BALANCED LABOUR MARKET ACT

The Balanced Labour Market Act (WAB will enter into force on 1 January 2020. Major changes in employment law are being introduced that will have consequences for all employers.

The Balanced Labour Market Act is designed to narrow the differences between permanent and flexible employment in the Netherlands. Although flexible employment will still be possible, the new measures will make it more expensive. The bulk of these measures will take effect from 1 January 2020.

Below is a brief summary of the most important changes:

NUMBER / DURATION OF EMPLOYMENT CONTRACTS

It will now be possible to enter into a total of 3 fixed-term employment contracts within a 36-month period before an indefinite-term contract is agreed. The period was originally 24 months. If provided by a collective labour agreement (CAO), the number of employment contracts and the period can be extended. If there is an interval of 6 months between the contracts, then the period will start again. The CAO does, however, given an option to shorten the period from 6 months to 3 months.

ACCRUAL OF TRANSITION ALLOWANCE

An employee is entitled to a transition payment from the first working day. The current entitlement to a transition payment is after 24 months of employment. The change will take immediate effect on the date that the employer fails to take the initiative to extend a fixed-term employment contract in 2020 or an employment contract for an indefinite period ends in 2020 on the employer's initiative (unless there is culpability on the part of the employee). The transition payment will amount to one third of the monthly salary for each year of employment and is calculated over the actual duration of the employment. Half years of service will no longer be valid. The higher accrual for employees who have been employed for over 10 years and the transitional arrangement for 50+ employees will also be abolished.

TRANSITION ALLOWANCE COMPENSATION

The lower accrual of the transition allowance for small employers in a poor financial situation will be abolished. Instead, small employers will be compensated by a government scheme. If the conditions are met, small employers (< 25 employees) will be compensated for transition allowance on the grounds of company shutdown due to death, retirement or illness. The further conditions under which compensation may be obtained and the amount of the compensation are still to be announced. In any case, it will not be possible to make an appeal retrospectively. However, from April 1, 2020, it will be possible to request compensation retrospectively (until July 1, 2015) for a transition allowance paid to an employee whose employment was terminated due to 2 years of incapacity for work. The amount of the compensation will be limited to the transition allowance to which the employee was/is entitled on the date of 2 years of incapacity for work.

DISMISSAL

Dismissal will be possible by combining two existing partial grounds for dismissal. For example, combining the non-performance ground with a disrupted working relationship ground can then still lead to dismissal Therefore, by definition, meeting one full ground for dismissal is no longer necessary. In court proceedings, however, an additional compensation can be imposed by the court for 50% of the transition allowance in addition to the normal transition allowance.

ON-CALL WORKERS

The employer is obliged to give the on-call worker a contract for a fixed number of hours after 12 months. This must be the same number of hours as the on-call worker has worked on average in the past 12 months. The notification period for an on-call worker is also subject to a number of changes. The on-call worker must be notified of the work to be carried out at least 4 days in advance. An on-call worker who is notified too late is not obliged to carry out the work. A notification given less than 4 days in advance cannot be changed. The hours for which the on-call worker is then called out can be enforced by the on-call worker. The

cancellation period for a call-out contract is shortened to 4 days. If provided by a CAO, there will be an option to deviate from these rules, however.

DEDUCTION OF UNEMPLOYMENT INSURANCE CONTRIBUTIONS

The amount of the unemployment insurance contribution will be determined on the basis of an employee's contract type. The current sectoral classification for the unemployment insurance contribution will be abolished. A lower unemployment insurance contribution will need to be deducted for an employee with an indefinite-term employment contract than for an employee with a fixed-term employment contract. It is important here that the number of hours in the indefinite-term employment contract are fixed. The lower unemployment insurance contribution does not apply to a temporary contract. The high unemployment insurance contribution still applies retrospectively in two cases:

- If the employment contract ends no later than two months after commencement;
- -If in one calendar year 30% more hours are paid than specified in the employment contract. For example, if the employee has a contract for 20 hours a week, but works an average of 32 hours a week.

The reduced contribution also applies to employees younger than 21 who, on average, work no more than 12 hours a week and employees who are following a vocational training course (BBL).

PAYROLL EMPLOYEES

A legal distinction will be made between payroll and on-call employees. As a result, the contract flexibility offered by temporary agency workers (such as Phase A and B) no longer applies to payrolling. This means that it is no longer possible to invoke the temporary agency clause. Payroll employees are entitled to the same terms and conditions of employment as the employees who are directly employed. The pension scheme is an exception. The

payroll employer will need to make an appropriate arrangement for this before 1 January 2021. So the payroll employer will also need to take action in the area of pensions.

DO I NEED TO TAKE ACTION?

Depending on your situation, we can check with you in concrete terms what you, as an employer, need to anticipate. Examples include:

- An inventory of the current on-call contracts and the implementation of the new obligations in your personnel policy;
- An inventory of current fixed-term contracts within the context of the revised chain arrangement;
- Are you thinking about parting ways with an employee? Then take a strategic look at whether it is advantageous to say goodbye to your employee in 2019 or in 2020?
- An inventory of your permanent and flexible contracts. You pay a lower unemployment insurance contribution for employees with permanent contracts. Does it make sense to adjust the permanent to flexible contract ratio? Or does it make sense to hire other groups of employees?
- Determine the number of hours with your on-call staff before 1 January 2020. If you do not do this, you will have to make an offer for the average
number of hours (if the on-call worker works for 12 months on the basis of an on-call contract);
- An inventory of any dormant employment contracts and how to treat them.
- Make an inventory of whether you still want to use payrolling (if applicable).

If you want to be fully prepared when the Balanced Labour Market Act enters into force, we are happy to offer you our expertise. We can coordinate the effects of the new legislation with you so that you have taken the actions within your personnel policy to optimally respond to the changes. We will provide you with tailored advice and will be happy to help you further.