



**Reconciling work  
and  
family life in the Netherlands**

student seminar EWL  
Leicester April 2014

Authors: Marlot Tak, Krijn de Veer, Charlotte van Heijst  
and Leonieke Suurd

By supervision of: prof.mr. T. Jaspers and prof.mr. F.  
Pennings  
Utrecht University  
March 2014



## Table of Contents

<b>Chapter 1: Principal sources, aims and rationale of Dutch labour law in this field</b>	<b>4</b>
1.1 Introduction	4
1.2 Aims and rationale of Dutch labour law in this field	4
1.3 The Working Hours Act	5
1.4 The Working Hours Adjustment Act	5
1.5 The Dutch Work and Care Act	6
1.6 Collective Agreements	7
1.7 Brief overview of the national approach to childcare provision	8
<b>Chapter 2: Types of leave</b>	<b>11</b>
2.1 Introduction	11
2.2 Maternity leave	11
2.3 Paternity leave	12
2.4 Parental leave	13
2.5 Emergency leave and short leave	14
2.6 Adoption and foster care leave	15
2.7 Short-term care leave	17
2.8 Long-term care leave	18
2.9 Overview of features per form of leave in a table*	20
2.10 Collective agreements and leave	20
<b>Chapter 3: Flexible working, is there a right?</b>	<b>23</b>
3.1 Introduction	23
3.2 What is flexible working?	23
3.3 Examples of flexible working	24
3.4 Legal bases for flexible working	24
3.5 Procedure in the Working Hours Adjustment Act	25
3.6 Grounds for refusal	26
3.7 Consequences for the contract	27
3.8 Changing the terms of employment	28
3.9 Extent of flexible working	30
3.10 To conclude: flexible working, is there a right?	32
<b>Chapter 4: Enforcement and remedies</b>	<b>33</b>
4.1 What courts / authorities are competent?	33
4.2 What role is played by anti-discrimination law?	35
4.3 Is there protection from victimisation?	37
4.4 What remedies are available?	38
<b>Chapter 5: current developments and reforms</b>	<b>42</b>
5.1 Developments and reform in Europe	42
5.2 Developments and reform in the Netherlands	44
<b>Annex 1: Employees with a care situation who were (not) on leave</b>	<b>48</b>
<b>Annex 2: Parental leave: use and duration</b>	<b>53</b>

## **Chapter 1: Principal sources, aims and rationale of Dutch labour law in this field**

### **1.1 Introduction**

The structure of this chapter is as follows. First, the aims and rationale of law in the field of work and family life in the Netherlands will be explained. Attention will be paid to the principal sources of the Dutch labour law, like the Working Hours Act adopted in 1995, the Working Hours Adjustment Act adopted in 2000 and the Dutch Work and Care Act adopted in 2001. Besides the aforementioned Acts, attention will be paid to collective agreements with regard to leave arrangements, working hours, and the adjustment of working hours. Collective agreements can play an important role to make the combination of paid work and care tasks easier. This chapter will end with a brief overview of the national approach to childcare provision.

### **1.2 Aims and rationale of Dutch labour law in this field**

The policy field of combining paid work with care tasks is referred to as ‘work and care’ (*arbeid en zorg*) in the Netherlands. In the mid-eighties, the concept ‘work and care’ was used for the first time in Dutch policy.<sup>1</sup> Combining paid work with care tasks was identified for the first time in 1985 as an important policy goal in the Policy Plan Emancipation (*Beleidsplan Emancipatie*).<sup>2</sup> In this Policy Plan Emancipation, the realization of economic independence of women was seen as a necessary condition for their emancipation. This should be achieved through a growing labour participation of women.<sup>3</sup> On the other hand the economic necessity was felt by the government to have a solution to a current or future deficit on the labour market.<sup>4</sup> The labour participation of women with young children continued to grow in the following years.<sup>5</sup> Subsequently, a growing need for regulations that made it easier to combine paid work with the care of young children arose.<sup>6</sup>

In 1988, the government decided to extend childcare and leave arrangements<sup>7</sup>, namely the Childcare Promotion Scheme (*Stimuleringsmaatregel Kinderopvang*) came into force in

---

<sup>1</sup> B. de Jong (2002), *OR & Arbeid en Zorg, 2002*: Elsevier bedrijfsinformatie bv; SZW (Sociale Zaken en Werkgelegenheid) 2010, *Faciliteiten Arbeid en Zorg 2009*, Den Haag: Ministry of Social Affairs and Employment, p.3.

<sup>2</sup> Explanatory Memorandum Work and Care Act, House of Representatives, session year 1999-2000, 27 207, nr.3; SZW (Sociale Zaken en Werkgelegenheid) 2010, *Faciliteiten Arbeid en Zorg 2009*, Den Haag: Ministry of Social Affairs and Employment, p.3.

<sup>3</sup> W. Roozendaal, *Werk en prive: De strijd om tijd in het arbeidsovereenkomstenrecht*, Kluwer: Deventer 2011, p. 201; Explanatory Memorandum Work and Care Act, House of Representatives, session year 1999-2000, 27 207, nr.3.

<sup>4</sup> W. Roozendaal, *Werk en prive: De strijd om tijd in het arbeidsovereenkomstenrecht*, Kluwer: Deventer 2011, p. 201.

<sup>5</sup> P. Ester & H. Vinken, *Een dubbel vooruitzicht: Doembeelden en droombeelden van arbeid, zorg en vrije tijd in de 21<sup>e</sup> eeuw*, Bussum: Uitgeverij Coutinho 2001, p. 11.

<sup>6</sup> SZW (Sociale Zaken en Werkgelegenheid) 2010, *Faciliteiten Arbeid en Zorg 2009*, Den Haag: Ministry of Social Affairs and Employment, p.3.

<sup>7</sup> Explanatory Memorandum Work and Care Act, House of Representatives, session year 1999-2000, 27 207, nr. 3.

1990<sup>8</sup>, maternity leave was extended from twelve to sixteen weeks in 1990 and a regulation of parental leave was introduced in 1991. However, the policy goal of combining paid work with care tasks, formulated in 1985, had not been reached yet. There was still no situation in the Netherlands where every adult person was able to support and take care of him/herself and his/her dependent children.<sup>9</sup>

### 1.3 The Working Hours Act

The Working Hours Act (*Arbeidstijdenwet*), which came into force in 1995, was the first of the three specific Acts related to reconciling work and family life within Dutch labour law. The Working Hours Act sets obligations for the employer to take care of personal circumstances of employees when it comes to stipulating working hours and rest hours/periods. This act regulates how many hours a day or per period employees are allowed to work according to article 5:7, 5:8 and 5:9 and it contains rules for breaks according to article 5:4 and minimal rest periods for employees according to article 5:3 and 5:5. The Working Hours Act gives the possibility to settle working time regulations on collective agreement-level.<sup>10</sup> Examples are lactation leave, working at home, flexible working hours or the distribution of working hours over the day or week or month.<sup>11</sup>

### 1.4 The Working Hours Adjustment Act

With the underlying assumption that combining paid work and care tasks can be made easier by the possibility to reduce working hours, the Working Hours Adjustment Act (*Wet Aanpassing Arbeidsduur*) came into force in 2000 as part of the ‘work and care’ policy in the Netherlands.<sup>12</sup> According to article 2 (2) this Act gives the employer under certain circumstances the obligation to agree with a request by the employee on a reduction of working hours for the purpose of enabling a better combination of paid work and care tasks.<sup>13</sup> This obligation for the employer to agree does not exist only if there are reasons of compelling management or business interests according to article 2 (5).<sup>14</sup> The Working Hours Adjustment Act gives the possibility to give further rules by collective agreements.

---

<sup>8</sup> *Parliamentary Papers II*, session year 1989-1990, 20 528.

<sup>9</sup> SER (Sociaal Economische Raad), *Arbeid, Zorg en economische zelfstandigheid*, Advies 1998/11, 15 mei 1998; Explanatory Memorandum Work and Care Act, House of Representatives, session year 1999-2000, 27 207, nr.3.

<sup>10</sup> For example article 5:4 (3).

<sup>11</sup> Which days and hours an employee works on a weekly basis; SZW (Sociale Zaken en Werkgelegenheid) 2010, *Faciliteiten Arbeid en Zorg 2009*, Den Haag: Ministry of Social Affairs and Employment, p.3.

<sup>12</sup> W. Roozendaal, *Werk en prive: De strijd om tijd in het arbeidsovereenkomstenrecht*, Kluwer: Deventer 2011, p.185-186.

<sup>13</sup> The law offers also the possibility for employees to request for an increase of working hours, under certain circumstances; [http://www.inspectieszw.nl/english/working\\_conditions/](http://www.inspectieszw.nl/english/working_conditions/), last visited March 20 2014.

<sup>14</sup> H.J. Bakels, *Schets van het Nederlandse arbeidsrecht*, 21<sup>th</sup> edition, Deventer: Kluwer 2011, p. 113.

## 1.5 The Dutch Work and Care Act

In 2001, shortly after the introduction of the Working Hours Adjustment Act, the Dutch Work and Care Act (*Wet Arbeid en Zorg*) came into force. This Act brought together a number of different leave arrangements aimed at supporting employees in combining paid work with care tasks.<sup>15</sup> Problems with combining paid work with care tasks were no longer seen as a private responsibility because of the involved large public interests,<sup>16</sup> namely, supporting labour participation of women.<sup>17</sup> Permanent labour participation should be more attractive than resigning from work to adopt care tasks.<sup>18</sup>

Since its origin in 2001, the contents of the Work and Care Act have been extended: In 2005, the legal right to long-term care leave has been incorporated and the parental leave tax credit since then offers a partial financial right to compensation. Furthermore, the length of parental leave doubled in 2009 from thirteen to twenty-six weeks.<sup>19</sup> Nowadays, the Work and Care Act regulates and lays down conditions<sup>20</sup> for the following leave arrangements<sup>21</sup>: maternity leave, paternity leave, parental leave, adoption leave and foster care leave, short-term care leave, long-term care leave, and emergency leave.<sup>22</sup> Moreover, from 2006 to 2012 a life-course saving scheme (*levensloopregeling*) was provided by the Work and Care Act. This life-course savings scheme gave each employee in the Netherlands the opportunity to save part of the gross salary tax-free in order to finance a period of unpaid leave in the future.<sup>23</sup> Nowadays the life-course saving scheme is still covered by the Work and Care Act in chapter 7 by a transitional arrangement for employees who have saved 3,000 euros into the life-course saving scheme before 1st of January 2012. The aforementioned will be discussed in greater detail in chapter 5 of this paper about current developments and reforms. There is a possibility in the Work and Care Act for employers and employees to make additional

---

<sup>15</sup> D. de Wolff, *Actualiteiten Sociaal Recht: Wet Arbeid en Zorg*, Deventer: Kluwer 2002, p. 11; J. van Drongelen & R. Verkoren, *Vormen van verlof: Een overzicht van verlofregelingen inclusief het wetsvoorstel arbeid en zorg*, Deventer: Kluwer 2001, p.8.

<sup>16</sup> W. Roozendaal, *Werk en prive: De strijd om tijd in het arbeidsovereenkomstenrecht*, Kluwer: Deventer 2011, p.140.

<sup>17</sup> W. Roozendaal, *Werk en prive: De strijd om tijd in het arbeidsovereenkomstenrecht*, Kluwer: Deventer 2011, p.140.

<sup>18</sup> J. van Drongelen, *Teksten en toelichting op de Wet Arbeid en Zorg*, Den Haag: Sdu Uitgevers 2002, p.9.

<sup>19</sup> Sociaal Cultureel Planbureau 2011, *Verlofvragen: de behoefte en het gebruik van verlofregelingen*, Den Haag: Sociaal Cultureel Planbureau, p.9.

<sup>20</sup> For example the procedure of application and income provision during the leave scheme.

<sup>21</sup> H.J. Bakels, *Schets van het Nederlandse arbeidsrecht*, 21<sup>th</sup> edition, Deventer: Kluwer 2011, p. 109.

<sup>22</sup> According to article 3:1 (maternity leave); article 3:2 (adoption and foster-care leave); article 4:1 (emergency leave); article 4:2 (parental leave); article 5:1 (short-term leave); article 5:9 (long-term leave) and article 6:1 (parental leave) of the Dutch Work and Care Act; <http://www.rijksoverheid.nl/onderwerpen/verlof-en-vakantie/vraag-en-antwoord/welke-soorten-verlof-zijn-er.html>, last visited March 20 2014.

<sup>23</sup> Article 7:1, 7:2 and 7:3 Work and Care Act.

arrangements or restrictive arrangements in collective agreements with regard to the relevant leave arrangements, for example article 6:8.<sup>24</sup>

Currently, the government mentions the following reasons to intervene with legal measures within the framework of ‘combining paid work and care tasks’: (1) When people have problems with combining paid work and care tasks, this may result in a decrease of participation in the labour market; (2) There is a risk of sickness absence as a result of problems with combining paid work and care tasks; (3) The Dutch government has to take into account international legal obligations, like treaties concluded between the Netherlands and other parties and European directives and other instruments.<sup>25</sup>

### 1.6 Collective Agreements

Dutch labour law provides for the possibility to make further agreements on a collective level. Collective agreements with regard to leave arrangements<sup>26</sup>, duration of work and fixation of working times can simplify the combination of paid work and care tasks. These collective agreements are often used to deviate from the rules concerning the different forms of leave, by giving more or fewer opportunities than given in the act. The Dutch legal provisions have the nature of minimum standards. That means that there is always a possibility to make additional agreements, for example continued payment of wages during parental leave according to article 6:2 (1) of the Work and Care Act.<sup>27</sup> Some parts of Dutch labour law also give the possibility to make restrictive agreements on a collective level, for example a shorter duration of paternity leave according to article 4:2 of the Work and Care Act.<sup>28</sup>

In 2009, the Ministry of Social Affairs and Employment published a notable investigation on collective agreements with reference to ‘paid work and care tasks’ in the Netherlands. This investigation contributes to the understanding of the degree to which ‘combining paid work and care tasks’ is supported by collective agreements. It includes inter alia leave arrangements with a legal basis as referred to in the Work and Care act and agreements in the area of the

---

<sup>24</sup> <http://www.rijksoverheid.nl/onderwerpen/verlof-en-vakantie/vraag-en-antwoord/welke-soorten-verlof-zijn-er.html>, last visited March 20 2014.

<sup>25</sup> SZW (Sociale Zaken en Werkgelegenheid) 2006, *Beleidsdoorlichting Arbeid en Zorg*, Den Haag: Ministerie van Sociale Zaken en Werkgelegenheid, p.11; Now in particular a legislative proposal has been submitted to the Parliament. This proposal provides the simplification of leave arrangements and the possibility of the adjustment of working hours in the Work and Care Act and the Working Hours Adjustment Act. The Dutch government has the aim to improve those acts to give employers and employees by agreement the possibility to a more flexible use of leave arrangements and the adjustment of working hours; W. L. Roozendaal, *Flexibel verlof en flexibel werken*, TRA 2012/26.

<sup>26</sup> Limited to leave arrangements on a legal basis.

<sup>27</sup> According to article 6:1 section 1 of the Work and Care Act a person during parental leave will not get paid wage (minimum standard).

<sup>28</sup> SZW (Sociale Zaken en Werkgelegenheid) 2010, *Faciliteiten Arbeid en Zorg 2009*, Den Haag: Ministry of Social Affairs and Employment, p.1.

Working Hours Adjustment Act and the Working Hours Act. This investigation will be discussed in greater detail in chapter 2.

### 1.7 Brief overview of the national approach to childcare provision

In the sixties the need for childcare increased for women who began work for economic reasons and also university students and more highly educated people entered the labour market.<sup>29</sup> However, for a long time the government saw stimulating childcare not as a government responsibility.<sup>30</sup> Gradually the government changed this view on childcare.<sup>31</sup> As a result of this gradual changing point of view, in the eighties and nineties the government increased the offer of childcare by means of the Childcare Incentive Schemes.<sup>32</sup> The government was from then on of the opinion that childcare facilitates the increase of labour participation.<sup>33</sup>

With the entry into the Childcare Act (*Wet Basisvoorziening Kinderopvang*) in 2005, the government wanted to eliminate the following bottlenecks<sup>34</sup>: (1) So far there were insufficient opportunities for the parents to choose their own way of childcare since the government and the employers financed the offer of childcare (*aanbodfinanciering*) through fixed budgets. This way of financing did not stimulate the providers<sup>35</sup> to meet the wishes of the parents. All this resulted in long waiting lists for childcare because of the limited supply of childcare;<sup>36</sup> (2) The financial accessibility of childcare for parents was not uniform, but depended on which kind of employer you had, the municipality you lived in etc.; (3) There were a lot of different (temporary) financial rules for childcare.

The aim of The Childcare Act was to facilitate the combination of paid work and care tasks and to increase the access to childcare.<sup>37</sup> As a result of this, the labour participation was expected to be enhanced.<sup>38</sup> The government saw it as their responsibility to create conditions

---

<sup>29</sup> W. Roozendaal, *Werk en prive: De strijd om tijd in het arbeidsovereenkomstenrecht*, Kluwer: Deventer 2011, p.132.

<sup>30</sup> W. Roozendaal, *Werk en prive: De strijd om tijd in het arbeidsovereenkomstenrecht*, Kluwer: Deventer 2011, p.181.

