
WORKING TIME REGULATION

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Ilse Baijens

Yvette Broekhuis

Geralde van de Bunt

Arjan Koorevaar

Prof. Teun Jaspers

Prof. Frans Pennings



Index

| | |
|---|--------------|
| 1. Sources of working time regulation in the Netherlands | p. 4 |
| 1.1 Implementation and constitution | p. 4 |
| 1.2. Collective agreements | p. 4 |
| 1.2.1. Applicability of the CAO | p. 5 |
| 1.2.2. Conclusion | p. 6 |
| 1.3. Case-law | p. 6 |
| 2. Goals of the regulation | p. 8 |
| 2.1. Health, safety, welfare | p. 8 |
| 2.2. Work, private life, care tasks | p. 8 |
| 2.3. Developments | p. 8 |
| 3. Implementation of the working time directive | p. 10 |
| 3.1. Dutch implementation system | p. 10 |
| 3.2. Implementing the working time Directive | p. 10 |
| 4. General framework of working hours in the Netherlands | p. 12 |
| 5. The legal system about working time in the Netherlands | p. 14 |
| 5.1. Derogations to the general regulation of working hours | p. 15 |
| 5.2. The definition of overtime work in the Netherlands | p. 15 |
| 5.3. The refusal to work overtime | p. 16 |
| 5.4. Compensation for overtime work | p. 17 |
| 5.5. The right to request adjustment of working hours and the conditions | p. 17 |
| 5.6. The possibility for the employer to refuse the adjustment of working hours | p. 18 |
| 6. Division of working hours over time | p. 19 |
| 6.1. Consequences on wages | p. 19 |
| 6.2. Consequences for rest periods | p. 20 |
| 6.3. Internal flexibility on the initiative of the employer | p. 20 |
| 6.4. Internal flexibility on the initiative of the employee | p. 21 |
| 6.5. Repartitioning of working time in practice | p. 22 |
| 7. Legal or other rules about paid leaves | p. 24 |
| 7.1. Vacation and week days off | p. 24 |
| 7.2. Pregnancy and maternity leave | p. 25 |
| 7.3. Adoption and foster care leave | p. 25 |
| 7.4. Leave for short-term care | p. 26 |
| 7.5. Emergency leave | p. 26 |



| | |
|--|--------------|
| 8. Legal or other rules for situation with specific working time models | p. 27 |
| 8.1. Part time work | p. 27 |
| 8.2. Weekend work | p. 27 |
| 8.3. Night work | p. 28 |
| 8.3.1. Number of hours in a night shift | p. 29 |
| 8.3.2. Number of night shifts | p. 29 |
| 8.4. Shift work | p. 30 |
| 8.5. On-call duty and standby duty | p. 30 |
| 8.5.1. On-call duty | p. 31 |
| 8.5.2. On-call duty during the night | p. 31 |
| 8.5.3. Standby duty | p. 31 |
| 8.5.4. On site standby duty | p. 32 |
| | |
| 9. Current discussion and developments | p. 33 |
| 9.1. Four day work week | p. 33 |
| 9.2. Children in cultural productions | p. 33 |
| 9.3. Function based contracts | p. 34 |
| 9.4. Change in mindset | p. 34 |
| | |
| 10. Literature list | p. 35 |



1. Sources of working time regulation in the Netherlands

1.1 Implementation and constitution

Within the Netherlands there are several sources of working time regulation. First the European *Working Time directive* (hereinafter referred to as: 'WTD')¹ is implemented in the Dutch national legislation, namely in the *Dutch Working Time Act* (hereinafter referred to as 'WTA').² Before the implementation of the directive, working time was already regulated in the Netherlands since 1919 in the 'Employment act'.³ The first *Working time Act* was established in 1995.⁴ The *WTA* falls under public legislation, and compliance with the *WTA* falls under the supervision of the inspectorate SZW.⁵ In the *WTA*, working time and minimum rest periods for employees are settled. The provisions apply for employees aged eighteen and older. Separate provisions apply for children under 16 and young people aged 16 and 17.⁶

In addition to the *WTA*, there is the *Working Time Decree* (hereinafter referred to as: *WTDec*) which contains exceptions and additions to the *WTA*.⁷ Beside general exceptions of the *WTA*, there are additional rules for health care, mining and a number of other sectors. These sectors are therefore subject both to the general rules of the *WTA* and *WTD* and the separate sector regulations.⁸

Finally there is, next to the general *Working Time Decree*, a *Working Time Decree for transport*.⁹ This decree contains specific rules for working in the field of road transport. These rules are in addition to the *Working Time Decree* and, if applicable, the Regulation on driving time and rest periods.¹⁰

Besides in the *WTA* and Decree's, working time in the Netherlands is organized in other regulations as well. First there are some provisions in the *Dutch Civil Code* (Hereinafter referred to as 'DCC') which contain regulations regarding working time, especially with respect to holidays.¹¹ Next there is the '*Wet Flexibel Werken*' (Flexible Working Act¹²) which has taken effect on the 1st of January 2016. In this act some particular rules regarding part time work are laid down. The act includes, among other things, rules on the adjustment of working hours, working hours and workplace. Lastly, there is the '*Wet Arbeid en Zorg*' (Law of employment and care) which provides rules concerning the combination of care tasks and working time.¹³

1.2 Collective agreements

Some rules of the *WTA* and many of the general and sector rules of the *WTDec* can only be applied by means of 'collective agreements', i.e., after consensus has been reached in collective consultation. A collective arrangement may be a 'CAO' (collective labour agreement) or regulations on the legal

¹ Directive 2003/88/EG.

² Stb 2006, 632 (Official publication).

³ Arbeidswet 1919 (Employment act)

⁴ Wet van 23 November 1995, Stb. 598, last amended in July 2013, Stb 2013, 236 (Official publication).

⁵ Ministry of Social affairs and Employment 2013.

⁶ Sol & Ramos 2013.

⁷ Decision of 4 December 1995, last amended in August 2012, Stb 2012, 397 (Official publication).

⁸ Ministerie van Sociale Zaken en Werkgelegenheid 2010.

⁹ Working Time Decree Road Transport 14 February 1998 (Official publication).

¹⁰ Regulation 561/2006.

¹¹ Article 7:634-638 DCC.

¹² Wet Flexibele Arbeid (Flexible work act) Law of 1 January 2016.

¹³ WAZO (Employment and care act) Law of 16 November 2001.



status of public servants.¹⁴ When speaking about a collective arrangement in this paper, a collective labour agreement (hereinafter referred to as: CAO) is meant.

With regard to the above mentioned ‘collective agreement’ it is useful to explain who is bound by the agreement. The CAO plays quite an important role in Dutch law although it is in principle no formal legislation. A CAO is nothing more than a collective agreement between employees associations (usually called ‘trade unions’) and employers associations for a certain period.¹⁵ However, collective agreements between a company and one or more trade unions are possible as well. This kind of agreement is called an ‘enterprise CAO’. The first type of CAO is called an ‘industry wide CAO’.¹⁶

1.2.1 Applicability of the CAO

When an employer is a member of an employees associations which is a party involved by the agreement, he is bound by the CAO. However, also when an employer is not a member, it is still possible that he is bound to fulfill the commitments following from the CAO and that he has to apply the CAO on all his employees, on the basis of the *CAO Act* (hereinafter referred to as: ‘*WCAO*’).¹⁷ When the CAO contains a ‘norm’, the employer has to meet this commitment precisely. When the CAO contains a minimum regulation, the employer has to meet at least this commitment, but he is allowed to do more.¹⁸

When an employee is a member of the trade union which is a party involved by the agreement, he is bound by the CAO. This only has effect when the employer is bound by the CAO as well. However, also when an employee is not a member, it is still possible that he can appeal to the CAO on the basis of the *WCAO*. This means that in such situations the employer has to apply the CAO; The employee does not have a general right to appeal on the provisions of the CAO. Although, the trade union is able to do so and represent the employee.¹⁹

Nowadays most of the industry wide CAO’s are declared universally binding by the Dutch ministry of social affairs (this is called a ‘CAO AVV’). As a result of that, also employers and employees who are not members of associations or trade unions which are a party by the agreement or not bound based on the *WCAO*, can be bound by the CAO.²⁰

Last there is the possibility to lay down in an individual employment agreement that a CAO is applicable. Following that, the employer and employee are bound by the CAO regardless their membership of associations or trade unions. This became a common practice in the Netherlands.²¹

Furthermore it is important to mention that in a situation that a CAO is expired, it is still possible that employers and employees are bound by the CAO because of the ‘after effect’. This includes that when there is no new CAO yet, although the CAO is expired, it is still valid until there is a new CAO.²² However, this is not applicable for employers and employees who are solely bound by the CAO because it is a CAO AVV.²³

¹⁴ Articles 1:3, 1:4, 1:5 en 1:6 WTA.

¹⁵ SER 2003.

¹⁶ Bakels 2013, p. 243.

¹⁷ Article 14 *WCAO*.

¹⁸ Bakels 2013, p. 250-251.

¹⁹ Beltzer & Verhulp 2012, p. 25-27.

²⁰ Beltzer & Verhulp 2012.

²¹ Beltzer & Verhulp 2012, p. 40-41, 48.

²² Beltzer & Verhulp 2012, p. 53.

²³ HR 10 January 2003, JAR 2003, 38.



