

THE NETHERLANDS

I. Legal notice - disclaimer

This sheet aims to provide a general overview of the main substantive rules concerning the terms and conditions of employment to be met by legislation transposing Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997). By its very nature, such a sheet can only summarise and does not necessarily contain all the relevant information in this context. In no way can it replace legislative, regulatory or administrative texts, or applicable collective agreements. The information below has been provided by the authorities of the Member States, which have made every effort to ensure its accuracy. Neither the Commission nor the Member States concerned can, however, guarantee that the information provided is always precise, complete, accurate and up to date. Furthermore, publication on the portal of the European Commission does not imply in any way that the latter or its DGs and Services consider the rules presented in this way to be in conformity with Community law.

II. Instrument transposing Directive 96/71/EC

Employment Conditions Cross-border Employment Act (hereafter referred to by its Dutch abbreviation "WAGA" (Wet arbeidsvoorwaarden grensoverschrijdende arbeid)). Official publication: Stb. 554, 2 December 1999.

Act of 1 December 2005 amending the Employment Conditions Cross-border Employment Act. Based on this new Act all collective agreements which have been declared universally applicable with regard to the terms and conditions of employment covering the matters mentioned in Article 3 of Directive 96/71/EC apply to posted workers. (Until this new Act of December 2005 they were restricted to activities in the building sector, as defined in the Annex to Directive 96/71/EC.)

Official publication: Stb. 2005, 626.

Internet link: www.tweede-kamer.nl/index.jsp
www.overheid.nl

III. Information on legislation applicable in accordance with the Directive

Information on legislation applicable to undertakings which, for a limited period of time, post workers to the territory of another Member State can be obtained at the following address:

Ministry of Social Affairs and Employment
P.O. Box 90801
2509 LV Den Haag

Tel.: +31 (0) 800-9051

Via e-mail
info@szw.nl

Internet links

www.minszw.nl English version: <http://www.employment.gov.nl/>
www.arbeidsinspectie.nl
www.cwinet.nl (option for an English version)
www.werk.nl (option for an English version)

IV. Failure to comply with the prescribed terms and conditions of employment

Cases of failure to comply with the prescribed terms and conditions of employment in the Netherlands and possible cases of illegal transnational activities can be reported to the following address:

www.arbeidsinspectie.nl

Postbus 11563

2502 AN Den Haag

Den Haag

Tel.: 070-3044500

Fax: 070-3044593

www.minszw.nl english version: <http://www.employment.gov.nl/>

V. Situations constituting a posting [Article 1 of the Directive]

The WAGA applies to all workers who exercise an activity in the Netherlands on a temporary basis and whose employment contract is not governed by Dutch law.

The WAGA and the Directive, however, are addressed to companies in the Member States.

VI. Posted workers [Article 2 of the Directive]

Directive 96/71/EC applies to workers who, for a limited period of time, carry out their work on the territory of a Member State other than the State in which they normally work.

In Dutch labour law “employee” means any person in employment who is subordinate to the employer, irrespective of that person’s designation in the country of origin.

According to the case law of the Court of Justice of the European Communities, the temporary nature of an activity carried out on the territory of a Member State in the context of free provision of services cannot be determined abstractly but should be judged on a case-by-case basis, depending on the duration, frequency or continuity.

If an occupational activity in the Netherlands can no longer be considered as being exercised temporarily, taking account of the abovementioned criteria, but is stable and continuous, *all* the binding rules and regulations in force in the Netherlands apply.

VII. Work periods and rest periods [Article 3(1)(a) of the Directive]

Maximum work periods and minimum rest periods are laid down in the Working Time Act (ATW). The maximum number of working hours per week is set at 45 hours excluding overtime and 48 hours including overtime. Without overtime, measured over a 4-week period the average number of hours is set at 40 hours per week. The limit is 60 hours a week, but, measured over a 13-week period, the average number of hours may not exceed 48 hours.

Further information and the relevant Act can be found at: <http://www.employment.gov.nl>.

Alternatively, relevant information can be obtained from the public helpline of the Ministry of Social Affairs (Tel.: +31 (0) 800-9051).