<sup>31</sup> W. Roozendaal, *Werk en prive: De strijd om tijd in het arbeidsovereenkomstenrecht*, Kluwer: Deventer 2011, p.182.

<sup>32</sup> *Parliamentary papers II*, session year 1988-1989, 21 180, nr.1.

<sup>33</sup> W. Koolmees e.a., *CAO-afspraken over arbeidsomstandigheden, scholing, werving en de combinatie arbeidzorg in zorg en welzijn*, OSA-publicatie ZW39, December 2002, p.69; Explanatory Memorandum the Childcare Act, House of Representatives, session year 2001-2002, 28 447 nr.3.

<sup>34</sup> SZW (Sociale Zaken en Werkgelegenheid) 2006, *Beleidsdoorlichting Arbeid en Zorg*, Den Haag: Ministerie van Sociale Zaken en Werkgelegenheid, p.22.

<sup>35</sup> The owner of a childcare centre.

<sup>36</sup> W. Koolmees e.a., *CAO-afspraken over arbeidsomstandigheden, scholing, werving en de combinatie arbeidzorg in zorg en welzijn*, OSA-publicatie ZW39, December 2002, p.78; C. Berden & L. Kok, *Gevolgen van vraagfinanciering in de kinderopvang*, *TPedigitaal* 2011 jaargang 5(1) 81-86.

<sup>37</sup> S. Dusarduijn, *De Wet Kinderopvang, een kind van de rekening?*, *WFR* 2004/1878.

<sup>38</sup> Explanatory Memorandum the Childcare Act, House of Representatives, session year 2001-2002, 28 447 nr.3.



for parents to fulfil their upbringing responsibility, also when they want to combine work and care.<sup>39</sup>

A notable change with the coming into force of the Childcare Act was the adoption of demand financing (*vraagfinanciering*). Demand financing means that parents pay the full market price to the provider.<sup>40</sup> The subsidy of the government and the employer was from then on paid to the parents instead of the provider, in the form of income-dependent allowance by the tax authorities.<sup>41</sup> Demand financing should promote the operation of market forces in childcare. Beside demand financing, the Childcare Act contained a guideline for the quality of childcare via policy rules.<sup>42</sup>

Since 2005<sup>43</sup>, the use of childcare has increased tremendously.<sup>44</sup> Besides this increase, government expenditure to childcare increased substantially. As from 2005, the expenditure became three times as high.<sup>45</sup> Since 2012, drastic budget cuts are made in childcare. Because of these drastic budget cuts there was a total decrease of 13 % in the use of childcare in the second quarter of 2013.<sup>46</sup> Yet, the reduction of labour participation of women compared with the previous quarter of 2013 did not continue in the second quarter of 2013. The development in the working hours of women has remained stable. The majority of women with a youngest child aged 0-11 is employed by a job of 24 hours per week or more. The number of childcare locations decreased slightly in 2013. The average hourly rate in childcare increased in 2013 compared with 2012.<sup>47</sup>

The system of childcare in the Netherlands nowadays is basically left to private initiative. The Childcare Act - since 2010 referred to as the Childcare and Quality Requirements Caring Institutions Act (*wet kinderopvang en kwaliteitseisen peuterspeelzalen*) - has been amended a couple of times. Currently, this Act only lays down conditions for the allowance of costs for childcare and it guarantees the quality of childcare and caring institutions. In the first instance parents should pay childcare themselves. Financial support is given under more strict

---

<sup>39</sup> Explanatory Memorandum the Childcare Act, House of Representatives, session year 2001-2002, 28 447 nr.3.

<sup>40</sup> The provider is the owner of the childcare centre.

<sup>41</sup> C. Berden and L. Kok, Gevolgen van vraagfinanciering in de kinderopvang, *TPedigitaal* 2011 jaargang 5(1) 81-86.

<sup>42</sup> SZW (Sociale Zaken en Werkgelegenheid) 2010, *Faciliteiten Arbeid en Zorg 2009*, Den Haag: Ministry of Social Affairs and Employment, p.23.

<sup>43</sup> With the effect of the Childcare Act

<sup>44</sup> <http://www.cbs.nl/NR/rdonlyres/7B78A256-4452-4607-85AB-9FAEF7490E3E/0/2011k1v4p45art.pdf>, last visited March 20 2014.

<sup>45</sup> <http://www.rijksoverheid.nl/onderwerpen/kinderopvang/kosten-kinderopvang>, last visited March 20 2014.

<sup>46</sup> Letter of Ministry of Social Affairs and Employment, 11th of September 2013, concerning figures childcare second quarter of 2013.

<sup>47</sup> Letter of Ministry of Social Affairs and Employment, 11th of September 2013, concerning figures childcare, second quarter of 2013.

conditions: Depending on the financial capacity of the parents, the amount of working hours of the parents, the number of children, the amount of hours of childcare and the price per hour, the costs for childcare are supplemented with childcare allowance.<sup>48</sup>

As a compensation for the drastic budget cuts on the past few years, the Dutch policy decided in the Budget Agreement of 2013 to make additional €100 million available for the childcare allowance.<sup>49</sup> However, the pattern of childcare in the Netherlands is whimsical<sup>50</sup>; it changes often and therefore causes legal uncertainty. Furthermore, many parents in the Netherlands experience childcare as expensive with the effect that it is not seen as a structural basis for supporting labour participation.<sup>51</sup>

---

<sup>48</sup> <http://www.rijksoverheid.nl/onderwerpen/kinderopvangtoeslag>, last visited March 20 2014.

<sup>49</sup> Letter of Ministry of Social Affairs and Employment, 4th of October 2013, concerning the intensification of the childcare allowance 2014; <http://www.rijksoverheid.nl/onderwerpen/kinderopvangtoeslag/vraag-en-antwoord/hoeveel-kinderopvangtoeslag-kan-ik-krijgen.html>, last visited March 20 2014.

<sup>50</sup> W. Roozendaal, *Werk en prive: De strijd om tijd in het arbeidsovereenkomstenrecht*, Kluwer: Deventer 2011, p.183.

<sup>51</sup> <http://www.nu.nl/geldzaken/3573450/ouder-werkt-minder-dure-kinderopvang.html>, last visited March 20 2014.

## **Chapter 2: Types of leave**

### **2.1 Introduction**

This chapter deals with seven main types of leave in the Netherlands. They are all regulated in the Dutch Work and Care Act. Firstly maternity leave will be discussed, followed by paternity leave, parental leave, emergency and short-term leave, adoption and foster care leave, short-term care leave and long-term care leave. The aspects that will be described per form of leave are length, whether the leave is paid and if so, who pays, conditions of entitlement to these rights, dismissal prohibitions, accrual of holiday and pension entitlement and possibilities to deviate from those aspects.

### **2.2 Maternity leave**

According to article 3:1 of the Work and Care Act female employees are entitled to leave in case of pregnancy and childbirth.<sup>52</sup> The right to maternity leave is 16 weeks. It can start six weeks before the expected day of childbirth<sup>53</sup> and it starts in any case four weeks before this. The remainder of the 16 weeks is after the childbirth.<sup>54</sup> In case of multiple birth there is no difference in duration, nor in payment.<sup>55</sup> To have access to maternity leave the female employee needs to make an announcement of her application for leave at least three days before the desired starting day of the leave and she is required to inform the employer of the childbirth no more than two days after the birth.<sup>56</sup>

The employee does not have a right to full pay during maternity leave, but social security benefit is granted to her during the period of leave.<sup>57</sup> In some cases a former employee is entitled to this benefit as well.<sup>58</sup> The employee needs to apply for this social security benefit via her employer<sup>59</sup> at the Employee Insurance Agency at least two weeks in advance of the effective date of leave or the commencement date of her right to benefit. This application must notify of one of these dates and the expected date of childbirth.

---

<sup>52</sup> A miscarriage does not fall under a child birth, but will be considered as an inability to work due to sickness (article 29a section 2 Work and Care Act). See also J. van Drongelen and W.J.P.M. Fase, *Individueel arbeidsrecht deel I: De overeenkomsten tot het verrichten van arbeid, Vakantie en Verlof*, Zutphen: Paris 2011, fourth edition, p.260.

<sup>53</sup> Article 3:1 section 2 Work and Care Act.

<sup>54</sup> Article 3:1 section 3 Work and Care Act.

<sup>55</sup> According to the Explanatory Memorandum the basis for maternity leave is the health of the mother and the chance to get accustomed to the new situation. Those two aspects will not be different in case of multiple birth. Explanatory Memorandum the Childcare Act, House of Representatives, session year 2001-2002, 28 447 nr.3, 3.2.1 and 3.2.2.

<sup>56</sup> Article 3:3 section 1 Work and Care Act.

<sup>57</sup> Article 3:7 section 1 Work and Care Act.

<sup>58</sup> Article 3:10 section 1 Work and Care Act.

<sup>59</sup> Article 3:11 section 1 Work and Care Act.

The level of the social security benefit is equal to the daily wage.<sup>60</sup> This ‘full wage’ is subject to a ceiling of approximately € 4.137 a month.<sup>61</sup> The payment is from the General Unemployment Fund.<sup>62</sup> However, since the employer applies for the social security benefit at this Fund in practice, the employee will receive the social security benefit directly from her employer and indirectly from the Fund.

The employee continues to acquire entitlement to holiday pay during the period of her maternity leave.<sup>63</sup> (Parts of) days on which the employee does not work because of maternity leave cannot be considered as holidays.<sup>64</sup>

Regarding the pension entitlement the maternity leave does not interrupt the employee’s accrual to pension rights. The Dutch Equal Treatment Act regards clauses contrary to this rule void, equally does article 646 of Book 7 of the Dutch Civil Code.

During pregnancy and the right to maternity leave a prohibition of dismissal applies. Moreover, an employee cannot be dismissed during six working weeks after maternity leave and neither when the employee becomes incapacitated for work after her maternity leave if this incapacity is caused by the pregnancy.<sup>65</sup> In the latter case the employee is entitled to another 104 weeks of benefit amounting to 100 per cent of her daily wage.<sup>66</sup>

There is no possibility to deviate to the detriment of the employee.<sup>67</sup> Deviations to the employee’s benefit are possible.

### **2.3 Paternity leave**

There is no separate arrangement for paternity leave. Paternity leave is considered to be a form of emergency and short-term leave. The childbirth<sup>68</sup> is considered to be a ‘very special personal circumstance’<sup>69</sup> for which the employee has a right to short-term leave without loss of pay. By virtue of this kind of short-term leave, the employee has, during a period of four weeks after the birth, a right to leave for two working days with full payment, decreased with expenses allowances. The employee has a duty to notify his employer, in advance (or as soon

---

<sup>60</sup> Article 3:13 section 1 and 3:14 section 1 Work and Care Act. The subsequent clause contains some exceptions and deviations.

<sup>61</sup> Daily wage means the wage before social insurance purposes in the year before the leave started, divided through the number of days for wage, which is normally 261. There is however a maximum daily wage of €197. See: <http://www.uvw.nl/Werkgevers/>, search for: Mijn werknemer krijgt een kind, last visited March 12 2014.

<sup>62</sup> Article 3:15 Work and Care Act.

<sup>63</sup> Article 635 section 2 Book 7 of the Dutch Civil Code.

<sup>64</sup> Article 3:4 Work and Care Act.

<sup>65</sup> Article 670 section 2 Book 7 of the Dutch Civil Code.

<sup>66</sup> Article 29a, Sickness Benefits Act (*Ziektewet*).

<sup>67</sup> Article 3:5 Work and Care Act.

<sup>68</sup> It has to be the childbirth of the spouse, the registered partner or the person with whom the employee lives together. The leave under article 4:2 gives an additional possibility: birth of the person of whom the employee recognises the child.

<sup>69</sup> Article 4:1 section 2 under a) Work and Care Act.

as possible), that he wants to go on leave. Days (or parts of it) on which the employee does not carry out his work, cannot be considered as holidays. During paternity leave days the employee accrues the right to holiday pay, because the general rule in labour law, '*a right to pay constitutes a right to accrual of holiday entitlement*'<sup>70</sup>, applies. All the above mentioned articles are imperative provisions from which only can be deviated to the detriment of the employee by a regulation by an administrative body,<sup>71</sup> a collective agreement or by a written agreement with the works council or an employee's representative body, unless agreed on in a collective agreement.<sup>72</sup> Those agreements have a term of five years.<sup>73</sup> By these agreements<sup>74</sup> even the entire right to paternity leave can be contracted out.

## 2.4 Parental leave

Chapter 6 of the Work and Care Act regulates parental leave. This leave can be granted to a parent *with a family relationship* to the child which is below the age of eight years. On the basis of the act no wage has to be paid during parental leave. The employee without a family relationship, but *who lives at the same address* as the child according to the municipal personal records database *and who raises and takes care* of the child on a long-lasting basis has a right to parental leave as well.

An employee has a right to parental leave only when the working relationship has lasted at least one year.<sup>75</sup>

The employee has a right to leave to a maximum of 26 times the length of his or her working week. This means half a year of leave in case the employee has a full-time working week. The total amount of leave hours per week can amount to half of the length of the working week. Exceptions to the aforementioned are possible by request of the employee. The employer can however reject such a request in case of a substantial business interest.<sup>76</sup> If the employment contract has been terminated while the employee is on leave, he or she is entitled to the remaining part of the leave by or her subsequent employer.<sup>77</sup>

In order to get parental leave, the employee must notify in writing to the employer his or her intention to go on leave at least two months before the desired commencement date of leave.

---

<sup>70</sup> Article 634 Book 7 of the Dutch Civil Code.

<sup>71</sup> Article 1:4 Work and Care Act.

<sup>72</sup> Article 4:7 Work and Care Act.

<sup>73</sup> Article 1:5 Work and Care Act.

<sup>74</sup> Article 1 in conjunction with 8, 9 and 12 of the Collective Agreements Act.

<sup>75</sup> Article 6:3 Work and Care Act. This term of one year is calculated over (a) period(s) in which the employee carried out work. Different periods are regarded to be each other's successor in case interruptions do not exceed a three month period or in case the work carried out in the several periods reasonably should be considered to be each other's successor.

<sup>76</sup> Article 6:2 Work and Care Act.

<sup>77</sup> Article 6:2 section 6 in conjunction with article 6:2 section 4 under b Work and Care Act.

The employee should give reasons and list the period concerned, the amount of leave hours per week and the distribution of those hours per week.<sup>78</sup> It is possible to withdraw or adjust this notification after notifying the employer.<sup>79</sup>

Days (or parts of days) on which the employee does not carry out his or her work due to the leave, cannot be considered as holidays. Besides, given the fact that parental leave is a form of leave without pay, the employee does not accrue holiday entitlement. This is in conformity with the general rule ‘a right to pay constitutes a right to holiday entitlement’.<sup>80</sup> A deviation to the detriment of the employee from the clause in the Dutch Civil Code regarding holidays and leave is only possible in cases where this clause allows so.<sup>81</sup> Deviation from the rules concerning parental leave in the Work and Care Act is possible on several aspects of this leave, which are specifically mention in this Act.<sup>82</sup> Outside these aspects it is not possible to deviate to the detriment of the employee.<sup>83</sup>

Lastly, the employer cannot dismiss the employee for making use of his or her right to parental leave<sup>84</sup> unless the employee agrees in writing with the termination of the employment contract.<sup>85</sup>

## **2.5 Emergency leave and short leave**

Chapter 4 of the Work and Care Act deals with emergency leave and short-term leave, of which paternity leave is a special kind. The general description of emergency leave and short-term leave is as follows:

*‘The employee has a right to leave without loss of pay for a short, reasonably calculated period of time, in which he or she is not able to carry out his or her work due to:*

- a) very special personal circumstances;*
- b) an obligation imposed by law or government, without monetary compensation, which obligation could not be fulfilled in spare time;*
- c) the exercise of his or her right to vote.’<sup>86</sup>*

Subsequently a description of very special personal circumstances is given.<sup>87</sup>

The employee has to notify that he or she is on leave in advance (or as soon as possible) and

---

<sup>78</sup> Article 6:5 Work and Care Act.

<sup>79</sup> Article 6:6 Work and Care Act.

<sup>80</sup> Article 634 Book 7 of the Dutch Civil Code.

<sup>81</sup> Article 645 Book 7 of the Dutch Civil Code.

<sup>82</sup> Article 6:8 Work and Care Act.

<sup>83</sup> Article 6:9 Work and Care Act.

<sup>84</sup> Article 670 section 7 Book 7 of the Dutch Civil Code.

<sup>85</sup> Article 670b section 2 Book 7 of the Dutch Civil Code.

<sup>86</sup> Article 4:1 Work and Care Act.

<sup>87</sup> Those very special circumstances are: a) the childbirth of the spouse, registered partner or the person with whom the employee lives together unmarried, and b) the death and the funeral of one of his or her room mates or of his or her blood relatives and relatives by marriage in the direct or collateral line up to the second degree. Other examples of these personal circumstances are a marriage, a removal, a diploma-award to a child, a doctor’s visit,

he or she has to give reasons. This notification has no procedural requirements. The employer is allowed to ask his or her employee to give convincing reasons for the need to take this kind of leave.<sup>88</sup>

As with paternity leave, the pay is decreased with any other monetary compensation received by the employee. It is possible to consider (parts of) days as holidays under the condition that the employee explicitly agrees with it and that he or she maintains his or her right to the statutory minimum holiday entitlement.

