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WWZ (DUTCH DISMISSAL LAW)
CHANGES AS OF 1 JANUARY 2015

Due to the gradual inception of the WWZ on 1 January 2015, much has changed in employment law. We would like to keep you as well-informed as possible about this.

Especially concerning the contents of your employment contracts, the WWZ is very important.

On 1 January 2015, the first part of the WWZ went into effect, and on 1 July 2015 and 1 January 2016, more changes followed.

This overview will give you clear idea of the changes that have gone into effect as of 1 January 2015.

If you have any questions you can always contact the employment lawyers of accon■avm advisors and accountants. You can contact them by sending an e-mail to juristen@acconavm.nl or by calling the general company telephone number 00(31) 26-384 23 84.

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THE NOTIFICATION PERIOD

Rules and regulations up until 12-31-2014	Rules and regulations as of 01-01-2015
Prior to 1 January 2015, there was nothing in the law regarding a compulsory notification.	As of 1 January 2015, a notification period was introduced.
Thus, a fixed-term employment contract ends automatically and the employer can inform the employee on the last day of the employment contract to extend it or not.	The fixed-term employment contract still ends automatically. For fixed-term employment contracts of 6 months or longer, an official notification period of 1 month applies. This means the employer must inform the employee in writing at least one month prior to the end date, whether the fixed-term employment contract is going to be continued or not, and under what conditions the employer proposes to continue. If notification of continuance occurs but no conditions are proposed, then the rule applies that the new fixed-term employment contract commences under the same conditions and for the same duration (with a maximum of 1 year). This notification period applies to fixed-term employment contracts that end on or after 1 February 2015. **No obligation for notification:** There is no obligation for notification for the following: ▪ A fixed-term employment contract that is shorter than 6 months ▪ A permanent employment contract ▪ An employment contract that does not have a fixed expiration date (on the calendar) ▪ A temporary employment contract which contains a temporary employment clause **Not notified?** If the employer has not fulfilled his obligation for notification or has not done so in a timely manner, he owes the employee a compensation equal to one month's salary or a proportionate compensation.

ADVICE FROM THE EMPLOYMENT LAWYERS OF ACCON■AVM

If you are not sure if you have to give notice for a fixed-term employment contract that is coming to an end, please don't hesitate to contact one of our employment lawyers. If you are in doubt and it is urgent, we advise you, in any case, to give notice at least 1 month prior to the end of the employment contract and otherwise as soon as possible.

THE PROBATIONARY PERIOD

Rules and regulations up until 12-31-2014	Rules and regulations as of 01-01-2015
Prior to 1 January 2015, it was permitted to have a probationary period for a fixed-term employment contract. ▪ For fixed-term employment contracts up to 2 years: **one month** ▪ For employment contracts of 2 years or longer or permanent employment contracts: **two months** ▪ Always check the relevant collective agreements (CAO). These may offer the possibility of concluding a longer probationary period.	As of 1 January 2015, it is no longer possible to incorporate a probationary period for employment contracts of 6 months or shorter. It is still possible to incorporate a probationary period for employment contracts longer than 6 months. Please note: ▪ The probationary period must be the same for both parties ▪ The probationary period must always be agreed upon in writing ▪ When concluding a permanent employment contract, the probationary period may have the duration of up to 2 months ▪ When concluding a fixed-term employment contract of longer than 6 months, then the following probationary period applies: ○ ***One month*****:** for employment contracts shorter than 2 years ○ ***Two months*****:** for employment contracts for 2 years or longer; ○ Collective agreements (CAO) may offer the possibility of having a longer probationary period. ▪ If a fixed-term employment contract does not have an expiration date on the calendar then a probationary period of one month is possible, (this may include employment contracts for the duration of a project or an employment contract to replace sick or pregnant employees). ▪ No probationary period may be concluded for consecutive employment contracts with the same employer; the only exception here is if the employment contract clearly demands different skills or responsibilities from the employee ▪ If a new employer can reasonably be seen as the successor to the old employer, no probationary period may be concluded.