VIII. Paid annual holidays [Article 3(1)(b) of the Directive]

Minimum paid annual holidays are laid down in Articles 634 to 642 and 645 of Book 7 of the Civil Code (BW). The minimum leave entitlement is four times the weekly working hours

(i.e. for a full-time job 20 days a year). This minimum entitlement may not be paid out (Article 7:640 of the BW). The minimum holiday allowance (in addition to the right to payment of wages during holidays) is laid down in Article 15 of the Wages Act (WM).

Further information and the relevant Act can be found at: <http://www.employment.gov.nl>. Alternatively, relevant information can be obtained from the public helpline of the Ministry of Social Affairs (Tel.: +31 (0) 800-9051).

IX. Pay [Article 3(1)(c) of the Directive]

Minimum rates of pay, including overtime rates, are covered by the WM. At the moment the minimum full-time wage is €1264.80 per month, €291.90 per week and €58.38 per day for an adult worker. Lower rates are laid down for young workers between the ages of 15 and 22 (*Besluit Minimumjeugdloonregeling*). Under the second sentence of Article 3(7) of Directive 96/71 allowances specific to a posting can be considered part of the minimum wage, unless they are paid to reimburse expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging. The same rule is included in Article 6, paragraph 1 (subparagraph f) of the Minimum Wages Act (WMM).

Further information and the relevant Act can be found at: <http://www.employment.gov.nl>. Alternatively, relevant information can be obtained from the public helpline of the Ministry of Social Affairs (Tel.: +31 (0) 800-9051).

X. Rules concerning hiring-out of workers and terms and conditions which apply to temporary workers [Articles 3(1)(d) and 3(9) of the Directive]

Conditions for hiring out workers, in particular on provision of workers by temporary employment agencies, are laid down in the Temporary Agencies Act (Dutch abbreviation: WAADI). Article 7:690 of the BW also applies. This states that a contract for temporary work is an employment contract. The most important provision of the WAADI is Article 8: “Unless a (universally applicable) collective agreement provides other rules, temporary workers are entitled to the same wage and other allowances as comparable workers in the industry where the worker is temporarily carrying out his work”. Furthermore, Article 11 of the WAADI places an obligation on employers to give temporary workers full details about the necessary vocational qualifications and working conditions, before the temporary work starts.

Further information and the relevant Act can be found at: <http://www.employment.gov.nl>. Alternatively, relevant information can be obtained from the public helpline of the Ministry of Social Affairs (Tel.: +31 (0) 800-9051).

XI. Health, safety and hygiene at work [Article 3(1)(e) of the Directive]

Rules about health, safety and hygiene at work can be found in the Working Conditions Act (Arbo-wet 1998) and, specifically for employment-related diseases and accidents, in Article 7:658 of the BW.

The Working Conditions Act contains a code of conduct for health and safety policy. This Act requires employers to pursue a working conditions policy in order to prevent absenteeism due to illness, occupational disability and occupational illnesses. Employers and employees are jointly responsible for systematically improving working conditions. The Working Conditions Act mainly contains general provisions regarding, for example, the guiding principles for

occupational safety and health policy, the risk inventory and assessment system, support from expert services and cooperation between employers and employees. It also provides for monitoring and enforcement by the Labour Inspectorate and for a penalty system. The Working Conditions Decree and the Working Conditions Order implement the Working Conditions Act. Many of the provisions in the 1998 Act, the Decree and the Order are based on the relevant mandatory EU regulations.

Article 5(6) of Arbo-wet 1998 places an obligation on the user undertaking to give the posting employer a timely survey and evaluation of the risks involved in the job that the temporary worker is hired for. Subsequently, the posting employer has to hand this document to the temporary worker before he starts the job.

Further information and the relevant Act can be found at: <http://www.employment.gov.nl>. Alternatively, relevant information can be obtained from the public helpline of the Ministry of Social Affairs (Tel.: +31 (0) 800-9051).