Deviation to the detriment of the employee is not possible except by a regulation by an administrative body,<sup>89</sup> a collective agreement or by a written agreement with the works council or an employee's representative body.<sup>90</sup> Those agreements can have a term up to five years.<sup>91</sup> However, it is not possible to contract out the entire right to this kind of leave.

## 2.6 Adoption and foster care leave

Article 3:2 Work and Care act is the basis for adoption leave in the Netherlands. This provision has the objective to offer the employee a period to grow accustomed to the new situation with an adopted child. Therefore the period of leave is not prolonged in case two or more children are adopted simultaneously.<sup>92</sup> Both parents, if both are employees, can claim the leave for adoption with respect to the same child(ren).

The employee has to prove that he or she has adopted a child.<sup>93</sup> The right to adoption leave exists during a period of eighteen weeks and amounts up to a maximum of four continuous weeks. The adoption leave can commence no more than two weeks before the day the child(ren) actually move(s) into the employee's house. This day has to be notified to the employer at least three weeks before that day.<sup>94</sup> The (parts of) days of leave cannot be considered as holidays.<sup>95</sup> Moreover, although he or she is not entitled to full pay from his or her employer, the employee accrues entitlement to holiday pay during the period of adoption (or foster care) leave.<sup>96</sup>

It is not possible to deviate from these rules, except in some extraordinary circumstances.<sup>97</sup>

---

acute sickness of a child or a bursted water pipe. Zie H. van Drongelen and K. Eerder, *Actueel recht voor P&O, Vormen van verlof, Handleiding voor de praktijk*, Alphen aan de Rijn: Kluwer 2008, fourth edition, p. 44.

<sup>88</sup> Article 4:4 Work and Care Act.

<sup>89</sup> Article 1:4 Work and Care Act.

<sup>90</sup> Article 4:7 Work and Care Act.

<sup>91</sup> Article 1:5 Work and Care Act.

<sup>92</sup> Explanatory Memorandum Work and Care Act, House of Representatives, session year 1999-2000, 27 207, nr. 3, p.43.

<sup>93</sup> Article 3:2 section 3 Work and Care Act.

<sup>94</sup> Article 3:3 section 2 Work and Care Act.

<sup>95</sup> Article 3:4 Work and Care Act.

<sup>96</sup> Article 635 section 3 Book 7 Dutch Civil Code.

<sup>97</sup> Article 3:5 section 2 Work and Care Act.

Employees who satisfy these conditions have a right to social security benefit during the leave.<sup>98</sup> An employee is entitled to social security benefit during four continuous weeks within the earlier mentioned period of eighteen weeks. This period of eighteen weeks commences two weeks before the child(ren) actually move(s) in. If two or more children are adopted simultaneously, the right to this social security benefit only exists in respect of one child,<sup>99</sup> because the period to get accustomed is the same.<sup>100</sup> Moreover, this right to social security benefit also exists, on the day the child(ren) move(s) in, in relation to the person who ceased to be an employee no more than ten weeks ago.<sup>101</sup>

The employee needs to apply for the payment via the employer<sup>102</sup> at the Employee Insurance Agency at least two weeks before the effective date of leave or the commencement date wished for. The application needs to mention one of these dates. In addition the application must include documents proving *the fact that* and *when* the child(ren) is(are) being or is(are) fostered.

The level of the social security benefit amounts to the daily wage and is being paid every month.<sup>103</sup> The payment will be provided by the General Unemployment Fund.

The employer cannot dismiss the employee for making use of this right to adoption leave,<sup>104</sup> unless the employee agrees in writing with the termination of the employment.<sup>105</sup> Moreover, there is no possibility to deviate to the detriment of the employee.<sup>106</sup> Deviations to the employee's benefit are possible, however in case of an extension of leave's length, the right to social security benefit is not extended.<sup>107</sup>

#### *Foster care leave*

A child is a foster child if the child, as evidenced by the municipal personal records database, lives at the same address as the employee and is cared of and raised on a lasting basis by

---

<sup>98</sup> Article 3:7 section 2 Work and Care Act.

<sup>99</sup> Article 3:9 Work and Care Act.

<sup>100</sup> H. van Drongelen and K. Eerder, *Actueel recht voor P&O, Vormen van verlof, Handleiding voor de praktijk*, Alphen aan de Rijn: Kluwer 2008, fourth edition, p.36. See also note 55.

<sup>101</sup> Article 3:10 section 2 Work and Care Act.

<sup>102</sup> Article 3:11 Work and Care Act. In case the person equivalent to an employee does not have an employer, he/she can directly apply for an adoption (or foster care) social security benefit at the Employee Insurance Agency according to article 3:12 section 2 Work and Care Act.

<sup>103</sup> Article 3:13 section 1 and 3:14 section 1 Work and Care Act. The subsequent clauses contain some exceptions and deviations.

<sup>104</sup> Article 670 section 7 Book 7 of the Dutch Civil Code.

<sup>105</sup> Article 670b section 2 Book 7 of the Dutch Civil Code.

<sup>106</sup> Article 3:5 Work and Care Act.

<sup>107</sup> M.M. Olbers, 'Afdeling 3. Vakantie en verlof', 'Wet arbeid en zorg', en 'Wet aanpassing arbeidsduur', in: G.J.J. Heerma van Voss (hoofdred.), *Arbeidsovereenkomst*, Deventer: Kluwer.



virtue of a foster contract by this employee.<sup>108,109</sup> All the above mentioned concerning adoption equally applies to the situation of fostering a child.<sup>110</sup>

## 2.7 Short-term care leave

Chapter 5 of the Work and Care Act regulates short-term and long-term care leave. An employee has the right to leave for necessary care in connection with the sickness of a person as described in article 5:1 of the Act. This ‘person’ could be a) the spouse, registered partner or the person with whom the employee lives together but is not married to; b) a resident child with whom the employee has a family relationship; c) a resident child of the person mentioned under a); d) a foster child or; e) a blood relative in the first degree.

‘Necessary’ means that there is no one else who can take care of the sick person. By consequence the right to short-term care leave ends as soon as the necessity for care and leave ceases to exist.<sup>111</sup> The employer can ask his or her employee to make plausible that the care is necessary.<sup>112</sup> The short-term care leave ends in any event when the period has reached the maximum period of twice the length of the working week in every period of 12 continuous months.<sup>113</sup> This period commences on the first day of leave.

Identical to some aforementioned forms of leave, the employee has to notify the employer that he or she is going on leave before the application for leave, if possible, or as soon as possible, by giving reasons and listing the extent, manner and duration of leave. Again, the employer can ask his or her employee to make these reasons (necessary care and leave) plausible. The aim of the regulation is to discourage abuse. Article 5:4 of the Act offers the employer the possibility to prevent the commencement, or to stop the continuation of leave, because of substantial business interest. The employer can do this once and only directly after the notification came to his or her knowledge.

In principle an employee receives 70% of the daily wage<sup>114</sup> from his or her employer during

---

<sup>108</sup> Article 5:1 section 2 under d) Work and Care Act.

<sup>109</sup> A foster contract as mentioned in article 28b section 1 Youth Care Act.

<sup>110</sup> These rules apply, among others, by virtue of articles 3:2 section 4, 3:9 section 4 and 3:10 section 3 of the Work and Care Act.

<sup>111</sup> H. van Drongelen and K. Eerder, *Actueel recht voor P&O, Vormen van verlof, Handleiding voor de praktijk*, Alphen aan de Rijn: Kluwer 2008, fourth edition, p.50.

<sup>112</sup> Article 5:5 Work and Care Act. The employee could make the need for care plausible by providing the employee with, for example, a confirmation of a doctor’s appointment or a bill of a consult (Explanatory Memorandum Work and Care Act, House of Representatives, session year 1999-2000, 27 207, nr. 3, p.25 en 38). However, sometimes it will be difficult for the employee to provide such documents. Therefore this article has the wording ‘has to make plausible’ instead of ‘has to prove’ or ‘has to demonstrate’ to mitigate the burden of proof for the employee (*Parliamentary Papers II*, session year 2000/01, 27 027, nr.5, p.71 en 71). Moreover, if the employee is not able to make his or her reasoning plausible, the employer can impose a sanction, such as withholding wage (Explanatory Memorandum Work and Care Act, House of Representatives, session year 1999-2000, 27 207, nr. 3, p.25 and p.38).

<sup>113</sup> Article 5:2 Work and Care Act.

<sup>114</sup> See note 61.

the short-term care leave and at least the statutory minimum wage. This wage can be decreased with monetary benefits to which the employee is entitled due to an insurance or fund (and with saved expenses).

Days or parts of days of leave cannot be considered as holidays.<sup>115</sup> In case of deviation from this general rule the employee maintains a right to the minimum holiday entitlement. The main rule with regard to accrual of holiday entitlement applies.<sup>116</sup>

Chapter 5 can only be deviated from to the detriment of the employee by a regulation by an administrative body,<sup>117</sup> a collective agreement or by a written agreement with the works council or an employee's representative body.<sup>118</sup> According to Chapter 5 it is possible to contract out the right to short-term care leave in its entirety.

In case emergency or short-absence leave concurs with short-term care leave, the former one ends after one day. In case of concurrence of short-term care leave and long-term care leave, the former can (partly) be considered as long-term care leave on request of the employee.<sup>119</sup>

The employer cannot dismiss the employee for making use of his or her right to short-term care leave,<sup>120</sup> unless the employee agrees in writing with the termination of the employment agreement.<sup>121</sup>

## **2.8 Long-term care leave**

Chapter 5 of the Work and Care Act also embodies the long-term variant of care leave. This variant deals with the care for a person with a life-threatening disease. The notion of 'person' is equal to the notion of person in case of short-term care leave. 'Care' in this respect has to be interpreted broadly. A life-threatening disease is a serious health situation which is, according to objective medical criteria, a serious danger to a person's life in the near future.<sup>122</sup> The employee does not receive wage during long-term care leave.

The period of long-term care leave is subject to a maximum of six times the length of the working week per twelve continuous months. This twelve months period starts on the first day of leave. The leave has to be taken per week during these twelve months. The amount of

---

<sup>115</sup> Article 5:15 Work and Care act.

<sup>116</sup> Article 634 Book 7 of the Dutch Civil Code.

<sup>117</sup> Article 1:4 Work and Care Act.

<sup>118</sup> Article 5:16 Work and Care Act.

<sup>119</sup> Article 5:16 Work and Care Act.

<sup>120</sup> Article 670 section 7 Book 7 of the Dutch Civil Code.

<sup>121</sup> Article 670b section 2 Book 7 of the Dutch Civil Code.

<sup>122</sup> Article 1:3 clause 3 Work and Care Act. See also: H. van Drongelen and K. Eerder, *Actueel recht voor P&O, Vormen van verlof, Handleiding voor de praktijk*, Alphen aan de Rijn: Kluwer 2008, fourth edition, p. 55.

leave per week is at most half of the length of the working week of the employee. However, the employee can request for derogation from these limits.<sup>123</sup>

The application for long-term care leave has to be done at least two weeks in advance of the commencement date wished for by the employee. The employee can request for an earlier day of commencement. The leave ends with the expiry of the term the leave was granted for or in case the person in need of care dies or is no longer life-threatening sick.<sup>124</sup>

The application must give information about the reasons, the person in need for care, the effective date, the extent of leave, the duration of leave and the distribution of leave hours over the working week.<sup>125</sup> The employer can request for additional information.<sup>126</sup> The employer has the possibility to reject the application because of substantial business interest. The employer can do this once and only directly after the notification came to his or her knowledge. In that case, the employer discusses an adjustment of the application with the employee. In the event that the employer did not communicate a decision one week before the desired commencement day, the leave is considered to be granted and the provided information is considered to be correct.

The conditions and rules with regard to (accrual of) holiday entitlement, deviation, concurrence of short-term care leave and long-term care leave and dismissal (prohibitions), are equal to those under short-term care leave.

---

<sup>123</sup> Article 5:10 section 4 Work and Care Act.

<sup>124</sup> The principle of 'being a good employee' from article 611 Book 7 of the Dutch Civil Code, obliges the employee to notify that the situation is no longer life-threatening. In case the employer has strong indications that there is no longer a life-threatening situation, he or she can order the employee to return to work. This is only possible in case the employer has good reasons to order this. When the employee disagrees, he or she has to provide information to be able to continue the long-term leave. *Parliamentary Papers II*, session year 2003-2004, 28 467, nr.7, p.18.

<sup>125</sup> Article 5:11 Work and Care Act.

<sup>126</sup> The employer is not allowed to test the nature and manner of care substantively, *Parliamentary Papers II*, session year 2003-2004, 28 467, nr.7, p.18.

## 2.9 Overview of features per form of leave in a table\*

Form of leave/ feature	Maternity leave	Paternity leave	Parental leave	Emergency leave/ short term leave	Adoption/ foster care leave	Short term care leave	Long term care leave
<b>Length</b>	Sixteen weeks	Two days during four weeks	Maximum 26 times the length of the working week per year	A short, reasonably calculated period of time	Maximum 4 weeks during period of 18 weeks	Maximum of twice the length of the working week per year	Maximum of six times the length of the working week per year
<b>(Amount of) payment</b>	Social security benefit amounting daily wage per day	Full payment of wage	None, but a payment can be provided for by collective agreement	Full payment of wage	Social security benefit amounting daily wage per day	70% of daily wage, at least minimum wage	None, but a payment can be provided for by collective agreement
<b>Who pays</b>	General Unemployment Fund	Employer	- (unless provided for by collective agreement)	Employer	General Unemployment Fund	Employer	- (unless provided for by collective agreement)
<b>Special conditions/ features/ requirement</b>	Several announcements to employer	No separate arrangement in Work and Care Act, falls under emergency leave/ short term leave	Only when working relationship lasted one year, notification in writing	Notion of emergency and other circumstances for which this leave is meant, are clearly defined.	Adoption and foster care has to be proven by the employee (substantiated with documents)	Notion of the (group of) person(s) who is cared of, is clearly defined. Extensive notification required.	Notion of the (group of) person(s) who is cared of, is clearly defined. Extensive notification required.
<b>Accrual of holiday entitlement</b>	Yes	Yes	No	Yes, unless employee agreed on deviation	Yes	Yes	Yes
<b>Pension entitlement</b>	Yes	Yes	Differs per sector/ company	Yes	Yes	Differs per sector/ company	Differs per sector/ company
<b>Dismissal during leave</b>	No	No, but no special provision	No	No, but no special provision	No	No	No
<b>Deviation to the detriment of the employee</b>	No	By a collective agreement or by a written agreement with the works council	Only if specifically provided for by law.	By a collective agreement or by a written agreement with the works council, but cannot be contracted out in its entirety.	No	By a collective agreement or by a written agreement with the works council	By a collective agreement or by a written agreement with the works council

\* Deviations in favour of the employee are possible with regard to all these arrangements, either by collective agreements or by the individual agreement or an agreement with the works council or employee's representative body.

## 2.10 Collective agreements and leave

One of the possibilities to deviate from the rules concerning the different forms of leave is a collective agreement. This way of deviation is very frequently used. As mentioned in chapter

1, the Ministry of Social Affairs and Employment published an investigation on collective agreements in 2009, with reference to ‘paid work and care tasks’ in the Netherlands. The investigation has been carried out on a basis of 115 collective agreements (representative sample) in the market sector, care sector and public sector. About five million employees are covered under this representative sample. These five million employees are 89% of the total number of employees covered by a collective agreement.<sup>127</sup>

The investigation shows, among other results, relevant information on the practice of derogations from the main rules regarding leave forms. It entails derogations to the detriment (restrictive) and to the benefit (additional) of employees. The results are schematised below:

**Table 1: additional and restrictive provisions of forms of leave with a legal basis<sup>128</sup>**

Form of leave	Additional Collective agreements %	Restrictive Collective agreements %	% employees under additional collective agreements	% employees under restrictive collective agreements
Maternity leave	25 %	-	21 %	-
Paternity leave	17 %	14 %	16 %	15 %
Adoption leave	22 %	17 % <sup>129</sup>	17 %	21 %
Parental leave	33 %	4 %	40 %	2 %
Emergency leave	70 %	8 %*	56 %**	7 %
Short-term care leave	23 %	10 %	21 %	14 %
Long-term care leave	13 %	3 %	16 %	2 %

\* Leave in the case of the death of immediate next-of-kin will be considered as ‘additional’.  
 \*\* Leave in the case of an indefinable emergency will be considered as whether or not ‘restrictive’.

Examples of derogations to the detriment are shortening of the length of leave, reduction of the amount of payment and limitations on the notion of ‘person’, who is in need of care. On the other hand extension of the length, supplementary benefits and relaxing rules on the conditions are examples of deviation to the employee’s benefit.

<sup>127</sup> SZW (Sociale Zaken en Werkgelegenheid) 2010, *Faciliteiten Arbeid en Zorg 2009*, Den Haag: Ministry of Social Affairs and Employment, p.9-10.

<sup>128</sup> SZW (Sociale Zaken en Werkgelegenheid) 2010, *Faciliteiten Arbeid en Zorg 2009*, Den Haag: Ministry of Social Affairs and Employment, p. 73.

