

iGlobal Law 2024 Annual Alert : The Netherlands

Legal Change	Effective Date	Action required
<p>Changes to Flexible Work Arrangements are under consultation</p> <p>The proposed measures will change certain types of working arrangement which will reduce flexibility for employers. Under the proposals, the gap between a chain of 3 renewed temporary contracts for an employee (currently 6 months) should be at least 5 years before a new 'chain' of 3 contracts (in a period of up to 3 years) can start. Deviations from this in Collective Labour Agreement's (CLA) for duration and number contracts in 'chain' will also be denied.</p> <p>Zero-hour/on-call contracts would be banned for all employees other than students. Instead a minimum number of work hours must be agreed with a maximum 30% upward deviation.</p> <p>Employment terms agency workers should be treated equally to employees in company to which they are seconded to.</p> <p>The proposals also include measures to make permanent contracts more attractive.</p>	<p>The proposals are not yet filed in Parliament but have been opened for internet consultation.</p> <p>The passing of this legislation will depend on the composition of the new government which will be formed in early 2024.</p>	<p>If (or when) passed, this Bill will mostly affect the way in which employers tend to make use of temporary, on-call and agency contracts. Employers are therefore encouraged to keep an eye on this Bill's potential passage.</p>
<p>Clarification of Employee or Contractor status</p> <p>There are proposals to clarify when a contract is considered an employment contract and when it is considered a contract for services (self-employed).</p> <p>The law states that an employment contract will entail (i) labour, (ii) remuneration and (iii) work done 'in service of' someone else. The qualification test has always been dependent on all circumstances of the case, making it difficult to assess upfront whether a contract is an employment contract. The government aims to create more clarity upfront by giving a (sub) test for criterion (iii). Work is done 'in service of' someone else if:</p> <ul style="list-style-type: none"> A) Is the work performed under supervision and direction of the other contracting party? or B) Is the work performed, or the worker, embedded in the organisation of the other contracting party? 	<p>The proposals are not yet filed in Parliament but have been opened for internet consultation.</p> <p>The passing of this legislation will depend on the composition of the new government which will be formed in early 2024.</p> <p>In addition, there is a lot of criticism aimed at this Bill, and rumours in The Hague are spreading fast that the Bill will never make it to Parliament.</p>	<p>If (or when) passed, this Bill will mostly affect the way in which companies tend to make use of self-employed workers. Companies are therefore encouraged to keep an eye on this Bill's potential passage.</p> <p>In addition, the Tax Authority has announced to increase enforcement of 'false self-employment'. Companies that tend to use many self-employed workers, especially for lower-paid work, should be mindful of this.</p>

<p>If either A) or B) is confirmed, then criterion (iii) is met unless:</p> <p>C) The worker performs the work at its own risk and this own risk-bearing weighs stronger than elements (A) and/or (B).</p> <p>Please note that element C) only relates to ‘entrepreneurship’ within the legal relationship with the contracting party. ‘Entrepreneurship’ outside of that relationship can only be taken into account if the combination of (A) and (B) is of equal weight as (C).</p>		
<p>Restrictions on the use of Non-Compete clauses</p> <p>The Non-Competition Bill proposes measures to reduce the use of non-compete clauses.</p> <p>At the time no Bill has yet been presented but the outgoing government has announced its intention to introduce the following measures on non-compete clauses:</p> <ul style="list-style-type: none"> - Maximum duration; - Geographical restrictions; - Mandatory inclusion of motivation why clause is necessary to protect compelling business interests; - Payment of compensation in case non-compete is enforced post-termination. 	<p>No proposals have been filed yet. However this proposal does not seem controversial and will likely be introduced in 2024 by the new government.</p>	<p>If (or when) passed, this Bill will require companies to (i) draft non-compete arrangements differently and (ii) reconsider their use of non-compete arrangements.</p>