1.2.2 Conclusion

In conclusion we can state that a huge number of the employers and employees are bound by a CAO; 74% of the Dutch employees falls under the scope of a sector wide CAO and 9% under an enterprise CAO.²⁴ Almost all CAO's contain provisions regarding work and rest time.²⁵ This means that a great part of applicable working regulation in the Netherlands is laid down in collective agreements. Examples of subjects which are covered by CAO's are the minimum/maximum number of hours an employee is allowed to work, the number of breaks and the possibility for an employer to force his employee to work on more Sundays than laid down in the WTA.²⁶ Working on Sundays became a common practice as a result of, amongst other things, secularization in the Netherlands. To facilitate the use of possible agreements regarding working on Sundays, the WTA was modified in 2001.²⁷

Finally it is important to mention that not only trade unions and employers associations have influence on working time regulation of employees: When a company has a Works Council (companies with 50 or more employees), before modifying working time regulation of employees, consent of the Works Council is required.²⁸

1.3. Case law

In general, in comparison with other fields of law, the subject of working time has not led to litigation very often. Relevant cases related to conflicts between collective agreement actors, as the individual worker does not go to court for problems over working time very often in fear of conflict with the employer. Only in case of dismissal employees might consider to do so.²⁹ Considering the published judgments regarding working time over the last three years, one can notice that most of the judgments are related to compliance with collective agreements.³⁰ Procedures at the lower Dutch courts regarding working time are often related to employers liability for diseases and disorders as a result from not following the rules of working time. For instance, it happens that employees go to court to claim damages for a 'burn-out' as a result of an employer who is not following the working time rules.³¹

Focussing on important jurisprudence regarding working time, we can see that following the case-law before 2012, the definition of the concepts 'work time' and 'rest-time' was not sufficiently clear in the previous WTA.³² For example, it was ambiguous whether traveling time is part of the working time or not. As a result of many procedures³³ before the Dutch courts, the legislator decided to modify the WTA in 2012. Since that time, the act states that working time involves the time that an employee is working 'under the authority of the employer'.³⁴ This modification did not only have influence on the issue of traveling time but also on situations as mandatory trips with colleagues and visiting the doctor during working time.³⁵

²⁴ Bakels 2013, p. 243.

²⁵ Kamerstukken II, 2005/2006, 30532, 3 (Official publication).

²⁶ Ministerie van Sociale Zaken en Werkgelegenheid 2010.

²⁷ Kamerstukken II, 1999/2000, 27075, 3 (Official publication).

²⁸ Article 27 Act on Works Councils (WOR).

²⁹ Sol & Ramos 2013, p. 19.

³⁰ For instance Hoge Raad 28 November 2014, ECLI:NL:HR:2014:3458. Hoge Raad 22 November 2013, ECLI:NL:HR:2013:1391. Hoge Raad 11 juli 2014, ECLI:NL:HR:2014:1632.

³¹ Hof den Haag 18 January 2008, JAR 2008/129. Hof den Haag 25 November 2009, JAR 2009/286.

³² Sol & Ramos 2013.

³³ RvS 4 maart 2009, JB 2009, 99. Rb. Utrecht 19 January 2010, SBR 08, 966.

³⁴ An amendment of Article 1:7 Atw was introduced by Stb 2013, 236 (Official publication).

³⁵ For instance CRvB 10 December 2015, ECLI:NL:CRVB:2015:4469.



Another important subject in the Dutch jurisprudence regarding working time relates to the definition of ‘on-call time’.³⁶ The previous *WTA* defined inactive on-call time at the workplace as rest time. However, the Court of Justice’s (hereinafter referred to as: ‘ECJ’) decisions with respect to on-call working time were applied by national courts a lot of times.³⁷ As a result the *WTD* amended national law to define inactive on-call time at the workplace as working time in 2006.³⁸ Consequently, CAO’s established before the *WTD* are now void in case inactive on-call time is determined other than as working time in that CAO. This modification had great consequences for sectors as health care, residential care, ambulance and fire services and armed forces.³⁹

³⁶ Rb. Den Haag, 27 February 2007, LJN AZ9327.

³⁷ Sol & Ramos 2013.

³⁸ Hof Arnhem 2006, LJN AZ6434.

³⁹ Sol & Ramos 2013.



2. Objectives of the regulation

The objectives of the working time regulations in the Netherlands are pointed out in the acts themselves. The main overall goals of working time regulation are: Health, safety, welfare and combining work with private life and care tasks.

2.1. Health, safety, welfare

The above stated sources of working time regulation are established in order to guarantee health, safety and the well being of employees,⁴⁰ assuming that long working times and short resting periods could lead to work related accidents and diseases.⁴¹ The *WTDec* regarding road transport includes the particular role of protection of road safety of working drivers.⁴²

2.2. Work, private life, care tasks

The above stated sources of working time regulations are also established in order to combine work, private life and care tasks.⁴³ This is noticeable very clearly in some provisions of the *WTA* and *WTDec* that are relevant to women. By establishing these provisions, the legislator focused on the employment participation of women. For example, there are special protective rules for pregnant women or women who had recently given birth.⁴⁴ Following the memorandum of the *WTA*, the reason for these provisions is the fact that working times have to be in line with the emancipation policy and policies regarding labour and care that the government created.⁴⁵ Beside that, combining work, private life and care tasks also relates to activities regarding citizenship, study, social contacts and relaxation.⁴⁶

The goals regarding combining working time and care tasks are regulated in the ‘*Act on Employment and Care*’ (*WAZO*) as well. In this act, provisions are established with respect to modifying working time for pregnant women or women who recently gave birth or (men/women who) adopted a child.⁴⁷ This act also contain provisions related to calamities or family members who are sick and in need of care.⁴⁸

2.3. Developments

As mentioned above, in 2007 the government modified the *WTA* in order to strengthen the opportunity of flexible working times. This was the result of the fact that a large group of people thought that, regarding working time regulation, there was too much state intervention which may lead to the situation that employees and employers do not take their responsibility and do not try to find solutions on their own in case of disputes. With the modification in 2007, the Ministry concluded that a reduction of the number of rules regarding working time was possible without doing harm to the goals of the *WTA*.⁴⁹ Furthermore, a reduction of rules gave rise to the possibility of organizing more on the level of collective agreements (CAO's). In that period, the legislator believed that because CAO

⁴⁰ Art. 4:1 *WTA*.

⁴¹ Rayer 2014.

⁴² Stb. 586, 2014 (Official publication).

⁴³ Ministerie van Sociale Zaken en Werkgelegenheid 2010.

⁴⁴ Kamerstukken II 1993/1994, 23 646, 3, p. 60-63 (Official publication).

⁴⁵ Kamerstukken II 1999/2000, 27224, 3 (Official publication)

⁴⁶ Rayer 2014, p. 102.

⁴⁷ Chapter 3 *WAZO*.

⁴⁸ Chapter 4 *WAZO*.

⁴⁹ Rayer 2014, p. 118.



regulations are more specialized than the national constitution, the goals of the *WTA* and *WTDec* were protected in a better way. In contrary, critics on this regulation thought that deregulation of working time would result in less protection of the aims of the *WTA* and *WTDec*.⁵⁰

⁵⁰ Rayer 2014, p. 109-110, 121-123.



3. Implementation of the Working Time Directive in the Netherlands

3.1. Dutch implementation system

The legislative process in the Netherlands is based on a bicameral system with a Second Chamber (House of Representatives) that discusses and adopts the bills and a First Chamber (Senate) that assesses bills by reference to its own criteria after they have passed through the Second Chamber.

When describing the legislative process in the Netherlands, it is important to mention the existence of some bi- and tripartite advisory boards. In fact, trade unions and employers are represented in the Social-Economic Council (Sociaal Economische Raad, SER) and the Stichting van de Arbeid (STAR).⁵¹ Both the SER and the STAR can be consulted by the government during a legislative process.⁵²

Generally in the Netherlands, when a new European directive has to be implemented in the national legislation, the directive will be 'transferred' into the national legislation. The Netherlands do not have a general system for transferring a directive; they use the normal legislation system which involves that the procedure depends on the content of the directive and the requirements of the Dutch law.⁵³

3.2. Implementing the Working Time Directive

In 2007, the *WTA* and *WTDec* were modified, amongst other reasons, in order to implement the rules of the *WTD*. The *WTA* and *WTDec* had been simplified in conformity with the *WTD* which consists of basic rules of daily and weekly resting time, breaks, maximum working times, holidays, and working during night.⁵⁴ The most important changes in the Dutch legislation were related to the maximum working time⁵⁵, resting time⁵⁶ and working at night⁵⁷.

Regarding holiday rights, there were some difficulties during the implementation of the *WTD* and the period after the implementation. In the *WTD* it is laid down that workers have holiday rights while keeping their wages during at least 4 weeks on a yearly basis.⁵⁸ This right can exclusively be substituted by a financial compensation in case of termination of the employment. In the Schultz-Hoff case in 2009, the ECJ decided that workers have holiday rights on a yearly basis with preservation of their salary, regardless of their health situation.⁵⁹ Article 7:635 - 642 of the *DCC* included that workers did not have holiday rights during long-term sickness.⁶⁰ As a result of the judgment, the Netherlands had to adapt their law.⁶¹ Article 7:635 paragraph 4 of the *Dutch Civil Code* was deleted. However, the legislator did not give retroactive effect to the modification. As a result of that, a couple of employees started a procedure against the state. They claimed that the State was liable on the

⁵¹ Sol & Ramos 2013.

⁵² http://www.stvda.nl/nl/stichting/organisatie/stvda_ser.aspx - https://www.ser.nl/nl/publicaties/ser/2009/juni_2009/03.aspx

⁵³ Steunenberg & Voermans 2005, p. 42.

⁵⁴ Wet van 30 november 2006 tot wijziging van de Arbeidstijdenwet in verband met vereenvoudiging van die wet, Stb. 632 (Official publication. This law came into force on the 1st of November 2007).

⁵⁵ Article 6 of the Directive transferred into article 5:7 *WTA*.

⁵⁶ Article 4 of the Directive transferred into article 5:4 *WTA*.

⁵⁷ Article 8 of the Directive transferred into article 5:8 *WTA*.

⁵⁸ Article 7 of the Directive.

⁵⁹ ECJ EG 20 January 2009, C-350/06.

⁶⁰ Heerma van Voss 2014, p. 631.

⁶¹ Law of 26 mei 2011, Stb. 2011/318 (Official publication).



ground of not implementing the *WTD* in time which had resulted in damages for a lot of workers. The Dutch Supreme Court accepted the claim and the Dutch state was held liable in 2015.⁶²

⁶² Hoge Raad 18 september 2015, ECLI:NL:HR:2015:2722.



