

Minimum wage in The Netherlands: present state of play (1 February 2017)

Two new laws in The Netherlands

1. The EU posting of workers directive and the enforcement directive have been transferred into one law in The Netherlands, the so called **WagwEU** (Wet arbeidsvoorwaarden gedetacheerde werknemers in de EU) as from June 2016. This is the date that every European member state had to implement the enforcement directive into their own national law. The Netherlands has done this on time, but the notification system will only become operational by **January 2018** the earliest.
2. From the **1st of January 2017** another Dutch law, the so called “Wet Aanpak Schijnconstructies” (**WAS**) is introduced. This law doesn’t focus on minimum wages, but aims to combat bogus constructions by introducing the concept of **joint liability**.

Both of these laws are also (partly) applicable to foreign operators and their personnel when they carry out work (transports) in The Netherlands.

How and when does it apply to foreign operators

Based on the WagwEU employers who post their workers to The Netherlands are obliged to pay their personnel the Dutch minimum wage. If there is however a Dutch collective labor agreement applicable in the concerning sector, then the wages of the collective labor agreement apply. The Dutch transport sector has a collective labor agreement which is binding for all road transport companies in The Netherlands. As long as this CAO is binding foreign operators underlie the wages of the Dutch CAO. If at any time the CAO is not binding anymore (i.e after the duration period of a CAO and a new CAO is not yet in force) then the minimum wage applies

However, The Dutch Ministry of Social Affairs has up to now communicated that the posting of workers directive in transport is only applicable in the case of cabotage. Bilateral, third country and transit operations do not underlie the Dutch CAO or minimum wages. That means that according to the present state of play the Dutch CAO only applies when drivers execute transports within The Netherlands (cabotage)

Next to the obligated wages also the other elements as described in article 3 of the posting of workers directive apply:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
- the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- health, safety and hygiene at work; protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- equality of treatment between men and women on non and other provisions -discrimination.

What level of remuneration is to be paid to workers posted to The Netherlands?

The driver has to be paid according to the CAO level in transport or the Dutch minimum wage level. The CAO level for an international driver is €13.91 gross per hour and the minimum wage level is 8.96

Euro gross per hour.

When do foreign transport operators have to comply with the Dutch CAO standard/ minimum wage?

According to the posting of workers directive a 'posted worker' means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works. As the phrasing 'limited period' has not been defined exactly, the Dutch CAO standard is applicable when a transport is executed on the territory of The Netherlands.

However, The Dutch Ministry of Social Affairs has up to now communicated that the posting of workers directive in transport is only applicable in the case of cabotage. Bilateral, third country and transit operations do not underlie the Dutch CAO or minimum wages. That means that according to the present state of play the Dutch CAO only applies when drivers execute transports within The Netherlands (cabotage)

There is however a debate (and also an ongoing important court case) in The Netherlands about the question if the posting of workers should also involve international transports. This is not clear yet. That means that the Dutch position can still change.

What are the obligations employers have to fulfill?

1. Only upon request, employers are obliged to give to the inspectorate all the information needed for a correct enforcement of Directive 2014/67
2. The following documents have to be kept available at the place of work:
salary slips including proof that salary has been transferred to the driver, labor contract, working time overviews (for the period drivers have worked in The Netherlands) proof of social security
The documents do not have to be on board of the vehicle, however is not forbidden. The documents may also be transferred digitally to the inspectorate.
3. Employers are obliged to notify their personnel in advance, about where, when and who is going to do the transports in The Netherlands.
Only cabotage operations have to be notified. The Netherlands will introduce an electronic register where drivers can be notified. However, this register is still under construction and will be ready from 1 January 2018. This means that up till then foreign companies can of course not notify their personnel
4. The employer needs to appoint a contact person in The Netherlands to which the inspectorate can turn to in case of requests.

Obligation 1, 2 and 4 are already in force and the employer can be sanctioned if he refuses to provide the requested information.

A violation of the WagwEU can be sanctioned with a fine up to 20.500 Euro per infringement.

What documents do employers from countries other than The Netherlands have to keep available?

Basically relevant documents which prove that the driver is paid against the Dutch CAO standard, like salary slips, proof that salary has been transferred to the driver, labor contract, working time overviews (for the period drivers have worked in The Netherlands) proof of social security. The documents do not have to be on board of the vehicle, however is not forbidden. The documents may also be transferred digitally to the inspectorate.

The Dutch law says nothing about having to translate documents into the Dutch language.

Is a representative needed?

A contact person has to be appointed in The Netherlands, to whom the inspectorate can turn to if information is needed. It is up to the employer who he wants to appoint, however the contact person must be someone who has immediate access to the requested documents like salary slips, labor contracts etc.

Who is responsible for the right payment (WAS/Joint Liability)

Initially the employer is to be held responsible for the right payment. However, the Dutch WAS law foresees in a chain/joint liability, meaning that also the shipper can be held responsible if the employer i.e fails to meet the wage standards the driver should be entitled to. Both parties can be held responsible by the Dutch inspectorate/enforcers.

Upon request of the Dutch inspectorate, all documents and information needed to determine whether the right payment has been done, should be presented to the inspectorate/enforcers.

Do self-employed drivers also fall under the scope of the Dutch law

Yes, but only to a certain extent. They underlie the obligation to hand over to the inspectorate all necessary documents the inspectorate wants to check (i.e the check if you are really an entrepreneur and not a bogus self-employed driver) Again only upon request, these documents have to be transferred to the inspectorate, also digitally possible.

If the electronic notification register is ready, also self-employed drivers are obliged to register themselves.