PAYROLL SPECIAL

February 2021

In this publication, we provide an overview of the most important personnel and salary changes for 2021 so that you can stay completely up to date. The most important changes regard:

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Do you have questions regarding this newsletter? Please do not hesitate to get in touch with us.
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1 PAYROLL TAX AND NATIONAL INSURANCE CONTRIBUTIONS – MISCELLANEOUS

1.1 Changes to income tax

The basic rate of income tax has been cut to 37,10% in 2021 (37,35% in 2020). This rate applies to income up to € 68.507. People in work and benefit recipients will both benefit from this reduction.

Taxable income	Rate for 2021
€ 0 to € 68.507	37,10%
€ 68.507 of more	49,50%

* Box 1 tax rates in 2021 for people without a state pension

Tax credits

In addition to the change to the tax rate mentioned above, a number of changes are also being made to tax credits. The disposable income of people with income up to € 68.507 is increasing in 2021. This is due to the rises in the general tax credit and employed person's tax credit.

General tax credit

In 2021 the general tax credit is capped at € 2.837. The maximum amount in 2020 was € 2.711. This rise will benefit the purchasing power of people on lower incomes in particular.

Employed person's tax credit

In addition to the general tax credit, the employed person's tax credit is also going up in 2021. The maximum employed person's tax credit in 2021 amounts to € 4.205. In 2020 it was capped at € 3.819. This rise will also benefit the purchasing power of people on lower incomes in particular.

1.2 Statutory minimum wage to increase slightly

The statutory minimum wage is increasing by 0,29% from 1 January 2021. This means the monthly minimum wage amounts to € 1.684.80. The minimum wage applies to employees aged 21 and above and is adjusted in line with wages under collective labour agreements on 1 January and 1 July each year. It is applicable to a full working week. How many hours per week this amounts to differs from sector to sector. It can be 40 hours, although some sectors employ a shorter working week of 38 or 36 hours, for example.

Minimum youth wages also rising

The minimum youth wages are a fixed percentage derived from the minimum wage and are therefore also increasing by 0,29%.

Details of the statutory minimum wage that applies from 1 January 2021 for each age group are presented in the table below.

AGE	SCALE	PER MONTH	PER WEEK	PER DAY
≥ 21 jaar	100%	€ 1.684,80	€ 388,80	€ 77,76
20 jaar	80%	€ 1.347,85	€ 311,05	€ 62,21
19 jaar	60%	€ 1.010,90	€ 233,30	€ 46,66
18 jaar	50%	€ 842,40	€ 194,40	€ 38,88
17 jaar	39,50%	€ 665,50	€ 153,60	€ 30,72
16 jaar	34,50%	€ 581,25	€ 134,15	€ 26,83
15 jaar	30%	€ 505,45	€ 116,65	€ 23,33

Work-based learning pathway (BBL)

For apprentices who are following the work-based learning pathway (BBL) and are aged between 15 and 17 the same amounts apply as are applicable to other young workers. However, different statutory minimum youth wages apply to BBL apprentices in the 18-20 age group. The details for each age group are presented in the table below.

AGE	SCALE FOR BBL	PER MONTH	PER WEEK	PER DAY
21 jaar	100%	€ 1.684,80	€ 388,80	€ 77,76
20 jaar	61,50%	€ 1.036,15	€ 239,10	€ 47,82
19 jaar	52,50%	€ 884,50	€ 204,10	€ 40,82
18 jaar	45,50%	€ 766,60	€ 176,90	€ 35,38

1.3 Contributions for employee insurance schemes in 2021

The new contributions for national insurance and employee insurance schemes have been announced. These are the percentages you will need to apply from 1 January 2021 when completing the payroll tax return for your employees.

The high and low contributions to the General Unemployment Fund (AWf) are 0,24 of a percentage point lower than in 2020. On the other hand, the Invalidity Insurance Fund (Aof) contribution and the calculation contribution for the Return to Work Fund (Whk) have been raised slightly. In addition, the maximum wage assessable for contributions is higher than in 2020.

An overview of these contributions can also be found in the table below.

CONTRIBUTIONS		2020	2021
AOW	Old age pension fund	17,90 %	17,90 %
ANW	Surviving Dependants Fund	0,10 %	0,10 %
AWf	General Unemployment Fund		
AWf-low		2,94%	2,70 %
AWf-high		7,94 %	7,70 %
Ufo	Implementing Fund for the Government	0,68 %	0,68 %
Sfn/ Ufo	Uniform childcare supplement	0,50 %	0,50 %
Aof	Invalidity Insurance Fund	6,77 %	7,03 %
Whk	Return to Work Fund	1,28 %	1,36 %

Maximum wage assessable for contributions in 2021
The maximum wage assessable for contributions is increasing in 2021 and will amount to € 58.311 on an annual basis. This compares with € 57.232 in 2020. As an employer you do not have to pay contributions on the portion that an employee earns above this amount. This maximum amount is also used when calculating the income-related healthcare insurance contribution.

1.4 Percentages for income-related healthcare insurance contribution in 2021

The new percentages for the income-related contribution under the Healthcare Insurance Act (Zvw) have been set. In 2021 the contributions will rise by 0,3 of a percentage point.

Employees
As a result of the increase, in 2021 employers will owe a contribution of 7,0% of the assessable wage for their employees instead of 6,70% in 2020. This represents a 4,5% increase in the contribution.

Self-employed persons and directors/major shareholders
In the case of self-employed persons and directors/major shareholders (DGAs) the healthcare insurance contribution will amount to 5,75% from 2021 instead of 5,45% (2020). This represents a 5,5% increase in the contribution.

The above changes are also shown in the table below.

Contribution	2020	2021
Employer levy under Zvw	6,70%	7,00%
Employee contribution under Zvw	5,45%	5,75%

Maximum assessable income going up
A maximum assessable income also applies under the Zvw. In 2021 this maximum is increasing from € 57.232 to € 58.311. The healthcare insurance contribution is payable on income up to this maximum level. This means that in 2021 employers will pay a maximum of € 248 more in healthcare insurance contributions for their employees than they did in 2020.

1.5 Expansion of practical learning subsidy scheme

The subsidy is an allowance for the costs that employers incur for supporting an apprentice, participant or student. Approved work placement companies at upper secondary vocational level (MBO) in the agricultural, hospitality and recreation sectors are due to receive an additional supplement until the end of 2024. However, the practical learning subsidy scheme only runs until the end of 2022. As yet there has been no announcement regarding an extension of the scheme. It is therefore not yet clear how the supplement will be made available for the 2022/2023 and 2023/2024 academic years.

The distribution of the budget across the educational categories in 2021 is not currently known. At present the scheme is temporarily closed and no applications can be submitted.

1.6 SLIM subsidy scheme in 2021

In 2021 SMEs will again be able to receive a subsidy for certain types of training, via the Learning and Development at SMEs Incentive Scheme (SLIM). As was the case in 2020, applications can be submitted under the subsidy scheme from 2 to 31 March 2021 and, in the case of the second application period, from 1 to 30 September 2021. A sum of € 15 million is being made available for the first application period in March, while a budget of € 14,5 million will be set aside for the second round of applications in September. However, a number of changes have been made to the scheme compared with 2020. The application period for large companies and alliances in the hospitality, agricultural and recreation sectors has been reduced significantly.

The maximum subsidy per employer amounts to € 24.999 (max. € 20.000 for agricultural businesses). For alliances of several organisations the maximum level has been set at € 500.000. The eligible costs must amount to at least € 5.000.

Agricultural, hospitality and recreation sectors also eligible
Larger companies within the agricultural, hospitality and recreation sectors will also be eligible for the subsidy, due to the fact that they frequently employ seasonal workers.

Please note!
The SBI code from the CBS (Statistics Netherlands) must be used to demonstrate that a company operates in the agricultural, hospitality or recreation sector.

Which companies are eligible?
A company is regarded as an SME for the purposes of this scheme if it employs fewer than 250 people and has an annual turnover not exceeding € 50 million and/or an annual balance sheet total not exceeding € 43 million.

Third learning pathway for upper secondary vocational education (MBO)
SMEs that make use of the subsidy scheme for practical training contracts need to keep the start date of the work-study programme in mind. This is because contracts that have already started before 1 September 2021 cannot be subsidised via the SLIM scheme. If the learning and development programme starts on 1 September 2021, it is important that the application is submitted on 1 September.

1.7 Changes to R&D tax credit (WBSO)

You can apply for the R&D tax credit if you carry out research and/or development projects, but only for future activities. This means that an application is always submitted in advance. To be able to log into the application portal of RVO.nl, you need eHerkenning eH2+ or higher. With effect from 1 January 2021 the level eH3 is recommended and from 1 July 2021 onwards it will only be possible to log in using eH3. Make sure you apply for eHerkenning in good time. You should take a lead time of around two weeks into account.

Increase in percentages for R&D tax credit
The percentages for the R&D tax credit are increasing this year. In 2021 an entrepreneur will receive a subsidy of 40% on the first € 350.000 of expenses incurred for innovative activities, compared with 32% in 2020. Above this level the subsidy is remaining at 16%.

Also available to start-ups
Start-ups will also receive additional support for innovation in 2021. For this group of businesses the R&D tax credit percentage is increasing from 40% in 2020 to 50% in 2021 on the first € 350.000 of expenses incurred for innovative activities. In this case too the subsidy of 16% of costs will continue to apply above this level.

Please note!
In 2021 the latest date for submitting an R&D tax credit application is 30 September 2021. This is the deadline for R&D tax credit applications for the last quarter. This deadline applies both to companies with staff and self-employed persons.

New portal
RVO is opening a new application portal for the R&D tax credit. You can already submit your application for 2021 via this new portal. Until April 2021 it is also still possible to use eLoket with eH2+ or eH3.

1.8 Job-related investment tax credit (BIK)

The government is encouraging companies to invest by means of a new investment tax credit: the job-related investment tax credit (BIK). This temporary scheme aims to ensure that even in these turbulent times companies will continue to invest in new machinery, for example. The scheme applies to new investments made from 1 January 2021 to 31 December 2022 at the latest. In the case of major investments during a year the tax credit is 3,9% up to € 5 million and 1,8% above this figure. Companies can offset the investment tax credit against the payroll tax they owe.

Please note!
This offsetting against payroll tax means the BIK is only attractive to companies that employ staff.

It is not permitted to make an investment for which the BIK is received available to a third party, regardless of whether this third party is a Dutch or foreign company.

Please note!
It is not yet certain whether a tax entity for corporation tax purposes can also apply for the BIK. The European Commission first has to give the green light to confirm whether this component of the BIK is regarded as authorised aid.

1.9 Standard amounts for highly skilled migrants in 2021

Employers who want to apply the highly skilled migrants scheme for a foreign employee may only do so if this employee receives a certain minimum gross salary every month. From 1 January 2021 the salary requirements are as follows:

- highly skilled migrants under the age of 30: € 3.484;
- highly skilled migrants from the age of 30: € 4.752;
- highly skilled migrants who enter employment in the Netherlands within three years of completing an approved bachelor's, master's or postdoctoral course: € 2.497;
- holder of an EU Blue Card: € 5.567.

The amounts all exclude the holiday allowance to which the employee is entitled.

What counts towards the salary criterion?
The Immigration and Naturalisation Service (IND) counts expense allowances and fixed bonuses (such as thirteenth-month pay) towards this. The following conditions apply here:

- The allowances and bonuses are included in the contract.
- The allowances and bonuses are transferred every month to a bank account in the name of the highly skilled migrant or the holder of an EU Blue Card.

The following salary components are not counted:

- holiday allowance;
- the value of benefits in kind;
- irregular salary components that are not certain to be paid out. These may include: overtime payments, gratuities and payments from funds.

Work permit not required
For highly skilled migrants it is not necessary for employers to obtain a combined residence and work permit (GVVA) or work permit (TWV). The same applies to employees with an EU Blue Card. In this case, however, there is an additional requirement that the employee has completed a course of study at a Dutch university or university of applied sciences or an equivalent course of study abroad. In addition, the monthly salary of employees with an EU Blue Card must amount to at least € 5.567 (excluding holiday allowance) in 2021.