4. The general framework on working hours in the Netherlands

In the Netherlands the general framework concerning working time is laid down in *Working Time Act*⁶³. This law provides amongst other things the minimum age at which one can start working, the work and rest periods per day and per week and times during which working is not always allowed (e.g. nights and Sundays).⁶⁴ In addition, it contains some specific rules and restrictions regarding juvenile and female workers.

The scope of the regulation is not limited to persons who work under an employment contract.⁶⁵ The law also applies to civil servants and persons who are working under the supervision of a person or organisation other than under a contract or public employment. This means the law is also applicable to for example trainees and temporary workers. The territorial scope of the law is limited to Dutch territory, with the exception of employees on board of airplanes or in or on motorised or rail vehicles.⁶⁶

The definition of working hours in the sense of the *WTA* contains all work which is performed under the authority of the employer.⁶⁷ In its turn, resting hours are all hours which are not working hours.⁶⁸ In this sense the term work has a very broad meaning.⁶⁹ When it comes to work this includes any given activity. It does not matter if it costs any effort or not, or if it is of mental or physical nature. The nature or purpose of the work is not of decisive significance. The mere availability of the employee for the employer can fall under the definition of work in the sense of this act.

In case law it is made clear that hours during which a person only has to be present are also considered working hours.⁷⁰ This is even the case when the employee only has to wait or even when an employee can sleep during the time he has to be present. The legislator makes a distinction between the situation in which the employee has to be present and wait for work and the situation in which the employee has to be standby for when the employer can call him to work, so-called on-call or standby duty.

In the Netherlands the legislator states that being standby and not being called in, cannot be seen as work or working hours.⁷¹ However, if an employee is called and has to go to work, the time does count as working hours.⁷² A call counts for at least half an hour, even if the employee only actually works for fifteen minutes. If an employee is called once again within half an hour after he has finished his work following the first call, the time in between is also counted as working time.

⁶³ Working Time Act of the 23rd of November 1995, laying down rules on working and rest times..

⁶⁴ Bakels 2013, p. 30.

⁶⁵ Article 1:1 WTA.

⁶⁶ Article 2:8 WTA.

⁶⁷ Article 1:7 (1) (K) WTA.

⁶⁸ Article 1:7 (1) (L) WTA.

⁶⁹ Kamerstukken II 2011/12, 33 244, nr. 3, p. 3 (official publication).

⁷⁰ Hof Arnhem 16 januari 2007, LJN AX 6395.

⁷¹ Kamerstukken II 2011/12, 33 244, nr. 3, p. 3 (official publication).

⁷² E. Sol & N. Ramos 2013.



Additionally, concerning the maximum working hours, minimum resting hours and other provisions of chapter 5 of the *WTA*, the hours the employee would normally have worked, but by the performance of its duties under the works council hasn't worked, will be seen as working hours.⁷³ The same applies when the employee is ill, on holiday or fulfilling a legal or government-related obligation. However, this applies only if it could not be done in his spare time or it is due to unforeseen circumstances or extraordinary personal circumstances.

As for travelling time, the time an employee travels from home to work is most often not considered to be working time.⁷⁴ However, the time an employee travels from one task to another under the supervision of the employer is considered to be working time. In practice, this has proved to be more difficult than it looks. The problem here is that it must be time in which is traveled under the authority of the employer. This has to be assessed according to the circumstances of the case. When weighing the facts and circumstances, the relationship between the exercise of authority and the nature of the work is reviewed. For example the travel time of a worker who is sent out by the employer to perform work at different places is regarded as working time. A prime example of this is a representative.

Finally it should be noted that the simplified law leaves more room for the employer and employee to make mutual agreements. The *WTA* gives the minimum guarantees.

⁷³ Article 5:2 *WTA*.

⁷⁴ Kamerstukken II 2011/12, 33 244, nr. 3, p. 4 (Official publication).



5. The legal system about working hours in the Netherlands

The rules for maximum working time and minimum resting time are laid down in chapter 5 of the *WTA*. The maximum working time for an adult is 12 hours per shift and 60 hours per week.⁷⁵ For a period of 16 weeks, the average per week may only be 48 hours and in a period of 4 week the maximum is 55 hours per week.⁷⁶ For a young worker these limits differ. A young worker is defined in the *WTA* as a person aged 16 or 17.⁷⁷ For young workers the limits are 9 hours a shift, 45 hours a week and an average of 40 hours per week over a period of 4 weeks.⁷⁸

For a young person the daily rest-period has to be at least 12 hours every period of 24 hours, including the hours between 23.00 and 06.00.⁷⁹ This means that a young person may not work after 23.00 or before 06.00, and is therefore excluded from working nightshifts. The obligatory daily rest-period for an adult is at least 11 hours in every period of 24 hours.⁸⁰ Once every 7 days this rest-period may be shortened to 8 hours, when necessary due to the nature of work or business conditions.

In addition to the daily rest period, the legislator has also established a weekly rest period.⁸¹ The employer must ensure that a young employee has an uninterrupted rest period of at least 36 hours in any consecutive period of 7 days. For an adult this period shall be an uninterrupted rest period of 36 hours in any consecutive period of 7 days or 72 hours in a continuous period of 14 days. The latter period of rest may be divided into uninterrupted rest periods of at least 32 hours.

With regard to work on Sundays, the employer must, under the *WTA*, organize the work in such a way that the employee does not have to work on Sundays.⁸² Work on Sundays has to be done only when the need for working on this day follows from the nature of the work. In each case, the employee only has to work on Sunday if he has given his/her consent. This will be further discussed later on.

Additionally the employer has to distribute the working hours in such a way that the employee does not work on more than 13 Sundays in consecutive 52 weeks. However, this rule may be waived in a collective arrangement.⁸³

The *WTA* also provides mandatory breaks.⁸⁴ For a young employee this break is 30 minutes if s/he has a shift of more than 4.5 hours. For an adult worker this amounts to a 30-minute break if his shift is longer than 5.5 hours, and if the shift is over 10 hours: 45 minutes,. These breaks may all be divided into breaks of at least 15 minutes.

⁷⁵ Article 5:7 (2) *WTA*.

⁷⁶ Article 5:7 (3) *WTA*.

⁷⁷ Article 1:1 (3) *WTA*.

⁷⁸ Article 5:7 (1) *WTA*.

⁷⁹ Artikel 5:3 (1) *WTA*.

⁸⁰ Artikel 5:3 (2) *WTA*.

⁸¹ Article 5:5 *WTA*.

⁸² Article 5:6 *WTA*.

⁸³ Article 5:6 (4) *WTA*.

⁸⁴ Article 5:4 *WTA*.



Finally in the *WTA* rules are given regarding night work.⁸⁵ These provide that the maximum working hours per night are 10 hours. Further rules regarding night work will also be discussed later on.

5.1 Derogations to the general regulation of working hours

Regarding the daily uninterrupted rest, the weekly uninterrupted rest and on call employees-provisions, the *WTA* provides that no derogations are allowed.⁸⁶ When nevertheless one deviates from these provisions, this deviation is void. From other provisions for example relating to the breaks, the regulations on working on Sunday, working hours and night work, a derogation is allowed. Derogation of these provisions can be granted by collective arrangement.

Such a collective agreement is initially defined as a collective labour agreement.⁸⁷ If there is no applicable collective agreement or when the collective agreement allows it, derogations may also be made by a written agreement between the employer and the employee representative body, which is most often the works council.⁸⁸

Derogations to the general regulations are also made in the *WTDec*.⁸⁹ In this resolution derogations for specific persons or sectors are laid down. These derogations relate to, for example, medical specialists, athletes, volunteers and supervisors with wages at least as high as three times the minimum wages.

5.2 The definition of overtime work in the Netherlands

Generally speaking, overtime work is defined when the employee is working longer than is agreed upon.⁹⁰ In the Netherlands there is no clear regulatory definition of overtime work. In the past there was a definition of the term overtime work in the *WTA*. A distinction was made between working hours with and without overtime. The definition of overtime work was more hours than the normal legal standard and it was occasionally allowed in situations of unforeseen circumstances or where the nature of the work makes it necessary for a short time. However, there was also a possibility to deviate from the rules of the *WTA* by agreements in collective agreements as well as in individual employment contracts. As a result there were a lot of interpretation problems because of the interrelationship of the concepts of overtime work in the *WTA* and in the deviating agreements.⁹¹ Therefore the legislator took the concept of overtime work out of the *WTA*, leaving the meaning and content of the concept of overtime work to the parties to agree on at collective or individual level.

⁸⁵ Article 5:8 *WTA*.

⁸⁶ Article 5:3, 5:5 and 5:9 *WTA*. Bakels 2013, p. 37.

⁸⁷ Article 1:3 *WTA*.

⁸⁸ Article 1:4 *WTA*.

⁸⁹ *Arbeidstijdenbesluit van 4 december 1995, houdende nadere regels betreffende de arbeids- en rusttijden*.

⁹⁰ Van der Grinten 2015, p. 285.

⁹¹ *Kamerstukken II 2005/06, 30 532, nr. 3, p. 10* (official publication).



5.3 The refusal to work overtime

Case law shows that in the Netherlands in general it is assumed that an employee may be expected to carry out overtime if necessary for the proper execution of his duties.⁹² It is not necessary that this obligation has been incorporated in the employment contract.⁹³ However, when it is incorporated in either a collective agreement or in the individual employment contract, the employee cannot refuse overtime work, except when it is contrary to the rules set out in the *WTA*. Furthermore, an obligation to accept overtime work can follow from customs.⁹⁴ This can be the case when overtime work is customary for certain functions in a company or industry. Also, in the *Dutch Civil Code* there is a general principle, known as a *good employee-ship principle*, which may mean that the employee must accept an assignment to do overtime work.⁹⁵

The good employee/employer-ship principles obliges the employer and employee to behave according to the standards of reasonableness and fairness.⁹⁶ The first question to be asked is whether the employer as a good employer in this situation has a reason for making the proposal to work overtime.⁹⁷ The second question to be asked is whether the proposal made was reasonable.