<sup>129</sup> As mentioned earlier, there is no possibility to derogate from the rules on adoption leave to the detriment of the employee. In 17% of the collective agreements other types of arrangement are found with regard to this form of leave. Due to their wording, it is not clear whether they are to the benefit or to the detriment of the employee. See SZW (Sociale Zaken en Werkgelegenheid) 2010, *Faciliteiten Arbeid en Zorg 2009*, Den Haag: Ministry of Social Affairs and Employment, p. 13.

All collective agreements contain provisions on several forms of leave. However, more or less two-thirds of these agreements contain provisions which are wholly in conformity with the law. It can be concluded from the table that only a small percentage of the collective agreements derogates in favour of the employee and even a smaller percentage deviates to the detriment of the employee. The 70% of 'additional collective agreements' with regard to emergency leave can be explained by the fact that 70% of the collective agreements has a separate arrangement of leave in case of death, in addition to the regular arrangements for contingencies of which 65% is conformity with the law. This 65% corresponds with the two-thirds of collective agreements mentioned earlier.

Besides those forms of leave with a legal basis, almost 70% of the examined collective agreements also provide for other circumstances for which a leave provision has been made. Examples are marriages, voluntary work, mourning, death of somebody and moving. Some agreements also provide arrangements to 'save' days of leave or to 'buy' days of leave.

## **Chapter 3: Flexible working, is there a right?**

### **3.1 Introduction**

Flexible working can be an important instrument in reconciling work with family life. The need for flexible working arrangements has given rise to a new legislative proposal<sup>130</sup>, which will be discussed in more detail below. For the time being (i.e. before this law is passed and comes into effect), the most important laws governing flexible working are the Working Hours Act (*Arbeidstijdenwet*), the Work and Care Act (*Wet Arbeid en Zorg*) and the Working Hours Adjustment Act (*Wet Aanpassing Arbeidsduur*). However, these laws do not provide a uniform definition of flexible working. Before going into more detail, the concept of flexible working needs to be defined.

### **3.2 What is flexible working?**

The examples of flexible working are numerous. One can think of working part-time, working from home, job sharing, etc. The Central Bureau of Statistics (CBS) defines<sup>131</sup> flexible working contracts as ‘temporary agency workers, on-call workers and all other workers who do not have a contract for an indefinite period of time or for a fixed amount of hours of work’.<sup>132</sup> These are forms of flexible work, i.e. the type of contract. However, the definition of flexible working<sup>133</sup> used in this chapter is broader since it comprises a wide variety of arrangements (in addition to certain forms of contract) that allow workers to be more flexible in their work.

To illustrate what is meant here by flexible working, one should consider its counterpart: full-time employment for an indefinite time with regular office hours. In the Netherlands the ‘normal’ working week is made up out of a nine-to-five job on set office hours in a set workplace for a fixed number of hours per week on an employment contract for indefinite time.<sup>134</sup> The common denominator in all flexible working arrangements is a deviation from this traditional regime with regard to the working place, working hours and / or the number of

---

<sup>130</sup> Proposal by Members of Parliament Van Gent and Van Hijum for the amendment of the Working Hours Adjustment Act to promote flexible working (Flexible Working Act).

<sup>131</sup> The Central Bureau of Statistics recognizes that flexible working is an ambiguous concept. For instance, the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen, UWV*) uses a different definition.

<sup>132</sup> P. Hilbers, H. Houwing and L. Kösters, *De flexibele schil – Overeenkomsten en verschillen tussen CBS- en UWV-cijfers*, CBS Sociaaleconomische trends, 2<sup>e</sup> quarter 2011, p.1. Retrieved at <http://www.cbs.nl/NR/rdonlyres/12ADBDCB-5594-42DF-B670-D97E155DC800/0/2011k2v4p26art.pdf>, last visited March 10 2014.

<sup>133</sup> Please note the distinction between flexible work and flexible working. Both can be used to balance work and care and so the two terms will appear interchangeably throughout this chapter.

<sup>134</sup> This standard working week does not have a legal basis but stems from tradition and common practice. However, one should note that shift work is usually considered as standard work although it is not a nine to five job and the number of hours of work is often less than that of a full-time job.

hours of work.<sup>135</sup> Flexible working can thus come in a wide variety of arrangements. The common forms will be discussed below.

### 3.3 Examples of flexible working

- Flexible hours of work: for example, an employee works the standard 38 hours per week *on average*. One week the employee works 36 hours whereas the next week he or she works 40 hours. The number of hours of work can vary per day, week, month or even per year as long as the total number of hours over a certain period of time is met.
- Part-time work: an employee only works a part of a full-time job (also expressed as 1,0 full-time equivalent or 1,0 fte). Also here the number of hours of work can vary.
- Flexible working place: if the task at hand so permits, employees can work from a place other than their usual workplace, for instance from home. The assessment of work is shifted more towards the outcome.
- Flexible working hours: the employee will still come to the workplace for a fixed number of hours per week but the employee can decide (up to a certain extent) at which times he or she comes in. This allows the employee to come in for example after dropping the children off at school or when the traffic jams from rush hour have finally cleared.
- Temporary (agency) work: a worker is hired for a definite period of time, e.g. for a certain task or project. This gives more flexibility to both employer and employee.

Of course these examples of variations in working hours, the number of hours of work and the workplace are not mutually exclusive. A mix of arrangements can be used.

### 3.4 Legal bases for flexible working

As mentioned above there are three important laws that govern flexible working. These can be deviated from or supplemented by collective agreements. The Working Hours Act protects workers by setting maximum working hours and minimum resting periods. Based on the Working Hours Act (ATW) is the Working Hours Decree (*Arbeidstijdenbesluit*) which contains provisions to deviate from the aforementioned minimum standards of protection for branches like the tourist industry, healthcare and fire departments. In other words, the

---

<sup>135</sup>Explanatory Memorandum to the proposal for amendment of the Working Hours Adjustment Act, *Parliamentary Paper* 32 889, nr.3, p.1.



Working Hours Act sets limits to what employers can ask from their employees. A noteworthy provision in the Working Hours Act is article 4:1a which states that the employer has to, insofar as is reasonable, take into account the personal circumstances of the employee when setting the work pattern. These personal circumstances include *inter alia* caring responsibilities for children and dependent relatives and social responsibilities.

Based on the freedom of contract<sup>136</sup>, employers and employees can design a contract in any way they see fit, provided that they stay within the legal boundaries. Part-time contracts, on-call contracts, contracts with flexible working hours etc. they can all be agreed upon. However, the question arises what options for flexible working are available for employees who have already signed a contract and might have been working for the same employer for years. The Work and Care Act and the Working Hours Adjustment Act contain provisions, which allow the employee to request specific forms of leave in order to care for others and to request an adjustment in working hours respectively. The Work and Care Act has been discussed in the chapter 2 on rights to leave. Therefore the focus in this section will lie on the Working Hours Adjustment Act. The most important aim of the act is to facilitate a more balanced distribution of work and care between men and women.<sup>137</sup>

### **3.5 Procedure in the Working Hours Adjustment Act**

In the Netherlands the first deviation from the traditional employment contract came in the form of part-time work. After World War II the loss in human lives (and thus workers) and the economic damage led to a need for more workers. In 1955 employers began to offer part-time jobs to married women.<sup>138</sup> The next step in making working arrangements more flexible was the introduction of employment contracts for a definite period and temporary employment agency work. Before the Working Hours Adjustment Act, an employee had few possibilities to try to reduce working time. Either the employee would resign and be hired back part-time or work on the basis of temporary agency work, or a request for a partial resolution of the contract by the judge had to be filed. The latter was often not successful. However, with the Working Hours Adjustment Act the employee has the right to *request* an adjustment of the working hours specified in the employment contract.<sup>139</sup> This entails an adjustment in the duration of work and the division of working hours. Employees are only eligible if they have been working for the employer for at least a year before the adjustment comes into effect.<sup>140</sup> The request must be filed in writing at least four months before the

---

<sup>136</sup> Article 40 Book 3 of the Dutch Civil Code.

<sup>137</sup> Explanatory Memorandum 26 358, p. 9.

<sup>138</sup> SCP, *Verdeelde tijd: waarom vrouwen in deeltijd werken*, Vol. 1568. No. 1262. Den Haag: Sociaal en Cultureel Planbureau, 2008.

<sup>139</sup> In other words, no new contract is needed. The old contract is merely adjusted.

<sup>140</sup> Article 2 section 1 Working Hours Adjustment Act.

proposed date of effect and should include the date, the extent of the adjustment in duration of work over the desired period of time (e.g. hours per week). The employee can file a request once every two years regardless of whether an earlier request has been granted or denied.<sup>141</sup> The employer is obliged to discuss the request with the employee.<sup>142</sup>

The employer has to grant the request regarding the date of effect and the extent of the adjustment in duration of work unless there is a compelling business reason for not doing so (see section 3.6 for grounds for refusal).<sup>143,144</sup> The law stipulates that the employer sets the distribution of working hours in accordance with the wishes of the employee. However, the employer can alter the distribution of the hours if he or she can show an interest that outweighs the wishes of the employee in light of reasonableness and fairness.<sup>145</sup> One should note that this test (reasonableness and fairness) is less strict than the test of compelling business interests. The employer's decision on the request needs to be given in writing to the employee. If the request is denied or if the distribution of the hours deviates from the employee's proposal, the employer must provide the reasons for doing so.<sup>146</sup> If the employer has not taken a decision a month before the proposed date of effect, the adjustment in duration of work will be implemented as proposed by the employee.<sup>147</sup>

A deviation from one or more of these statutory provisions is not allowed unless it regards an increase in the duration of work and a provision is included in a collective agreement, or in the absence of such a provision, if the employer has reached an agreement in writing with the worker council<sup>148, 149</sup>. Such provisions apply for a maximum of five years if no other time restrictions are set.<sup>150</sup> Article 2 of the Working Hours Adjustment Act does not apply to employers who employ less than 10 workers. These employers should make arrangements on their own for the right for employees to adjustment in the duration of work.<sup>151</sup>

### **3.6 Grounds for refusal**

Even though an employee can just request for adjusting the number of working hours, the employer can only refuse a request if he or she can bring forward compelling business

---

<sup>141</sup> Article 2 section 3 Working Hours Adjustment Act.

<sup>142</sup> Article 2 section 4 Working Hours Adjustment Act.

<sup>143</sup> Article 2 section 5 Working Hours Adjustment Act.

<sup>144</sup> Please note the distinction between the adjustment in the duration of work and the division (or spread) of hours of work.

<sup>145</sup> Article 2 section 6 Working Hours Adjustment Act.

<sup>146</sup> Article 2 section 7 Working Hours Adjustment Act.

<sup>147</sup> Article 2 section 10 Working Hours Adjustment Act.

<sup>148</sup> Or in the absence of a workers council, with the employees representative body.

<sup>149</sup> Article 2 section 11 Working Hours Adjustment Act.

<sup>150</sup> Article 2 section 13 Working Hours Adjustment Act.

<sup>151</sup> Article 2 section 12 Working Hours Adjustment Act.

reasons.<sup>152</sup> The Working Hours Adjustment Act provides some examples (see below) of possible grounds for refusal, although these are not exhaustive.

If the duration of work is *decreased*<sup>153</sup>, a compelling business interest is (presumed to be) at stake if the decrease leads to serious problems:

- a. in business operations when filling the hours that fell vacant.
- b. with health and safety, or
- c. with regard to work scheduling.

If the duration of work is *increased*<sup>154</sup>, a compelling business interest is (presumed to be) at stake if the increase leads to serious problems:

- a. of a financial or organisational nature.
- b. due to the lack of sufficient work, or
- c. because the set staff capacity levels or personnel budgets are insufficient.

The act does not oblige employees to motivate their request. Nor is this necessary since the employer does not have to weigh the needs of the employee against compelling business interests. The employer simply needs to prove the existence of compelling business interests in order to refuse.<sup>155</sup> For instance, in a recent case an employer asked to decrease his working hours from 40 to 36 hours. He also requested that the hours worked would be divided over five days per week with eight hours of work day so that the employer could take one day off every two weeks. The employer refused on the grounds of financial problems and problems with work scheduling. However, the employer had already factually realised such a reduction in working hours before without any problems by buying extra holidays and taking up free days with extra hours he had put in before. Therefore the court found that the employer had not sufficiently proven the existence of compelling business interest and so the employer had to grant the request.<sup>156</sup>

### **3.7 Consequences for the contract**

Of course a reduction or increase in the duration of work must be reflected in the different forms of compensation. Pay, number of holidays etc. are normally adjusted *pro rata* to the change in duration of work, although the Working Hours Adjustment Act does not explicitly

---

<sup>152</sup> As mentioned before, the compelling business interest regards the date of effect and the extent of the adjustment in duration of work, not the division of the hours. If a request is denied on the grounds of compelling business interest, the employer will obviously not come around to the division of hours of work.

<sup>153</sup> Article 2 section 8 Working Hours Adjustment Act.

<sup>154</sup> Article 2 section 9 Working Hours Adjustment Act.

<sup>155</sup> It can be argued that the employer does have to weigh the interests. See W.C.L. van den Grinten, *Arbeidsovereenkomstenrecht*, Kluwer: Deventer 2011, p.44.

<sup>156</sup> District Court of Deventer, 18 April 2013, JAR 2013/150.

cover this. The Working Hours Adjustment Act protects employees who request an adjustment. Article 3 of the Working Hours Adjustment Act states that an employer cannot terminate the employment contract on the grounds that an employee has filed a request.<sup>157</sup>

### **3.8 Changing the terms of employment**

The above departed from the viewpoint of the employee in making adjustment to arrangements made in the employment contract. Also, the employer may also want to change previously agreed flexible working arrangements such as changing part-time to full-time work.

#### *Changing the terms of employment*

As a rule, changing the terms of employment (whether it is the pay, secondary terms, the duration of work) requires consent of both parties. First of all, not everything can be considered a change of the terms. In the Netherlands the employer has the power to give instructions<sup>158</sup>, which could entail working on different hours or on a different location. Consent is not always needed.

Even if there is indeed a substantial change in terms of employment, the employee should in general accept reasonable proposals made by the employer. The key article is article 611 Book 7 of the Dutch Civil Code which requires the employer to behave as a ‘good employer’ and in turn requires the employee to behave as a ‘good employee’. There is no distinct line to be drawn on which alteration should be considered reasonable and which as unreasonable.

The criterion of reasonableness and fairness<sup>159</sup> has been used in the notable cases Van der Lely / Taxi Hofman<sup>160</sup> and Stoof / Mammoet Transport<sup>161</sup>. In the former case the rule was developed that in principle an employee should accept a reasonable proposal for change in the terms of employment. Only if it could not be reasonably expected of the employee to comply with the proposal, he or she can refuse. The latter case elaborated upon this rule by dictating that the focus should not only be on what could be expected from the employee but that all the circumstances must be weighed, including whether the employer has sufficient cause for changing the terms.<sup>162,163</sup>

---

<sup>157</sup> The penalty for terminating a contract on this ground is that the termination is voidable by an appeal of the employee to article 3:40 section 2 of the Dutch Civil Code. See *Parliamentary Papers II*, 1998/99, 26 358, nr.26, p.1-2.

<sup>158</sup> Employees should abide the instructions the employer gives ex article 660 Book 7 of the Dutch Civil Code.

<sup>159</sup> These notions run through the entire Dutch legal system and often serve as a safety net for unreasonable outcomes.

<sup>160</sup> Dutch Supreme Court, 26 June 1998, NJ 1998, 767, JAR 1998/199.

<sup>161</sup> Dutch Supreme Court, 11 July 2008, LJV BD 1847, JAR 2008-204.

<sup>162</sup> If an employee refuses a reasonable proposal (without good countervailing reasons to do so) and as a consequence does not work, the employee can even be denied pay according to this case law.

Let us take a look at two recent cases in the Netherlands. In both cases the employer wanted to decrease pay for workers. In one case<sup>164</sup>, the (unilateral) 10% decrease in pay by the employer was deemed unreasonable despite the fact that there were indeed compelling commercial reasons for the decrease. However, these commercial interests could not offset the interests of the employers, which was the maintenance of their livelihood. As a rule of thumb, essential primary labour conditions such as pay are not to be changed unilaterally. Nonetheless, in the second case<sup>165</sup> an employer (the Dutch Royal Airlines Catering department) wanted to lower the night duty allowance for workers and this was ruled to be reasonable for two reasons. Firstly, the unions had accepted the proposal made by the employer which was considered to be an indication of reasonableness even for unbound workers<sup>166</sup>. Secondly, a very elaborated phasing-out scheme was offered. This allowed to workers to anticipate on the changes in income and their interests could not offset the commercial interests of the employer.

#### *Unilateral change clause*

It is possible that the employee has signed a unilateral change clause that permits the employer to change the terms of work. Article 613 Book 7 of the Dutch Civil Code governs the unilateral change clause and demands that such a clause is agreed upon in writing.<sup>167</sup> But the employer will still need to demonstrate that he or she has good cause for the unilateral change which outweighs the interests of the employee. In other words, such a clause does not give the employer *carte blanche* for any change the employer desires. Again all case-specific circumstances need to be taken into account. It is important to note that collective agreements to which both the employer and employee are bound, can overrule a clause based on article 613 Book 7 of the Dutch Civil Code in an individual contract for an employee.<sup>168</sup>

#### *Changing flexible working agreements*

Given this ambiguous system it is difficult to give a clear-cut answer on the question whether and if so under which conditions an employer can change flexible working conditions. Let's take the example above. If the employer wants a part-time employee to work full-time, it is very likely that the consent of the employee is needed since such a substantial request is highly unlikely to outweigh the interests of the employee. However, if an employee was granted permission to come in on sliding hours and an employer would want to change that

---

<sup>163</sup> W.C.L. van den Grinten, *Arbeidsovereenkomstenrecht*, Kluwer: Deventer 2011, p. 41-42, 53-57.

