

NOW: conditions known

Temporary Emergency Measure Bridging for Retention of Employment (NOW)

In Dutch: Tijdelijke Noodmaatregel Overbrugging voor behoud van Werkgelegenheid (NOW)

On Tuesday 31 March 2020, the Dutch Cabinet announced the content and conditions of the Temporary Emergency Measure Bridging for Retention of Employment (NOW). The NOW replaces the short-time work scheme (Werktijdverkorting (WTV)), which expired on 17 March with immediate effect. The NOW provides a subsidy of a maximum of 90% of the wage costs for companies with a decrease in turnover of at least 20%. The Dutch institute for employee insurance (UWV) aims for companies to be able to apply for this subsidy from 6 April. Below follows how this will work.

Decrease in turnover

In order to apply for the NOW, the employer must expect a decrease in turnover of at least 20%. The decrease in turnover of at least 20% must occur over a period of three months. The starting date of these three months is the first day of March, April or May 2020. The employer makes a choice in this respect. In order to calculate the decrease in turnover, 25% of the turnover over the whole of 2019 is taken as a comparative measure. For employers who did not yet exist on 1 January 2019, the entire calendar months from the time that the business of the employer started in 2019 up to and including February 2020 are taken into account, converted to three months. If a business consists of several legal entities that together form a group, the decrease in turnover of the entire (Dutch) group will be maintained. Please note: the employer must submit a separate application for the NOW for each payroll tax number, but each time fill in the same expected decrease in turnover and chosen 'turnover period' as for the other companies within the group.

The UWV leaves it up to the employer to choose the period in question for the application. Depending on the type of work, the starting date may make a difference to the amount of the subsidy. This is the case, for example, when a lack of patronage is not reflected in the decrease in turnover until later.

Please note: a choice once made cannot be changed. If the decrease in turnover ultimately exceeds the expected decrease in turnover when the application is submitted, this can lead to a subsequent payment by the UWV. Conversely, a lower decrease in turnover than expected may result in a repayment obligation.

Wage bill

The employer applies for the subsidy for the wage bill in March, April and May 2020. This is therefore not a period for which the employer can choose the starting date. For the wage bill, the data from the wage tax return at the Dutch Tax and Customs Administration (Belastingdienst) will be used. The UWV automatically adopts these data and uses the social insurance wage ('sv-wage', or in Dutch: sv-loon) as the basis. Corrections will still be made: for example, any holiday allowance paid will be deducted from this sv-wage and this also applies to the wage per employee that exceeds an amount of € 9,538 gross per month. In addition to this 'corrected' sv-wage there is a fixed surcharge of 30%, which provides compensation for employer expenses such as the accrual of holiday pay, pension and employer contributions. All this, which is calculated by the UWV itself, together makes up the 'wage bill' that serves as the basis for the amount of the subsidy.

Amount and calculation of the subsidy

The amount of the subsidy depends on the percentage decrease in turnover and amounts to a maximum of 90% of the wage bill for the months March, April and May 2020. A subsidy of 90% of the total wage bill will only be paid in the event of a decrease in turnover of 100%. An employer with a decrease in turnover of 50%, for example, is entitled to a subsidy of 45% of the total wage bill and with a decrease in turnover of 20% to a subsidy of 18% of the total wage bill.

To calculate the advance, the UWV uses the wage bill for January 2020 as known to the Dutch Tax and Customs Administration. If this is not available, the wage bill of November 2019 will be used. Changes to the wage tax return for January 2020 that were submitted after 15 March will not be included. Following a positive decision on the application, the UWV will pay out an advance equal to 80% of the subsidy as calculated on the basis of the information provided with the application regarding the expected decrease in turnover. The advance payment is made in three instalments.

In the final determination of the subsidy that will take place afterwards, the actual decrease in turnover over the chosen turnover period and the actual wage bill for the months March, April and May 2020 will be taken into account. As mentioned above, an actual turnover that exceeds the expected turnover may lead to a higher subsidy and a lower decrease in turnover may lead to a lower subsidy (and possibly a repayment obligation).

If the actual wage bill for March, April and May 2020 is lower than three times the wage bill for January 2020, this could ultimately result in a lower final subsidy. This could therefore possibly result in an obligation to repay part of the advance. If the actual wage bill for March, April and May 2020 is higher than three times the wage bill for January 2020, the latter wage bill will still be retained for the final subsidy. No subsidy will be calculated on the higher part of the wage bill. With this measure, the legislator wishes to combat fraudulent conduct.

Dismissal for business economic reasons

The NOW penalises an employer who applies for dismissal for business economic reasons for his employees during the period of 18 March to 31 May 2020. This therefore does not apply to dismissal applications submitted before 18 March. For dismissal applications for business economic reasons submitted from 18 March onwards, employers have the option of withdrawing them up to five working days after publication of the NOW (1 April). Dismissal of employees on other grounds, for example during the probationary period, due to malfunctioning or after expiry of a fixed-term contract, is not covered by this obligation and therefore does not give rise to a penalty.

If an application for dismissal for business economic reasons is nevertheless submitted and this application has not been withdrawn (or not withdrawn on time), a correction is made when determining the subsidy, which is to be regarded as a fine. The correction is achieved by increasing the wage of the employees for whom the dismissal has been applied by 50%. This wage plus the 50% increase (plus the fixed surcharge of 30%) will be deducted from the final amount of the subsidy. The employer thus does not lose his right to the NOW, as previously indicated by the government.

Note: an employer who still applies for dismissal for business economic reasons for his employee(s) will have to make it plausible that the NOW cannot prevent the dismissal and why it cannot.

Application, advance payment and grant

The application period for the subsidy runs in principle from 14 April to 31 May 2020. However, the UWV aims for companies to be able to submit applications from 6 April 2020. The application must be made using an application form which can be found on the UWV website. In the application, the employer must in any case state the expected decrease in turnover, the chosen turnover period, his payroll tax number and his bank account number. The UWV applies a decision period of 13 weeks after receipt of the complete application, but strives to pay the first instalment within 2 to 4 weeks.

Within 24 weeks after the end of the period for which the (provisional) subsidy has been granted, the employer must apply for the (definitive) subsidy to be determined. In principle, an auditor's report is required. Within four weeks after publication of the NOW, more clarity will be given as to the limit below which an auditor's report is not required. Within 52 weeks of receipt of this application, the UWV will determine the definitive subsidy, which will depend on the actual decrease in turnover and wage bill. In other words, the settlement may involve a subsequent payment or, for example, if the decrease in turnover is lower, a recovery.

It will be decided before 1 June 2020 whether the NOW subsidy scheme will be extended and, if so, under what conditions.

Do you have questions about the NOW? Please contact [Joost Schunselaar](mailto:j.schunselaar@holla.nl) (j.schunselaar@holla.nl) or [Marloes Stuurop](mailto:m.stuurop@holla.nl) (m.stuurop@holla.nl) or one of the other specialists of the Employment Law Business Unit (088- 4402400).