Ultimately, a balance will have to be made based on the circumstances of the case.⁹⁸ The circumstances which are taken into account are the interest of the employer that the employee works overtime and the objections made by the employee. On the one hand it may be the case that there are factors present which show that it cannot reasonably be expected that the employee works overtime. For example s/he has a responsibility to care for children or an ill or disabled partner. On the other hand it may also be the case that there is a business interest that makes the request to work overtime a reasonable order. For example in the case of a small firm who encounters an unexpected busy period or has an ill employee.

For this purpose the *WTA* sets the limits which should be taken into account. No derogation may be made from the maximum standards set by the *WTA*. All derogations that are made are considered as null and void. It has to be stated that the mere risk of exceeding these standards is not sufficient to reject overtime work. The employee may only refuse overtime if the excess is already established or when there are more reasons to justify the refusal besides the excess.⁹⁹ This means that the employee may not refuse overtime if the maximum standards of the *WTA* are not yet exceeded when there are no additional reasons to refuse. These additional reasons could include caring responsibilities or social obligations. In this consideration the facilities which the employer provides the employee have to be taken into account.

⁹² Rb. Maastricht 24 juli 1997, JAR 1997/180.

⁹³ Van Genderen, Fluit, Stefels en de Wolff 2015, p. 125.

⁹⁴ Van der Grinten 2015, p. 285. HR 3 december 1933, NJ 1934/661.

⁹⁵ Article 7:611 Dutch Civil Code. Van der Grinten 2015, p. 55. HR 18 november 1995, NJ 1956/28.

⁹⁶ Van der Grinten 2015, p. 55.

⁹⁷ HR 11 juli 2008, JAR 2008/24 (Stoof/Mammoet).

⁹⁸ Van der Grinten 2015, p. 286.

⁹⁹ HR 27 januari 1995, LJN ZC1627 en Rb. Rotterdam 10 juli 2001, JAR 2001/151.



5.4 Compensation for overtime work

Usually when the employee works overtime, he/she is entitled to at least the normal hourly rate.¹⁰⁰ However, when working with fixed weekly or monthly wages, one has to look at the individual employment contract and/or the collective agreement to find specific provisions. In that case a due overtime compensation is required. If the overtime provisions in the employment contract and/or collective agreement are inconclusive, a solution has to be found on the grounds of reasonableness and fairness.¹⁰¹ However, a compensation on these grounds shall be only granted if it is established that the overtime was assigned by the employer or at least that the employer had given his assent for working overtime.¹⁰²

Case law shows that the Court finds that it is obvious, in the relationship between the employer and the employee, that a compensation has to be given for assigned overtime. However, in practice at senior positions often no compensation is provided for overtime. For these functions it's assumed that working hours are not fixed and any excess of normal working hours is already calculated in the salary or belongs to the nature of the function.

5.5 The right to request adjustment of working hours and the conditions

In the Netherlands the *Working Hours Amendment Act* used to be applicable. On the basis of this act the contractual extent of working hours could be amended. However since the 1st of January 2016 the *Flexible Working Act* has taken effect. On the basis of this act not only the contractual number of working hours, but also the workplace and the actual working hours can be adjusted. Under the *Flexible Working Act*, the employee may make a request for a reduction or an increase or of his/her working hours.¹⁰³ The act applies only to employees who have been employed with this employer for more than six months prior to the commencement date of the required adjustment of the working hours. For the calculation of this period the consecutive employment-contracts with an interruption between them of less than six months are counted together. The right to increase the number of hours can be excluded by collective arrangement.¹⁰⁴ Contracting out of a reduction of working hours is not possible. Small employers (less than 10 workers) are excluded from the obligations of the act, although they need to have a regulation of adjustment of working hours.¹⁰⁵

The request should be made at least two months before the desired commencement date.¹⁰⁶ This request must be submitted in writing and must be stating the desired commencement date and the desired numbers of hours. Except in unforeseen circumstances, an employee can make a new request a year after the employer responded to the previous request.

¹⁰⁰ Van der Grinten 2015, p. 286.

¹⁰¹ Hof 's-Gravenhage 9 oktober 2012, RAR 2013/4.

¹⁰² HR 6 maart 1998, JAR 1998/126.

¹⁰³ Article 2 (1) FWA.

¹⁰⁴ Article 2 (15) FWA.

¹⁰⁵ Article 2 (16) FWA.

¹⁰⁶ Article 2 (3) FWA.



The definition of employee given in this law only includes people working on the basis of an employment contract or as civil servants.¹⁰⁷ In contrast to the *WTA*, the *Flexible Working Act* is not applicable to people who are working under the authority of someone else other than performing under an employment contract or under public employment.

5.6 The possibility for the employer to refuse the adjustment of working hours

The employer must grant the request of the worker as regards the adjustment of working hours, as far as the time of entry and the size of the adjustment.¹⁰⁸ The employer may only refuse if there are compelling business interests that oppose the adjustment.

The law also indicates when there are such compelling business interests. In the case of reduction of working hours there is, in any case, a considerable business interest if the reduction poses serious problems a. with regard to the filling of the vacant hours in order to keep the business going, b. in terms of safety or c. if the work schedule poses severe problems.¹⁰⁹

In the case of increase in working hours there is, in any case, a considerable business interest if the increase results in serious problems a. of a financial or organizational nature, b. there is not enough work available or c. in case the establishment of personnel or personnel budget for this purpose is insufficient.¹¹⁰

Case law shows clearly the need to assess these compelling business interests in each individual case.¹¹¹ The employer can not suffice by referring to general assumptions. The employer must explain the unacceptable consequences that would occur in the allocation of the request to adjustment. Technical problems regarding the work-schedule can be raised, but must be sufficiently substantiated.

If the employer does not react to the request at least a month before the intended commencement date, the working hour will be adjusted in accordance with the request.¹¹² In case of unforeseen circumstance the employer shall decide within five working days.

¹⁰⁷ Article 1 (2) FWA.

¹⁰⁸ Article 2 (5) Wfw.

¹⁰⁹ Article 2 (9) Wfw.

¹¹⁰ Article 2 (10) Wfw.

¹¹¹ Rb. Dordrecht 1 maart 2007, LNJ BA1417 en Rb. Groningen 19 juli 2011, LNJ BR5044.

¹¹² Article 2 (12) Wfw.



6. Division of working hours over time

Chapter 5 of the *WTA* deals with the maximum working time and minimum resting time. The maximum working time for an adult is 12 hours per shift and 60 hours per week.¹¹³ There are also rules about maximum average working hours per week for longer periods.¹¹⁴ For young workers the maximum of working hours is set lower.¹¹⁵

With regard to work on Sundays, the employer must organize the work in such a way that the employee does not have to work on Sundays and that the employee does not work on at least 13 Sundays in consecutive 52 weeks.¹¹⁶ Finally in the *WTA* rules are given regarding night work; these will be discussed later on.¹¹⁷ Deviation from these rules is possible by collective agreement.¹¹⁸ Derogations to the general regulations are also made in the *WTD* concerning specific persons or sectors.

Within this legislative framework, it is also interesting to look into the possibilities of adjustment and the practice of repartitioning working hours over time. The way that those working hours are divided over the week, the month or the year is not strictly regulated. In fact, recent years have shown a tendency of the government to withdraw and to leave more room to employers and employees to agree on a tailor made set of rules, to be applied in their specific circumstances.¹¹⁹ Employers and employees will have to come to an agreement, either collectively or individually. In so doing, a balance needs to be struck between the needs of the employer to be able to match the working hours with the workload and the employee's wish to combine work with other activities, such as care for their children or sick family members. Clearly, flexibility is in both parties' interests.

The employee cannot refuse overtime work when it is incorporated in a collective agreement or in the individual employment contract, except when it is contrary to the rules set out in the *WTA*. Furthermore, an obligation to accept overtime work can follow from customs.¹²⁰ Also, in the *Dutch Civil Code* there is a general principle, known as a *good employee-ship principle*, which could mean that the employee must accept an assignment to do overtime work.¹²¹

6.1 Consequences on wages

Whether or not there are consequences for wages depends on the reason for the change. If the employer succeeded in decreasing the working time one-sidedly (see below), it may very well be that it would be unreasonable to decrease the wages accordingly. If, on the other hand, the employee has requested a decrease of working hours and the employer has accepted this request, normally the contract and conditions of employment, most notably the wages, are decreased proportionally.¹²² For overtime work, an employee is entitled to at least the normal hourly rate.¹²³ However, when working with fixed weekly or monthly wages, one has to look into the individual employment contract and/or the collective agreement to find specific provisions. In the absence of specific provisions a solution

¹¹³ Article 5:7 (2) *WTA*.

¹¹⁴ Article 5:7 (3) *WTA*.

¹¹⁵ Article 5:7 (1) *WTA*.

¹¹⁶ Article 5:6 *WTA*.

¹¹⁷ Article 5:8 *WTA*.

¹¹⁸ Bakels 2013, p. 37.

¹¹⁹ Bakels 2013, p. 31.

¹²⁰ Van der Grinten 2015, p. 285. HR 3-12-1933, NJ 1934/661.

¹²¹ Article 7:611 *BW*. HR 18-11-1995, NJ 1956/28.

¹²² Van Sprundel-Jansen, 2011.

¹²³ Van der Grinten 2015, p. 286.



has to be found on the grounds of reasonableness and fairness.¹²⁴ Case law shows that the Court finds that it is obvious, in the relationship between the employer and the employee, that a compensation has to be given for assigned overtime. However, in practice at senior positions often no compensation is provided for overtime.

6.2 Consequences for rest periods

As mentioned before, there are statutory minimum periods of rest. These are laid down in the *Working time Act*. The adult employee must at least have an uninterrupted resting time of 11 hours in every consecutive period of 24 hours. Once a week, this resting time may be shortened to eight hours, if the character or the circumstances of the work so require. In addition, the employee must have at least 36 hours of uninterrupted rest every week and 72 hours of rest once every two weeks, which may be split in uninterrupted periods of at least 32 hours each. For a juvenile the daily rest-period has to be at least 12 hours and they are excluded from working night shifts.¹²⁵ They must also be given an uninterrupted rest period of at least 36 hours in any consecutive period of 7 days.

