

# Concerns about employment agencies that abuse summary dismissal for financial gain

## Netherlands Labour Authority

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### Introduction

This signal concerns extensive abuse of immediate termination of an employment contract for an urgent cause, better known as 'summary dismissal'. This has been observed at three employment agencies in the meat-processing industry, specialising in migrant workers. It concerns thousands of employees.

The incentives for labour migration to the Netherlands are extremely strong. Private revenue models encourage labour migration, but shift the burden to the public. These public burdens include great pressure on the housing market, which means poor living conditions will increase rather than decrease, additional pressure on facilities such as education, and pressure on scarce public goods such as clean water, nature (nitrogen deposition ceiling, CO<sub>2</sub>, etc.) and energy. These negative external effects are hardly included in the private revenue models. This was noted in the 2021 annual report of the Netherlands Labour Authority.<sup>1</sup> This also leads to the conclusion that the Netherlands Labour Authority will increasingly have to investigate the business economic motivations for abuses in the labour market. Based on this approach, the Authority has already published several studies on financial motivations and revenue models.<sup>2</sup>

Based on ongoing investigations, these concerns provide insight into yet another new type of revenue model. This concerns the financial gain that arises when an employment agency (the employer) 'summarily' dismisses large numbers of employees on paper.

This signal provides insight into how and what financial gain is achieved, who is disadvantaged and which measures private and government parties can take together.

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<sup>1</sup> [2021 Annual Report | Annual Report | Netherlands Labour Authority \(nlarbeidsinspectie.nl\)](#)

<sup>2</sup> See for example the signal on business economic / financial drives related to violations of Aliens Employment Act (Wet Arbeid Vreemdelingen), March 2024. [Signaal Nederlandse Arbeidsinspectie financiële drijfveren overtredingen Wav | Publicatie | Nederlandse Arbeidsinspectie \(nlarbeidsinspectie.nl\)](#)

## Core

An employee can be summarily dismissed if she/he, culpably, does something that makes it no longer reasonable for the employer to keep him or her employed, such as stealing, violence, serious matters. Summary dismissal is rare. This concerns less than 1% of all dismissals. In the event of summary dismissal, the employer may immediately stop payments for wages, holiday pay, etc. and does not have to pay the employee a transition payment. In fact, the employee owes the employer compensation, for instance, for the costs of arranging a replacement. A practical solution to this is for the employer to offset this compensation with the employee's final settlement (still outstanding reserved balances such as accrued holiday pay and payment of unused leave days).

In an ongoing investigation, inspectors noticed that an employment agency working for the meat industry had a very high percentage of summary dismissals in its accounts. As a result, the Authority conducted an analysis of the data that agencies provide to the government. The results thereof are explained in detail in the appendix.

There are more than 19,000 employment agencies and employment brokers in the Netherlands. Because an analysis of all those agencies would not be proportionate, a start was made on investigating 13 employment agencies that are already known to the Authority due to supervisory investigations. The period 2020-2022 was analysed. At three of those 13 employment agencies, the percentage of summary dismissal turned out to be very high, from 40% to more than 80%. At the 10 other employment agencies, summary dismissal does not or hardly ever occurs. It concerns more than 7,000 entries of summary dismissal in the records. This almost exclusively concerns employees with a non-Dutch nationality, because these employment agencies almost exclusively employ employees of non-Dutch nationality .

The financial gain of this form of dismissal for the employer can vary greatly and can amount to at least many hundreds of euros per dismissal, if not more. For the aforementioned 7,000 dismissals, the gain is estimated, very provisionally, at an amount between 1 and 5 million euros.

If summary dismissal is wrongly applied, both the employee and society are disadvantaged.

First, the employee, because payments stop immediately. The employee may receive less wages, overdue wages are retained, no or less holiday allowance is paid, there is no transition or severance payment, etc. In the event of summary dismissal, the employee is culpably unemployed in a formal sense and loses rights to unemployment benefits, or periods worked in the Netherlands may not be included in the calculation of unemployment benefits in other countries. The employee may also lose his housing more quickly or even immediately. Because the collective agreement for the meat sector, for instance, stipulates that if you are summarily dismissed, the four-week period that you are allowed to stay in your home if you lose your job, also expires immediately.

Summary dismissal can be challenged. The employee can do this before the sub-district court judge. But it appears that employees (especially non-Dutch ones) are not aware of the precise nature of their dismissal or the legal form of their contract. They know that they work for an employment agency and that this brings uncertainty. Many non-Dutch employees do not know what is due to them under the law or the collective agreement. It appears that the employment agency does not communicate to the employees that they are subject to a 'severe' form of dismissal that reduces their rights. In fact, employees often return to work afterwards, inspectors note. In the case of a real summary dismissal, employers logically do not do this. Summary dismissal therefore seems to exist mainly administratively ('on paper') in order to collect the related gains. It doesn't seem to be a good reflection of reality. For example, the code for summary dismissal is registered in the records. This

then 'justifies' stopping payments and drawing up a 'final settlement' with the employee, which apparently almost always ends up at 0 euros. The data set is then generated from the agency's records and delivered to the government (monthly). The Authority estimates that the chance that the 'summary dismissal' code will be used accidentally or due to clumsiness, in other words that this would constitute 'administrative carelessness', is little more than zero.

