

Employing staff in the **Netherlands**



Table of Contents

1.0	INTRODUCTION	4
2.0	EMPLOYMENT OF FOREIGNERS	4
2.1	EEA, EU and Swiss Nationals.....	4
2.2	Other Foreign Nationals	4
3.0	EMPLOYMENT CONTRACT.....	4
3.1	Form of Employment Contract.....	4
3.2	Written Particulars.....	4
3.3	Fixed Term Contract	4
3.4	Variations.....	4
4.0	PROBATION	5
5.0	REMUNERATION	5
5.1	Basic Pay	5
5.2	Overtime Elements of Remuneration.....	5
6.0	WORKING HOURS AND TIME OFF.....	5
6.1	Standard Working Hours.....	5
6.2	Overtime.....	5
7.0	LEAVE.....	5
7.1	Vacation and Public Holidays.....	5
	Vacation	5
	Public holidays.....	6
7.2	Sick Leave and Pay	6
7.3	Family Leave.....	6
	Maternity.....	6
	Paternity.....	6
	Adoption/Foster Leave	6
	Parental Leave.....	7
	Short-Term Care Leave	7
	Long-Term Care Leave	7
	Right to request flexible working.....	7
7.4	Other leave.....	7

8.0	SOCIAL SECURITY COVERAGE.....	7
8.1	Introduction	7
8.2	Basic Pension.....	8
8.3	Basic Health Coverage	8
8.4	Unemployment Insurance.....	8
9.0	WORKER'S COMPENSATION INSURANCE	8
9.1	WEGAM Insurance.....	8
9.2	Accident Insurance.....	8
10.0	SUPPLEMENTAL BENEFITS.....	8
10.1	Health Insurance	8
10.2	Occupational Sick Pay.....	9
	Sickness Insurance.....	9
10.3	Occupational Pension	9
10.4	Death & Disability Insurance	9
	Life Insurance	9
	Disability Insurance	9
10.5	Company Car	9
10.6	Others.....	10
	Gym Membership.....	10
	Saving Plan	10
11.0	TERMINATION OF EMPLOYMENT	10
11.1	Means of Termination	10
	Termination by the employer	10
11.2	Transitional Allowance.....	10
11.3	Notice of Termination.....	10
11.4	Redundancy	11
11.5	Settlement Agreements.....	11
11.6	Post-Employment Restrictions.....	11
11.7	Providing References.....	11
12.0	DISCRIMINATION	12
13.0	INDUSTRIAL RELATIONS	12
14.0	DATA PROTECTION.....	12

This publication may not deal with every topic within its scope nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice with regard to any specific case. Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on this document alone. For specific advice on any particular feature you should seek advice from the IRIS HR Consulting representative.

1.0 INTRODUCTION

The main legislation governing employment relationships in the Netherlands are Dutch Civil Code and various statutes such as Working Hours Act, Working Conditions Act, Act on Minimum Wages and Minimum Holiday Allowances, etc.

2.0 EMPLOYMENT OF FOREIGNERS

2.1 EEA and Swiss Nationals

EEA and Swiss nationals do not require either a work permit or a residence permit to be employed in the Netherlands.

Local registration with the local municipality is required however, if these nationals are to remain in the Netherlands for longer than four months.

2.2 Other Foreign Nationals

All employees from outside the EEA require work permits from the Ministry of Social Affairs and Employment, except in certain circumstances such as for highly skilled migrants (defined by an annually indexed salary), and scientific researchers and physicians in training to become specialists regardless of their annual salary.

Only employers can apply for work permits and they will need to demonstrate, in most cases, that it is not possible to fill the vacancy through recruitment within the Netherlands or the EEA.

3.0 EMPLOYMENT CONTRACT

3.1 Form of Employment Contract

An employment contract may be agreed orally or in writing.

3.2 Written Particulars

Employers must provide their employees with written particulars of the principle terms and conditions of employment as below within one month of employment:

- > Names and addresses of the parties;
- > Place of work;
- > Job title and description of the role;

- > Start date (and the duration of the contract in case of a fixed term contract);
- > Working hours;
- > Remuneration and its payment intervals;
- > Holiday entitlement;
- > Termination notice;
- > Any pension scheme;
- > Any relevant collective agreement;
- > Whether the contract is a temporary employment contract.

