

Labour Law

in

The Netherlands

Antoine T. J. M. Jacobs

**KLUWER LAW INTERNATIONAL**

Labour Law in The Netherlands

By

Antoine T.J.M. Jacobs
University of Tilburg

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Labour Law and Industrial Relations

2004

KLUWER LAW INTERNATIONAL
THE HAGUE / LONDON / NEW YORK

Published by:

Kluwer Law International
P.O. Box 85889
2508 CN The Hague, The Netherlands
sales@kluwerlaw.com
<http://www.kluwerlaw.com>

Sold and Distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704, USA

Sold and Distributed in all other countries by:

Extenza-Turpin Distribution Services
Blackhorse Road
Letchworth
Hertfordshire SG6 1HN, United Kingdom

A C.I.P. Catalogue record for this book is available from the Library of Congress

Printed on acid-free paper

Cover design: The Bears Communications, Amsterdam

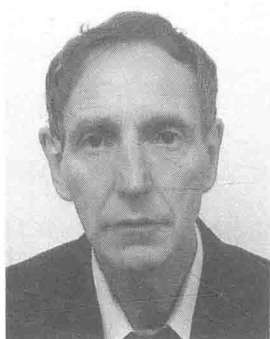
ISBN 90 411 22486

© 2004 Kluwer Law International

This publication is protected by international copyright law.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

The Author



Dr. Antoine T.J.M. Jacobs is Professor in Labour Law, Social Security Law and Social Policy at the University of Tilburg, The Netherlands.

Born on 30 April 1946, in Vaals (The Netherlands), he took his Master's Degree (*cum laude*) in law at Leyden University, 1973. Later he studied in Düsseldorf, Paris, Cambridge, Canterbury and Brussels.

He was deputy-secretary on social affairs at the Dutch Merchant Shipping Council (1968–1974) and lecturer in Labour Law and Social Security Law at Tilburg University (1976–1982). In 1986 he obtained his doctorate (*cum laude*) at the University of Brabant in Tilburg on the right of collective bargaining in European and comparative perspective.

He has written books and articles on Dutch labour and social security law in general, the right to work, the right to strike, discrimination and employment, the direct effect of international norms on Dutch labour and social security law, the influence of ILO norms on Dutch social security law, labour law and social policy of the European Communities, labour law in the German Federal Republic, labour law, employment law and social security law in the USA, Dutch collective labour law, the Dutch law on dismissals and flexible workers, actual developments in Dutch social security law, etc.

He has held the chair of Professor in Labour Law, Social Security Law and Social Policy at Tilburg University since 1987.

He has been visiting professor in Montpellier (1993), Bari (1995), Nantes (1996) and Leuven (1998), has given papers on comparative labour law at international conferences on Labour Law in Cologne, Frankfurt, Komintini (Greece), Fontevreau (France), Tokyo, Barcelona, Montreal, Paris, etc., cooperated with colleagues in other European countries on comparative work and has advised the European Commission and social partners in The Netherlands on matters of labour law and social security law.

He is a member of the Research Network on transnational trade union rights of the European Trade Union Institute.

Table of Contents

The Author	3
Abbreviations	11
Introduction	13
CHAPTER 1. GENERAL BACKGROUND	13
§1. Geography, Population and Economy	13
§2. Economic Growth and Employment	14
§3. The Composition of the Labour Force	16
§4. Wealth and Poverty	17
CHAPTER 2. THE POLITICAL BACKGROUND	21
§1. General Observations	21
§2. Political Parties, Coalition Cabinets	21
CHAPTER 3. THE SYSTEM OF INDUSTRIAL RELATIONS	24
CHAPTER 4. GENERAL ASPECTS OF LABOUR LAW	26
§1. Origins, Functions and Prospects of Labour Law	26
§2. Definitions and Notions of Labour Law	30
CHAPTER 5. SOURCES OF LABOUR LAW	32
§1. Constitutional Law	32
§2. International Law	33
§3. Legislation	34
§4. Collective Agreements	34
§5. Agreements with the Works Councils, Company Rules and Rules Unilaterally Imposed by the Employer	35
§6. The Contract of Employment and Custom and Practice	36
§7. Judge-made Law	38
§8. The Conflict of Rules and the Hierarchy of Sources	38

