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NOW 2.0 IS PUBLISHED

The Dutch Ministry of social affairs and employment has offered the second package of the temporary arrangement compensation labor costs ("NOW 2.0") to Dutch parliament. In this alert an overview of the most important items in this second package are provided together with a high level overview of some of the differences between the NOW 2.0. and the NOW 1.0.

Longer subsidy period and increased subsidy

The NOW 2.0. is applicable for a period of 4 months where the NOW 1.0. could only be applied for 3 months. The NOW 2.0. allows for a labor costs subsidy from June 2020 to September 2020 with a 80% prepayment that is in principle based on the wages paid per March 2020. The increase of 30% on the wages costs that applied in the NOW 1.0. will be increased in the NOW 2.0. to 40%. This will result in a higher subsidy compared to the first package.

Unlike the NOW 1.0. no exceptions are made in the NOW 2.0. for companies that use labor during certain seasons or employers that pay more wages during the period from June to September 2020. For these employers the benchmark for the wages will be March 2020 which could result in a lower subsidy compared to the NOW 1.0. Similar to the NOW 1.0. lower wage costs for the period from June to September 2020 will result in an adjustment to the final NOW assessment.

Application, prepayment and final determination

Employers can file an application for the NOW 2.0. from July 6th until August 31, 2020 via the website of the 'Executive Institute for Employee's Insurances' ("UWV"). The prepayment that follows from the filing will be paid in 2 terms. Subsequently, the employer will need to file the final subsidy request within 24 months of the end of the reference period.

When a prepayment of at least EUR 100,000 or a subsidy is applied for of at least EUR 125,000 an audit is required. An exception applies in this respect when the prepayment and the subsidy is lower than the aforementioned amount. In that instance the applicant can suffice with a third party declaration. At a later stage guidance will be published on which third parties are allowed to issue such a declaration. For very small subsidy requests a declaration from the employer is sufficient.

Qualifying revenue decrease of 20% still applies

Similar to the NOW 1.0. it is still required that the employer is confronted with a revenue decrease of 20% or more to qualify. To determine the revenue decrease one third of the average revenue of 2019 is used as a reference to compare with the realized revenue in the 4 months period in 2020. The latter period can be, subject to the choice of applicant, on June 1st, July 1st or August 1st (the reference period). When the employer applied for the NOW 1.0. the reference periods for both arrangements need to be adjacent. This means that when a reference period of April – June is applied for the NOW 1.0., the reference period for the NOW 2.0. will automatically be July – October.

For companies that started between January 1, 2019 and February 1, 2020 or companies that undertook a restructuring during this period, a different reference period can be requested for.

In the NOW 2.0. a new rule is introduced on which basis employers that sold activities or parts of the company between January, 2019 up to and including February 1, 2020 are required to adjust the 2019 revenue to adjust for the new situation. The subsidy amount will be lower as a result compared to the NOW 1.0.

When the employer is part of a group the consolidated revenue is still relevant when determining the revenue decrease. As for the NOW 2.0. the group structure per June 1, 2020 is used whereas under the NOW 1.0. the group structure per March 1, 2020 was relevant.

When the revenue decrease at group level is less than 20% but one of the group companies does have a qualifying revenue decrease this company can still qualify under strict conditions via an exception for the NOW 2.0. With the application the employer is required to indicate that the exception is applied and an audit is always required.

Dividend distribution, bonus payments and buy back shares

As announced it is not allowed under the NOW 2.0. to make a dividend distribution or to buy back shares. It is also not allowed to pay a bonus to the directors or the board. Based on the definition provided, directors and the board include board members, directors and management that is responsible for the company's management. The restriction to make any of the abovementioned payments not only apply to the applicant but can also apply to its parent company or the ultimate parent company.

The restriction only applies for dividend distributions, bonus payments and share buy backs that relate to the 2020 results and not for 2019. The reason for this is that a decision to undertake any of these transactions for 2019 could have been made before. However, the rules in the NOW 2.0. are not entirely clear at this point so it is important to be prudent.

In addition, the restriction does not apply when the prepayment of the subsidy is less than EUR 100,000 or when the total subsidy is below EUR 125,000.

No "penalty" in case of request for dismissal for certain situations

In the NOW 1.0. the subsidy was adjusted with 150% of the wages of the employees for which a request for dismissal for economic reasons was filed. In the NOW 2.0. the adjustment is reduced to 100%. This applies to requests for dismissal that were filed with the UWV between June 1, 2020 up to and including September 30, 2020. Furthermore, the adjustment is applied to only 3 months instead of 4 months for which the NOW is granted. However, an additional adjustment will apply in case of a collective dismissal. When the employer files a request in this respect during the aforementioned period or when dismissal for more than 20 employees is requested for with economic reasons, the total NOW will be reduced with 5%.

This adjustment can be prevented when the employer reaches an agreement with the union, or when there is no union, with any other representatives of the employees.

Effort obligation education employees

In the NOW 2.0. an effort obligation is introduced. Based on this the employers is required to motivate employees to request for advice on their careers or start and education. Via the crisis package on education the effort obligation can be satisfied.

Administration

Both the NOW 1.0. as the NOW 2.0. provide with several (administrative) requirements whereby some have to be taken care of before an application is done. It is important to properly document how the requirements are satisfied. This can be helpful in case of an audit from the UWV.

More information?

In case you require more information please be informed that a webinar is organized on July 2, 2020 on the NOW 2.0. During this webinar (in Dutch) we will illustrate the new rules on the basis of practical examples. You can register [through the link below](#). You can also contract your RSM advisor or send an e-mail to maatregelencorona@rsmnl.nl.