

# Redundancy in The Netherlands

## What are your rights?

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**Expatax: the expat tax specialist**

## 1. Introduction

If you are made redundant from your job, you should be treated fairly by your employer and there are certain steps your employer is expected to follow.

Reasons for redundancy include:

- new technology or a new system has made your job unnecessary;
- the job you were hired for no longer exists;
- the need to cut costs means staff numbers must be reduced;
- the business is closing down or moving.

In a redundancy situation, the following should happen:

- your employer must act according to Dutch dismissal legislation (if applicable);
- your employer should select you fairly (principle of reflection);
- you should be consulted about the redundancy;
- you should get any redundancy pay you were able to arrange;
- you should be given the correct amount of notice;
- your employer should consider any alternatives to redundancy.

In this brochure we will discuss the legal obligations your employer has to follow if he wants to end your contract. If a redundancy payment is applicable (which depends on the situation) we give you guidelines to calculate the amount. You may be entitled to claim unemployment benefit. We point you at your rights. We also discuss the consequences for your residence permit and work permit (if applicable) and for the 30% ruling. If you are granted a redundancy payment you need to decide how you would like to receive it. We tell you the options you have and what the tax consequences are.

As you can see a lot will happen in case of upcoming redundancy. Expatax is here to help you. We can support you with tax matters, our lawyer can assist you during the entire dismissal procedure and our financial planners can answer your questions about personal finance. Make sure you are prepared. Rules may change so stay in touch with us.

## 2. Dismissal legislation

The Dutch legislation around redundancy payments is complicated. This is related to the fact that the Netherlands has a unique dismissal legislation. In the Netherlands the contract of employment can be terminated in different ways.

## Notice of termination

The first possibility is by means of 'notice of termination'. If your employer wishes to validate the termination of the contract of employment, permission is firstly required from the Institute for Employee Benefit Schemes (UWV). A preventive check is involved here. Before notice can be given to you, UWV Werkbedrijf checks if you can be dismissed based on several criteria. It may for example be possible that your employer wants to end the contract on personal grounds, for example because you do not perform properly. Your employer must be able to demonstrate this. He should have discussed it with you and you must have been given the opportunity to improve your performance.

The preventive check applies only when your employer wishes to terminate the contract of employment. When you wish to terminate the contract, no prior permission is needed. You, as well as your employer, only need to comply with the period of notice.

The Court of Appeal has decided that an employer also needs prior permission in case the dismissal concerns a foreign employee, especially if the foreign employee is working in the Netherlands, for a Dutch employer, with an employment contract under Dutch law. The comment of the employer that the employee would return to his home country after the dismissal was not of real importance to the judge.

## Judicial cancellation

The second possibility to terminate the contract of employment, is through a judicial cancellation. In the event that the judge grants the cancellation request, no periods of notice need to be observed and neither prior permission is needed.

So the employer can choose to consult the UWV first or to go to court. The second route may take less time but will cost more and will (also) have an uncertain outcome. That is why most employers will try to reach mutual consent with you about ending the contract or get the approval from the UWV. You can still go to court if the UWV has given approval to claim a redundancy payment if your employer doesn't want to offer it to you.

## Other options

Apart from these two major routes to termination, there are also other possibilities to terminate the contract.

- Termination because of 'urgent reasons'. Examples of urgent reasons are gross negligence in the performance of duties, theft, fraud, crimes involving a breach of trust, or divulging of trade or professional secrets.
- Temporary contracts legally end on the end date of the contract, unless they are renewed.
- Termination during the trial period. An employer will not have to give a reason why the contract will not be continued.

In these situations a redundancy payment is not awarded.

## Period of notice

Notices of termination should be given at the end of the month, unless another day has been defined by written agreement, internal regulations or by past practice.

The notice period which employers have to consider is:

- one month for an employment contract that has lasted for a period of less than 5 years;
- two months for contracts that have lasted 5 to 10 years;
- three months for contracts of 10 to 15 years;
- four months for contracts that have lasted 15 years or longer.