Becoming a recognised sponsor
A highly skilled migrant is a foreign worker from outside the European Union (EU) who is employed by your organisation on account of his/her technical or scientific knowledge. To bring a highly skilled migrant to the Netherlands, your organisation must be designated as a recognised sponsor by the Immigration and Naturalisation Service. The employer then has a specific obligation to provide information and keep records, as well as a duty of care, is entered in the public register of recognised sponsors and is able to apply for residence permits for the highly skilled migrant.

1.10 Customary salary for directors/major shareholders

For 2021 the fixed amount for the director/major shareholder and his/her partner under the customary salary scheme is € 47.000. Under certain conditions directors/major shareholders can set their customary salary in 2021 at a lower level than € 47.000. This is made possible by a rebuttal scheme in relation to the general rule that the salary of a director/major shareholder is the highest of the following amounts:

- 75% of the salary for the most comparable position;
- the highest salary received by the other employees of the company or affiliated companies (legal entities);
- € 47.000.

Please note!
To set the salary at a level lower than € 47.000, you need to plausibly demonstrate that the salary received for the most comparable position is lower than € 47.000. If you are unable to do so, the customary salary will amount to a minimum of € 47.000.

Please note!
Under certain conditions, it may also be possible in 2021 to set a lower customary salary on account of the coronavirus crisis. The customary salary for 2021 can be derived from the customary salary for 2019. It may be reduced to the same extent as the drop in turnover experienced in 2021 relative to 2019. One condition that applies here is that this drop must amount to at least 30%.

1.11 eHerkenning compensation payment

Since the beginning of 2020 employers who submit their payroll tax return themselves have only been able to do so via the new portal of the Tax and Customs Administration. They are required to use eHerkenning for this purpose, which means they incur costs.

What is the situation with eHerkenning?
eHerkenning is a secure, digitised communication tool that can be used to communicate with numerous government bodies, such as the Tax and Customs Administration. Using this tool has cost implications. On the insistence of the Lower House of the Dutch Parliament it has been decided that compensation will be paid to assist with these costs, based on the notion that it should not cost anything to file a tax return.

A compensation scheme has been introduced to support organisations. All organisations that require eHerkenning solely to file their tax returns (eH3 login tool of the Tax and Customs Administration) can take advantage of this scheme. The above does not apply to sole traders and self-employed persons. They can file their return free of charge using DigiD. Under the scheme compensation can be received for the costs of one eHerkenning tool per organisation per year. The cost of authorising an intermediary will not be compensated.

This scheme will run from November 2020 to the end of July 2022. It will be possible to apply for compensation twice: from 30 November 2020 to 31 August 2021 (1st year) and from 1 September 2021 to 31 July 2022 (2nd year). RVO will pay the compensation of € 24,20 including VAT directly to the entrepreneur who has incurred costs to acquire the eH3 login tool of the Tax and Customs Administration. The amount of the compensation is based on the lowest price on the market. It is possible to apply for the compensation online via RVO.nl.

Organisations that cannot register with the Chamber of Commerce and have to file a payroll tax return can also receive compensation for the costs of eHerkenning. The Tax and Customs Administration has made an online form available to apply for this.

Compensation can only be received if it is not possible for the organisation to purchase eHerkenning, as is the case for embassies, for example.

Such organisations will receive compensation for other necessary costs, e.g. for the purchase and use of a software package or for having the return filed by an intermediary. In this case the actual costs are compensated, including VAT, up to a maximum of € 450 per calendar year.

1.12 Higher allowance for foreign business travel

The untaxed allowances for employees' foreign and domestic business travel have been changed from 1 January 2021. The maximum amounts differ depending on the country, city and region and can be found in the collective labour agreement for central government ('cao Rijk'). Although the 'cao Rijk' is intended for employees who fall under this collective labour agreement, these allowances may also be applied to other employees whose expenditure is comparable.

Fixed amounts
An employee who travels abroad for work can receive a fixed allowance for his/her travel and accommodation expenses, which, under certain circumstances, is untaxed. It is not necessary to collect any receipts or invoices. If you reimburse more than the maximum amounts mentioned above, the excess amount must be designated as taxable salary or as salary for final levy purposes under the work-related expenses scheme.

Are the costs plausible?
All costs that you are unable to demonstrate as being plausible costs are taxed. The allowances for these must also be regarded as salary and taxed or included in the work-related expenses scheme. If you are unable to demonstrate that the costs of an overnight stay were plausible, you may grant an allowance of € 11,34. This allowance is taxable, however.

Tip: Do you want to follow the 'cao Rijk'? Present your situation to the Tax and Customs Administration to make sure that, from a cost perspective, you are comparable with a civil servant travelling on official business.

1.13 Tax exemption for volunteers in 2021

The tax exemption for volunteers is changing from 2021. This means that, from 1 January 2021, a volunteer can receive a maximum of € 180 tax free per month for services performed, up to a maximum of € 1.800 per year.

Conditions
The condition that an organisation must be non-profit-making in order to apply the tax exemption for volunteers is remaining unchanged. Ordinary companies are therefore excluded from the scheme.
This means that the organisation must be:
- a public benefit organisation (ANBI);
- a sports organisation or sports association;

- a company that is not subject to corporation tax.

The volunteer is also not permitted to be employed at the organisation where he/she is volunteering. In addition, the volunteer's allowance that he/she receives may not be in proportion to the nature of the work and the amount of time involved.

Please note!
It is possible to avoid an employment relationship by using a model agreement for voluntary work. However, the work must then be carried out in accordance with the agreement.

Please note!
If the maximum amounts are exceeded, the tax exemption for volunteers no longer applies. This means that, depending on the facts and circumstances, an employment relationship may be deemed to exist. In such a case payroll taxes will therefore have to be deducted.

1.14 Transitional arrangements for life-course savings scheme

Since 1 January 2012 it has no longer been possible to participate in the life-course savings scheme. At that time transitional arrangements were introduced for employees who had an entitlement under the scheme with a fair value of € 3.000 or more on 31 December 2011 (the end date of the transitional arrangements is 31 December 2021).

These transitional arrangements give the employee until 1 January 2022 at the latest to take up an existing entitlement under the scheme. If the employee fails to do so, the fictitious moment of payment is considered to be 31 December 2021. In this case the (former) employer is the withholding agent for the payroll tax and national insurance contributions that are due. These transitional arrangements are currently being amended. For entitlements that have not yet been taken up the date of the fictitious moment of payment has been brought forward to 1 November 2021 ('fictitious moment of payment') to make sure that in all cases life-course savings schemes have been settled before the end of 2021.

With regard to the settlement of existing balances as at 1 November 2021 the following applies:

- the withholding obligation is transferred to the institution with which the balance is held (instead of the (former) employer). If the employee takes up the entitlement before 1 November 2021, the (former) employer remains the withholding agent for payroll tax and national insurance contributions.
- the institution does not apply tax credits (including the tax credit for leave under the life-course savings scheme) when withholding payroll tax and national insurance contributions on the entitlement under the life-course savings scheme. If applicable, the employee can apply the tax credits on his/her 2021 income tax return.
- at the fictitious moment of payment the fair value is taxed as salary from current employment. If the employee concerned is 61 or older on 1 January 2021, the life-course savings benefit is regarded as salary from previous employment.
- the institution applies the special remuneration table. If the institution did not withhold payroll tax in the previous year for the employees concerned, the annual salary is calculated on the basis of the fair value of the entitlement under the life-course savings scheme or on the basis of this value plus other benefits paid in 2021.
- the institution does not owe any employee insurance contributions or income-related healthcare contribution on the entitlement under the life-course savings scheme.
- this can have consequences for a (former) employee when it comes to payroll and income tax, national insurance contributions and income-related schemes, e.g. allowances.

1.15 Temporary relaxation of early retirement levy

As part of the pension agreement, with effect from 1 January 2021 a temporary threshold-based exemption has been introduced for early retirement schemes. This means that as an employer you will be exempt, temporarily and subject to certain conditions, from the 52% early retirement levy provided that the payments made under the early retirement scheme remain below the amount of the threshold-based exemption.

The intention of this temporary relaxation is to allow employers to support older employees who could not have anticipated the increase in the state pension age and cannot continue working up to state pension age for health reasons.

The conditions that apply to the exemption are as follows:

- the payment under the early retirement scheme is granted in (at the most) the 36 months immediately preceding the date on which the employee reaches state pension age.

- the amount of the exemption is calculated each month.
- the early retirement exemption applies to the period of no more than 36 months immediately preceding state pension age. If the payment starts less than 36 months before state pension age, the exemption applies only for the remaining months.
- the employee reaches an age that is (no more than)
- 36 months before state pension age by 31 December 2025 at the latest.
- the early retirement exemption does not exceed an amount that, after deduction of payroll tax and national insurance contributions, is equal to the net state pension payment for single persons that applies on 1 January of the year in which payment is made.

If, as an employer, you make a payment under an early retirement scheme prior to the 36-month period immediately preceding the date on which the employee reaches state pension age, you will owe the regular early retirement levy of 52%. You will also owe this regular levy on the portion of the amount above the threshold for the early retirement exemption.

Example
In this example an exemption of € 1.767 per month is taken as a basis. An employee reaches state pension age on 20 June 2024. On 1 July 2021 the employee receives a one-off early retirement payment from the employer. The period between receipt of the payment and the employee reaching state pension age is 35 months and 19 days. This period can be rounded up to whole months, meaning that 36 months are taken into account for the purposes of the exemption. The exemption amounts to € 63.612 (36 months times € 1.767).

Please note!
If the one-off early retirement payment is received before 20 June 2021, no exemption applies, as the payment is received more than 36 months before the employee reaches state pension age.

The early retirement exemption applies over the period from 1 January 2021 to 31 December 2025. On the basis of the transitional arrangements, a grace period applies under the conditions described below for 2026 to 2028. If an early retirement scheme has been agreed in writing by 31 December 2025 at the latest and the employee has reached an age that is (no more than) 36 months before state pension age, on the basis of the transitional arrangements further payments can be made under this scheme from 2026 to 2028 while benefiting from the early retirement exemption.

From 2021, for a payment under an early retirement scheme you need to use a new code for the type of income relationship/income code (wage code): code 53 ('Payment within the context of early retirement'). You use this code regardless of whether the exemption from the pseudo final levy applies. The green special remuneration table is and remains applicable to the regular levy.

2 TRANSPORT

2.1 Company car

In 2021 there will be no changes to the addition to taxable income for new cars with CO2 emissions of more than 0 grams per kilometre. As in previous years, this will remain at 22%. There will, however, be changes to the addition to taxable income for electric cars.

Electric cars
The addition for a fully electric car is being increased from 8% to 12% for the portion of the list price up to € 40.000. In the case of a car that costs more than € 40.000, an addition of 22% applies to the excess amount.

The impact of the increase in 2021 is explained below with the help of an example.

Example
An employee has an electric car with a list price of € 90.000. The addition on the first € 40.000 of the list price is 12%, with 22% applying to the remaining € 50.000, or € 15.800 per year. In 2020 the same employee would have paid an 8% addition on € 45.000 and 22% on the remaining € 45.000, or € 13.500 per year. This is a difference of € 2.300 per year.

Further increase in addition to taxable income
The addition to taxable income for electric cars will increase further over the coming years. From 2022 to 2024 the addition will be 16% and in 2025 will rise to 17%. From 2026 onwards the regular addition of 22% will apply to an electric car. This will be applied to the full list price.

Please note!
The addition is fixed for 60 months from the first month after that in which the car is first registered.

Exception for hydrogen-powered cars
The change that will result in the addition percentage of 22% being applied to the portion of the list price above € 40.000 will not apply to hydrogen-powered cars. However, for these cars too the addition will increase to 12% in 2021, although this will apply to the whole of the list price. The government is encouraging use of these vehicles due to their innovative nature.

CO_2 emissions	Addition to taxable income
0 (battery-powered)	12% up to € 40.000, above this 22%
0 (hydrogen- and solar-powered)	12% without restriction
More than 0	22%

Consequences for cars dating from 2016
For cars dating from 2016 the 60-month period will expire in the course of 2021. This means that cars that were first registered in 2016 may be subject to a new addition to taxable income in 2021 (if the car was not registered until December 2016, this will not apply until 1 January 2022).

In such a case electric cars will be subject to an addition of 15% up to € 40.000 and 25% on the excess amount (for hydrogen-powered cars the addition will be 15% on the entire list price). This addition will then rise over the coming years. For cars that emit $CO-_2$ the addition will be 25% in all cases after the 60-month period has expired. See also the table below.

