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The COVID-specific Measures in the Netherlands – Do They Fit into the General Picture?

Summary

This article discusses the nature of the Dutch COVID relief measures for employers concerning wage costs. The question is raised whether the ad-hoc decrees fit into the general picture of Dutch labour law and respects the two key principles (1) safeguarding employees' income and (2) requesting employee flexibility with regard to the work in case the exact job does not exist any more or is under serious threat. The contribution finds that the emergency legislation does respect these two main principles, while judges refuse substantial modifications of wages and/or working hours on the basis of reasonableness, also upholding the key principles of employee protection.

Keywords: COVID, wage costs, relief measures, modification of contract

1. Introduction

COVID-19 confronts us with a situation that First World countries have not encountered since the Spanish Flu pandemic 100 years ago. There is a worldwide health crisis which leads to mandatory closure of businesses, affecting a whole range of sectors. What does this do to paid employment which is already under pressure from various directions?¹ This article discusses the changes that the Dutch government introduced in the rules governing financial aid to employees and employers due to the COVID pandemic, where safeguarding (some) income for employees is as crucial as the survival of businesses.² The

¹ Think of challenges connected to the atomisation of work, the gig economy, declining trade union membership, artificial intelligence and the like.

² Even though this may be considered direct aid for enterprises, this is compatible with EU law under the Framework for State Aid measures to support the economy in the current COVID-19 outbreak (PbEU 2020 C112 I).

core question will be to what extent the COVID-specific measures fit into the more general framework of Dutch labour law. This will be measured along two axes: (1) protection of wages/income, and (2) employee flexibility concerning job content, which are two cornerstones of Dutch employment law. The income position will be guaranteed as much as possible, if necessary by adapting the content of the employment contract to the extent that the employee has to accept a suitable new position.³

In order to be able to assess the extent to which the emergency measures fit into Dutch labour law in general, the article starts with the general rules concerning payment of wages. This summary will offer general insights into how the problem of an employee who is not working but still wants pay is dealt with in general. The article will then briefly discuss the pre-Covid regulations, in order to highlight why these rules needed to be replaced. The third section will deal with the new, COVID-specific measures in detail. Attention will be paid to their near constant fine-tuning, particularly when it comes to income protection and employee flexibility. In the fourth section, an alternative way to reduce costs will be discussed. This is the unilateral modification of the employment contract based on the doctrine of reasonableness. A discussion of this – seemingly distant – topic is necessary, as this is usually the main way of adapting the content of an employment contract to a change in circumstances. The arguments accepted and rejected in court as well as the judges' reasonings will be crucial for assessing the leeway employers have when asking for wages to be reduced, which will also influence the extent to which the temporary decrees will be used or left aside. Finally, section five will contain concluding remarks on the right to receive pay during a pandemic.

The contribution is not intended to be a comparative piece. The discussion focusses on Dutch law and regulations regarding regular employment and will therefore not touch upon the specific measures

³ See, for example, art. 7:669 (1) BW (Burgerlijk Wetboek, Dutch Civil Code. The first number refers to the book the provision can be found in, the second is the number of the provision in that book), which allows for a dismissal only in case the employee cannot be offered a suitable new position.

for flexible work (TOFA⁴), for self-employed (TOZA⁵) and compensation for hard-hit sectors (TOGS⁶).⁷

2. A right to wages in case of no work?

The general rule on wages in case the employee does not (fully) carry out his tasks is laid down in art. 7:628 BW. This provision has recently been updated to its current form and now provides that the employer is liable to pay wages, even if the employee does not fully carry out his tasks, unless the reason why the employee could not do the work must in all reasonableness be deemed to come within the employee's sphere of risk.⁸ The employer is obliged to offer proof for this. Case law has spelt out the respective spheres of risk in more detail. A first rule of thumb is that foreseeable risks are for the person who can influence them best, e.g. by taking out an insurance or who profits.⁹ This also means that an employer should make reasonable provision for times in which business is slack. Generally speaking, problems regarding lack of materials, insufficient contracts or clients and the like are for the employer to bear. The same goes for a temporary shutdown of the enterprise by the authorities due to insufficient health and safety measures.¹⁰ Interestingly, the employer's decision to take disciplinary actions like suspension of the employee are also considered to come within the employer's sphere of risk, so that in principle, wages are due.¹¹ On the other hand, the employee has to bear the risk, e.g. in case

⁴ Tijdelijke Overbruggingsmaatregel Flexibele Arbeid (temporary redress decree concerning flexible work).

