



Embassy Newsletter

Russell Advocaten

In this issue:

June 2019

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 in Dutch law:

Employment law:

- **Balanced Labour Market Act**
- **Minimum (youth) wage**
- **Employee sickness**
- **Personnel handbook**
- **Privacy issues (GDPR)**

Real estate law:

- **Energy label C**
- **Leaving the Embassy building**
- **Delivery of the Embassy building**
- **Rent increase**



Balanced Labour Market Act

Did you know that Dutch dismissal law will (significantly) change again in 2020?

The Balanced Labour Market Act (in Dutch: Wet arbeidsmarkt in balans) will (significantly) change Dutch dismissal law. Under this act, employers will be allowed, among other things, to combine several reasonable grounds to justify a dismissal. Also, in case of consecutive temporary employment contracts (immediately or within 6 months) a permanent employment contract will follow after 36 months instead of the current 24 months.

Do you have any questions regarding the upcoming changes? We will be most happy to inform you!

Minimum (youth) wage

Did you know that the minimum (youth) wages of employees are regularly subject to change?

The change is introduced in two steps:



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Step 1: since 1 July 2017

Employees aged 22 or older are entitled to 100% of the statutory minimum wage.

Employees aged 21 or younger are entitled to a fixed percentage of the minimum wage (= minimum youth wage). The fixed percentage of the minimum wage has been adapted for employees aged 18 (47.5%), 19 (55%), 20 (70%) and 21 (85%).

Step 2: as of 1 July 2019

The fixed percentage of the minimum youth wage will be raised for employees aged 18 (50%), 19 (60%) and 20 (80%). Employees aged 21 will be entitled to 100% of the minimum wage.

When paying minimum wage...

Please note that when an employer pays an employee minimum wage, this also limits the maximum amount of a fine that the employer can impose on the employee, for example a fine regarding the violation of the contractually agreed confidentiality clause.

Would you like to know whether you pay the correct specific minimum (youth) wage? Or do you have any other questions regarding wages?

Please contact us at +31 20 301 55 55 or embassydesk@russell.nl.

Employee sickness

What are the obligations for the Embassy in the event of employee sickness?

Payment of wages

During the first two years of an employee's sickness, the Embassy is obliged to continue to pay at least 70% of the salary and at least the minimum wage.

Instructions during sickness

The Embassy is allowed to set rules and give instructions during sickness absence. If the employee refuses to comply with these rules or instructions, the Embassy might suspend or (temporarily) cease payment of the employee's wage.

Contract with Occupational Health and Safety Service

Each employer in the Netherlands is obliged to have a contract with an external Occupational Health and Safety Service (in Dutch: arbodienst). This service is involved in the protection of a safe and healthy work environment and the prevention of accidents and illness. An occupational physician (regularly) checks the (health) situation of an employee who has reported sick and gives advice regarding the re-integration of the employee.



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Suitable work and reintegration

Both the Embassy and employee have reintegration obligations. This includes that the Embassy needs to offer the sick employee suitable (alternative) work. It is possible that the Embassy does not put enough effort into the reintegration of the sick employee. The Employee Insurance Agency (UWV) may then extend the Embassy's obligation to pay salary beyond the first two years of sickness. Therefore, it is important for the Embassy to comply with its reintegration obligations.

Do you have any questions regarding your reintegration obligations? Or do you have questions regarding the options to suspend or cease payment of the sick employee's wage? Please contact us at +31 20 301 55 55 or embassydesk@russell.nl.

Transition compensation

When is an employee entitled to transition compensation and to what amount?

Since 1 July 2015, each employee who has been employed for at least two years and whose employment is terminated on the initiative of the employer is entitled to transition compensation.

The amount of the transition compensation depends on the length of the employment:

- 1/3 of the monthly salary per year of service over the first ten years of service; and
- half a month's salary over the subsequent years.

Employees aged 50 years or older are entitled to one month's salary over the subsequent years, if it concerns an employer with 25 or more employees. This transitional arrangement will cease to exist per 1 January 2020. Do you have any questions regarding the (amount of) transition compensation? Please contact us at +31 20 301 55 55 or embassydesk@russell.nl.





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Personnel handbook

Do you already have a personnel handbook?

Employers are allowed to give instructions regarding, for example, the use of e-mail, Internet, social media, company cars, or safety. If an employee does not comply with these rules or instructions, the employer can take disciplinary measures. The employer will have to make sure that employees are aware of the rules of conduct and the disciplinary measures in case of violations. Therefore, it is recommended to adopt a code of conduct or personnel handbook.

Would you like to adopt a personnel handbook, or do you want a review of your handbook? Please contact us at +31 20 301 55 55 or embassydesk@russell.nl.

Privacy issues (GDPR)

Did you know that not only consumers are protected by the privacy legislation but also employees?

Since the introduction of the General Data Protection Regulation last year, companies and governmental institutions have been fined. It is expected that the Data Protection Authority will also investigate

companies and institutions for control purposes, and violations of the GDPR will be fined more often.

Personal data of employees

An employer must comply with the GDPR. Therefore, testing employees on alcohol, drugs or medication is prohibited because it means processing of special personal details. As an employer, you might also process personal data of employees in other ways (camera footage, checkout details, keys, passes, e-mails, etc.). Have your employees been informed of this? Have they given their consent to this? And who has access to employee data within the company? Has this been clearly laid down?



Employment contracts and company regulations must be adjusted accordingly. Would you like to include special GDPR clauses in your employment contracts or do you want us to draft a privacy policy? Please contact us at +31 20 301 55 55 or embassydesk@russell.nl.



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Energy label C

Does your Embassy building already have energy label C?