Also, the employer must make sure that the employee who works more than 5.5 hours, takes a break of at least 30 minutes, which may be split into two breaks of at least 15 minutes each. An employee that works 10 hours or more, is entitled to a minimum of 45 minutes break, which may again be split in breaks of 15 minutes. Deviation from these rules by collective arrangement is allowed, but any deviation that limits the break to less than 15 minutes is void.

Given the fact that minimum resting periods and the minimum duration of breaks are related to the hours worked, it is clear that repartitioning of the working time has consequences on rest periods. The exact consequences on periods of rest and breaks will vary from case to case.

6.3 Internal flexibility on the initiative of the employer

The concept of internal flexibility refers to the possibilities to change the working hours of the current employees to the needs of the company. Within the boundaries of the law, the collective agreement and the individual employment contract, the employer has the right to give his employees directions concerning the performance of the work.¹²⁶ In principle, this includes the right to establish the work schedule. However, when working time qualifies as a working condition, changing the schedule is much more troublesome for the employer.¹²⁷ If employer and employee have agreed on working time, that means that this subject is outside the scope of the right to give directions.¹²⁸ Merely mentioning in a letter that the usual working time for the company is from 18:00 to 23:00 has been found to be insufficient for this working time to qualify as a working condition. On the other hand, the fact that the employee has worked from 18:00 to 23:00 for multiple years already, could lead to the conclusion that this working has become part of the working conditions of this employee.¹²⁹ In the absence of written provisions in the employment contract, the content of the agreement must be established on the basis of the actual performance in the course of time. That means that an employee who has worked according to a certain work schedule for a sufficiently long period, can object to a sudden one-sided change of the schedule by the employer.¹³⁰ It is unclear how much time must pass for working time to

¹²⁴ Hof 's-Gravenhage 9-10-2012, RAR 2013/4.

¹²⁵ Article 5:3 (1) WTA.

¹²⁶ Article. 7:660 BW.

¹²⁷ Ktr. Maastricht 29-3-2005, *JAR* 2005/105.

¹²⁸ W.L. Roozendaal 2007.

¹²⁹ Ktr. Utrecht 27-4-2011, *LJN* BQ3288.

¹³⁰ Ktr. 's-Hertogenbosch 17-2-2000, *JAR* 2000/70.



become a working condition. Four years have been found to be sufficient, while nine months was ruled to be insufficient.¹³¹

Once working time forms part of the working conditions, the employer has only limited possibilities to change the working hours one-sidedly. Two ways will be shortly dealt with.

Firstly, a specific clause in the individual agreement may allow him to change working conditions one-sidedly.¹³² If such a clause exists, he still needs to demonstrate that he has compelling reasons that are, in the specific circumstances, more important than the interests of the individual employee. This is a high threshold and it will be hard for the employer to change the working time this way.¹³³

In the absence of such a clause, an employee may be obliged to accept reasonable proposals to change the contract. In that respect there are three conditions to be fulfilled. There need to be changed circumstances that necessitate a change of working time; the employer's proposal must be reasonable and it must be assessed whether acceptance can be required of the employee.¹³⁴ When it comes to proposals to change the work schedule, quite some flexibility can be required of the employee. In order to successfully object to a change of the schedule, an employee will have to bring forward convincing arguments why his situation justifies an exception.¹³⁵ The more radical the change of the working time, the more serious the interests that the employer will need to show.¹³⁶ Allowing the employee some time to adapt his private life to the new work schedule contributes to the reasonableness of the proposed change.¹³⁷

It is important to note that these are ways to change the individual labour contract. If the employer wishes to establish or change an 'arrangement', meant to apply to multiple or all of the employees, he needs the approval of the works council (or other codetermination body).¹³⁸ This approval is not binding for the individual employees, but it may play a role in the court's assessment of the reasonableness of the proposed change.

6.4 Internal flexibility on the initiative of the employee

The employee's need for flexibility is legislatively facilitated by the *Flexible Working Act*. The employee may request both a permanent and a temporary upward or downward change of working time per week, but also the repartitioning of working time over the week. Such a request can only be done if at least a year has passed since any previous request. It must also be done in writing and it must contain desired time of entry into force, the size and the spreading of the hours over the week. It must be done at least four months in advance, but there is no obligation to provide reasons for the request, nor does it need to be related to the primary aim of the law, facilitating the combination of work and care.¹³⁹

In as far as concerns the desired starting date and the size of the change, the employer can only decline a request for a decrease of working hours if acceptance would cause serious safety problems or serious problems with the work timetable for his company. In case the employee requests an increase of working hours, the employer may refuse for serious problems of financial character or lack of work.

¹³¹ Ktr. Delft 12007, *JAR* 2007/130 ; Ktr. Zaandam 16-11-2006, *LJN* AZ1783; M.A. Huizing 2012.

¹³² Article. 7:613 BW.

¹³³ Van der Grinten 2015, p. 43, 44.

¹³⁴ Art. 7 :611 BW; HR 26-6-1998, *NJ* 1998, 767 (Van der Lely/Taxi Hofman); HR 11-7-2008, *RAR* 2008, 128 (Stoof/Mammoet).

¹³⁵ For an overview and analysis of the case law: C.W.G. Rayer 2014, p. 211-214.

¹³⁶ W.L. Roozendaal 2011, p. 299.

¹³⁷ Ktr. Maastricht 28-5-2009, *LJN* BI8757.

¹³⁸ Article. 27(1) sub b; art. 35c (3) and art. 35d (2) WOR.

¹³⁹ Van der Grinten 2015, p. 48, 49.



To the extent that the request concerns the spreading of the hours over the week, a different regime applies: the employer may reject if his interests outweigh the interests of the employee.¹⁴⁰ Any rejection must be done in writing, providing the reasons, and cannot be done without prior consultation with the employee.¹⁴¹ Deviation from these rules is only possible by collective arrangement.

6.5 Repartitioning of working time in practice

So far, only the legislative framework was discussed. Within this framework employers and employees are to a large extent free to agree on working hours and the distribution of these hours over time. They may do so individually, but in practice most of the bargaining is done collectively. This also means that it is not possible to carry out an in-depth analysis of the practice of repartitioning working time in general, because there will be considerable sectoral differences. It is possible however, to shortly describe recent developments.

Recent years in The Netherlands have shown the emergence of a movement called ‘Het Nieuwe Werken’,¹⁴² which refers to a multidisciplinary IT-driven process of renewal of the physical working place, the structure and culture of the organization and the mentality of both the employer and the employee.¹⁴³ The government stimulates this development of place- and time-independent work.¹⁴⁴ There are several ways to implement this.

One important aspect of this development is that employees are given (varying degrees of) influence on their own timetable. There are several forms of individual timetabling.¹⁴⁵ In the weakest form, the employee is merely allowed to change shifts with his coworkers. It may also be that employees are given the chance to sign in on particular shifts. Another situation that often occurs, is that the employee is given the chance to express his preferences, which the employer then takes into account as much as possible. The concept called ‘Zelfroosteren’ (autonomous schedule-making) is the most flexible and therefore the most interesting for the purpose of this report. Somewhat misleadingly, this term seems to suggest that workers are left completely free to decide on their own working time. In reality, their freedom is restricted by two factors. In the first place, the legislative maximum of working hours and minimum of non-working hours, as described before.¹⁴⁶ And secondly, the employees will have to take into account the limits set by the employer/collective arrangement. It may very well be that the employer/collective arrangement decides on a time window, within which the employee must work. Outside that window workers are free to decide on their own timetable.¹⁴⁷ That flexibility enables the employee to achieve a better work-life balance. He can take his children to school in the morning; he can take care of his needy old mother or perhaps even go to the gym in the middle of the day. Unfortunately, research has shown that this strongest form is still relatively rare; the form that merely allows employees to express their preferences is much more common.¹⁴⁸

A phenomenon similar to working time accounts is also used in The Netherlands and is called ‘year hour system’. When this system is used, an annual amount of working hours is determined. If the

¹⁴⁰ Article. 2 (7) Flexible Working Law.

¹⁴¹ Article. 2 (6) and (8) Flexible Working Law.

¹⁴² Which would translate to: ‘The new way of working’.

¹⁴³ D. Bijl 2007, p. 15.

¹⁴⁴ *MvT* 13 june 2012, *Stb.* 2012, 270 (Official publication).

¹⁴⁵ Dikker, Groen & Vos 2009, p. 16-18.

¹⁴⁶ Article 3.4 Collective Agreement Housing Services.

¹⁴⁷ For an example, see art. 4.2 CAR-UWO (collective arrangement for municipal civil servants).

¹⁴⁸ <http://www.kennisbanksocialeinnovatie.nl/nl/kennis/kennisbank/individueel-roosteren-in-nederland/95>;

Article 3.5 Collective Agreement KPN.



employee has worked more hours than this norm, there are two options: either the norm of working hours for the following year is adjusted downward accordingly, or the employer pays the employee for the surplus of hours worked. In practice, this system is quite similar to the concept of autonomous schedule-making.¹⁴⁹ ‘year hour system is laid down in some collective arrangements, but use of this system does not seem to be very widespread in The Netherlands.¹⁵⁰

Whereas the traditional employment contract is to a large extent based on time and being present, the so-called function based contract is based on results. This enables the employee to better organize their own work and working times. The aim is to reach a more mature employment relationship with more autonomy for the employee. Each year the employee and the employer come to an agreement about the results that will have to be achieved in the coming year. An example of the usage of this type of contract can be found in the collective agreement of the Dutch universities. The provisions about working time, overtime work and vacation are put aside, while of course respecting the legislative minimum and maximum hours working time and non-working time as discussed before. Leave and working time no longer have to be registered and can be established in consultation with the superior. If, due to unforeseen circumstances like illness or pregnancy, the agreed results are no longer achievable, employer and employee will discuss whether or not to continue the function based contract.¹⁵¹

There is also criticism on these types of contracts. Although mutual assent is required in order to work on a function based contract,¹⁵² it has been argued that employees actually have no choice but to accept. Autonomy and flexibility sounds great, but it has also been argued that the workload often increases and the economic independence only exists on paper.¹⁵³ In the absence of fixed working times, the boundaries between work and private life would blur and working at home is said to be a euphemism for overtime working.¹⁵⁴

¹⁴⁹ Dikker, Groen & Vos 2009, p. 19.

