



Calculating the benefit

NOW measure update – 25 June



What are the criteria for eligibility and for how long will it apply?

Emergency Measure for Job Retention (in Dutch: *Tijdelijke noodmaatregel overbrugging voor werkbehoud* or "NOW 1.0"). On 22 June 2020, the Dutch government published the Second Temporary Emergency Measure for Job Retention (in Dutch: *Tweede Tijdelijke noodmaatregel overbrugging voor werkbehoud* or "NOW 2.0"). The general framework of NOW 2.0 is set out below.

Calculation period for loss of revenue

NOW 2.0 will apply to employers who expect to suffer a loss of revenue of at least 20% during a consecutive period of 4 months between 1 June and 30 November 2020. When filing the application, employers can choose to calculate the loss of revenue over a consecutive period of 4 months starting on either 1 June, 1 July or 1 August 2020 ("NOW 2.0 calculation period").

However, employers which also applied for NOW 1.0 shall ensure that the NOW 2.0

calculation period is directly adjacent to the period used for the NOW 1.0 loss of revenue calculation.

Once chosen, the start date of the NOW-calculation period cannot be amended.

Regardless of the chosen NOW-calculation period, the contribution to the wage costs as described below remains related to the wage costs for June, July, August and September 2020.



Method of calculating loss of revenue

The loss of revenue shall be calculated by deducting the expected revenue over the NOW 2.0 calculation period from the reference revenue and dividing this amount by the reference revenue. The reference revenue is defined as 1/3rd of the employer's revenue in 2019.

Alternative calculation methods apply with respect to seasonal businesses and in the event of the transfer of an undertaking or in the event that a company commenced its activities after 1 January 2019.



Definition of revenue

NOW 2.0 concerns the (expected) loss of revenue at the level of the legal entity. However, in the case of a group (within the meaning of article 2:24b Dutch Civil Code), the decrease in revenue at group level applies. For the purpose of NOW 2.0, a group includes foreign group companies to the extent that these pay wages in the Netherlands (eg branches). Other foreign group companies are excluded. The start date for the calculation of the loss of revenue shall be consistent for each entity within the group. If the group of companies as a whole has no or a limited loss of revenue, it is in principle up to the group to take responsibility for the employees of entities with more loss of revenue.

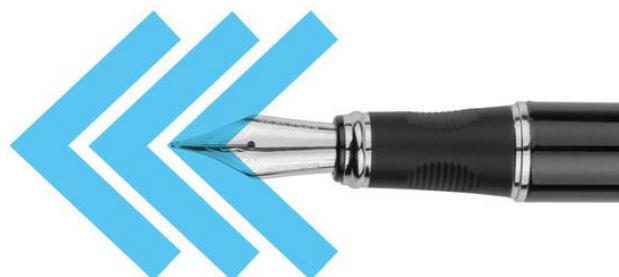
Revenue is defined as the net revenue within the meaning of article 2:377 under 6 DCC i.e. the proceeds from the supply of goods and/or provision of services by the employer minus discounts, etc. and revenue tax, adjusted to amendments in ongoing projects as shown in the profit and loss account and determined on the basis of the same accounting policies as used by the employer in its most recent annual account established prior to 1 June 2020. In addition, (a prorated part of) government subsidies and other income received by the employer, irrespective of whether these are usually classified as revenue and excluding compensation received under NOW 1.0, count as revenue for the purpose of NOW 2.0.



Exception for operating companies

An exception to the above rule with respect to the calculation of the loss of revenue at group level may apply to operating companies within the group. Should an operating company of a group suffer a loss of revenue of at least 20%, then NOW 2.0 could still apply even if other business units do not suffer revenue losses or even make a profit. For the purpose of this exception, the operating company's revenue will be increased by any work which its employees perform for other group companies within the NOW-calculation period. Key requirements (in addition to the Requirements below) are:

- the operating company shall reach an agreement on maintaining employment with the labour unions or employee representative body and act in accordance with this agreement;
- the loss of revenue at group level shall be less than 20%;
- other entities of the group shall not carry out projects or work which may be to the detriment of the operating company;
- the operating company shall be a legal entity in its own right; and
- no more than 50% of the operating company's activities consist of intra-group posting of workers.





