

Chapter 9 Dismissal

ARTICLE 9.1 GENERAL PROVISIONS

1. The employer authorised to effect employment grants dismissal. The written dismissal decision specifies the commencing date of dismissal.
2. Upon dismissal, the employer will notify in writing the party involved that in order to be eligible for a benefit pursuant to the WVOI, he is under obligation to register himself as job seeker, ultimately on the first day of unemployment, at the Centre for Work and Income /Job Centre. Within 3 weeks of unemployment he is to submit to the UWV an application for benefit, without prejudice to other obligations and provision in the BWOI.
3. The employer is under obligation, upon termination of the employment to furnish a letter of recommendation to employee if so desired. The letter of recommendation contains at any rate the start and finish date of employment and the function(s) in which the employee was active during the course of his employment as well as the working hours per day/week.
4. As a rule honourable dismissal is granted.

ARTICLE 9.2 EMPLOYEES REQUEST FOR DISMISSAL AND NOTICE PERIOD

1. At his request, employee shall be granted honourable dismissal.
2. The first paragraph may be departed from if criminal proceedings regarding a serious offence have been instituted against the employee or if dismissal is being considered as a disciplinary measure.
3. The employee's term of notice consists of a minimum of 1 and a maximum of 3 months.
4. If the conduct of business thus necessitates this term can be extended to 6 months at the most, whereby in all fairness first the interests of the employee will be taken into consideration.
5. The employee's term of notice is never longer than that of the employer's. If the employee's agreed term of notice exceeds 1 month, the same term of notice will be applied to the employer.
6. The notice period can be shortened by mutual consent. If this occurs on the initiative of the employer, the salary plus vacation pay and year-end bonus will be paid over the remaining notice period.

ARTICLE 9.3 TERMINATION OF FIXED-TERM EMPLOYMENT

1. The fixed-term contract terminates by law if at the commencement of that employment an expiry date or an objectively to be specified end situation may be laid down.
2. The employee can terminate employment prematurely, provided that the following notice period is taken into consideration:
 - a. 3 months, if the employee had at least been in employment for at least 12 consecutive months at the time of the notice;
 - b. 2 months, if the employee had been in employment for at least 6 months yet less than 12 consecutive months at the time of the notice;
 - c. 1 month, if the employee had been in employment for less than 6 consecutive months at the time of the notice. One can depart from the provision in this paragraph in favour of the employee.
3. In departure from the provision in the previous paragraph, in case of dismissal in the framework of reorganization, the extended notice periods such as has been agreed in the relevant Social Policy Framework, Social Statutes or Reorganization Guide apply.
4. The employee is entitled to an accommodating policy in conformity with the organization's prevalent Social Policy Framework including the terms set out therein, if a fixed-term employment or a succession of fixed-term employments constituting a period of more than 2 years has been terminated by the employer or by operation of law, irrespective of whether this termination is premature.

ARTICLE 9.4 DISMISSAL PROHIBITIONS

1. Termination cannot take place during a female employee's pregnancy, nor during maternity leave, nor, if she has resumed her work within 6 weeks following end of the maternity leave. The employer can require a statement from a physician or obstetrician in corroboration of the pregnancy.
2. Termination cannot take place if employee has appealed, in or out of court, to the principle of equal treatment of men and women.

ARTICLE 9.4a DISMISSAL DURING TRIAL PERIOD

Both the employer and employee may terminate employment during the trial period as meant in article 2.5 paragraph 3 without observing a notice period.