The statement may be provided electronically with electronic signature with the employee's agreement. From 1st August 2022 it is expected that additional information will need to be provided on:

- > The conditions of any probationary period
- > Any entitlement to training or education
- > The arrangements for termination of contracts
- > The separate components of wage slips e.g., bonuses

3.3 Fixed Term Contract

A fixed term contracts may be renewed up to three times as long as the total duration of the consecutive contracts does not exceed 36 months. Fixed-term contracts lasting six months or less may not include a probationary period.

For fixed term contract with a duration of six months or more, the employer must inform the employee in writing at least one month before the expiry whether or not the contract will be continued and on what conditions.

Probationary periods for fixed term contracts vary from none to 2 months depending on the duration of the contract.

3.4 Variations

Any variation to the employment contract must be agreed expressly between the parties. Certain variations will further need the prior consent of the works council.

Where the contract or the company handbook provides the employer with the right of unilateral variation, the employer may only rely on that right if justified by a business requirement that outweighs the needs of the employees.

Any changes to the written particulars must be provided within one month of the change except in the case of a statutory amendment or relevant collective agreement.

4.0 PROBATION

Probationary periods are commonly applied in the Netherlands, the duration of which depends on the applicable CBA and is based on the employee's professional level. Where no CBA applies, probationary periods are usually agreed at three months for blue-collar workers and six months for white-collar workers. Probationary periods will not generally exceed six months in duration.

5.0 REMUNERATION

5.1 Basic Pay

CBAs generally prescribe minimum wage rates (often on a graduated scale depending on the employee's skills and qualifications) and other benefits. There is no statutory minimum wage.

Wages are usually paid on the 26th of each month by direct bank transfer, and employees are entitled to an itemized pay slip.

5.2 Other Elements of Remuneration

It is common for CBAs to provide for the payment of 13th and 14th month salaries, which are payable around Christmas and in June or July respectively.

6.0 WORKING HOURS AND TIME OFF

6.1 Standard Working Hours

The Working Hours Act provides for a daily working hour limit of 12 hours and a weekly working hour limit of 60 hours. The average working hours should not exceed 55 hours per week over a period of 13 weeks, or 48 hours over a period of 16 weeks. Collective agreements often provide for normal working time of less than 40 hours per week. Employees are entitled to regular breaks when

working for 5.5 hours or more. The number and time of the breaks are to be agreed upon between the employer and the employee.

Executives and senior staff earning more than three times the minimum wage are exempted from the working time rules and rest periods, except in the case of night shifts or risky work.

6.2 Overtime

New legislation in the Working Hours Act abolished the rules regarding overtime from 2007.

7.0 WORKING HOURS AND TIME OFF

7.1 Vacation and Public Holidays

Vacation

The statutory minimum paid annual vacation entitlement equates to four times the number of the employee's weekly working days/hours, which means 20 working days for an employee working full-time five days a week. It is common practice to provide an enhanced annual entitlement of 23 days or more.

Employees must take their statutory holidays before the end of 6 months after the year in which the holidays were accrued, and employers must inform the employee of any holiday leave which is about to expire. If the employees have not reasonably been able to take those holidays due to illness or lack of cooperation by the employer, accrued vacation entitlement will lapse five years after the year during which it has been accrued.

This six-month limitation period does not apply to holiday entitlement over and above the statutory provision. For these additional holidays, any accrued but untaken days lapses 5 years after the calendar year in which it accrued.

Pay in lieu of the statutory minimum holiday is only permitted on the termination of employment.

Public holidays

There are 9 public holidays in the Netherlands:

- > New Year's Day (1 January)
- > Easter Sunday and Monday
- > King's Day (27 April)
- > Ascension Day
- > Whit Sunday and Monday
- > Christmas Day (25 December)
- > 2nd Day of Christmas (26 December)
- > Liberation Day – Every five years on 5th of May.

Employees do not have a statutory right to paid time off on these days, however, in practice, they are usually paid through collective agreements or terms within the contract.

7.2 Sick Leave and pay

Statutory sick pay is 70% of the salary for a maximum of two years (subject to a cap of the daily salary and in the first year of illness no less than the statutory minimum wage). It is possible to agree, by individual or collective agreement, that the first 2 days are waiting days where the employee is not entitled to any payment.

