

New Government measures intended to help companies combat the economic downturn

Partial Unemployment Benefit

I. Introduction

The Government has recently implemented new legislative measures regarding part-time dismissal, or to be more precise, partial unemployment benefit. These regulations have been implemented as a more permanent measure to counter the negative consequences of the global credit crisis and corresponding recession that currently exists.

In this brief article we will go into the details of the new scheme and highlight some of its implications.

II. Reduction in working hours

As a result of the recent global credit crisis, the economy of many countries (including the Netherlands) has slipped into or is threatening to slip into a recession. A number of companies in the Netherlands is encountering a substantial reduction of its turnover and is thereby running the risk of facing serious financial difficulties. To try and alleviate this situation the Government decided to implement some provisional measures. Among these were the special regulations regarding a reduction in working hours. From the end of November 2008 until 21 March 2009 companies were able to apply to a temporary reduction in working hours in respect of its employees. If a company complied with the applicable conditions, it was granted permission to reduce its working hours for a maximum period of 6 weeks. Insofar as this was necessary, an application for an extension could be made.

At the end of March 2009 the Government together with the trade union movement agreed to replace this provisional measure with long term measures, intended to combat the recession and stimulate the economy. One of these measures concerns temporary partial unemployment benefit.

III. Regulations regarding partial unemployment benefit

The regulations regarding partial unemployment benefit enable companies to temporarily reduce the number of hours the employees are on the payroll without having to dismiss them. As soon as the economic situation improves, the employees can resume their work within the company on a fulltime basis.

Partial unemployment benefit implies that a company will be able to reduce the contractually agreed working hours of its employees up to a maximum of 50%. This will result in an equivalent reduction of salary expenses of up to 50%. The employees in question will be able to apply for unemployment benefit in respect of the reduced working hours.

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As such, companies are given the opportunity to temporarily reduce salary costs, whereas employees will – at least partially – be compensated for the loss of salary through unemployment benefit.

The partial unemployment benefit scheme is possible from 1 April 2009 until 1 January 2010. Schemes already implemented before 1 January 2010 can nonetheless still be extended. This temporary scheme does, however, have a budgetary ceiling. If and when it is apparent that the overall costs involved in awarding unemployment benefit exceed EUR 375,000,000, the partial unemployment benefit scheme will be immediately withdrawn. Schemes already implemented will then be respected, new schemes or extensions will no longer be accepted.

Applicable conditions

Partial unemployment benefit will be granted subject to the following conditions:

- The company must seek prior approval from the trade unions or the works council / employee representative body. In the event that the partial unemployment benefit scheme involves 20 or more employees, the trade unions' prior approval is required (i.e. those trade unions with a representative level of membership in respect of the employees within the company). In the event that the partial unemployment benefit scheme involves less than 20 employees, prior approval of the works council or, if no works council has been established, an employee representative body must be secured.
- The individual employees' prior approval need not be secured. The employees in question must, however, sign the application form for unemployment benefit.
- Both the company and the trade unions / works council / employee representative body must enter into a written agreement containing the following issues:
 - the specifics regarding the temporary reduction on working hours (period, percentage of reduction number of working hours, number of employees, etc.);
 - in the event that the employee is not entitled to unemployment benefit (because he/she does not meet the statutory requirements (due to recent employment history (one must have been employed during at least 26 out of the last 36 weeks before the initial date of unemployment) and/or the overall years of service (one must have been employed during at least 4 out of the last 5 years before the initial date of unemployment)) the company warrants that it will continue payment of the full salary;
 - specific arrangements regarding schooling / training (duration, frequency, funding etc.) for the purpose of retention of the employees within the company and/or a better employability within another company, as well as a secondment of the employees in question (suitable employment, working hours, commuting times etc.). To this end the

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company may use the services of the UWV (the semi-governmental body responsible for awarding unemployment benefit) and/or so-called mobility centres;

