FOR TRANSITIONAL ALLOWANCE

If you pay a transitional allowance due to the termination of employment resulting from long-term incapacity for work (after the expiry of the two-year dismissal prohibition or longer), you as an employer may be eligible for compensation from the UWV for the transitional allowance paid.

Note!

The UWV will not provide compensation for the period during which you deliberately kept the employment contract dormant.

The transitional allowance, in the case of termination after obtaining a dismissal permit from the UWV, must be calculated up to the end date of the employment contract, based on the wage applicable at that time if the employee had not become ill. This means that part of the transitional allowance paid, namely the portion relating to the period after the end of the waiting period, will not be compensated.

SUBMITTING A COMPENSATION REQUEST

You can submit a digital application through the employer portal of the UWV. You will need eHerkenning (digital identification for businesses). The service can be found under 'Submit Dismissal Application'. The UWV will carefully review your application and verify the following through supporting documents:

- The entitlement to the transitional allowance.
- The amount of the transitional allowance.
- The calculation and payment of the transitional allowance.

The UWV will require various documents, such as:

- Proof of the existence of an employment contract.
- Proof of the end of the employment contract due to illness (termination letter, termination agreement, subdistrict court decision).
- Proof of the amount of the transitional allowance.
- Proof of payment of this allowance (bank statement).

You must advance the payment of the transitional allowance. For the payment of profit distributions and bonuses, additional documentation may be required.

COMPENSATION FOR 'DEEP SLEEPERS'

There has been a discussion regarding the right to compensation for the transitional allowance for 'deep sleepers'. 'Deep sleepers' are those for whom the waiting period ended before 01/07/2015, as well as the possibility of dismissal. Additionally, there are semi-deep sleepers and delayed sleepers:

- Semi-Deep Sleepers: The waiting period expired before 01/07/2015, but the right to dismissal only arose after 01/07/2015.
- Delayed Sleepers: The waiting period expired after 01/07/2015 due to an extended wage payment obligation.

The Central Appeals Tribunal has now ruled that compensation for the transitional allowance may also exist for deep sleepers and semi-deep sleepers (provided all other conditions are met). The key factor is whether the employer terminated the employment contract on or after 01/07/2015. It is irrelevant whether the right to terminate arose before, on, or after that date.

The Supreme Court has also determined that employers are required to cooperate with a request from an employee to terminate a dormant employment contract with payment of the transitional allowance for semi-deep sleepers and deep sleepers, provided the request was submitted on or after 20/07/2018 (Xella ruling).

Note!

It is not permissible to make a final discharge a condition of the Xella allowance. In early 2022, the Supreme Court ruled that an employer does not act as a good employer if they are only willing to accept a proposal for termination on the condition that the employee grants them final discharge for any other claims.

DEVELOPMENTS IN TRANSITIONAL ALLOWANCE COMPENSATION

The government intends to limit compensation for the transitional allowance paid after the expiry of the dismissal prohibition due to illness to small employers. Small employers are defined as those with a total wage bill of no more than 25 times the average wage subject to social security contributions per calendar year two years earlier. In 2025, this would apply to employers with a total wage bill below €990,000 in 2023. This follows from the legislative proposal "Limitation of the Transitional Allowance Compensation Scheme for Dismissal Due to Long-Term Incapacity for Work to Small Employers". This proposal is part of the government programme, which stipulates that compensation for the transitional allowance after dismissal due to long-term incapacity for work will be limited to small employers. Public consultation on this proposal was held from 19/02/2025 to 19/03/2025.

The compensation scheme aims to prevent employers from keeping employment contracts dormant after two years of illness (after which wage payment obligations usually cease). As indicated, the Supreme Court ruled in the Xella ruling that employers are required to cooperate in the termination of the employment contract due to long-term incapacity for work with the payment of the transitional

allowance. However, the Supreme Court explicitly pointed out the compensation scheme. For employers, this presents fewer problems due to the compensation provided by the UWV.

Under the new legislative proposal, the current compensation for (medium and large) employers will end. This raises the question of whether these employers will again start keeping employment contracts dormant. This is likely to result in new legal proceedings.

The intended implementation date of the amended compensation scheme is 01/07/2026.

COMPENSATION SCHEME IN THE EVENT OF RETIREMENT OR DEATH

If you are a small employer, you may qualify for compensation for transitional allowances paid to your employees in the event of retirement or death. You are considered a small employer if, on 01 January of the year of termination, you employ fewer than 25 employees. For calculating the number of employees, it does not matter whether the employee has a temporary or permanent contract.

Compensation may be granted for allowances you were obliged to pay as an employer:

- In connection with the termination of employment contracts in the six months before the request for permission to terminate or dissolve the employment contract.
- In connection with the termination of employment contracts in the nine months following the granted permission or approval of the request for dissolution.

It has now become clear that the promised compensation scheme in connection with business termination due to illness or incapacity will not be implemented.

If the above legislative proposal to limit the compensation of the transitional allowance is introduced, the determination of eligibility for small employers will be based on the wage subject to contributions two years earlier, rather than on the number of employees.

OTHER ALLOWANCES

Notice compensation

You are required to inform an employee with a fixed-term employment contract of six months or longer at least one month before the end of the contract, in writing, whether you intend to extend the contract or not. If you choose to extend it, you must also specify the conditions under which the extension will take place. This process is known as notice. If you fail to observe this notice period, you are liable to pay notice compensation.

Important!

A verbal notice does not suffice.

The notice compensation is equivalent to one gross monthly salary without additional benefits, such as holiday allowance or year-end bonuses. In the case of late notice, you are required to pay pro-rata compensation. The calculation is based on the last month of the employment contract. If that month has 31 days and you give notice two days late, the compensation owed is $\frac{2}{31}$ of the monthly salary. If the month has 28 days, the compensation would be $\frac{2}{28}$ of that amount.

Note!

The notice compensation is not payable in the event of insolvency, such as bankruptcy, suspension of payments, or the application of the Dutch Debt Restructuring for Natural Persons Act (Wsnp). This means the compensation is not covered by the wage guarantee scheme of the Unemployment Insurance Act (WW), and the UWV is not liable to pay this compensation in the event of the employer's insolvency. The notice compensation is considered wages from previous employment and is subject to the green tax table. This means that employment tax credit does not apply, and no employee insurance premiums are deducted.

Fixed compensation for damages

Failure to observe the correct notice period, causing the employment relationship to end too early – referred to as irregular termination – obliges you to compensate for the salary corresponding to the unobserved notice period. It is irrelevant whether the employee actually suffers a loss. This is known as fixed compensation for damages. Conversion, which means converting an irregular termination into a regular one, is not possible.

Fair compensation

Fair compensation can only be awarded by the court. This may apply in cases of serious misconduct on the part of the employer. Examples of serious misconduct include:

- Sexual harassment.
- Discrimination.
- Neglecting reintegration obligations.
- Inadequate care for working conditions.
- Stating a false reason for dismissal.
- Urgent reasons for dismissal.
- A disturbed working relationship due to the employer offering little to no improvement process.

There is no upper limit on the amount of fair compensation. However, it is intended as a 'last resort', and courts are expected to use it sparingly. Fair compensation may also apply in other situations.

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