CO_2 emissions	Addition to taxable income after 60 months
0 (electric)	15% up to € 40.000, above this 25% (further increase from 2022)
0 (hydrogen- and solar-powered)	15% without restriction
More than 0	25%

2.2 Electric car subsidy applications will no longer be carried over

Electric car subsidy
Since July 2020 a subsidy has been available to private individuals who purchase a new or used electric car. This amounts to € 4.000 for a new and € 2.000 for a used electric car.

Funding pot empty
Due to the large number of applications received, the funding pot for subsidising new electric cars was soon empty.

Subsidy applications submitted later were automatically carried over to a subsequent year.

Carry-over no longer possible
The State Secretary for Infrastructure and Water Management, Stientje van Veldhoven, has informed the Lower House that this possibility is being withdrawn. This means that persons who purchased a new electric car in 2020 after the change to the scheme will no longer receive a subsidy. A new subsidy budget set aside for purchases made in 2021 was already fully allocated at the beginning of January 2021.

2.3 Tax-free travel allowance to end on 1 April 2021

Situation in 2020
If a fixed travel allowance had been granted before 13 March 2020 and satisfied the conditions laid down by the Tax and Customs Administration, an employer could continue to pay it free of tax, even if the employee was working from home (for part of the time) as a result of the coronavirus crisis. Many employers have opted to do so, due to the fact that employees who are working from home also incur additional costs, e.g. for heating.

Situation in 2021
The above relaxation of the rules applies until 1 April 2021. It will then lapse, unless it is decided to continue with these arrangements on account of the coronavirus crisis. Employers can continue to pay the allowance after 1 April 2021, but in principle it will then be taxed. This tax will be paid by the employee. The employer will be required to pay employee insurance contributions on the allowance.

Allocation to work-related expenses scheme
An employer can also allocate the allowance to the work-related expenses scheme. If the employee has actually commuted to and from work, the allowance is, of course, exempt and therefore untaxed. In cases where the exemption does not apply the allowance falls under the fixed budget.

You should bear in mind that the fixed budget is slightly more limited in 2021 than it was in 2020. In 2021 it amounts to 3% on the first € 400.000 of the wage bill and 1,18% on the excess amount. This may mean that in 2021 you use up the fixed budget sooner and therefore also become liable for the 80% final levy more quickly.

> **Tip:** If you want to assist your staff with their expenses in a different way, consider a homeworking allowance. You can find out more about this later in this special.

2.4 The new bicycle scheme: what bicycles are covered and what value applies?
Since 2020 a new company bicycle scheme has been in effect.

This scheme eliminates a significant amount of the administrative burden by introducing a fixed addition to taxable income of 7%.

What bicycles are covered by the scheme and what value should you apply?
There is no legal definition of what a bicycle is. For payroll tax purposes a bicycle is therefore anything that is popularly understood as such. This means electric bicycles, or e-bikes, are also covered.

Speed pedelec?
In the case of a speed pedelec it gets more complicated. This is a bicycle with electric pedal assistance and a maximum speed of between 25 and 45 km per hour. Under the Road Traffic Act this is regarded as a moped rather than a bicycle. The speed pedelec has therefore been specifically added as a 'bicycle' for payroll and income tax purposes.

Ordinary and low-performance mopeds fall outside this bicycle scheme. For these you have to calculate your private use on the basis of the private kilometres actually travelled, multiplied by the cost price per kilometre.

Racing bike or mountain bike?
For tax purposes, sports bikes, such as racing bikes or mountain bikes, can also be used as company bicycles under the scheme. However, you need to check carefully to ensure this is also allowed under your company's bicycle scheme.

What is the value of the bicycle?
With regard to the value on which the 7% addition to taxable income is calculated, the recommended retail price published in the Netherlands by the manufacturer or importer is taken as a basis. If no recommended retail price is known for the bicycle, you use the recommended retail price of the most comparable bicycle.

This value applies to both a new and used bicycle. Contrary to the situation with company cars (after fifteen years the addition for a company car is calculated on the actual value), there is no maximum number of years for which the new price must continue to be used.

Used bicycle?
In the case of used bicycles it will not always be easy to find out the original recommended retail price. Together, bicycle importers and manufacturers have therefore made an online tool available via Stichting DST (Stichting Digitaal Samenwerken Tweewielerbranche) on the website www.bijtellingzakelijkefiets.nl. The database on this website contains the product data for brands affiliated to Stichting DST.

Value of accessories?
Bicycle accessories can form part of the recommended retail price. In that case they also fall under the 7% addition. Such accessories may include a battery upgrade, for example.

f, as an employer, you have made accessories available that do not form part of the recommended retail price – such as a child seat or rainwear – the 7% addition does not apply to them. Instead you have to take these accessories into account for payroll tax purposes on the basis of the actual private benefit. You may also be able to use the fixed budget under the work-related expenses scheme for this.

3 WORK-RELATED EXPENSES SCHEME

In 2020, as a result of the coronavirus crisis, the government increased the fixed budget under the work-related expenses scheme to 3% on the first € 400.000 of the taxable wage bill. This is being maintained in 2021.

The fixed budget for the portion of the wage bill above € 400.000 is, however, being cut from 1,2% to 1,18%. The impact of this reduction will mainly be felt by large companies with a substantial wage bill. Companies with a wage bill up to € 400.000 will not be affected by it. The consequence of the reduction is that companies may exceed the fixed budget sooner and therefore become liable for the 80% final levy more quickly.

Example
Without the reduction a company with a wage bill of € 500.000 would have a fixed budget of 3% x € 400.000 + 1,2% x €100.000 = € 13.200. With the reduction this becomes 3% x € 400.000 + 1,18% x € 100.000 = € 13.180, a difference of € 20.

In the case of a company with a wage bill of € 10.000.000 the fixed budget drops from € 127.200 to € 125.280, a difference of € 1.920.

3.1 2021 group scheme

If you have a number of companies and make use of the work-related expenses scheme, it is also possible to apply the group scheme. This may also prove detrimental in 2021, however.

Group scheme
The group scheme under the work-related expenses scheme allows a group to add the fixed budgets of all group companies together. Tax only has to be paid if the value of all the group's allowances and benefits in kind exceeds the total fixed budget of the group.

Please note!
The group scheme is therefore advantageous if not every company within the group is using the whole of its fixed budget. After all, the unused portion can then be used by another group company.

Disadvantage for groups
For the group as a whole the fixed budget is set at 3% on the first € 400.000 of the group's total wage bill and at 1,18% on the excess amount. The fixed budget of each part of the group cannot be taken as a basis.

Example for 2021
A group made up of five companies each with a wage bill of € 1.000.000 has a total fixed budget of 3% x € 400.000 + 1,18% x € 4.600.000 = € 66.280. The fixed budget of each company individually amounts to 3% x € 400.000 + 1,18% x € 600.000 = € 19.080. For all the companies together the total fixed budget, without application of the group scheme, is therefore 5 x € 19.080 = € 95.400, i.e. € 29.120 more.

> **Tip:** Check first whether the group scheme would be beneficial for you. You do not need to make a definitive decision until the second return period of 2022.

3.2 Other changes
In addition to the increase in the fixed budget and the additional consequences if the group scheme is applied, a number of other (minor) changes are also being made.

Relaxation of specific exemption for study and training
A specific exemption applies to allowances and benefits in kind that are used for eligible training courses. If an employee follows a training course within the conditions that apply to the specific exemption, no payroll tax is payable on this.

As a result of the current (COVID-19) crisis, an even greater emphasis is being placed on the importance of training. From 1 January 2021 the specific exemption for training therefore also applies to allowances and benefits in kind granted for training arising from previous employment. The relaxation of the rules applies to allowances and benefits in kind granted for the purpose of following a training programme or course of study with a view to generating income. As a result, allowances and benefits in kind granted to an employee who has left or is leaving the company also fall under the specific exemption for a training programme or course of study, where this is not already possible.

Company's own products
In the case of products made by your own company an exemption amounting to 20% of the fair value of these products applies, up to a maximum of € 500 per year. Up to 2020 the value was sometimes set at the amount that third parties were charged for these products. From 2021 this calculation method no longer applies and a company's own products are valued at their fair value.

3.3 Standard amount for accommodation
If the accommodation at the workplace does not satisfy the conditions for zero rating and is also not a dwelling (or a dwelling provided so that an employee can perform his/her work properly (dienstwoning)), a standard amount is applied to your employee's salary for accommodation at the workplace. For 2021 this standard amount is € 5,70 per day (2020: € 5,60 per day). Energy, water and window cleaning are included in this standard amount.

4 SALARY COSTS (INCENTIVE ALLOWANCES) ACT

In 2021 the Salary Costs (Incentive Allowances) Act will also consist of three parts:
1. the low-income allowance (LIV),
2. the youth low-income allowance (youth LIV) and
3. the wage expense allowance (LKV).

4.1 Payment of incentive allowances
The LIV, youth LIV and LKV for 2020 will be paid automatically in 2021 if it is apparent from the payroll tax returns that an employer is entitled to them. This will take place as follows:
1. The employer will receive a provisional calculation of the LIV, youth LIV and LKV from the Tax and Customs Administration before 15 March. This calculation will be based on the returns and corrections for 2020 that have been submitted up to 31 January 2021.
2. You can submit corrections for 2020 until 1 May 2021. These will then be taken into account in the definitive calculation. Although corrections received after 1 May will be accepted, they will no longer be taken into account for calculating the various incentive allowances.
3. The Tax and Customs Administration will send a decision containing the definitive calculation of the LIV, youth LIV and LKV to the employer. This will take place before 1 August 2021 on the basis of the information known. It is possible to lodge an objection against this decision.
4. The amounts will be paid out within six weeks of the date of the decision. This will be 12 September 2021 at the latest.

4.2 The low-income allowance in 2021
The low-income allowance (LIV) is being reduced from 1 January 2021. It will continue to be lowered in the future and the youth LIV will even be withdrawn altogether with effect from 2024. These measures are being taken to cover the costs of a slower increase in the state pension age.

The amounts that will apply in 2021 are as follows:

Average hourly wage in 2021	LIV per employee per hour	Max. LIV per employee per year
> €10,48 ≤ €13,12	€ 0,49	€ 960

> **Tip:** You can influence the hourly wage of your employees yourself to make sure you benefit as much as possible from the LIV.

For example, you could grant employees who are just above the hourly wage threshold an expense allowance under the work-related expenses scheme in exchange for a slightly lower wage. Naturally, you can only do this within the limits of what is possible under the applicable tax legislation.

Conditions applicable to the LIV
The conditions you must meet to be eligible for the LIV are unchanged in 2021:

- The employee satisfies the average hourly wage requirement (based on a minimum of 100% and a maximum of 125% of the statutory minimum wage).
- The employee is insured under the employee insurance schemes.
- The job in question can be regarded as substantial (at least 1.248 paid hours per calendar year).
- The employee has not yet reached state pension age.

No action needed for LIV applications
You do not need to take any action to apply for the LIV. This is because the UWV assesses whether you meet the conditions on the basis of your payroll tax returns. The UWV then passes on the information to the Tax and Customs Administration, which makes the final decision. You will receive a provisional calculation by 15 March and have until 1 May to submit corrections relating to the previous year. You will always receive the definitive LIV calculation by 1 August.

4.3 The youth low-income allowance in 2021

The youth low-income allowance (youth LIV) is an annual incentive allowance for employers linked to the increase in the minimum youth wage resulting from a reduction in the age at which a person is entitled to the adult minimum wage. In 2020 the amounts of the youth LIV were halved compared with previous years. The hourly wage thresholds were also adjusted. The conditions you have to meet will remain the same. New hourly wage thresholds will be announced on 1 July 2021.

Youth LIV amounts for 2020
If an employee falls within the hourly wage thresholds and meets the other conditions, an employer is entitled to the youth LIV for the employee in question. The exact level of the allowance depends both on the number of paid hours and the employee's age. The amounts have been cut back slightly compared with previous years.