⁵ Tijdelijke Overbruggingsmaatregel Zelfstandige Arbeid (temporary redress decree concerning self-employed persons).

⁶ Tijdelijke Overbruggingsmaatregel Getroffen Sectoren (temporary redress decree concerning sectors that have been particularly severely hit by the crisis).

⁷ For a brief overview of these measures see e.g. H. Bennaars, B.P. ter Haar, <https://illej.unibo.it/article/view/10779/11130>.

⁸ Please note that there is a separate provision, art. 7:629 BW, which deals with payment of wages in case of sickness, which is the most regularly occurring employee risk.

⁹ In Dutch: beïnvloedings- en profijtbeginsel, A.R. Houweling, e.a. *Arbeidsrechtelijke Themata I*, Boom juridische uitgevers Den Haag, 2020, p. 292.

¹⁰ A.R. Houweling e.a. *Arbeidsrechtelijke Themata I*, Boom juridische uitgevers Den Haag, 2020, p. 297.

¹¹ HR 21 maart 2003, JAR 2003/91 (Van der Gulik/Vissers).

he is late due to a broken car, or if he has lost his driver's licence while this is necessary to perform the work.¹²

However, in case of exceptional circumstances, the general rules do not apply anymore, because neither employer nor employee could have foreseen these circumstances and/or taken precautionary measures. This is one of the main issues that is discussed in case law and literature. The Oost-Brabant county court, for example, brazenly decided that COVID-related risks are for the employer to bear, because the risks do not fall within the sphere of risk of the employee.¹³ However, COVID is a worldwide health crisis which employers cannot solve by themselves. Therefore, this assumption may at least be debatable. Van Slooten argues that in the light of recent crises, this decision is not as straightforward as it may seem to the Oost-Brabant county court, because in 2009, social partners agreed that the consequences of the worldwide credit crisis were for employees to bear.¹⁴ Therefore, the mere argument that a risk is for the employer to bear because it is not within the employee's sphere of risk may not be valid in these exceptional circumstances where the government reacts to a health crisis by ordering the compulsory closure of businesses.

3. Pre-COVID regulations on relief in exceptional circumstances

Until 17 March 2020, if a sector or an enterprise suffered grave difficulties for reasons beyond the employer's control, an employer could ask permission to apply the so-called short-time system.¹⁵ This permission was needed because of a breach of two general principles of Dutch labour law, the principle of indivisibility of contract and the prohibition to unilaterally reduce working hours if this goes hand in hand with reductions of wages.¹⁶

The employer could ask for this regime to apply if the situation could not be described as a normal business risk and there was a reduction of

¹² ECLI:NL:GHSHE:2016:1766.

¹³ ECLI:NL:RBOBR:2020:2838.

¹⁴ J.M. van SLOOTEN, De NOW 1.0: een loonkostensubsidie met enkele strategische aspecten, OR 2020/64.

¹⁵ Regeling Werktijdverkorting (WTV).

¹⁶ Art. 8 BBA.

available work of at least 20% for a substantial amount of time.¹⁷ The permission then allowed for a partial suspension of the employment contract. The employee would get unemployment benefits¹⁸ for the part that was suspended, while the employer would top this up to the normal income and also pay wages for the other part of the contract. For example an employer who got permission to reduce working time by 60% had to pay wages for two out of the five working days. The employee got unemployment benefits for the other three days, which the employer topped up to the normal income. The employer would thus be relieved of a substantial amount of the wage costs, offering a better chance for survival of the business, while the employee would usually get an income equal to the wages.¹⁹ However, this system was not without flaws. One major problem was that there was no clear rule on how to deal with employees who had not yet qualified for unemployment benefits.²⁰ The authorisation for the employer seemed to indicate that the situation was beyond his control, and that therefore art. 7:628 BW would not apply, but it was less than clear whether this actually should mean that the risk was for the employee to bear. After all, the employee has even fewer possibilities to influence the situation. Another main issue was that employees were “eating into” their unemployment benefits which in the Netherlands are limited in time. Therefore, if employees were made redundant after a (prolonged) period of short time work, this could mean that they would no longer be eligible for unemployment benefits and would have to fall back on social assistance benefits. The pre-COVID emergency relief rules therefore did achieve a certain protection for employee income, but in the end, it was the employees who footed the bill by eating into their unemployment benefits. Employers had to bear certain costs by themselves, but certainly the wage costs were lowered. However, as a whole the system was suitable for smaller

