Equal treatment of persons with disabilities in employment in the Netherlands

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1. Legal framework on equal treatment for persons with disabilities in employment

1.1 Anti-discrimination laws

The Dutch legal framework for protecting the rights of people with disabilities is a comprehensive system that is based on constitutional principles, national legislation, and international obligations. At its core, this framework is established in Article 1 of the Dutch Constitution, which ensures the fundamental principle of non-discrimination. Since 2023 this article explicitly includes disability as a protected ground against discrimination.[1]

This constitutional foundation is further elaborated and implemented through a series of national laws and regulations, primarily influenced by European Union directives and international human rights treaties.

International influences on Dutch law include the European Convention on Human Rights (hereafter: ECHR), particularly articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination), provides additional legal grounds to exclude discrimination and to enforce reasonable accommodations.

The EU Directive 2000/78 (hereafter: Directive), also known as the Employment Equality Framework Directive, establishes a general framework for equal treatment in employment and occupation, including the prohibition of discrimination on grounds of disability. This directive has been implemented into Dutch national law through the Equal Treatment on Grounds of Disability or Chronic Illness Act (hereafter: WGBH/CZ).

The WGBH/CZ does not only prohibit discrimination; it imposes positive obligations on employers such as the obligation to make effective adjustments to accommodate employees with disabilities.[2] These adjustments can range from modifying physical workspaces to adapting work schedules, ensuring that individuals with disabilities can participate fully and equally in the labor market. What these adjustments specifically contain is not mentioned in the WGBH/CZ nor in the legislative history.

[1] *Stb*. 2023, 62.
[2] Article 2 WGBH/CZ.

There are, however, exceptions to these obligations. For instance, Article 3 of the WGBH/CZ states that the prohibition of discrimination does not hold in cases where the distinction is necessary to protect safety and health.[3] Also in cases of positive action aimed at creating or maintaining specific provisions and facilities for persons with disabilities or chronic illnesses, there is an exception.[4] Additionally, Article 3(2) WGBH/CZ permits indirect discrimination if it can be objectively justified by a legitimate aim and if the means to achieve that aim are appropriate and necessary.[5]

The United Nations Convention on the Rights of Persons with Disabilities (hereafter: CRPD) also has had an impact on Dutch policy and legislation. It obliges all parties, to take measures to ensure accessibility, provide reasonable accommodations, and promote inclusion across all sectors of society, not just in employment.[6] The CRPD was ratified in the Netherlands in 2016 and has been in effect since then.

The Dutch Ministry of Health, Welfare and Sport had set ambitions to implement this convention effectively, aiming for full involvement of people with disabilities in policy-making across all government organizations by 2040. [7] They aim to normalize employment for people with disabilities, ensuring adequate job opportunities and equal chances of finding work.

The UN Committee on the Rights of Persons with Disabilities (hereafter: UN Committee) plays a crucial role in monitoring the implementation of the CRPD internationally. In September 2024, following the Netherlands' first report on the implementation of the convention, the UN Committee issued recommendations to the Netherlands in its concluding observations. The UN Committee acknowledged in its review of the Netherlands' implementation of the CRPD some positive aspects yet also highlighted significant shortcomings.[8] In response to these recommendations, the College for Human Rights (CRM), as the national monitoring body for the implementation of the CRPD in the Netherlands, provided a report to the UN Committee.[9]

[3] Article 3 paragraph 1 sub a WGBH/CZ.
[4] Article 3 paragraph 1 sub c WGBH/CZ.
[5] Article 3 paragraph 2 WGBH/CZ.
[6] United Nations Convention on the Rights of Persons with Disabilities (CRPD).
[7] Nationale strategie voor de implementatie van het VN-verdrag Handicap, p. 21.
[8] Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of the Kingdom of the Netherlands*, 2024.
[9] Netherlands Institute for Human Rights, *Aanvullend rapport aan het VN-comité inzake de rechten van personen met een handicap*, 2024.

Despite the ambitions and plans of the Dutch legislation, the CRM has a lot of criticism on the Dutch law. In its report, the CRM highlighted several concerns and areas for improvement that align with the UN Committee's findings. A key concern raised by both the UN Committee and the CRM is the lack of a comprehensive strategy to fully implement all articles of the CRPD across all levels of government.[10] The UN Committee and the CRM have strongly recommended that the Netherlands develop an all-including strategy to implement the entire UN Convention at all governmental levels.[11] This strategy should actively involve people with disabilities and their representative organizations in its development and implementation, linked to the principle of "Nothing About Us Without Us." Furthermore, there is a call to ensure that the implementation of the CRPD extends to the Caribbean Netherlands, addressing the unique challenges faced by people with disabilities in these territories.

Provisions of the UN Convention can also play a role in horizontal relations, by meants of the provision of 'good employership', as established in Article 7:611 of the Dutch Civil Code (hereafter: BW). This article imposes a general obligation on employers to act as "good employers" by treating their employees fairly and responsibly. The concept of good employership includes a wide range of obligations, such as timely payment of salaries, ensuring a safe workplace, and granting annual leave. Importantly, the principle of good employership can serve as an instrument for incorporating international norms, such as those from the CRPD, into horizontal relationships between employers and employees. This allows for the indirect application of these international standards in private employment contexts, even in the absence of specific statutory provisions. By interpreting the duty of good employership in light of international obligations, courts can require employers to take proactive steps to promote equal opportunities and support inclusive participation in the workplace.

Moreover, as far as statutory and international provisions do not give a particular provision, good employership can be used to fill this gap. It also includes making reasonable accommodations to promote equal opportunities and support inclusive participation in the workspace.[12]

[10] Netherlands Institute for Human Rights, *Aanvullend rapport aan het VN-comité inzake de rechten van personen met een handicap,* 2024.
[11] Netherlands Institute for Human Rights, *Aanvullend rapport aan het VN-comité inzake de rechten van personen met een handicap,* 2024 & Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of the Kingdom of the Netherlands,* 2025.
[12] S. Burri, 'Discriminatie bij de arbeid bestrijden: ja! Maar hoe? Een bespreking van het SER-advies *Discriminatie werkt niet*!', *TRA* 2014/98.

1.2 Other laws relevant to equal opportunities and persons with disabilities

In an effort to increase the labor market participation of people with disabilities, the Netherlands introduced the Jobs Agreement and Quota Act for People with Occupational Disabilities (hereafter: Wbqa). This legislation aims to create 125,000 additional jobs for people with occupational disabilities by 2026, divided between the private sector (100,000 jobs) and the public sector (25,000 jobs).[13] The Wbqa operates through a dual mechanism: a voluntary agreement phase, where employers are encouraged to meet hiring targets, and a potential quota system that can be activated if voluntary targets are not met. To encourage employers, the law provides wage cost benefits for hiring individuals from the target group.

The Dutch legislative framework extends beyond anti-discrimination measures, incorporating comprehensive income protection and reintegration support for workers who have become disabled through the Work and Income According to Labor Capacity Act (WIA). This act ensures that employees who are unable to work due to illness or disability receive income protection, typically ranging from 70% to 100% of their salary.[14] The WIA provides different types of benefits (WGA for partially disabled employees and IVA for fully and permanently disabled employees) and imposes obligations on employers to support the return to work of disabled employees. This approach emphasizes the importance of reintegration and maintaining workforce participation for individuals with disabilities. Further details on the WIA will be discussed in section 3.2.

1.3 Conclusion

In conclusion, while the Netherlands has established an extensive legal framework for protecting the rights of people with disabilities, including constitutional provisions, national laws, and international treaty obligations, there remains significant work to be done. The challenge lies not only in refining and expanding legislative protections but also in ensuring their effective implementation across all sectors of society and all regions of the Netherlands. As the Netherlands continues to evolve its approach to disability rights, the focus must remain on full inclusion, equal participation, and the active involvement of people with disabilities in shaping the policies that affect their lives.

[13] Wet banenafspraak en quotum arbeidsbeperkten Kennisdocument.
[14] Article 51, 61, 62 & 63 WIA.

2. Definitions of the persons with disabilities

2.1 The definition of 'disability'

Both Dutch and international law, including the Directive and the CRPD, refrain from providing a conclusive definition of 'disability'. This deliberate lack of specificity allows for flexibility in interpretation, leaving the clarification of these terms largely to jurisprudence and legislative commentary. The explanatory memorandum to the WGBH/CZ explicitly states that a definitive definition is "neither necessary nor desirable," emphasizing that these concepts should evolve through judicial interpretation. Similarly, at the international level, the CRPD adopts a dynamic approach, defining disability as an evolving concept arising from the interaction between impairments and societal barriers that hinder equal participation.

The CJEU has played a crucial role in clarifying the concept of disability, addressing two key aspects: the permanence of the condition and the role of societal barriers. In the case of Chacón Navas, the CJEU established that disability entails a long-term limitation resulting from physical, mental, or psychological impairments that hinder participation in professional life.[15] This interpretation was further expanded in HK Danmark where the Court adopted a social-contextual model based on Article 1 of the CRPD.[16] The CJEU emphasized that disability arises not solely from impairments but from their interaction with societal barriers, thereby broadening its scope to include conditions like obesity[17] and temporary illnesses with long-term effects.[18] The Court clarified in the Daouidi-case that 'long-term' should be assessed at the time of the alleged discrimination, focusing on whether recovery is foreseeable in the short term, as supported by objective medical evidence.[19]

Dutch legislation includes both 'disability' and 'chronic illness' as grounds for discrimination in the WGBH/CZ, distinguishing between typically irreversible disabilities and long-term but not necessarily permanent chronic illnesses.[20]

[15] HvJ EG 11-07-2006, *ECLI:EU:C:2006:456* (*Chacon Navas*).
[16] HvJ EU 11-04-2013, ECLI:EU:C:2013:222 (*HK Danmark).*
[17] HvJ EU 18-12-2014, ECLI:EU:C:2014:2463 (*Kaltoft).*
[18] HvJ EU 1-12-2016, ECLI:EU:C:2016:917 *(Daouidi*).
[19] HvJ EU 1-12-2016, ECLI:EU:C:2016:917 *(Daouidi*).
[20] *Kamerstukken II* (Parliamentary documents) 2001/02, 28169, nr. 3, p. 24.

While this appears to provide broader protection than EU law, the CJEU's expansive interpretation of disability aligns closely with the Dutch approach, emphasizing long-term limitations and societal barriers rather than strict medical criteria or permanence.[21] For instance, conditions like cancer may qualify as disabilities under both Dutch law and CJEU jurisprudence if they significantly hinder professional participation, regardless of curability. This evolving interpretation demonstrates a shift from a purely medical model to a social model of disability, where the interaction between an individual's condition and societal barriers is central to the definition, and permanence is not a strict requirement as long as the condition has long-term effects on professional participation.

2.2 Interpretation by CRM

De Dutch legislator seems to consider recovery as a factor to determine disability, as indicated in the explanatory memorandum.[22] However, an examination of jurisprudence reveals that the CRM, which is not a court but an independent supervisory body that promotes, monitors, and protects human rights in the Netherlands, has largely aligned its interpretation with the jurisprudence of the CJEU, adopting a more expansive understanding of disability.

This alignment is evident in cases such as the case from February 26th 2015.[23] In this case, which involved an individual with cancer -a potentially curable condition- seeking employment, the court adopted the CJEU's interpretation, disregarding the question wheter the person concerned could still recover from the disease or not. The CRM stated:

"While chronic illness is not explicitly listed as a prohibited ground of discrimination in Directive 2000/78/EC, it is established case law of the CJEU that if a curable or incurable illness leads to a limitation consistent with the same definition, this illness may fall under the concept of disability within the meaning of Directive 2000/78/EC, provided it has been diagnosed by a physician and the limitation is long-term" (translated).[24]

This approach is confirmed in subsequent decisions, such in the CRM ruling of August 11th 2020[25], where the court explicitly references to the CJEU jurisprudence for explanation:

[21] HvJ EU 11-04-2013, ECLI:EU:C:2013:222 (*HK Danmark)*
[22] S.S.M. Peters, in: D.M.A Bij de Vaate (red.), *De zieke werknemer (MSR nr. 16)* 2021/2.4.5.3.
[23] CRM 26-02-2015, nr. 2015-18, par. 3.7.
[24] CRM 26-02-2015, nr. 2015-18, par. 3.7.
[25] CRM 11-08-2020, nr. 2020-71, par. 6.2.

"The Netherlands Institute for Human Rights (College) considers that the concepts of disability and chronic illness are not explicitly defined in the WGBH/CZ or its explanatory memorandum. However, the memorandum notes that a disability is, in principle, irreversible, while a chronic illness is, by nature, long-term.

