



# Embassy Newsletter

## Russell Advocaten

### In this issue:

April 2018

**As trusted legal advisors to many Embassies and Consulates for decades, the specialist lawyers of our Embassy desk inform you regularly on important rules and regulations regarding Dutch labour law, contract law and property law in the Netherlands.**

**In this newsletter we will discuss the following current topics of Dutch law:**

- **Privacy issues (GDPR)**
- **Pension clauses in employment contracts**
- **Notification of termination of employment contract**



### Privacy law: GDPR to enter into effect

Currently, privacy regulations in the Netherlands pertaining to data processing are part of the Dutch Data Protection Act (Wbp).

As from 25 May 2018 the General Data Protection Regulation (GDPR) will come into effect in all EU Member States, including in the Netherlands and the Wbp will cease to exist.

In the following we will briefly inform you about the GDPR and explain the potential effects of this Regulation on Embassies. In addition, it is of importance for Embassies to take note of the content of this Regulation, if they inform companies from their home countries. After all, both companies within and outside of the EU will have to comply with the GDPR if they are dealing with a data subject in the EU.

#### **GDPR and Embassies**

If, for instance, a company or authority keeps a database containing (personal data of) business relations or employees, it is considered to process personal data. The GDPR applies to the processing of personal data by European Embassies outside of the EU. Non-EU Embassies might fall under the scope of the GDPR if they are located within the EU. These Embassies should assess if and what personal data they process, the purpose

**Save the date**

**Privacy seminar**

**16 April 2018**

**12.00h – 14.00h**

**@ Russell Advocaten**



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of the processing and the legal basis thereof and whether sufficient security measures have been taken to protect these data.

This is because specific processing operations might have to meet the requirements of the GDPR.

### **Employer-employee relationship**

With regard to the employer-employee relationship, all Embassies within the EU will most probably have to fulfil the requirements of the GDPR when processing personal data of (locally recruited) employees. Embassies process personal data of employees, inter alia, when recruiting new employees, in human resources management and in the salary administration.

What will be the changes brought about by the GDPR?

- Requirements are introduced that all data processing has to comply with (transparent, effective, informed consent).
- There must be evidence that the GDPR is complied with. In short, a process description of the personal data processing has to be drafted containing what personal data are processed, the purpose of the processing and the legal basis thereof and what security measures

are taken. The processing of data must be registered.

- The employer requires a legal ground for each processing of personal data. One legal ground consists of the consent of the data subject. In addition, the processing might be permitted pursuant to the law or due to a vital interest of the data subject. The GDPR contains different requirements for the consent, for instance, consent must be given freely (there must be an actual choice regarding objection, without negative effects if consent is not given).
- Privacy rights for data subjects have been added to the GDPR, such as the right of objection and the right to be forgotten. The latter means that a person can request the data processor to delete its data within a certain time limit.
- All European Data Protection Supervisors will receive the same strong powers.
- If a company does not comply with the privacy laws, extremely high fines might be imposed: a maximum of EUR 20 million or 4% of the global turnover.

Would you like to learn what the new privacy laws mean for your Embassy and



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what adaptations you will have to make to your operations? Please contact us.

## Pension clauses in employment contracts

The majority of employment contracts contain a pension clause. A pension clause may contain that the employment contract will end when the employee reaches the state pension (AOW) age, the retirement age or the age of 65. As an employer, make sure to adjust the latter clause in all new and existing contracts. The clause that the employment contract will end at the age of 65 is void, unless you have a good reason for including a specific age. Of course, it is still possible to determine that an employment contract will end when an employee reaches AOW or retirement age.

It is also possible to continue the employment of an employee that has reached AOW or retirement age. However, pursuant to the Working Beyond State Pension Act, a different employment regime applies to employment after AOW age. For instance, the employer can terminate the employment contract without a dismissal permit or court order and the employer has a one month's notice period to terminate the employment

contract. The obligation to continue salary payments during illness is also limited to 6 weeks (instead of two years), etc.

Would you like to include or change a pension clause, or do you have any other questions regarding personnel? Our employment law specialists will gladly help you! Please contact us at +31 20 301 55 55.

## Notification of termination of fixed-term employment contract

Since the introduction of the Work and Security Act, in fixed-term employment relations notification has to be given. In short, the duty of notification provided for in Book 7, Section 668 (1) of the Dutch Civil Code means that the employer must inform the employee in writing not less than one month before the end date of the employment contract whether or not the employment contract will be continued, and, if so, what the conditions will be. Regarding the requirement of the written form, the receipt theory applies, so that the notification is best be sent by registered mail.