Table of Contents

CHAPTER 6. THE COURT SYSTEM	40
§1. Introduction	40
§2. The Ordinary Courts	40
§3. Special Courts	42
§4. Alternatives	42
CHAPTER 7. THE LABOUR INSPECTORATE	43
CHAPTER 8. SELECTED BIBLIOGRAPHY	44
Part I. The Individual Employment Relationship and Labour Market Regulation	45
CHAPTER 1. DEFINITIONS AND CONCEPTS	45
§1. The Contract of Employment	45
§2. Different Categories of Workers	48
I. Seamen	48
II. Commercial Agents and Commercial Representatives	48
III. Atypical Work Contracts	49
IV. Temporary Agency Workers	49
V. Apprentices	50
VI. Home-based Work	50
VII. Company Directors	51
§3. Different Kinds of Individual Contracts of Employment	51
I. Contracts of Employment for an Indefinite Period	51
II. Contracts of Employment for a Definite Period	51
III. Labour on Call	52
§4. Requirements Necessary to Conclude a Valid Contract of Employment	53
I. Formal Requirements	53
II. Legal Capacity	54
§5. Restrictions on the Work of Children, Young Persons and Foreigners	54
I. Child Labour	54
II. Young Persons	55
III. Foreigners	55
CHAPTER 2. DUTIES OF THE PARTIES TO THE CONTRACT OF EMPLOYMENT	57
§1. Duties of the Employee	57
I. Duty to Work	57
II. Duty to Obey Lawful and Reasonable Orders	57

Table of Contents

§2. Duties of the Employer	58
I. Duty to Pay Wages	58
II. A Duty to Provide Work?	58
III. Duty to Equal Treatment and Non-Discrimination	59
A. Handicapped Persons	60
B. Women	60
C. Immigrants	61
§3. The <i>Bona Fides</i> Principle	61
CHAPTER 3. REMUNERATION	63
§1. General Observations	63
§2. Manner of Payment	63
I. Calculation of Payment	63
II. Payment in Currency or in Kind	65
III. Periods of Payment	65
§3. Prohibition of Truck System, Deductions, Seizure and Transfer; the Itemized Pay Slip	65
§4. The Amount of the Wage	66
§5. Minimum Wage	67
§6. Equal Pay	68
§7. Remuneration and Work	68
I. Absence Due to Sickness	68
II. The Employer's Risk as Regards the Impossibility of Performing Work	69
§8. Rights to Remuneration in Case of Employer's Insolvency	70
CHAPTER 4. WORKING TIME	73
§1. Limitation of Working Time	73
I. Statutory Regulation	73
II. Collective Agreements	76
§2. Part-time Work and the Adaptation of Working Time	78
§3. Holidays	79
§4. Leave Regulations	80
CHAPTER 5. HEALTH AND SAFETY	82
§1. Duty to Provide Safe and Healthy Working Conditions on the Premises	82
§2. Health and Safety Regulations under Public Law	84
§3. Number of Persons Benefiting from Sickness and Disability Schemes	85
CHAPTER 6. MISCELLANEOUS	87
§1. Changing the Terms and Conditions of the Contract of Employment	87

Table of Contents

§2. The Privacy of the Employee	87
§3. The Principle of <i>Respondeat Superior</i>	88
§4. The Duty to Provide a Testimonial at the End of the Contract of Employment	89
§5. Covenants of Non-Competition	89
§6. The Duty of Secrecy	90
§7. Inventions by Employees and Copyright	90
§8. Transfer of an Enterprise; Job Security	91
§9. Retirement	92
§10. Disciplinary Sanctions	94
§11. Conflicts of Law	94
 CHAPTER 7. THE TERMINATION OF THE CONTRACT OF EMPLOYMENT	 97
§1. The Development of Dutch Law on Dismissals	97
§2. Redundancy Practices in The Netherlands	99
§3. Methods of Terminating Employment	100
§4. Termination by Mutual Consent	100
§5. Dismissal with a Permit of the Public Authorities	101
§6. Termination by Judicial Rescission	103
§7. Compensation	105
§8. Prohibited Dismissals – Special Protection for Certain Categories of Worker	106
§9. Periods of Notice	108
§10. Summary Dismissal	109
§11. Dismissal During a Probationary Period (Trial Clauses)	110
§12. Collective Dismissals	111
§13. Social Plan	112
§14. Dismissals in Case of Insolvency of the Employer	114
§15. Fixed-term Contracts	115
§16. Other Forms of Termination by Operation of Law	116
§17. The Dismissal of Temporary Workers	116
 CHAPTER 8. LABOUR MARKET SERVICES AND POLICIES	 118
§1. Introduction	118
§2. The Public Employment Service	119
§3. Reintegration Activities	119
§4. Private Employment Services	120
§5. Temporary Employment Agencies	121
§6. Labour Pools	123
§7. Vocational Training of Adults	124
§8. Apprenticeship	125
§9. Public Intervention for Corporate Restructuring or Reconversion	125
§10. Subsidizing Jobs	126
§11. Self-Employment Incentives	127
§12. Finances	127