The terms disability and chronic illness under the WGBH/CZ should be interpreted as an elaboration of the concept of disability as used in Directive 2000/78/EC. The Court of Justice of the European Union (CJEU) has further defined this concept, aligning it with the definition in the UN Convention on the Rights of Persons with Disabilities. According to the CJEU, a disability constitutes a condition that results in limitations which, in interaction with various barriers, prevent the individual from participating fully, effectively, and equally in professional life (see Kaltoft v. Billund Kommune).

Furthermore, the "long-term" nature of the limitations must be assessed in light of the individual's incapacity at the time of the alleged discriminatory act. Relevant factors include whether, at that time, there was no clear prospect of the incapacity ending in the short term or whether recovery would likely take a significant period (translated).[26]

The CRM thus seeks to align its interpretation with the explanations provided in the Directive and the CRPD. By doing so, the CRM ensures that its decisions are consistent with broader European and international legal frameworks. This alignment also reflects the CRM's commitment to upholding international standards in its national application of disability discrimination law.

2.3 Conclusion

In conclusion, while Dutch law uses the terms 'disability' and 'chronic illness' to as prohibition grounds, there is no definitive definition in either international or national law. However, guidelines for establishing disability have formed through jurisprudence. The Dutch courts have demonstrated a commitment to interpreting these concepts in alignment with EU law and CJEU jurisprudence, adopting a social approach of disability. This approach ensures a more inclusive understanding of disability, containing both permanent and long-term conditions that

[26] CRM 11-08-2020, nr. 2020-71, par. 6.2.

significantly impact professional life, regardless of their curability. This judicial interpretation effectively broadens the scope of protection under Dutch anti-discrimination law, aligning it more closely with the evolving European standards and the principles of the UN Convention on the Rights of Persons with Disabilities.

3. Equal treatment in the recruitment stage

3.1 Case law

Article 4 of the WGBH/CZ explicitly prohibits employers from discriminating against applicants based on disability or chronic illness during the recruitment and selection process. This provision has been the subject of numerous legal cases. The cases where employers (allegedly) do not engage a person because of their disability are ruled by the CRM (formerly the CGB).

Employers are not required to hire a person with a disability in every instance; valid reasons for rejection, such as lack of compatibility or exceptions under Article 3 of the WGBH/CZ, may apply. However, when a person with a disability applies for a position, stricter rules argue the acceptable grounds for rejection. Certain arguments for rejecting candidates are explicitly prohibited following Dutch caselaw. In the case of August 11th 2020, the rejection of a candidate was solely due to potential costs associated with their disability.[27] This was ruled as unlawful, as suitability for the role was not properly considered. Similarly, on November 11th 2019 a rejection solely based on a candidate's history of sick leave due to a chronic illness was ruled discriminatory.[28] Employers must also actively explore reasonable accommodations before concluding that a candidate is unsuitable, as ruled in the case of July 6th 2006.[29] Additionally, application forms that inquire about health conditions or periods of illness may discourage disabled individuals from applying and are therefore unlawful as well.[30]

The burden of proof in these cases lies initially with the employer. The requirements on proof are high demands. For instance, in the case of October 27th 2017, it was ruled that an employer had to give arguments that proved that a candidate's medical condition played no role in the rejection.[31] Subsequently, in the case of November 23rd 2017 the court emphasized that discriminatory intent is irrelevant; the argument that the rejection was not intentionally based on the disability is not a lawful argument.[32] When an employer does demonstrates an objective

[27] CRM 11-08-2020, nr. 2020-71.
[28] CRM 11-11-2019, nr. 2019-115.
[29] CGB 06-07-2006, nr. 2006-137.
[30] CRM 25-02-2014, nr. 2014-20.
[31] CRM 27-10-2017, nr. 2017-120.
[32] CRM 23-11-2017, nr. 2017-140.

business reason unrelated to the disability, such as in the case of October 17th 2016, the rejection can be deemed lawful.[33]

Safety concerns are another area where employers can invoke exceptions.[34] The courts however have set high standards for these claims. In the cases of December 3rd 2015 and May 26th 2016, it was established that safety exceptions require a well-substantiated argument showing a real danger.[35] If no thorough investigation into potential risks is conducted, the exception cannot be accepted.

It's important to note that not every unfavorable outcome for disabled applicants automatically constitutes unlawful discrimination. This is illustrated in several cases. An example is the case of April 14th 2020, where the applicant was not able to attend the interview due to her disability and did not specify when she could attend an interview.[36] The court ruled that employers are not obligated to wait indefinitely to fill a vacancy and therefor it was not an unlawful discrimination. The court clarified that employers may proceed with other applicants if no alternative proposals are made by the applicant.

Furthermore, in the case of October 20th 2020, the court ruled that an inconsistent or careless recruitment procedure alone is not sufficient to establish a presumption of discrimination.[37] In the case the applicant failed to present any additional facts that could suggest a link between the lack of feedback and their disability. Another case from January 16th 2020 further exemplifies this point.[38] Here, an applicant was rejected due to perceived low "energy levels". While the applicant claimed this was related to their physical disability, the court disagreed. The rejection was not ruled as discriminatory as the evidence suggested it was based on the applicant's interview responses, such as their stated inability to multitask, rather than their disability.

Lastly, a noteworthy case is the case from February 26th 2015, which demonstrates how cost considerations can sometimes justify what might otherwise appear to be discrimination.[39] In

[33] CRM 17-10-2016, nr. 2016-112.
[34] Article 3 paragraph 1 sub a WGBH/CZ.
[35] CRM 03-12-2015, nr. 2015-135; CRM 26-05-2016, nr. 2016-46.
[36] CRM 14-04-2020, nr. 2020-32.
[37] CRM 20-10-2020, nr. 2020-91.
[38] CRM 16-01-2020, nr. 2020-4.
[39] CRM 26-02-2015, nr. 2015-18.

this instance, an applicant was not hired due to her size (XL), as the company didn't supply work uniforms in that size. The employer argued that providing uniforms in all sizes would impose a disproportionate financial burden. The court accepted this as an objective justification, ruling that the discrimination was not prohibited in this specific context.

This body of jurisprudence underscores the nuanced balance between protecting individuals with disabilities and allowing employers legitimate discretion in recruitment decisions. It also highlights the importance of thorough investigations and reasonable accommodations to ensure compliance with anti-discrimination laws like the WGBH/CZ.

3.2 Measure to engage employers

The Netherlands tries to actively encourage the employment of individuals with disabilities through various financial incentives and measures.

An important encouragement lies in the so-called No-Risk Policy designed to soften employers' concerns about potential costs associated with sick leave among employees with a history of occupational disability. As stated in Article 29, paragraph 1, in conjunction with Article 29, paragraph 2, sub g and Article 29b of the ZW, this policy provides employers with the assurance that sickness benefits will cover wage costs during periods of illness of the employee, hereby removing a significant financial barrier to hiring people with a disability.[40]

To understand the significance of this policy, it's essential to explain how wage continuation during illness typically works in the Netherlands. According to Article 7:629 of the Dutch Civil Code (hereafter: BW), employers are obligated to continue paying wages to sick employees for a period of two years. In the first year of illness, the employer must pay at least 70% of the employee's last-earned gross salary, with the condition that this amount must not fall below the statutory minimum wage. Many collective labor agreements (in Dutch: cao) stipulate that employers pay 100% of the salary in the first year. In the second year of illness, the employer is required to pay at least 70% of the employee's salary, without the obligation to supplement it to the minimum wage level.[41] The No-Risk Policy, therefore, provides a significant incentive for employers to hire people with disabilities or chronic illnesses, as it unburdens the financial

[40] L. van den Berg, 'Arbeidsgehandicapte en arbeidsbeperkte werknemers met een gepercipieerd hoog ziekterisico', *Cursus Belastingrecht Archief* 2019/PH.2.1.2.D.e4.
[41] Article 7:629 BW.

risk associated with potential long-term illness of these employees. Under this policy, the UWV covers the wage continuation costs if the employee becomes ill, relieving the employer of this financial burden and thereby encouraging more inclusive employment practices.

The No-Risk Policy applies in two primary scenarios.[42] Firstly, when an employee with a previous WIA benefit entitlement becomes ill within five years of starting new employment, the employer can claim sickness benefits to reimburse the employee's expenses during illness. Secondly, it covers situations where an individual assessed as less than 35% occupationally disabled at the end of the WIA waiting period, and thus not eligible for WIA benefits, finds suitable employment with a new employer. If this employee becomes unable to work, the new employer is entitled to sickness benefits.[43] In both scenarios, the benefit typically equals 70% of the employee's daily wage, potentially increasing to 100% for the first 52 weeks if the employer is obligated to continue full wage payment.[44] This policy effectively transfers the financial risk from the employer to the UWV, thereby encouraging the employment of individuals with a history of occupational disability.

Other cases where this applies includes employees who have had problems due to their disability to finish education, individuals belonging to the target group of the Jobs Agreement, employees who receive or have received a Wajong-benefit (a benefit for the young disabled people), and those entitled to employment support from the municipality under the Participation Act.[45]

Despite the advantages from the no-risk policy, its awareness is notably low. The Employee Insurance Agency (hereafter: UVW) researched the employees who were aware of their entitlement to the no-risk policy. 16% of those entitled to this were aware of this.[46] Furthermore, only 52% of the employers were aware of the existence of the no-risk policy.[47]

[42] J.P.M. van Zijl & E.C.M. Jacobs-van Krevel, 'Arbeidsongeschikte werknemers: wat betaalt de individuele werkgever?', *ArbeidsRecht* 2025/1.
[43] Article 29b lid 1 paragraph b ZW.
[44] Article 29b, paragraph 1, sub a, and paragraphs 5 and 6 ZW.
[45] J.P.M. van Zijl & E.C.M. Jacobs-van Krevel, 'Arbeidsongeschikte werknemers: wat betaalt de individuele werkgever?', *ArbeidsRecht* 2025/1.
[46] *Kamerstukken II* 2017/18, 29544, nr. 843.
[47] J.P.M. van Zijl & E.C.M. Jacobs-van Krevel, 'Arbeidsongeschikte werknemers: wat betaalt de individuele werkgever?', *ArbeidsRecht* 2025/1.

Moreover, there are various financial incentives, primarily in the form of wage cost benefits and wage subsidies. Wage cost benefits, available under the Wage Cost Benefits Act (hereafter: Wtl), provide employers with annual compensation for hiring employees with a vulnerable position in the labor market. These benefits, which can be combined with rights to sickness benefits under the No-Risk Policy, can amount to up to €6,000 per year for a maximum of three years for occupationally disabled employees and up to €2,000 per year for a maximum of three years for employees covered by the Jobs Agreement.[48] Wage subsidies, on the other hand, are available for employers who hire individuals with a history of occupational disability who fall under the responsibility of the municipality. These subsidies are designed to compensate employers for the difference between the employee's labor value and the statutory minimum wage. This subsidy can be permanent, yet municipalities usually evaluate if there is still a need for the wage subsidy.[49]

Lastly, article 36 of the WIA outlines a subsidy provision for employers who adapt workplaces for employees with disabilities. The UWV offers these subsidies to cover the additional costs for employers when making necessary workplace adjustments for employees with disabilities hired for at least six months. This financial support aims to encourage employers to create accessible work environments and maintain employment for individuals with disabilities by offsetting the expenses associated with modifying workspaces, equipment or processes to accommodate their needs.

3.3 Conclusion

In conclusion, the WGBH/CZ establishes a legal framework to combat disability discrimination in the recruitment stage, reflecting the principle of equal opportunity. While not obliging the hiring of every applicant with a disability, it imposes strict requirements on employers who reject them. The law aims to ensure that hiring decisions are based on objective qualifications and job-related criteria, not on assumptions or biases related to disability. The burden of proof lies at the employers, compelling them to demonstrate that rejections are not discriminatory. To further promote inclusion, the Dutch law offers financial incentives like the No-Risk Policy, wage cost benefits and wage subsidies, yet awareness of these incentives needs improvement.

[48] Article 2.6-2.9 Wtl. & Article 2.10-2.13 Wtl.
[49] J.P.M. van Zijl & E.C.M. Jacobs-van Krevel, 'Arbeidsongeschikte werknemers: wat betaalt de individuele werkgever?', *ArbeidsRecht* 2025/1.