¹⁵⁰ Art. 6.2 CA on the care for disabled persons 2014-2015; art. 6.2 CA Hospitals 2014-2016; art. 6.4 CA of academic medical centers; art. 27 CA Sport 2015.

¹⁵¹ Article 4.4a Collective Labour Agreement of Dutch Universities 2015-2016.

¹⁵² Article 4.4a (1) Collective Labour Agreement of Dutch Universities 2015-2016.

¹⁵³ A. Nagelkerke 2004, p. 161-164.

¹⁵⁴ C.W.G. Rayer 2014, p. 224.



7. Legal or other rules on paid leaves

In the Dutch labour law system there are several grounds for leave of absence. This means that the employer is obliged to grant his employees permission to be absent from work for a period of time, after which the work will be resumed. Some of these leaves are paid leaves in the sense that the employer is under the obligation to continue paying an employee who is not working. Most grounds are related to the personal circumstances of the employee, such as pregnancy or parenthood. Interestingly, in 2015 the rules on leave have been modernized and made more flexible.¹⁵⁵ Before discussing these personal leaves, the text that follows here will deal with a more general ground of leave: vacation.

7.1 Vacation and week days off

The rules on vacation in The Netherlands are generally considered to be somewhat complicated.¹⁵⁶ The right to vacation is built up during the year and results in a paid leave. For each year that the employee is entitled to a wage,¹⁵⁷ he builds up rights to vacation amounting to a minimum of four times the agreed working time per week, annually. So a five-day workweek results in at least 20 days vacation. If an employee works part-time or has not yet worked an entire year, his rights to holiday will be reduced proportionally.¹⁵⁸

What if the working time is not fixed in advance, but differs from week to week? In that case, the actual time worked is decisive.¹⁵⁹ It should be noted that these are statutory minimum rules that cannot be deviated from at the expense of the employee. It is possible to grant an employee extra vacation days in a collective arrangement or in the individual contract.¹⁶⁰ Only vacation days that exceed the statutory minimum can be waived.¹⁶¹

Days that have not been used in one year can be transferred to the next. This can lead to accumulation of vacation days, which is problematic for the employer. To tackle this problem, employers often make use of ‘anti-hoarding’ clauses. That means that the number of vacation days that can be transferred to the next year is limited and that days that exceed the threshold expire. These clauses are most relevant for the extra-statutory days, because the statutory days expire after six months anyway,¹⁶² whereas extra-statutory days expire after five years in the absence of such a clause.¹⁶³ The five-year period is a limitation period that, in theory, could be interrupted infinitely. There is an exception for employees who have been unable to use their minimum vacation days during the entire year and the six months after that year. This can be due to medical reasons or other special circumstances.¹⁶⁴ During long term illness the decisive factor is whether an employee is exempted from reintegration obligations; if that is not the case, there is no reason to come to the conclusion that he has been unable to use his vacation days.¹⁶⁵

¹⁵⁵ *Stb* 2014, 565 (Modernizing leave and working time Act)

¹⁵⁶ Bakels 2013, p. 111; Van der Grinten 2015, p. 159.

¹⁵⁷ An employee does not only build up vacation days when he actually works, but also in a number of other situations as listed in article. 7:635 BW.

¹⁵⁸ Article. 7:634 BW.

¹⁵⁹ *Kamerstukken II* 1997/1998, 26079, p. 5 (Official publication), with reference to Ktr. Haarlem 23-3-1979, *Prg.* 1981/1562.

¹⁶⁰ Bakels 2013, p. 111.

¹⁶¹ Article. 7:640 BW.

¹⁶² Article. 7:640a BW.

¹⁶³ J.R. Vos 2012, p. 202; ECJ EG 3-5-2012, *JAR* 2012/154 (Neidel/Frankfurt am Main).

¹⁶⁴ M. Ledesma Marin & F.M. Dekker 2012, p. 5; 2009-2010, 32 465, nr. 3, p. 6,7 (Official publication).

¹⁶⁵ Rb.. Midden-Nederland 27-01-2016, ECLI:RBMNE:2016:434.



As a general principle, it is the employee who decides when he will use his vacation days, but there are exceptions. First, there is some scope for deviation, either by collective or individual agreement.¹⁶⁶ Second, an employer can try to argue that he has compelling reasons that justify that he decides when an employee uses his days.¹⁶⁷ However, the mere avoidance of undesired accumulation of vacation days would be insufficient and it is highly doubtful whether an employer could take the initiative to make that decision, as opposed to bringing forward compelling reasons against the initiative of the employee. Finally, *the principle of good employeeship* could enable the employer to make the decision. But again, exceptional circumstances would have to be present for this to be possible.¹⁶⁸

If an employee asks for a week day off, as opposed to a consecutive period of vacation days, this day is called a 'snipperdag'. The same rules apply, regardless the duration. The employer can only decline if he has compelling reasons to do so. This means that the course of business would be so seriously disrupted that the interests of the employee are outweighed.¹⁶⁹ During his vacation, the employee is paid in accordance with his usual wage.¹⁷⁰ Finally, workers are entitled to a holiday allowance of at least 8% a year.¹⁷¹

7.2 Pregnancy and maternity leave

The right to pregnancy leave starts from six weeks before the expected date of birth and lasts until the actual day of birth. The leave must commence at the latest four weeks before the expected date of birth. The pregnant employee is obliged to provide her employer with a doctor's statement.

The maternity leave starts the day after the date of birth and lasts for ten weeks, making a total of pregnancy- and maternity leave of at least 16 weeks. The first six weeks of maternity leave must be enjoyed uninterruptedly; the remaining ten weeks may be spread flexibly over the following thirty weeks. The leave can be extended in case the newborn child is in the hospital for more than eight days: incubator leave. If the mother dies during her leave the maternity leave is transferred to the other legal parent. Most employees do not get paid during their leave, but they are entitled to a benefit at the level of their wages. This benefit is to be requested by the employer.¹⁷²

7.3 Adoption and foster care leave

In order to give an adoptive/foster child and its legal parents the opportunity to get used to the new situation; both parents are entitled to a leave. The leave has a maximum duration of four consecutive weeks. The period within which this right is to be used, starts four weeks before the first day of the child in its new family and finished 26 weeks after that day. If the employer does not have compelling reasons against it, the leave may also be spread out over that period. The employees are not entitled to continuation of salary payment, but they do get a benefit similar to the one in case of pregnancy and maternity.¹⁷³

It should be noted that this list is not exhaustive: political (unpaid) leave and parental (unpaid) leave were not discussed. Finally, it is important to bear in mind that the aforementioned rights are the rights

¹⁶⁶ Article. 7:638 (2) BW.

¹⁶⁷ Article 7:638 (2) and (3) BW.

¹⁶⁸ J.R. Vos 2012, p. 201.

¹⁶⁹ 1997/1998, 26079, p. 7 (Official publication).

¹⁷⁰ Van der Grinten 2015, p. 167, 168.

¹⁷¹ Art. 15 Law on minimum wage .

¹⁷² Van der Grinten 2015, p. 175-178; Chapter 3 Law on work and care.

¹⁷³ Van der Grinten 2015, p. 178,179; Chapter 3 Law on work and care.



that follow directly from the law. This is not the whole story. Deviation by collective arrangement is often possible and in practice widespread. Sometimes the law explicitly states that deviation at the expense of the employee is possible by collective arrangement. In practice, however, workers are also often granted rights in such arrangements, that they would not have otherwise.

7.4 Leave for short-term care

The law contains a leave for the necessary care of people close to the employee: people in the same household and people with whom the employee has a close social relationship. For this right to exist, these people must be sick and care must be necessary. The requirement of necessity also means that it is the employee that must provide the care. In other words: if someone else could do it, the employee is not entitled to short-term leave. The right to the leave lasts for as long as this necessity exists, with a maximum of twice the weekly working time in each period of twelve months. Only if the employer has compelling reasons that outweigh the employee's interests, this leave can be denied. During the leave, the employee retains 70% of his wage; reduced with the amount of any insurance payment. There is also a leave for long-term care, which is an unpaid leave.¹⁷⁴

7.5 Emergency leave

An employee is entitled to emergency leave in case of very special personal circumstances and in case of unforeseen circumstances that require an immediate interruption of the work. This leave is meant for the employee who is confronted with, for instance: burglary, death and funeral of close family members or a child that suddenly becomes ill. This leave is meant for a very short, but reasonable period. In addition, the law contains an unconditional right to paternity leave. This leave lasts for two days, to be used within four weeks after the date of birth. The employee is to notify his employer as soon as possible when he intends to make use of his right of leave. This leave is a paid leave, although the employer may reduce the salary payment with the amount of any insurance payment that the employee is entitled to. Deviation from these rules at the expense of the worker is only possible by collective arrangement and the right to emergency- and paternity leave as such are mandatory law.¹⁷⁵

¹⁷⁴ Van der Grinten 2015, p. 182-184; Chapter 5 Law on work and care.

¹⁷⁵ Van der Grinten 2015, p. 180,181; Chapter 4 Law on work and care.



8. Rules for situations with specific working time models

The chapters above explore the working time regulations in the Netherlands and the rules about, inter alia, the organisation of time over the week and paid leaves. These rules are mainly focused on normal week during the day on working days. However, there are many different types of work and related working time models which deviate from this “normal” work, such as part time work, weekend work and night work. These models are often more burdensome and they might cause health issues, so specific rules are necessary to protect employees. This chapter will discuss different situations with specific working time models for: part time work, weekend work, night work, shift work, on-call duty, standby duty and on-site standby duty.

8.1 Part time work

Dutch law does not provide additional rules for part time work, except for the adjustment of the amount of working hours. The *Flexible Working Act* makes it possible for employees to request a decrease or increase of working hours because of various reasons. This is discussed in paragraph 5.5.