ADVICE FROM THE EMPLOYMENT LAWYERS OF ACCON■AVM

If you wish to make use of a probationary period, several options are available under the new law:

- You may offer an employment contract of longer than 6 months, for example, an employment contract for 6 months and 1 day.In this case, a probationary period of 1 month is possible.
- You may also use the first employment contract in the chain as a probationary period by, for example, offering an employment contract for 2 or 3 months. Formally speaking, this is an employment contract without a probationary period, however, the duration can actually be used to evaluate if the employee is suitable.
- *Please note: as of 1 July 2015, the so-called sequential stipulation has also changed! In our next newsletter we will further inform you of these changes.*

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THE USE OF MINIMUM-TERM CONTRACTS

Rules and regulations up until 12-31-2014	Rules and regulations as of 01-01-2015
In a minimum-term contract, the employer establishes in the employment contract that no wage payment obligation applies to the first 6 months. If this obligation is included, the employer runs the risk of still having to pay wages even if he does not call on the employee to work. This risk stems from the fact that, in principle, the employer is accountable for there being insufficient work available for the on-call employee. The employer is not required to pay the employee a wage over the first 6 months for the hours that the employee has not worked after being called up or for not being called up at all. During these 6 months, the employee does not acquire the right of employment for a fixed number of hours and the employer has the right to flexibly implement him/her. In the past, this period of 6 months could be extended indefinitely with a collective agreement (CAO).	As of 1 January 2015, a contract period of 6 months can only be extended if a collective agreement (CAO) is arranged, and this only applies for positions relating to incidental work activities that also have no permanent dimension. In principle, this means that, you can only conclude a minimum-term contract for 6 months. *Exception for on-call employees* An exception is made for minimum-term contracts involving the unique character of on-call employment. In these contracts, it is possible to deviate from the wage payment obligation during the first 26 weeks *worked.This* period can then be extended with collective agreements (CAO) up to 78 weeks worked. *Exception for certain branches* At the behest of the Labour Foundation, a governmental regulation can be invoked that makes a deviation from the wage payment obligation for certain branches or segments thereof, no longer possible at all (not during the first 6 months). For minimum-term contracts in the health-care branch, the Labour Foundation has already requested such a regulation and the government will most likely concur. This means for contracts in the health-care branch it will no longer be possible to be exempt from the risk of the wage payment obligation. Currently, the status of this request is still unclear. *When?* The old law continues to apply to employment contracts that have been concluded prior to 1 January 2015. If, prior to 1 January 2015, the corresponding collective agreement (CAO) contains the possibility of exemption from the wage payment obligation, please contact one of our employment lawyers.

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If there is no extended exemption based on the corresponding collective agreement (CAO), it is wise to only conclude minimum-term contracts of 6 months. If you wish to incorporate a probationary period, you can also conclude a minimum-term contract for 6 months plus 1 day with your employee. If you still want to conclude a minimum-term contract for 6 months or longer, then it is up to you weigh the pros and cons. If you have any questions, you can always contact one of our employment lawyers.

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THE NON-COMPETITION CLAUSE	
Rules and regulations up until 12-31-2014 Before 1 January 2015, a non-competition clause could be incorporated in fixed-term and permanent employment contracts. The requirements are: ▪ Agreement in writing ▪ Only with an adult employee The employee always retains the right to ask a judge to declare the non-competition clause wholly or partially void.	**Rules and regulations as of 01-01-2015** *(Article 7:653 BW)* As of 1 January 2015, a non-competition clause can, in principle, no longer be incorporated in a fixed-term employment contract. A non-competition clause can be incorporated in a fixed-term employment contract if the clause clarifies the employer's motivation and the employer shows the clause is required due to compelling company or operating interests. The employee always retains the right to ask a judge to declare the non-competition clause wholly or partially void.
ADVICE FROM THE EMPLOYMENT LAWYERS OF ACCON■AVM If you still wish to incorporate a non-competition clause in a temporary employment contract, you will need to include a sound motivation for this in the employment contract. If you want to make sure that you have supplied sufficient motivation for a non-competition clause, please feel free to contact one of our employment law specialists.	