4. Equal treatment as regards employment conditions

4.1 Legal rules for employment conditions of disabled individuals

The Dutch legislation contains specific rules to ensure the equal treatment of employees with disabilities concerning employment conditions. These rules are primarily laid down in the Equal Treatment of Disabled and Chronically Ill People Act and related labour laws, such as the Dutch Civil Code, the Working Conditions Act, and the Working Hours Act.[50]

Reasonable Accommodations

Employers are legally required to provide reasonable accommodations to enable employees with disabilities to participate in the labour market on an equal basis. This is established in Article 2 WGBH/CZ, which states that the prohibition of discrimination also means that the person to whom this prohibition is addressed is obliged to make effective adjustments according to need, unless these would constitute a disproportionate burden for him.[51]

In practice, reasonable accommodations may include:

- Adjusting job tasks or productivity expectations to align with the employee's abilities. This follows from the employer's obligation to provide suitable work under Article 7:658a lid 1 BW.[52]
- Modifying working hours for flexibility, as set out in article 4:1 Working Hours Act, which allows deviations from standard working hours based on special personal circumstances.[53]
- Providing assistive devices, adapted equipment, or accessible workplace facilities, derived from the employer's general duty of care to ensure a safe and healthy working environment under Article 3 Working Conditions Act.[54]
- Allowing time off for medical appointments or rehabilitation, which falls under the employer's duty of care and is supported in practice by case law on reasonable accommodations.[55]

[50] Wet gelijke behandeling op grond van handicap of chronische ziekte, WGBH/CZ.
[51] Article 2 Wet gelijke behandeling op grond van handicap of chronische ziekte (WGBH/CZ).
[52] Article 7:658a Burgerlijk Wetboek.
[53] Article 4:1 Arbeidstijdenwet.
[54] Article 3 Arbeidsomstandighedenwet.
[55] Article 7:611 Burgerlijk wetboek.

Access to Training and Promotion

Employers may not exclude employees with disabilities from training and promotion opportunities. Article 4 states that denying access to training, career development, or promotion may constitute discrimination.[56] This obligation aligns with Article 27 of the UN Convention on the Rights of Persons with Disabilities (CRPD), which requires the Netherlands to guarantee equal access to vocational training and career development.[57]

Rules og health and safety

The obligation of employers to provide a safe and healthy working environment also applies to employees with disabilities. Article 3 Working Conditions Act requires employers to implement policies aimed at protecting the health and safety of all employees, including those with disabilities. Furthermore, Article 7:611 BW establishes the principle of good employer and employee conduct, meaning that employers are required to take appropriate measures to support employees with disabilities.[58]

Wage cost subsidy for employers hiring employees with disabilities in the Netherlands

Employers who hire employees with a work disability sometimes face additional risks, such as the potential for reduced productivity compared to employees without disabilities. In such cases, employers may be eligible for a wage cost subsidy provided by the municipality, in accordance with the Participation Act. This subsidy also applies to employers who hire employees for sheltered work and adjustment of the workplace.

The wage cost subsidy compensates the employer for the difference between the employee's productivity (wage value) and the statutory minimum wage, which assumes 100% productivity. If an employee is less than 100% productive, for example, because they work at a slower pace, the employer can still hire them with the support of this subsidy. The amount depends on the employee's wage value, which is determined in the workplace using a transparent and reliable method, ensuring an objective assessment.[59] The subsidy covers the difference between the statutory minimum wage and the wage value, which is reassessed annually (or every three years in case of sheltered employment). The maximum subsidy is 70% of the statutory minimum

[56] Article 4 Wet gelijke behandeling op grond van handicap of chronische ziekte (WGBH/CZ).
[57] Article 27 VN-verdrag inzake de rechten van personen met een handicap.
[58] Article 7:611 Burgerlijk Wetboek.
[59] Article 6b paragraph 1 Participatiewet.

wage. Additionally, municipalities can provide a wage cost subsidy of 50% of the minimum wage for up to the first six months to facilitate quick job placements, in consultation with the employer.[60]

The wage cost subsidy can be used on a structural basis. However, the municipal executive board will regularly assess whether the employee still belongs to the target group and what their wage value is.[61] Changes in these factors may lead to the withdrawal or adjustment of the subsidy amount. Individuals working under this arrangement are entitled to workplace guidance, as they often cannot achieve the determined wage value without personal support.[62] Municipalities have the flexibility to decide how they implement this guidance, ensuring a tailored approach that meets individual needs.

4.2 Examples of discrimination in the case law concerning employment

There are a few rulings on this. One ruling is a judgment by the Court of Appeal of 's-Hertogenbosch dated June 30, 2020.[63] In this ruling, the court determined that there was no discrimination.[64] The court found that the employee's shoulder complaints did not play a role in the employer's decision to offer employment contracts to other employees. Although shoulder complaints can generally be considered a physical condition that may lead to a long-term limitation and thus hinder the performance of a professional activity, in this specific case, it was established that the employee, outside the recovery periods after two or three surgeries, was able to perform his work as a carpenter/roofer. There were no facts demonstrating that this was different in March 2016, nor that the employer assumed a (presumed) long-term limitation. Therefore, the court concluded that there was no chronic illness or disability in this case, rendering the factual basis for the employee's argument invalid.[65]

Another ruling is the decision of the Netherlands Institute for Human Rights.[66] This case concerns an employee who did not receive a salary increase because, due to prolonged absence and partially performing adjusted duties, she did not receive a positive evaluation.[67] The

[60] Article 10d paragraph 4 Participatiewet & Articel 10d lid 5 Participatiewet.
[61] Article 10d paragraph 6 and7 Participatiewet.
[62] Article 10da Participatiewet.
[63] Gerechtshof ‘s-Hertogenbosch 30 juni 2020, ECLI:NL:GHSHE:2020:1978.
[64] Gerechtshof ‘s-Hertogenbosch 30 juni 2020, ECLI:NL:GHSHE:2020:1978, r.o. 3.6.6.
[65] Gerechtshof ‘s-Hertogenbosch 30 juni 2020, ECLI:NL:GHSHE:2020:1978, r.o. 3.6.5.
[66] CRM 10-03-2009, judgment number 2009-14.
[67] CRM 10-03-2009, judgment number 2009-14, paragraph 3.15.

absence and adjusted duties are directly related to the employee's illness, namely fibromyalgia, which is a chronic disease. Pursuant to Article 4, preamble and section e, of the Equal Treatment Act on the Grounds of Disability or Chronic Illness (WGBH/CZ), discrimination based on disability or chronic illness is prohibited in employment conditions, including remuneration.[68] Therefore, the commission ruled that there is an indirect distinction based on disability/chronic illness, which is not objectively justified. This constitutes unlawful discrimination.[69]

One possible reason for the limited case law on discrimination in employment conditions is that such cases are often resolved outside of court. Employees who feel discriminated against may be more likely to opt for a settlement or mediation through the Netherlands Institute for Human Rights rather than pursuing a lengthy and costly legal procedure. Additionally, employees may be reluctant to take legal action due to fear of repercussions, such as losing their job or damaging workplace relationships. Proving that an employment condition is truly discriminatory and not objectively justified can also be challenging in legal proceedings. Finally, employers are generally aware of anti-discrimination laws and may adjust their policies accordingly before a case reaches a court ruling. As a result, the number of cases that lead to actual case law is limited.

4.3 Restrictions on implementing disability laws and positive actions

Under Dutch law, there are strict restrictions on employers asking job applicants about their disability status during the recruitment process. Employers are generally prohibited from making such inquiries unless the information is essential for the specific role or necessary to ensure appropriate workplace adjustments.[70] The Equal Treatment (Disability and Chronic Illness) Act (WGBH/CZ) explicitly prohibits discrimination based on disability, meaning that any questions regarding an applicant's health or disability status could be considered discriminatory unless there is a clear, objective justification linked to the nature of the job.[71]

However, certain exceptions exist that allow for positive action. Under the Participation Act, employers may be incentivized to hire employees with disabilities through financial support

[68] CRM 10-03-2009, judgment number 2009-14, paragraph 3.2.
[69] CRM 10-03-2009, judgment number 2009-14, paragraph 4.
[70] Article 9 paragraph 2 onderdeel a Algemene Verordening Gegevensbescherming.
[71] Article 5 Wet gelijke behandeling op grond van handicap of chronische ziekte.

mechanisms, such as wage cost subsidies.[72] In this context, employers may ask applicants about their disability status, but only to the extent that it is relevant to necessary workplace adjustments or eligibility for these subsidies.[73] Even in such cases, employers must ensure that such inquiries do not lead to indirect discrimination or violate privacy rights.[74] Additionally, workers are not generally required to disclose their disability status to their employer unless doing so is necessary to access specific employment-related benefits. For instance, if a worker with a disability requires modifications to their work environment or working hours, they are responsible for informing the employer so that reasonable accommodations can be made. Similarly, in order to access benefits such as wage cost subsidies under the Participation Act, employees must disclose their disability status, as this information is required for the employer to apply for financial support.

Finally, data protection laws play a crucial role in regulating the processing of disability-related information.[75] Under the General Data Protection Regulation (GDPR), employers may only collect and process such data when it is necessary and legitimate for the purpose of providing reasonable accommodations or assessing eligibility for specific support schemes. Privacy protections remain a fundamental aspect of Dutch law, ensuring that employers use disability-related information solely for the intended purpose of facilitating workplace adjustments or accessing government support, in full compliance with privacy regulations.[76]

To conclude, it is important to note that privacy is strongly protected in Dutch law. Employees are not obligated to disclose their disability status unless they choose to do so in relation to specific employment-related benefits. The employer must then use this information solely for the purpose of providing the necessary accommodations or accessing government support measures, in line with privacy laws.[77]

4.4 Measures to support employers in retaining workers with disabilities

Dutch law offers possibilities to take measures making it easier/more attractive for employers to keep their workers who have or develop a disability in employment. First of all, Article

[72] Participatiewet.
[73] 'Verbetering loonkostensubsidie Participatiewet', *NJB* 2023/70, p. 1.
[74] On the basis of the Algemene Verordening Gegevensbescherming.
[75] Art. 9 paragraph 2 onderdeel b Algemene Verordening Gegevensbescherming.
[76] *Kamerstukken II* 1997/98, 25892, 3, p. 123.
[77] D.J.A. Vesters, 'De AVG in het sollicitatieproces, een goed begin is het halve werk', *TRA* 2019/26, p. 9.

7:658a of the Dutch Civil Code mandates that employers actively support employees who become partially or fully incapacitated due to illness or disability. This duty includes drafting a reintegration plan in consultation with occupational health services and facilitating necessary workplace adjustments. Non-compliance can result in extended wage payment obligations of up to two years or fines imposed by the Dutch Labour Inspectorate.[78]

Second, under Article 2 of the WGBH/CZ, employers are legally obligated to provide reasonable accommodations, such as flexible hours or modified tasks, unless doing so would impose a disproportionate burden. An effective accommodation is one that is appropriate and necessary and contributes to the equal treatment of individuals with a disability or chronic illness. However, failing to provide such an accommodation may be justified if it places an excessive burden on the employer, which depends on the specific circumstances. The assessment follows a two-step process: first, determining whether the accommodation is necessary and appropriate, and second, balancing the interests of the individual with a disability or chronic illness against those of the employer or institution.[79] There remains room for further legal development, allowing the courts and the Netherlands Institute for Human Rights to take societal developments into account in their assessments.[80] Refusal to provide reasonable accommodations without valid justification may lead to legal action before a Dutch court.[81]

Third, the Job Agreement Act sets targets for private and public sector employers to collectively create 125,000 jobs for disabled workers by 2026. Compliance is monitored via a national registry. Employers who fail to meet these targets risk exclusion from public procurement tenders or may face reputational sanctions.[82]

Last, the UWV is dedicated to supporting people in relation to work and income, providing security in times of setback, and working to prevent unemployment and disability. Employers hiring through the UWV may benefit from the No-Risk Policy, which exempts them from wage payment obligations if the employee falls ill again, provided they adhere to reintegration

[78] UWV.nl, 'Overview of financial support schemes'.
[79] *Kamerstukken II* 2001/02, 28169, nr. 3, p. 25-26.
[80] *Kamerstukken II* 2001/02, 28169, nr. 3, p. 25-26.
[81] Article 2 Wet gelijke behandeling op grond van handicap of chronische ziekte (WGBH/CZ).
[82] KVK.nl 'Hiring staff? Apply for subsidies'.

protocols. Additionally, costs incurred for disability-related workplace adaptations are tax-deductible, offering further financial incentives to employers.[83]

4.5 Conclusion

Dutch law provides a strong legal framework to ensure equal employment opportunities for individuals with disabilities, requiring employers to offer reasonable accommodations, protect against discrimination, and facilitate workplace reintegration. While legal protections are well established, case law on employment discrimination remains limited, possibly due to mediation preferences and challenges in proving discrimination. Privacy laws restrict employers from inquiring about an applicant's disability status unless necessary, ensuring that such information is processed lawfully. To support employers, financial incentives such as wage cost subsidies and tax benefits are available, alongside obligations to assist employees in retaining their jobs. Overall, Dutch legislation balances the rights of disabled workers with practical support for employers, promoting a more inclusive labour market.

[83] UWV.nl, 'Voorwaarden no-riskpolis'.

