

HUG on Tour

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Dutch Employment Law

Burnout, boreout and quiet quitting

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Employment Law

Topics of this presentation:

1. *To employ or be employedor rather not?*
2. *Types of employment contracts*
3. *Burnout or boreout - quiet quitting*

To employ or be employedor rather not?

- Independent workers - ‘ZZP-ers’
- Platform workers - employed?
- Various types of employment contracts
- Working from home
- Quiet quitting?
- Fulltime bonus!

Types of employment contracts



Types of employment contracts

- 1st Temp contracts -
 - CAO Uitzendkrachten Collective Labour Agreement temporary workers:
 - Phase A (78 weeks, with / without temp clause; 52 weeks 2023)

- 2nd Flex Workers - 0 hours - On-Call
 - Fixed number of hours after 12 months
 - 4 days notification
 - Payment if shift cancelled
 - Reference days and hours

- 3rd Definite period of time contracts

- 4th Indefinite period of time contracts

Burnout or boreout



Burnout or boreout

What is it?

- 142 definitions Journal of the American Medical Association (JAMA 2018)
- Emotional exhaustion + distancing + lack of confidence
- Dutch General Practitioners *do* acknowledge diagnosis burnout
- Dutch psychiatrists *don't* ?
 - *But yes - stress causes mental and physical problems - hormone imbalance*
 - *Prevent work overload (surménagement)*
- Not recognized in the US

How many cases?

- 17,500 cases in NL - not working 300 days
- None in New York

Burnout or boreout

3.1 Policies preventing burn out

3.2 Job descriptions

3.3 Reporting in sick

3.4 Company doctor and Arbo control

- Protocol
- Second opinion
- Expert opinion

3.5 Sickness pay

3.6 Employee claiming damages?

- Covered by insurance?

3.7 Employer liability

- Case law

3.1 Policies



3.1 Policies

Dutch Act on Working Conditions

Arbeidsomstandighedenwet (Arbo-wet)

Employer responsible for health & safety employees - providing optimal working conditions based on scientific insights and professional care

Policy preventing or limiting psycho-social work load

Definitions

- psychosociale arbeidsbelasting: de factoren direct of indirect onderscheid met inbegrip van seksuele intimidatie, agressie, geweld, pesten en werkdruk, in de arbeidssituatie die stress teweeg brengen
- Stress: een toestand die als negatief ervaren lichamelijke, psychische of sociale gevolgen heeft

3.1 Policies

- Dutch Act on Working Conditions (Article 5)
- Documenting & assessing labour risks
- Plan to address risks
- Providing employee access to an expert

3.2 Job description and career planning



3.2 Job description and career planning

- Job description
- Career outlook and career development
- Expectations *versus* promises?

3.3 Reporting in sick

- When?
- When it's too late? Definitely....

3.4 Company doctor



3.4 Company doctor

Guidelines

Medical *versus* None-medical?

Mediation?

- Termination of employment?

3.5 Sickness salary pay

2 years continued payment: 70% or more

For higher salaries *statutory minimum* is capped

70% * € 5.065,58 = € 3.545,91 gross

No termination of employment by giving notice during first 2 years of sickness

3.6 Damages

1st Medical / Therapy cost

- *Employer to pay reasonable costs for the reintegration of the sick employee*
 - *For example for psychological help*
- *Irrespective of whether the employer is e.g. example for psychological help.*
- *Taking into account benefits that the employee can receive under insurance policies taken out for by him or herself or by the employer.*
- *Only if expenses create prospect of recovery*
- *Insurance coverage if employer liable for damages?*

2nd Claiming 100% salary?

3rd Claiming salary for extra hours?

4th Other damages - career damages?

5th Post traumatic stress syndrome (PTSS)

3.7 Employer liability - Three questions



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1st Causal link work and burn-out?

- ❖ Psychological and/or physical injury caused by job performance?
- ❖ Multiple causes....often a combination of work and private circumstances
- ❖ Sufficient to demonstrate a plausible link?
 - a considerable probability that work caused the burnout
 - based on expert statements - doctor/psychologist

2nd Duty of care employer - own fault employee

- ❖ Has the employer complied with his duty of care?
- ❖ Is the employee at fault too - “own fault” burnout?

3rd Was the burnout predictable for the employer?

Did the employee timely share his complaints and how did the employer respond?

3.7 Employer Liability - Case Law I

The Hague Appeal Court May 21st 2019:

- *Employer acted seriously culpable by having the employee perform double shifts, without compensating her in free time or paying any overtime allowance*
- *Employer had not taken adequate and effective measures to reduce the workload*
- *Employment agreement dissolved due to a disturbed employment relationship*
- *Court awarded the employee a fair compensation of € 30,000.-.*

3.7 Employer liability - Case Law II

Salary claims for extra hours often not awarded

Burnout? No employer liability for mere fact that the employee has to work extra hours.

Employer *only* liable if it was clear that

- (A) *The Employee experienced excessive workload, and*
- (B) *Employee informed Employer, and*
- (C) *Employer took no action.*

Thank you for your attention!

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