Secondly, society is harmed. Because the employer avoids payment of wages and taxable allowances to the employee and thus the employer also avoids payments for payroll taxes and premiums to the community. Employment agencies that apply this construction not only transfer external effects to society, but also directly harm that society by evading tax payments.

## **Conclusion**

The 13 agencies that were investigated and the three striking outliers are of course too small a group for a representative picture of the entire temporary employment sector. But the significant numbers in these three cases alone make it desirable to take measures. Employment agencies that act in this way should be prevented from being active on the market. The Bill for the Provision of Personnel (Accreditation) Act (Wtta) could be a way to achieve this. The associated framework of standards should provide starting points to gain insight into such constructions in order to counter them.

Other measures are also possible before amendments to these and any other laws and regulations have been implemented.

Employers who use the services of employment agencies can ensure that the employees made available to them are not improperly summarily dismissed. Industry organisations are asked to actively discourage the use of constructions and to identify possible abuse and to prevent it where possible. .

It also seems desirable for the government to carry out specific checks on the data that employment agencies provide to the government. In those cases where summary dismissal occurs more often than the (yet-to-be-determined) threshold value, this should give rise to further investigation. Investigation to determine whether the summary dismissal is justifiable or whether the described construction is being used. In the latter case, enforcement and additional assessment can take place.

## Enclosure: Results of investigation into summary dismissal at 13 employment agencies

1. **Definition.** Summary dismissal is legally regulated in the Dutch Civil Code (DCC 7:677).<sup>3</sup> An employer 'is authorised to terminate the employment contract without delay for an urgent cause'. Public sources mention the following urgent causes for summary dismissal: stealing, fraud, seriously lacking the skills to do the work and refusing work without good reason.
2. There are three requirements for summary dismissal:
  - a. There is an urgent cause;
  - b. The employer terminates the contract 'without delay'<sup>4</sup>;
  - c. The employer communicates the urgent cause to the employee to be dismissed 'without delay'.<sup>5</sup>
3. An employer does not first have to go to the sub-district court or UWV for summary dismissal. The dismissal is not verified in advance. Summary dismissal happens if the employer cannot be expected to continue the employment contract any longer. If an employee does not agree with the summary dismissal, he/she can request the sub-district court judge to annul the dismissal within two months. The Netherlands Labour Authority has no powers to rule on summary dismissal.
4. **Implications.** Summary dismissal means that the employer may terminate the employment contract without notice period. The employee is immediately no longer entitled to wages. In addition, the employee must pay compensation to the employer (e.g. for the costs of arranging a replacement). This compensation must be at least equal to the amount the employee would have received in wages over the statutory notice period.<sup>6</sup> A practical solution to this is for the employer to offset this compensation with the employee's final settlement (still outstanding reserved balances such as accrued holiday pay and payment of unused leave days). Furthermore, the employer does not have to pay the dismissed employee a transition payment and the employee's health insurance ends, provided the employer has arranged this for the employee.<sup>7</sup> Lastly, summary dismissal means that an employee cannot claim unemployment benefits from the UWV.
5. If the employer is an employment agency, two additional implications are possible: the employee loses accrued rights as an agency worker and remains in phase A/1-2.<sup>8</sup> If the employer arranges housing for the dismissed employee, the employee often loses the right to housing.<sup>9</sup> The adverse implications of summary dismissal for employees are therefore serious. They lose income, lose (accrued) rights and may lose their health insurance and housing. At the same time, employers experience financial gains.

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<sup>3</sup> [wetten.nl](https://www.wetten.nl) - Regulations – Dutch Civil Code Book 7 - BWBR0005290 (overheid.nl)

<sup>4</sup> Without delay means that the employer can use some time to conduct an investigation or, for instance, hear the employee or obtain legal advice. If the investigation is conducted too late or the contract is only terminated afterwards, this requirement has not been met. Source: <https://open.overheid.nl/documenten/ronl-6caacb64-71b5-4415-bdec-Bc01ccc4ba6d/pdf>

<sup>5</sup> In other words: The employer must inform the employee about the summary dismissal and the reason for it. Otherwise, the dismissal is not valid.

<sup>6</sup> If it concerns a temporary contract that cannot be terminated early, this compensation is equal to the salary the employee would have received if the temporary contract had ended by operation of law. The sub-district court judge may, if he deems this fair, reduce this compensation.

<sup>7</sup> See Article 36 of the ABU Collective Agreement for agency workers: The employment agency informs the agency worker about the obligation to have health insurance. In addition, the employment agency makes the agency worker an offer for health insurance. The agency worker is not obliged to accept this offer.

<sup>8</sup> For more information about the phase system for agency workers, see: [Phase system ABU | How does it work? | Uitzendbureau.nl](#) and: [These are your rights as an agency worker - FNV](#)

<sup>9</sup> The collective agreement for the meat sector 2022-2024 explicitly states that the housing guarantee (the right to continue living in the home for four weeks after termination of the employment contract) expires in cases of unsatisfactory performance or culpable actions by the employee.