5. Equal treatment in the dismissal stage

5.1 Employer Obligations for Retaining Workers Who Develop a Disability

In the Netherlands, employers are required to continue paying at least 70% of an employee's salary for up to 104 weeks (2 years) if they are unable to work due to illness, with the condition that during the first 52 weeks, the salary must be at least equal to the applicable statutory minimum wage.[84] The Gatekeeper Improvement Act mandates both employer and employee to actively engage in reintegration. Failure to comply with reintegration duties may result in financial penalties, such as extended salary payments.[85]

Reintegration obligations

Under Article 7:658a BW, the employer is obligated to offer the employee who is ill a reintegration process. The employer must undertake efforts to reintegrate the employee, which means the employer must offer suitable work within the company. If the employee's original position is no longer feasible due to the disability, the employer must look for other suitable jobs within the organization or seek external employment opportunities if necessary.[86]

Reasonable adjustments (Arbowet and WGBH/CZ)

The employer must make reasonable adjustments to enable the employee to return to work, if feasible. This follows from the Working Conditions Act, which states that employers are responsible for ensuring a safe and healthy workplace for all employees, including those with a disability or chronic illness. Article 3 of the Working Conditions Act requires employers to assess and, if necessary, adjust working conditions to guarantee a safe workplace.[87]

Under the Equal Treatment of Disabled and Chronically People Act (WGBH/CZ), the employer is also required to make reasonable adjustments to enable the employee with a disability to perform their job. This could include modifying the workplace (e.g., by providing assistive devices or adjusting work hours). Failure to comply with these obligations may be considered discrimination based on disability.[88]

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[84] Article 7:629 paragraph 1 Burgerlijk Wetboek.
[85] Article 7:629 paragraph 11 Burgerlijk Wetboek.
[86] Article 658a Burgerlijk Wetboek.
M.P. Dickhoff & I. Baijens, ' Ziek is ziek? De loonaanspraak tijdens de eerste twee ziektejaren bij gedeeltelijke werkhervatting', *ArbeidsRecht* 2020/19, p. 12.
[87] M. Snoep, 'Arbeidsomstandighedenwetgeving voor diverse werkenden', *ArbeidsRecht* 2017/42, p. 11.
[88] Article 2 Wet gelijke behandeling op grond van handicap of chronische ziekte (WGBH/CZ).

Cooperation with the occupational physician

The occupational physician plays a crucial role in determining the disability and reintegration opportunities for the employee. The employer is required to cooperate with the occupational physician and follow their advice regarding reintegration. This is stipulated in Article 7:658a BW, which specifies that the employer must support the employee in the reintegration process and ensure appropriate medical and practical support, including engaging an occupational physician to guide the reintegration.

The occupational physician is responsible for preparing the reintegration plan and providing medical guidance to the employee. The employer has a duty of care and must follow the occupational physician's recommendations to support the employee's return to work. If the efforts appear unsuccessful and the employee remains ill for more than two years, the employer may terminate the employment contract based on Article 7:669(3)(b) of the Dutch Civil Code. After two years, as in the current situation, the prohibition on termination no longer applies.[89] However, termination under this provision is only allowed if recovery is not expected within 26 weeks and if the agreed work cannot be performed in an adapted form within that period.[90]

Reintegration timeframe

The employer is required to achieve reintegration within the first two years of sickness, as stipulated in Article 7:629 of the Dutch Civil Code and Article 25 of the Work and Income (Capacity for Work) Act. During this period, the employer remains obligated to continue paying the employee's salary.

In certain situations, the obligation to continue salary payments can be extended. This occurs when the WIA application is submitted too late, when the employer and employee mutually agree to extend the waiting period, or when the Employee Insurance Agency determines that the employer's reintegration efforts have been insufficient. If the delay in submitting the WIA application is the employer's responsibility, the employer must continue salary payments for the duration of the delay up to twelve months. However, if the employee is at fault, this extension may not apply, and the employer can invoke Article 7:629(3)(f) BW to avoid additional payment obligations.

[89] Unless the term is extended on the basis of art. 7:670 lid 11 BW.
[90] Article 7:669 paragraph 3 sub b Burgerlijk Wetboek.

When both parties agree to extend the waiting period because reintegration is expected to be successfully completed within 15 weeks, it is reasonable to ensure that the employee's salary from the second year of illness continues to be paid throughout this extended period. The most common situation leading to an extension, however, is when the UWV imposes a sanction due to the employer's inadequate reintegration efforts.[91]

Protection against dismissal

An employee undergoing reintegration is strongly protected against dismissal. The employer cannot terminate the employment contract while the employee is unfit to work due to illness unless the incapacity has lasted for at least two years.[92] Dismissal is only possible after this two-year reintegration period.[93]

If, despite all reintegration efforts, the employee is unable to return to work, the employer may initiate a dismissal procedure through the Employee Insurance Agency. In such a case, the employer must provide evidence that all reasonable steps were taken to facilitate the employee's reintegration.

5.2 Rules for dismissing employees with disabilities

In the Netherlands, an employer must have a valid reason to dismiss an employee. One of the legal grounds for dismissal is the B-ground, which refers to termination due to long-term incapacity for work.[94] This means that an employee has been ill for at least two years and is not expected to recover within a reasonable period to resume their job or take on a suitable alternative position.

The UWV performs a preventive dismissal check

An employer may only dismiss an employee on the grounds of long-term illness if several conditions are met.

[91] P.A. Charbon, 'De loondoorbetaling in het derde ziektejaar', *ArbeidRecht* 2020/17, p.3.
[92] A Article 7:670 paragraph 1 sub a Burgerlijk Wetboek.
[93] M. Ruijssenaars & L.D.Brouwer, 'De (on)toelaatbaarheid van de ontbindende voorwaarde in het arbeidsrecht', *ArbeidsRecht* 2023/51, p.3.
[94] Article 7:669 paragraph 3 sub b Burgerlijk Wetboek.

First, the employee must have been incapacitated for at least two years. During this period, the employer is legally required to continue paying the employee's salary. This obligation provides financial stability while allowing time for recovery or reintegration.

Second, recovery must not be expected in the short term. A company doctor must assess the employee's condition and determine whether recovery is possible within a foreseeable period, usually set at six months. If full or partial recovery is likely within that time frame, dismissal is not permitted.

Third, reassignment within the company must not be possible. Before considering dismissal, the employer is required to explore whether the employee can be reassigned to another suitable position, even with additional training. If reassignment is a viable option, dismissal is not allowed.

Finally, the employer must have fulfilled all reintegration obligations. Dutch labor law requires employers to make maximum efforts to support the employee's return to work, either within the company or in an alternative role elsewhere. If the employer fails to meet these obligations, the UWV (Employee Insurance Agency) may impose a wage sanction, extending the employer's salary payment obligation for up to one additional year.

Only when all these conditions are met can an employer proceed with a dismissal request based on long-term incapacity.[95]

Rules for dismissing an employee with a disability or who has developed a disability

Under Dutch law, employees with a disability or those who develop a disability are strongly protected against dismissal (as we described earlier). An employer cannot terminate an employment contract solely based on an employee's disability or illness.[96] This protection is primarily derived from Article 7:670 of the Dutch Civil Code, which prohibits dismissal during the first two years of incapacity for work. However, dismissal may be possible under specific circumstances. If an employee has been unable to work for at least two years and there is no expectation of recovery or reintegration into suitable work within 26 weeks, the employer may

[95] Article 7:669 Burgerlijk Wetboek.
[96] The first two years and with the wage sanction it is up to three years.

request dismissal through the Employee Insurance Agency based on Article 7:669(3)(b) BW. If it is not possible for the employee to return to their original role or to a suitable alternative position within the company, termination may be considered. However, before taking this step, the employer must first explore all reasonable accommodations and opportunities for adapted work.

Dismissal may also be justified for business economic reasons, such as company restructuring or financial difficulties. Even in this case, termination is only permitted if no suitable alternative position is available within the organization. In some situations, an employee may voluntarily agree to termination, for example, through a mutual termination agreement (settlement agreement). However, the employer must ensure that the employee fully understands their rights and is not pressured into signing such an agreement. If an employer unlawfully dismisses an employee with a disability, the employee has the right to challenge the termination in court or through the UWV.[97] Additionally, if the employer has not made sufficient reintegration efforts, the obligation to continue salary payments can be extended beyond the two-year period as a sanction.[98]

5.3 Non-extension of contract for a define period of time

The ruling of the Midden-Nederland District Court on March 27, 2020, concerns an employer in the healthcare sector who decided not to extend the temporary employment contract of a female employee with a disability or chronic illness (not congenital).[99] There is a direct link between the employee's disability or chronic illness and the complaint regarding her reintegration efforts. This means that the decision not to enter into a new employment contract with her as of August 1, 2019, was at least partly based on prohibited discrimination on the grounds of disability or chronic illness. As a result, the employer was found to be seriously at fault and is required to pay fair compensation.[100]

On the other hand, there is the ruling by the Arnhem Court of Appeal from December 11, 2023.[101] In this case, discrimination due to chronic illness was not assumed. The court emphasized that an employer is free not to renew a fixed-term employment contract. This is

[97] Article 7:681 Burgerlijk Wetboek.
[98] Article 7:629 paragraph 11 Burgerlijk Wetboek.
[99] Rb Midden-Nederland 27-03-2020, ECLI:NL:RBMNE:2020:6055.
[100] Rb Midden-Nederland 27-03-2020, ECLI:NL:RBMNE:2020:6055, paragraph 6.1.
[101] Hof Arnhem-leeuwarden 11-12-2023, ECLI:NL:GHARL:2023:10490.

different if the employer does not extend the employment contract because of a chronic illness or disability of the employee. At the time of the notice of non-renewal of the employment contract on December 1, 2022, the employer knew that the employee was ill (after all, his incapacity for work was the reason not to continue the employment contract), but not that he was suffering from a severe depression and was therefore possibly chronically ill.[102] The diagnosis from the company doctor dated December 5, 2022, also did not indicate this; the prognosis was full recovery, only the timeframe was not yet clear. The mere fact that the employee was ill from May to December 2022 does not mean that the employer had to understand that his illness was chronic.[103]

Now we will discuss a case law for the Dutch Human Rights College.[104] The Dutch Human Rights College ruled that the complainant was recovering from surgery and experiencing prolonged stress-related symptoms when her employer decided not to renew her contract. Although her recovery was delayed, the key issue was whether her medical condition influenced this decision. The College found that internal communications initially indicated an intent to retain her but that this changed after her visit to the company doctor, suggesting a possible link between her illness and the non-renewal.[105] While the employer claimed the decision was based on relocating the role to Belgium, the College found this explanation unconvincing and inconsistent with prior communications.[106] The employer also failed to disprove the presumption that the complainant's illness played a role in the decision. As a result, the College ruled that the employer engaged in direct discrimination based on disability or chronic illness, violating the Equal Treatment Act on Disability and Chronic Illness (WGBH/CZ).[107]

5.4 Conclusion

In conclusion, Dutch labor law provides a comprehensive framework to protect employees who develop a disability, ensuring that employers fulfill their reintegration obligations and make reasonable accommodations. Employers must actively support employees' return to work and only consider dismissal as a last resort when all reintegration efforts have been exhausted.

[102] Hof Arnhem-leeuwarden 11-12-2023, ECLI:NL:GHARL:2023:10490, paragraph 3.12.
[103] Hof Arnhem-leeuwarden 11-12-2023, ECLI:NL:GHARL:2023:10490, paragraph 3.13.
[104] CRM 04-08-2022, judgment number 2022-88.
[105] CRM 04-08-2022, judgment number 2022-88, paragraph 6.16.
[106] CRM 04-08-2022, judgment number 2022-88, paragraph 6.15.
[107] CRM 04-08-2022, judgment number 2022-88, paragraph 6.16.

Strong legal protections against dismissal due to disability reflect the commitment to preventing discrimination, as demonstrated by relevant case law. However, while employees benefit from significant safeguards, employers must navigate complex regulations and potential sanctions if reintegration obligations are not met. This balance between employee rights and employer responsibilities highlights the Dutch legal system's focus on fostering an inclusive labor market while maintaining business flexibility.

6. Obligations of employers

6.1 Reasonable accomodation and best practices

Reasonable accommodation is found in article 2 of the 'Wet gelijke behandeling op grond van handicap of chronische ziekte' and a definition is provided during the legislative process. Under this article, the employers are legally bound to provide reasonable accommodations as in article 2 of the WGBH/CZ in the form of flexible hours or modified tasks, unless doing so would impose a disproportionate burden. Dutch law provides financial compensations for the employer that employs workers with a disability. Such measures are, but not limited to, wage cost subsidy from the government. This is a way for the government to encourage employers to employ less abled workers. With the wage cost subsidy, provided in the law 'regeling loonkostensubsidie participatiewet 2021', the employer can request the subsidiary income which then compensates the employer for the difference between minimum wage and the earned wages by the employee. This is 70% of the minimumwage for the first six months.