Requirements

Employers are obliged to adhere to the following "Requirements":

- keep the wage bill as equal as possible;
- refrain from filling an application to request a dismissal permit for business-economic reasons from 1 June 2020 up to and including 30 September 2020;
- in the event that the employer decides to make 20 redundancies or more in the UWV region (and therefore has to notify the UWV and labour unions of a collective redundancy pursuant to the Collective Redundancy (Notification) Act ("Wet Melding Collectief Ontslag" or "WMCO") it has to
- consult the relevant labour unions in order to try to reach an agreement regarding the collective redundancy or alternatively make a request - jointly with the labour unions - for mediation by the Labour Foundation ("Stichting van de Arbeid"); and
- refrain from filing an application to request a dismissal permit for business-economic reasons until four weeks after the notifying the UWV of the collective redundancy;
- use the compensation in accordance with the purpose of NOW 2.0, which means that the contribution shall in any case be used to pay employees' salaries;
- inform the Works Council, or if there is no Works Council the Employee Representative Body, or in the absence of both the employees, that the compensation has been granted;
- encourage employees to take retraining or reskilling courses or seek career development advice;
- keep proper records of information which could be relevant for determining the final level of compensation and retain these records for 5 years;
- file their wage tax declaration in a timely manner;
- inform the minister in writing of any circumstance which may be of influence to the compensation; and
- after the period for which compensation was received has lapsed, the employer shall send a final calculation of the loss of revenue, if applicable, accompanied by an auditor's report.





Prohibition to pay bonus or dividends

Companies that expect to receive a compensation for which an auditor's report is required (see "Determining final level of compensation" below) shall not pay any bonuses to the board of directors, management and leadership, distribute dividends or other profit distributions and/or repurchase shares for 2020, until the date at which the annual report of 2020 has been determined (by the general meeting of shareholders) in 2021. In the event that the exception for group operating companies is applied, this prohibition will also apply to the parent company. To that effect, a written statement by the employer and/or the parent company must be included in the application for the advance payment of NOW 2.0. Regular employees remain entitled to their variable compensation through bonuses.

The above prohibition does not apply if the employer has a statutory duty to pay dividends or is required to do so on the basis of a statement of findings ("*Vaststellingsverklaring*") agreed upon with the Dutch Tax Authority.

In the event that the employer's financial year does not coincide with the calendar year, the prohibition described above shall apply to the financial year(s) which relate(s) to the period from 1 June 2020 up to and including 30 September 2020, until the date at which the annual report of this (last) financial year has been adopted (by the general meeting of shareholders).



Compensation period

NOW 2.0 will be granted for a period of 4 months. This concerns the months June, July, August and September 2020.

Where and when can employers apply for the NOW measure?

Employers will be able to file their application for NOW 2.0 to the UWV via an online application form. It is expected that employers will be able to file applications as from 6 July 2020 until 31 August 2020. The UWV has to decide on the application ultimately within 13 weeks of the application being filed.



What is the level of compensation?

Employers can apply for a contribution to the wage costs (including a 40% increase for employer costs such as pensions) for June, July, August and September 2020 of up to 90% of the total salary for its employees. Whether 90% of the total salary or a lower percentage will be granted, depends on the loss of revenue.



Advance on compensation

The following formula shall be applied to determine the advance on the compensation to be paid:

$A^* \times B \times 4 \times 1.4 \times 0.9 = \text{expected compensation.}$

$A^* = \% \text{ expected loss of revenue}$

$B = \text{total salary as follows from B below}$

80% of the expected compensation as calculated by using the formula above shall be paid as an advance payment, to be paid as a lump sum payment or in 2 instalments.

Final compensation

The final level of compensation shall be determined by applying the following formula:

$A \times B \times 4 \times 1.4 \times 0.9 = \text{final compensation}$

$A = \% \text{ actual loss of revenue}$

$B = \text{total salary paid for the third wage reporting period of 2020, based on the wage tax declaration which was filed ultimately on 15 May 2020, with the exception that}$

- the holiday allowance will be deducted from the total salary costs if the employer reserves the employees' holiday allowance on a monthly basis throughout the year;
- if the employer does not reserve the employees' holiday allowance on a monthly basis, the total salary shall be multiplied by 0,926;
- salary paid pursuant to the (collective) employment agreement which is in addition to the usual salary and holiday allowance and is not dependent on the company and/or the employee's performance (eg 13th month payments), will be deducted from the total salary;
- individual salaries will be capped at EUR 9,538 gross per month.

In the event that the salary costs for 1 June – 30 September 2020 (defined as C) are less than 4 times the salary defined as B, the compensation shall be reduced by applying the following formula:

$(B \times 4 - C) \times 1.4 \times 0.9$

The actual wage costs (C) will be based on the employer's wage tax declaration as filed by the employer to the Tax Inspectorate ultimately on 16 November 2020.

In the event that the employer files a request for a dismissal permit between 1 June 2020 and 30 September 2020 and this application is not withdrawn ultimately 5 days after the application was filed, the final compensation shall be reduced by applying the following formula:

$D \times 3 \times 1.4 \times 0.9$

$D = \text{the monthly salary as defined under B of employees for whom a dismissal permit was requested.}$

Which documents are needed for the application?