The duty of notification is an implementation of being a good employer.



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The employee is not meant to hear on the last day that he will no longer be welcome the following day, a practice that was regularly employed to prevent demotivated employees from reporting sick.

Matters pertaining to the duty of notification have been decided by the subdistrict courts in conformity with the letter and the history of the law. For example, it is allowed to include in the employment contract that the employment will not be continued. However, it will be less easy to answer the question how courts will decide disputes regarding the continuation of employment contracts, in particular whether compensation will be due if the requirement of notification has not been fulfilled and whether conditions other than conditions of employment are permitted, and if so, which ones. The sanction for no or untimely notification is the sum of one month's salary, or a sum corresponding to the period that notice was given too late. Do you wonder whether you have to observe the duty of notification or whether you have given notification in time? Please contact us.



This newsletter provides information on three subjects of Dutch law and the potential consequences for your Embassy or Consulate. We have a special department for legal services for Embassies and Consulates. If you would like to meet with one of our specialist lawyers, we will gladly arrange a meeting at your offices. Of course, the Embassy Desk of Russell Advocaten also provides services on:

- **Investment / Doing business in the Netherlands**
- **Real Estate issues**
- **Matrimonial issues**
- For companies of your home country:  
**[www.startingabusinessnl.com](http://www.startingabusinessnl.com)**

We will gladly assist you!

Yours sincerely,  
Russell Advocaten

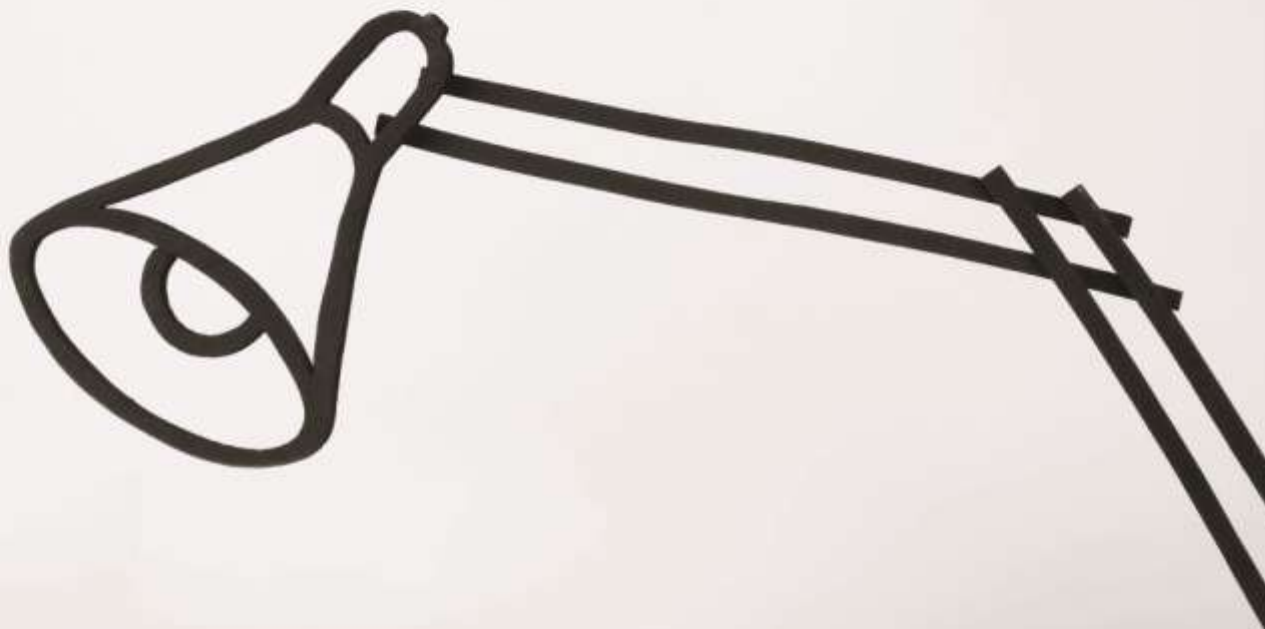
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# Need us to shine a light on something?

Russell Advocaten is a full-service law firm for leading enterprises. We take care of a broad range of fields: corporate law, business formation and reorganization, real estate and lease law, labour and employment law and commercial litigation. You can contact us on all your legal issues.

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