Wage dispensation is for employers who have a 'Wajonger' under employment. Workers that are classified as 'Wajonger's' are often less able to work because of either sickness or a physical handicap. Dutch legislation provides benefits for these 'Wajonger's'. This piece of legislation is designed and made for persons that from a young age have not and might not be able to work because of a handicap or illness.[108] To acquire such benefits, persons have to adhere to certain rules and requirements. These are to be found on the UWV website.[109] In order to acquire these benefits, the person applying has to provide the right information, attend certain appointments where a medical professional will examine the less abled person, keep documents, read the UWV messages, have a valid form of identification, adhere to routine check-ups.[110]

The employer pays the workers less and can ask for the wage dispensation. The UWV will give de employee the extra amount of money via a form of benefits which depends on the height of the income the employee makes with their labour.

[108] 'Wajong', https://www.uwv.nl/nl/wajong.
[109] 'Uw plichten', https://www.uwv.nl/nl/rechten-plichten/algemene-plichten.
[110] 'Uw plichten', https://www.uwv.nl/nl/rechten-plichten/algemene-plichten.

6.2 How has the obligation that employers provide reasonable accommodation for persons with disabilities in the area of employment, as required by Directive 2000/78, been elaborated in Dutch law?

The reasonable accommodation of less abled workers/people in article 5 of the Directive 2000/78 aims to accomplish the guarantee of compliance with the principle of equal treatment in relation to persons with disabilities. This means that appropriate measures are taken to enable a person with a disability to have access to participate in, or advance in employment, or to undergo training. In Dutch law this can be found in the 'Wet gelijke behandeling op grond van handicap of chronische ziekte', in article 2, article 2a, article 6b.

6.3 What constitutes unreasonable accommodation according to Dutch law? Are there guidelines or bylaws in the Netherlands that elaborate this?

As mentioned before reasonable accommodation is found in article 2 of the 'Wet gelijke behandeling op grond van handicap of chronische ziekte', and under this article, the employers are legally bound to provide reasonable accommodations as in article 2 of the WGBH/CZ in the form of flexible hours or modified tasks. The definition of unreasonable accommodation is to be found in article 2a, sub-article 1 WGBH/CZ. This article gives municipalities the freedom to provide rules about what constitutes unreasonable accommodation, this is to be found in article 2a sub-article 2 of the WGBH/CZ.

The definition provided by the legislator when it comes to this term is supposed to closely follow the unreasonable accommodation term provided in article 5 of the Directive 2000/78/EG. The way to answer the question whether or not unreasonable accommodation is to be spoken of needs to be answered by looking at what the reasonable accommodation in the case would be. To test whenever the can be spoken of unreasonable accommodation, what must be taken into account is the following according to the Directive 2000/78 par 21:

- The financial state of the organization
- Is there a possibility to receive government funded support?
- The size of the organization
- The necessary investment and costs of making the organization a reasonable accommodation
- The available financial compensation like wage subsidiaries, personal budget in the 'Wet REA' and subsidiaries in the 'Wvg'

- The operational and technical probability of the change in the accommodation[111]

6.4 Case law regarding unreasonable accomodation

6.4.1. Rb. Utrecht, 21 mei 2010, ECLI:NL:RBUTR:2010:BM5297.

Some case law about unreasonable accommodation according to Dutch law can be found in a dictum from the court of Utrecht. An employee who suffered health issues concerning their heart had their contract, before the actual employment had begun, terminated.[112] In principle, such an action is allowed according to article 7:676 BW, however the worker suspected the termination was a form of discrimination such as to prohibited by article 4 sub-article b WGBH/CZ.[113] The subdistrict court judge found this to be plausible because the Sopro (henceforth: future employer) had informed the worker that there was no insurance for the company when it came to the worker's health situation, indicating the direct relation between the termination and the illness.[114] In turn, this meant the termination would be legally voidable.[115] The subdistrict court judge concludes by stating that in principle, the future employer is authorized to terminate the contract before the starting date of employment.[116] However, this authority may not lead to discrimination on such grounds as prohibited by the WGBH/CZ unless justifiable by objective criteria.[117]

6.4.2. CRM, case number 2024-79

Another example to be found in a ruling of the Netherlands institute for Human Rights (CRM).[118] A man diagnosed with autism, among which Asperger and the electromagnetic field intolerance syndrome (EMFIS), makes use of an assistance dog in his daily life. The applicant had requested the foundation Amsterdam University Medical centre (Amsterdam UMC) for certain benefits and or assistances to follow his promotional trajectory. However, when attempting to enter the building, the applicant was rejected entry by the Amsterdam UMC. The foundation Amsterdam UMC is not in agreement with the statement of the man in question and claims to have made all the necessary adjustments for the man to enter the building.

[111] Kamerstukken II, 27-12-2001, 28169 nr. 3, p9.
[112] Rb. Utrecht, 21 mei 2010, ECLI:NL:RBUTR:2010:BM5297.
[113] Rb. Utrecht, 21 mei 2010, ECLI:NL:RBUTR:2010:BM5297, (par. 4.5, par. 4.8.)
[114] Rb. Utrecht, 21 May 2010, ECLI:NL:RBUTR:2010:BM5297, (par. 4.5, par. 4.8.)
[115] Rb. Utrecht, 21 May 2010, ECLI:NL:RBUTR:2010:BM5297, (par. 4.8.), Article 9 WGBH/CZ.
[116] Rb. Utrecht, 21 May 2010, ECLI:NL:RBUTR:2010:BM5297, (par. 4.4, par. 4.5)
[117] Rb. Utrecht, 21 May 2010, ECLI:NL:RBUTR:2010:BM5297, (par. 4.4, par. 4.5), Article 3 sub-article 2 WGBH/CZ.
[118] CRM, case number 2024-79.

The CRM judges that according to the WGBH/CZ, the Amsterdam UMC should take care of any impediment that the man has that would obstruct him from entering the building. The CRM judges it is specifically chronic illness or handicaps that would impede on the research and promotional work of the man that should be taken care of in the way of reasonable accommodations.[119] The applicant specifically requested a separate working space in order for the assistance dog to accompany him en help him with his disabilities.[120] The applicant was left unsatisfied by the fact he had to share an unhygienic and overly full working space, alongside this instalment of special instruments for his relief was requested but not performed.[121] This resulted in the applicant having to install the instrument himself.[122] The Amsterdam UMC, as their defence rebuttal, argued that PHD students are not appointed to fixed working spaces.[123] The Amsterdam UMC further pleas that even against the usual procedure the applicant got a working space which he was aware he had to share and agreed to sharing.[124]

The CRM cannot determine whether the workspace was structured in a poor way or unclean and unsuitable for work because of the variety of statements between parties. To this point, the CRM argues that it would be likely that a University medical centre is properly cleaned regularly.[125] Furthermore, the CRM is not able to determine whether the applicant agreed with the aforementioned working conditions. Regarding the special instruments, there was contact via e-mail to which it was unclear for the CRM whether the applicant would object to instalment of the instruments being done by the applicant themselves.[126] Furthermore in this context there were no indications of the material or special instruments of being unfit to serve their purpose. In this context the CRM judges that the applicant's claim of (in)direct discrimination of the grounds of disability is unfounded.[127]

An important part of this case was the assistance dog. Applicant claims that the Amsterdam UMC denied access to one of the locations, the reason being that the applicant's assistance dog

[119] CRM, case number 2024-79, par. 6.2.
[120] CRM, case number 2024-79, par. 6.3.
[121] CRM, case number 2024-79, par. 6.6.
[122] CRM, case number 2024-79, par. 6.6.
[123] CRM, case number 2024-79, par. 6.7.
[124] CRM, case number 2024-79, par. 6.7.
[125] CRM, case number 2024-79, par. 6.8.
[126] CRM, case number 2024-79, par. 6.8.
[127] CRM, case number 2024-79, par. 6.8.

would have urinated in front of the entrance, after which entrance was denied.[128] However, the applicant has stated during the hearing that on the day of the incident there was contact with security and the receptionist who had told him that the assistance dog is supposed to be kept on a leash.[129] Furthermore, the applicant was still able to use the MRI machine within the building on the day of the incident.[130] In this context, the CRM judges that on the basis of the submitted documents and subsequent hearing that it is plausible that the receptionist and security guard initially denied entry to the building with the assistance dog.[131] Later that same day, the applicant was still able to use the MRI machine in the building. However, the fact that eventual entry was gained does not change the fact initial entry of the assistance dog was refused.[132] The CRM emphasizes that article 2, paragraph 2 of the WGBH/CZ aims to make society more inclusive for less abled persons.[133] An assistance dog may only be refused if it would impose a disproportionate burden (Article 2, paragraph 1, Wgbh/cz) or if it is necessary for safety and health reasons (Article 3, paragraph 1, under a, Wgbh/cz). Neither of these conditions were met or demonstrated in this case.

The Institute, therefore, concludes that the respondent made an unlawful distinction based on disability or chronic illness in this matter.

6.5 Good practices of accommodations made for persons with disabilities in the Netherlands

The council of the European Union has adopted the Directive 2000/78/EC in 2000. Article 5 creates the obligation to provide reasonable accommodation. Any person with a disability should be enabled to have access to, participate in, or advance in employment. In a report analysing case studies in 2008 24 company case studies were done across Europe. Accommodations can be made in the form of the following but not limited to:

- flexible working hours;
- disability-specific accommodations like braille for the blind workers or specific modifications to vehicles;
- adjustable desks;

[128] CRM, case number 2024-79, par. 6.12.
[129] CRM, case number 2024-79, par. 6.12.
[130] CRM, case number 2024-79, par. 6.12.
[131] CRM, case number 2024-79, par. 6.13.
[132] CRM, case number 2024-79, par. 6.13.
[133] CRM, case number 2024-79, par. 6.13.

- flexible break times.[134]

Furthermore, the Dutch legislator provided an in depth explanatory memorandum in which positive discrimination or positive action is given a role in Dutch legislation. The legislator elaborates on positive action as a tool to fight social injustice.[135] Positive action is an exception to the prohibition of discrimination. These exceptions can be found in Dutch law, for chronically ill or less abled persons it is to be found in article 3 sub article 1 WGHB/CZ.[136] The legislator gives multiple examples of positive action, such as, but not limited to: subsidizing certain groups of people (be it by courses, training or any forms that are alike) or by positive discrimination in recruitment and selection processes.[137]

According to a Dutch based institution under the name *Nivel*, there is still a lot to be done in order to make society more inclusive for less abled persons.[138] *Nivel* makes the claim that society is 10 years behind when it comes to how it is set up and laid out for less abled persons.[139] According to *Nivel* many people who are either physically or mentally less abled experience many forms of reduced accessibility, be it physically, mentally or financially.[140]

6.6 Does Dutch law provide for remedies in case the obligation to provide reasonable accommodation for persons with disabilities has not been complied with? Is there case law? Are there proposals from NGO's and other interest organisations (such as those for persons with disabilities, equality bodies, or trade unions)?

The remedies in case the obligation to provide reasonable accommodation for persons with disabilities have not been complied with is to be found in the *Wet gelijke behandeling op grond van handicap of chronische ziekte*. These remedies are found in the obligations found in article 2 and 2a, article 5b, article 6a and article 8 WGBH/CZ. Some case law about this can be found in a dictum from the court of The Hague, where a person was not able to get onto certain city buses. The person in question invoked article 2a paragraph 1 WGBH/CZ, appealing that the

[134] Practices of providing reasonable accommodation for persons with disabilities in the workplace, 2008.
[135] *Kamerstukken II 2015/16, 34521, nr. 3, p. 2.*
[136] *Kamerstukken II 2015/16, 34521, nr. 3, p. 2.*
[137] *Kamerstukken II 2015/16, 34521, nr. 3, p. 2.*
[138] *'Er valt nog veel te doen om samenleving voor mensen met een beperking toegankelijk te maken',* Nivel.nl, 2 mei 2024.
[139] *Er valt nog veel te doen om samenleving voor mensen met een beperking toegankelijk te maken',* Nivel.nl, 2 mei 2024.
[140] *Er valt nog veel te doen om samenleving voor mensen met een beperking toegankelijk te maken',* Nivel.nl, 2 mei 2024.

