The Work and Security Act: most important changes per Juli 1, 2014

In February 2014 the Lower House adopted the Work and Security Bill. The Senate is currently examining this bill. If the Senate will adopt the bill, the following changes regarding flexible employment contracts will enter into effect as from July 1, 2014. The current law will remain in effect for employment contracts that have been entered into or extended before July 1, 2014. The obligation to notify is also applicable to fixed-term contracts that will end after August 1, 2014. The effective date of the change in the provisions on succession of fixed-term employment contracts has been moved to July 1, 2015.

Obligation to notify intention to terminate / continue a temporary contract
In principle, a fixed-term employment contract will end by operation of law, unless it has been agreed in writing that prior notification is necessary. The act will place a new obligation on employers: if an employer has concluded a temporary contract with an employee with a term of six month or longer, then at least one month before the contract ends, it must notify the employee in writing of (i) whether or not the contract will be continued , and if so (ii) on what conditions.

If the employer has failed to notify the employee in time and correctly, it is dued to the employee a compensation equal to one month salary at the maximum, also in the event that the contract will be continued. If the employer hasn't informed the employee in time, for example only one week before the employment contract will end, it is dued a pro rato compensation, being in the given example: the salary the employee is entitled to over a period of three weeks.

If the employer hasn't fully complied with the obligation to notify and the employee continues his work, the employment contract is supposed to be continued for the same period of time, however no longer than one year, on the same terms.

The employee must submit his claim for compensation within two months after the contract has ended. The obligation to notify does not apply to fixed-term contracts that do not include a fixed end date and to contracts with an temporary agency clause.

Probationary period
Probationary periods are no longer permitted in temporary contracts with a term of six months or shorter.

Non-competition clause
A non-competition clause in a fixed-term employment contract is forbidden, unless it is necessary on account of compelling business interests. If an employer wishes to include a non-competition clause in a fixed-term contract, it must substantiate the interests involved in writing, i.e. in the contract, and explain why those interests make a non-competition clause neccessary. A non-competition clause without such a motivation is void.

If the employee is of the opinion that the stated motivation isn't valid or no longer applicable, he can request the court to annul the non-competition clause. Furthermore, the employee can - as is the case under the current law - request the court to annul the clause, if he finds the clause too detrimental to him compared to the interests of the employer in retaining it.

In the debate on the Work and Security Bill, the business relation clause has thus far not come up. Because courts do consider a business relation clause as a form of non-competition clause it seems advisable to substantiate a business relation clause in the same way as a non-competition clause.

Stand-by employees / on-call contracts

According to article 7:628 of the Dutch Civil Code, employees are entitled to payment of salary in the event that they have not worked due to circumstances which, in reasonableness, should come for the account of the employer. This wage payment obligation can be excluded by the employer in writing, for the first six months of the employment contract. This is often done so in on-call and o-hours contracts: the exclusion of the obligation to continue to pay salary is the legal basis of such contracts.

Under the current law the exclusion period of six months can be extented by collective agreement without any limit. The Dutch government holds the view that this possibility encourages improper use of on-call contracts. In order to prevent such an improper use the possiblity to deviate in collective agreements from artikel 7:628 is limited: in collective agreements that enter into effect after July 1, 2014 the period of exclusion can only be extented for specific jobs designated in the collective agreement that are non-recurrent and do not have a fixed scope. Arrangements in collective agreements regarding the exclusion of the wage payment obligation that are already in force on July 1, 2014 will continue to apply for the remaining term, but only up January 1, 2016.

Furthermore, the Minister of Social Affairs and Employment can, on request of the Joint Industrial Labour Council (Stichting van de Arbeid), impose a prohibition to deviate from the obligation to continue to pay salary for specific industrial branches. The Dutch government aims for an abolition of o-hours contact in the care sector as per July 1, 2014.

An employee with an o-hours contract to whom the exclusion of the obligation to continue to pay salary is no longer applicable, is entitled to payment of salary. Relevant in that respect are the legislation and jurisprudence regarding the so-called " legal presumption on the scope of the employment contract" (article 7:610b Dutch Civil Code). On the basis of this presumption the employee can, at any time, claim to have an employment contract with a fixed scope equal to the average scope of the work he fulfilled in the last 3 months.

Employers in the care sector and in other sectors where stand-by employees form a substantial part of the work force seem to be well advised to examen the pool of stand-by employees in order to gain a sound insight into the rights of these employees in the event that they would no longer or less be called in for work.