Additional sickness benefits, such as full pay for a limited period of time, or 70% of the actual salary regardless of the cap, are also commonly provided for in individual or collective agreements.

Employees are protected from dismissal during the first two years of their sickness absence.

7.3 Family Leave

Maternity

The statutory maternity leave is for 16 weeks and is applicable to all female employees, regardless of their length of service or hours of work. Of the 16 weeks of maternity leave, four to six weeks are taken before the due date. Pregnant employees are not allowed to work between four weeks before the due date and six weeks after the actual date of delivery.

The maternity leave may be extended in case of prolonged hospital admission of the baby or in case of a multiple birth.

While on maternity leave, employees are entitled to their full pay, subject to a daily cap. Maternity pay is usually paid by the employer who then claims it back from the state.

Employees are protected against dismissal during their pregnancy, maternity leave, during illness caused by her pregnancy or childbirth following their maternity leave, and for a period of six weeks after they resume work after maternity leave or after pregnancy or childbirth related illness.

Paternity

The Employment and Care Act grants employees the entitlement to one week of paid paternity or 'birth' leave after the partner of the employee has given birth, which can be taken within a period of four weeks after the childbirth. To be eligible as a partner, the employee must be married to the person who has given birth to the child; have a registered partnership with the mother; co-habit with the mother; or have acknowledged the child as their own.

In addition, employees will receive 5 weeks of additional unpaid birth leave to be taken in the first 6 months after the baby's birth. Subject to fulfilling the requirements, eligible employees will receive 70 percent of their wages (capped at the maximum daily wage) from the Employment Insurance Agency.

Adoption/Foster Leave

Employees are entitled to six weeks' leave in connection with the adoption/fostering of a child, which can be taken within a period of 26 weeks – From 4 weeks before the arrival of the adopted or foster child up to and including 22 weeks afterwards.

While on leave, employees can apply for adoption and foster care allowance which equates the employee's daily wage subject to a cap.

Parental Leave

Any employee who has a child under the age of eight is entitled to take unpaid parental leave. The length of the leave is calculated as twenty-six times the number of working hours per week per parent per child, which gives 26 weeks for a full-time employee.

Parental leave is unpaid; however, employees taking parental leave may qualify for a tax credit. As of 21 August 2022, employed parents will receive benefits from the Employment Insurance Agency during the first 9 weeks of parental leave. The parental leave will be paid at 50% of the daily wage, up to a maximum of the 50% of the statutory daily wage. The 9 weeks of paid leave are to be taken up until the child's first birthday. The remaining 17 weeks which is unpaid can be taken up until the child's 8th birthday.

Employees on parental leave are protected against dismissal.

Short-term care leave

Employees are entitled to short-term care leave on 70% pay (subject to a cap) for a maximum of two weeks (2 x their normal working week) per twelve months in connection with illness of a partner, child or parent, provided the employee is the only person who can look after the ill person at that moment in time.

Long-term care leave

Employees are entitled to unpaid long-term care leave to take care of a partner, child or parent who suffers from a life-threatening illness.

The leave is for a maximum of six times the number of contract hours per week per twelve months.

Right to request flexible working

For employers with ten or more employees, employees with one year's service or more are entitled to request for a reduction or increase of their working hours.

The employer is required to consult with the employee on this request and inform the employee

of its decision in writing no later than one month before the intended start date. Employers can only refuse such a request for compelling business reasons.

Other leave

Employees are also entitled to paid time off in case of unforeseen personal emergencies.

8.0 SOCIAL SECURITY COVERAGE

8.1 Introduction

The Dutch social security system is a comprehensive system. It is comprised of two parts:

- > "Social welfare benefits". Funded by the central government, these provide a basic standard of living for the more vulnerable within the community. It is non-contributory and means-tested.
- > "Social insurance benefits". These are compulsory, not means-tested and funded with contributions from both the employer and employee. The social insurance benefits have two elements –
- > Employee insurances (covering unemployment, long-term disability and sickness); and
- > National insurances (covering old age or survivors' pensions, child benefits, disability benefits for young people and independent workers).