HTM had discriminated against them by not granting availability to use the public transport because of his electric wheelchair. The court in this case decided that in principle, HTM had discriminated in an illegal manner according to article 8, paragraph 1 sub b WGBH/CZ. HTM to refute these claims was obligated to provide an exception such as in article 3 WGBH/CZ. HTM when refuting these claims on the grounds of article 3, paragraph 1 sub a WGBH/CZ made the claims that the moving around of the wheelchair during transport would serve as an unnecessary health risk to passengers, which in turn was supported with research reports. The court of The Hague followed this reasoning and came to the conclusion that there was no breach of article 2a paragraph 1 WGBH/CZ.[141]

Concerning NGO's there is the organization *Handicap International.* Their purpose is to fight for people with a disability or other persons who are in a vulnerable situation. The mission of this organization is to help the persons get their basic needs and improve their living conditions, and to uphold the respect for their fundamental worth and rights as people.[142]

[141] Hof Den-Haag 12 maart 2024, ECLI:NL:GHDHA:2024:352, (par. 5.2.).
[142] 'Onze organisatie', https://www.handicapinternational.be/nl/onze-organisatie.

7. Positive action measures

7.1 Does the Netherlands have quotas in employment for persons with disabilities?

There is a quota arrangement for employers when it comes to employing persons with disabilities. This quota is to be found in the *Wet banenafspraak en quotum arbeidsbeperkten,* which translates to *Job Agreement Act and quota for people with disabilities*. This social agreement was made between the Dutch cabinet and the social partners, being the employees and employers, to create more job-opportunities for less abled persons. The reason behind this social agreement and the quota that comes with it is to allow persons with labour disabilities to more easily become and remain employed.[143]

The ministry of social affairs and employment has set a minimum employment percentage for government organs of abled persons.[144] In 2024 the quota for the government is 2.76%.[145] For regular employers, it is not mandatory to upkeep the quota, although a fine is in place when the quota is not met.[146]

7.2 Does Dutch law have positive action measures for persons with disabilities and if so, what does it entail?

There is a 'job-agreement' between the government and employers to create extra jobs for less abled or sick persons. This way, the persons who cannot make minimum wage themselves by earning it can possibly be supported by an employer who is supported by the government. The existing agreement is to create 125,000 jobs between 2013 and 2026.[147]

One job in the 'job-agreement' is seen as a job that entails 25,5 paid hours per week, jobs containing more or fewer hours than this will be counted pro rata.[148] Monitoring whether the quota is met will be done per working sector country-wide.

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[143] Ministerie van Sociale Zaken en Werkgelegenheden, *Wet banenafspraak en quotum arbeidsbeperkten Kennisdocument,* november 2023, p.5.
[144] Ministerie van Sociale Zaken en Werkgelegenheden, *Wet banenafspraak en quotum arbeidsbeperkten Kennisdocument,* november 2023, p.4.
[145] Ministerie van Sociale Zaken en Werkgelegenheden, *Wet banenafspraak en quotum arbeidsbeperkten Kennisdocument,* november 2023, p.4.
[146] Ministerie van Sociale Zaken en Werkgelegenheden, *Wet banenafspraak en quotum arbeidsbeperkten Kennisdocument,* november 2023, p.4.
[147] Ministerie van Sociale Zaken en Werkgelegenheden, *Wet banenafspraak en quotum arbeidsbeperkten Kennisdocument,* november 2023, p.4.
[148] Ministerie van Sociale Zaken en Werkgelegenheden, *Wet banenafspraak en quotum arbeidsbeperkten Kennisdocument,* november 2023, p.4.

The quota-arrangement offers support to employers. The municipalities and UWV and are tasked with supporting the employers and have been provided with facilities in order to support the 'job-agreement' in place. [149]

Such facilitating options and instruments for the municipality and UWV are as follows:

- A trial placement (UWV and Municipality). The employee gets a trial period in which they and the employer see if the work is appropriate and fitting. This format of work is meant to give the worker and employer a chance to see if the work in question employer see if the work is possible to do for the employee;
- Wage cost subsidy (UWV and Municipality). The municipality has this option to accommodate employers in the salary of less abled workers, specifically the employees who are not able to make minimum wage according to the WML;
- The no-risk policy (UWV and Municipality). This allows employers to employ workers who are *Wajong* or *Participatiewet* employees, without the (full) risk of them becoming sick. The employer will receive compensation in the event of sickness regarding the employee. Aside from this, the employer will not be paying higher premium for the social security regarding these employees;
- Personal support of the less abled worker (UWV and Municipality). This is done via a workplace coach or another form of guidance. The intensity and duration of this form of guidance is dependent on the regulation of the municipality, as is the required quality of the guidance counsellor;
- Working facilities (Municipality). The municipality is required to formulate rules and regulations on facilitating transport to (among other things) work, required intermediary facilities and activities regarding visual or motoric impeding handicaps;
- Flat-rate wage cost subsidy (Municipality). This subsidy is meant for the first 6 months of the worker's employment, within which the employer can get this subsidy for 50 percent of the minimum wage for an employee that starts their employment coming out of the *'participatiewet';*

[149] Ministerie van Sociale Zaken en Werkgelegenheden, *Wet banenafspraak en quotum arbeidsbeperkten Kennisdocument,* november 2023, p.18.

- The Social Innovation Fund pilot (henceforth: SIF) (Municipality). The SIF has as its purpose to support employers in regard to investing to hire groups of people who require extra help, among but not limited to the groups named in the 'job-agreement'. During this pilot, the Ministry of Social Affairs and Employment will be researching whether the pilot lowers the bar of entry to the work place for less abled persons;
- Other efforts regarding working facilities (UWV). These other efforts entail the adaption of the workplace in order to make it easier or more reachable for less abled persons.[150]

These instruments are limited to the municipalities and the UWV. However, there are also instruments in place for the employers in order to accommodate less abled employees.

- Wage cost advantage (LKV) target group job agreement and people with educational barriers. Employers receive compensation for employees whom are part of the target group regarding the job-agreement or persons who experience educational barriers;
- Low-income advantages. This instrument is meant for employers whom employ workers who earn 100-125 percent of the minimum wage and work at least an average of 24 hours per week. The Dutch cabinet is intent on abolishing this instrument.[151]

7.3 Are best practices and case law on positive action known in your country?

A case about the positive action when it comes to the aforementioned quota and 'job-agreement' was ruled over in a decision of the court of Northern-Holland.[152] In this specific case, a less abled person, who has an auditory handicap, was receiving benefits. This person went to the municipality to receive help with finding work. The municipality directed the person to the UWV to request to have his ability to perform work checked. The UWV rejected this request because the person would not meet the requirements set for this check. The person in question was left unsatisfied and objected to this decision, which in turn was rejected by the UWV. The person in turn objected to the decision made by the UWV, which in turn was rejected again by the UWV. This decision was based on a report made by an expert on

[150] Ministerie van Sociale Zaken en Werkgelegenheden, *Wet banenafspraak en quotum arbeidsbeperkten Kennisdocument,* november 2023, p.19.
[151] Ministerie van Sociale Zaken en Werkgelegenheden, *Wet banenafspraak en quotum arbeidsbeperkten Kennisdocument,* november 2023, p.19
[152] Rb. Noord-Holland 14 maart 2017, ECLI:NL:RBNHO:2017:4976.

capabilities to perform labour. This expert was of the opinion that the person in question was able to perform the work asked of him, which in turn would mean the person would not be eligible for the 'job-agreement' group. The less abled worker made the plea that the regulation was indirectly discriminating on the grounds of handicap and called upon EU-directive 2000/78/EG alongside article 1 of the Dutch constitution and article 1 of the *wet gelijke behandeling op grond van handicap of chronische ziekte (WHBH/CZ)* and the United Nations treaty against discrimination on the grounds of handicap.[153] The less abled worker put forth the argument that the rule would impede on the possibility of finding appropriate work for less abled persons who are still able to earn minimum wage.[154]

The court recognizes that the Job Agreement and Quota for Persons with Disabilities Act makes a distinction by focusing on the most vulnerable group, namely people who are unable to earn 100% of the WML[155]. This distinction is justified by the objective of increasing the labour participation of people with disabilities and reducing displacement in the labour market. The court concludes that there is an objective and reasonable justification for the distinction made.[156] The court states that the legislator consciously chose a specific target group to minimize the risks of displacement. The court finds that this choice is justified and that the legislator has taken into account possible side effects through periodic evaluations.[157]

7.4 Are positive action measures permitted only for limited grounds of discrimination, including disability, or is there a general derogatory provision authorizing unilateral implementation of positive action measures?

Positive action can be taken to lessen the structural damage to discrimination in the past. There are strict rules surrounding positive action. The European court of Justice has judged certain situations concerning positive action in cases like Abrahamsson, case C-407/98. Positive action can be justified to compensate for inequality. However, these measures proportionate and cannot be of a disproportionate disadvantage to the groups who fall outside the span of the positive action. The grounds for positive action can be found in the Directive 2000/78/EC,

[153] Rb. Noord-Holland 14 maart 2017, ECLI:NL:RBNHO:2017:4976, par. 3.1., The *wet gelijke behandeling op grond van handicap of chronische ziekte,* is a piece of Dutch legislation which translates to the *law on equal treatment on the grounds of handicap or chronic illness.*
[154] Rb. Noord-Holland 14 maart 2017, ECLI:NL:RBNHO:2017:4976, par. 3.1.
[155] The *Wet minimumloon* (WML) is a Dutch law governing minimum wage for employees 21 years and older. For employees under the age of 21 there is the *Wet minimum jeugdloon.*
[156] Rb. Noord-Holland 14 maart 2017, ECLI:NL:RBNHO:2017:4976, (par. 4.1, 4.2, 4.4).
[157] Rb. Noord-Holland 14 maart 2017, ECLI:NL:RBNHO:2017:4976, (par. 4.4.)

article 7. In Dutch national law, there is another basis for positive action. This is to be found in the *Wet gelijke behandeling op grond van handicap of chronische ziekte (WGBH/CZ)*.[158] Article 3 under sub-article 1 paragraph c of the WGBH/CZ regulates the usage of positive action. The prohibition of differentiation on the grounds of handicap is not applicable in the case that the differentiation is in place to put the less abled worker in a more favoured place with the goal of cancelling out the differentiation and negative ratio of the less abled workers.

[158] The *Wet gelijke behandeling op grond van handicap of chronische ziekte (WGBH/CZ)* translates to the *Law pertaining Equal Treatment on the Grounds of Disability or Chronic Illness Act (WGBH/CZ).*

8. The role of workers representatives and social dialogue

This chapter will discuss the role that workers representatives may play in the inclusion- and integration of persons with disabilities. It must be noted that workers representation in the Netherlands takes places in two mostly separate ways. Firstly, there is the workers representation in undertakings, which most often revolves around works councils. This form of workers representation will be discussed in paragraph 8.1. Secondly, there is the representation of workers through trade unions. Trade unions will participate in social dialogue and may conclude collective labour agreements on behalf of their members, but generally do not play any significant role at the level of the undertaking.[159] The role that trade unions play through social dialogue will be discussed in paragraph 8.2.

8.1 Workers representation at the level of the undertaking; definition of undertaking; distinction- and differences between small and larger undertakings

Dutch law provides for a system of workers representation in undertakings in the 'Works councils act' (WOR).[160] Undertaking in this sense must be interpreted very broadly; it also covers non-profit organizations and public bodies.[161] The way in which workers representation takes place depends on the number of persons employed by the undertaking concerned. Undertakings that employ more than ten, but less than fifty persons must establish a staff representation or hold staff meetings and may establish a works council.[162] Undertakings that employ more than fifty persons must establish a works council.[163] We will now go into the role that both these forms of workers representation may play in the integration of workers with disabilities.

8.1.1 Rights of works councils (applicable to larger undertakings and optional for small undertakings)

Dutch law explicitly states that the works council has a general responsibility to guard against discrimination in the undertaking and to promote the recruitment of workers with disabilities or workers who belong to a minority.[164] This means that the works council also has a right to

[159] A.T.J.M. Jacobs, *Collectief Arbeidsrecht (Monografieën Sociaal Recht nr. 28)*, Deventer: Wolters Kluwer 2023/2.1.2.
[160] *Wet op de ondernemingsraden*; WOR.
[161] Article 1(1)(c) WOR; A.T.J.M. Jacobs, *Collectief Arbeidsrecht (Monografieën Sociaal Recht nr. 28)*, Deventer: Wolters Kluwer 2023/10.3.2.
[162] Articles 35b, 35c and 5a(2) WOR.
[163] Article 2(1) WOR.
[164] Article 28(3) WOR.

be informed and to request information on policies related to discrimination- or the integration of workers with disabilities.[165] Furthermore, the works council has a general right to request meetings with a person running or representing the undertaking, where such policies or other related issues can be discussed.[166] Besides that, the works council has the possibility to make agreements with the person or entity running the undertaking, although no obligation rests on either side to make use of this possibility.[167] These agreements could include policies on equal treatment or the integration of workers with disabilities.

