

Tips for Dismissing an Employee in the Netherlands

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The Netherlands is one of the few places in the world where dismissing an employee requires prior authorization from the government (unless it is done summarily for urgent cause).

In order to dismiss an employee for poor performance or misconduct, an employer must submit an application to the Cantonal Court. This process may take many months, even up to a year or more depending on the backlog. In the case of a redundancy (a job disappearing due to economic or reorganizational reasons), the employer must submit an application to the local Employee Insurance Office (*Uitvoeringsinstituut Werknemersverzekeringen* (or UWV). This process usually take between six weeks to two months but can take longer. Both processes require the employer to legally justify the dismissal with evidence, and both allow the employee to present his or her side of the case.

However, obtaining authorization is *not* a foregone conclusion; therefore, many dismissals are achieved through the negotiation of a mutually agreed upon separation agreement. Some factors that can affect the negotiations are the strength of the employer's case and how much the employee wants to avoid discharge and/or bargain for a larger severance package.

Here are a few tips to consider when discharging an employee in the Netherlands:

Tip 1: Best Possible Case

When negotiating with the employee, if the employer looks unlikely to receive authorization, the employee has less incentive to be reasonable. Therefore, it makes sense to be as prepared with your dismissal arguments when discussing with the employee, as when applying to the UWV.

Tip 2: Sick Leave

Approaching an employee to discuss a mutual separation agreement in the case of a redundancy may induce an employee to go out on sick leave, which would prevent the dismissal from proceeding. Employers are responsible for paying employees sick pay for two (and possibly three) years.

Therefore, in the case of a redundancy dismissal, the employer may want to file the basic information of the application for dismissal (including basic information about the parties) in order to stop the clock and preempt sick leave from delaying the process while the employer discusses a mutual

agreement. The employer can then use the next couple of weeks to gather documentary evidence in case the negotiations regarding the separation agreement fail, and the application needs to be completed. (If the dismissal is due to a redundancy, then the employee being on sick leave will not prevent the process from moving forward.)

Tip 3:

Employers may want to put an employee on “garden leave” (not reporting to work but still receiving pay) while going through this process, but doing so without the employee’s consent is not permitted and could negatively affect its case with the authorities. In addition, if authorization is denied and negotiations fail to yield a mutual separation agreement, the employee will remain employed, and the employer may be forced to figure out how to reintegrate the employee into the workforce.

Tip 4:

When planning the timing of the severance payment in a mutual agreement, do not forget that the employee has the right to revoke the agreement during the first 14 days post-execution.

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National Law Review, Volume IX, Number 73

Source URL: <https://natlawreview.com/article/tips-dismissing-employee-netherlands>