ARTICLE 9.5 DISMISSAL DUE TO DISCONTINUANCE OF FUNCTION OR REDUNDANCY

1. The employee may be granted honourable dismissal:
 - a. Due to discontinuance of his function;
 - b. Due to redundancy of personnel as a result of change in the organization's department where the employee is active, or as a result of cut-down on activities in said department.
2. Dismissal on one of the grounds mentioned in the first paragraph can only take place if careful investigation shows that it is not possible to assign activities to the employee within the employer's scope of authority and which are suited to his personality and circumstances, or if the employee refuses to accept such activities. The point of departure for assigning suitable activities is to combat the creation or increase of actual inequality, thus priority will be given to female employees.
3. Dismissal on one of the grounds mentioned in the first paragraph will take place no later than one year after publication of the redundancy or the discontinuance of the function. In case of reorganisations a longer period may be agreed on within the Local Consultation.
4. Dismissal due to the redundancy of employees who have a permanent employment will take place in the following order of ranking:¹⁴
 - a. Those who have 35 or more pensionable employment years, whereby senior citizens are prioritised to juniors;
 - b. Those who have not yet exceeded the age of 35 years, to begin with those who have served the fewest years in civil services, including years served at a Dutch university or a Dutch university hospital;
 - c. Those who have served the fewest years in civil service.
To calculate the number of years in public service the time devoted to the care of the 0-4-year old (to a maximum of 6 years in total) biological, step or foster children belonging to the employee's household is partially taken into consideration.
5. If the interest of the employer so requires, the ranking order in the fourth paragraph for issuing dismissal may be departed from. If the redundancies in that case amount to more than 1% of the number of employees with an indefinite-term contract at the relevant organization's department, with a minimum of 5, then this shall occur according to a certain pre-determined plan.
6. A notice period of at least 3 months will be taken into consideration for dismissal on grounds of the first paragraph, depending on the Social Policy Framework.
7. Having been relocated from the department where he had worked on grounds of the objections he has raised as regards his personal circumstances, which the employer has accepted to be valid and reasonable, the employee shall be granted honourable dismissal if, he cannot reasonably be expected to conform to the relocation, unless the employer deems it possible to assign other suited activities to the employee, against which the aforementioned objections will not apply.
8. The employee can still be granted honourable dismissal during a maximum period of 1 year after having fulfilled the activities assigned to him as a result of this article, if those activities appear to be unsuited to him. To this end no notice period is necessary.

ARTICLE 9.6 DISMISSAL AS A RESULT OF END OF EXTERNAL FINANCING

The employee with an indefinite-term contract, which is dependent on external financing as is evidenced from his letter of appointment or labour agreement, may be granted dismissal if that financing has come to a stop. The grounds for this dismissal are discontinuance of the function or redundancy without there being a reorganization. The accommodating policy and the Social Policy Framework are applicable.

¹⁴ For employers under civil law the 1945 BBA applies unimpaired.
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ARTICLE 9.7 DISMISSAL AS A RESULT OF FLEXIBLE PENSION AND RETIREMENT (FPU)

1. The employee that requests dismissal with view to a benefit in pursuance of the Flexible Pension and Retirement Scheme (FPU) will be granted dismissal, if the board of the ABP Pension Fund Organization have decided that there are grounds for a benefit in pursuance of the FPU scheme. The dismissal takes effect on the same day that the benefit commences.
2. This article also applies if and insofar as there is a part-time use of the FPU scheme.
3. Where possible article 9.2 is applicable mutatis mutandis.

ARTICLE 9.8 DISMISSAL DUE TO ILLNESS AND DISABILITY

In case of illness and disability dismissal is prohibited during a period of two years. This prohibition on dismissal shall not apply if the employee refuses without sound reasons to:

- a. Comply with the reasonable instructions assigned by employer or an expert appointed by him, and/or to cooperate in activities assigned by employer or an expert designated by him, or to comply with any arranged measures which will enable him to carry out his own or other suitable work.
- b. Carry out suitable work that the employer has arranged for him. 'Suitable work' in the framework of this article is understood to be all work befitting the employee's strengths and competencies, unless acceptance due to reasons of physical, mental or social nature cannot in all fairness be expected of him.
- c. Cooperate to the drafting, evaluation and (re)adjustment of a plan of approach as meant in article 25 paragraph 2 WIA¹⁵.

ARTICLE 9.9 DISMISSAL DUE TO ACCEPTANCE OF A PUBLIC FUNCTION

1. The employee shall be granted honourable dismissal if, due to the acceptance of a function in a public-law board, to which he has been appointed or elected, he is temporarily relieved from fulfilling his function, and after discontinuing to hold that function he, in the employer's opinion, cannot be reinstated to active duty.
2. Honourable dismissal shall also be granted to the employee who after the conclusion of long-term special leave, cannot, in the employer's opinion, be reinstated in active service.
3. Honourable dismissal shall be granted to the employee who accepts an appointment as a minister or vice-minister, on the day of accepting this function.