Dutch law does however not explicitly grant works councils a right to be consulted on decisions on the integration of workers with disabilities. Nevertheless, with regard to certain staff regulations, the person or entity that runs the undertaking needs consent from the works council before being able to introduce a regulation on these matters, or else the regulation will be legally void.[168] If an undertaking were to adopt a policy with regard to discrimination- or the integration of persons with disabilities that *by its aim* falls into one of the categories mentioned in article 27 WOR, consent from the works council is needed.[169] Amongst these staff regulations is the (general) policy with regard to the recruitment, dismissal and promotion of employees and the (general) policy with regard to the way in which complaints from employees are dealt with.[170]

8.1.2 Rights of representatives in small undertakings (without works council)

Staff meetings must be held at least twice a year and additionally at the request of a quarter of the total number of persons employed.[171] Once a year, at this meeting, the undertaking must inform its staff on the social policy it pursues, part of which could be the integration of workers with disabilities.[172] Staff representations only have the right to be consulted and give a binding advice with regard to decisions on a very limited number of matters, amongst which is not the

[165] Article 31b WOR; C.L.C. Reynaers, 'Het procesrecht van de ondernemingsraad op grond van artikel 28 WOR; waarheen, waarvoor?', *AR* 2021/38, par. 5.
[166] Article 23 WOR; C.L.C. Reynaers, 'Het procesrecht van de ondernemingsraad op grond van artikel 28 WOR; waarheen, waarvoor?', *AR* 2021/38, par. 5.
[167] Article 32(2) WOR.
[168] Article 27 WOR.
[169] HR (Hoge Raad; Supreme Court of the Netherlands) 20 december 2002, ECLI:NL:HR:2002:AF0155, (*Holland Casino*); L.C.J. Sprengers (red.), *De ondernemingsraad (Monografieën Sociaal Recht nr. 86)*, Deventer: Wolters Kluwer 2024/4.6.3.
[170] Article 27(1)(d) and 27(1)(j) WOR.
[171] Article 35b(1) WOR.
[172] Article 35b(4) WOR.

integration of people with disabilities or even the social policy in general.[173] It can thus be concluded that the possibilities offered to workers representatives in small undertakings in the integration of workers with disabilities (without works council) are much more limited than the those of works councils in larger undertakings (see previous paragraph).

8.2 Provisions in collective labour agreements on the inclusion of persons with disabilities

Under Dutch law, the social partners have the possibility to enter into a binding collective labour agreement (*cao* in Dutch), which could contain provisions on the integration of persons with disabilities.[174] In 2024, the annual report of the Dutch Ministry of Social Affairs and Employment contained an analysis of all 149 collective labour agreements, valid at the 1st of January 2024, under which scope fell more than 7500 employees in the case of branche level agreements or more than 1600 employees in the case of company level agreements.[175] Part of this analysis was the extent to which these agreements contain provisions about persons 'with a distance to the labour market'.[176] It must be noted that the qualification 'with a distance to the labour market' not only includes persons with occupational disabilities, but also other groups of persons that may experience difficulties in finding employment, such as unemployed youth or persons without basic qualification.[177] In the following subparagraphs, some categories of provisions that are described in the report will discussed to illustrate what provisions can be found in Dutch collective labour agreements and how common these different provisions are.

8.2.1 Provisions about anti-discrimination and equal treatment in general

These provisions are not specifically aimed at the equal treatment of persons with disabilities, but also cover other prohibited discrimination grounds, such as age or gender. These forms of provisions will often take the form of an intention, expressed by the employer involved, to pursue a policy of non-discrimination or to promote diversity and inclusion.[178] 71 out of 149 collective labour agreements that were analyzed contained a general provision about equal treatment.[179]

[173] Article 35c(3) and (4) WOR.
[174] Article 1(1) Wet op de collectieve arbeidsovereenkomst (Collective labour agreement act, Wcao).
[175] Dutch Ministry of Social Affairs and Employment, 'Cao-afspraken 2024', p. 8.
[176] Chapter 7 of 'Cao-afspraken 2024'.
[177] Dutch Ministry of Social Affairs and Employment, 'Cao-afspraken 2024', p. 102.
[178] Dutch Ministry of Social Affairs and Employment, 'Cao-afspraken 2024', p. 104.
[179] Dutch Ministry of Social Affairs and Employment, 'Cao-afspraken 2024', p. 103.

8.2.2 Provisions promoting the recruitment of persons with a distance to the labour market

In 55 out of 149 collective labour agreements that were analyzed, an agreement was made that the employers that fall under it must recruit more persons with a distance to the labour market.[180] This obligation will either take the form of a binding figure with regard to the number of jobs to be realized or of merely an effort obligation, stipulating that the employers concerned must do their best efforts to recruit more persons with a distance to the labour market.[181]

The recruitment of persons with a distance to the labour market may also be promoted through indirect, financial means. An example would be the introduction of an additional, lower salary scale specifically for jobs meant for persons with disabilities, making it more attractive to employers to recruit those persons.[182] In our opinion, these sorts of provisions are typical of the pragmatic approach that is sometimes taken in the Netherlands with regard to the integration of persons with disabilities into the workforce.

8.2.3 Provisions about placement of persons with a distance to the labour market in regular jobs

A small number of collective labour agreements contains provisions about the placement of persons with a distance to the labour market in regular jobs.[183] These provisions may stipulate that if these persons have served a temporary employment contract, the employer concerned will do his best to offer a regular, permanent job to them. Also, collective labour agreements may grant a right to additional education to persons with a distance to the labour market in order for them to be able to take up a regular job.

8.2.4 Provisions about prevention of dismissal of persons with a distance to the labour market

Collective labour agreements can also promote the inclusion of persons with disabilities by preventing these groups from flowing out of the workforce. Usually, to this end, an agreement will be made between the social partners that the employers concerned must make adjustments to the labour conditions of persons with disabilities in order for them to retain their jobs.[184] These could include adjustments to the workplace, working hours or tasks that are being performed. Obligations with regard to the adjustment of working conditions can be found in

[180] Dutch Ministry of Social Affairs and Employment, 'Cao-afspraken 2024', p. 106.
[181] Dutch Ministry of Social Affairs and Employment, 'Cao-afspraken 2024', p. 106.
[182] Dutch Ministry of Social Affairs and Employment, 'Cao-afspraken 2024', p. 107.
[183] Dutch Ministry of Social Affairs and Employment, 'Cao-afspraken 2024', p. 109.
[184] Dutch Ministry of Social Affairs and Employment, 'Cao-afspraken 2024', p. 110.

53 out of 149 collective labour agreements that were analyzed by the Dutch Ministry of Social Affairs and Employment.[185]

[185] Dutch Ministry of Social Affairs and Employment, ‘Cao-afspraken 2024’, p. 110.

9. Remedies, procedures and sanctions

This chapter will explain the possibilities under Dutch law for persons with disabilities to effectuate their rights connected with their disabilities and the measures that may be applied when discrimination has taken place.

9.1 Judicial means to combat discrimination and to effectuate rights connected with disabilities

A person that wants to effectuate his rights connected with his disability has the possibility to step to a court. The way in which a procedure before court is initiated depends on what is being claimed or requested.[186] If an employee thinks he has been dismissed unlawfully, for example because the dismissal must be deemed discriminatory, this employee can initiate an action by application.[187] The employee can apply for the annulment of the termination of his employment contract or for a fair compensation (also see paragraph 9.3). Outside of unlawful dismissals, rights connected with disabilities can be effectuated by requesting a bailiff to serve a writ of summons to the defendant, which summons the defendant to appear before court on a specific date and time and specifies the claims being made against the defendant.[188]

In both of these procedures, the subdistrict court (*kantonrechter*) is the competent judicial body, insofar as the procedures are related to an employment contract.[189] At this court, which is nowadays a department of the district courts (*rechtbanken*),[190] parties can litigate *pro se* and do not have to be represented by a lawyer.[191] In both procedures, parties then have the possibility to appeal to a court of appeal (*gerechtshof*) and eventually, to bring their case before the Supreme Court of the Netherlands (*Hoge Raad*).[192] In both these appeal procedures, parties will have to be represented by a lawyer.[193]

[186] Articles 78 and 261 *Wetboek van Burgerlijke Rechtsvordering* (Code of Civil Procedure; Rv).
[187] Article 7:681(1)(c) *Burgerlijk Wetboek* (Civil Code; BW), article 9 *Wet gelijke behandeling op grond van handicap of chronische ziekte* (Act on equal treatment on grounds of handicap of chronic illness; WGBH/CZ) and article 261(2) Rv.
[188] Articles 45(1), 78(1) and 111 Rv.
[189] Article 93(c) Rv.
[190] Article 47 *Wet op de rechterlijke organisatie* (Judiciary organisation act; RO).
[191] Article 79(1) Rv.
[192] Articles 332(1) and 398 Rv (procedures initiated by writ of summons); articles 358(1) and 426(1) Rv (action by application).
[193] Article 80(2) Rv.

9.2 Non-judicial means to combat discrimination and to effectuate rights connected with disability

Before taking judicial steps, a person who is being discriminated against may first seek a solution through non-judicial means and may, in fact, be well advised to do so, as these procedures, will usually be more accessible or less costly.[194] Three possibilities that exist in Dutch practice or under Dutch law will be discussed in the following section.

9.2.1 Consulting a confidential advisor

In case of discrimination, a confidential advisor can assist the victim in finding a solution.[195] The confidential advisor may explore informal solutions for the victim or, else, advise the victim on what complaint procedure to follow.[196] The confidential advisor may also inform the organizations management on an alleged discriminatory practice, if the victim desires so.[197]

Under Dutch law, an employer is currently not obliged to hire a confidential advisor whom his employees can consult.[198] The number of confidential advisors, however, has been quickly rising over the past years and offering the possibility to employees to consult a confidential advisor is thus probably becoming more of a common practice.[199] A legislative proposal is currently pending that may in the near future make it mandatory for employers to arrange a confidential advisor (internal or external) that his employees can consult.[200]

9.2.2 Filing a complaint with a municipal anti-discrimination body

Dutch municipalities are obliged by law to set up an anti-discrimination body where discrimination complaints can be filed.[201] The anti-discrimination body can advise the victim of the alleged discrimination on what steps to take or what body to adjudicate.[202]

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[194] P.C. Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 45.
[195] Ministerie van Sociale Zaken en Werkgelegenheid, 'Wat zijn de taken van een vertrouwenspersoon?', arboportaal.nl.
[196] Ministerie van Sociale Zaken en Werkgelegenheid, 'Wat zijn de taken van een vertrouwenspersoon?', arboportaal.nl.
[197] Ministerie van Sociale Zaken en Werkgelegenheid, 'Wat zijn de taken van een vertrouwenspersoon?', arboportaal.nl.
[198] A.M. Wevers, 'De vertrouwenspersoon: een 'must' of 'nice to have'?' *AR* 2022/37.
[199] 'Aantal vertrouwenspersonen afgelopen vijf jaar aanzienlijk gestegen', kvk.nl 19 december 2023.
[200] Voorstel van wet van het lid Renkema tot wijziging van de Arbeidsomstandighedenwet in verband met het verplicht stellen van een vertrouwenspersoon (*Kamerstukken II* 2020-21, 35592 nr. 2); A.M. Wevers, 'De vertrouwenspersoon: een 'must' of 'nice to have'?' *AR* 2022/37, punt 3.
[201] Article 1 *Wet gemeentelijke antidiscriminatievoorzieningen*.
[202] Article 2(1)(1) *Wet gemeentelijke antidiscriminatievoorzieningen*; Nationaal Coordinator tegen Discriminatie en Racisme, 'Wat kan ik doen als ik gediscrimineerd word?', bureauncdr.nl.

9.2.3 Filing a complaint with the Netherlands Institute for Human Rights

The victim of an alleged case of discrimination on grounds of disability has the possibility to file a complaint with the Netherlands Institute for Human Rights.[203] The institute will examine the complaint and may conduct an investigation into the alleged discrimination, for example by visiting the employer concerned.[204] The institute can thus take a more active role in the examination of the case than a regular judicial body.[205] Part of the procedure may also be a hearing with both parties.[206]

When the institute finishes its examination of the case, it will render a judgment on whether the alleged case of discrimination is in violation of Dutch equal treatment law.[207] This judgment is however not binding upon the parties.[208] If the perpetrator of the discrimination does not respect the judgment of the institute, the victim will still need to take additional judicial steps to enforce his rights.

9.3 Sanctions for discrimination on grounds of disability

9.3.1 Compensation (other than in case of unlawful dismissal)

The person who suffered damage because of an unlawful act is entitled to compensatory damages, which can consist of compensation for material- and for immaterial damage.[209] Discrimination may constitute such an unlawful act. Culpability on the side of the perpetrator is not required in the case of discrimination, as followed from the *Dekker* case of the Court of Justice.[210] This means that the victim of the discrimination is automatically entitled to compensatory damages, provided that he actually suffered damage as a result of the discrimination.

