



THE BALANCED LABOUR MARKET ACT (WET ARBEIDSMARKT IN BALANS: WAB)

The Balanced Labour Market Act (in Dutch Wet arbeidsmarkt in balans or WAB) will come into force on 1 January 2020. Major changes in employment law are being implemented which will have consequences for every employer.

The Balanced Labour Market Act must reduce the differences between flexible and permanent work. Flex work remains possible, but is made more expensive by the new procedures. The majority of the measures will take effect from 1 January 2020.

Below you will find a brief overview of the most important changes.

NUMBER / DURATION OF LABOUR AGREEMENTS

It becomes possible to enter into three fixed-term employment contracts in a period of 36 months before an open-ended employment contract is created. This period used to be 24 months.

With a collective labour agreement the number of employment contracts and period can be extended.

With a break of six months and one day, the period starts again. With a collective labour agreement there will be the option to shorten the term of six months and one day to three months and one day.

CONSTRUCTION SEVERANCE PAY

An employee is currently entitled to severance pay from the first working day. With the new procedures the employee is entitled to severance pay after 24 months. This change will take effect immediately when, in 2020, a fixed-term employment contract is not extended at the initiative of the employer or an employment contract for an indefinite period of time ends in 2020 at the initiative of the employer (unless there is culpability on the part of the employee).

The amount of severance pay will be a third of the monthly salary for each year of employment and will be calculated over the actual duration of the employment. There is no longer affiliation with half years of service.

The higher accrual is no longer applicable for employees who have been employed for more than ten years and the transitional arrangement also is no longer applicable for employees aged 50 and older.

COMPENSATION SEVERANCE PAY

The lower accrual of severance pay for small employers with a bad financial situation will be cancelled. Instead a compensation scheme is put back in place for small employers in the event of company termination due to death, retirement or illness. If conditions are met, a small employer (<25 employees) can be compensated for a transitional payment based on company termination due to death, retirement or illness. Further conditions under which compensation could be obtained, including the amount, must still be announced. In any case, it cannot be invoked with retroactive effect.

From 1 April 2020, compensation can be requested retroactively (from 1 July 2015) for a transition allowance to be paid to an employee whose employment has been terminated due to 2 years of incapacity to work. The amount of the compensation will be limited to the severance to which the employee was/is entitled at the time of 2 years of incapacity to work.

DISMISSAL

Dismissal becomes possible through the accumulation of two grounds for partial dismissal. Combining, for example, the ground for dismissal due to poor performance with the ground for dismissal due to a disturbed employment relationship still can lead to dismissal. Therefore, it is no longer necessary to meet one full ground for dismissal. However, in proceedings, the court can impose further compensation of 50% of the severance pay in addition to the usual severance pay.



ON-CALL EMPLOYEES

The employer is obliged to give the on-call employee a contract for a fixed number of hours after 12 months. This must be the same number of hours as the on-call employee has worked on average in the past 12 months.

There are also several changes in the calling period of an on-call employee. The on-call employee must be called up at least 4 days in advance. With a call less than the 4 days minimum, the on-call employee is not obliged to work. A call shorter than 4 days in advance cannot be changed. The hours for which the on-call employee is then called can be enforced by the on-call employee.

With the new regulations the cancellation period of a call agreement is shortened to 4 days.

With a collective labour agreement there will be the possibility to deviate from the aforementioned rules.

REMITTANCE UNEMPLOYMENT INSURANCE PREMIUM

The amount of unemployment insurance contribution will be determined on the basis of the type of employment contract of an employee. The current sectoral classification for unemployment insurance premium will be abolished. A lower unemployment insurance contribution will have to be paid for an employee with an open-ended employment contract than for an employee with a fixed-term employment contract. It is important that the number of hours in the open-ended employment contract has a fixed size. The lower unemployment insurance premium does not apply to a fixed-term contract. The reduced premium also applies to an employee younger than 21 who, on average, does not work more than 12 hours a week, and an employee who is following a professional practical training course (BBL).

PAYROLL

There is a legal distinction between payroll and temporary agency work. As a result, the contract flexibility that temporary work has (such as Phase A and B) no longer applies to payrolling. It is therefore no longer possible to invoke the temporary employment clause. The employment conditions of a payroll employee must also at least be the same as the employment conditions of employees at

the hiring employer. An exception applies to a pension scheme. The payroll employer must have made an appropriate arrangement for this before 1 January 2021.

SHOULD I TAKE ACTION?

Depending on your situation, we can check with you in concrete terms what you, as an employer, must anticipate, such as:

- an inventory of the current on-call agreements and the implementation of the new obligations in your personnel policy;
- an inventory of current fixed-term contracts in the context of the revised chain arrangement;
- an inventory of whether your current employment contracts still comply with the new legislation;
- are you thinking of saying goodbye to an employee? Then consider strategically whether it offers an advantage to say goodbye to your employee in 2019 or in 2020?
- an inventory of permanent and flexible contracts. You pay a lower unemployment insurance premium for employees with open-ended employment contracts. Does it make sense to adjust the ratio of flexible to permanent contracts? Or does it make sense to hire other groups of employees?
- an inventory of inactive employees present and what to do with them.
- make an inventory of whether you still wish to make use of payrolling (if applicable).

NEED MORE INFORMATION?

If you wish to be fully prepared for the Balanced Labour Market Act, we are happy to offer you our expertise. We can co-ordinate the effects of the new legislation with you so that you have set out the actions within your personnel policy in order to respond as optimally as possible to the changes. We will provide you with customised advice and will be happy to help you further.