DISMISSAL UNDER DUTCH LAW

Advisory Handbook 2025

This advisory handbook provides you with the current state of dismissal law. It covers when you may dismiss an employee, the route you must follow, and what you must document.

The following topics are addressed:

- Dismissal Routes
- Notice Periods
- Prohibitions on Dismissal
- Termination Agreement
- Resolutive Condition
- Immediate Dismissal
- Employee's Death

DISMISSAL ROUTE

As an employer, which route should you take to terminate an employee's employment contract? The UWV (Employee Insurance Agency) is the competent authority in cases of:

- Dismissal for economic reasons; and
- Dismissal due to prolonged incapacity for work.

Other, more personal reasons must go through the sub-district court. At the sub-district court, the following reasonable grounds for dismissal apply:

- Frequent absence by the employee;
- Employee's underperformance;
- Employee's culpable actions or omissions;
- Refusal to work due to serious conscientious objections;
- Disrupted employment relationship;
- Other circumstances of such a nature that it is unreasonable to expect the employer to continue the employment contract;
- A combination of several of the above dismissal grounds (except the ground of refusal to work) which, individually, do not constitute sufficient grounds for dismissal but are such that it is unreasonable to expect the employer to continue the employment contract.

The final ground for dismissal, known as the cumulative ground or "i-ground," has been applicable since 01/01/2020.

Procedures at the UWV and the sub-district court take time. This procedure time can be fully deducted from the notice period. However, at least one month's notice must remain. In the notice of termination, the employer must state the reason for termination. Termination is only applicable after obtaining a dismissal permit from the UWV. In a termination procedure, the court determines the date on which the employment contract ends. Normally, it considers the standard notice period. However, if there is serious culpable conduct by the employee, the sub-district court may terminate the employment contract immediately.

NOTICE PERIODS

Termination is a unilateral legal action of one party towards the other. Acceptance of termination by the other party is not required.

Both the employer and employee must adhere to the specified notice periods. As a general rule, termination must take place at the end of the month. This is only different if another day is specified in a written agreement or by usage.

Important!

Failure to observe the correct notice period, resulting in the employment relationship ending too early – referred to as irregular termination – creates an obligation to pay wages for the notice period not observed. This is known as the payment of fixed compensation.

For a fixed-term contract without an interim termination clause, both parties must complete the full term. Failure to do so also results in irregular and therefore liable termination. Only if you indicate no problem with the employee's early departure will no liability for damages arise.

Note!

Even if no wages are payable during the notice period – for example, after 104 weeks when the wage payment obligation during illness ends – the fixed compensation can still be claimed, that is, wages for the notice period not observed.

The notice period the employer must observe is related to the duration of the employee's service.

Duration of Service	Notice Period
Less than 5 years	1 month
5-10 years	2 months
10-15 years	3 months
15 years or more	4 months

The length of service on the date of termination determines the notice period. For an employee wishing to terminate their employment, the standard notice period is one month. If you wish to require a longer notice period, the notice period for you is double, up to a maximum of one year. For an employee entitled to state pension (AOW), you only need to observe one month's notice, regardless of the length of service.

Example

If the notice period for the employee is three months, your notice period is six months.

A collective labour agreement (CAO) may shorten the notice period you must observe. Therefore, it is important to check the applicable CAO, as it may contain notice periods that differ from the law.

PROHIBITIONS ON DISMISSAL

You may only terminate the employment contract after obtaining permission from the UWV. However, termination is not permitted if a prohibition on dismissal applies. The UWV checks for the presence of such prohibitions when processing dismissal applications. The sub-district court is not authorised to dissolve the employment contract if a statutory prohibition on dismissal exists, unless the termination request is not based on economic reasons and is unrelated to the employee's illness or if the termination is in the employee's interest. This is only different when it is reasonably expected that the prohibition on dismissal will no longer apply within four weeks of the UWV's decision.

A distinction is made between prohibitions on dismissal "during" and "due to."

Dismissal is not permitted due to:

- Trade union membership;
- Attending meetings of the Senate (Eerste Kamer) or representative bodies of public law organisations formed through direct elections, and committees from these bodies (excluding the House of Representatives);
- Taking care and parental leave;
- Transfer of the business to a new employer;
- Refusal to work on Sundays.