<sup>164</sup> District Court of Oost/Nederland, 27 March 2013, *LJN* CA0060.

<sup>165</sup> District Court of Noord-Holland, 6 November 2013, *JAR* 2014/45.

<sup>166</sup> I.e. workers who are not with a union.

<sup>167</sup> Oral agreements on this issue are void ex article 39 Book 3 of the Dutch Civil Code.

<sup>168</sup> See articles 9, 12 and 13 Collective Agreements Act (*Wet collectieve arbeidsovereenkomst*).

agreement substantially, it will strongly depend on the personal circumstances of the employee. For instance, if the employee is a single father or mother who has to drop the kids off at school might rightfully refuse where a childless worker who just wants to avoid traffic jams might not.

### **3.9 Extent of flexible working**

In the previous section the legal possibilities for flexible working were described. But to what extent are flexible working arrangements being used in practice? Given the broad definition the actual use of flexible working is hard to measure. Nonetheless, the following examples give an impression on the current situation in the Netherlands.

#### *Use of the Working Hours Adjustment Act*

A report on the effectiveness of the Working Hours Adjustment Act was published in 2008. From a survey among 502 employers it followed that nine out of ten employers had dealt with a request for the adjustment of working hours by an employee in the last two years. A quarter of those request had been denied. However, the report points out that few employees are familiar with the Working Hours Adjustment Act and its possibilities. Nonetheless, requests are filed and in practice the employer and employee are able to work out such requests by themselves. Therefore, the effect of the Act is mainly indirect insofar that most employers realize that they need to take the requests into serious consideration. Employees are not afraid of possible negative consequences of a request and seldom take legal action if their request is denied. Nor do sick absence or demotivation increase amongst employees to whom a request was denied. In general, both employers and employees regard the amount of hours worked as negotiable.<sup>169</sup>

#### *Collective agreements*

Provisions on flexible working are not often found yet in collective agreements. When the proposal for the Flexible Working Act was filed, a mere 16% of all collective agreements included clauses on flexible working. Only in 4% of all collective agreements provisions were included which guaranteed that personal circumstances of employees such as care duties for others were taken into account when scheduling work. For 90% of the workers who were not yet working under flexible working arrangements at that time, no clause to request flexible

---

<sup>169</sup> Final report 'Effectiveness of the Working Hours Adjustment Act' by Bureau Bartels B.V., commissioned by the Ministry of Social Affairs and Employment, published 17<sup>th</sup> July 2008, Amersfoort (*Effectiviteit van de Wet Aanpassing Arbeidsduur, in opdracht van het Ministerie van Sociale Zaken en Werkgelegenheid, Amersfoort, 17 juli 2008*).

working was incorporated in the collective agreement.<sup>170</sup> But given the results from the report on the use of the Working Hours Agreement Act as discussed above, this does not necessarily have to be a big problem since employees can file a request for adjustment even if such a right is not incorporated in collective agreements.

#### *Other statistics*

As mentioned in the beginning of this chapter, the CBS regards flexible working contracts as ‘temporary agency workers, on-call workers and all other workers who do not have a contract for an indefinite period of time or for a fixed amount of hours of work’. In 2013 about 20% of all workers had such a flexible contract.<sup>171</sup>

The Netherlands is the forerunner in Europe with regard to part-time work. In 2011 the labour force participation rate was 71,1%<sup>172</sup> and 48,5% of total employment was part-time employment. However, there is a big difference between men and women. Over 75% of all working women have a part-time contract where only about 25% of all working men have a part-time contract.<sup>173</sup>

Teleworking, i.e. working from a place other than the regular office space has increased over the last decade, as the following graph shows.

Table: Companies (10 or more employees) with teleworkers

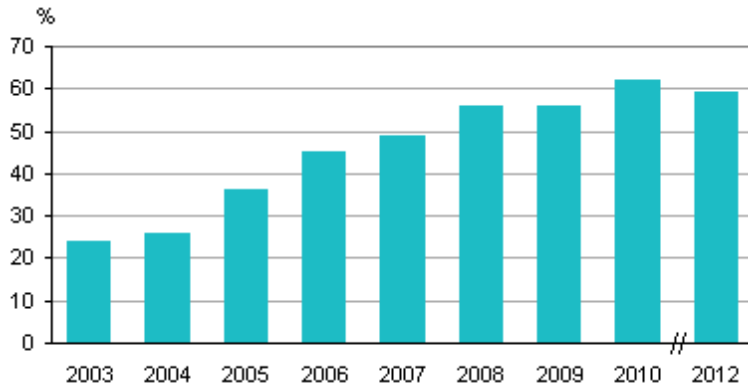
---

<sup>170</sup> Explanatory Memorandum on the proposal for amendment of the Working Hours Adjustment Act, *Parliamentary Paper* 32 889, nr.3, p.2.

<sup>171</sup> Central Bureau of Statistics, Workforce: gender and age, (*Beroepsbevolking; geslacht en leeftijd*) last updated 14/02/2014, retrieved from <http://statline.cbs.nl/StatWeb/publication/?DM=SLNL&PA=71738ned&D1=1-6&D2=a&D3=a&D4=0&D5=69&VW=T>, last visited March 20 2014.

<sup>172</sup> Central Bureau of Statistics, Workforce: gender and age (*Beroepsbevolking; geslacht en leeftijd*) last updated 14/02/2014, retrieved from <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=71738NED&D1=24-25&D2=a&D3=0&D4=0&D5=6,11,16,21,26,31,36,41,46,51,60,65,l&HD=140304-0958&HDR=G1,T&STB=G2,G3,G4>, last visited March 10 2014.

<sup>173</sup> Source: Eurostat. Table 1: Employed persons: number, employment rates and share of part-time employment, by sex, 2011. Retrieved from [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-12-040/EN/KS-SF-12-040-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-12-040/EN/KS-SF-12-040-EN.PDF), last visited March 10 2014.



Source: CBS, 'Telewerken kan bij zes op de tien bedrijven', Webmagazine, 27/08/2013

Three out of four Dutch working fathers with young children would like to make use of flexible working hours.<sup>174</sup> Although this might seem an ideal way to combine work and care, the work at hand must lend itself for teleworking (i.e. a job in a factory would naturally be excluded). Furthermore, since the employer has less oversight on the work of the employee, performance will be measured more based on output.

### 3.10 To conclude: flexible working, is there a right?

The answer to the question of this chapter is straightforward. Flexible working, is there a right? Yes. The concept of flexible working comprises a wide variety of arrangements between employers and employees. This makes it difficult to measure the scale on which flexible working occurs. But more importantly, if employees want to work flexibly<sup>175</sup>, they have the means to file a request which cannot be denied very easily. Even when an employee has worked under a contract with fixed conditions for years, the law provides the tools to make some of these terms negotiable.

<sup>174</sup> Ministry of Youth and Family, *Working fathers. Strategies for fathers who want to combine work and family* (Ministerie voor Jeugd en Gezin: *Werkende vaders. Strategieën voor vaders die werk en gezin willen combineren*, april 2010).

<sup>175</sup> I.e. adjust the number of hours and division of hours worked.



## **Chapter 4: Enforcement and remedies**

### **4.1 What courts / authorities are competent?**

#### *Introduction*

In the Netherlands there are several competent courts and authorities concerning labour law. There is the *kantonrechter*, the administrative judge, the Equal Treatment Commission and the Labour Inspectorate. The aforementioned courts and authorities will be discussed in this chapter.

#### *Civil procedures*

The competent judge in cases of labour law is the *kantonrechter*. The *kantonrechter* is part of the court of first instance in the Netherlands. With which court the parties lodge their claim depends on the domicile of the plaintiffs or the establishment of the firm. One can appeal at the court of appeal and after that appeal in cassation at the Supreme Court. The appeal has to be submitted within three months after the decision (verdict) of the *kantonrechter*.

For access to the court of first instance parties are due to pay the *griffierechten*. These are the costs for starting a procedure at the court. At the court of first instance the costs are €77,00 and appeal costs are €308.<sup>176</sup> The respondent/defendant is not required to pay those *griffierechten*. The appellant has to pay before the date of the first hearing. If the appellant submits an application, paying is required on the date of application. In case of non-payment after four weeks, the *kantonrechter* will not give a decision on the application. Legal representation is not required during a procedure with the *kantonrechter*. Therefore, these procedures are quite favourable in costs comparing with other civil procedures in the Netherlands.

#### *Administrative procedures*

Besides the civil procedures there are administrative procedures. The administrative court will be competent in cases which are related to social security benefits and payments. In the Netherlands there is an administrative body which decides upon granting social securities, called the General Unemployment Fund. In the event the employee is a civil servant, or disputes regarding decisions of an administrative body the *bestuursrechter* will be competent. This is the judge of the administrative court.<sup>177</sup> The Work and Care Act contains several provisions for the social security benefit during the leave.<sup>178</sup> Only the maternity and adoption leave of this Act give the right to social security benefit from the General Unemployment

---

<sup>176</sup> Fees for the *kantonrechter* 2014, [www.rechtspraak.nl/Procedures/Tarieven-griffierecht/Pages/Griffierecht-sector-Kanton](http://www.rechtspraak.nl/Procedures/Tarieven-griffierecht/Pages/Griffierecht-sector-Kanton), last visited March 20 2014.

<sup>177</sup> Wolff, *Wet aanpassing arbeidsduur*, Deventer: Kluwer 2000, p.20.

<sup>178</sup> Article 3:7 and 3:18 Work and Care Act.

Fund, and therefore disputes regarding these social security benefits have to be resolved at the administrative court.<sup>179</sup> At the administrative court of first instance, the costs are €45,00. The costs for appeal depends on the sort of claim. Disputes concerning benefits are €22,00 and disputes concerning civil servants are €46,00.<sup>180</sup>

Civil servants are given the same rights as other employees, but the procedures differ. The civil servant has to lodge a notice of objection on the decision of the employer. This objection has to be sent to a decision making authority within six weeks. This authority will reconsider its decision and take a new decision. If the decision still is a rejection of the request the civil servant can bring an appeal to the lower court. After this appeal there is a possibility to bring an appeal to the administrative Supreme Court.<sup>181</sup>

### *Other competent authorities*

#### *1) The Board for Equal treatment*

In the context of the Act regarding the equal treatment of full-time and part-time workers, the Board for Equal Treatment (board) is charged, alongside the courts with a kind of enforcement of the Act. This ‘enforcement’ means that the commission can give non-binding decisions on equal treatment. These decisions can be used as legal support in a procedure at the court. Within the framework of the Act, the commission handles complaints (from employees) and is competent, on its own initiative or on request, to investigate whether unequal treatment has occurred based on working hours and to publish its opinion.<sup>182</sup> The advantage of the Board for Equal Treatment is that the procedure is free of charge. The downside is that there only a few procedures concerning labour law, leaves, part-time and full-time workers.<sup>183</sup>

#### *2) The Labour Inspectorate*

The Working Hours Act gives the Labour Inspectorate a guiding role in the enforcement of the Act. Article 8:1 determines that other civil servants can be appointed as supervisor. In practice, the Labour Inspectorate visits the firm in order to inspect the situation. In the light of reconciling work and family live this Labour Inspectorate does not have a direct guiding role. The aforementioned inspection regards situations such as resting time and working

---

<sup>179</sup> See: Table question 2, overview of features per form of leave.

<sup>180</sup> Table of costs in 2014 for administrative procedures, [www.rechtspraak.nl/Procedures/Tarieven-griffierecht/Pages/Griffierecht-Centrale-Raad-van-beroep](http://www.rechtspraak.nl/Procedures/Tarieven-griffierecht/Pages/Griffierecht-Centrale-Raad-van-beroep), last visited March 24 2014.

<sup>181</sup> Central Appeals Tribunal (for the public service and social security matters).

<sup>182</sup> In 2003 most of the large businesses and works councils were familiar with the commission (85% and 86%, respectively). More than 60% of the small businesses and employees were familiar with the commission. Most people were familiar with the work of the commission in evaluating complaints made by employees relating to unequal treatment and providing information about equal treatment legislation. The employers, businesses and work councils were least aware of the commission’s own investigations.

<sup>183</sup> Mission and legal competences of the Board, [http://mensenrechten.nl/sites/default/files/2013-02-14\\_Strategisch\\_Plan.pdf](http://mensenrechten.nl/sites/default/files/2013-02-14_Strategisch_Plan.pdf), last visited March 24 2014.

conditions. The Inspectorate is not active in terms of leaves, social security benefits and flexible working.<sup>184</sup>

### *Conclusion*

Concerning labour law the *kantonrechter* will, in most disputes, be the competent judge. In case of disputes regarding social securities granted by an administrative authority, or if the employee is a civil servant, the claim can be conducted at the administrative court.

## **4.2 What role is played by anti-discrimination law?**

### *Introduction*

The Dutch Civil Code has anti-discrimination standards and creates a legal standard concerning anti-discrimination. The Dutch Civil Code contains rules concerning equal treatment based on sex, working hours and duration of employment contracts. Furthermore, there is a prohibition on discrimination based on gender and<sup>185</sup> equal treatment for men and women is regulated.<sup>186</sup> Employers cannot discriminate between men and woman during the stage of entering into an employment contract. Intimidation and sexual intimidation is considered to be discrimination based on sex. Even an assignment or/and instruction to discriminate based on sex falls within the scope of the Dutch Civil Code.<sup>187</sup> To conclude, the Dutch Civil Code gives a broad protection against discrimination. The parties should take into account the provisions within the Acts before they invoke the Dutch Civil Code. Therefore, the Acts regarding the theme reconciling work and family life will be discussed. The national laws/Acts are influenced by European directives, which contain anti-discrimination standards.<sup>188</sup> Most of them are the result of implementation of treaties and European directives.

### *The Work and Care Act*

This Act contains several leaves, which are (partly) influenced by anti-discrimination law. The main purpose is to create a better balance between working and family life. Furthermore, the Act is a reflection of European directives which had to be implemented.<sup>189</sup> The maternity leave is strongly influenced by the European pregnancy-directive, which provides extra

---

<sup>184</sup> The total amount of inspections in 2012 was 27.473, a few concerns this theme, [www.inspectieszw.nl/Images/Jaarverslag-2012-Inspectie-SZW](http://www.inspectieszw.nl/Images/Jaarverslag-2012-Inspectie-SZW), last visited March 20 2014.

<sup>185</sup> Article 157 TFEU.

<sup>186</sup> Article 646 Book 7 of the Dutch Civil Code.

<sup>187</sup> Article 646 Book 7 of the Dutch Civil Code.

<sup>188</sup> Directives of the European Parliament 5th, July 2006, *PbEU* 2006, L 204/23. (Assembled in: Directives 2006/54/EC).

<sup>189</sup> Directive 92/85/ EC; article 11 section 2 *Verdrag inzake uitbanning van alle vormen van dsicriminatie van vrouwen*, article 3 section 2 and 3 ILO-Treaty; nr. 103 *inzake de bescherming van het moederschap*, article 10 sector 2 Esocil and article 8 section 1 ESH.

protection against dismissal and retaining jobs.<sup>190</sup> The main purpose of the directive is to enhance the safety and health care of the pregnant women. Given the fact that this Act, regarding maternity leave, is based on many international treaties and European directives, which protect equal treatment, it can be stated that it is influenced by anti-discrimination law. An example of anti-discrimination influence in case law is the a annual bonus for active labour. In this case the pregnant employee did not receive the an annual bonus based on presence and active labour. The ground for rejecting the bonus was that she was absent during here leave. This was not permissible given the fact that this bonus was an annual based retroactively bonus. She was discriminated on the ground of her pregnancy, which could not be justified.<sup>191</sup> Parental leave; the main purpose of this leave is to create more flexibility to combine parenthood with work. Whether the leave actually will be used to fulfil the tasks of parenthood is not important, the purpose of the leave is to create the possibility to combine those tasks with work.<sup>192</sup> Men can spend more time on raising their children, and women can use the leave to prevent to stop with working.<sup>193</sup> Therefore, it can be stated that regarding the parental leave the Act is not substantial influenced by anti-discrimination law.

#### *The Working Hours Adjustment Act*

The Act intends to provide employees, in private and public sectors, with a legal right to change their working hours. On the basis of this legislation every employee who has worked for a company or organisation with more than ten employees for at least one year has the right to work for more of fewer hours in the same position. The Act provides stimulating conditions for part-time working. At first sight, this is not influenced by anti-discrimination law.<sup>194</sup> Especially women claim their rights for long-term leave or adjustment of working hours.<sup>195</sup> Given the fact that this leave is without payment and/or social security benefits, and is requested by women in general, it disadvantages women. Therefore, it can be said that the present conditions may lead to indirect discrimination for women.