These notice periods can be shortened by collective labor agreements or extended by written agreement. However, the notice period for the employer is at least twice as long as the notice period for the employee in case of extension by written agreement.

You can't be dismissed by reason of the following:

- by reason of your nationality, race, gender, age, disability or religion (discrimination);
- just because you are a member of a trade union, works council or specific political organisation;
- because you are on maternity leave or want to take parental leave;
- when you have to fulfil your military service in your own country.

### **3. Redundancy payment**

For the first method of terminating employment, notice of termination and preventive check, the basic assumption is that no redundancy payment is awarded.

Furthermore, it is also possible after the termination for the employee to ask the judge for an opinion on the fairness of the dismissal. When the judge is of the opinion that the dismissal is 'evidently unfair', for example because of the consequences of the dismissal for the employee, he can grant a redundancy payment.

The second main road to termination, the judicial cancellation, recognizes a different point of departure. In the case that the employer submits a request for rescission, a redundancy payment is awarded in principle. If the employee submits the request, then in principle no redundancy payment is awarded, but if it emerges that the employer is to blame, compensation can still be awarded. Inversely, if it is shown that blame is attributed to the employee as the basis for the employer submitting the request, the payment can be adjusted downwards.

#### 4. Calculation of the redundancy payment

As mentioned earlier you may be able to claim a redundancy payment if you are made redundant, which depends on the actual situation and whether or not there is a social plan. If there is no social plan you will have to negotiate with the employer yourself about a redundancy payment you may receive due to the (unwanted) dismissal. But where do you start?

The most used option to calculate a redundancy payment is the formula which has been developed by the District Courts of Justice, the so called "kantonrechttersformule". Due to the many court cases they decided to create a formula which all courts would use. This formula will look at the period the employee has worked for the employer, the monthly salary paid and the way the contract is ended. At the moment there is no legal maximum to the redundancy payment. As of 2013 there may be a maximum of € 75,000 for the highest managers in the public sector but not for private enterprises.

##### Calculation

Amount of the redundancy package = A x B x C

##### Part A

The first part is the number of the weighed years of service. For the calculation of A the years of service are rounded off at whole years. This means that a period of 6 months and 1 day is treated as a whole year. After that the years of service are weighed. This means that the older the employee is the more important a year of service will be.

For every year of service	Weighing factor
Till age 35	0.5
From age 35 till 45	1.0
From age 45 till 55	1.5
From age 55	2.0

##### Part B

The second part of the formula is the monthly salary which consists of several parts. Some of them are relevant for the calculation of the redundancy package and some are not. Be aware that if the 30% ruling is applicable the (taxable) salary is reduced in the employment contract. This reduced salary (70% of the gross salary) is (in principle) the basis for the calculation of the redundancy payment. Check your employment contract for an article about the 30% ruling.

Relevant	Not relevant
Gross (or taxable) monthly salary	Employers part pension premium
Holiday allowance	Company car
Thirteenth month	Tantieme
Structural profit share	Non structural profit share
Structural overtime	Employers part health insurance
Structural nightshift allowance	Expenses allowance

### Part C

The third part of the formula is the correction factor which is the variable part of the formula. The amount of the redundancy package can be adjusted because of special circumstances. Normally part C is fixed at 1. But when the employer is to blame that the employee has been made redundant part C can be fixed at 1.5 or even more. When the employee is to blame part C can be fixed at less than 1 or even at 0 when the employee decides to leave himself.

### Foreign employees

Recent court cases show that the legal position of foreign employees can differ from local employees in case of redundancy. The Court decided for example that a foreign employee was entitled to a higher redundancy payment than he would have received based on the kantonrechtersformule. Reason for this decision was that the foreign employee was recruited from abroad with the clear intention to employ him in the Netherlands for a certain number of years. On this basis the employee came to the Netherlands. Due to the dismissal this period was not reached and therefore the employee had to be compensated more.

## **5. Payment of the redundancy payment – tax consequences**

When you are granted a redundancy payment you can choose out of three options to receive the money:

1. payment in one lump sum to your bank account;
2. income insurance from an insurance company or a savings scheme from a bank;
3. income insurance from your own limited company, a so called “stamrecht BV”.