Employer contributions towards the social security system can include the following:

- > Health insurance 6.95%
- > Childcare 0.50%
- > Standard disability 6.96%
- > Disability insurance surcharge 0.09%
- > Work resumption premium 1.24%
- > Average redundancy calculation 1.37%
- > General unemployment 3.60%

8.2 Basic Pension

The Dutch pension scheme has three main pillars:

- > The basic old age pension scheme
- > Occupational pensions schemes
- > Personal pensions

The General Pensions Act (AOW) provides individuals aged 66 or over with a state pension. To qualify for the full State pension, individuals must have paid social security contributions for at least 50 years.

The basic pension rate is calculated using 70% of the net minimum wage, which is then modified to accommodate the different circumstances on an individual basis (i.e., married or co-habiting).

8.3 Basic Health Coverage

In January 2006 a single healthcare system came into force, under which everyone is obliged to secure themselves under a private medical insurance scheme of their own choice. The composition of the basic package is set by law. Insurance companies are legally obliged to accept and insure anyone who applies to them, regardless of age or health status. The CAK enforces the basic health insurance law and is authorised to fine anyone who does not register for health insurance within 3 months, or, for continued failure to register for insurance, can arrange insurance for individuals and then collect the premiums through the individual's payslip.

8.4 Unemployment Insurance

Employees are insured against the financial risks of unemployment, provided they meet specific criteria stipulated by the Unemployment Act. Premiums on unemployment insurance are paid by the employer only.

Unemployment benefits may be paid up to a maximum duration of 3 years and 2 months, depending on the employee's employment history.

9.0 WORKERS' COMPENSATION INSURANCE

Risks at work are covered by the general social security system and there is no separate compulsory work injury compensation plan. Therefore, many employers voluntarily take out group insurances for accidental death and disability.

9.1 WEGAM Insurance

In the Netherlands, Employer Liability Insurance does not cover employees for motor vehicle accidents, even whilst driving on behalf of the company. The driver of a vehicle involved in an accident whilst travelling on company business, may make a claim against his employer for damages; a car passenger travelling on behalf of the company can make a claim for damages against the driver. Consequently, as a protection against such liabilities, Dutch companies secure themselves with WEGAM insurance.

9.2 Accident Insurance

Most companies insure their employees for accidental death or disability since this is a relatively cheap insurance to purchase. Typically, the amount insured is for a multiple of salary. This is normally 1x salary for accidental death and 2x salary in the event of accidental disability.

10.0 SUPPLEMENTAL BENEFITS

10.1 Health Insurance

As mentioned above, it is a statutory requirement for Employees to purchase their own medical insurance. The basic level insurance required by law will not cover elements such as medicines, dental, physiotherapy or psychological assistance. Employees can therefore elect to purchase a higher-level plan to include these elements. The additional cover can be paid either by the employee or subsidised by the employer.

Employers can also elect to fund enhancement to the statutory provision for their employees. This can be in the form of a group insurance for a larger number of employees, or on an individual basis. Additional benefits paid by the employer are considered to be taxable.

Where companies have only limited numbers of employees, a cash contribution towards the private element, which may be capped at a set rate per month, is usually provided in lieu of an actual group medical plan.

10.2 Occupational Sick Pay

Sickness Insurance

The employer is legally obliged to continue with salary payment for up to 2 years at a minimum rate of 70% of the (capped) daily wage, in the event of employee sickness absence. Subsequently, the majority of Dutch companies secure an insurance that will assume the burden of salary continuation for long-term employee absences. This insurance is not deemed to be an employee benefit, but as a protection for the employer.

There are various options available with sickness insurance (percentage of payout/deferral periods). Typically, such insurance would look to provide employees with 100% of salary for the first year, reducing to 70% of salary for the second year. Such insurance schemes can also build in the services of the Arbodienst (a certified organisation consisting of health and safety specialists), who will act as a liaison point for the employee and the employer, for the re-integration to the workplace.