AGE ON 31-12-2019	YOUTH-LIV PER PER HOUR IN 2020	MAX. YOUTH-LIV PER EMPLOYEE IN 2020
20 years	€ 0,30	€ 613,60
19 years	€ 0,08	€ 166,40
18 years	€ 0,07	€ 135,20

Please note!
An employer who makes use of apprentices as part of the work-based learning pathway (BBL) can also be eligible for the youth LIV. The employer will receive this incentive allowance if it pays the apprentice on the basis of the statutory minimum youth wage appropriate for his/her age. The employer may pay the apprentice less than the statutory minimum wage, but in this case is not entitled to the youth LIV.

Please note!
If the employer has included incorrect information in its payroll tax return (it is important for the application of this Act that the information is correct), an administrative fine amounting to a maximum of € 1.319 per item of information per employee per year may be imposed.

Conditions applicable to the youth LIV
An employer is entitled to the youth LIV for each employee who meets these three conditions:

- The employee is insured under the employee insurance schemes.
- The employee has an average hourly wage that complies with the statutory minimum youth wage for his/her age.
- The employee was 18, 19 or 20 years old on 31 December of the previous year.

The average hourly wage is the wage received from employment over a year, divided by the number of paid hours during that year.

Hourly wage thresholds for 2020
The hourly wage thresholds for the different age groups for the youth LIV are as follows as at 1 July 2020:

AGE ON 31-12-2019	LOWER LIMIT	UPPER LIMIT
20 years	€ 8,30	€ 10,29
19 years	€ 6,23	€ 9,24
18 years	€ 5,19	€ 6,93

End of youth LIV
It seems at the moment that the youth LIV will be abolished with effect from 2024. However, Minister Wouter Koolmees is working on a solution in response to the withdrawal of this allowance. For example, he has made agreements with employers on the future of the LKV and (youth) LIV. He is keen to use the LIV in a more targeted way and transform it into a wage expense allowance (LKV) for potentially vulnerable young people. Together with the agreement to make the LKV permanently available for individuals who fall within the target group of the job arrangement for persons with an occupational disability (banenafspraak), this should ensure that employers continue to be incentivised to hire and retain people in a vulnerable position on the labour market.

4.4 Wage expense allowances in 2021

Since 2018, employers who take on older benefit recipients, persons with an occupational disability and persons who fall within the target group of the job arrangement for persons with an occupational disability and the target group of persons with an interrupted education due to illness or disability (scholingsbelemmerden) have been entitled to so-called wage expense allowances (LKVs). The conditions applicable to these will remain the same in 2021.

Amounts for 2021

LKV	AMOUNT PER PAID HOUR	MAX. AMOUNT PER YEAR	DURATION
Older employee	€ 3,05	€ 6.000	3 years
Employee with an occupational disability	€ 3,05	€ 6.000	3 years
Persons within target group of job arrangement and persons with interrupted education	€ 1,01	€ 2.000	Without restriction
Redeployment of employee with occupational disability	€ 3,05	€ 6.000	1 year

Maximum duration of LKV for target group with a job arrangement or interrupted education from 2021
With effect from 2021 a change will be made to the duration of the LKV for persons within the target group of the job arrangement and persons with an interrupted education due to illness or disability. From 2021 onwards it will be possible to apply this LKV to an employee for an indefinite period, provided that he/she continues to meet the conditions.

Application period for target group declaration cut to three months again
The application period for a target group declaration has been reduced again to three months. It had been temporarily extended to six months, as in many cases the coronavirus crisis was making it impossible to apply for the declaration on time. An application period of three months applies again to employment relationships with a start date from 1 October 2020 onwards.

5 ASSESSMENT OF EMPLOYMENT RELATIONSHIPS (DEREGULATION) ACT

5.1 Introduction

The government is keen to replace the Assessment of Employment Relationships (Deregulation) Act (Wet DBA). The reason behind this step is that the Act is a cause of too much anxiety and uncertainty amongst self-employed persons and their clients.

Instead the government will focus on combating undesirable competition between employees and self-employed persons in the area of employment conditions in order to tackle bogus self-employment. It has also been agreed that self-employed persons will have a statutory obligation to insure themselves against the risk of occupational disability and the participation of self-employed persons in pension schemes will be examined.

Pilot web module
A pilot web module was launched on 11 January 2021. The pilot will be assessed after six months and a decision will then be taken on how to proceed.

On the basis of the information entered, the module issues one of the following conclusions:

1. Client declaration: the contract can be carried out outside an employment relationship.

2. Indication of employment relationship: there are strong indications that there is a (fictitious) employment relationship.
3. No conclusion possible: on the basis of the answers given it is unclear whether work is being carried out outside or inside an employment relationship.

During the pilot phase these results do not have any legal status.

5.2 Enforcement

Enforcement will start (in phases) once the web module has been assessed. This decision will be taken in October 2021 at the earliest. However, this does not mean that no supervision is currently taking place. The Tax and Customs Administration can only take enforcement measures if there is malicious intent or if instructions have not been complied with within a reasonable period.

When does malicious intent apply?

An employer is deemed to have acted with malicious intent if it 'intentionally allows a situation of obvious bogus self-employment to arise or continue, as it knows – or ought to have known – that an employment relationship actually applies'. Here it is necessary to demonstrate that the following three situations apply:

1. a (fictitious) employment relationship
2. obvious bogus self-employment
3. intentional bogus self-employment

Instructions

It is also possible that an inspection does not directly reveal any malicious intent, but that there is nevertheless a (fictitious) employment relationship. In such a case enforcement measures will not yet be taken, but the Tax and Customs Administration may issue instructions. The employer must then take steps to implement these instructions in order to:

- structure the working relationship in such a way that work is carried out outside an employment relationship, or
- include the working relationship as employment in its tax return.

An employer will generally be given three months to comply with the instructions. If, after these three months, it is concluded that the instructions have not been complied with sufficiently, enforcement measures may then be taken.

Please note!
Checks to identify cases of malicious intent will be carried out at least until 1 October 2021.

6 EMPLOYMENT LAW – MISCELLANEOUS

6.1 Transition payment

An employee is entitled to a transition payment if he/she is made redundant at the employer's initiative.

The level of the transition payment depends on the employee's salary and the number of years of service. In 2021 the maximum transition payment is € 84.000, or a year's salary if higher.

6.2 Relaxation of rules on deducting training costs from transition payment

Do you need to make a transition payment if you make one of your employees redundant? And have you previously trained this employee to perform a different role within your company? In that case, since July 2020 you have been able, under certain conditions, to deduct the training costs you incurred from the transition payment. One of the conditions that applies here is that this must have been laid down in writing in advance, e.g. in a study contract.

Under the amended 'Decree on the conditions for deducting costs from the transition payment' it is now also possible to deduct the training costs for a different role with a different employer from the transition payment. These cannot therefore be costs incurred with a view to developing the employability of the individual in his/her current role. Such training is regarded as good employment practice and the costs are borne by the employer.

These arrangements are intended to give employers and employees a greater incentive to invest in the broader employability of staff during the employment relationship. The change is in keeping with one of the aims of the transition payment, namely to facilitate the transition to another role and in this way increase the employability of the person concerned.

Conditions applicable to deduction

It is only possible to deduct these costs from the transition payment if the costs:
have been incurred after they have been specified and communicated in writing to the employee;

- have been incurred after the employee has agreed in writing to the deduction of the specified costs;
- have been incurred by the employer who owes the transition payment for the benefit of the employee to whom the transition payment is due;
- do not concern the employee's salary;
- are in reasonable proportion to the purpose for which they were incurred;
- were or are incurred during or after the period on the basis of which the transition payment is calculated;
- cannot be recovered from a third party;
- cannot be recovered from the employee.

These costs associated with employability must have been incurred within a period of no more than five years before the end of the contract. If the employer and employee have made other written agreements themselves regarding the applicable period, the agreed (shorter or longer) period applies.

Please note!

The employer and employee must make agreements themselves on the possibility of deducting training costs for a different role within their own company from the transition payment. These should also be set out in writing. The possibility of deducting training costs from the transition payment is therefore by no means automatic!

6.3 Notice period also falls under transition payment

If an employee is made redundant at the employer's initiative, it is important to carefully check the applicable notice period in the employment contract or applicable collective labour agreement when calculating the transition payment.

If no notice period is observed or a shorter one than has been agreed in the employment contract (also referred to as 'irregular termination'), you still need to take the agreed notice period into account for the calculation of the transition payment. Irregular termination to avoid paying a higher transition payment is not permissible, according to the Supreme Court. Failure to observe the correct notice period will also have consequences if the employee wants to receive an unemployment benefit, because in this situation the UWV will conclude that an act prejudicial to the UWV has taken place, as the employee became unemployed too early.

6.4 Transition payment can reduce allowances

Receiving a transition payment has an effect on a person's income. In the year in question his/her income will be higher as a result and he/she will often then be entitled to a lower level of allowances, e.g. housing and care allowance. According to the state secretary, this is not unreasonable, as allowances are, after all, intended as a form of income support. If a person's income is higher, the support may fall. This will lead to allowances previously received being reclaimed.

6.5 Transition Payment Compensation Act

Since 1 April 2020 employers have received compensation for the transition payment they are required to make if employees who are sick for a long period of time (two years or more) are made redundant. The transition payment has to be made in these cases too.

Level of compensation

The compensation to be paid to the employer by the UWV does not necessarily have to be the same as the transition payment that the employer has made to the employee. First of all, it must be a question of a payment made after expiry of the period during which it is prohibited for the employer to terminate employment. There is no right to compensation for the transition payment accrued over the period during which the employer has kept the employment relationship dormant. The Act also sets a maximum limit for the amount to be compensated in two respects:

- The compensation amounts to a maximum of the transition payment accrued from the start of the employment relationship until the employee has been sick for two years.

- On the basis of the Act the transition payment is also accrued over the period of any extension to the employer's obligation to make continued salary payments (as a result of a penalty imposed due to insufficient efforts to reintegrate the employee) or over the period during which the employment relationship was kept dormant. This portion of the transition payment is payable by the employer, but is not compensated by the UWV.
- The compensation also amounts to a maximum of the salary paid during two years of sickness (the so-called 'second maximum'). The effects of introducing this second maximum are currently still being examined and for the time being it has not entered into force.

On the basis of the Supreme Court's decision in the Kolom case, an entitlement to a pro-rata transition payment exists in the event of a substantial and sustained reduction in working hours. This is a reduction in working hours by at least 20% that seems likely to be permanent. If the employment contract has been amended and the conditions mentioned are met, there is therefore an entitlement to a pro-rata transition payment for which compensation can be received from the UWV.

In the SIPOR decision of April 2020 the Supreme Court ruled that an entitlement to a partial transition payment in the event of a loss of income due to redeployment in a role with a lower salary is incompatible with the statutory system and the nature of the transition payment. Redeployment in a different role cannot be equated with partial termination of the employment contract. A reduction in salary resulting from such redeployment therefore does not create an entitlement to a transition payment.

6.6 Compensation if benefits paid during sickness

Applying to the UWV

The UWV can therefore award compensation with retroactive effect. Applications will be checked by the UWV, which requires information from the employer for this purpose. The employer has to submit the following documents with its application:

- The employment contract or a document indicating the date of commencement of the employment contract, e.g. a payslip showing the date on which the employee started work.
- Evidence of the end of the employment contract:
  - termination agreement or settlement agreement;
  - a court judgment;
  - a termination letter.
- Evidence of the amount of gross salary you paid in total over the entire sickness period. The following are required for this:
  - the payslip for the period preceding the date on which the employee had been sick for one year;
  - the payslip for the period during which the prohibition of termination of employment due to sickness expired.
- Evidence in special situations:
  - offsetting of employability-related costs and/or transition costs
- written agreement from the employee concerning the reduction in the transition payment
- proof of payment of the employability-related and/or transition costs incurred
  - evidence of any transition payment previously made in the event of a takeover or a temporary agreement (bank statement);
  - if the employee was performing domestic work for a private individual (dienstverlener aan huis), the UWV will also ask for additional payslips;
  - if the employee was under 18, the UWV will ask for an overview of hours worked in the months when your employee was less than 18 years of age;
  - in the event of a shiftwork and/or overtime allowance:
- all payslips showing the shiftwork and/or overtime allowance. This applies for the last 12 months of the prohibition of termination of employment.
  - in the event of profit distributions and/or bonuses:
- all payslips showing the accrual of the profit distributions or bonuses for the last 3 calendar years preceding the calendar year in which the prohibition of termination of employment ends.
- The calculation of the level of the transition payment. This is needed to determine the level of the compensation.
- Evidence that the full transition payment has been made and on what date, e.g. a bank statement. If the payment has been made in instalments, evidence of payment must be included for all payments.