6. **Reason for the investigation.** The Netherlands Labour Authority carried out inspections during which it identified an employment agency (agency X) that assigns agency workers (mostly labour migrants) to meat industry. Further investigation revealed that the agency terminated a very large number of jobs during a given calendar year, with 80% of the cases involving 'summary dismissal'. Jobs that were terminated during the probationary period were not taken into account.
7. **Follow-up.** The Netherlands Labour Authority has initiated a follow-up investigation to verify these initial figures and to gain better insight. For this follow-up investigation, the Netherlands Labour Authority has selected 13 employment agencies (including agency X), where there are risks of unfair work.<sup>10</sup> The UWV policy administration was used for this investigation and the years 2020 to 2022 were examined. The policy administration is created on the basis of data provided by businesses.<sup>11</sup>
8. The results show that at 10 employment agencies, summary dismissal does not or hardly ever occurs.<sup>12</sup> Three agencies (agency X and two other employment agencies) make extensive use of summary dismissal. An analysis of terminated jobs at these agencies shows the following:
  - a. Agency X has terminated 75%-81% of jobs per year by summary dismissal. In absolute numbers, this concerns several thousand jobs in the period 2020-2022;
  - b. Agency A has terminated 8%, 37% and 41% of jobs each year by summary dismissal. This agency is larger than agency X and terminated several thousands of jobs in 2020-2022 by means of summary dismissal;
  - c. Agency G has terminated 71%-79% of jobs per year by summary dismissal. This agency is smaller than agency X. In absolute numbers, this agency has summarily dismissed several hundreds of employees in 2020-2022.

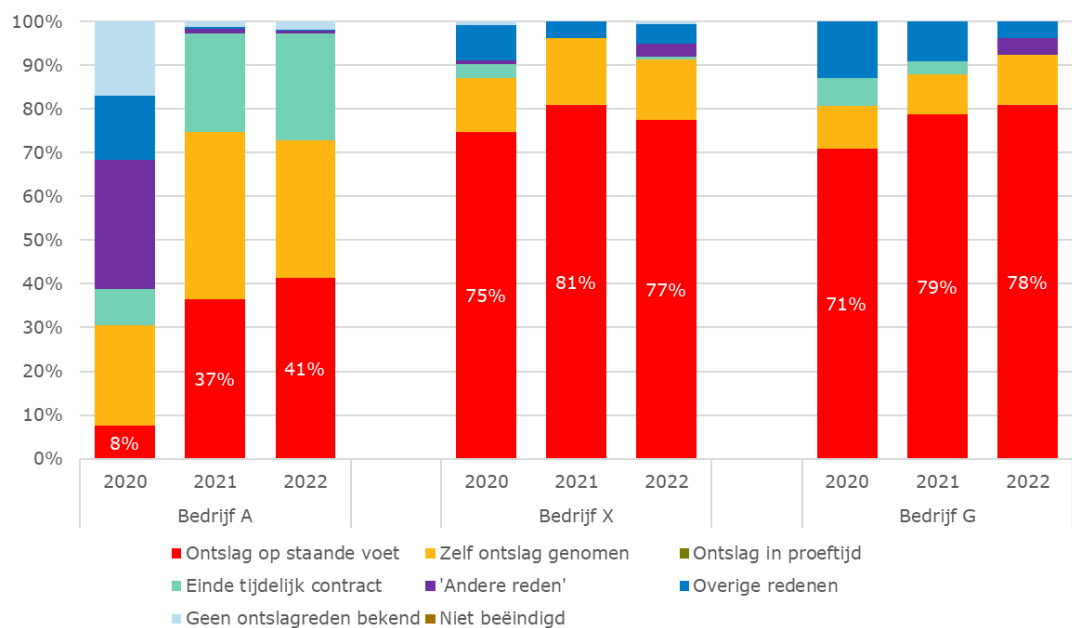


Figure: Overview of terminated jobs outside a probationary period, at employment agencies A, X and G.

<sup>10</sup> This selection is therefore not random.

<sup>11</sup> See for instance: [Data specifications for payroll tax returns 2023 - Intended for software developers \(belastingdienst.nl\)](https://belastingdienst.nl)

<sup>12</sup> A side note here is that other agencies widely use dismissal during the probationary period. This may be another way to disadvantage employees and keep them in phase 1-2/A of the agency contract.

9. Most employees who have been summarily dismissed have a nationality other than Dutch. Most of the 13 employment agencies examined mainly employ people with a non-Dutch nationality: only 3% of all employees had Dutch nationality.
10. The modus operandi as it emerges from conversations with a small portion of the dismissed employees of agency X, seems to be that none of them was informed by the agency about the summary dismissal. Some stated that they were still owed money from agency X when their employment ended, but that they never received it. Other employees stated that they did not know whether they had received all the wages and allowances to which they were still entitled. Inspectors were able to check some pay slips of dismissed employees. Those pay slips showed that the final settlements in all cases amounted to exactly € 0.