The above prohibitions always apply, meaning there are no exceptions. However, the route through the sub-district court can still be followed.

Dismissal is not permitted during:

- Illness;
- Pregnancy and maternity, and maternity leave, and six weeks after the employee has resumed work after maternity leave;
- Military or substitute service;
- Membership of a works council;
- Candidacy for a works council;
- The two years following membership of a works council;
- Membership of a preparatory committee of a works council;
- Work as an expert employee under the Working Conditions Act.

These "during" prohibitions are less strict, as they do not apply if the employee has consented in writing to the termination (and has not revoked it within 14 days), the termination is during the probationary period, there is immediate dismissal, the contract is terminated due to reaching state pension (AOW) or other retirement age, or there is illness after a request for termination has been submitted.

The dismissal protection of the data protection officer is found in the General Data Protection Regulation (GDPR). The prohibition on dismissal has changed from a prohibition "during" to a prohibition "due to."

TERMINATION AGREEMENT

It is also possible for an employer and employee to mutually agree on a termination agreement in writing. The employee then has a reflection period of fourteen days. The employer must explicitly inform the employee of this in writing. If the employer fails to do so, the reflection period is extended to three weeks. Within this reflection period, the employee may terminate the termination agreement out of court without any reason. They may do so by informing the employer in writing. Only one reflection period applies per six-month period.

For an employee, it is important to protect their potential entitlement to an unemployment benefit (WW benefit) as much as possible. Therefore, the following elements must be included in the termination agreement:

- The employer has initiated the termination of the employment contract.
- The correct notice period has been applied (failure to do so is an exclusionary reason that temporarily prevents entitlement to a WW benefit).
- There is no culpability on the part of the employee.
- Possibilities for reassignment have been considered.

Other matters that may be included in a termination agreement are:

- Agreement on communication about the employee's departure to third parties.
- Confidentiality clause.
- Clause on the return of company property.
- Contribution towards legal costs (usually an amount ranging from €500 to €1,250). This does not apply if the employee is a member of a trade union or has legal expenses insurance that they can use.
- An outplacement or training allowance.
- Terms and conditions under which the employee may continue to use the company or lease car.
- Waiver or repayment of study costs.
- Amount of the severance payment, usually based on the transition payment.
- (Positive) reference letter and (positive) references to third parties.
- Removal or modification of a non-compete clause or its conversion into a relationship clause.
- Exemption from work, with or without taking remaining vacation days.
- Modification of social media details per the employment end date.
- Arrangements regarding the lapse or retention of any non-compete clause.
- Payment of final settlement, where it is advisable to explicitly list the components of the final settlement.
- A final settlement clause.

If the prohibition on dismissal during illness has lapsed after two years and it is clear that a return to work in the employee's own job or suitable alternative work within 26 weeks is not possible, a termination agreement can be reached. In that case, no notice period needs to be observed.

RESOLUTIVE CONDITION

As an employer, you cannot agree with your employee that the employment contract will end if the employee marries, enters into a registered partnership, or due to pregnancy or childbirth of the employee. Other resolutive conditions are very rarely considered permissible. An example is the temporary employment clause. This is a written clause stating that the agreement ends automatically because the temporary employment agency's placement of the temporary worker with the hirer ends at the hirer's request. If you, as the hirer, send the temporary worker back to the agency for any reason, the temporary employment contract automatically ends.

The validity of a resolutive condition in an employment contract is only accepted in exceptional cases and depends on the nature, content, and context of the condition. Judges consider it important that the condition is agreed upon in writing. The resolutive condition must be linked to an objectively determinable future event, without any further subjective assessment by you as the employer (also known as the "trigger prohibition"). For example, the requirement to provide a Certificate of Conduct (VOG) within a specified period. It is advisable to clearly record the connection between the nature and content of the job and the requirement of a VOG.

A common resolutive condition is one explicitly included in the employment contract, stating that it ends when the employee reaches the state pension (AOW) age. This is known as the retirement dismissal clause. Such a clause is permissible because there is broad societal support for the AOW age as the end of working life. This is also linked to the fact that, in principle, entitlement to an AOW benefit exists at that age.