10.3 Occupational Pension

Approximately 90% of Dutch companies provide access to a pension scheme via the employer or offer assistance with an individual private pension plan. The trend is to set up group pension schemes on a defined contribution basis. Although this is generally not mandatory, some sector-wide pension schemes stipulate mandatory membership for members. Sector-wide pension schemes are mostly Defined Benefit schemes. The contribution rate is calculated as a percentage of 'Pensionable Salary' to a defined 'Ceiling', which is offset by an amount equivalent to the state pension and is usually also linked to the employee's age. The Pensionable Salary, Ceiling, offset amounts and Employer pension contribution percentage are set centrally on 1st January annually.

10.4 Death & Disability Insurance

Life Insurance

It is not common to implement a separate 'life insurance' scheme in the Netherlands.

Typically, a survivor's pension is built under the umbrella of the pension plan and is calculated using the remaining years of service up to the age of 65. This element is usually fully funded by the employer.

Disability Insurance

Some employers provide additional long term disability insurance to cover 70% of pay, including social security (WIA) and is made up of two insurances:

- > A WIA-gap insurance for income below the threshold which complements social security to the 70% level. Premiums are usually split 50/50 between employee and employer.
- > A WIA-excess which covers 70% of income exceeding the annual fixed salary threshold. Employees usually pay a minimum of 50% (and sometimes up to 100%) of the premium for this element.
- > The benefit provided by the employer is not taxable for the employee.

10.5 Company Car

Company cars are a common benefit for sales-related employees and executives.

Usually, the employee is able to use the car for private use as well as business purposes. Such private use is considered to be a taxable benefit if in excess of the stipulated annual kilometer rate. Private mileage recorded above this limit is deemed to be taxable. Subsequently, it is advisable for company car drivers to retain mileage logs in order to apportion private versus business usage. Car allowances are a common alternative to the company car and are treated as an additional element of pay.

10.6 Others

Gym Membership

There are initiatives in place to encourage employee gym membership. This benefit promotes a healthy attitude to fitness from a corporate level and has proven to be extremely popular in recent years.

Savings Plan

Many companies utilise tax-efficient savings plans as a means to incentivise employees. Schemes such as the Spaarloonregelingen (referred to as Spaarloon) are approved schemes that allow employees to have tax-free savings via monthly deductions from payroll, spread over a four-year period. Providing the annual savings do not exceed the approved limits, the employee can enjoy the savings tax-free, with the employer shouldering the 15% wage tax burden on the employee's behalf. Savings in excess of the tax-free limit are taxed as income.

11.0 TERMINATION OF EMPLOYMENT

11.1 Means of Termination

Termination by the employer

There are eight grounds for dismissal that are considered lawful by the Dutch Civil Code:

- > Dismissal for business reasons;
- > Dismissal of an employee who has been incapacitated for work for more than two years;
- > Regular absence due to illness that has unacceptable consequences for the business operations;
- > Poor performance;
- > Culpable acts or omissions by the employee;
- > Refusal to perform responsibilities on the grounds of serious conscientious objections;
- > Impaired working relationship; or
- > Other circumstances as a result of which the employment contract cannot be maintained, such as detention or the lack of a work permit.

A ninth ground (cumulation) has been introduced from 1st January 2020 by the Labour and Market Balance Act, which allows employers to combine different grounds for dismissal.

Employers may terminate an employment contract in three ways:

- > On notice with a permit from the UWV (Netherlands' employment and social security office) for dismissals on grounds a) business reason and b) more than two years of incapacity;
- > On application to the Cantonal Division of the District Court for dismissals due to other reasons (ground c) to h) above); or
- > By summary notice or during probationary period without involving the UWV and the court.

11.2 Transitional Allowance

Irrespective of the termination route (UWV or court), the employer will have to pay a 'transitional allowance' on dismissal of an employee (including the situation where a temporary contract is not renewed), except in certain situations (such as in the case of severe culpable acts or omissions by the employee, termination upon the employee reaching retirement age, termination by mutual consent).

With effect from 1st January 2020, the transition allowance shall be calculated as one-third of a monthly gross salary for each full year of service and pro rata for incomplete year of service, regardless of the age or years of service of the employee.

11.3 Notice of Termination

The statutory minimum notice to be given by an employee is one month.

The statutory minimum notice to be given by employer increases with length of service as follows:

-
- > 1 month if the employee has been employed for less than 5 years;
- > 2 months if the employee has been employed for at least 5 years but no more than 10 years;
- > 3 months if the employee has been employed for at least 10 years but no more than 15 years;
- > 4 months if the employee has been employed for 15 years or more.