¹⁷ For a full overview see W.A. Zondag, *Werktijdverkorting*, Gouda Quint 2001 and A.M. Helstone, *Van WTV naar NOW; van werktijdverkorting naar loonkostensubsidie*, AR 2020/22.

¹⁸ Art. 47 Unemployment Benefits act (WW): 75% of the (maximalised) daily wages for the first two months, then 70%.

¹⁹ Unless someone earned more than this maxed-out daily wage.

²⁰ In Dutch law, in order to be able to claim unemployment benefits, the employee in question must show that during the last 36 weeks he worked at least 26 weeks (art. 17(1) WW).

or isolated issues, but did not offer sufficient flexibility to deal with a nationwide crisis.

4. Noodfonds Overbrugging Werkgelegenheid²¹

When COVID became an issue in the Netherlands, it quickly became clear that this would be a much bigger crisis than the issues that had triggered the WTV before. After all, an intelligent lockdown, compulsory closure of non-essential businesses, travel restrictions and the like affect all sectors and employers can only do so much to prevent the spreading of the disease.²²

a) NOW-1

The first Noodfonds, NOW-1, came into force on 17 March 2020.²³ Its aim was to keep as many people as possible in (their) employment. Therefore, the regulation followed a two-pronged approach: on the one hand, the employer's financial burden had to be lightened, on the other hand, the employees' income had to be protected. The system worked as follows: the employer pays 100% of the wages, but is eligible for a compensation for these costs of up to 90%, depending on the reduction of revenue, which must be 20% at least for the business to be eligible for compensation. The wage costs are also taken into account in this calculation. This means that an employer who has discontinued fixed-term contracts or who proceeds to terminate contracts gets less compensation. The calculation for the compensation was as follows:

$$A \times B \times 3 \times 1,3 \times 0,9$$

A = Percentage expected revenue loss

B = wage sum

3 = amount of months for which the subsidy is calculated

1,3 is a factor that allows for employer costs like pension premiums, insurance, etc.

0,9 is the maximum subsidy, meaning 10% is always for the employer to bear²⁴

²¹ Emergency Funds to Safeguard Employment, Dutch abbreviation NOW.

²² B.H. ter Haar, <https://illej.unibo.it/article/view/10779/10688>.

²³ Stcrt 2020/19874.

²⁴ G.C. Boot, *Arbeidsrechtelijke maatregelen in Corona-tijd*, Wolters Kluwer, Deventer, 2020, p. 10.

The compensation for the employer actually was an advance payment of 80% of the estimated compensation, and the correct amount was to be calculated at the end of the period for which the compensation has been requested. This means that the employer could become liable to pay back part of the compensation. The employer was obliged to refrain from redundancies on economic grounds while getting the compensation. If the employer asked permission for issuing dismissals on economic grounds nonetheless, he was “fined”. This means the subsidies were lowered by an amount equal to 150% of the dismissed employee’s wages (until April) or by 1,5 times the employee wage costs, multiplied with a specific factor (from 5 April 2020 onwards).²⁵ Dismissals also influenced the calculation set out above, as the wage sum will be lower.