Part II. Collective Labour Relations	129
CHAPTER 1. TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS	129
§1. Trade Unions	129
§2. Employers' Organizations	131
§3. Trade Union Law	131
§4. Representativeness	133
CHAPTER 2. THE NEO-CORPORATIST SYSTEM	135
§1. History	135
§2. Wage Formation Policies	136
§3. Institutions	140
CHAPTER 3. COLLECTIVE BARGAINING	141
§1. The System of Collective Agreements	141
§2. The Bargaining Process	147
§3. Definition, Form and Publicity of Collective Agreements	148
§4. Parties to Collective Agreements	148
§5. A Right to Collective Bargaining?	150
§6. Geographical, Temporal and Personal Scope of Collective Agreements	151
§7. Regulatory Content of Collective Agreements	152
§8. The Mandatory Force of Regulatory Provisions of Collective Agreements	153
§9. Extension of Collective Agreements	154
§10. Contractual Content of Collective Agreements	156
§11. Diagonal Clauses	157
§12. Interpretation and Appeal	157
CHAPTER 4. INDUSTRIAL DISPUTES	159
§1. Introduction	159
§2. Historical Development of the Right to Strike and Strike Action	160
§3. Definition/Concept of the Legal Strike	161
§4. Judicial Methods and Procedures	162
§5. Disputes of Rights and Disputes of Interest	163
§6. Strikes in Essential Services	164
§7. Effects of Strikes	164
§8. Other Types of Industrial Action	165
§9. The Lock-out	165
§10. Dispute-settlement Mechanisms	166
§11. Strikes in the Public Service	167

Table of Contents

CHAPTER 5. EMPLOYEE PARTICIPATION IN THE ENTERPRISE	168
§1. Introduction	168
§2. Union Participation Rights	169
I. Involvement in the Right of Company Inquiries	169
II. Collective Dismissals	170
III. The Merger Code	170
§3. Workers' Influence on the Composition of the Top-level Management of Major Companies	172
§4. Works Councils	175
I. Legal History	175
II. The Duty to Establish a Works Council	176
III. Notions and Definitions	176
IV. Statutory and 'Autonomous' Arrangements	177
V. Composition of the Works Council and Contact with the Employer	178
VI. The Electoral System	178
VII. General Powers	179
VIII. Economic Powers	180
IX. Social Powers	183
X. Other Powers	184
XI. Dispute Resolution	185
§5. European Works Councils	185
 Index	 187

Labour Law in The Netherlands

By

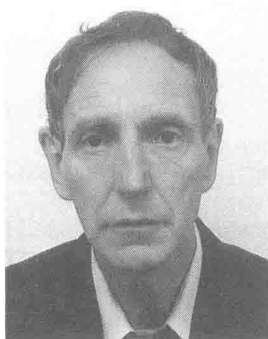
Antoine T.J.M. Jacobs
University of Tilburg

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Labour Law and Industrial Relations

2004

KLUWER LAW INTERNATIONAL
THE HAGUE / LONDON / NEW YORK

The Author



Dr. Antoine T.J.M. Jacobs is Professor in Labour Law, Social Security Law and Social Policy at the University of Tilburg, The Netherlands.

Born on 30 April 1946, in Vaals (The Netherlands), he took his Master's Degree (*cum laude*) in law at Leyden University, 1973. Later he studied in Düsseldorf, Paris, Cambridge, Canterbury and Brussels.

He was deputy-secretary on social affairs at the Dutch Merchant Shipping Council (1968–1974) and lecturer in Labour Law and Social Security Law at Tilburg University (1976–1982). In 1986 he obtained his doctorate (*cum laude*) at the University of Brabant in Tilburg on the right of collective bargaining in European and comparative perspective.

He has written books and articles on Dutch labour and social security law in general, the right to work, the right to strike, discrimination and employment, the direct effect of international norms on Dutch labour and social security law, the influence of ILO norms on Dutch social security law, labour law and social policy of the European Communities, labour law in the German Federal Republic, labour law, employment law and social security law in the USA, Dutch collective labour law, the Dutch law on dismissals and flexible workers, actual developments in Dutch social security law, etc.

He has held the chair of Professor in Labour Law, Social Security Law and Social Policy at Tilburg University since 1987.

He has been visiting professor in Montpellier (1993), Bari (1995), Nantes (1996) and Leuven (1998), has given papers on comparative labour law at international conferences on Labour Law in Cologne, Frankfurt, Komintini (Greece), Fontevreau (France), Tokyo, Barcelona, Montreal, Paris, etc., cooperated with colleagues in other European countries on comparative work and has advised the European Commission and social partners in The Netherlands on matters of labour law and social security law.