8.2 Weekend work

Weekend work is regulated by Dutch law, but only regarding work on Sundays.¹⁷⁶ Saturday is equated with the regular working week, although most people in the Netherlands work from Monday to Friday. This has not been the case forever, but was gradually introduced since the beginning of the 60's. A growing number of sectors changed their collective labour agreements, where they abolished working on Saturdays. The first national agreement dates from December 1973, when the representatives of employers and employees concluded a central agreement.¹⁷⁷ A central agreement is an agreement which forms a guideline for all collective labour agreements. The representatives of the employers and employees agreed on a decrease of working time, but in a way that the working productivity would not be jeopardized. The 40-hour working week was born and work during the weekend is no longer the standard. However, according to a district court in 2006 working on Sundays is still widely accepted in the Netherlands.¹⁷⁸

Employees in the Netherlands are not obliged to work on Sundays, unless the employer and employee have made an agreement that says otherwise.¹⁷⁹ Besides that, work on Sundays is only permitted when the type of work requires this and on an occasional basis. This applies mainly for sectors such as health care, the police or fire brigade, but also in industry if certain production processes may not be interrupted. It might happen that work on Sundays is unavoidable, for example because of the business circumstances. In such cases permission is required from the works council and each individual employee. This may not exceed the limit of the minimum of 13 non-work Sundays per year.¹⁸⁰ This number may be decreased by collective labour agreement, but the employee still has to agree with it. An religious employee who has objections to work on Sundays can rely on the right to equal treatment of religion and the right to religious freedom.¹⁸¹ The same applies to employees with religious or

¹⁷⁶ Ministry of Social Affairs and Employment 2011, p. 5.

¹⁷⁷ http://www.overlegeconomie.nl/meerwaarde/1970-1980/tijdbalk_1972_centraal_akkoord.aspx.

¹⁷⁸ Rb. 's-Hertogenbosch 9 October 2006, ECLI:NL:RBSHE:2006:AZ0502.

¹⁷⁹ Article 5:6 WTA.

¹⁸⁰ Article 5:6 (3) WTA.

¹⁸¹ Van Drongelen 2014. See also: Equal Treatment Commission 19 November 2012, judgment No. 2012-177 and judgment No. 2012-176.



philosophical beliefs who have their weekly rest day on another day than Sunday.¹⁸² They enjoy protection from dismissal if they refuse to work on their religious day. However, when the employee refuses to work on Saturdays and all other employees have to work one full weekend every month, the employee is entitled to dismiss the employee.¹⁸³

The *WTA* does not give any rights to an additional wage supplement or extra non-work time because of the weekend work. However, many collective labour agreements contain these supplements for employees who work on Saturdays or Sundays, especially when it is not common to work during the weekend.

The Dutch government created additional rules regarding work during the weekend for youth under 18.¹⁸⁴ Young people are more vulnerable, so they need more protection. Children until the age of 14 are allowed to do some light work on Saturdays, but it is illegal to let them work on Sundays. Work on Sunday is permitted between the age of 15 and 17, but employers have to comply with extra rules.

The 16- and 17-year-olds are allowed to work during the weekend, but some additional rules apply for them when they work on Sundays. There are three conditions:

- it is necessary for the type of work;
- it is agreed upon; and
- a minimum of 4 non-work Sundays every 13 weeks (unless agreed otherwise by collective agreement).

Saturdays are equated with normal days. This means that the 16- and 17-year-olds are only allowed to work a maximum of nine hours per shift.

A whole different set of rules apply to fifteen-year-olds. They are allowed to work on Sundays, but there are more restrictions than for 16- and 17-year-olds. The following rules apply:

- it is necessary for the type of work and it is incorporated in the employment contract;
- it is necessary because of the business circumstances and agreed upon by either the works council, employee representation or the 15-year-old;
- explicit consent from the parents or guardians;
- a minimum of 5 non-work Sundays every 16 weeks; and
- the Saturday before the 15-year-old works on a Sunday is a day off.

It is not allowed for 13- and 14-year-olds to work on Sundays. An exception has been made for children who work in the entertainment business. Children between 13 - 15 years old are allowed to work on Sundays, when:

- it is necessary for the type of work and it is incorporated in the employment contract;
- it is necessary because of the business circumstances and either the works council, employee representation or the 13-, 14- or 15-year-old agrees;
- explicit consent of the parents or guardians;
- a minimum of 5 free Sundays every 16 weeks; and
- the Saturday before the 15-year-old works on a Sunday is a day off.

8.3 Night work

We speak of a night shift when someone works at least one hour between the hours of midnight and 6 am.¹⁸⁵ The rules for night shifts are much stricter than for dayshifts, as they are particularly

¹⁸² Article 5:1 *WTA*.

¹⁸³ Ktr. Haarlem 2 July 2004, ECLI:NL:KTGHAA:2004:AQ8810.

¹⁸⁴ <https://www.rijksoverheid.nl/onderwerpen/jongeren-en-werk/vraag-en-antwoord/>.

¹⁸⁵ Article 1:7 (1) (D) *WTA*.



burdensome.¹⁸⁶ Our biological clock is easily disturbed by night work and that might cause various physical and social challenges.¹⁸⁷ The Health Council of the Netherlands has studied the relationship between night work and health last year.¹⁸⁸ It turns out that there are no good solutions yet to prevent health problems caused by night work. Their advice is to avoid night work as much as possible. However, night work is often inevitable, given the fact that almost 16% of the Dutch working population works regularly during the night.¹⁸⁹ Good guidelines to avoid negative side effects from night work are necessary to protect all those employees.

8.3.1 Number of hours in a night shift

- A night shift may only last up to 10 hours.¹⁹⁰
- If a night shift ends after 2 am, it has to be followed by a period of 14 hours non-work time. This can be shortened once a week to eight hours, but only when either the type of work or business circumstances demands this.
- Night shifts that end before 2 am must be followed by a minimum of 11 consecutive hours of non-work time, just like a day shift.
- 12-Hour night shifts are allowed for a maximum of 5 times per two weeks and 22 times per year, each time followed by at least 12 hours of non-work time.
- An employee must have at least 46 consecutive hours of non-work time after a series of three or more night shifts.

8.3.2 Number of night shifts

- An employee may work a maximum of 36 night shifts every 16 weeks.
- No more than seven consecutive shifts are permitted if one of these shifts is a night shift. This can be extended to eight shifts if agreed in a collective arrangement and the type of work or business circumstances demand this.
- An employee may work on average 48 hours per week if he only does night shifts occasionally (less than 16 times in 16 weeks). This is the same as applies to day shifts.
- Employees who work night shifts regularly (16 times or more in 16 weeks), may not work more than an average of 40 hours per week during this period.

It is possible to increase the number of night shifts by collective arrangement from 117 to 140 per year. However, this is only allowed when the type of work or business circumstance necessitate this. Employees who start their workday in the early morning (for example at 4 am) will work a part of the night shift, so on the ‘edge of the night’. They may work a maximum of 38 hours every 2 weeks between the hours of midnight and 6 am if it is arranged by collective labour agreement.

Young people under 18 are not allowed to work between 23.00 and 06.00 o’clock. However, certain exceptions are allowed, because night work is part of their education or job:

- exercises of the Ministry of Defence;
- apprentice inland navigation;
- apprentice bakers and confectioners;
- apprentices in the bakery are allowed to start at 04.00 am if needed for their training.

¹⁸⁶ Ministry of Social Affairs and Employment 2011, p. 6-7.

¹⁸⁷ <http://www.hpdetijd.nl/2015-04-30/s-nachts-werken-ongezond-weg-met-de-nachtdienst/>.

¹⁸⁸ <http://nos.nl/artikel/2068269-geen-oplossing-voor-negatieve-gezondheidseffecten-nachtdienst.html>.

¹⁸⁹ Health Council 2015.

¹⁹⁰ Article 5:8 WTA.



There is no right to an additional wage for working night shifts, but most collective labour agreements do provide a kind of wage.

Not all people are allowed to do night work. Some groups of people are excluded because of their vulnerable position, such as pregnant women and people with health problems. They must be exempted, unless this cannot be reasonably required of the employer. Employees can request a health screening from their employer, to identify the possible health risks which may be caused by the work.¹⁹¹ If it turns out that the employee experiences health problems because of the night work, the employer is obliged to offer the employee work at different times.

8.4 Shift work

Shift work means irregular working hours, which may affect the health of employees. It may cause adverse effects on physical and mental well-being. There are various types of shift work, depending on the amount of shifts. From three shifts or more, it is possible to work 24 hours a day and a five shifts-schedule enables a continue-schedule (24 hours per day, 7 days per week). Shift work with three or more shifts is subject to additional working hours regulations.

The *Working Time Act* is applicable to the above stated situation and the following rules can be derived from this act:

- Employees aged 18 and older are allowed to work up to 12 hours per shift and 60 hours per week. On average, no more than 48 hours may be worked every 16 weeks.
- The maximum working hours for a three-shift schedule (including a night shift) is 10 hours per night.
- In a three-shift schedule with more than 16 night shifts in a 16-week period, there is a maximum working time of 40 hours per week. An employee may work a maximum of 36 night shifts every 16 weeks, unless different agreements are made by collective agreement.
- The employer should do a risk inventory and evaluation about the risks of working in shifts.

Night shifts may be extended from 10 to 12 hours, but only 5 times every two weeks and with a maximum of 22 times every 52 weeks. This enables employers to replace sudden absence caused by for example illness, because the first shift can work a half shift longer and the following shift starts a half shift earlier.

The employer may rotate the shift schedule forward or backwards. The start and end times of the shifts are determined by the employer, in consultation with the works council or the employee representation. It is allowed to keep a shift worker between two shifts on call (on-call duty).

8.5 On-call duty and standby duty

An employee who is not working, may be called on to go to work if unforeseen circumstances arise (for example a technical failure).¹⁹² This is similar to standby duty, but it is not the same. Standby duty means that being called to work is a normal part of the job and is only found in the healthcare sector. Both on-call duty and standby duty are not considered as working hours during the hours which an employee is waiting for a call. Counting working hours starts at the moment when an employee is called and must go to work. Every call counts for at least half hour of working time, even if the actual working time is less. In case the employee is called once again within half an hour after he has

¹⁹¹ Article 4:9 WTA and article 18 Working Conditions Act.