If you have any questions about the upcoming changes or you want to know if your employment contracts meet the new requirements, please contact our employment law specialists at juristen@acconavm.nl or call 00(31) 26-384 23 84.

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WWZ (DUTCH DISMISSAL LAW)
CHANGES AS OF 1 JULY 2015

On 1 July 2015, the second phase of the WWZ went into effect. Redundancy is being modernised. Suitable work is more easily found in relation to unemployment benefits (WW) and the so-called “sequential stipulation” has been streamlined. Additionally, the transitional severance payment has been implemented and employers are required to offer employees schooling.

Below, we have made a list of the most frequently asked questions for you.

1) Redundancy
2) Sequential stipulation
3) Transitional severance payment
4) Unemployment benefits (WW)

If you have any questions you can always contact the employment lawyers of accon■avm advisors and accountants. You can contact them by sending an e-mail to **juristen@acconavm.nl** or by calling the general company telephone number 00(31) 26-384 23 84

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REDUNDANCY

What changed as of 1 July 2015 regarding redundancy?

1. Employers no longer have a free choice regarding the dismissal route (UWV or district court judge).
2. An employment contract can be cancelled in writing at the start once the employee has provided written consent.
3. The transitional severance payment has been introduced.

Which route should you choose?
UWV procedure
In the case of dismissal due to business-economic reasons or employment disability of longer than two years, employers are required to start a dismissal procedure at the UWV.

District court judge procedure
With dismissal due to other than business-economic reasons or employment disability of longer than two years such as a distorted working relationship or the non-functioning of an employee, employers are required to ask the district court judge to terminate the contract. Please note! A "reasonable cause" needs to be present. In the case of incompetence, for example, a (thorough) file must form the basis of the request for termination. If this is not the case, the judge will not terminate the contract (in contrast to the current situation where the district court judge can to do so but only by awarding a higher severance payment, for example).

How long does the UWV procedure take?
In principle, the UWV must make a decision within four weeks of receipt of the request. Upon termination of the employment contract with a dismissal permit, employers are allowed to subtract one month off of the term of notice, providing at least one month's notice remains.

Is it possible to mutually agree to terminate an employment contract?
This possibility will continue to exist. After signing the agreement, the employee has a two week reflection period. Within these two weeks, the employee can reverse his/her decision without having to provide a reason. If the employer has forgotten to include a reflection period in the termination agreement, then the employee has a three week reflection period.

Besides termination with mutual consent, the WWZ introduces termination by the employer with the consent of the employee. This option prevents a UWV procedure and a district court procedure. This situation also carries a two week reflection period.

Is an appeal process possible? Prior to 1 July 2015, an appeal against a decision by the UWV was not possible; it was in principle, the "end station". As of 1 July 2015, an appeal to the district court judge can be made against the decision of the UWV. An appeal against the decision made by the district court judge can subsequently be made to the higher court. Any further appeal can be submitted to the highest judge in the Netherlands, "de Hoge Raad" (High Council).

ADVICE FROM THE EMPLOYMENT LAWYERS OF ACCON■AVM

- Always include a 2 week reflection period in the termination agreement.
- Try to conclude a settlement agreement before the 15th of the month so that the reflection period ends before the end of the month.
- Make sure you compile a thorough file and be aware of your schooling policy.

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THE SEQUENTIAL STIPULATION

What changes?
As of 1 July 2015, the sequential stipulation was streamlined. Whereas previously employers were able to conclude a maximum of three consecutive, fixed-term employment contracts over a period of three years, this has now become three consecutive, fixed-term employment contracts over a maximum of two years. The sequence is no longer interrupted by a break of 3 months and 1 day but by a break of 6 months and 1 day. *The rule of 3 x 3 x 3 becomes 3 x 2 x 6.*

Do the changed rules also apply to running employment contracts? The new sequential stipulation applies to all new employment contracts that are concluded on or after 1 July 2015.

