

ICT professionals/expatriates and important changes in Dutch labor law

Since November 2000 important changes were implemented in the Dutch labor law regarding certain foreigners working in the Netherlands. In this article I will focus on some of these changes and inform you about their effects.

Why change?

The law governing employment of certain foreigners in the Netherlands, the *Wet Arbeid Vreemdelingen* (WAV), first came into force in 1994. In general, this law was regarded as efficient, straightforward and clear. However, according to Dutch government, some adjustments were needed to increase the efficiency of implementation and further improvement in the enforcement of the law. To this end an external research bureau assessed the law and found room for improvement and modernization. After consulting with several parties, the Dutch Minister for Social Affairs and Employment Mr. W. Vermeend, put forward a proposal for change to the Dutch legislature, resulting in the approval of the *Wet van 28 september 2000*, the *Besluit van 20 oktober 2000* and subsequent measures. The new regulations feature some interesting changes.

Special treatment of certain categories of jobs

Last year it was recognized that the Dutch ICT sector was under threat from the continued lack of sufficient numbers of professionals. It is now clear also other sectors within Dutch commerce and industry may also face similar threats. The new regulations offer a possible temporary 'solution' and state that the Central Employment Office may exempt certain ICT jobs or categories of jobs with regard to the statutory obligation to file job openings with the local Employment Office. Normally, when intending to employ a non-EU citizen, the prospective employer must file the job opening at his company for a period of at least five weeks before applying for a work permit. Skipping the compulsory listing means less paperwork and costs for the prospective employer and (in an ideal situation) a shorter application procedure for the work permit. The Central Employment Office may grant the aforementioned exemption for a period of up to six months. Under certain circumstances an extension of this period is possible. Since April 2, 2001 applications for ICT related work permits may be lodged directly with the Central Employment Office instead of the local Employment Office branches. This is to ensure a swift adjudication of these applications.

Key ICT personnel of an international group of companies

Key ICT personnel of an international group of companies may be temporarily employed in the Netherlands without first having to advertise the concerned job opening in a



Dutch newspaper or magazine and without the required filing of the job opening with the local Employment Office. This simplifies the work permit application considerably. In this way key ICT personnel may easily and speedily be transferred into the Netherlands. In order to be qualified as an international group of companies, the group must have subsidiaries or branches in at least three countries and must realize a substantial turnover. Joint ventures operations do not qualify. Former law required key personnel to be employed by the group for at least a period of one year. In practice this regulation often frustrated a smooth transfer of key ICT personnel. In the new regulations the 'one year criteria' is has therefore been abandoned. This will allow for more flexibility regarding international transfers. Key ICT personnel, such as top ICT managers and highly qualified ICT specialists, must possess specific specialist knowledge and experience that is essential for the Dutch subsidiary or branch of the group. Please note that in certain cases the key ICT professional will also need the pre-requirement authorization for temporary stay (*machtiging tot voorlopig verblijf*, MVV), a visitor's visa or/and a residence permit in order to travel to and reside in the Netherlands.

ICT trainees

Under the new law a regulation is incorporated regarding trainees. Trainees working for an international group of companies and who possess a degree may temporarily work in the Netherlands. The prospective employer must apply for a work permit but is not required to advertise and list the trainee's position (see above). The employer has to submit a detailed training program. This program needs to state the specific purpose of the training and must substantiate why the training program has to be followed in the Netherlands. To make sure that the trainee will return to his/her country of origin and does not

remain permanently employed in the Netherlands, the work permit is limited to a period of less than three years. In general this means that the foreign trainee can not obtain a residence permit with the annotation 'work permit is not required', and must therefore return to his/her country of origin.

Another legal novelty is the regulation that a foreigner (non EU) is allowed to install and adjust software in the Netherlands for a period up to four weeks without having to obtain a work permit. The foreigner has to be employed by a software company from outside the European Economic Area and may only come to the Netherlands on an incidental basis to install or adjust company software. This novelty is a clear improvement for the Dutch business community. The foreign software specialist may now perform his/her temporary services without a work permit. But what about visa requirements? Since the period is limited to a maximum of four weeks, the foreigner is not to apply for a Dutch residence permit. Only a "non-Dutch" national who intends to stay in the Netherlands for more than three months needs to apply for a residence permit with the Aliens Police of the municipality in which he or she is residing or staying. A foreign software specialist wishing to come to the Netherlands for short periods (see above) will in certain cases need a visitor's visa.

This article is for informative purposes only, is general in nature, and is not intended to be a substitute for competent legal and professional advice. Dutch rules and regulations regarding work permits, visitor's visas and residence permits/MVV's are continuously subject to change.

Patrick R. Rovers,
lawyer with Van Velzen C.S. The Netherlands B.V.
e-mail: wvcs.nl@vviworld.net