He is a member of the Research Network on transnational trade union rights of the European Trade Union Institute.

The Author

Table of Contents

The Author	3
Abbreviations	11
Introduction	13
CHAPTER 1. GENERAL BACKGROUND	13
§1. Geography, Population and Economy	13
§2. Economic Growth and Employment	14
§3. The Composition of the Labour Force	16
§4. Wealth and Poverty	17
CHAPTER 2. THE POLITICAL BACKGROUND	21
§1. General Observations	21
§2. Political Parties, Coalition Cabinets	21
CHAPTER 3. THE SYSTEM OF INDUSTRIAL RELATIONS	24
CHAPTER 4. GENERAL ASPECTS OF LABOUR LAW	26
§1. Origins, Functions and Prospects of Labour Law	26
§2. Definitions and Notions of Labour Law	30
CHAPTER 5. SOURCES OF LABOUR LAW	32
§1. Constitutional Law	32
§2. International Law	33
§3. Legislation	34
§4. Collective Agreements	34
§5. Agreements with the Works Councils, Company Rules and Rules Unilaterally Imposed by the Employer	35
§6. The Contract of Employment and Custom and Practice	36
§7. Judge-made Law	38
§8. The Conflict of Rules and the Hierarchy of Sources	38

Table of Contents

CHAPTER 6. THE COURT SYSTEM	40
§1. Introduction	40
§2. The Ordinary Courts	40
§3. Special Courts	42
§4. Alternatives	42
CHAPTER 7. THE LABOUR INSPECTORATE	43
CHAPTER 8. SELECTED BIBLIOGRAPHY	44
 Part I. The Individual Employment Relationship and Labour Market Regulation	 45
CHAPTER 1. DEFINITIONS AND CONCEPTS	45
§1. The Contract of Employment	45
§2. Different Categories of Workers	48
I. Seamen	48
II. Commercial Agents and Commercial Representatives	48
III. Atypical Work Contracts	49
IV. Temporary Agency Workers	49
V. Apprentices	50
VI. Home-based Work	50
VII. Company Directors	51
§3. Different Kinds of Individual Contracts of Employment	51
I. Contracts of Employment for an Indefinite Period	51
II. Contracts of Employment for a Definite Period	51
III. Labour on Call	52
§4. Requirements Necessary to Conclude a Valid Contract of Employment	53
I. Formal Requirements	53
II. Legal Capacity	54
§5. Restrictions on the Work of Children, Young Persons and Foreigners	54
I. Child Labour	54
II. Young Persons	55
III. Foreigners	55
CHAPTER 2. DUTIES OF THE PARTIES TO THE CONTRACT OF EMPLOYMENT	57
§1. Duties of the Employee	57
I. Duty to Work	57
II. Duty to Obey Lawful and Reasonable Orders	57

Table of Contents

§2. Duties of the Employer	58
I. Duty to Pay Wages	58
II. A Duty to Provide Work?	58
III. Duty to Equal Treatment and Non-Discrimination	59
A. Handicapped Persons	60
B. Women	60
C. Immigrants	61
§3. The <i>Bona Fides</i> Principle	61
CHAPTER 3. REMUNERATION	63
§1. General Observations	63
§2. Manner of Payment	63
I. Calculation of Payment	63
II. Payment in Currency or in Kind	65
III. Periods of Payment	65
§3. Prohibition of Truck System, Deductions, Seizure and Transfer; the Itemized Pay Slip	65
§4. The Amount of the Wage	66
§5. Minimum Wage	67
§6. Equal Pay	68
§7. Remuneration and Work	68
I. Absence Due to Sickness	68
II. The Employer's Risk as Regards the Impossibility of Performing Work	69
§8. Rights to Remuneration in Case of Employer's Insolvency	70
CHAPTER 4. WORKING TIME	73
§1. Limitation of Working Time	73
I. Statutory Regulation	73
II. Collective Agreements	76
§2. Part-time Work and the Adaptation of Working Time	78
§3. Holidays	79
§4. Leave Regulations	80
CHAPTER 5. HEALTH AND SAFETY	82
§1. Duty to Provide Safe and Healthy Working Conditions on the Premises	82
§2. Health and Safety Regulations under Public Law	84
§3. Number of Persons Benefiting from Sickness and Disability Schemes	85
CHAPTER 6. MISCELLANEOUS	87
§1. Changing the Terms and Conditions of the Contract of Employment	87