Are there any groups of employees for whom an exception is made?
The policy makers have determined that two groups are exempt from the sequential stipulation. These are:
- young people under 18 years of age who, on average, work less than 12 hours per week;
- employees who have an employment contract that is part of completing their studies.

In addition, there is also a limited possibility of deviating from the sequential stipulation with a collective agreement (CAO), namely, extending the period from two to a maximum of four years and increasing the number of temporary contracts to six at the most. This deviation is only permitted, however, if there is a temporary employment contract or for positions or groups of positions sanctioned by a collective agreement (CAO) where the business process intrinsically justifies deviation from the sequential stipulation.

Transition arrangement
There is a transition arrangement for one year for CAO agreements made before the new rules went into effect. Until 1 July 2016 at the latest, the old regulations will still apply for CAO agreements that contain a deviating arrangement and were concluded prior to 1 July 2015.

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- Check the possible relevant CAO for deviations and transition arrangements.
- Conclude employment contracts of, for example, 7- 8- 8 months so that you comply with the sequential stipulation and the employment duration remains under 24 months in connection with the transitional severance payment.

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THE TRANSITIONAL SEVERANCE PAYMENT

To whom do employers pay the transitional severance payment? In principle, employers must pay a transitional severance payment to every employee who has been employed on a fixed-term or permanent employment contract for at least two years, except for employees who have resigned themselves.

When are employers obliged to pay employees a transitional severance payment?

Mandatory:

- Dismissal procedure via the UWV or district court judge.
- When an employer decides not to extend a fixed-term employment contract and the employee has been employed for at least two years.
- In the case of seriously imputable acts or negligence by the employer where the employee has consequently begun proceedings to end or discontinue the employment contract on his/her own initiative.
- For those who are long-term employment disabled and those who quality for fully-disabled unemployment benefits (IVA).

Not mandatory:

- Dismissal with mutual consent.
- The dismissal is the result of seriously imputable acts or negligence by the employee.
- The employee is younger than 18 years of age and has worked a maximum of twelve hours per week on average.
- The employment contract ends due to the employee reaching the age of retirement (AOW).
- Bankruptcy, suspension of payment or debt restructuring on the part of the employer.

The amount of the transitional severance payment

The transitional severance payment is based on the employee's salary and the number years of employment. For the first ten years worked the employee receives a third of a monthly salary for each year of employment. For every year after that, he/she receives half of his/her monthly salary for each year of employment. The transitional severance payment cannot exceed a maximum of € 75,000 gross but for employees who earn more than € 75,000 gross, the maximum payment is equal to one year's salary.

If the employer has demonstrably invested in the schooling of the employee or has undertaken other activities which enhance the employee's prospects on the job market, then these costs may, under certain conditions, be subtracted from the transitional severance payment.

Transition arrangement

A transition arrangement applies until 1 January 2020 for employees aged fifty or older who have been employed for over ten years. This group of employees has the right to one monthly salary per every year of employment after reaching the age of 50. Here too, applies a maximum of € 75,000 gross or one year's salary if it exceeds € 75,000 gross. Furthermore, small companies (with fewer than 25 employees) may pay a lower transitional severance payment if they are forced to dismiss personnel due to poor financial standing. This exception does not apply for small companies that are part of a concern.

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- Be sure to document in a study agreement that these costs will be subtracted from any possible transitional severance payment to be paid later.
- Check whether a fiscal provision needs to be formed for the transitional severance payments.

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UNEMPLOYMENT BENEFITS (WW)

Unemployment benefits (WW) will also be radically changed by the WWZ. The intention here is to stimulate those receiving unemployment benefits to search for new work more actively and thus make use of these benefits for a shorter period of time. The unemployment benefits should be a safety net but they can also be a stepping stone to new work.

