

EVERSHEDS
SUTHERLAND



Help in an emergency
NOW measure update

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

On 31 March 2020, the Dutch government published the Temporary Emergency Measure for Job Retention (in Dutch: *Tijdelijke noodmaatregel overbrugging voor werkbehoud* or "NOW"). Please find the general framework of the measure below.

The NOW-measure will apply to employers who expect to suffer a loss of revenue of at least 20% during a consecutive period of 3 months between 1 March and 31 July 2020.

This 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 the NOW-measure, a group includes foreign group companies to the extent that these pay wages in the Netherlands (e.g. branches). Other foreign group companies are excluded. If such group as a whole has no or a limited loss of revenue, it is up to such group to take responsibility for the employees of parts with more loss of revenue. The start date for the calculation of the loss of revenue shall also be consistent for each entity within the group.

When filing the application, employers can choose to calculate the loss of revenue starting the consecutive period of 3 months on 1 March, 1 April or 1 May 2020 ("NOW-calculation period"). Please note that the chosen start date cannot be amended and that notwithstanding a possible later start date of the NOW-calculation period the contribution to the wage costs described below remains related to March until May 2020.

In the NOW-measure, 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.

The loss of revenue shall be calculated by deducting the expected revenue from the reference revenue and dividing this amount by the reference revenue. The reference revenue is defined as 25% of the employer's revenue in 2019.

In addition, employers are obliged to adhere to the following "Requirements":

- a. continue to pay their employees 100% of their salary as much as possible;
- b. refrain from filling an application to request a dismissal permit for business-economic reasons from 178 March 2020 and during the period for which the employer receives an advance payment of the NOW-measure compensation (ie until 31 May 2020);
- c. only use the contribution to pay employees' salaries;
- d. 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;
- e. keep proper records of information which could be relevant for determining the final level of compensation and retain these records for 5 years;
- f. file their wage tax declaration in a timely manner;
- g. inform the minister in writing of any circumstance which may be of influence to the compensation;
- h. after the period for which compensation was received has lapsed, the employer shall send a final calculation of the loss of revenue accompanied by an auditor's report; and
- i. if applicable, inform the municipality which has granted a wage costs grant (in Dutch: *loonkostensubsidie*) that compensation has been granted.

The NOW-measure will be granted for a period of 3 months. It can be extended once for another period of up to 3 months, possibly subject to additional conditions.

Where and when can employers apply for the NOW measure?

Instead of filing an application to the Ministry of Social Affairs and Employment, employers will be able to file their application for the NOW-measure directly to the UWV via an online application form. It is expected that employers will be able to file applications as from 6 April 2020, and in any case from 14 April 2020, until 31 May 2020. The UWV expects that the first advances of the NOW-measure compensation shall be paid 2 to 4 weeks after the date on which applications can be filed, and 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 employer costs such as pensions) for March, April and May 2020 of up to 90% of the total salary for its employees. This applies to employees with indefinite term contracts and fixed-term contracts, provided that the employees with the latter contract remain employed during the period for which the NOW-measure is granted, but also to employees with more flexible contracts (e.g. on-call 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:

$A^* \times B^* \times 3 \times 1.3 \times 0.9 = \text{expected compensation.}$

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

$B^* = \text{total salary owed for January 2020, which will be determined based on the wage tax declaration which was filed ultimately on 15 March 2020.}$

80% of the expected compensation as calculated by using the formula above shall be paid as advance payment, to be paid in 3 instalments for which the aim is to pay the first instalment within 2 – 4 weeks.



Final compensation

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

$$A \times B \times 3 \times 1.3 \times 0.9 = \text{final compensation}$$

A = % actual loss of revenue

B = the total salary as follows from B* above, with the exception that

- any grants the employee receives from the UWV which were taken into account for B* shall be deducted from the total salary;
- 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;
- individual salaries will be capped at EUR 9,538 gross per month.

In the event that the salary costs for 1 March – 31 May 2020 (defined as C) are less than 3 times the salary defined as B, the compensation shall be reduced by applying the following formula:

$$(B \times 3 - C) \times 1.3 \times 0.9$$

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 19 July 2020.

In the event that the employer files a request for a dismissal permit from 17 March 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:

$$D \times 1.5 \times 3 \times 1.3 \times 0.9$$

D = the 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 March, 1 April or 1 May 2020);
- the employer's wage tax number;
- the bank account number on which the employer receives payments from the Dutch Tax Inspectorate with respect to wage tax;
- a copy of the employer's bank statement which clearly shows the account number and the name of the account holder; and

if applicable, the file number of the application for statutory reduction of hours (in Dutch: *Werktijdverkorting*).

Please note that the UWV will only be able to make payments to Dutch account numbers.

Therefore, employers with foreign account numbers are given a period of 4 weeks following receipt of the application to open a Dutch account number and inform the UWV thereof.

It is recommended to request the assistance of an accountant as early as possible.

Given that the UWV will require the employer's wage tax declaration (in Dutch: *aangifte loonheffing*) in order to process the application for the NOW-measure, it is advisable to file the wage tax declaration with the Dutch Tax Inspectorate as soon as possible. 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?

Ultimately 24 weeks after the 3-month period which the employer used for the calculation of the loss of revenue has lapsed, the employer shall file an online application for a government grant to the Minister. This application shall in any case include:

- the data on which the loss of revenue was based and supporting documents;
- the auditor's report which accompanied the final calculation of the loss of revenue; and
- a statement that the employer has complied with the requirements for eligibility as described above.

The decision on this application shall be sent to the employer ultimately 522 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.

If an employer files a request for permission to give notice for business economic reasons at the UWV and does not withdraw this request within the applicable period, a penalty deduction will apply to the final compensation amount (see also "Final Compensation" above).

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 a – i mentioned above