XII. Rules concerning terms and conditions of employment of pregnant women and women who have recently given birth [Article 3(1)(f) of the Directive]

Protective measures with regard to the terms and conditions of employment of pregnant women, women who have recently given birth, children and young people can be found in the Working Time Act (ATW), the Working Conditions Act (Arbo-wet 1998) and the Minimum Wages Act (WMM). Article 7:670(2) of the Civil Code (BW) also applies to pregnant posted workers.

Working Time Act

For the period before giving birth the Working Time Act prescribes several protective measures.

Employers have to take into account the specific circumstances of the pregnant employee, e.g. by allowing more breaks and taking care that she works to a stable and regular pattern of working and rest periods and, in principle, not during the night. The employer also has to take into account these obligations for six months after the employee has given birth. In the period preceding delivery the employer has to offer the employee the opportunity to undergo the necessary ante-natal examinations.

Furthermore, there is an absolute ban on working immediately before and after delivery. No work may be done for 28 days before the expected date of delivery and 42 days after delivery. Finally, the mother is allowed to interrupt her work during the first nine months for the purpose of feeding her child and the employer has to make a room available for that purpose if necessary.

Leave arrangements under the Work and Care Act

Birth leave: Two days' birth leave are granted to the partner of any woman who has given birth or to the father who acknowledges the child. The employer must continue paying the employee's wage during the birth leave. Changes to the entitlement, duration and payment arrangements are possible by collective labour agreement or, if there is no collective labour agreement, the employer can come to an agreement with the works council or, in the absence thereof, with staff representatives.

Parental leave: This arrangement provides an entitlement to unpaid leave on a part-time basis for a continuous period of up to six months to care for a child under the age of 8. With the

agreement of the employer, it is possible to take this parental leave in a maximum of three parts. In order to be entitled to this leave, the employee must have worked for the same employer for at least one year. Requests for parental leave by either men or women cannot be refused by the employer.

Long-term care leave (came into force on 1 June 2005): This is a conditional entitlement to long-term care leave of a maximum of 6 times the weekly working hours per year in order to care for a child, partner or parent with a life-threatening disease. Changes to the entitlement and the duration of this arrangement are possible by collective labour agreement or, if there is no collective labour agreement, the employer can also come to an agreement with the works council or, in the absence thereof, with staff representatives.

The Work and Care Act stipulates that a pregnant employee may take pregnancy leave from 6 weeks before the expected date of birth, but that this leave must start at the latest 4 weeks before the expected date of birth (Article 3:1). This rule is combined with the prohibition for pregnant women to work in the ATW.

After delivery the employee has the right to take pregnancy leave (10 continuous weeks plus the number of days of pregnancy leave remaining if less than 6 weeks were taken before the delivery). If the baby is delivered earlier than the expected date of birth, the remaining days will be added to the leave after delivery in order to give a total of at least 16 weeks' pregnancy leave in every case.

Working Conditions Act (Arbo-wet 1998)

The Dutch Working Conditions Act of 1998 requires employers to pursue a working conditions policy in order to prevent absenteeism due to illness, occupational disability and occupational illnesses. Employers and employees are jointly responsible for systematically improving working conditions. The Working Conditions Decree and the Working Conditions Order implement the Working Conditions Act. Many of the provisions in the 1998 Act, the Decree and the Order are based on the relevant mandatory EU regulations.

The Working Conditions Act and the Decree contain provisions regarding special risk groups, such as pregnant workers.

The Working Conditions Act considers pregnant and breastfeeding employees as special risk groups. Special attention needs to be paid to this group in risk assessments and evaluations. The employer must indicate which measures have been taken to protect the health of the employee and her unborn baby during the pregnancy and during the period of breastfeeding. Furthermore, the employer must indicate which measures have been taken to protect fertility, including hereditary material in egg cells and sperm cells.

Once an employee informs her employer that she is pregnant, the employer must inform the employee within two weeks about the possible dangers in the company and take measures to protect the employee and her unborn embryo against them. During pregnancy a number of tasks may not be performed, such as physically demanding work. By law pregnant women who work standing up must have the possibility to sit down from time to time if work allows and when necessary.

Any employee who has questions about the risks at work can ask them at the "working conditions consultations" (arbeidsomstandighedensprekkuur).