[203] Article 12 WGBH/CZ.
[204] H.J.W. Alt, *Stelplicht en bewijslast in het nieuwe arbeidsrecht (Monografieën Sociaal Recht nr. 71)*, Deventer: Wolters Kluwer 2017/7.7.
[205] H.J.W. Alt, *Stelplicht en bewijslast in het nieuwe arbeidsrecht (Monografieën Sociaal Recht nr. 71)*, Deventer: Wolters Kluwer 2017/7.7.
[206] P.C. Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 44-45.
[207] H.J.W. Alt, *Stelplicht en bewijslast in het nieuwe arbeidsrecht (Monografieën Sociaal Recht nr. 71)*, Deventer: Wolters Kluwer 2017/7.7.
[208] H.J.W. Alt, *Stelplicht en bewijslast in het nieuwe arbeidsrecht (Monografieën Sociaal Recht nr. 71)*, Deventer: Wolters Kluwer 2017/7.7.
[209] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 54-56.
[210] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 54-55; ECJ 8th November 1990, Case no. 177/88, *NJ* 1992/224 (*Dekker*).

It follows from EU law that the compensation awarded to the victim must be effective, proportionate and dissuasive.[211] Punitive sanctions against employers who discriminate are not required, but, at least, the victim must be compensated for all damage suffered as a result of the discrimination.[212] In the case of an applicant who is rejected as a result of discrimination, this means for example that it must be determined whether the applicant would have been accepted and for how long he would have been employed, had the discrimination not taken place.[213] The victim is entitled to a compensation equal to the wage for this expected period of employment, corrected for possible earnings that the victim now has instead of the job for which his application was rejected.[214] In accordance with Dutch case law, the degree of culpability on the side of the employer may also affect the amount of compensation awarded.[215]

9.3.2 Sanctions in case of unlawful dismissal

The rules concerning unlawful dismissals are a *lex specialis* of the so called 'unlawful act' under Dutch civil law (see the previous paragraph), which mean cases of unlawful dismissal do not fall under the general rules that were discussed in the previous paragraph.[216]

As mentioned earlier, if an employee thinks he has been dismissed unlawfully, for example because the dismissal must be deemed discriminatory, this employee can initiate an action by application.[217] The employee can choose whether he wants to apply for the annulment of the termination of his employment contract or for a fair compensation.

Annulment will retroactively nullify any legal consequence of the termination of the contract, which means that the contract must be deemed to have never ended.[218] The employee never lost his right to receive his wage, but is also obliged to resume his work from that moment onwards.[219] Thus, the employee may alternatively apply for a fair compensation instead of the annulment of the contract.

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[211] Article 17 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
[212] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 55.
[213] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 55.
[214] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 55.
[215] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 55.
[216] Article 6:162 BW; P.C. Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 54.
[217] Article 7:681(1)(c) BW, article 9 WGBH/CZ and article 261(2) Rv.
[218] W.H.A.C.M. Bouwens & D.M.A. Bij de Vaate, *Van der Grinten Arbeidsovereenkomstenrecht*, Deventer: Wolters Kluwer 2023, p. 432.
[219] W.H.A.C.M. Bouwens & D.M.A. Bij de Vaate, *Van der Grinten Arbeidsovereenkomstenrecht*, Deventer: Wolters Kluwer 2023, p. 432.

Depending on all circumstances of the case, the court can attribute more or less importance to the consequences of the unlawful dismissal in determining the amount of that fair compensation.[220] In the case of a discriminatory dismissal, we would argue that, in accordance with the *Dekker* case (see the previous paragraph), the amount of fair compensation must always be determined on the basis of the consequences that the dismissal has had for the victim, regardless of the degree of culpability on the side of the employer.[221] Thus, it must be determined for how long the employment would have continued and what amount of earnings the victim has missed out on due to the unlawful dismissal, corrected for (possible) earnings that the victim has had instead of out of his terminated employment contract.[222] An even larger amount of compensation may be awarded in especially grievous cases of discrimination, for example where an employer deliberately discriminated against certain groups of employees.[223]

9.3.3 Other sanctions

Discrimination in the exercise of a public service, profession or business is a punishable crime under Dutch law.[224] However, prosecution on this ground is rare and will not directly benefit an employee who merely wants to effectuate his rights.[225]

Another consequence of a discriminatory policy within an organization may be that the disadvantaged group of persons is entitled to the treatment enjoyed by the advantaged group, as follows from case law of the Court of Justice.[226] This is referred to as so called 'levelling up' and may dissuade an employer from adopting a discriminatory policy.[227]

9.4 Procedural rules in case of discrimination

Procedural rules in cases of alleged discrimination are strongly affected by EU law, which prescribes that if a person, who alleges that he has been discriminated against, establishes facts

[220] W.H.A.C.M. Bouwens & D.M.A. Bij de Vaate, *Van der Grinten Arbeidsovereenkomstenrecht*, Deventer: Wolters Kluwer 2023, p. 661-662.
[221] ECJ 8th November 1990, Case no. 177/88, *NJ* 1992/224 (*Dekker*).
[222] W.H.A.C.M. Bouwens & D.M.A. Bij de Vaate, *Van der Grinten Arbeidsovereenkomstenrecht*, Deventer: Wolters Kluwer 2023, p. 661-663.
[223] W.H.A.C.M. Bouwens & D.M.A. Bij de Vaate, *Van der Grinten Arbeidsovereenkomstenrecht*, Deventer: Wolters Kluwer 2023, p. 666.
[224] Article 137g *Wetboek van Strafrecht* (Dutch Criminal Code).
[225] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 43.
[226] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 58; ECJ 12th December 2002, C-442/00 (*Caballero*).
[227] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 58; ECJ 12th December 2002, C-442/00 (*Caballero*).

form which it may be presumed that discrimination has taken place, it shall be for the respondent to prove that there has been no discrimination.[228] In practice, this means that procedures in Dutch courts concerning alleged cases of discrimination take place in two stages.[229]

In the first stage, the burden of proof lies with the alleged victim, who must establish and, if necessary, prove the facts that support a presumption of discrimination.[230] The fact that the defendant refuses to provide the alleged victim with data relevant to the case of alleged discrimination may also contribute to the establishment of this presumption.[231] General data about the organization that allegedly discriminates against certain groups of employees or the fact that this organization does not use clear and transparent criteria in their policy with regard to salaries, promotions, etc. is usually not enough to support a presumption of discrimination.[232] There must be a link to the individual case in which discrimination has allegedly taken place.[233] In the case of an alleged discriminatory dismissal or non-extension of an employment contract, Dutch case law shows that the plaintiff often succeeds in establishing facts from which it can be presumed that there has been discrimination.[234]

In the second stage, once a presumption of discrimination has been established, the burden of proof shifts to the alleged perpetrator. He does not have to prove the opposite (i.e. that he did not discriminate against), but merely has to disprove the presumed discrimination.[235] For that, 'hard' evidence is required; it does not suffice to merely sow doubt about the presumed discrimination.[236] If the alleged perpetrator succeeds in disproving the presumed discrimination, the burden of proof shifts back to the alleged victim, who now once more has the opportunity to prove discrimination in the 'regular' way, so without the help of the presumption rule.[237]

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[228] Article 10 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Article 10 WGBH/CZ; Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 58.
[229] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 48-49.
[230] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 49-51.
[231] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 49-51.
[232] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 49-51.
[233] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 49-51.
[234] K.G.F. van der Kraats & W. Boers, 'Een overzichtsartikel over gelijke behandeling op grond van handicap of chronische ziekte van de afgelopen vijf jaar', *AR* 2024/56, punt 3.1.
[235] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 51.
[236] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 51.
[237] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 51.

If there has already been a judgment on the case by the Netherlands Institute for Human Rights, the court is not bound by that judgment, but will need to motivate as to why they deviated from it.[238]

9.5 Limitations for instituting legal action

A claim for compensatory damages expires five years after it becomes known to the aggrieved party that they have suffered damage and who caused the damage or, else, twenty years after the damage-causing event took place.[239] A person who becomes known with a form of discrimination, has from that moment onwards five years time to claim a compensation. In case of an unlawful, discriminatory dismissal, the term to take legal action against the dismissal before a court is much shorter: two months from the moment of the notice of dismissal.[240]

A complaint with the Netherlands Institute for Human Rights must be filed within a reasonable period after the alleged case of discrimination has taken place.[241] It is not exactly clear what period can be considered reasonable; filing the complaint after one year is sometimes considered unreasonably late, but a complaint after four years on the other hand has been considered on time.[242]

9.6 Possibilities for third parties to act in support of persons with disabilities

Dutch law offers the possibility to associations and foundations to make a collective claim in protection of the interests of others.[243] These 'others' must all have interests that are sufficiently similar to each other, so that a judgment about the claim can be made without having to address the specific interests of different individuals.[244] Furthermore, the association or foundation must be sufficiently representative for the group whose interests they defend and may not have a profit motive.[245] The organization must also meet several requirements with regard to their

[238] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 45.
[239] Article 3:310 BW; Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 52-53.
[240] Articles 7:686a(4)(a) and 7:681(1)(c) BW.
[241] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 44.
[242] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 44.
[243] Article 3:305a BW.
[244] Article 3:305a(1) BW; I. Tzankova & X.D. van Leeuwen, 'Art. 305a (nieuw) – Burgerlijk Wetboek Boek 3', in: *SDU Commentaar Burgerlijk Wetboek Vermogensrecht (Boek 3 BW)*, par. 1.1.
[245] Article 3:305a(2) and (3); I. Tzankova & X.D. van Leeuwen, 'Art. 305a (nieuw) – Burgerlijk Wetboek Boek 3', in: *SDU Commentaar Burgerlijk Wetboek Vermogensrecht (Boek 3 BW)*, par. 3 and 8.

internal governance, expertise and financial position.[246] Established (larger) trade unions will usually meet the aforementioned criteria.[247] Thus, they could, for example, litigate in support of persons with disabilities who all face the same discriminatory policy, so that their interests are sufficiently similar.

A works council, on the other hand, is no legal entity and, thus, cannot litigate on the abovementioned ground.[248] Nevertheless, case law as well as academic literature is currently divided on the question of whether the general responsibilities that the law places upon works councils, such as that to guard against discrimination (also see paragraph 8.1.2), give it a right to bring proceedings before a court if the undertaking were to default on its obligations stemming from legislation or (collective) agreements.[249] Instances where such a procedure was actually initiated are however rare, which means that it may take some more time until there will be a case before the Supreme Court of the Netherlands and this issue may be clarified.[250] With regards to the Netherlands Institute for Human Rights, requirements for initiating a procedure are much less strict.[251] Trade unions as well as works councils can file complaints in support of persons with disabilities with the Netherlands Institute for Human Rights.[252]

[246] Article 3:305a(2) and (3); I. Tzankova & X.D. van Leeuwen, 'Art. 305a (nieuw) – Burgerlijk Wetboek Boek 3', in: *SDU Commentaar Burgerlijk Wetboek Vermogensrecht (Boek 3 BW)*, par. 4, 5 and 7.
[247] C. van den Bor & D.M.A. Bij de Vaate, 'Collectief procederen door de vakbond', *TRA* 2020/12, punt 3.2.
[248] C.L.C. Reynaers, 'Het procesrecht van de ondernemingsraad op grond van artikel 28 WOR; waarheen, waarvoor?', *AR* 2021/38, par. 3.
[249] In favour: Rb. Haarlem (District court of Haarlem) 13 April 2007, ECLI:NL:RBHAA:2007:BA2930, par. 4.9; Rb. Rotterdam (District court of Rotterdam) 26 February 2020, ECLI:NL:RBROT:2020:1674, par. 4.5; L.C.J. Sprengers, 'OR toegelaten als procespartij op grond van artikel 28 WOR', *TRA* 2020/47, against: Rb. Amsterdam (District court of Amsterdam) 10 October 2017, ECLI:NL:RBAMS:2017:7888, par. 4.14; C.L.C. Reynaers, 'Het procesrecht van de ondernemingsraad op grond van artikel 28 WOR; waarheen, waarvoor?', *AR* 2021/38.
[250] We could only find seven relevant instances of published case law in the period between 2007 and 2025 on www.uitspraken.rechtspraak.nl by using search term ' *"artikel 28 WOR"* '. None of these cases were brought before the Supreme Court of the Netherlands.
[251] Vas Nunes, *Discriminatie in arbeid*, Den Haag: Boom juridisch 2021, p. 45-46.
[252] Article 10(2)(d) and (e) *Wet College voor de Rechten van de Mens* (Act on the Netherlands Institute for Human Rights).