The following information and documents shall be filed with the application for the NOW-measure:

- the calculation for the expected loss of revenue, expressed as a whole percentage point and rounded up;
- the start date for the calculation of the loss of revenue (1 June, 1 July, or 1 August 2020);
- the employer's wage tax number;
- if applicable; the unique number assigned to the employer by the Dutch Chamber of Commerce;
- the bank account number on which the employer receives payments from the Dutch Tax Inspectorate with respect to wage tax;
- a statement that the employer and/or the head of the group of companies will comply with the prohibition to pay bonuses/dividends;
- a statement that the employer will comply with the obligations with respect to collective redundancies (see 'Sanctions' below)
- whether the application concerns an employer which has taken over an undertaking.



Please note that the UWV will only be able to make payments to Dutch account numbers or non-Dutch SEPA account numbers. Therefore, employers with foreign account numbers will be given a period following receipt of the application to open a Dutch account number and inform the UWV of the number thereof.

By filing the application, the employer agrees to the publication of the following date on the UWV website:

- the name and registered office of the employer;
- the advance compensation granted; and
- the final compensation granted.

Given that the UWV will require the employer's wage tax declaration (in Dutch: *aangifte loonheffing*) in order to process the application for NOW 2.0, it is advisable to file the wage tax declaration with the Dutch Tax Inspectorate in a timely manner. In the event that the employer cannot pay the subsequent wage tax assessment, the employer can request a postponement for payment thereof by sending a letter to the Dutch Tax Inspectorate. This letter should contain a request for postponement and a substantiation that the employer has difficulties meeting its payment obligations due to the COVID-19 pandemic. Unlike the usual process, this request does not have to be accompanied by an expert statement (eg auditor report) if the requested postponement does not exceed a period of 3 months.

Determining final level of compensation

As of 15 November 2020 and ultimately 24 weeks after the 4-month NOW-calculation period has lapsed, the employer shall file an online application for a government grant to the Minister. If an auditor's report is required, the application shall be sent ultimately 38 weeks after the NOW-calculation period has lapsed. The application shall in any case include:

- the data on which the loss of revenue is based and supporting documents;
- a statement that the employer has complied with the requirements for eligibility as described above; and
- whether the conditions for a WMCO penalty have been met (see 'Sanctions' below), including supporting documents.

In addition to the above, an auditor's report will be required for companies that

- receive an advance payment (80% of the amount of expected final compensation) of EUR 100,000 or more; or
- expect to receive a final compensation amounting to EUR 125,000 or more.

Companies that have received an advance payment of less than EUR 100,000 are therefore responsible to estimate whether the final compensation will be determined at EUR 125,000 or more, as a result of which an auditor's report is required. To this end, an online tool will be made available by the government.

The abovementioned amounts are based on the amount of compensation granted to the group of companies or, in case the company is not part of a group, the legal entity and not the payroll tax number. Please note that, for groups of companies that apply for NOW 2.0 to compensate the loss of revenue for operating group companies, an auditor's report is mandatory irrespective of the amount of compensation received.

A report from an expert (as to be defined by the Minister) will be required for companies that

- receive an advance payment (80% of the amount of expected final compensation) of EUR 20,000 or more; or
- expect to receive a final compensation amounting to EUR 25,000 or more.

The decision on this application shall be sent to the employer ultimately 52 weeks after receiving the application. This decision will contain the final level of compensation or (partial) denial of the application if the employer's actions during or after the receiving advance payment can be deemed contrary to the purpose of the NOW-measure. Following this definitive decision, additional payment or recovery of the overpayment may take place.



Sanctions

In the event that the Minister suspects that the Requirements have not been met, the payment of the advance may be suspended.

A penalty ("WVCO penalty") applies in the event that the employer:

- notifies the UWV of a collective redundancy pursuant to the WVCO;
- files an application to request a dismissal permit for business-economic reasons for 20 or more employees within one working area (as defined by the UWV) from 1 June 2020 up to and including 30 September 2020;
- without (a) reaching an agreement with the labour unions regarding the amount of positions which need to be made redundant or alternatively (b) the employer and the labour unions having jointly requested mediation in that respect by a committee formed by the Labour Foundation ("*Stichting van de Arbeid*") which request may not be withdrawn by the employer.

The penalty is 5% of the final compensation after the reduction of the salary of employees for who a dismissal permit was requested. The penalty is 'paid' by reduction of the penalty amount from the final compensation amount.

Lastly, the advance payment may be reclaimed partially or in whole in the event of an unjustified application, an application for an amount which is too high or a violation of the Requirements.