#### *The Equal Treatment Full-time and Part-time workers Act*

This Act can be seen as a final piece of the policy on improving the legal position of employees with different working hours. The aim of the Act is to give employees the legal right to equal treatment in employment conditions under which an employment contract is

---

<sup>190</sup> Directive 92/85/EC.

<sup>191</sup> Court of Justice 21th October 1999, JAR 1999/278 (Lewen); Van der Grinten, *Arbeidsovereenkomstenrecht*, Deventer: Kluwer 2011, p.164.

<sup>192</sup> Van de Grinten, *Arbeidsovereenkomstenrecht*, Deventer: Kluwer 2011, p.161.

<sup>193</sup> *Parliamentary Papers II, session year 1988/89*, 2- 528, nr.3, p.1.

<sup>194</sup> Ministry of Social Affairs and Employment, *Onderzoek ten behoeve van evaluatie WAA en WOA*, Den Haag 2000, p.31.

<sup>195</sup> Van de Grinten, *Arbeidsovereenkomstenrecht*, Deventer: Kluwer 2011, p.161.

entered into, extended or terminated, irrespective whether they work part-time or full-time, unless a distinction can be objectively justified. Therefore it is forbidden to treat part-time and full-time work unequal. In the present social context unequal treatment on the basis of working hours is often the same as discrimination on the basis of gender. The means of determining whether there is an objective justification for making a distinction is derived from the test developed by the High Court<sup>196</sup>, related to indirect discrimination based on sex. The following criteria are therefore used to make a judgement:

- the means selected to reach the goal must meet an actual need (of the company), also known as legitimacy;
- They must be appropriate to meet that goal - effectiveness;
- And they must also be necessary for that purpose - proportionality.

In addition to the courts, the Commission on Equal Treatment has been charged with enforcement of this Act. The judgements of the Equal Treatment Commission are not legally binding.<sup>197</sup> The Act is written with the aim to protect the part-time worker, the side effect of giving part-time workers legal benefits can result in a disadvantages for full-time workers.<sup>198</sup>

### *Conclusion*

The aforementioned Acts are not inspired by anti-discrimination laws, but have their main purposes on reconciling work and family life, health and safety. The disadvantage of those main purposes can result in unintended discriminatory effects. The Acts are regulated enough to give protection against discrimination. In case the Act does not provide enough protection, the Dutch Civil Code gives a broad legal framework on anti-discrimination law to fall back on.

## **4.3 Is there protection from victimisation?**

### *Introduction*

Victimisation is in the context of law, law against discrimination on grounds of sex, race, sexual orientation, belief, disability or age. This is for example the situation in which someone experiences less favourable treatment because he or she has brought a complaint under the legislation or has assisted someone else to do so. In general, there is a prohibition for dismissal during sickness, pregnancy (leave) and parental leave of the employee in the Dutch Civil Code.<sup>199</sup> The Dutch Civil Code refers to The Work and Care Act, and prohibits discharge during the period described in the Act.<sup>200</sup> This is during the leave after the

---

<sup>196</sup> Inspired by the case law of the European Court of Justice.

<sup>197</sup> Ministry of Social Affairs and Employment, *Onderzoek ten behoeve van evaluatie WAA en WOA*, Den Haag 2000, p.33.

<sup>198</sup> Van de Grinten, *Arbeidsovereenkomstenrecht*, Deventer: Kluwer 2011, p.184.

<sup>199</sup> Article 670 Book 7 of the Dutch Civil Code.

<sup>200</sup> Article 3:1 section 1 Work and Care Act.

childbirth/ as well as for the period of sickness as a consequence of the pregnancy. Furthermore, article 670 section 7 Book 7 of the Dutch Civil Code provides a prohibition for discharge on the ground that an employee claims his or her parental leave. It refers to the Work and Care Act as well as to adoption leave, the leave for a foster care, for short-term and long-term care leave and parental leave.<sup>201</sup> Within the Acts there are a few articles prohibiting victimisation, which will be discussed in the following paragraphs.

#### *The Work and Care Act*

The Act contains an article against prejudice of the employee's request for parental leave in article 6:1a. This article contains a prohibition for the employer to discharge on the ground that the employee claims parental leave.

#### *The Working Hours Adjustment Act*

This Act provides protection from victimisation in article 3 which describes that an employer cannot discharge the employee in the view of the circumstance that the employee claimed an adjustment of working hours. Termination of the labour contract in these circumstances is voidable, based on a breach with the public order of public morals. The employee has a period of two months in order to invoke the nullity.<sup>202</sup>

### **4.4 What remedies are available?**

#### *Introduction*

Within all the aforementioned Acts, many disputes may arise. In order to illustrate the available remedies each Act will be discussed briefly in the following paragraphs. In general, breaching the prohibitions of the Dutch Civil Code regarding discrimination is a wrongful act.<sup>203</sup> The employer is fully liable for the consequences of breaching these articles. There is no possibility for justification in order to avoid liability, even where there is absence of guilt or other justifications for the discrimination can be put forward. This liability is influenced by case law of the European Court and interferes with the national law on liability. According to national law the employer will not be liable in absence of guilt. This interference is the so called "risico aansprakelijkheid" risk liability with regard to breaching equal treatment based on sex.<sup>204</sup>

---

<sup>201</sup> Article 3:2 Work and Care Act, Chapter 5 and 6 Work and Care Act.

<sup>202</sup> *Parliamentary Papers II*, session year 1998/99, 26 358, nr. 26, p.1-2; article 40 Book 3 of the Dutch Civil Code.

<sup>203</sup> Court of Justice 8 November 1990, *NJ* 1992/224; article 162 Book 6 Dutch Civil Code.

<sup>204</sup> Bakels, *Schets van het Nederlandse Arbeidsrecht*, Deventer: Kluwer 2011, p.115 e.v.

## *The Work and Care Act*

### *a) Void*

The regulations of the Act are mandatory law. This means it is not possible to arrange otherwise at the expense of the employee. Otherwise, the arrangement will be void. Regarding the pregnancy leave, adoption leave it is not possible to deviate at the expense of the employee. Deviation is possible concerning the emergency leave, short-term leave and long-term leave, parental leave. Deviation at the expense of the employee is possible with collective agreement. Other ways of deviation are void.<sup>205</sup>

### *b) No change of contract*

In the Act, regarding the pregnancy leave, there is a right for women to return to an equal job with comparable terms and conditions of employment. Furthermore, women have the right to benefit from each improvement of the terms and conditions of employment if she was entitled to these improvements during absence.<sup>206</sup>

The right to parental leave is very strong.<sup>207</sup> If the employee requests his or her parental leave, the employer only can reject this request on substantial interest. This substantial interest is granted just in a few exceptional situations.<sup>208</sup> Granting parental leave cannot mean that there is job modification, unless the employee agrees.<sup>209</sup> The acquired rights regarding the job remain during and after the parental leave. Therefore, disputes will only concern the manner of distributing the working hours.

### *c) Withholding payment*

Regarding the short-term care<sup>210</sup>, long-term care and emergency leave, the employer can ask to make plausible that the employee was not able to work on the ground of care/emergency. If the employee cannot show that the leave was necessary there can be several sanctions, such as to withhold payment, or even dismissal.<sup>211</sup>

### *d) Procedural position*

Parental leave is very often used to try whether or not the adjustment of hours is favourable for the employee's family situation. To continue this balance in work and family live, employees often claim adjustment of working hours, which will be explained in the next paragraph. During a procedure for the adjustment of working hours the employer cannot claim that it is not possible to adjust the hours. Given the fact that the employee could work

---

<sup>205</sup> Drongelen, *De element van de arbeidsovereenkomst*, Zutphen: Paris2005, p.231.

<sup>206</sup> Directive 2006/54/EC, incorporated in the Dutch Law on Equal Treatment and the Dutch Civil Code, <https://zoek.officielebekendmakingen.nl/stcrt-2008-94-p25-SC85789.html>, last visited March 24 2014.

<sup>207</sup> Van Sprundel-Janssen, *Aanpassing van de arbeidsduur of ouderschapsverlof?* AR 2011/24.

<sup>208</sup> *Kantonrechter* Hilversum 23 augustus 2010, JAR 2010/241, *Kantonrechter*, Utrecht 3 november 2009, JAR 2010/117 and *Kantonrechter*, Amsterdam 18 december 2008, JAR 2009/43.

<sup>209</sup> *Kantonrechter*, Amsterdam 21th July 1995, JAR 1996/17.

<sup>210</sup> Parliamentary Papers, II 1999/2000, 27 207, nr. 3, p. 53.

<sup>211</sup> Van der Grinten, *Arbeidsovereenkomstenrecht*, Deventer: Kluwer 2011, p.158 and article 5:5, 4:1 and 4:2 Work and Care Act.

“part-time” during the parental leave, the employee has a strong position if the adjustment of hours is a follow up of the parental leave.

### *The Working Hours Act*

Sanctioning of this Act can be done in criminal, administrative and civil procedures. The values within this Act are criminal to safeguard the employees an adequate level of protection. This Act mostly regulates working conditions, such as resting periods, pauses and night work. Relevant within the theme of ‘reconciling work and family life’ is the resting period, the leave, of pregnant employees.

In case of an infringement of the regulations for female employers in the period before and after the birth and regulations concerning rest periods a fine can be imposed. Some articles of this Act impose administrative fines. This fine is charged by the administrative authority. The advantage of an administrative fine compared to a criminal fine is that the administrative procedure is shorter. Article 10:1 gives a list of finable offences. The level of the fine can amount, when committed by a natural person, to a maximum of €11,250. If an employer breaches the Act the fine will be for a maximum of €45,000. In case of repeated offence the amount of the penalty can be raised within 24 months.<sup>212</sup>

As mentioned before some regulations can have criminal sanctions. Criminal disposal is only relevant in cases where resolution is not sufficient within a civil or administrative enforcement. If the employer infringes the Act and is responsible for bringing the employee under minimum level of protection, a criminal sanction can be imposed.<sup>213</sup>

Furthermore, diverse articles of the Act are not sanctioned in a criminal or administrative manner, but can be enforced in civil procedures. The civil sanction is the nullity of a regulation of agreement that is in breach with the Act.<sup>214</sup>

In conclusion, most procedures of the theme of reconciling work and family life are not within the framework of this Act.

### *The Working Adjustment Hours Act*

Concerning this Act three problems may arise which can lead to procedures. In the first place the fact that the employee does not agree with the request of the employer to reduce or to increase the working hours. Secondly, there can be a dispute on the requested commencement date. Thirdly, parties can argue about the layout of the work rota after the adjustment of the

---

<sup>212</sup> Bakels, *Schets van het Nederlandse Arbeidsrecht*, Deventer: Kluwer 2011 p.40.

<sup>213</sup> Van Drongelen, *Arbeidstijden gebundeld*, Zutphen: Paris 2011, p. 20.

<sup>214</sup> For example: Article 5:4 chapter 3 of the Working Hours Adjustment Act.



working hours.<sup>215</sup> Arising from the request for adjustment parties will discuss the situation. In principle, the employer has to grant the request, unless he has substantial interest.

#### *Ending labour contract*

The dispute can accumulate in such a way that one of the parties wants to end the labour contract. In that case article 3 of the Act can be invoked. The employer cannot dismiss his or her employees on the ground that the employee requests for a change of working hours. If the employee does not respond on the request in time, the request will be granted automatically.<sup>216</sup>

#### *Procedural example*

The results of the disputes can differ, but an example is that an employee would like to reduce the number hours of working and this is refused. The employee can claim payment compensation. The employer could be subject to a penalty of €500 a day with a maximum of €50,000 to be cooperative with the request of adjustment. The employee can rely on the fact that he or she was legally entitled to do the request and there is a lack of substantial interest on the side of the employer. In case the employee is suffering damage, because the request should have been granted before, the employee can claim these damages.<sup>217</sup> The court formally only needs to assess whether the employer has a substantial interest for his or her firm to reject the request. Even though the judge does not assess the interest of the employee, he or she should demonstrate his or her urgent need for adjustment, just to be safe in the procedure.

#### *Conclusion*

The Acts provide that the employee maintains his or her rights regarding the labour after leave. In general, the leave cannot justify that annual rewards are not granted. The employee has a strong right in adjustment of working hours. The employer can only reject this request in case of substantial interest, which is almost never the case. The employer has a stronger right regarding the distribution of the working rota. The employee can claim the loss of income, as a result of unequal treatment.

---

<sup>215</sup> De Wolff, *Wet aanpassing arbeidsduur*, Deventer: Kluwer 2000, p.24.

<sup>216</sup> De Wolff, *Wet arbeid en zorg*, Deventer: Kluwer 2002, p.72.

<sup>217</sup> De Wolff, *Wet aanpassing arbeidsduur*, Deventer: Kluwer 2000, p.24.

## **Chapter 5: current developments and reforms**

### **5.1 Developments and reform in Europe**

#### *Social partners*

During the nineties the European Treaties gave new competences for the social partners, the "social agreement".<sup>218</sup> On the ground of article 154 TFEU the social partners are invited to start negotiation about atypical work. These negotiations led to several framework agreements, but important in this case is the directive 1997/81/EC for part-time work. The accepted directives serve a less wider scope than intended during the eighties.<sup>219</sup> The labour market has changed significantly. In the guidelines for the labour market atypical work is not a threat for the labour market anymore, and an infringement on the social economic security of the employees. Nowadays, flexible work can contribute to make the market more competitive, and increase the adaptability of the employers. Furthermore, flexible work can serve the needs of employees to combine their work and family life. The double general aims of protection of the employee and enhancing the flexibility of the labour market is known as "flexicurity".

Social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, the maximum total duration of successive fixed-term employment contracts or relationships, the number of renewals of such contracts or relationships.<sup>220</sup>

#### *Teleworking*

As a result of the computerization of the society in recent years, there is a great extent of flexibility in working on different locations and different points in time.<sup>221</sup> Besides working in the office it is also possible to work from a distance, like working from home. One of the benefits of teleworking is that it can support combining work and care tasks. Employees are free to choose the hours they work provided the work has been done (tasks and outcome related). They therefore are not losing time because of traffic to and from work and are also able to spread their work throughout the whole day. An accurate definition of teleworking is the following: "Distance working from the employer with the help of information- and communication technology."<sup>222</sup> Because of the computerization, the idea of teleworking has received a considerable amount of attention in recent years. The International Labour Conference (*Internationale Arbeidsconferentie*) accepted in 1996 an convention on

---

<sup>218</sup> Now article 153 and 153 of the TFEU.

<sup>219</sup> Peters en Beltzer, *Monografieën Sociaal Recht*, Deventer: Kluwer 2013, p.218.

<sup>220</sup> Court of Justice 4 July 2006, nr.C-212/04, RvdW 2006/755.

<sup>221</sup> Labour Foundation, *Aanbeveling mobiliteit en telewerken*, oktober 2009, publication number 4/09, p. 12.

<sup>222</sup> [http://web.archive.org/web/20070927023126/http://home.szw.nl/actueel/dsp\\_persbericht.cfm?jaar=1998&link\\_id=604](http://web.archive.org/web/20070927023126/http://home.szw.nl/actueel/dsp_persbericht.cfm?jaar=1998&link_id=604), last visited march 23 2014.

teleworking. On European level the European Commission took the initiative to ask social partners to make a framework agreement on supporting teleworking. This agreement established a general framework of rules for the introduction and use of this new form of working called teleworking.<sup>223</sup> The agreement was indeed reached in 2002, but it has not been implemented into binding EU law. Therefore, social partners at the national level are encouraged to elaborate this in their national collective agreements. Following this in 2009 the central employers' associations and trade unions represented in the Labour Foundation (*Stichting van de Arbeid*) recommended to the collective agreement parties to consider teleworking as a useful instrument to facilitate the combination of work and care tasks and to reduce automobile use.<sup>224</sup>

Recently, in 2013, the Central Bureau of Statistics Netherlands published an investigation about teleworking in the Netherlands.<sup>225</sup> It says that from 2004 till 2010 the number of firms using teleworking doubled. Teleworking is possible by more than the half of the firms in the Netherlands. Especially companies in the ICT sector and the financial sector use teleworking.<sup>226</sup> However, until now the concept of teleworking has not been incorporated into legislation in the Netherlands.

#### *The revised version of the Framework Agreement on Parental Leave*

In 1995 the first Framework Agreement on Parental Leave was signed between the European Union-level social partners, followed by a Council Directive in 1996.<sup>227</sup> This Framework Agreement on Parental Leave marked an important turning point for European Social Dialogue because it was the first agreement reached between the European Union-level social partners under the Maastricht social policy procedure.<sup>228</sup> The aim of this framework agreement was to promote common ground for improving work-life balance in Europe and to increase the participation of women in the labour market.<sup>229</sup> However, because the aim of this framework agreement was not reached yet and the social partners were considering that it was time to update the contents of this framework agreement, a revised Framework Agreement on Parental Leave was concluded by the social partners in 2009. This framework agreement

---

<sup>223</sup> M. Keading, *Towards an effective European single market*, Springer VS, p. 81.

<sup>224</sup> Labour Foundation, *Aanbeveling mobiliteit en telewerken*, oktober 2009, publication number 4/09, p. 14.