The duration of unemployment benefits
With the WWZ, the maximum duration of unemployment benefits will gradually be reduced to 24 months starting from 1 January 2016. The reduction of one month per every quarter will be carried out from 1 January 2016 until 2019. Employers can make collective agreements (CAO) to extend the unemployment benefits with a maximum of 14 months.

Accepting suitable work
Under current rules, job-seekers that have received unemployment benefits for 6 months must also accept work that is one level below their educational level. After having received 1 year of unemployment benefits, job-seekers must accept any available work as suitable. As of 1 July 2015, the unemployed are to accept any available work as suitable regardless of their educational level, for example.

Income adjustment
Under current rules, when a job-seeker finds (part-time) work, the number of hours that he/she works are deducted from the unemployment benefits. This means that, when the new work results in a wage that is lower than the unemployment benefits, it will result in a lower overall income. In order to prevent this, an income adjustment system will be implemented. This system will not look at the number of hours worked but at the income earned. The intention here is to always make it financially rewarding to go back to (part-time) work again.

Build-up of the unemployment benefits
Currently, everyone who receives unemployment benefits receives 1 month of benefits (WW) for every year worked. Soon, this will change and it will only apply for the 1st 10 years of work. After that, people will only receive a half month of unemployment benefits for every year worked. Moreover, the working history that the unemployed have built up prior to 2016 will be respected.

ADVICE FROM THE EMPLOYMENT LAWYERS OF ACCON■AVM

In collective agreements (CAOs), it can be agreed that employers extend the unemployment benefits from 24 to 38 months. The expectation is that the unions will strongly insist on this. Keep an eye on the collective agreements (CAO) and the negotiations and focus on your branch organisation in order to influence the outcome of the negotiations.

If you have any questions about the coming changes, please contact our employment law specialists at **juristen@acconavm.nl** or call 00(31) 26-384 23 84.

May 2016

WWZ (Dutch Dismissal Law) and WW (unemployment benefits) – The changes as of 1 January 2016

On 1 January 2016, the third phase of the WWZ (Dutch Dismissal Law) went into effect. What does this mean? The third phase focuses on unemployment benefits (WW). The duration of the unemployment benefits has been shortened and the manner in which they are accrued has also changed.

The duration of the unemployment benefits (WW) has been shortened
As of 1 January 2016, the unemployment benefits (WW) has been shortened by one month per quarter. This means that the maximum period of an unemployment benefit - between 1 January 2016 and 1 July 2019 - will be gradually shortened by one month per quarter from the current 38 months down to 24 months. By way of collective agreements (CAO), social partners can still agree to an extension of the unemployment benefits (WW) for a maximum of 14 months.

The changed build-up of the unemployment benefits (WW)
Besides the duration, the manner in which unemployment benefits (WW) are built up has also changed. Prior to 1 January 2016, every year of employment resulted in one month being added to the duration of the unemployment benefits (WW). This remains the same for the first ten years of an employment period. After that, as of 1 January 2016, every year of employment will result in an additional half month of unemployment benefits (WW). The employment history that has been built up prior to 2016 continues to be respected. This means that every year of employment prior to 2016 has the right to one month of unemployment benefits (WW) but never more than the maximum that is allowed for the recipient of unemployment benefits that applies at the beginning of their unemployment.

	How was it before 1 January 2016?	**Situation as of 1 January 2016**
(Common) duration	A maximum of 38 months	Gradually adapted so that the unemployment benefits in 2019 will have a duration of a maximum of 24 months.
Level	75% for the first 2 months and 70% daily wages after that	75% for the first 2 months and 70% daily wages after that
Build-up	1 year employment = 1 month of unemployment benefits	1st 10 years: 1 year = 1 month of unemployment benefits and after that, for each year of employment = ½ month unemployment benefits

If you have any questions about this subject, please feel free to contact us! Please send an e-mail to international@acconavm.nl or you can also reach us by telephone at: 0031 113 – 21 57 10. We would be more than happy to help.

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