Compensation for any employer

The coalition agreement stated that the scheme applied to small employers. However, it has been decided that large employers will also be eligible for the scheme. Any employer may make use of the scheme if it satisfies the conditions.

Effective date

You can submit a digital application for compensation to the UWV from 1 April 2020, within six months of making the full transition payment. In the case of employment relationships that end on or after 1 April 2020 due to long-term incapacity for work – the structural situation – the UWV has eight weeks to come to a decision. The UWV's decision is a decision within the meaning of the General Administrative Law Act, which means it is possible to lodge an objection against it. The possibility of applying for compensation for 'old cases' in which the employment relationship was terminated before April 2020 due to long-term incapacity for work has now expired.

6.7 Compensation also possible if business is discontinued due to retirement or death of the employer

If an employer discontinues his/her business due to retirement, from 1 January 2021 he/she can claim compensation for the transition payments made to his/her employees.

This applies to companies with fewer than 25 employees.

The compensation for transition payments in the event of the discontinuation of a business is regulated in the Balanced Labour Market Act. For the purposes of calculating the number of employees it is irrelevant whether an employee has a temporary or permanent contract. This scheme does not apply with retroactive effect.

Avoiding payment from private assets
The government wants to prevent a situation in which employers who are forced to discontinue their business as a result of retirement have to draw on private assets to make the transition payment to their employees.

Conditions for compensation
To be eligible for this compensation, the following conditions must be met:

- Employees are being made redundant as a result of the discontinuation of the business.
- The business has fewer than 25 employees on 1 January of the year of discontinuation.

Compensation can be awarded for payments that the employer owed:

- in connection with the termination of employment contracts in the six months preceding the request for approval of the termination of the employment contract;
- in connection with the termination of employment contracts in the nine months after the request for termination has been approved or granted.

The employer can therefore submit a compensation application several times over a period. This has the advantage of limiting the financial burden that an employer faces as a result of issuing the transition payments up front. To be eligible for the compensation, permission must have been received from the UWV to terminate the employment contract of at least one employee due to job losses resulting from the discontinuation of the activities of the business.

In addition, the reason for discontinuing the business must be linked to:

- the entrepreneur reaching pensionable age (within six months) and
- the fact that there is no successor.

Following the employer's death, heirs and/or co-employers may be left with a business that they do not wish or are unable to continue. In such cases discontinuing the business and then making the employees redundant will be the only option. The heirs of the deceased employer who have become the employer by operation of law after accepting the inheritance, together with any co-employers (e.g. in the case of a general partnership), will owe a transition payment to all employees who are made redundant upon termination of the employment relationships.

It is for this purpose that the compensation has been introduced. If the employer has died, the associated compensation will be awarded if a redundancy application has been submitted to the UWV within twelve months at the latest of his/her death.

Procedure required by the UWV
The employer will have to supply the necessary information to the UWV, including on the calculation of the level of the transition payment and the actual payment transaction.

Compensation in the event of sickness or disability of the employer has been postponed
The compensation scheme relating to the discontinuation of a business due to the sickness or disability of the employer has been postponed. This is because, for this component of the scheme, it is necessary to assess whether the employer will be able to continue his/her activities within six months. The UWV and professional associations of company doctors and insurers' medical advisors have not yet reached agreement on how this can be assessed. The Minister for Social Affairs and Employment, Wouter Koolmees, had previously announced this in a letter to the Lower House.

6.8 Unemployment insurance contribution

The level of the unemployment insurance contribution depends on whether the person concerned has a permanent or flexible employment contract. The government hopes that this measure will encourage the use of permanent employment contracts and make them more attractive for employers.

When does the low unemployment insurance contribution apply?
The low unemployment insurance contribution is payable in the case of written contracts for an indefinite period in which the scope of the work is clearly defined. This low contribution is also due for employees under the age of 21 who have been paid for a maximum of 48 hours (per four-week return period) or 52 hours (per return period of a calendar month). In addition, the low contribution applies to apprentices following a work-based learning pathway (BBL) and to employees whose employer is paying an employee insurance benefit in the form of an employer's payment or as a self-insurer.

> **Please note!**
> If the employment contract is terminated within two months of the start of the employment relationship, the employer is required to pay the high unemployment insurance contribution with retroactive effect. Whether the employee claims unemployment benefit is irrelevant.

High unemployment insurance contribution due to overtime to be suspended again in 2021
If employees on a part-time contract of fewer than 35 hours a week have worked overtime exceeding 30% and the employer has applied the low unemployment

insurance contribution, an exception applies and the high unemployment insurance contribution does not have to be paid. Due to the ongoing coronavirus crisis, it has been decided that the requirement to pay the high contribution will also not apply in 2021.

6.9 Offer of fixed hours in 2021

After twelve months the employer is obliged, within one month, to offer an employment contract with a fixed number of hours. These hours must be based on, as a minimum, the average number of paid hours over the previous twelve months. Only hours that follow on from one another within a six-month period are counted.

Example

An on-call worker started on 1 January 2020. From January to the end of May 2020 he was paid for an average of 36 hours per week, but did not work in June or July. He was then paid for an average of 32 hours per week from August through to 31 December 2020. June and July are not counted, as no work was carried out in these months. The on-call worker has to be offered an employment contract for at least 34 hours per week.

After twelve months employers are obliged to offer on-call workers a fixed amount of work. This must at least equal the average scope of the work performed over the last twelve months. The offer must be made within a month of the end of the twelve-month period. These statutory regulations will be amended on 1 July 2021. From that date the worker will have a month at the most to decide whether or not to accept the offer. If it is accepted, the new scope of work will become effective on the first day of the 15th month at the latest. Previously, the law stated that the employee had 'at least' a month to decide whether or not to accept the offer.

Right to pay if no offer made

If a contract with a fixed number of hours is not offered, the on-call worker is entitled to be paid for the average number of hours worked per week over the previous twelve months, irrespective of whether he/she is called to perform work. This is a regular pay claim that is subject to a limitation period of five years.

Tip: It is therefore important that the employer makes an offer, as there is a risk that the employee – often in cases where he/she has left the company – may claim pay retrospectively on the basis of the offer that should have been made.

6.10 Call period

An employer must call a worker to carry out work at least four days in advance, in writing or electronically. This period may be reduced to at least 24 hours in an applicable collective labour agreement. If the employer withdraws the offer within the above period, the worker is entitled to be paid for the hours withdrawn. It is therefore important to indicate clearly in advance what the duration of the work for which the worker is called will be: a few hours, a day, a week, etc.

A different arrangement may apply to people working in seasonal sectors. This is because, for seasonal jobs, it can be agreed in a collective labour agreement that a shorter call period will apply or that the interruption period – the period after which a new series of contracts starts to run – can be reduced from six to at least three months. In the latter case this must concern jobs that can be carried out for a maximum period of nine months per year due to climatological or natural conditions and cannot be carried out consecutively by the same worker for a period of more than nine months per year. This will therefore depend on the collective labour agreement that applies to you as an employer.

Please note!

The rules on successive fixed-term contracts (ketenregeling) have been relaxed and up to three temporary employment contracts are now permitted within a period of 36 months. In the event of an interval that exceeds six months, a new chain takes effect upon re-employment. The employer is also required to call the worker no later than 4 days before the work will begin. If the employer cancels the call within 4 days or changes the working hours, the worker is entitled to be paid for the hours for which he/she was called.

6.11 Risk assessment & evaluation

The Social Affairs and Employment Inspectorate subjects companies to checks to determine whether they have a risk assessment & evaluation (RI&E) in place.

In the event of a breach the Inspectorate will immediately impose a fine, the level of which has also been raised.

RI&E for small employers exempt from assessment
Smaller employers with up to 25 employees do not have to have their risk assessment and evaluation assessed. This exemption only applies if you use an approved RI&E tool for your sector. Larger employers must always have their RI&E assessed.

Conditions applicable to an approved sector RI&E
Approved RI&E tools for the various sectors need to meet certain conditions. Employers and employees from the same sector must have developed the tool jointly, for example. The tool must also have been assessed by a person certified as a key occupational health and safety expert. In addition, it must have been registered with the RI&E Support Centre (Steunpunt RI&E) and made available digitally on the website.

Co-determination bodies have right of approval
After it has been assessed by the certified key occupational health and safety expert the RI&E and action plan must also be sent to the works council or employee representative body. They have a right of approval. The Working Conditions Act also stipulates that employees have a right to inspect the RI&E. The more employees are aware of the risks, the better they can take them into account.

As many smaller employers in particular do not have an RI&E, attention is focused on this issue each year during RI&E Week, which this year will run from 21 to 25 June 2021. The Social Affairs and Employment Inspectorate subjects companies to rigorous checks to determine whether they have an RI&E in place. If they do not have an RI&E, including action plan, this can result in substantial fines. Information on the RI&E is also available from the website.

6.12 Fine under Working Conditions Act reduced with retroactive effect?

If you receive an administrative fine from the Social Affairs and Employment Inspectorate following a breach of working conditions legislation and you subsequently take adequate and appropriate measures, the fine may be reduced by 12.5% with retroactive effect.

This has been laid down in an addition to the Working Conditions Act that took effect on 13 October 2020. Such a fine can be imposed without court intervention.

The measures you take as an employer have to meet two conditions. On the one hand, they must prevent the same or a similar breach from occurring in the future and, on the other, must be taken as soon as possible after the breach is identified. If you show goodwill, it is possible that you will be granted a 12,5% reduction in the fine imposed.

Mitigation principle
If a breach is identified in respect of which you have taken partial but not complete measures, your fine may be reduced by a certain percentage; this is also referred to in the Working Conditions
Act as the mitigation principle. In addition to this, you can now also obtain mitigation of a fine with retroactive effect. Furthermore, the reduction of 12,5% is added to the percentage of any earlier mitigation. The fine can never be reduced to zero, however.

6.13 Partner leave

As an employer you can apply for additional partner leave for your employee. This extra leave applies to partners of women who have given birth on or after 1 July 2020. The application can be submitted digitally to the UWV via the absenteeism reporting application Verzuimmelder or via Digipoort. The leave can be applied for once only.

Five extra weeks
The additional partner leave cannot exceed five weeks. This is on top of the leave of one working week, the costs of which must be borne by the employer. For this five-week period partners receive a payment of 70% of their daily wage via the UWV, up to the maximum daily wage.

Conditions
A number of conditions apply to the additional partner leave:

- The employee must first take the standard partner leave of one times the number of working hours per week.
- The employee must take the extra weeks of leave within six months of the birth. These can be taken together or spread over six months.

- The employee must have acknowledged parenthood of the child.
- The employee must be the partner of the child's mother.

When are you a partner?
For purposes of the extra partner leave you are regarded as a partner if you are married, in a registered partnership or living together.

Also applicable in the event of complications
The additional partner leave can also be taken if the child is admitted to hospital or dies following birth.

6.14 New UWV implementing rules on redundancy procedure and redundancy

What are the rules on applying for redundancies for commercial reasons or due to long-term incapacity for work? What do you have to bear in mind as an employer according to the UWV guidelines?

If you want to make staff redundant for commercial reasons or due to long-term incapacity for work, the UWV is the designated body to which you should submit a redundancy application. These rules are laid down in the UWV redundancy procedure regulations. When applying for a redundancy it is important that you follow the redundancy procedure carefully. For example, you need to consider the period for supplementing an incomplete application, the periods for hearing both parties and situations when a deferment can be granted.

UWV redundancy procedure implementing rules
In addition to these rules, the UWV has drawn up internal work instructions – the UWV redundancy procedure implementing rules – setting out how the UWV will apply these ministerial procedural rules in practice. These redundancy procedure implementing rules have applied since 1 September 2020. They provide clarity regarding matters such as the UWV's complaints procedure, provisional and repeated applications, the opportunity to put forward a defence and the oral hearing.

Provisional redundancy application
In the implementing rules the UWV indicates how to proceed if the employer wants to negotiate further with the employee regarding a termination agreement. In such a case the employer can submit a provisional application with a request for deferment to allow these negotiations to be conducted.

