

iGlobal Law Annual Alert 2023 : The Netherlands

Legal Change	Effective Date	Action required
<p>Future Pensions Act</p> <p>The Future Pensions Act introduces several important changes to the current Dutch pension system. One of these changes entails that only pension accrual on the basis of a <i>premium agreement</i> will be possible. This means that pensions will be <i>contribution-based</i>; the employer promises a certain contribution to the employee's pension, instead of promising a fixed benefit. The pension fund invests the contributions and records the personal part of the collective pension assets for each of its members. As a result, pension will become more personal and the risks will be shared in both the accrual phase and the benefit phase.</p> <p>The Future Pensions Act further prescribes that pensions can only be accrued with an <i>age-independent</i> contribution. This means that employers owe the same premium for all their employees, regardless of their age.</p> <p>Above changes will not only apply to new pension schemes, but will in principle also affect existing schemes. In addition, the starting point is that pension rights already accrued will be transferred to the new pension system. If the amendment of the pension scheme leads to lower pension entitlements, employees will be adequately and cost-neutrally compensated.</p>	<p>The new pension rules are expected to enter into force no later than July 1st 2023. By January 1st 2027 at the latest, employers, employees and pension providers must have adapted all pension schemes that fall within the scope of the Act.</p>	<p>All employers who have a pension scheme for their employees and those who are not affiliated with a mandatory industry-wide pension fund are required to draw up a <i>transition plan</i>. This transition plan must include all choices, considerations and calculations that form the basis of the agreements made in the context of the transition.</p>
<p>Minimum Hourly Wage Bill</p> <p>This Bill introduces an <i>hourly</i> minimum wage applicable to everyone who falls within the scope of the Minimum Wage Act ('WML'). Traditionally, the WML fixes the statutory minimum wage at a <i>weekly</i> amount multiplied by a factor, from which employers derive the applicable hourly minimum wage. In this connection, the WML assumes that a normal working week consists of (no more than) 36 hours. As a result, minimum wage earners who work more than 36 hours per week have, on balance, a lower hourly wage than 'minimum wagers' working (less than) 36 hours per week. To address this, certain members of parliament submitted an own-initiative bill for a minimum hourly wage. Due to this bill, the minimum wage will henceforth be set hourly by the WML, independent of the length of what the current WML perceives as a normal workweek. As a result, working more than 36 hours per week will lead to a higher income for minimum wage earners.</p>	<p>It is expected to be approved by the Senate and to enter into force on April 1, 2023.</p>	<p>Affected employers may want to ensure whether changes to payroll are required.</p>

<p>Draft bill ‘Mandatory appointment of a confidential counsellor’</p> <p>This bill is aimed at combatting undesirable behaviour in the workplace. It proposes to make the appointment of a confidential counsellor mandatory, regardless of the size of the business. The bill grants the confidential counsellor protection against dismissal, safeguarding its independent position, and a claim to training and a secure IT environment.</p> <p>Furthermore, it imposes a duty of confidentiality on the confidential counsellor and formulates certain requirements that such a counsellor must meet (among which: sufficient expertise and experience). Finally, the bill grants the Works Council a right of consent to the choice of the confidential counsellor and the extension and termination of its appointment by the employer.</p>	<p>Not yet announced, but expected in 2023.</p>	<p>Nothing at this stage. However, once enacted, employers will have to appoint a confidential counsellor (with the consent of the Works Council, insofar as one is established).</p>
<p>Draft bill ‘Working from wherever one wants’</p> <p>After the entry into force of this bill, employees may apply for amendment of their workplace if:</p> <ul style="list-style-type: none"> (i) they are employed for at least 26 weeks at the time of the intended amendment; and (ii) insofar as the (new) workplace concerns their place of residence (located within the EU), or any other workplace from which activities are normally carried out for the employer. <p>The employer must grant the employee's aforementioned request if, in view of all the circumstances of the case, his interests should reasonably give way to the interests of the employee. An employee must submit such a request at least two (2) months before the intended date of commencement of the amendment. The employer must then inform the employee in writing of his decision in this respect no later than one (1) month before the intended date of commencement of the amendment. If the employer does not do so (in time), the employee's request is deemed to have been granted.</p>	<p>It is expected to be approved by the Senate in 2023.</p>	<p>Nothing at this stage. However, if and as soon as this bill is entered into force, employers must be aware of the fact that they must respond in good time to requests from employees to amend their workplace.</p>
<p>Amendment of the House for Whistle-blowers Act</p> <p>Currently the House for Whistle-blowers Act already obliges employers with 50 employees or more to implement an internal reporting procedure for suspected wrongdoing(s) (a so-called whistle-blower policy). The Amendment of the House for Whistle-blowers Act proposes the following (most important) amendments to the aforementioned act:</p> <ul style="list-style-type: none"> (i) abolition of the obligation to report internally first. Whistle-blowers may also directly report externally (e.g. to the competent authorities); 	<p>Not yet announced, but expected in December 2023.</p>	<p>At the time this bill will enter into force, employers (which employ 50 or more employees) will most likely have to adjust their internal whistle-blower policies in order to comply with this new bill. The employer's employee representative body must be consulted in this regard in good time, due to their right of consent in this respect.</p>

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| <ul style="list-style-type: none">(ii) expansion of prohibition of discrimination towards whistle-blowers. Whistle-blowers may not be disadvantaged in any way;(iii) expansion of the definition of 'wrongdoing' so that more notifications will fall under the protection of this bill. For example, (i) violations of internal rules and (ii) imminent violations of legal regulations may also qualify as a 'wrongdoing';(iv) expansion of group of persons being protected by this bill (i.e. not only employees, but also third parties (e.g. freelancers, volunteers, business relations, etc.));(v) more and/or stricter statutory requirements for (internal) whistle-blower policies;(vi) there will be a specific prohibition on 'silencing clauses' in respect of protected whistle-blowers. | | |
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