### Option 1: Payment in one lump sum to your bank account

Normally when you are made redundant the employer will pay the redundancy package in one amount. The employer can also decide to pay you in monthly installments combined with a social security payment from the government but we will not discuss this further.

The lump sum will be taxed based on the tariff for special remunerations. The whole amount will be taxed together with your other income during the year. The higher the income and lump sum the sooner your income will fall in the highest tax bracket of 52%. When normally your salary isn't taxed against 52% the lump sum leads to a higher average taxation. The so called averaging regulation can reduce this. But the choice depends on your personal situation. If you will leave the country or if you have debts (depending on the amounts) we give you into consideration to accept the lump sum. A lump sum is often chosen when the redundancy payment is relatively low (< € 25,000). If you want to stay in the Netherlands and find another job or start your own business you can decide to go for option 2 or 3. With these options you can delay taxation of the whole payment.

Benefits:

- immediately money available.

Disadvantages:

- immediately taxed, possibly against the highest tax rate.

### Option 2: Income insurance from an insurance company or a savings scheme from a bank

To prevent taxation of the whole redundancy package in one year you can decide to receive it in annual installments. This can be done by using a special insurance from an insurance company or special bank savings product from a bank. The employer pays the lump sum directly to the insurance company or bank and they will pay it to you in annual installments, either starting immediately or at a certain date or age, for example as a pre-pension at the age of 60 or normal pension at the age of 65. In the mean time the capital is growing with the yearly profits on the capital made by the insurance company or bank.

The product may be created around your personal situation, but you will have to use the options the bank or insurance company can give you and the payment period may be maximized in number of years. What is the benefit? The monthly installments parts are now also normally taxed but not always against 52%. Again this depends on your personal situation. When your normal salary already falls into the 52% tax bracket you won't have a benefit now, but maybe in the future if the tax rates may go down again. If the payments are made to you after the age of 65 they will be taxed at a lower tax rate which means that you can create a cash benefit. So it's a good way to save for your retirement. If payments are made while you are not living in the Netherlands anymore, the payments may be taxed in the country where you are living at that time, but social security premiums will remain to be paid in the Netherlands. Our certified financial planners can help you make the right decision if you go for this option.

#### Benefits:

- the payment is paid by your employer to the bank or insurance company without withholding tax, which means that a higher amount can be invested and generate income;
- you have more options to decide when you will receive the payment(s), where a bank product is a little more flexible than an insurance product;
- the bank product has relatively low costs and the bank guarantees the savings amount up to € 100,000 in case of bankruptcy.

#### Disadvantages:

- you have to follow the rules of the bank or the insurance company, they are not as flexible as you may want them to be;
- the maximum payment period of the bank product is 20 years;
- the (hidden) costs of the insurance product can be relatively high and there is no guarantee in case of bankruptcy;
- the insurance product will have a minimum payment period and often requires that the amount stays with them for a minimum period;
- you can't just take out all money or stop the product when you want to.

#### Option 3: Income insurance with your own limited company

Instead of using an external insurance company or bank you can decide to use your own limited company as an insurance company/bank. This way you keep in charge of your own money and you save tax. It does mean that you have to invest the redundancy payment yourself in order to be able to pay out the needed income to you based on the agreement made with the limited company. Our certified financial planners will gladly advise you about this. They will look for the best opportunities for you on the (international) market.

When you would like to start your own business this option can be the right one for you and also if you will receive a reasonable redundancy payment (> € 75,000).

Expatax can assist you with the whole procedure of setting up this limited company. This will include:

- a personal meeting to discuss the situation;
- creation of a 'stamrecht' agreement between employer and employee;
- creation of a 'stamrecht' agreement between employee and the limited company which will be set up;
- investigation of the wishes regarding the articles of association;
- creation of draft and final articles of association;
- creation of a lending agreement between employee and limited company if money is needed to do business;
- registration with the tax authorities and the Chamber of Commerce.
- advice during the whole procedure.