Implementing rules on redundancy for commercial reasons
At the same time the UWV published a new version of the implementing rules on redundancy for commercial reasons, which replaces the version of October 2019 and has applied since September 2020.

The new version incorporates changes to legislation, such as the Civil Servants (Normalisation of Legal Status) Act and the scrapping of the transition payment bridging scheme.

> **Tip:** Before submitting a redundancy application consult the UWV redundancy procedure implementing rules to avoid any unexpected surprises. You can download them from the UWV website.

6.15 Alternative regime for persons of state-pension age adjusted

The Act on Continued Employment After State-Pension Age (in effect since 1 January 2016) provides for a lighter employment-law regime for employed persons of state-pension age. Wouter Koolmees, the Minister for Social Affairs and Employment, announced at the time of its introduction that the Act would be subject to an assessment, following which the continued payment of salary to persons of state-pension age in the event of sickness may be reduced from thirteen weeks to six weeks.

While the Act was being debated, concerns were raised in the Lower House about the risk of persons who have not yet reached state-pension age possibly being squeezed out of the labour market as a result of this Act. It was agreed that the Act would be assessed and it would be examined whether this effect was arising on the labour market. Transitional arrangements apply until the Act has been assessed. Under these arrangements, amongst other things, the period for which the salary of employed persons of state-pension age will continue to be paid in the event of sickness will be thirteen weeks, instead of the six weeks proposed in the Act.

The assessment of the Act has now been completed and a study has revealed that no parties are being demonstrably squeezed out of the labour market. In his letter to Parliament of 13 November 2020 Minister Koolmees therefore announced that the transitional arrangements would be ending. The intended date for this is 1 April 2021.

Due to the withdrawal of the transitional arrangements, the period of thirteen weeks is being reduced to six weeks for:
- the continued payment of salary in the event of sickness;
- the prohibition of termination of employment in the event of sickness;
- the reintegration obligation in the event of dismissal due to sickness.

6.16 Legislative proposal to make company doctor's opinion decisive when reintegration report is assessed

The intention of this legislative proposal is to ensure the company doctor's opinion on the employee's workload capacity is decisive in future when the UWV assesses the reintegration report (RIV).

The insurer's medical advisor will no longer assess this opinion from the company doctor. His/her role will therefore also change. This should lead to greater certainty for employers. As a consequence of this measure, the assessment of the reintegration report will be based solely on an assessment of the report by an occupational health and safety expert. The UWV's occupational health and safety expert will assess whether the employer and employee have complied with their reintegration obligations and made sufficient efforts that are in keeping with the company doctor's opinion on the employee's workload capacity.

The possibility for employers and employees to apply to the UWV for an expert opinion during the 104-week period will be retained, as will the possibility for the employee to request a second opinion at the employer's expense from another company doctor contracted by the employer. It will still be possible for the UWV to impose a penalty due to insufficient reintegration efforts on the part of the employer, although this will no longer be based on a medical difference of opinion between the insurer's medical advisor and the company doctor – a change that will greatly please many employers. The intention is for the Act to enter into force on 1 September 2021 at the latest.

6.17 Protected earnings level to be definitively raised to 95%

If a fine is imposed due to abuse of the benefits system, the income of the person concerned cannot fall below 90% of the social assistance benefit level as a result of the fine. In anticipation of a change to the law, the Central Appeals Tribunal (CRvB) decided that 95% of the social assistance benefit level should be taken as a basis.

Benefit fraud

In the case in question a fine had been imposed on a benefit recipient. This person had tried to open a lounge bar and had failed to notify the local authority of these activities. Following an inspection, the benefits wrongly received were reclaimed and a fine was also imposed. The CRvB decided that the monthly income of the recipient could not fall below 95% of the social assistance benefit level.

Protected earnings level

A protected earnings level applies to prevent people from being left with too little money to live on. This is currently 90% of the social assistance benefit level.

New Act

For a number of years work has been ongoing with a view to changing the law, including increasing this level to 95%. The introduction of this change has been delayed, however, due to implementation problems. The Act on the Simplification of the Protected Earnings Level entered into force on 1 January 2021 and a level of 95% is now taken as a basis.

2021 as a transition year

In 2021 debtors may still find that a protected earnings level based on the old regulations is applied. They can, however, request a recalculation on the basis of the new protected earnings level. Debtors can perform this calculation themselves on the website.

7 CORONAVIRUS AND HOMEWORKING

7.1 Homeworking allowance

As employees are working from home a lot more as a result of the coronavirus crisis, employers may feel obliged to support them with the costs they incur at home. This section provides an overview of the tax treatment of various common allowances and benefits in kind. The government, together with social organisations and social partners, is looking into the possibilities of introducing an additional scheme that will also enable employers to reimburse other homeworking costs free of tax. The existing travel allowance schemes will also be examined within this context.

PC, mobile communication equipment and internet

Computer equipment, such as laptops, printers, etc., and mobile communication equipment, such as a smartphone, can be reimbursed or supplied free of tax by an employer if, in its opinion, the employee needs it to perform his or her role properly from home. An internet contract also falls under the above.

> **Please note!**
> In the case of a contract covering various services, such as TV, the employer needs to reasonably estimate the costs that can be allocated to the internet connection. Only this portion may be reimbursed free of tax.

Essential?

For employees who are obliged to work from home there will generally be little argument about whether a laptop, etc. is essential. Non-essential aids are also exempted if 90% or more of their use by the employee is for business purposes.

> **Tip:** Within this context the term 'making available' (ter beschikking stelling) means that an employee hands the equipment back at the end of the employment relationship, for example, or if he/she no longer needs it to perform his/her work. Document these agreements with an employee carefully.

If not exempted, charge to fixed budget

If the employer reimburses the cost of or makes available a non-essential item, in principle this is taxable for the employee. However, the employer can also include it under the work-related expenses scheme, which means it will remain untaxed. The employer will only pay a final levy of 80% if the fixed budget for this year is exceeded.

And when the crisis is over?
If employees no longer need to work from home after the coronavirus crisis, they will have to return the PCs, etc. that have been made available to the employer or acquire them as their own private property and pay reasonable compensation for them.

Nibud study
According to Nibud (National Institute for Family Finance Information), working from home costs around € 2 per day. For employees who work from home for several months this year, the costs can therefore quickly mount up to several hundred euros. These include the costs of coffee and sanitary facilities, energy costs and depreciation of furniture.

Free of tax
The employer can pay the homeworking allowance free of tax if it is allocated to the fixed budget under the work-related expenses scheme. If the employer exceeds this fixed budget, it has to pay 80% tax via the final levy. Under certain conditions it is also possible to make equipment available free of tax if there is a self-contained office with its own sanitary facilities and own entrance and the employer also pays rent to the employee for use of this office. These conditions will not usually be met.

Work-related expenses scheme
Last year the fixed budget under the work-related expenses scheme was expanded. The increased budget will be maintained this year. This means that in 2021 the fixed budget will again amount to 3% instead of 1,7% on the first € 400.000 of the wage bill.

Please note!
This year the fixed budget on the amount above this figure will be 1,18% instead of 1,2% in 2020.

7.2 Homeworking scheme
Draw up a homeworking scheme if you want to make it possible for people in certain jobs or job groups to work from home.

This should include points relating to homeworking, but also information on how inspections will be carried out, for example. Consider the following points:

- The jobs or job groups in which employees will be permitted to work from home, in view of the nature of the role.
- The number of days that an employee can work from home.
- The possibility of contacting the employee and when this should be possible.
- How the workplace inspection will take place.
- How good working conditions will be maintained and how the employer and employee should handle this.

The homeworking scheme can be incorporated into the personnel handbook.

As you have the right to issue instructions as an employer, it is not necessarily a requirement that employees agree to such a scheme. A homeworking agreement can be concluded with the individual employee on the basis of the homeworking scheme.

8 NOW (TEMPORARY EMERGENCY BRIDGING FUND FOR EMPLOYMENT)

8.1 NOW 1.0

NOW 1.0 was the first contribution towards payroll costs for employers whose turnover dropped by at least 20% as a result of the coronavirus crisis. This contribution relates to the period from March to the end of May 2020 and amounts to a maximum of 90%.

On its website the UWV has made a calculation tool available that you can use to work out for yourself what the definitive level of the NOW 1.0 subsidy will be. You can, of course, also have this calculation performed by a third party, such as your accountant. You will then know in advance whether you will need to pay back (part of) the contribution and can prepare for this.

Since 7 October 2020 employers who applied for the NOW 1.0 contribution have been able to apply for definitive determination of the subsidy. This was the date on which the UWV made the application form for this available. The UWV will have a maximum of one year to reach a decision.

Final application deadline
If you do not have to enclose a declaration from an accountant, you need to submit the application for definitive determination of the subsidy by 23 March 2021 at the latest. If you do have to enclose a declaration from an accountant, you have until 29 June 2021 to do so.

Declaration from third party or accountant
You need a declaration from an accountant if you have received an advance payment of € 100.000 or more or if the definitive contribution amounts to € 125.000 or more. A declaration from a third party is sufficient in the case of an advance payment of € 20.000 or more or a definitive contribution of € 25.000 or more.

The minister has reported that when the definitive NOW 1.0 subsidy is determined, a cost-efficiency threshold of € 500 will be applied. This means that any excess NOW 1.0 subsidy received will only have to be paid back if the amount is more than € 500.

If you do not apply for definitive determination of the subsidy, you will have to pay back the advance payment in full. Should you conclude that you are not entitled to the subsidy, it is also possible to withdraw your application entirely. In that case contact the UWV.

8.2 Definitive payment under NOW 2.0 delayed

The definitive determination and payment of the NOW 2.0 payroll subsidy have been delayed. This is because the UWV is responsible for administering various schemes linked to the coronavirus crisis and its workload has become excessive. The opening of the service point for determination of the NOW 2.0 subsidy has therefore been postponed from 15 November 2020 to 15 April 2021.

Remainder of subsidy amount
The delay also means that companies will have to wait longer for the remainder of the subsidy amount under NOW 2.0. This is because, like the NOW 1.0 scheme, NOW 2.0 involves payment of an advance of 80% of the subsidy to be received. Employers have already received this 80% advance. As the definitive subsidy will now be determined later, the same applies to the remaining amount of 20% and the definitive amount that will be received under NOW 2.0 will remain uncertain for longer.

8.3 NOW 3.0: what are the conditions?

The conditions that will apply to the NOW 3.0 scheme are already known. What will the third variant of this support measure look like?

Drop in turnover and level of contribution
NOW 3.0 covers a period of three times three months (in total from October 2020 to the end of June 2021). During the first period (October to the end of December 2020) a company is entitled to a contribution if its turnover has dropped by at least 20%. This will continue to apply over the period from January to the end of June 2021. During the first period (October to the end of December 2020) the subsidy will amount to a maximum of 80% of the wage bill and this will increase to 85% during the second and third periods.

> **Tip:** You can submit the application for the period from January to the end of March from 15 February to 14 March 2021.

Drop in wage bill
Under NOW 3.0 a limited drop in the wage bill is also allowed without this affecting the contribution. Over the first period (October to the end of December) this can be a maximum of 10%. If the wage bill has fallen by 20%, for example, over the first period, it has therefore dropped by 10% more than permitted. In this case the contribution is set at a lower level on this 10% only and not on the entire 20%. The above will also apply to the second and third periods of NOW 3.0.

Mark-up unchanged
The mark-up added to payroll costs will remain unchanged at 40%. This is intended to compensate for additional payroll costs, such as holiday allowance.

Ban on payment of bonuses
Under NOW 3.0 a ban on the payment of bonuses and dividends and on buying back own shares will also apply in

2021.

Maximum wage limited
The maximum wage on which the contribution is based amounts to twice the maximum daily wage (€ 9.691 per month). The plan to further limit the maximum from 1 April has been scrapped.

No additional reduction in the event of redundancies
Under NOW 3.0, the wage of an employee who is made redundant for commercial reasons will no longer be deducted from the subsidy at a rate of 100% or 150% for the entire subsidy period. This means that under NOW 3.0 the employer will receive a subsidy based on the payroll costs it incurs during the subsidy period, provided that an employee is actually employed during this period.