It soon became clear that NOW-1 contained some serious shortcomings. One rule which seriously limited employers’ preparedness to actually request compensation was the prohibition on dismissal of employees on economic grounds. Employers wanted to keep their flexibility and therefore did not request compensation. This in turn led to a greater risk of bankruptcy and irrevocable loss of employment, something which NOW-1 tried to prevent. Another issue was the fact that only dismissals on economic grounds were prohibited, while an agreement to terminate the contract for the same reason remained perfectly possible and did not trigger the fine. As this kind of termination is the most common one in the Netherlands, this loophole in the decree was serious. However, the employer would have incurred financial consequences as rescission of contracts would also have led to a lower wage sum which influenced the calculation of the compensation. A final point, which was also a sensitive issue politically, was that bonuses or dividends for executive managers could be financed through the compensation offered by the Government and thus paid for by taxpayers’ money. In short, employees’ wages were relatively safe, but for employers, the system was inflexible, which led to employers evading it.

²⁵ See art. 5 and 7 NOW-1 respectively.

b) NOW-2

As it became clear that COVID was not a one-season issue, the government issued a second decree on 22 June 2020, ingeniously named NOW-2.²⁶ It addresses some of the shortcomings of NOW-1, but also shows a shift in policy priorities. NOW-2 focusses less on keeping people in their original jobs and more on allowing businesses to adapt. The maximum subsidy for employers is still 90% in case of 100% loss of revenue, but the fine in case of dismissals on economic grounds is discontinued. There is still a financial consequence, however. As was already the case under NOW-1, if the employer dismisses employees or discontinues temporary employment contracts, the wage sum will be lower, which will influence the calculation of the compensation to be received. Furthermore, if the employer proceeds to carry through a collective redundancy and has not succeeded in getting the Trade Unions' agreement for this plan, the compensation he gets will be lowered by 5% of the total amount due to him. From the explanatory memorandum, it becomes clear that this means that all parties to the contract need to agree on the collective redundancy.²⁷ The justification for these changes is that businesses need to be able to restructure in order to avoid bankruptcy, now that the economic outlook has changed. Furthermore, the Government wishes to encourage enterprises to apply for the subsidy and avoid bankruptcy, and prefers that to their not making use of the measures because dismissals might still be necessary.²⁸ Consequently, dismissals are "decriminalised" as the government accepts that they might be necessary. The calculation is changed slightly when compared to NOW-1. This also addresses the issue that, under NOW-1, dismissals led to smaller financial consequences than a reduction of the wage sum (e.g. by employees reaching pensionable age, sickness, etc.), while the opposite was intended.²⁹ The formula was as follows:

²⁶ Stcrt 2020/34308.

²⁷ P.A. HOGEWIND-WOLTERS & S.F.H. JELLINGHAUS; Het Coronavirus en het beroep op de NOW-2 regeling, TAP 2020/159.

²⁸ Kamerstukken II, 2019/20, 35420 nr. 2, p. 8.

²⁹ P.A. HOGEWIND-WOLTERS & S.F.H. JELLINGHAUS; Het Coronavirus en het beroep op de NOW-2 regeling, TAP 2020/159.

A x B x 4 x 1,4 x 0,9³⁰

The other aspect that demonstrates the policy shift towards accepting a rise in unemployment and survival of most businesses by creating a well-trained, flexible workforce is the introduction of an obligation for best efforts to train and retrain employees.³¹ This fits nicely with the more general rule in Dutch dismissal law, that dismissal is only acceptable if the employee cannot be offered a suitable different job.³² Employees may not always have a right to keep their exact job, but the employment relation will be retained as much as possible. This necessitates a certain flexibility in contract law, which is offered by the general clause of art. 7:611 BW (see below, sec 4). In order to make this well-trained, flexible workforce happen on a substantial scale, the Dutch government made available € 50 Million for 2020 to set up a funds for training activities, personal advice and the like.³³ This came on top of all training responsibilities employers have anyway. Finally, in order to discourage fraud, which was an issue with the rather un-bureaucratic NOW-1, businesses which receive more than € 100.000 in subsidies must hand in an audit. These businesses are also forbidden to pay the board of directors or policy-making management dividends or bonuses over 2020. It is therefore no longer possible to finance bonuses and dividends from taxpayers' money.

c) NOW-3

From October 2020 onwards, NOW-2 has been followed by NOW-3.³⁴ This most recent decree, which aims to regulate the situation until July 2021, shows the continuation of the policy changes that NOW-2 started. However, NOW-3 also bears witness to the realisation that – while the overall situation in the Netherlands relating to government debt and unemployment figures is still pretty rosy when compared to other countries – funds are not unlimited and need to be distributed

³⁰ G.C. BOOT, *Arbeidsrechtelijke maatregelen in corona-tijd*, Wolters Kluwer 2020, p. 17.