The annual costs concern:

- registration with the Chamber of Commerce;
- administration costs -> annual accounts, corporate tax return, annual minutes for shareholders, correspondence with the tax authorities.

Be aware that all these costs are deductible for the limited company and therefore reducing the corporate income tax burden.

Benefits:

- you are in control, you decide when payments start and for how long, how money is invested, there is flexibility;
- you can borrow money from the *stamrecht* BV to start a business, buy a property, etc.;
- if you die all money will go to your relatives, without any additional insurance;

Disadvantages:

- costs of setting up a limited company;
- annual activities like filing a corporate income tax return, keeping up with the business administration, which Expatax can take over from you.

Every situation is different and requires other solutions. We can help you make a choice.

### Emigration and redundancy package

Migration from the Netherlands doesn't mean you get rid of the Dutch tax authorities unless you have been working for an international company with branches in several countries and were made redundant while you were already living and working outside the Netherlands again. But most of the time you will have been made redundant by your Dutch employer or a Dutch branch of your international employer.

If the periodic payments or the redundancy package are paid out of the Netherlands, the Dutch tax authorities can tax these payments based on Dutch tax laws. Since also the country of (new) residence will like to tax these amounts the Netherlands have created tax treaties with most of the countries. In these tax treaties a difference is made between:

- a payment for the loss of salary
- a payment for the loss of pension

If the redundancy package is paid to cover loss of salary, the whole amount is taxed in the Netherlands. If the package is paid to cover the loss of pension, the package is taxed in the country of residence. A combination of both is possible. The employee has to prove that (part of) the package is granted to cover the loss of pension. This must be clearly stated in the agreement with the employer. Social security premiums will not be due in the Netherlands.

## 6. The 30% ruling

### 30% ruling and redundancy payment

The 30% ruling is not applicable on redundancy payments. However, if part of the redundancy payment is related to work performed - like holiday allowance, remaining holidays and accumulated bonuses - this part will fall under the 30% ruling. It is therefore important for you as employee to have your employer specify the redundancy payment in detail and to confirm all the separate reimbursements.

The part of the payment which is calculated according to the “kantonrechttersformule” will not fall under the 30% ruling. This has been confirmed by the Supreme Court of Justice.

Be aware that also the calculation of the redundancy payment can be affected by the 30% ruling as such that the monthly salary, which forms the basis for the calculation, is supposed to be the gross monthly salary minus the 30% allowance. In other words, the basis for the calculation of wage tax and premiums social security is also the basis for the calculation of the redundancy payment. We however know an individual court case in which the Judge decided that the redundancy payment should be calculated based on the gross salary. So check your employment contract and if there will be a court case it is good to bring up this point as well.

### You receive a payment from your employer in a later year

If you receive a bonus after you have left the company, this bonus can fall under the 30% ruling if it was agreed that you would receive the bonus, even if the amount of the bonus was not determined yet. This also applies to options you have received and are paid out. Important is that the payment is made to you within the term of the 30% ruling, so before the end date as mentioned on the official 30% ruling declaration issued by the tax authorities. In an individual case the Court also decided that it is possible that the ruling is applicable pro rata based on the amount which was vested during the term of the 30% ruling, but paid out after the end date of the ruling. At the moment this case is still on trial with the Supreme Court. In each individual situation it has to be determined whether the 30% ruling is applicable or not.

### How to prevent that you lose the 30% ruling

Once your contract with your employer has ended the 30% ruling will automatically end on the last day of the contract. If you don't want to lose the 30% ruling definitely you will have to find a new job within 3 months. So it is important that you start looking for another job as soon as you know that you will be made redundant.

### Unemployment benefits

The 30% ruling will not be applicable on unemployment benefits you will receive from the UWV.

## 7. Consequence for your residence or work permit

The moment the employment contract ends (at the end of the agreed period, dismissal on request of the employee, etc.) automatically also the residence permit ends since this permit was granted based on the employment contract. This means that you would have to leave the Netherlands. If you want to stay in the Netherlands longer for example to study or to be with your partner, you will have to apply for a new residence permit based on the applicable rules. You will have to arrange this yourself.