Like all office buildings in the Netherlands, Embassy buildings will also have to be energy efficient from 2023 onwards and must at least be provided with energy label C. This is particularly relevant for Embassies that rent office space in non-monumental buildings. Their landlord will request the Embassy's cooperation if measures are required to obtain energy label C.

According to the law, the landlord is primarily responsible for the measures and the costs for the modification of the building to obtain energy label C. The landlord may no longer allow the tenant to use the building if it does not have energy label C by 2023. In addition, the landlord risks a high fine.

The tenant must give the landlord the opportunity to take these measures. If the tenant does not cooperate, the landlord is even allowed to terminate the lease.

Would you like to know more about the Embassy's obligations regarding energy labels? Please contact us at +31 20 301 55 55 or embassydesk@russell.nl.

Leaving the Embassy building

When does the tenant of an Embassy building have to leave the premises if the landlord has given notice of termination of the lease?

The tenant must vacate the premises within 2 months after having been notified of the evacuation date, or request evacuation protection in the subdistrict court. The court assesses whether the interest of the tenant is more seriously harmed by the eviction than the landlord would be by the tenant's continued use.



The judge can extend the eviction period by one year. After that, the tenant can request an extension twice more. During the proceedings, the tenant may continue to use the rented property. Of course, the tenant must then continue to pay rent.



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The landlord could demand eviction in summary proceedings if the tenant fails to request eviction protection in good time and does not vacate the leased property voluntarily.



Do you have any further questions with regard to leaving the Embassy building or the termination of your Embassy's lease? Please contact us at +31 20 301 55 55 or embassydesk@russell.nl.

Delivery of the Embassy building

In what condition must the Embassy building be delivered at the end of the lease?

The starting point is that the Embassy building must be delivered in the same condition in which the Embassy received it at the start of the lease, unless the parties agree otherwise.

Therefore it is important that tenant and landlord prepare a report at the start of the lease that shows what the building looks like at the start of the lease, what facilities are available and in what state of maintenance the different parts of the building are. To avoid discussions afterwards, we also advise you to attach overview and detail photos to the report.

Was there no inspection report drawn up at the start of the lease term? In that case the Embassy building must be delivered in good condition, without defects and free of damage. Do you have any questions regarding the delivery of your Embassy building? Please contact us at +31 20 301 55 55 or embassydesk@russell.nl.





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Rent increase

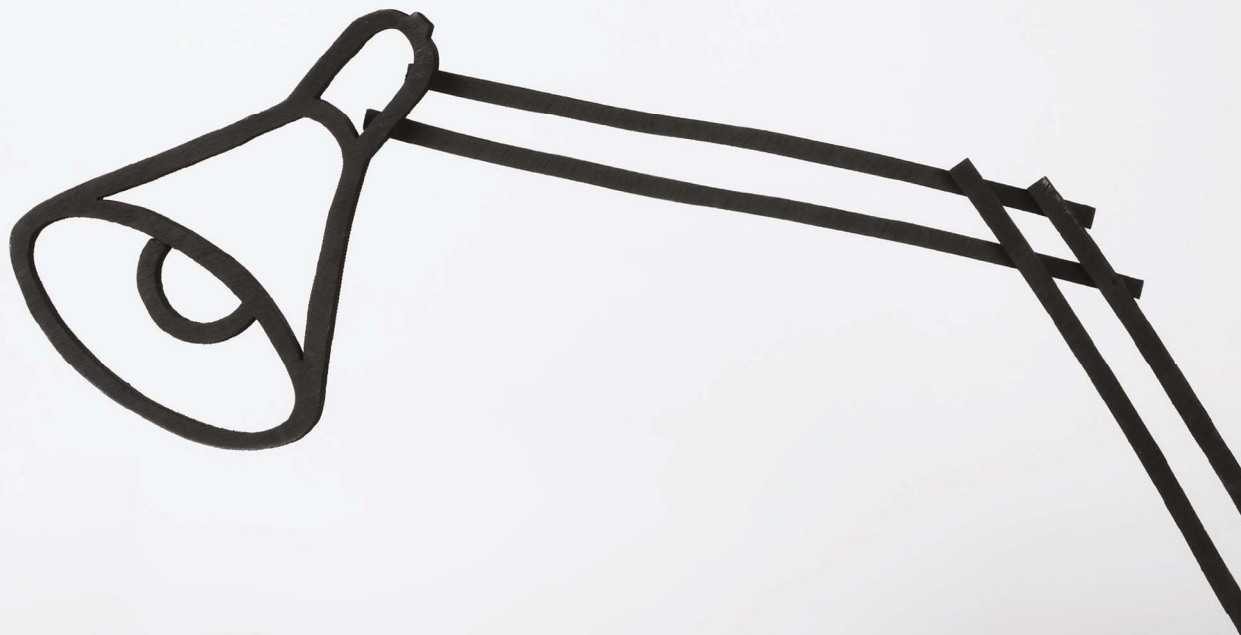
Can the landlord of a leased Embassy building increase the rent anytime?

No. The rent of an Embassy building may only be adjusted if the tenant and the landlord have agreed to this in the tenancy agreement or in a further agreement. A maximum of only one rent increase per year applies. If rent adjustment is not provided for in the tenancy agreement and the tenant does not agree to the rent increase, the landlord is not allowed to increase the rent. Do you have questions regarding your Embassy's rent? Please contact us at +31 20 301 55 55 or embassydesk@russell.nl.

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 Embassies and Consulates. We take care of a broad range of fields: real estate and lease law, labour and employment law, corporate law, business formation and reorganization and commercial litigation. You can contact us on all your legal issues.

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