³¹ P.A. HOGEWIND-WOLTERS & S.F.H. JELLINGHAUS; *Het Coronavirus en het beroep op de NOW-2 regeling*, TAP 2020/159.

³² Art. 7:669 lid 1 BW jo. Art. 9 Ontslagregeling.

³³ Crisispakket NL leert door: <https://www.rijksoverheid.nl/onderwerpen/corona-virus-financiele-regelingen/overzicht-financiele-regelingen/now/now-nl-leert-door>.

³⁴ Stcrt 2020/52209.

more carefully. In the first place, to remain eligible for subsidies and compensation, a business must show a loss of 20% of revenues now, but from January 2021 onwards, this will need to be at least 30% loss of revenue. Also, the compensation offered to the employer is lower and will be lower still in 2021. Instead of a maximum of 90% compensation in case of total loss of revenue, the maximum percentages are 80% (October–December), 70% (January–March 2021) and 60% (April–June 2021). This shows the realisation that not all businesses will be able to survive and not all can be saved. Fines in case of economic dismissal are not reintroduced and the fines surrounding collective redundancies from NOW-2 are also skipped. However, the general rules concerning collective redundancies still apply.³⁵

While dismissals seem to be accepted as part of current economic necessities, the ideas on lifelong learning and retraining are retained. The employer is still obliged to offer training, employees can get personalised career advice and the like. The available funds have been raised to € 67 million. Right now the situation therefore is that employers who deal with a substantial decline in revenue are still eligible for compensation, but not as generously as they were up to October 2020. On the other hand, dismissals are possible to a greater degree.

By way of conclusion, we can state that the COVID-specific measures fit into the general system of Dutch labour law. Safeguarding employees' wages without jeopardising employment is a priority issue. However, employees are also expected to show flexibility concerning their exact job. They have a right to retraining in case their exact job is threatened or lost. This right goes hand in hand with the obligation to accept a change of job where the new place offered is a suitable placement and the alternative would have been a termination of contract.³⁶

³⁵ They derive from the implementation of Directive 1998/59/EC, and therefore, obviously, must remain in place. The applicable Dutch law is the *Wet Melding Collectief Ontslag (WMCO)*.

³⁶ Technically, there is the possibility to refuse, as otherwise this could be labelled forced labour. However, refusal to accept a suitable job offer triggers severe consequences such as loss of unemployment benefits (art. 24 WW) and therefore rarely occurs.

5. Unilateral modification of contracts instead of using NOW

As has been explained above, the current measures to keep the economy going focus on keeping businesses afloat while also guaranteeing a near normal income to employees. However, these measures come with strings attached, even if this is just showing how many employment contracts still exist and what losses of revenue are encountered. Therefore, a fair number of employers who did not want to apply for NOW or who did not qualify for the measures try a different way to alleviate wage costs.

This other way for employers to minimise wage costs is to (unilaterally) modify wages and/or working hours. The unilateral modification of contracts is fully accepted in Dutch labour law and offers a great amount of flexibility to keep the employment relation intact, even if the contract as such is modified to such an extent that it would otherwise qualify as something completely new. Dutch law offers two possible legal bases for this modification, art. 7:613 BW and art. 7:611 BW respectively. The first one regulates the unilateral modification clause and is only applicable if a written modification clause exists. In that case, the employer must show overriding business interests which must reasonably prevail over the employees' interest in retaining the unchanged employment contract. The second one is a codification of reasonableness, in labour law described as good employership and good employeeship. Case law by the Dutch Supreme Court shows that a good employee must react in a positive way to employer's requests for reasonable adaptations of the contract in case of a change in circumstances.³⁷ Therefore, three steps will be subject to judicial review: (1) the change of circumstances, (2) the reasonableness of the offer made by the employer, and (3) the question whether the employee could reasonably have refused the reasonable offer. The main question in all these cases was whether a wage sacrifice (or a reduction of working hours) can be deemed a reasonable offer and if so, under which circumstances. Case law from the credit crisis is pretty unanimous on this issue. While showing the change of circumstances that necessitates a reaction is rarely an issue