- the number of working hours will for the duration of the partial unemployment benefit scheme not be further reduced.
- Unlike with the temporary reduction in working hours scheme, no prior permission is required from the UWV.
- Unlike with the temporary reduction in working hours scheme, the company does not have to demonstrate a reduction in turnover.
- There are no notice periods to observe.
- In respect of the percentage whereby the overall working hours are reduced (up to 50%), more in particular in respect of the corresponding loss of salary, the employee – provided he/she is eligible – will receive unemployment benefit. The employee does not have to register with the UWV, let alone demonstrate that he/she is actively seeking alternative employment (which obligations exist in the event of a 'regular' loss of employment).
- The employee remains on the company's payroll. Upon expiry of the partial unemployment benefit scheme the employee will resume employment on the basis of 100% of the working hours.
- The company is under an obligation to fully continue the employment relationship with those employees covered by the partial unemployment benefit scheme for a minimum period of 13 weeks upon expiry of the scheme. In the event that the overall duration of the scheme exceeds 39 weeks, this obligation on the part of the company applies for a minimum of 1/3 of this overall period. In the event that the employees are nonetheless (partially) dismissed within this timeframe, the company must pay the UWV compensation amounting to 50% of the unemployment benefit paid to its employees under the scheme, including the employer's share of social security contributions paid for by the UWV.

Duration and extension

The partial unemployment benefit scheme can be implemented for a maximum period of 13 weeks. This period can be extended twice (albeit for the same number of employees and for the same number of working hours) for a period of 26 weeks. Thus a partial unemployment benefit scheme is possible during an overall maximum period of 65 weeks. In the event of an extension the written agreement between the company and the trade unions / works council / employee representative body must contain an annex, in which the company must substantiate which schooling / training and/or secondment arrangements the company has offered. If the UWV does not consider this to

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be satisfactory, an application for extended unemployment benefit may be denied.

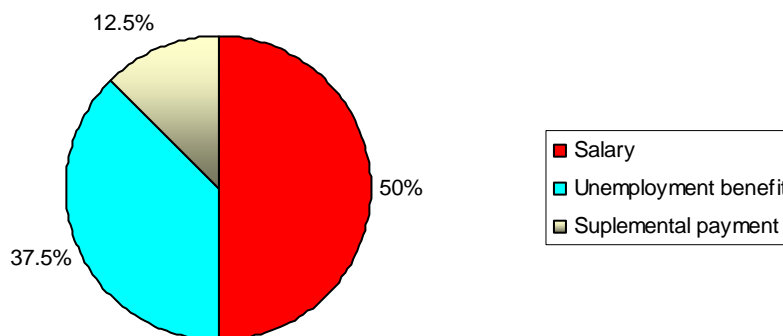
IV. Other issues

It is clear that this partial unemployment benefit scheme is much easier to implement than the reduction in working hours scheme, which applied until 21 March 2009. The main reason for this is that the company does not need to apply for the scheme and does not need to demonstrate a reduction in turnover. Although the company will still need to substantiate that there is a (financial) necessity to implement such a scheme if it wants to secure the trade union's (or works council's / employee representative body's) approval. As a result of the less stringent formal conditions, the scheme appears prone to abuse by companies as a cheap alternative (in respect of employees) to actual dismissal and unemployment benefit. To a certain extent this is covered by the fact that prior approval of the trade unions and/or works council / employee representative body is required.

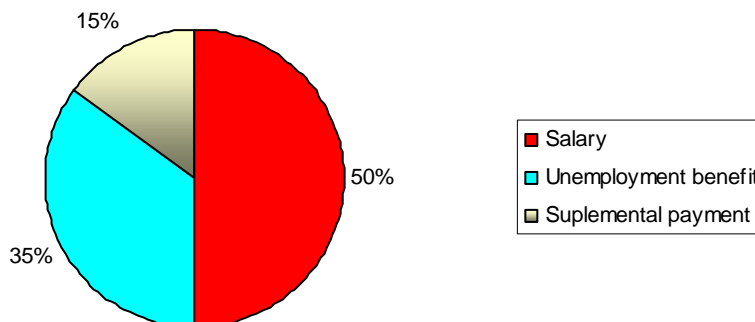
The Government has emphasised that the partial unemployment benefit scheme is intended to be available only to those companies which expect to have sufficient work to fully re-employ the employees in the foreseeable future. In view of the fact that there is so far very limited experience with this temporary scheme and in view of the possibility of inappropriate use, the Government has opted for an initial limited running period of 13 weeks. During this period the Government will assess the scheme. If this assessment shows that the scheme is inappropriately used, it may be immediately withdrawn.