If you have found a new job a new work permit must be requested by your new employer and the IND must be informed about this step. It is important that the work permits are uninterrupted. If you are working in the Netherlands as a knowledge migrant and your contract is ended by the employer you have a period of 3 months to find a new job. If you find a new job make sure that your new employer is registered with the IND under the knowledge migrant scheme.

Be aware that if you sign a settlement agreement in which you accept that the contract is ended with compensation you are assumed to have consented to the dismissal which means you automatically lose your permit. In that case the three months period will not be applicable.

If you are an EU resident you also have to prove that you have sufficient income to support yourself. So it is important that you find a new job or become self-employed as soon as possible, unless your partner is able to support you.

As long as a residence permit is valid, you are entitled to unemployment benefit, if you satisfy the requirements. If you leave the Netherlands you may be able to keep the employment benefit but that depends on where you are going to and the applicable treaties.

## 8. Unemployment benefit

If you become fully or partly unemployed due to actions of your employer, you may be entitled to unemployment benefit, a benefit under the Unemployment Insurance Act (WW).

As mentioned before an employment agreement can also be terminated by mutual consent. In the past, an employee would not have accepted such a termination unless he or she had found another job, because such employees generally were not entitled to unemployment benefits. Since the adjustment of the Act on Unemployment in October 2006, however, the rules for unemployment benefits are less severe, and the unemployment benefits will more easily be granted as long as the employment agreement is not terminated based on urgent reasons or on request of the employee.

A number of conditions apply. You will be entitled to unemployment benefit for a minimum term of 3 months and a maximum term of 38 months.

### Weeks requirement

If you meet the weeks requirement, you will be entitled to a benefit for 3 months. The weeks requirement means that you must have worked for at least 26 of the 36 weeks before you became unemployed. Weeks worked are ones in which you worked for at least one day, weeks in which you were on holiday and weeks in which you went on paid leave. Weeks not counted are weeks in which you performed work as a self employed person and weeks included in the calculation of a previous benefit.

The weeks requirement is less stringent for musicians, film employees, artists and employees who provide technical support to these professional groups. They must have worked for at least 16 of the 39 weeks before becoming unemployed.

### Years requirement

You will be entitled to a benefit for a longer period if you also meet the years requirement. This means that you must have worked a sufficient amount for at least 4 of the 5 years before becoming unemployed. You are considered to have worked a sufficient amount if you were paid wages for at least 52 days of a year.

The year in which you became unemployed does not count in the calculation of the benefit. The period during which the benefit is paid out may be extended by a maximum of 35 months. The exact term of the benefit will depend on your overall employment history, which is the sum of your fictitious and actual employment histories. Your fictitious employment history comprises all calendar years from the one in which you turned 18 up to and including 1997. Years in which actual work was performed are counted from 1998. You must be able to show your actual employment history, for example by means of an annual statement from the tax authorities or wage slips.

You are entitled to unemployment benefit of one month for every year worked.

The years in which you cared for children can also be partly included in the calculation. From 2007, a year in which you provided informal care can also be counted.

### What is the amount of your unemployment benefit?

The amount of your unemployment benefit generally depends on the wage you were receiving in the year before you became unemployed. The unemployment benefit that you receive will be equal to 75% of that wage for the first two months and equal to 70% of that wage in subsequent months.

For the calculation of the unemployment benefit the wage you received is the wage excluding the 30% ruling.

The amount of the unemployment benefit is linked to a certain maximum, namely the maximum daily wage. As from January 1, 2011, a maximum daily wage of € 188.88 (€ 191.82 in 2012) applies. The maximum benefit is 75% of the daily wage in the first two months and 70% of the daily wage in subsequent months.

#### How to apply for unemployment benefit?

You can register as a jobseeker and apply for unemployment benefit at the Institute for Employee Benefit Schemes (UWV). You can visit a UWV WERKbedrijf office in your area.

#### What are your obligations when receiving unemployment benefit?

If you are receiving unemployment benefit, you are obliged to return to work as soon as possible. You must make agreements with your UWV WERKbedrijf office about looking for work. You have an obligation to seek work. If you are offered suitable work, you must accept it. Suitable work is work related to your education and training requirements and wage level.