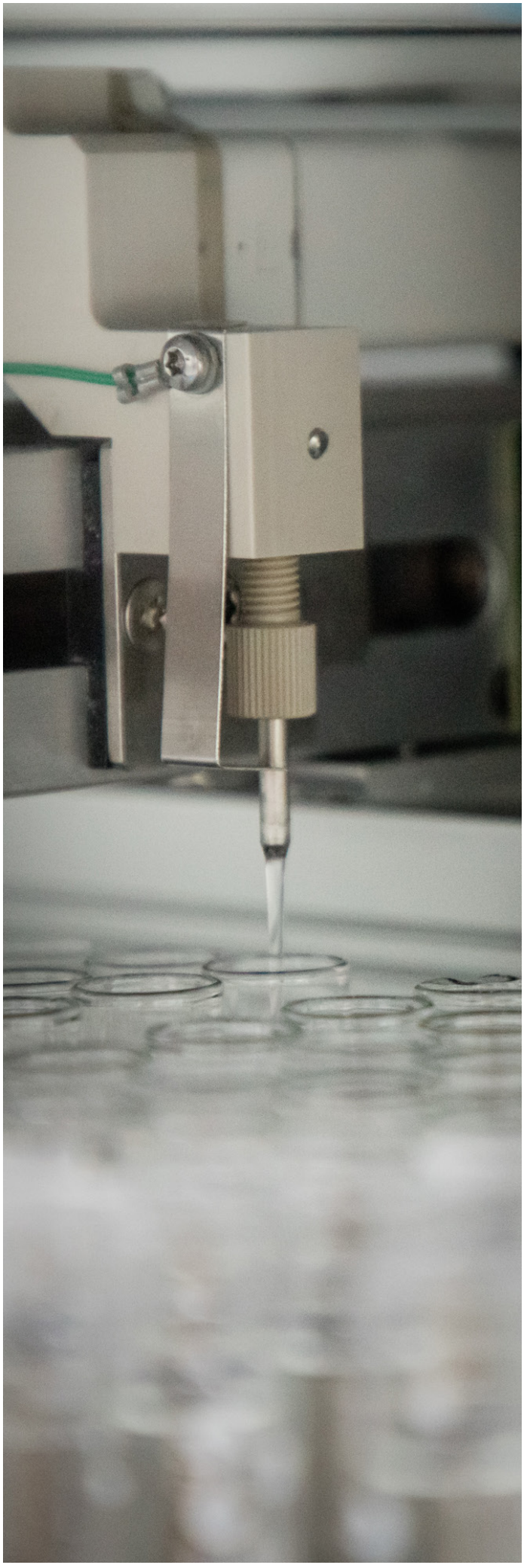
Redundancy penalty
Under NOW 3.0, the 5% reduction will no longer be applied to the whole subsidy amount if, in the case of large redundancy applications, the employer has failed to reach agreement with the relevant trade unions or, in the absence thereof, another employee representative body.

Compulsory support with finding new job
Employers who take advantage of NOW 3.0 have a best-efforts obligation to support employees who are made redundant with finding a new job. When employees are made redundant for commercial reasons the employer is obliged to contact the UWV. The telephone number is: 088 - 898 20 04. When the subsidy is determined the UWV will check whether the employer has actually done so. If it has not, the NOW subsidy will be reduced by 5%. If an employer has other questions relating to the NOW scheme, the UWV can be contacted on the following telephone number: 088 - 898 92 95.

Determination of drop in turnover and wage bill
The drop in turnover is determined by comparing a quarter of the turnover for 2019 with the turnover generated over a three-month period chosen by the employer. A choice of period is only possible if the employer has not previously taken advantage of the NOW scheme. Otherwise the periods used to determine the drop in turnover must follow on from each other. With regard to the determination of the wage bill, the advance payments for all three periods will be based on the wage bill for June 2020. If the UWV's policy records for June 2020 have not been completed, the wage bill for April 2020 is taken as a basis.

9 CORONAVIRUS AND SPECIFIC ISSUES RELATING TO EMPLOYEES

9.1 Can an employer make it compulsory to wear a face mask?



To comply with its duty of care, can an employer make it compulsory to wear a non-medical face mask? If so, who pays for it? And what happens if an employee does not want to wear a face mask?

The employer has a statutory duty of care. That means it has to ensure a safe working environment for its employees. Under the Working Conditions Act it is also obliged to pursue a working conditions policy in which attention is paid to risks in the workplace. This is based on the risk assessment and evaluation (RI&E). In this document attention should also be focused on measures associated with the coronavirus.

Complying with the duty of care
To comply with its duty of care, an employer can make it compulsory to wear a non-medical face mask. After all, the employer also has the right to issue instructions. This right implies that the employer can issue instructions regarding how and under what conditions work must be carried out. The regulations must be reasonable, however. If, for example, it is impossible to maintain sufficient distance in the workplace, e.g. in a supermarket with narrow aisles, it may be reasonable to make a face mask compulsory.

A court has also now ruled on this question and has stated that an instruction to wear a face mask could be in breach of fundamental rights, e.g. in the area of privacy. The employee in question, a driver for a chocolate maker, refused to wear a face mask on the premises.

However, the subdistrict court ruled that the obligation to wear a face mask on the employer's business premises served two legitimate aims:

1. Firstly, the employer is legally obliged to protect the individual interests of its employees by ensuring a safe and healthy working environment in which infection by the coronavirus should be prevented.
2. Secondly, the employer must protect its own business interests, as it has to continue to pay the wages of employees if they are sick or have to self-isolate. The wearing of face masks can help to protect these interests. Furthermore, such a measure can only be effective if everyone complies with it.

Who pays for the face mask?
If the employer makes it compulsory to wear a non-medical face mask, the employer must make face masks available or offer the possibility of claiming back these expenses. The employer must also provide clear instructions on how they should be used. Face masks can be reimbursed or provided on an untaxed basis, as they are compulsory for travelling on public transport. However, the Tax and Customs Administration does not say that face masks are taxed in all other cases, so we can assume that all face masks that are reimbursed or provided for business-related reasons will be untaxed.

If an employee does not want to wear a face mask
If the employee does not comply with the employer's request to wear face masks in the workplace, the employer can require him/her to work from home. In the case of an employee who is unable to work from home due to the nature of his/her work, the employee's conduct may constitute grounds for the employer to take disciplinary action, e.g. to issue a warning or suspend the payment of wages. This is obviously a last resort. It is important that the parties enter into discussion in all cases.

Medical impediments to wearing a face mask
Some employees are unable to wear a face mask (or wear one for long periods) due to health reasons. This may include people with respiratory conditions, such as asthma or COPD. Employees may also suffer panic attacks as a result of wearing a face mask. Making face masks compulsory at work would actually mean that these employees were no longer suitable for their work. An obligation to wear a face mask should therefore be introduced in a tailored manner.

Right of approval of works council/employee representative body
As making face masks compulsory in the workplace is a measure that relates to working conditions, the works council or employee representative body has a right of approval. Without the approval of such a body it will be difficult to introduce an obligation to wear face masks.

> **Tip:** Check whether there is an (approved) RI&E or a coronavirus protocol for your sector. In this you may find guidance that is relevant to your business situation.

9.2 Can an employer require an employee to be vaccinated?

Can an employer oblige an employee to receive a vaccination? Are you allowed to ask a candidate whether he or she has been vaccinated during a job interview? Can you include an obligation to be vaccinated in the job requirements? Is the answer to this last question different in the case of healthcare personnel?

These questions are now arising, with the prospect of a large-scale vaccination programme getting under way this year. Vaccinations will be given on the basis of a priority list.

> **Tip:** If you wish, you can reimburse the costs of vaccination free of tax.

Can an employee be obliged to receive a vaccination?
Can an employer oblige an employee to receive a vaccination? The answer to this question is 'no'. An employee has a right to physical integrity and this is enshrined in the Constitution. It is therefore up to the employee to decide whether or not to be vaccinated. Vaccination takes place on a voluntary basis.

Continued payment of salary?
An employer cannot therefore oblige his or her employees to receive a vaccination. Although the employer has a duty of care with regard to an employee's health and safety and his or her working conditions, this does not extend to being able to force the employee to be vaccinated. It is also not permitted to put the employee under pressure to receive a vaccination. After all, we are talking here about health data and this is subject to privacy legislation.

> **Please note!**
> If an employee who has not been vaccinated falls ill, the employer also has an obligation to continue paying his or her salary in this situation.

Job interview
During a job interview it is also not permitted to ask the candidate whether he or she has been or plans to be vaccinated. After all, this is also health data. Health data is a specific item of personal data whose processing is prohibited, unless a statutory exemption applies. The explicit consent of the employee is insufficient, as – in view of the relationship of dependency – it is possible to question whether the consent was given voluntarily.

Vaccination obligation as a job requirement
An obligation to be vaccinated can only be included as a job requirement if there is a legitimate aim and the means of achieving that aim are appropriate and necessary. After all, this means that a distinction is being introduced between staff who have and staff who have not been vaccinated. As mentioned above, the principle of physical integrity and the right of self-determination apply. Including an obligation to be vaccinated in a job requirement is not justified by a legitimate aim.

Vaccination essential for a candidate for a healthcare role?
If vaccination is essential to be able to carry out the work in question safely, as in the case of a candidate for a healthcare role, the employer can demand that the candidate undergo a medical examination. On the basis of the Medical Examinations Act, it is permitted for the company doctor to ask the candidate whether he or she has been vaccinated. The company doctor will subsequently indicate whether or not the candidate is suitable for the role. The reason for this conclusion is not given.

Vaccination of employed healthcare workers
Can an employer oblige healthcare workers on permanent contracts to receive a vaccination? This is a difficult question to answer, as everything is new when it comes to the coronavirus and there is no case-law in this area. We can infer from past case-law, however, that in such cases the court will often weigh up the individual and collective interests.

9.3 Can an employee be obliged to take a coronavirus test?

Can an employer oblige an employee to take a coronavirus test?

Is an employer allowed to send home an employee who has coronavirus symptoms? And is it permitted for an employer to take an employee's temperature? These are questions that are arising in the workplace and for which we provide an answer below.

Can an employer oblige an employee to take a coronavirus test?
No, this is not allowed. As the employee has a right to physical integrity, it is not permitted for an employer to oblige an employee to take a coronavirus test. The right to physical integrity means that every individual can decide him/herself what happens with his/her body.

Naturally, the employer can refer the employee to the recommendation of the National Institute for Public Health and the Environment (RIVM) to make an appointment for a test if you have cold-like symptoms, a high temperature or fever, a sore throat or a cough.

> **Tip:** If you wish, you can reimburse the costs of the test free of tax.

Can an employee be sent home?
If the employer notices in the workplace that an employee has symptoms related to the coronavirus, the employer can send this employee home. This is permitted on the basis of the employer's right to issue instructions and its duty of care towards the company's other employees in terms of ensuring a safe working environment.

Rapid test
Various rapid tests are now in circulation. An employer can, of course, offer employees a rapid test, but in this case too the test must be taken voluntarily. A reluctant employee cannot therefore be penalised. The rapid test must be taken voluntarily after the employee has given his/her explicit consent. In view of the hierarchical relationship between the employer and employee, it is possible to question whether there can be such a thing as explicit consent.

The test may only be performed by a healthcare professional. The result of the test is privacy-sensitive information that may not be shared with anyone other than the employee. Any costs associated with the test are borne by the employer. If the test is not performed by a healthcare professional, the employer is in breach of the rules and may be fined.

The Dutch Data Protection Authority has now taken a position with regard to rapid tests and has aimed for consistency with what it has stipulated in relation to taking a person's temperature. In the case of rapid tests, privacy legislation (the GDPR) therefore also does not apply if the result of the rapid test is merely read off. However, the following three conditions must be met:

1. The test result may not be entered in a file, e.g. an Excel list containing names and test results obtained.

2. The rapid test may not be automated, e.g. using certain electronic analysis equipment.
3. The processing may not result in any automated actions.

Temperatures
What is the situation with regard to taking an employee's temperature? Body temperature is an item of personal data if this temperature can be traced back to a specific individual. As your body temperature provides information about your health, it is also health data. Health data is a specific item of personal data whose processing is prohibited, unless a statutory exemption applies. Such an exemption can apply if explicit consent has been given. However, in view of the relationship of dependency between the employee and employer, it is possible to question whether explicit consent can be deemed to have been given.