¹⁹² Article 1:7 (1) (G) WTA.



finished the work of the previous call, the interim time counts as working time. A call does not count as an interruption of the daily or weekly rest time. A call during the night is not considered as a night shift.¹⁹³

8.5.1 On-call duty

A number of regulations is applicable to on-call duty:¹⁹⁴

- maximum of 13 working hours per 24 hours, including the hours that arise from calls;
- an employee may only be on on-call-duty for 14 days every 4-week period;
- an employee must have a minimum of two consecutive days of not working and no on-call duty during the 4-week period; and
- on-call duty immediately before or after a night shift is not allowed. An employee may not be on on-call duty for at least 11 hours preceding or 14 hours after a night shift.

8.5.2 On-call duty during the night

- An employee may not work more than 40 hours per week on average in a 16-week period when he works 16 or more on-call duties between midnight and 6 am.
- An exception is possible up to 45 hours per week during the 16-week period, if:
 - the employee has 8 consecutive hours after the night call, during which he is not working or on call-duty; or
 - if that is not possible, a minimum of 8 consecutive hours of rest on the same day before midnight.

There is no legal right to any additional wage supplement for on-call duty, but collective labour agreements or individual contracts of employment may contain additional agreements about this.

8.5.3 Standby duty

Standby duty is only found in the healthcare sector and means that being called to work is a normal part of the job. The general rules for standby duty are similar to the rules for on-call duty, but there are some significant differences. Standby duty is for example only allowed in the healthcare sector and only if agreed on by collective labour agreement. Furthermore, a call has to be reasonably expected, in contrast to on-call duty where there has to be an unforeseen circumstance.

Standby duty is a work shift, so there is a maximum duration. It may last up to 24 hours, where one standby shift can consist of a scheduled shift followed by a period of standby duty. This may be followed by another standby shift, but at least 11 hours have to be between the two scheduled shifts.

The Working Hours Decree includes a large number of exemptions for specific sectors, including the healthcare sector. For example: doctors and dentists in training may work five standby shifts every seven days, with a maximum of 32 times every 16 weeks. Midwives in training are allowed to work 12 series of seven consecutive shifts, with a maximum of 84 a year. It depends on the function with specific rules from the *Working Hours Decree* apply next to *the Working Time Act*.

¹⁹³ Ministry of Social Affairs and Employment 2011, p. 8.

¹⁹⁴ Article 5:9 WTA and article 1:1 WTDec.



Besides on-call duty and standby duty, yet another form of 'being available' is known in the Working Time Act: 'on-site standby duty'. An employee has to stay on the work place for this kind of duty.

8.5.4 On-site standby duty

Employees with on-site standby duty have to stay at the work place during their shift, so they can start working as quickly as possible after a call.¹⁹⁵ This differs from on-call duty and standby duty, because those shifts enable employees to wait for a call somewhere outside their working place. On-site standby duty is only allowed if the type of work necessitates it and the work cannot be organised in a different way. For example: some types of healthcare and the fire brigade require on-site standby duty to respond to a call as fast as possible. However, this is only permitted if there is an agreement by collective labour agreement.

On-site standby duty has its own regulations, but they only apply to employees who regularly work on-site standby shifts.

- One on-site standby shift may last a maximum of 24 hours, including hours of waiting or sleeping.
- Employees may not work a minimum of 11 hours before and after an on-site standby shift. This can be shortened once a week to 8 hours and once to 10 ten hours, and only if the nature of the work or the business circumstances require this. Besides that, a collective agreement is necessitated. The two shortened rest times may not be scheduled consecutively. The shortened rest time must be compensated for in the following rest period, by extending the following rest period by the number of hours by which the previous one was shortened.
- Every week on-site duty must contain a minimum of 90 hours rest time. This rest time must contain uninterrupted rest periods of at least one time 24 hours, four times 11 hours, one time 10 hours and one time 8 hours. The uninterrupted rest periods may follow one another.
- An employee may work a maximum of 52 on-site standby shifts in 26 weeks.
- All hours during the shift count as working time, including hours of scheduled work, work resulting from calls and the hours of mandatory on-site presence.
- Employees may work a maximum average of 48 hours per week in half a year. The employee and employer may agree on an arrangement to work up to 60 hours per week, which requires written approval of the employee. This is a 'customisation construction' or opt-out.
- The written consent is valid for a period of 26 weeks and can be implicitly renewed for the same period, unless an employee explicitly states that he does not want that.
- Withdrawal of consent is always possible with a reasonable time and a good reason.

¹⁹⁵ Article 1:1 WTDec.



9. Current discussion and developments of working time in the Netherlands

Working time is not a “hot topic” in the Netherlands. There are some minor discussions about working time, such as the four-day workweek and function based contracts. These issues are discussed below and are not linked to the economic crisis. For the coming period are no major changes regarding working time expected.

The economic crisis has not had a major impact on the working time legislation. One of the changes that partly emerged from the crisis is the *Flexible Working Act* that entered into force on the first of January 2016.¹⁹⁶ Due to the economic crisis, the demand for flexible employment has increased. The functioning of the *Flexible Working Act* is discussed in paragraph 5.5.

9.1 Four-day workweek

The Minister for Agriculture Van Dam made the remark in an interview that a four-day workweek should be the norm, in response to a newspaper article from the Guardian.¹⁹⁷ We only have one life and we should not spend it all at work, according to the newspaper. The workweek should consist of four days with 9 working hours each. This should have a positive effect on our happiness and health, because employees have more time for their children, family and friends. Remarkable is that several studies show that working less would also be good for the productivity of employees. However, the idea requires good arrangements between employers and employees about a decent wage for a 36-hour workweek. The government could promote this by introducing tax measures, so people will have a decent wage, and employers have fewer costs.

However, it is not sure if the four-day workweek is effective. There have been many studies, but they all contradict each other. Besides that, it is really depending on the sector if working 4 days would have a positive effect on happiness and health. It seems that an extra day off only works if friend and family have an extra day off too. So the idea requires several people who choose to work four days.

The four-day workweek will remain a point of discussion, but it does not seem to actually become the norm in the Netherlands very soon.¹⁹⁸

9.2 Children in cultural productions

The Minister of Social Affairs and Employment is changing the rules for children working in cultural production.¹⁹⁹ He wants to make the rules easier and more spacious. For example: rehearsals should not be counted as a performance. The rules apply to children under 13 years old, who work in musicals, reality shows, cooking program, talent show or movie.

The children can get a waiver to make an appearance in a show, with a maximum of 24 days per year. For children up to six years applies a maximum of six days.²⁰⁰

¹⁹⁶ *Kamerstukken II* 2011/12, 32 889, 5, p.6 (Official publication).

¹⁹⁷ <http://www.theguardian.com/money/2016/jan/02/we-only-get-one-life-dont-spend-all-at-work-praise-four-day-week>.

¹⁹⁸ <http://www.nrc.nl/next/2016/01/13/4-dagen-werken-beter-voor-productiviteit-1576914>.

¹⁹⁹ <https://www.rijksoverheid.nl/onderwerpen/jongeren-en-werk/nieuws/2016/01/25/asscher-meer-mogelijkheden-voor-kunstkinderen>.

²⁰⁰ Article 3:3 WTA.



9.3 Function based contracts

A function based contract is focused on results, instead of time. A traditional contract consist of agreements about, inter alia, working time, working hours, number of holidays, whilst a function based contract leaves this to a significant extent unregulated. It expects from the employee to do its job and the amount of time he spends on it and when he does it is up to the employee. Performance is the sole criterion and the wage is therefore dependent on this.²⁰¹

Function based contracts are not common yet in the Netherlands. It is still in the experimental phase and some collective labour agreements give the option to try it out. In that case are the rules regarding working time not applicable.²⁰² For example: the collective labour agreement for Dutch universities gives the option to use the function based contract. The advantage of these types of contracts is that employees get more freedom and will be better able to combine their work and private life. However, it is only for employees with a certain wage, so not for all employees. Utrecht University is also experimenting with these contracts.

9.4. Change in mindset

As discussed in chapter 5, overtime work is defined as working longer than is agreed upon by the employer and employee. An employee receives usually extra free time or extra wage in exchange for the extra hours. However, overtime work is for some employees part of the job, for example bankers and lawyers. They have a very good salary, which includes all the extra hours.

Recently, a teacher of a high school in the Netherlands sued her employer, because she wanted the school to pay all here unpaid overtime hours.²⁰³ She was a mathematics teacher with an employment contract for four days a week, but she worked in reality 47 hours each week because of an abundance of lessons, reviewing homework and mentoring students. She stated that the school gave her too many duties for the amount of time she was employed. Her lawyer argued that it was a form of exploitation of the employee. However, the court decided otherwise. The school did not have to pay her overtime. According to the judges, the school did not give her specific instructions to work overtime. Besides that, the participation council of the school had agreed to the amount of duties and time for the teachers.

The judgment was in accordance with the public opinion. Most people find that overtime work is part of the job in education. And according to recent research, not only in education. It seems that half of all overtime work is unpaid.²⁰⁴ Unpaid overtime work is usual for jobs for higher educated people, but there is an ongoing trend in other sectors where unpaid overtime work is becoming more common. Many sectors with work for lower educated people, such as construction and cleaning, have strict rules for overtime work in the collective agreements.

²⁰¹ Rb. Midden-Nederland, 10 September 2015, ECLI:NL:RBMNE:2015:6649; Rb. Noord-Nederland 11 July 2014,

ECLI:NL:RBNNE:2014:3938.

²⁰² Kamerstukken II, 1998/1999, 26207, 2 (Official publication).

²⁰³ Gerechtshof Den Haag 26 January 2016, ECLI:NL:GHDHA:2016:77.

²⁰⁴ <http://www.volkskrant.nl/economie/9-tot-5-mentaliteit-definitief-voorbij~a4261529/>.



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