If you are unemployed for a period of 12 months any kind of work is assumed to be suitable. If you have been unemployed for over a year, therefore, you must also look for work that is not directly related to your education and training and previous work experience. After half a year, for example, someone with a higher professional education (HBO) must also look for work that is appropriate for someone with a senior secondary vocational education (MBO), and ultimately all jobs must be considered suitable.

After 3 months of being unemployed, your UWV WERKbedrijf office will check whether you have tried hard enough to get a job. This check is referred to as the 'gatekeeper test'. If you have failed to keep to the agreements made, UWV can reduce your benefit. You can, for that matter, also contact UWV if your UWV WERKbedrijf office is not supporting you enough.

In exceptional cases, you may be exempted from the obligation to seek work. Your UWV WERKbedrijf office can grant such an exemption in the following cases:

- you have tried hard enough but have not succeeded in getting a job. You must do at least 20 hours of volunteer work a week as part of a reintegration programme;
- you are providing intensive informal care;
- an emergency has arisen in your family situation, for example someone has died or become seriously ill;
- you are starting your own company (for a period of 6 months).

## **9. Conclusion**

As you will have read many things are important in case of dismissal. As soon as you know that you will be made redundant contact us.

## Checklist

- Has your employer followed the correct legal procedure?
- Was the period of notice long enough?
- Will all outstanding amounts be paid out to you like for example holiday allowance, remaining holidays and accumulated bonuses?
- Is there anything you need to pay back to your employer like a reimbursement you received for education costs?
- When will you have to return the company car?
- Will your employer assist you with finding a new job or additional training?
- Will you receive a redundancy payment?
- Is the redundancy payment high enough?
- How would you like to receive the redundancy payment?
- What are the consequences for your residence permit?
- Will you receive unemployment benefit?
- What are the consequences for the 30% ruling?
- What are the consequences for possible tax allowances or provisional refunds you are currently receiving from the Dutch tax authorities?

There is a lot to consider. Expatax can assist you with these questions. Don't hesitate to make an appointment with one of our advisors to discuss your personal situation.

Check our Knowledge Base on [www.expatax.nl/kb](http://www.expatax.nl/kb) for answers to frequently asked questions.

## **10. About Expatax**

Expatax was set up in 2001 and has grown to a fully licensed tax and accountancy firm employing several qualified advisors. These advisors are highly educated and gained their work experience at well known (international) tax and accountancy firms. Permanent education is part of our policy. Our advisors are member of several professional organisations which monitor our procedure and the quality of our work.

Expatax is specialized in assisting expatriates and foreign businesses who want to work and do business in the Netherlands.

Our approach is very personal and direct. Lines are short and we do all we can to find a solution around the client's needs. By focussing on the international tax advice we can keep our knowledge high, the procedures clear and the fees reasonable.

Due to our client base all our outgoing correspondence like tax reports, annual accounts, etc. are prepared in English. Specifications are provided so that you can see exactly what we have done and what the result will be.

## Services

We provide the following services:

- preparation of all tax returns and tax advice ([www.expatax.nl/contentstaxation](http://www.expatax.nl/contentstaxation))
- application of the 30% ruling ([www.expatax.nl/30ruling](http://www.expatax.nl/30ruling))
- company set up in the Netherlands ([www.expatax.nl/startingbusiness](http://www.expatax.nl/startingbusiness))
- accounting ([www.expatax.nl/bookkeeping](http://www.expatax.nl/bookkeeping))
- payroll solutions ([www.expatax.nl/payrolling](http://www.expatax.nl/payrolling))
- financial planning ([www.expatax.nl/financial\\_advice](http://www.expatax.nl/financial_advice))

## Cooperations

Cooperations have been set up with other specialized advisors:

- activpayroll Ltd: worldwide payroll solutions
- VédéVé Legal: international labour law, pension rights and social security
- Berkenhout Finance: financial planning
- Rothwell International BV, contracting agency

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