IMMEDIATE DISMISSAL

In certain cases, you as an employer can terminate the employment contract immediately for urgent reasons, with simultaneous notification of the urgent reason. In this case, no notice period needs to be observed. This is commonly referred to as "summary dismissal." However, there are conditions for a legally valid summary dismissal:

- There must be an urgent reason.
- The urgent reason must be communicated immediately.
- The dismissal must be given immediately. A short investigation period may be permissible, for example, in cases of an investigation into sexual misconduct.

Examples of urgent reasons for you as an employer:

- The employee refuses to work.
- The employee assaults, seriously insults, or severely threatens you, your family members, or housemates.
- The employee is unsuitable for the job.

For a legally valid summary dismissal, you must apply the principle of hearing both sides. Your employee must be given the opportunity to respond to the alleged urgent reason.

Tip!
Do not act hastily in the case of a summary dismissal. Ensure you apply the principle of hearing both sides and gather sufficient facts.

In the case of summary dismissal, there must be either:

- An objective urgent reason; or
- A subjective urgent reason.

An objective urgent reason is a behaviour that no other employer would tolerate. A subjective urgent reason is behaviour by the employee that is absolutely unacceptable specifically for you as an employer, given the circumstances of the case.

If the employee disagrees with the summary dismissal and takes the matter to court (within two months of the summary dismissal), the court will assess the validity of the dismissal, taking the employee's personal circumstances into account. This means that, depending on personal circumstances such as the duration of employment, education level, any unilateral work experience, or home situation, summary dismissal may be justified for one employee and not for another.

The court may also consider any policies you have established and whether you have consistently applied them.

What if only part of the urgent reason is proven later?

The dismissal remains valid if the following conditions are met:

- The proven facts justify the dismissal.
- It is likely that the employer would have dismissed the employee based on the proven facts alone.
- It was clear to the employee that the proven facts were sufficient grounds for dismissal on urgent grounds.

If the employee initiates legal proceedings, you run the risk that the summary dismissal is not upheld, and the employment contract remains in force. In that case, you would be required to continue paying wages, plus the statutory increase (maximum 50%) and the statutory interest (currently 6%). You may also choose to use the dismissal as leverage.

Tip!
You may give the employee some time to decide whether they would prefer to resign voluntarily rather than be dismissed. This approach may increase the chances of finding a more satisfactory solution than summary dismissal.

You may also offer the employee a termination agreement. However, ensure that you only withdraw the summary dismissal once the legal reflection period has expired.

EMPLOYEE'S DEATH

If your employee passes away, you are obligated to provide a death benefit to the employee's surviving dependants. This death benefit consists of the wages the employee would have received from the day after death until one month after the date of death. Surviving dependants are defined as:

- The surviving spouse; or
- The surviving registered partner; or
- The surviving unmarried cohabiting partner; or
- Minor children; or
- The person with whom the deceased lived as part of a household and for whose living expenses they provided.

Important!

The death benefit is only paid to the surviving dependants with whom the deceased was actually living before death. In the case of judicial separation, the surviving spouse does not qualify for a death benefit.

Note!

The death benefit is paid free of tax and social security contributions (gross = net). Upon death, you may provide up to three months' salary tax-free, but you are not legally obliged to do so. Such a provision is often included in a CAO.

POSTHUMOUS WAGES

In many cases, after an employee's death, there is still entitlement to a portion of posthumous wages for the period they worked before passing away. For example, if an employee dies on August 11, there is still an entitlement to wages and accrued vacation days up to the date of death. The employer must wait to transfer this payment until it is clear who the rightful beneficiaries are. These are the heirs, who may differ from the surviving dependants.

CONTACT

For further information on this topic, please contact us. We are happy to assist you.

JELINA ABRESCH - KONING

Employment Legal Advisor
+31 6 86 843 078
Jelina.Koning@esj.nl

Disclaimer

Although the utmost care has been taken in compiling this advisory handbook, no liability is accepted for any incompleteness or inaccuracies. Due to the broad and general nature of this advisory handbook, it is not intended to provide all the information necessary for making financial decisions.