<sup>225</sup> [http://www.europa-nu.nl/id/vjcjd0adpbws/nieuws/telewerken\\_kan\\_bij\\_meer\\_dan\\_helpt?ctx=vh6tqk1kv3pv&s0e=vhdubxdwqzrw](http://www.europa-nu.nl/id/vjcjd0adpbws/nieuws/telewerken_kan_bij_meer_dan_helpt?ctx=vh6tqk1kv3pv&s0e=vhdubxdwqzrw), last visited March 23 2014.

<sup>226</sup> [http://www.europa-nu.nl/id/vjcjd0adpbws/nieuws/telewerken\\_kan\\_bij\\_meer\\_dan\\_helpt?ctx=vh6tqk1kv3pv&s0e=vhdubxdwqzrw](http://www.europa-nu.nl/id/vjcjd0adpbws/nieuws/telewerken_kan_bij_meer_dan_helpt?ctx=vh6tqk1kv3pv&s0e=vhdubxdwqzrw), last visited March 23 2014.

<sup>227</sup> Directive 96/34/EC.

<sup>228</sup> <http://www.worker-participation.eu/EU-Social-Dialogue/Interprofessional-ESD/Outcomes/Framework-agreements>, last visited March 23 2014.

<sup>229</sup> <http://www.worker-participation.eu/EU-Social-Dialogue/Interprofessional-ESD/Outcomes/Framework-agreements>, last visited March 23 2014.

increases the duration of parental leave from 3 to 4 months per parent, and applies to all employees regardless of their type of contract.<sup>230</sup> However, this revised Framework Agreement on Parental Leave still leaves a lot of discretion to national level. The more difficult issues are provided by ‘soft law’ conditions.<sup>231</sup>

## 5.2 Developments and reform in the Netherlands

Reconciling work and family life is a recurring theme in Dutch politics. From the debate several initiatives followed, some of which failed and some still have to be worked on. In the Netherlands there is a wide debate about giving employees the right to leave including a benefit or reward also in circumstances that are not specified, so that they have the choice to take leave when they consider this necessary, e.g. for training, for caring for a family member or a good friend, or whatever reason. To date, the schemes and initiatives in this field have not had a long life. Since these leaves leave considerable choice to the employee the financing is based on a form of saving by the individual, facilitated to some extent by tax deductions for the savings.

For example, the life-course savings scheme was provided in the Dutch Work and Care Act from 2006 to 2012. As mentioned in Chapter 1, under this life-course savings scheme there was an opportunity for employees to save a part of the gross salary tax-free in order to finance a period of unpaid leave in the future. However, this saving was limited to the maximum of 12 % of the gross salary each year. Because this life-course savings scheme was limited in extent, not many employees made use of this scheme. As of 1 January 2012, the life-course savings scheme is therefore no longer accepting new participants.<sup>232</sup> A so-called Vitality savings scheme was announced to replace the life-course savings scheme in the course of 2013. However, the government decided not to implement this vitality savings scheme. Currently, there are no specific schemes but occasionally there are new calls that there should be a way to facilitate employees who need a time off from work in order to do some urgent things apart from those already regulated by the present Acts.

### *The Flexible Working Act*

A proposal was introduced to amend the Working Hours Adjustment Act into the Flexible Working Act (*Wet Flexibel Werken*). Basically, the proposal seeks to replace “duration of work” with “terms of work”. Thereby, the act (and its procedure as described in chapter 3) is no longer limited to the duration of work and the distribution of hours, but can also be used

---

<sup>230</sup> The framework agreement on parental leave applies to all employees regardless of their type of contract; [http://europa.eu/rapid/press-release\\_IP-09-948\\_nl.htm](http://europa.eu/rapid/press-release_IP-09-948_nl.htm), last visited March 23 2014.

<sup>231</sup> A. Veldman, *Uitbreiding ouderschapsverlof*, *TRA* 2009, 92.

<sup>232</sup> Transitional provisions will apply if employees were already participating in the scheme on this date.

for example for changing the location of work since the “terms of work” are not limited to (an adjustment in ) working hours. The scope of the aim of the act is broader than that of the original Working Hours Adjustment Act. The latter sought to accommodate an equal balance in work and care between men and women and facilitate work participation of women with care responsibilities. However, the new proposal mentions a broad variety of reasons for requesting an adjustment in terms of work. Employees should be able to balance work, care and education. This also includes bringing children to school or doing grocery shopping for a sick parent, a sick friend or even a sick neighbor. With the proposal for amendment of the Working Hours Adjustment Act, not just the working hours, but all terms of work might become more flexible. However, as more and more employees would rely on this possibility, it would become more and more difficult for employers to accommodate all requests. It might not be realistic to ask such a high degree of flexibility from employers and so it is not very likely the amendment will pass.

*Proposed amendment of the Work and Care Act and the Working Hours Adjustment Act*

At the end of 2013 the Minister of Social Affairs and Employment organised a meeting with several stakeholders to discuss the combination of work and care in the Netherlands. With regard to the background of this meeting can be stated: *‘‘For the quality of our society it is of great importance that people get the chance to develop themselves in the best possible way and to participate to the maximum in the society – on the labour market, but also in taking care of each other. This does not only affect the care for children, but also, to an increasing degree, the care for others in the society. [...] It is considered desirable that working people can combine the care for children, parents and other people in their environment with their work. Agreements to combine work and private life fall primarily under the responsibility of employees and employers.’’*<sup>233</sup>

However, the composition of and relationships within the Dutch society are changing. Therefore, the current legal framework needs to be revised. Two bottlenecks have been identified in the labour market: the economic independency of women and the strain on informal caregivers.

Regarding this first bottleneck the striking difference between the Netherlands and other European countries is that the Netherlands has a strong culture of women working part-time (73% of the working women). The government has taken several initiatives to make men and women aware of the importance to divide the work and care tasks equally.<sup>234</sup> With regard to

---

<sup>233</sup> Letter of the Minister of Social Affairs and Employment of November 18 2013, 32 855, nr 15, p.1.

<sup>234</sup> Letter of the Minister of Social Affairs and Employment of November 18 2013, 32 855, nr 15, p.3.

informal caregivers is can be stated that 14% of informal caregivers with a (part-time) job experience distress.<sup>235</sup>

To improve those situations, the government wants to focus on four topics in 2014:

- (a) arrangements with employers regarding the combination of work and (informal) care – social partners will play a key role and informal care friendly policies will be stimulated;
- (b) a statutory framework of leave forms which is in line with the changing needs of society;
- (c) preconditions, such as good and affordable childcare and
- (d) the division of care tasks between men and women.<sup>236</sup>

Concerning the revision of the forms a leave, the proposed amendment of the Work and Care Act and the Working Hours Adjustment Act comprises the following. Firstly, the paternity leave will be prolonged since investigations reveal that paternity leave has a positive effect on the father's involvement in taking care of the children and on the development of the children.<sup>237</sup> This extension of three days of the paternity leave (from two days) will be realised as an unconditional right under parental leave. Those three days will be unpaid.<sup>238</sup> Besides, a flexibility of the parental leave is proposed to the effect that the employee can apply for every desired way of parental leave.<sup>239</sup> The provisions with regard to maximum periods of leave, a certain distribution of leave hours, and the requirement that the employment contract must have lasted at least one year, will be deleted.<sup>240</sup> Hence the employee will be free with regard to the manner in which he or she uses the parental leave. The employer can only refuse an application in case of compelling business interest.

Concerning the long-term care leave the circle of persons in need of care will be enlarged. Furthermore the proposal provides for flexibility in the way of taking leave, by deleting some restrictive provisions.<sup>241</sup> In respect of short-term care leave the circle of persons will be amended likewise the long-term care leave. Moreover, the scope of application will be extended with two situations: (1) urgent, unforeseen or reasonably not outside of working hours 'schedulable' doctor's or hospital's visit by the employee or the necessary assistance thereof of a person out of the abovementioned circle; (2) necessary care on the first sick day of a person out of the abovementioned circle.<sup>242</sup>

---

<sup>235</sup> Gezondheidsmonitor 2012 (GGD, CBS and RIVM).

<sup>236</sup> Letter of the Minister of Social Affairs and Employment of November 18 2013, 32 855, nr 15, p.4.

<sup>237</sup> Fathers' leave, fathers' involvement and child development: are they related? OECD social, employment and migration working paper nr.40.

<sup>238</sup> Letter of the Minister of Social Affairs and Employment of November 18 2013, 32 855, nr 15, p.7.

<sup>239</sup> *Parliamentary Papers II*, session year 2010/2011, 32 855, nr.3, Explanatory Memorandum, 2.2.3.

<sup>240</sup> *Parliamentary Papers II*, session year 2010/2011, 32 855 nr.2, T to W, Legislative Proposal.

<sup>241</sup> *Parliamentary Papers II*, session year 2010/2011, 32 855 nr.2, Q to S, Legislative Proposal. See also: *Parliamentary Papers II*, session year 2010/2011, 32 855, nr.3, Explanatory Memorandum, 2.2.4.

<sup>242</sup> *Parliamentary Papers II*, session year 2010/2011, 32 855 nr.2, P to R, Legislative Proposal. See also: *Parliamentary Papers II*, session year 2010/2011, 32 855, nr.3, Explanatory Memorandum, 2.2.7.

As regards some of those proposals, the government will publish a memorandum of alternations in 2014.<sup>243</sup>

The Working Hours Adjustment Act will be amended on three points. Firstly the provision that states that the employee can only request for an adjustment once in two years, will be changed into 'once per year'. In addition, the current wording of the Act implies that adjustments have a structural and permanent character. However, there can be circumstances that only last for a certain period. Therefore, a provision will be included which enables the employee to adjust his or her working hours for a limited period. Thirdly, the possibility to request for an adjustment in case of contingencies will be introduced, even in if since the former request no year has been go by.<sup>244</sup>

To conclude, the right to flexible working will improve by the proposed amendment.

---

<sup>243</sup> Letter of the Minister of Social Affairs and Employment of November 18 2013, 32 855, nr 15, p.7.

<sup>244</sup> *Parliamentary Papers II*, session year 2010/2011, 32 855, nr.3, Explanatory Memorandum, 2.2.1.

**Annex 1: Employees with a care situation who were (not) on leave<sup>245</sup>**

				Gender	Men& women	Men& women	Men& women	Men& women	Men& women	Men	Men	Men	Men	Men	Women	Women	Women	Women	Women	
				Period	2005	2007	2009	2011	2013	2005	2007	2009	2011	2013	2005	2007	2009	2011	2013	
Employee with a long-term care situation	Employee has taken care of sick person	Total amount of employees who have taken care of long-term sick person	Total: employees who took care of long-term sick person	x 1 000	463	449	532	369	443	222	212	250	167	198	241	236	281	202	245	
			Total: employees who were on leave to take care	x 1 000	65	74	83	56	74	32	37	46	26	33	33	37	37	30	41	
			Reduction of working hours or holiday	x 1 000	14	12	17	9	23	6	7	11	5	14	9	5	6	4	9	
			Emergency leave or short term leave	x 1 000	6	6	7	5	4	3	3	3	2	2	3	2	3	3	2	
			Special or extraordinary leave	x 1 000	13	14	14	10	11	7	7	8	4	6	6	7	6	5	6	
			Short-term care leave	x 1 000	23	31	29	19	26	11	13	15	8	9	12	17	14	11	16	
			Long-term care leave	x 1 000	5	8	10	5	8	2	4	5	3	3	3	3	5	2	5	
			Unpaid leave	x 1 000	3	4	4	3	2	.	2	2	.	.	2	2	2	2	2	
			Other types of leave	x 1 000	4	6	9	6	4	3	3	5	3	2	.	3	4	3	2	
			Not on leave to take care, despite need	Total: employees not on leave to take care, despite need	x 1 000	86	103	105	68	76	41	47	46	28	31	45	56	59	40	45
		Financially not achievable		x 1 000	10	11	9	8	11	5	4	4	3	5	4	7	5	5	6	
		Job did not permit		x 1 000	35	39	40	26	29	19	20	18	13	11	17	19	22	13	17	
		No knowledge of types of leave		x 1 000	9	13	13	5	6	4	6	6	2	2	6	7	7	3	4	
		Too few days of leave		x 1 000	6	6	7	3	5	2	3	3	.	2	4	3	4	2	3	
		Other reasons why employee did not take care	x 1 000	25	34	34	27	25	11	13	14	10	10	14	21	20	17	14		
		Not on leave to take care, no need	Total: employees not on leave to take care, no need	x 1 000	308	265	339	239	285	148	126	157	110	130	160	138	181	129	155	
			Practice and need unknown	x 1 000	5	7	5	5	8	2	2	.	2	4	3	4	4	4	4	
		Amount of employees who have taken care of child, partner or elder	Child in the household	Total: employees who took care	x 1 000	52	57	71	56	55	27	28	35	27	28	25	29	36	30	28
				On leave to be able to take care	x 1 000	10	11	16	11	11	6	5	9	5	4	5	6	7	5	6
				Not on leave to take care, despite need	x 1 000	15	15	16	10	11	7	7	7	4	5	8	8	10	6	6
				Not on leave to take care, no need	x 1 000	27	30	38	34	32	15	16	19	16	18	12	14	18	18	15
				Practice and need for leave unknown	x 1 000	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.

<sup>245</sup> Centraal Bureau voor de Statistiek (Central Bureau for Statistics), Ouderschapsverlof; gebruik en duur, 24 maart 2014, www.statline.cbs.nl, search for: arbeid en zorg, last visited March 27 2014.



			Partner of the employee	Total: employees who took care	x 1 000	63	77	94	62	78	43	52	59	37	45	20	25	35	25	33					
			Partner of the employee	On leave to be able to take care	x 1 000	20	25	26	15	25	14	17	18	9	14	6	8	8	6	11					
			Partner of the employee	Not on leave to take care, despite need	x 1 000	15	23	21	17	17	10	15	13	10	10	5	8	8	7	6					
			Partner of the employee	Not on leave to take care, no need	x 1 000	28	28	45	29	34	19	20	27	17	19	9	8	18	12	15					
			Partner of the employee	Practice and need for leave unknown	x 1 000	.	.	.	.	2	.	.	.	.	.	.	.	.	.	.					
			Parent of the employee	Total: employees who took care	x 1 000	356	323	378	256	317	154	136	161	106	129	201	187	216	151	188					
			Parent of the employee	On leave to be able to take care	x 1 000	37	40	44	33	41	13	16	21	13	166	23	24	22	20	25					
			Parent of the employee	Not on leave to take care, despite need	x 1 000	60	68	69	42	50	25	26	26	15	16	35	42	43	28	34					
			Parent of the employee	Not on leave to take care, no need	x 1 000	256	210	261	177	222	115	92	113	77	94	141	118	149	100	127					
			Parent of the employee	Practice and need for leave unknown	x 1 000	3	5	3	3	5	.	2	.	.	3	2	3	3	3	2					
			Severity of sickness	Care for a life-threatening sickness	Total: employees who took care	x 1 000	134	123	139	93	120	62	51	60	41	48	72	71	79	51	72				
					Care for a life-threatening sickness	On leave to be able to take care	x 1 000	21	24	22	18	23	8	10	10	9	9	13	14	12	9	14			
						Care for a life-threatening sickness	Not on leave to take care, despite need	x 1 000	27	32	30	16	22	14	12	12	6	8	13	20	18	10	14		
							Care for a life-threatening sickness	Not on leave to take care, no need	x 1 000	84	65	85	58	72	40	29	37	26	29	44	36	47	32	42	
								Care for a life-threatening sickness	Practice and need for leave unknown	x 1 000	2	2	2	.	3	.	.	.	.	2	.	.	.	.	.
				Care for a non-life-threatening sickness					Total amount of employees who took care	x 1 000	330	326	393	276	324	161	161	191	125	150	169	165	202	151	174
					Care for a non-life-threatening sickness				On leave to be able to take care	x 1 000	44	50	61	38	51	24	27	36	17	24	19	23	25	21	27
						Care for a non-life-threatening sickness			Not on leave to take care, despite need	x 1 000	59	72	75	52	54	27	35	34	22	22	32	37	59	12	.
							Care for a non-life-threatening sickness		Not on leave to take care, no need	x 1 000	224	200	254	182	214	108	97	120	84	100	117	103	134	97	113
								Care for a non-life-threatening sickness	Practice and need for leave unknown	x 1 000	3	5	3	4	5	.	2	.	2	3	.	3	3	3	2
			Total amount of employees who took care with or without help of partner	Took care without help of the partner					Total: employees who took care	x 1 000	211	232	272	202	237	79	93	110	74	90	132	139	162	128	147
					Took care without help of the partner				On leave to be able to take care	x 1 000	37	47	48	33	47	17	23	25	13	19	20	25	23	20	29
						Took care without help of the partner			Not on leave to take care, despite need	x 1 000	49	59	59	45	44	19	25	23	17	17	30	34	36	28	27
							Took care without help of the partner		Not on leave to take care, no need	x 1 000	123	121	162	121	140	43	45	61	43	52	80	77	101	77	88
								Took care without help of the partner	Practice and need for leave unknown	x 1 000	3	4	3	3	5	.	.	.	.	2	2	3	2	2	2
				Took care with help of the partner					Total: employees who took care	x 1 000	252	217	260	167	207	144	119	141	93	108	109	97	119	75	99
					Took care with help of the partner				On leave to be able to take care	x 1 000	28	27	35	22	27	15	15	21	13	15	13	12	14	10	12
						Took care with help of the partner			Not on leave to take care, despite need	x 1 000	37	44	45	23	32	22	22	23	11	13	15	22	23	12	18
							Took care with help of the partner		Not on leave to take care, no need	x 1 000	185	144	177	119	145	105	82	96	67	78	80	62	81	52	67
								Took care with help of the partner	Practice and need for leave unknown	x 1 000	2	2	3	3	3	.	2	.	.	2	.	.	2	2	.
			Working hours per week	Working hours per week: 12 to 35 hours per week					Total: employees who took care	x 1 000	223	224	254	181	226	32	37	37	25	30	191	187	217	156	196
					Working hours per week				Working hours per week: 12 to 35 hours per week	On leave to be able to take care	x 1 000	26	32	32	25	36	3	5	4	4	3	23	27	28	21
						Working hours per week				Working hours per week: 12 to 35 hours per week	Not on leave to take care, despite need	x 1 000	40	49	50	30	40	6	8	6	3	6	35	41	44