The notice period runs to the end of the calendar month.

The statutory minimum notice does not apply during the probationary period.

Where the agreed notice period differs from the statutory provision, if the required notice from the employee exceeds one month (but cannot exceed six months), the notice to be given by the employer must be at least twice that period.

Garden leave is possible, although rare. Payment in lieu of notice is only permissible with the employee's agreement.

Notice is not required where either party has material grounds to terminate the contract on summary notice. This is usually due to a fundamental breach of contract which renders the continued employment relationship unreasonable and is likely to occur only in exceptional circumstances.

11.4 Redundancy

In order to terminate employment on economic grounds (redundancy), the employer will need to seek a dismissal permit from the UWV. If the UWV refuses to support the termination, the employer may ask the Cantonal Judge to authorise the dismissal. Similarly, where the UWV does issue a dismissal permit, the employee is able to ask the Cantonal Judge to restore the contract. Either party is able to appeal decisions of the Cantonal Judge to the Court of Appeal and the Supreme Court.

There are rules to follow regarding the selection of employees for redundancy.

Where the employer proposes to make 20 or more employees redundant within a period of three months at one establishment, the employer must notify the trade union(s) involved, the works council and the UWV as per the Notification of Redundancy Act (WMCO). The employer must consult with the trade union(s) involved and the works council on the collective redundancy.

During collective consultation with the trade union and/or works council, severance pay better than the transitional allowance is often requested.

11.5 Settlement Agreements

It is possible to terminate an employment relationship by mutual agreement of the parties.

Once the mutual separation agreement is signed, the employee will have a 'cooling off' period of two weeks during which time they can reconsider the decision.

11.6 Post-Employment Restrictions

Post-employment restrictions are valid and enforceable provided they are reasonable both in duration and geographical restriction. Only written and signed non-competition clauses are valid and enforceable. Generally, a non-competition clause of one to two years is likely to be upheld by the court.

Note however, non-competition and non-solicitation clauses are not allowed in temporary contracts, except where there are compelling business interests.

11.7 Providing References

Employers must, upon request, provide the employee with a written reference covering the following upon termination of employment:

- > The start and end date of employment;
- > The work performed and the daily/weekly working hours;
- > A description of how the employee fulfilled his obligations (to be included at employee's request);
- > A description of how the employment agreement was terminated (to be included at employee's request);
- > The reason for the termination in case of dismissal by the employer (to be included at employee's request).

12.0 DISCRIMINATION

Dutch law provides protection against discrimination on grounds of race, nationality, sex, sexual orientation, civil status, religion, belief, political conviction, marital status, duration of employment relation (full-time or part-time), employment relation (permanent or temporary), disability or chronic illness and age.

13.0 INDUSTRIAL RELATIONS

A Works Council is mandatory for enterprises that normally employ 50 or more people. Setting up a Works Council may also be required by a collective labour agreement, even if the enterprise normally employs fewer than 50 people.

For enterprises that normally employ fewer than 50 people, a voluntarily council can be formed by the employees, or a representative body can be created. This type of body does not entail the same powers or obligations as a legally implemented works council.

The powers and rights of the works council can be broadly categorised into three:

- > Right to information,
- > Right to consultation, and
- > Right to consent/endorsement.