Three conditions
The Dutch Data Protection Authority states that the General Data Protection Regulation (GDPR) does not apply if the temperature is merely read off and is therefore not processed as personal data. However, the following three conditions apply here (as in the case of the rapid test):

1. the temperature may not be entered in a file, e.g. an Excel list containing names and the temperatures obtained;
2. the measurement may not be automated, e.g. using a thermal imaging camera, and
3. the processing may not result in any automated actions. Here we are talking, for example, about gates that open automatically after a temperature has been taken or a light that turns green automatically if a person's temperature is not too high.

If these conditions are not met, personal data is being processed and the GDPR applies.

Please note!
The Dutch Data Protection Authority has now fined two companies for processing data about employees whose temperature had been taken.

9.4 Failure to comply with hygiene rules? Both employer and employee may be fined

Both an employer and an employee may be fined if they seriously breach the hygiene measures put in place to deal with the coronavirus. In very serious cases work may even be suspended temporarily. This is a consequence of a temporary amendment to the Working Conditions Decree.

Duty of care
An employer has a duty of care to ensure the health and safety of its employees and to this end must pursue an appropriate occupational health and safety policy. Taking measures or making arrangements to prevent or mitigate the risk of infection follows from this general duty of care. Within the context of ensuring protection against the coronavirus, the employer has an obligation to take the necessary measures or make the necessary arrangements in the workplace.

Suspension of work
Employers who intentionally commit serious breaches of the hygiene measures will now face sanctions under administrative law. By means of the Temporary Act on COVID-19 Measures a provision has been incorporated into the Working Conditions Act that makes it possible for the Social Affairs and Employment Inspectorate to suspend work if insufficient measures are being taken.

Administrative fine
In addition to the measure of last resort involving temporary suspension of work, immediate action can also be taken against employers who fail to observe the measures prescribed to combat the coronavirus in their workplaces. The labour inspector can impose an immediate fine in such cases. In the event of an infringement being identified, the inspector will draw up a fine report if the employer has taken no action in relation to:

- hygiene measures, information and training;
- monitoring of compliance to prevent or mitigate the risk of employees and third parties becoming infected with the coronavirus.

Also applicable to employees
Employees are also expected to ensure their own health and safety and that of other persons concerned in the workplace. That means they can be held accountable for improper conduct too. In this way the importance of employees taking responsibility themselves is also being emphasised. Although, when it comes to enforcement, attention is generally focused on the employer, there is also guidance for situations in which employees intentionally and seriously fail to comply in the workplace with the desired measures and arrangements aimed at combating the spread of the coronavirus.

Level of the fine
The administrative fine that can be imposed on the employer is € 3.000. The maximum fine for an employee amounts to € 450. These fines are based on the Policy Guidelines on the Imposition of Fines under Working Conditions Legislation.

9.5 Employees working across the border

As a result of the coronavirus crisis, it is not uncommon for employees to be working or to have carried out work in a country other than their normal country of employment. In accordance with the general rules, in such cases the country where tax and/or national insurance contributions are normally payable may change. However, various countries have already agreed that the obligation to pay tax or contributions will not be transferred. It is therefore a good idea to check what agreements apply in the country in question to employees working across the border.

9.6 Employee on holiday in spite of advice to the contrary: who continues paying his/her salary?

At present travelling abroad is strongly discouraged, but what if one of your employees goes on holiday to a yellow-list country?

What does it mean if this employee becomes sick or has to self-isolate while on holiday?

Do you want to find out which countries are on the yellow, orange and red lists? Visit the 'Nederland wereldwijd' website, a Dutch government site, to find out the current status. However, the government strongly advises staying at home as far as possible this winter.

Travelling to yellow-list countries
Yellow-list countries are countries where the risk of infection is roughly the same as in the Netherlands. The local rules on social distancing, hand hygiene and face masks are also similar.

Sick in a yellow-list country?
If an employee becomes sick during a stay in a yellow-list country – irrespective of whether he/she is suffering from an ordinary illness or coronavirus – he/she must call in sick and is then considered to be on sick leave, which means there is an obligation to make continued salary payments.

Repatriation from a yellow-list country
The government is no longer repatriating people as a result of the coronavirus. If someone travels to a yellow-list region, they do so at their own risk. It is also important to check the terms and conditions of the health insurance policy to find out what is reimbursed.

Travelling to an orange-list country
If a country is on the orange list, the country itself has indicated that Dutch tourists are not yet welcome or the Dutch government has indicated that the risk of being infected with the coronavirus is still greater in that country than it is in the Netherlands. Going on holiday to orange-list countries is therefore discouraged.

Repatriation from an orange-list country
The government will therefore also not assist with repatriation from an orange-list country. Tour operators must, however, provide such assistance. They are obliged to look after travellers who have booked a package holiday with them. This means that if the country in question moves from the yellow to the orange list, people must be repatriated. The above only applies to package holidays offered by tour operators and not, therefore, to holidays that you have booked yourself.

Self-isolation
If employees travel to an orange-list country, the Dutch government strongly advises them to self-isolate at home for ten days immediately on returning to the Netherlands. Employees who make the conscious decision to go on holiday to an orange-list country therefore know that they will have to self-isolate on their return. If they can work from home, that is not a problem. If that is not the case, however, they will be unable to work. As they were aware of this in advance, it can be argued that the cause of their inability to work was within their control. This may mean that they are not entitled to payment of their salary during their period of self-isolation. Another option is for employees to take holiday while self-isolating.

As virtually everyone displays symptoms within seven days, it is possible to confirm whether someone is infected from day five onwards in almost all cases. The employee can stop self-isolating in the event of a negative test result. If he/she suffers symptoms following a negative test result, another test must be taken.

Self-isolation: from yellow to orange list
If a country is moved from the yellow to the orange list while an employee is on holiday, meaning that he/she has to self-isolate while on holiday or after returning home, in principle this is outside the employee's control. That may not be the case if there were prior indications that the country could be moving from the yellow to the orange list.

Inform your employees in writing in advance about what the consequences will be if they go on holiday to an orange-list country and then have to self-isolate. They will then know where they stand beforehand and can adapt their behaviour accordingly.

9.7 Impaired working relationship due to enforced pay cut as a result of coronavirus crisis

Are you an employer who wants to implement a pay cut as a result of the coronavirus crisis? If so, your employees must agree to this voluntarily. You may not enforce this salary proposal in any way by putting pressure on your staff through other measures.

Dismissed from the team
There is a case of one employer who had asked its employees to agree to a 25% pay cut in connection with the coronavirus crisis. One of the employees did not agree to this. He not only received an official warning from his employer, but was also dismissed from the team.

Pay cut implemented
The proposed pay cut was also implemented without the employee in question having given his approval. Almost all of his colleagues, apart from one, agreed to the pay cut. The employment contract was due to run until 7 January 2021. In the end the working relationship had become impaired to such an extent that the employee approached the subdistrict court to apply for termination of the employment contract.

Punishment
The court described the employer's actions as punishment for the fact that the employee had not agreed to the pay cut and ruled that the employer was guilty of serious imputable acts by 'shutting out' the employee. The employment contract was terminated on 1 August 2020.

The employer has been ordered to make a transition payment and pay fair compensation for its serious imputable acts. In addition, it has to pay the employee's full salary, plus the statutory interest and a statutory increase of 20%.

Level of fair compensation and transition payment
When the level of fair compensation is determined the remaining term of the contract should normally be taken as a basis. As the employee worked in the IT sector, the subdistrict court considered it likely that he would be able to find other work within two months, as a result of which the fair compensation was limited to a loss of two months' pay (in this case approx. € 20.000).

The gross transition payment of € 6.725,66 may be deducted from this, given that it compensates for part of the damage. This results in a gross rounded amount of € 13.275.

If you want to make agreements with your employees in this area, it is important to confirm them and the employee's consent in writing. You can also make agreements on the temporary exchange of salary components, if any applicable collective labour agreement allows this.

10 OTHER CORONAVIRUS NEWS FOR EMPLOYERS

10.1 Deferment of payments

Employers who are facing liquidity problems due to the coronavirus crisis can apply for a deferment of payroll tax payments. These can be deferred for three months, but this period can also be extended under exceptional circumstances. Interest is payable on account of the late payment. However, this has been reduced to a rate of 0.01% (instead of the previous rate of 4%). The possibility of deferring payments will end on 1 July 2021. From 1 October 2021 entrepreneurs will be offered a payment scheme by the Tax and Customs Administration under which a fixed amount of the outstanding tax debt as at 30 June 2021 will be repaid each month until 1 October 2024.

If this period is too short for the entrepreneur, the Tax and Customs Administration will consider whether a custom solution would be possible in consultation with the entrepreneur.

10.2 Relaxation of administrative obligations

As a consequence of the coronavirus crisis an employer may be unable to fulfil all of its administrative obligations on time. Such obligations include identifying employees before their employment commences, for example. Until 1 July 2021 there will be no consequences for failing to comply promptly with these obligations. However, this is subject to the condition that the employer fulfils its administrative obligations as soon as it is able to do so.

10.3 G-account

If an employer works with an employment agency or subcontractor, part of the payment will often be deposited in a g-account. In this way the employer is indemnified against any taxes that the employment agency or contractor does not pay. Such an arrangement is usually less attractive for the employment agency or contractor, as it is harder for them to access their money.

However, the advice is to continue making these payments into the g-account as normal. If the company the employer is working with can no longer pay its payroll taxes, the risk then remains limited. At present, the rules on withdrawing funds from the g-account have been relaxed, which means there is less of a disadvantage for the employment agency or contractor. This relaxation of the rules will end on 1 January 2023.

10.4 Healthcare bonus

Healthcare workers who have cared for patients and clients suffering from coronavirus are entitled to a bonus. This amounts to € 1.000 for 2020 and € 500 for 2021. The 2021 bonus is expected to be paid out by 1 July 2021.

This healthcare bonus is paid net, which means the tax is paid by the employer. The same applies in the case of self-employed persons who are eligible for the bonus. In this case the customer pays the tax and is compensated by the government.

The healthcare bonuses also do not affect any allowances to which a person may be entitled. This is unusual, as the healthcare bonus increases a person's income and allowances are intended as compensation for low income.

Transition payment

The fact that the bonus is not counted when determining the level of allowances means it is treated differently from transition payments, for example. A transition payment received in the event of redundancy does affect the level of allowances.

Not for everyone

Not all healthcare workers will qualify for the healthcare bonus. An income threshold of € 73.000 gross applies for persons in full-time employment, amongst other things. Anyone who earns more than this will therefore not receive the bonus.

10.5 End of relaxed rules on earning additional income due to coronavirus crisis

In 2020, as a result of the coronavirus crisis, there was no limit on the additional income that students could earn. This meant that students could earn as much as they wanted without this affecting their study grant or child benefit.

In 2021 there is once again a limit on the maximum amount that can be earned without affecting study grants. The threshold has been set at € 15.415,63. The scrapping of the threshold for child benefit purposes is a permanent measure.

10.6 'NL leert door' programme

In 2021 the government will be spending € 200 million on the retraining and development of workers. In this way it wants to help people improve their chances of finding new work. Free online training activities are therefore available and soon it will once again be possible to follow a development programme.

If you are an employer who has applied or will be applying for the subsidy under the NOW 2.0 or 3.0 scheme, you have an obligation to encourage your employees to apply for development advice or follow training to boost their prospects on the labour market.

Free online training

The career or development advice forms part of the programme 'NL leert door' ('The Netherlands keeps learning'), which is linked to the coronavirus crisis. This programme aims to help employees, self-employed persons and jobseekers to prepare for changes on the labour market. Through 'NL leert door' the government is not only financing development advice, but also free online training.

Another 50.000 development advice programmes were made available in December 2020 and these have now been allocated. Thanks to the 'NL leert door' subsidy scheme, employees, flexiworkers and also self-employed people will be able to follow a free development programme with a qualified career advisor. This will give them a better insight into the opportunities available on the labour market. A career advisor can help them choose the right (re)training programme or give them tips on looking for and applying for jobs.

Alternatives

Anyone who misses out and is in need of career or development advice will need to look for alternatives. Some employers and trade unions finance this kind of programme, for example. R&D funds associated with a particular sector or industry also often offer such a scheme. In addition, regional desks of the career counselling organisation Leerwerkloket offer the possibility of receiving development advice.

For more detailed information and questions, please contact your advisor within one of the RSM-offices:

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