Recently, one of the trade unions has claimed to only agree to partial unemployment benefit schemes in the event that companies supplement unemployment benefit up to 100% of the employee's salary. During the initial 2 months, unemployment benefit amounts to 75% of the employee's salary. From the third month unemployment benefit amounts to 70% of the employee's salary. As is indicated in the charts below, the trade union's claim for supplemental payments will imply that the company will need to continue to pay at least 62.5% of the employee's salary during the initial 2 months of unemployment benefit and at least 65% of the employee's salary from the third month:

Initial 2 months



As of month 3



In addition it should be noted that entitlement to unemployment benefit exists over a (periodically adjusted) maximum salary only. This maximum salary currently amounts to EUR 3,983.51 gross per month, resulting in a corresponding maximum entitlement to unemployment benefit of EUR 2,988 gross per month over the initial 2 months and EUR 2,800 gross per month thereafter. In the event that the employees in question earn more than the current gross monthly salary of EUR 3,983.51, the supplemental payment demanded by the trade unions will thereby also amount to more than 12.5% and 15% respectively.

Employers associations do not agree with this additional demand made by the trade unions, arguing that the partial unemployment benefit scheme was never intended to include this demand for supplemental payments. Employers associations have warned that if trade unions persist in their demands, companies will be forced to turn to collective dismissals as the scheme will thus not have sufficient impact. The Government has indicated that it will not get involved as this is an issue that should be dealt with on a decentralised level by employers associations and trade unions.

For the time being it has been agreed that the question as to whether or not a company should supplement unemployment benefit will be determined by employers associations and trade unions on a decentralised level. In other words: whether or not a supplement to partial unemployment benefit must be considered will be determined on a company-by-company basis.

The Labour Foundation ("*Stichting van de Arbeid*"), a consultative body consisting of employers associations and trade unions and set up to advise parties and to stimulate consultation between employers, employees and the Government, issued a recommendation on 21 April 2009. In this recommendation, the Labour Foundation reiterates that both employers associations and trade unions must make a careful and balanced assessment of both the economic / financial state of the company in question and the possible consequences for the employees involved. The Labour Foundation points out that in the negotiation process companies must not in advance be

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unfavourably disposed to a possible supplement to unemployment benefit, whereas an ultimate lack of agreement as regards a supplemental payment must not in itself constitute a condition for either trade unions to withhold their consent or a reason for employees not to agree to an application for partial unemployment benefit (i.e. signing the application form for unemployment benefit)

Following the Labour Foundation's recommendation, on 29 April 2009 the Government issued an amendment to the Decree regarding partial unemployment benefit. In its explanatory notes, the Government confirms that the partial unemployment benefit scheme does not contain any regulations regarding a supplemental payment to unemployment benefit as outlined above. The Government states that, while it realises that trade unions may demand supplemental payment conditions based on grounds other than those relevant or intended in respect of the partial unemployment benefit scheme, a lack of agreement between the company and trade unions must not in itself prevent the implementation of the scheme.

With the amendment the Government has set up a so-called 'Reporting Centre Partial Unemployment Benefit' (*"Meldpunt Deeltijd WW"*). In the event that companies and trade unions disagree about specific details of the partial unemployment benefit scheme (e.g. regarding supplemental payments to unemployment benefit) which prevent the implementation of the scheme, such disputes can be submitted to the Reporting Centre Partial Unemployment Benefit in writing. The Reporting Centre Partial Unemployment Benefit in turn requests the Labour Foundation to mediate with the aim of finding a solution to the dispute. The Labour Foundation must report its findings within 14 days after having received the request from the Reporting Centre Partial Unemployment Benefit.

In the event that the Minister declares that (i) no solution has been found or (ii) the Labour Foundation has not issued its report within the given timeframe of 14 days, the company in question will nonetheless be able to implement the partial unemployment benefit scheme, provided that the employees involved agree with the intended partial unemployment benefit scheme.

V. Conclusion

It is evident from the information outlined above, that whilst the possibility to implement a partial unemployment benefit scheme appears rather straightforward, many issues are as yet unclear. Despite the additional clarification provided by the Government, a major stumbling block may be the demand by trade unions for supplemental payments, bearing in mind that (at least insofar as it concerns the involvement of 20 or more employees) the trade union's prior approval is required before the scheme can be implemented. Another as yet unresolved issue is what happens in the event that, despite the implementation of the partial unemployment benefit scheme, a company collapses. Will the employee be entitled to unemployment benefit on the basis of his/her partial or full salary? Another issue concerns the build-up of paid holiday entitlements. Will this be on the basis of fulltime employment or not? What about pension contributions during the period of partial

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unemployment benefit? Will these be paid for by the company as if the employee were fully employed or is a pro rata contribution more appropriate? These as well as other possible issues will be the subject of negotiations between companies and trade unions / works councils / employee representative bodies and are likely to become clear as the scheme becomes more widespread.

If you require more elaborate advice, Heussen will of course be happy to accommodate.