ARTICLE 9.10 DISMISSAL FROM INDEFINITE-TERM EMPLOYMENT

1. Other than at the request of the employee, by virtue of disciplinary measure or in pursuance of the Incompatibility of Office States-General and European Parliament Act, or the articles 9.5, 9.6, 9.7, 9.8 and 9.9 of this Collective Labour Agreement, the employee with an indefinite-term employment can be dismissed on grounds of:
 - a. Failing to meet a requirement for eligibility, as stipulated by the employer in a scheme prior to appointment, unless the requirement is only applicable prior to the commencement of the function;
 - b. The lack of a residence or work permit;
 - c. An irrevocable judicial decision whereby the employee is placed under guardianship;
 - d. The occurrence of committal for failure to comply with a judicial order for debts by virtue of an irrevocable judicial decision;
 - e. An irrevocable sentence regarding custodial sentence for a criminal offence;
 - f. Continuing disability, due to illnesses or shortcomings, which will impede the fulfilment of his function, as appears from continuance of the procedure meant in article 20 of the ZAOI. This dismissal can also be granted to part-time employers. After full dismissal only a part-time employment can be effected with the employee, subject to suitable work in the employer's organization;
 - g. Incompetence or disability other than on grounds of illness or physically incapacities for the function held by him;

¹⁵ See Eligibility for Permanent Invalidity Benefit (Restrictions) Act, Bulletin of Acts, 2001, 628.
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- h. Furnishing incomplete or incorrect information for or in connection with employment or medical examination, without which he would not have gained either employment or approval, unless the employee can convince employer that he acted in good faith;
 - i. Reaching retirement.
 2. Honourable dismissal will be granted on grounds of the first paragraph under sections a, f, g and i.
 3. In case of a dismissal on grounds of the first paragraph, under sections a or g, a notice period of 3 months is taken into consideration. No notice period needs to be taken into consideration for granting dismissal on grounds of sections b, c, d, e, f, h. and i.

ARTICLE 9.11 DISMISSAL ON OTHER GROUNDS

1. The employee with an indefinite-term employment may also be honourably dismissed on grounds other than those mentioned in this Collective Labour Agreement.
2. In case of dismissal in pursuance of the first paragraph, the employer shall make an arrangement whereby the employee will be given a fair and reasonable benefit.

ARTICLE 9.12 REINSTATEMENT EFFORT

In the case, meant in article 9.10 first paragraph, under section g (incompetence or unsuitability other than on grounds of mental and physical incapacity), the employer shall, prior to dismissal, seek whether employee can be transferred to another suited function within his scope of authority, in consideration of his personality and circumstances, unless the shortcoming is the relevant employee's own fault or doing.

ARTICLE 9.13 OBJECTION TO DISMISSAL DECISIONS

1. The employer shall set up an advisory committee, as meant in article 7:13 of the Awb to decide on objections to dismissals.
2. The advisory committee meant in the first paragraph, consists of a chairman and two members. The employer appoints both members and the chairman. A member is appointed on the recommendation of the employer and a member on the recommendation of the employee organizations. Both members nominate the chairman, as meant in article 7:13, first paragraph under section b of the Awb. By the same token, a substitute member will also be appointed for each member, and for the chairman, a substitute chairman.
3. A dismissal on the grounds of articles 9.3, paragraph 2, 9.5 paragraph 1 and 9.10 paragraph 1 under section a and g shall not take effect any earlier than 1 week after the employer has reached a decision on objections to dismissal as referred to mean in paragraph 1.
4. This article does not apply to the employer under Civil Law, as the 1945 Special Decree on Labour Relations (BBA) is hereby applicable.

ARTICLE 9.14 DISMISSAL AFTER REINSTATEMENT

If the employee has been offered a suitable function during the time that he is entitled to reduced pay by virtue of the Rijkswachtgeldbesluit 1959, or to a benefit by virtue of Allowance for Benefits Scheme 1966 or the BWOI, or to supplementation, as meant in chapter 1 of the ZAOI, and if it appears within one full year of service that this function does not suit him after all, he may be granted honourable dismissal from that function within that timeframe, this dismissal will be granted, which dismissal, with respect to his right to benefits, shall be deemed to be through no fault of his own.