If the work cannot be performed, even with the necessary adjustment and different working times, the employer has to provide the employee temporarily with different work. If this is not possible, the employee will be exempted from work.

The employee is allowed to take a maximum of a quarter of her working time to breastfeed for 9 months after the delivery. The employer must continue to pay her during this time. A suitable room that can be closed must be available for breastfeeding. If there is no such room, the time to travel home to feed the baby is considered working time.

Young people (16-18 age group) are also considered a special risk group in the Working Conditions Act and their employer has to take special measures for them.

Civil Code (Burgerlijk Wetboek)

Article 7:670(2) of the Civil Code (BW) applies to pregnant posted workers. This Code protects pregnant women and young mothers against dismissal (for a certain period).

But the usual penalty that accompanies this provision for workers under Dutch law does not apply.

Further information and the relevant Act can be found at: <http://www.employment.gov.nl>.

Alternatively, relevant information can be obtained from the public helpline of the Ministry of Social Affairs (Tel.: +31 (0) 800-9051).

XIII. Rules concerning terms and conditions of employment of children and young people [Article 3(1)(f) of the Directive]

See above.

XIV. Equality and non-discrimination [Article 3(1)(g) of the Directive]

Equal treatment of men and women and other provisions on non-discrimination are laid down in the Equal Treatment Act (Dutch abbreviation: AWGB) and in Articles 646, 647 and 648 of Book 7 of the BW. The important thing is that posted workers are not treated unequally on grounds of nationality. Unequal treatment is allowed only when related to the specific employment situation associated with cross-border posting. Directive 96/71 and, for the Netherlands, the WAGA contain rules about the specific situation of temporary employment in another Member State.

Further information and the relevant Act can be found at: <http://www.employment.gov.nl>.

Alternatively, relevant information can be obtained from the public helpline of the Ministry of Social Affairs (Tel.: +31 (0) 800-9051).

XV. Terms and conditions of employment concerning other matters [Article 3(10) of the Directive]

In the Netherlands there are no terms and conditions of employment concerning other matters, as provided for in the Directive.

XVI. Procedural and administrative requirements

Foreign service providers to whom the free movement of services applies, who wish to offer a service in the Netherlands using their own employees (i.e. posting of workers, as provided for in Article 1(3)(a) of the Directive) to whom the free movement of workers within the Netherlands does not apply, are exempted from applying for work permits for their employees under the following conditions:

- if the service provider is established outside the Netherlands in a country where the rules on the free movement of services apply and is not just a post office box business;

- if the services provided do not involve posting workers or an undertaking engaged in making labour available;
- if the services are reported to the Centre for Work and Income (CWI) before they start.

Work permits remain mandatory in all cases which fail to meet these conditions.

The service provider or client has two ways of providing the necessary information: by filling in an E-101 form or by completing a form supplied by the CWI with a limited number of questions (the name and address of the employer, a description of the nature of the company, registration details from the country of origin, the name and address of the person to whom the service is being provided, the nature of the service offered, where and when the employee will provide the service and the employee's identity).

If the service involves workers from outside the EEA a clearly legible copy of the work permit and residence permit of the worker(s) involved issued by the country of origin of the foreign company must be included.

Posted employees covered by Articles 1(3)(b) (i.e. workers posted to an establishment or to an undertaking owned by the group on the territory of a Member State) and 1(3)(c) of the Directive (i.e. workers hired out to a user by a temporary employment undertaking or placement agency) are exempted from the notification system and have to apply for work permits.

Further information and the relevant Act can be found at: <http://www.employment.gov.nl>.

Alternatively, relevant information can be obtained from the public helpline of the Ministry of Social Affairs (Tel.: +31 (0) 800-9051).

www.arbeidsinspectie.nl

www.cwinet.nl

XVII. Mediation mechanisms in case of conflict

XVIII. Information on judicial enforcement procedures

Information on possible judicial remedies in the Netherlands can be obtained from:

the public helpline of the Ministry of Social Affairs (Tel. +31 (0) 800-9051)

info@szw.nl

www.rechtspraak.nl