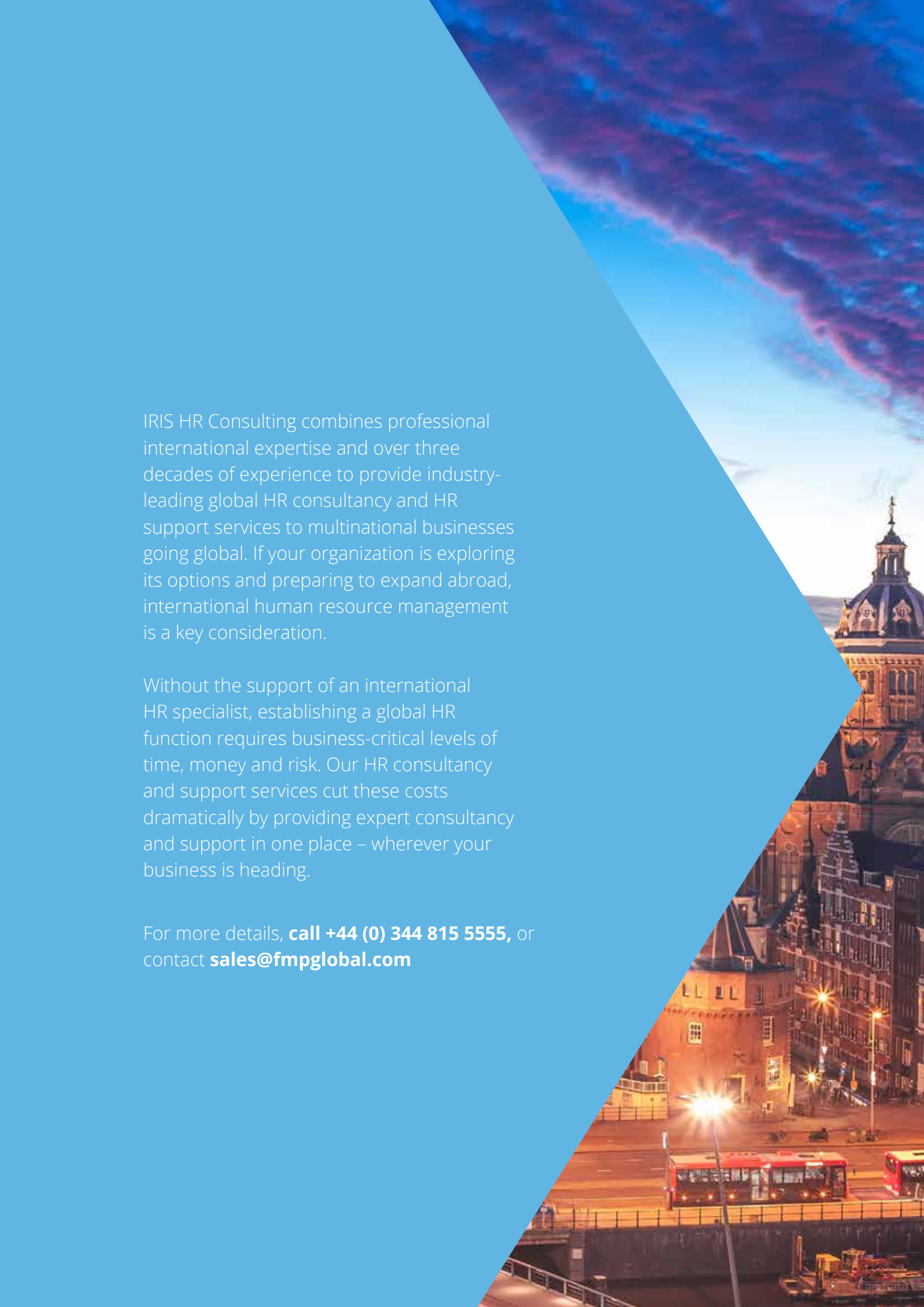
Employees who are or have been involved in Works Council duties enjoy special protection against dismissal.

Collective agreements negotiated by trade unions and employers, or employers' organisations are common for large companies or in large industries.

14.0 DATA PROTECTION

The Dutch GDPR Implementation Act came into effect on 25 May 2018, introducing only a handful of opening clauses and derogations from the GDPR.

The Dutch Data Protection Authority is the national supervisory body for data protection.



IRIS HR Consulting combines professional international expertise and over three decades of experience to provide industry-leading global HR consultancy and HR support services to multinational businesses going global. If your organization is exploring its options and preparing to expand abroad, international human resource management is a key consideration.

Without the support of an international HR specialist, establishing a global HR function requires business-critical levels of time, money and risk. Our HR consultancy and support services cut these costs dramatically by providing expert consultancy and support in one place – wherever your business is heading.

For more details, **call +44 (0) 344 815 5555**, or contact **sales@fmpglobal.com**

IRIS HR Consulting

Heathrow Approach

470 London Road

Slough

Berkshire

SL3 8QY

+44(0) 0344 815 5555

sales@fmpglobal.com