³⁷ HR 26 juni 1998, JAR 1998/199 (Taxi Hofman), HR 11 juli 2008, JAR 2008/204 (Stoof/Mammoet).

in case of economic difficulties, the reasonableness of the employer's request is usually the sticky point. Although the judiciary shows sympathy towards the employers' plight, generally speaking, a request for wage sacrifices is not a reasonable request as this concerns a primary employment condition.³⁸ The final step would be a discussion about the employee's duty to react in a positive way to a reasonable offer. However, once the offer is judged not to be reasonable, there is no duty for the employee to act reasonably him- or herself. Flat refusal by the employee is possible and is upheld in court. Recent case law seems to be in line with this line of reasoning.³⁹ The Amsterdam county court decided that a unilateral reduction of wages by 50% is way too much, considering that the employee has no other means to make ends meet. Therefore, however much the employer needs a reduction in cost, a unilateral reduction of wages by half is not a legal option.⁴⁰ The Court of Appeals for Arnhem-Leeuwarden decided similarly in a case where an employer restructured the enterprise and employees were placed in suitable alternative jobs. The new jobs did not provide compensation for the loss of the flexible payment in the earlier jobs, because commissions were not paid anymore. This led to a wage reduction of 13–23%, depending on the employee in question. The Court stated that in extreme economic circumstances, a wage sacrifice – concerning flexible parts of the payment, not the basic salary – may be justified, but that in this case the circumstances cited by the board of directors fell short of this kind of economic emergency. While the court does not rule out the possibility of wage sacrifices in extreme cases, in this case the need to act is not accepted to the degree necessary to demand a significant reduction of salary.⁴¹ The county court of Oost-Brabant also stated that Covid and the temporary closure of the business is no reason to just

³⁸ ECLI:NL:RBONE:2013:CA006 (Interwerk); ECLI:NL:RBAMS:2015:899 (V&D); ECLI:NL:GHARL:2016:891 (SNS real).

³⁹ In order to establish the basis in case law, the official website of published case law (www.rechtspraak.nl) was searched using the following terms: "Loonoffer" (50 hits), "Loonwijziging" (12 hits, none relevant). There is one case from one of the Caribbean parts of the Netherlands which will also be kept outside the discussion as the labour law is not 100% identical. The main text discusses only those cases which show an explicit reasoning.

⁴⁰ ECLI:NL:RBAMS:2020:2734, JAR 2020/149.

⁴¹ ECLI:NL:GHARL:2020:3186 (Renewi).

accept the employer's argument that he is no longer liable to pay wages.⁴²

So far, therefore, case law shows a clear tendency towards upholding the employee's rights to wages and does not easily accept employers' wishes to (unilaterally) lower wages. When it comes to reducing working time, art. 8 BBA is still the major obstacle. This provision explicitly prohibits the reduction of working time if this leads to a reduction in wages as well. Furthermore, a unilateral employer's right to reduce working hours is deemed incompatible with the employee's right to demand a change of working hours, as this could undermine the employee's right.⁴³ There are possibilities for exemptions from the prohibition, but as they have to be granted by the Secretary of State for Employment, the employer depends on third parties to be able to do this.

Taken together, this means that the employer's legal possibilities to unilaterally modify wages or working hours in order to save money on wage costs are few. The employer needs to show a truly exceptional case, and even then probably cannot touch the basic salary. Although none of the cases considered made an explicit comment on the availability of NOW measures as potential alternatives, it might be that the fact that a possible alternative exists which strengthens the line of reasoning found in the courts. After all, demanding wage cuts and arguing that they are a reasonable offer while also having the option to apply for emergency relief may sound unreasonable to a judge's ear.

6. Concluding remarks

The above shows that, generally speaking, Dutch law aims at securing the employee's wage, as this is the essential means for making a living. The first and most general rule is laid down in art. 7:628 BW. The employer must pay the employee's wages, unless he can prove that the reason why the employee could not do the work lies in the employee's sphere of risk. The COVID-specific emergency and relief measures aim at reducing (wage) costs for employers while securing an income for

⁴² ECLI:NL:RBOBR:2020:2838, JAR 2020/156, met noot J.M. van Slooten.

