

The Netherlands - House of Representatives approves extended employee rights to work from home (remote working)

Summary

On July 5, 2022, the legislative bill “Work where you want” was adopted in the Netherlands by the House of Representatives (“Tweede Kamer”). With this bill, employers have to consider an employee’s request to work from home by weighing the employer’s and employee’s interests according to the standard of reasonableness and fairness (“redelijkheid en billijkheid”).

This bill provides employees who fall under Dutch labour law with extended rights to work from home, as the threshold has been raised for employers to reject an employee’s request to work remotely. Under circumstances, employees living outside the Netherlands can also rely on this new legislation. An employer can however still reject such a request if the employer’s interests outweigh the employee’s interests. Elements that can be considered for this assessment are (non-limitative): social cohesion, cooperation within teams or a significant administrative and financial burden for the employer. In this light, the actual impact of this legislation for employees will depend on the circumstances of their specific situation and the policies employers will adopt.

The bill has still to be approved by the Dutch Senate, but this is expected to be a matter of time. The entry into force date is still to be determined.

The Detail

Currently, Dutch employment law (“Wet flexibel werken”) allows employees to ask their employer to work from home. The employer is obliged to consider this request (“duty to consider”), but is free to reject this request without further substantiation.

At the beginning of 2021, the initiative legislative bill “Work where you want” was submitted in the Netherlands (in Dutch: “Wet Werken waar je wilt”), with the aim of giving employees more rights to work from home. In the initial bill, it was proposed that the employer could only reject an employee’s request to work from home if there were compelling business reasons for the employer to deny this request (“zwaarwegende bedrijfsbelangen zich daartegen verzetten”). Without these compelling business reasons, an employer had to agree with the request from the employee to work from home.

However, various advisory bodies advised to amend the initial draft bill in order to avoid far-reaching implications for employers. Based on the recommendation of the Social-Economic Council (“Sociaal Economische Raad”), the initiators altered the draft bill last month. This amended version was enacted by the House of Representatives earlier this week.

Based on the current version, an employer has to consider a request to work from home based on the standards of reasonableness and fairness (“redelijkheid en billijkheid”), taking into account all circumstances of the case at hand. In other words, when assessing the



request, an employer has to weigh the interests of the employee and employer and decide which interests have priority. The aim is to facilitate a dialogue between employer and employee.

International implications

The new legislation is to apply to all employees who fall under Dutch labor law and who reside within the territory of the EU. Also international employees who fall under Dutch labor law will therefore have extended rights to work from home, once this bill is passed. This can for example apply to cross-border employees who live in Belgium and are employed by a Dutch employer.

If an employee who lives outside the Netherlands requests to work more time from home, this will directly impact the tax position and may also change the social security position (if the employee works 25% or more of the total work time in the country of residence).

Especially from a social security perspective, a shift to another country's social security scheme can result in an administrative and financial burden for the employer. In the bill, it has been indicated that an element that can be taken into account for the employer's assessment is such a significant administrative or financial burden for the employer ("zware administratieve of financiële lasten voor de werkgever"). Other elements that are mentioned are social cohesion and cooperation within teams. These factors can be arguments for employers to reject the request from the employee, although it is not yet clarified in what way these elements should be taken into account in a specific case.

Based on this legislative bill, the location where the employee would prefer to work is limited to a structural workplace. Such a structural workplace can for example refer to the home address of the employee or another branch within the company. The bill will not apply to incidental or very temporary work locations, such as working from home at the holiday location (workation).

What does this mean for employers?

The bill provides employees with more rights to work from home, as the threshold has been raised for employers to reject an employee's request to work from home. However, employers can still reject such a request, in case the employer considers that the employer's interests have priority over the employee's interests. The proposed bill leaves room for interpretation, as it does not introduce a clear framework for employers to decide on working from home requests.

We recommend employers to not await the voting on this bill by the Senate, but to consider how they want to facilitate remote working from a business perspective. The possibility to work from home is becoming an increasingly important employment condition for employees. In the current "war for talent", employers have to think about to what extent they want to retain employees and attract new employees by allowing increasing possibilities to work from home. This means examining needs and possibilities for remote working within the organization and the related implications for employer and employees. It is recommended to include the resulting guidelines in a remote working policy.



How we can help

Vialto will be happy to assist you in understanding the application of this bill, the meaning of this bill for your organization and the implications for specific situations of individual employees. Also, we are happy to assist you in designing a company policy or guidelines for Remote Working arrangements going forward.

Contact us

Please feel free to reach out to the following Dutch Vialto Partners colleagues to discuss further:

- Niek Schipper
- Maarten Enklaar
- Cecile de Rooij

Further information on Vialto Partners can be found here: www.vialto.com