			Not on leave to take care, no need	x 1 000	154	138	168	122	147	23	23	26	18	21	131	115	142	104	126	
			Practice and need for leave unknown	x 1 000	3	4	4	4	4	.	.	.	.	.	3	4	4	4	3	
		Working hours per week: 35 hours or more per week	Total: employees who took care	x 1 000	240	225	278	188	217	191	176	214	141	168	50	49	64	47	49	
			On leave to be able to take care	x 1 000	40	42	51	31	38	30	32	42	22	30	10	10	10	9	8	
			Not on leave to take care, despite need	x 1 000	46	54	55	38	36	35	39	40	25	25	10	15	15	12	11	
			Not on leave to take care, no need	x 1 000	154	126	170	118	139	124	103	132	93	109	29	23	39	25	30	
			Practice and need for leave unknown	x 1 000	.	2	.	.	4	.	2	.	.	3	.	.	.	.	.	
Employee did not take care of sick person	Total amount of employees who did not take care of long-term sick person	Total: employees who didn't take care of long-term sick person	Total: employees who did not take care of long-term sick person	x 1 000	158	199	215	134	154	130	150	159	101	109	28	50	57	34	46	
		Total: employees who were willing to take care	Total: employees who were willing to take care	x 1 000	77	89	93	64	73	61	66	69	50	51	16	23	23	14	22	
		To heavy	To heavy	x 1 000	4	4	3	3	3	2	3	2	2	.	.	.	.	.	.	
		Job did not permit	Job did not permit	x 1 000	50	40	40	30	29	45	34	33	27	23	6	6	7	3	6	
		No knowledge of types of leave	No knowledge of types of leave	x 1 000	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
		Too few days of leave	Too few days of leave	x 1 000	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
		Financially not achievable	Financially not achievable	x 1 000	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
		Someone else took care of sick person	Someone else took care of sick person	x 1 000	.	23	34	15	20	.	16	25	10	12	.	7	9	5	8	
		Other reasons why employee did not take care	Other reasons why employee did not take care	x 1 000	20	20	15	14	21	12	12	8	11	13	8	8	6	4	8	
		Did not want to take care of sick person	Did not want to take care of sick person	x 1 000	80	109	121	70	81	67	83	88	51	58	12	26	33	20	23	
	Unknown whether employee was willing to take care	Unknown whether employee was willing to take care	x 1 000	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	
	Total: employees who didn't take care of child, partner or elder	Child in the household	Child in the household	x 1 000	11	12	11	12	11	10	10	9	10	8	.	2	2	3	3	
		Partner of the employee	Partner of the employee	x 1 000	9	12	12	8	10	8	10	9	5	7	2	2	3	3	3	
		Parent of the employee	Parent of the employee	x 1 000	143	180	197	115	135	117	134	144	87	95	26	46	53	28	40	
Working hours per week	Working hours per week: 12 to 35 hours per week	Working hours per week: 12 to 35 hours per week	x 1 000	30	53	60	36	50	12	18	20	11	17	18	36	40	26	33		
	Working hours per week: 35 hours or more per week	Working hours per week: 35 hours or more per week	x 1 000	128	146	155	98	105	118	132	139	90	92	10	14	16	8	13		

Employee s with a short-term care situation	Employee e has taken care of sick person	Total: employees who took care of short-term sick person	Total: employees who took care of short-term sick person	x 1 000	461	458	509	404	431	208	209	237	186	200	253	249	272	218	232	
		Total: employees who were on leave to take care	Total: employees who were on leave to take care	x 1 000	142	154	157	140	151	70	75	82	69	76	72	78	75	72	75	
		Reduction of working hours or on holiday	Reduction of working hours or holiday	x 1 000	52	48	50	51	65	26	26	27	27	34	26	22	23	24	24	31
		Emergency leave	Emergency leave or short term leave	x 1 000	14	15	14	11	11	6	5	7	5	5	7	10	7	7	7	6
		Special or extraordinary leave	Special or extraordinary leave	x 1 000	22	24	22	22	15	12	12	13	13	9	9	11	9	9	9	7
		Short-term care leave	Short-term care leave	x 1 000	27	42	42	35	40	12	20	20	16	18	15	22	22	19	22	22
		Unpaid leave	Unpaid leave	x 1 000	7	6	7	4	6	3	3	3	.	4	4	4	4	3	2	
		Other types of leave	Other types of leave	x 1 000	21	22	24	18	19	11	11	12	8	9	10	11	11	10	10	
		Total: employees who were not on leave to take care, despite need	Total: employees not on leave to take care, despite need	x 1 000	62	59	62	47	49	25	26	26	20	20	37	33	36	27	29	
		Financially not achievable	Financially not achievable	x 1 000	6	4	5	2	5	.	2	2	.	2	5	2	2	.	2	
		Job did not permit	Job did not permit	x 1 000	21	25	23	17	21	9	11	11	7	9	12	14	11	9	12	
		No knowledge of regulations	No knowledge of types of leave	x 1 000	9	10	8	3	3	4	5	3	2	2	6	5	4	.	.	
		Too few days of leave	Too few days of leave	x 1 000	3	2	3	3	3	.	.	.	.	.	3	.	2	.	3	
		Other reasons why employee did not take care	Other reasons why employee did not take care	x 1 000	21	18	23	23	16	11	8	8	8	6	10	11	15	14	10	
	Not on leave to take care; no need	Not on leave to take care, no need	x 1 000	254	238	285	212	226	112	105	127	95	101	143	134	158	117	125		
	Practice and need unknown	Practice and need for leave unknown	x 1 000	3	8	6	5	6	.	3	2	2	3	2	5	4	3	3		
	Total amount of employees who took care with or without help of partner	Took care without help of partner	Total: employees who took care	x 1 000	214	259	285	246	244	73	104	121	103	104	141	154	164	143	141	
			On leave to be able to take care	x 1 000	64	88	92	86	89	26	40	48	39	42	38	47	44	47	47	
			Not on leave to take care, despite need	x 1 000	34	36	36	31	31	11	14	14	13	12	23	22	22	18	19	
			Not on leave to take care, no need	x 1 000	115	130	152	126	122	36	48	58	51	49	79	82	95	75	73	
			Practice and need for leave unknown	x 1 000	2	5	4	3	3	.	2	.	.	.	.	3	3	2	2	
		Took care with help of the partner	Total: employees who took care	x 1 000	247	200	224	159	187	135	105	116	83	96	112	95	108	75	91	
			On leave to be able to take care	x 1 000	78	66	64	54	62	44	35	34	30	34	34	31	30	24	28	
			Not on leave to take care, despite need	x 1 000	28	22	26	17	18	14	11	12	7	8	14	11	14	9	10	
		Not on leave to take care, no need	x 1 000	139	109	132	86	104	76	57	69	45	53	64	52	63	42	52		

		Practice and need for leave unknown	x 1 000	.	3	.	.	3	.	.	.	.	.	.	.	.	.	.	
Working hours per week	Working hours per week: 12 to 35 hours per week	Total: employees who took care	x 1 000	245	222	251	197	213	35	29	42	31	32	210	193	208	166	181	
		On leave to be able to take care	x 1 000	71	67	67	65	67	13	8	12	10	9	59	59	55	56	58	
		Not on leave to take care, despite need	x 1 000	34	29	35	24	24	4	4	6	3	3	30	25	29	21	22	
		Not on leave to take care, no need	x 1 000	138	121	144	106	119	17	17	24	18	20	120	105	121	88	99	
		Practice and need for leave unknown	x 1 000	2	5	4	2	3	.	.	.	.	.	2	4	3	2	2	
	Working hours per week: 35 hours or more per week	Total: employees who took care	x 1 000	215	236	259	207	219	173	180	195	155	168	43	56	64	52	50	
		On leave to be able to take care	x 1 000	70	87	89	75	84	57	68	70	59	67	13	19	19	16	17	
		Not on leave to take care, despite need	x 1 000	28	30	27	23	24	21	22	20	17	17	7	8	7	7	7	
		Not on leave to take care, no need	x 1 000	116	117	141	106	107	94	88	103	78	82	22	29	37	28	26	
		Practice and need for leave unknown	x 1 000	.	2	2	3	3	.	2	2	2	2	.	.	.	.	.	
Employee did not take care of sick person	Total employees who did not take care of short-term sick person	Total: employees who did not take care of short-term sick person	x 1 000	228	230	250	200	208	166	147	154	122	120	62	83	96	78	88	
		Total: employees who were willing to take care	x 1 000	96	74	71	57	65	77	55	52	42	44	19	18	19	15	21	
		To heavy	To heavy	x 1 000	2	2	.	.	.	.	.	.	.	.	.	.	.	.	
		Job did not permit	Job did not permit	x 1 000	65	32	31	27	30	55	28	25	22	24	10	5	6	5	6
		No knowledge of types of leave	No knowledge of types of leave	x 1 000	.	.	.	.	.	.	.	.	.	.	.	.	.	.	
		Too few days of leave	Too few days of leave	x 1 000	.	.	.	.	.	.	.	.	.	.	.	.	.	.	
		Financially not achievable	Financially not achievable	x 1 000	.	.	.	.	.	.	.	.	.	.	.	.	.	.	
		Someone else took care of sick person	Someone else took care of sick person	x 1 000	.	25	24	15	18	.	17	16	11	11	.	8	7	4	7
		Other reasons why employee did not take care	Other reasons why employee did not take care	x 1 000	27	13	15	13	15	19	9	10	8	8	9	5	5	5	7
		Did not want to take care of sick person	Did not want to take care of sick person	x 1 000	114	155	179	143	143	79	91	103	80	76	35	64	77	63	67
	Unknown whether employee was willing to take care	Unknown whether employee was willing to take care	x 1 000	18	.	.	.	.	10	.	.	.	.	8	.	.	.	.	
	Working hours per week	Working hours per week: 12 to 35 hours per week	Working hours per week: 12 to 35 hours per week	x 1 000	65	78	90	78	84	21	19	18	16	17	44	58	72	62	67
Working hours per week: 35 hours or more per week		Working hours per week: 35 hours or more per week	x 1 000	163	152	160	122	124	145	128	136	106	103	18	24	24	16	21	

**Annex 2: Parental leave: use and duration**<sup>246</sup>

Industrial branch	Gender		Period	2000	2001 (after revision Work and Care Act)	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
All economic activities	Total men and women	Number of employees entitled to parental leave	x 1 000	264	262	273	269	266	270	258	260	257	264	258	265	261	
		Total number of employees who took parental leave	x 1 000	54	52	63	71	72	79	77	76	70	79	83	101	97	
		Paid parental leave	x 1 000	25	24	36	39	42	46	47	40	38	43	48	53	50	
		Duration of parental leave	months	8	9	9	8	9	9	10	9	11	11	12	14	14	
		Hours parental leave per week	hours	13	11	10	11	10	10	9	10	10	10	9	9	9	
	Working hours per week of employee	hours	29	29	30	29	30	30	31	31	31	31	31	31	31	30	
	Men	Number of employees entitled to parental leave	x 1 000	158	155	160	153	152	150	144	141	138	136	136	137	129	
		Total number of employees who took parental leave	x 1 000	15	15	23	23	26	27	29	25	25	26	31	37	27	
		Paid parental leave	x 1 000	8	8	13	13	17	15	19	12	14	13	18	20	13	
		Duration of parental leave	months	9	11	11	10	10	11	11	11	13	14	14	18	17	
		Hours parental leave per week	hours	9	8	8	8	9	8	9	8	8	8	8	8	7	
	Working hours per week of employee	hours	36	36	37	36	37	37	37	37	37	37	37	37	37	37	
	Women	Number of employees entitled to parental leave	x 1 000	105	105	112	115	114	120	114	120	119	128	122	128	132	
		Total number of employees who took parental leave	x 1 000	39	37	40	48	46	51	48	50	45	53	52	63	70	
		Paid parental leave	x 1 000	17	15	23	26	26	30	28	27	25	30	30	32	37	
		Duration of parental leave	months	7	8	8	8	9	8	9	9	10	10	11	12	13	
		Hours parental leave per week	hours	14	13	12	12	11	11	10	10	11	12	10	10	10	
	Working hours per week of employee	hours	26	25	25	26	26	26	27	27	27	28	27	27	28		
	Governmental branch	Total men and women	Number of employees entitled to parental leave	x 1 000	76	75	82	83	83	85	84	80	82	92	88	97	.
			Total number of employees who took parental leave	x 1 000	29	31	38	40	42	45	48	43	39	44	42	54	.
Paid parental leave			x 1 000	16	17	30	30	32	37	38	31	30	35	33	40	.	
Duration of parental leave			months	8	9	10	8	9	9	10	9	11	11	11	13	.	
Hours parental leave per week			hours	11	11	10	11	10	10	9	10	10	10	9	8	.	
Working hours per week of employee		hours	27	28	29	28	29	28	30	29	29	30	29	29	.		
Men		Number of employees entitled to parental leave	x 1 000	26	26	28	28	28	27	28	23	24	24	25	28	.	
		Total number of employees who took parental leave	x 1 000	7	8	11	11	13	13	15	10	11	11	12	16	.	
		Paid parental leave	x 1 000	5	6	10	10	13	12	15	9	9	9	11	13	.	
		Duration of parental leave	months	11	11	11	10	11	11	11	11	14	15	13	18	.	
		Hours parental leave per week	hours	8	8	9	8	8	8	8	9	7	7	9	7	.	
Working hours per week of employee		hours	35	36	36	35	37	36	36	37	37	37	37	36	.		
Women		Number of employees entitled to parental leave	x 1 000	50	50	54	55	55	59	56	57	58	68	63	70	.	
		Total number of employees who took parental leave	x 1 000	21	23	27	29	29	32	32	33	28	33	31	39	.	

<sup>246</sup> Centraal Bureau voor de Statistiek (Central Bureau for Statistics), Ouderschapsverlof; gebruik en duur, 19 juli 2013, [www.statline.cbs.nl](http://www.statline.cbs.nl), search for: ouderschapverlof, last visited March 27 2014.

		Paid parental leave	x 1 000	11	10	19	20	19	25	24	22	20	25	22	27	.	
		Duration of parental leave	months	8	8	9	8	9	8	9	9	10	10	11	11	.	
		Hours parental leave per week	hours	12	12	11	12	11	11	10	10	11	11	10	9	.	
		Working hours per week of employee	hours	25	25	25	25	25	25	27	26	26	27	26	26	.	
Non-governmental branche	<b>Total men and women</b>	Number of employees entitled to parental leave	x 1 000	190	186	190	187	185	186	175	181	175	172	170	169	.	
		Total number of employees who took parental leave	x 1 000	26	21	25	31	30	34	29	33	31	35	41	46	.	
		Paid parental leave	x 1 000	9	7	6	9	10	8	9	9	9	9	9	14	13	.
		Duration of parental leave	months	7	9	9	8	9	9	9	10	11	11	13	16	.	
	Hours parental leave per week	hours	14	12	10	10	10	10	10	10	9	10	11	10	10	.	
	Working hours per week of employee	hours	30	30	31	31	32	32	32	33	33	33	33	33	33	.	
	<b>Men</b>	Number of employees entitled to parental leave	x 1 000	133	130	131	126	125	125	117	118	114	112	111	110	.	
		Total number of employees who took parental leave	x 1 000	8	7	12	12	13	15	14	15	14	15	20	21	.	
		Paid parental leave	x 1 000	3	2	3	3	4	3	4	4	4	3	6	7	.	
		Duration of parental leave	months	8	10	10	10	9	11	10	10	12	13	15	19	.	
		Hours parental leave per week	hours	10	7	8	9	10	8	9	8	9	9	8	9	.	
	Working hours per week of employee	hours	37	37	37	37	37	38	37	37	37	38	38	38	37	.	
	<b>Women</b>	Number of employees entitled to parental leave	x 1 000	56	54	58	61	59	61	58	63	61	61	59	59	.	
		Total number of employees who took parental leave	x 1 000	18	14	13	19	17	19	15	18	17	20	21	25	.	
		Paid parental leave	x 1 000	6	5	3	6	6	5	5	5	4	5	8	5	.	
		Duration of parental leave	months	7	8	7	8	8	8	8	9	10	10	12	13	.	
		Hours parental leave per week	hours	16	15	13	11	11	12	11	10	11	13	11	11	.	
	Working hours per week of employee	hours	27	26	26	27	28	28	28	29	28	29	29	29	29	.	