⁴³ See for more detail: N. GUNDT, *Wijziging van de arbeidsovereenkomst, een instrument voor interne flexibiliteit?* Kluwer, Deventer 2009, p. 157.

the employees. Therefore, they apply the general principle of wage protection and fit into Dutch non-emergency law.

The decrees try to strike a balance between employers' needs and employees' needs. However, the (substantial) adaptations that those measures have undergone reflect new realities. Neither all dismissals nor all bankruptcies will be preventable. In order to soften the impact for employees, they are given a right to take retraining, which means that once job offers become available again, they might be able to find a new job quickly. The measures therefore fit into the bigger picture of creating a workforce that is flexible in the sense that workers are able to adapt quickly to new sets of requirements in new jobs. Therefore, the measures that were introduced in March 2020 fit into the more general system of Dutch labour law, more specifically, the obligation to pay wages on the employer's side and the obligation to look for reasonable solutions like placement in other suitable jobs, if the current job ceases to exist, on the employee's side. This general idea of a certain flexibility of the employment contract also explains the idea of being able to change the employment contract in good faith on the basis of reasonableness. As this is a very open norm, the application to the facts by the judiciary is crucial for the stability of the employment contract. As has been shown in the paragraph dealing with case law, so far judges have been unwilling to find unilateral wage cuts of up to 50% reasonable. This means that the response to the crisis is not a weakening of the position of the weaker of two parties in the contract, but rather a continued protection. Considering that (particularly when it comes to unilateral modification) everything depends on the notion of "reasonableness" – an open norm liable to be interpreted by a single judge – the Dutch system so far shows surprising stamina in its efforts to protect the employees' income. This, however, is counter-balanced by a demand for flexibility concerning the exact content of the work to be done. Training efforts should prepare employees for new jobs which in turn may be offered. Acceptation of these offers is expected and refusal is – generally speaking – sanctioned by a loss of rights to unemployment benefits.

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Les mesures spécifiques au Covid aux Pays-Bas – s’inscrivent-elles dans les Principes Généraux?

Résumé

L'article examine la nature des mesures d'aide aux Pays-Bas liées à la pandémie de COVID qui visent à réduire les coûts salariaux pour les employeurs. La question est de savoir si les décrets ad hoc s'inscrivent dans les Principes Généraux du droit du travail néerlandais et respectent deux principes clés: (1) la protection des revenus des travailleurs; 2) la flexibilité d'un employé exigée dans une situation où un poste spécifique cesse d'exister ou est sérieusement menacé. Les recherches montrent que les règles d'exception respectent ces deux grands principes, tandis que les tribunaux refusent de reconnaître les changements significatifs des salaires et / ou des horaires de travail sur la base du prémisses de la rationalité et soutiennent les principes clés de la protection des travailleurs.

Mots-clés: COVID, coûts salariaux, mesures d'aide, modifications du contrat de travail

Środki nadzwyczajne w obliczu pandemii COVID-19 przyjęte w Holandii – czy wpisują się w ogólny obraz?

Streszczenie

W artykule omówiono charakter zastosowanych w Holandii środków pomocowych związanych z pandemią COVID, których celem było złagodzenie kosztów wynagrodzeń ponoszonych przez pracodawców. Powstaje pytanie, czy dekrety ustanawiane *ad hoc* wpisują się w ogólny obraz holenderskiego prawa pracy i czy respektują dwie kluczowe zasady: (1) ochronę dochodów pracowniczych; 2) wymaganie elastyczności pracownika w przypadku sytuacji, gdy konkretna osoba przestaje istnieć lub staje się poważnie zagrożona. Badania pokazują, że przepisy nadzwyczajne respektują te dwie główne zasady, podczas gdy sądy odmawiają uznania istotnych zmian płac i/lub godzin pracy w oparciu o przesłankę racjonalności oraz podtrzymują kluczowe zasady ochrony pracownika.

Słowa kluczowe: COVID, koszty wynagrodzeń, środki pomocowe, zmiany w umowie o zatrudnienie