

Diversity, Equity and Inclusion in the Netherlands

by Marije Ozinga, Dentons Europe LLP

Practice notes | [Law stated as at 01-Mar-2022](#) | The Netherlands

A Practice Note reviewing the key legal and practical issues regarding workplace diversity, equity and inclusion (DEI) requirements and initiatives in the Netherlands.

Companies across the globe must successfully navigate the rapidly evolving landscape of diversity, equity, and inclusion (DEI). Growing pressures go beyond a commitment to an inclusive workplace free of discrimination. Employer attention is also shifting to racial justice, corporate social responsibility, and a continued open dialogue with employees throughout the entire work relationship. This Note provides an overview of the established and more recent DEI legal developments and practical considerations in the Netherlands.

Scope of Diversity, Equity and Inclusion

Diversity, Equity and Inclusion (DEI) is gaining importance in the Netherlands.

An increasing number of employers are paying attention to their DEI strategies, although mainly large, international companies rather than small and medium-sized enterprises.

Employers refer to the guiding principles provided in the applicable equal treatment legislation to achieve more diversity in the workplace (see [Legal Requirements](#)).

DEI provides an opportunity for companies to develop their business and improve their image. In addition, there is widespread consensus that DEI benefits employees' wellbeing in general.

DEI is also a hot topic for the Dutch legislator. There has been a recent change regarding the gender composition of the Supervisory Boards of listed companies, and there are pending legislative proposals that seek to strengthen the equal pay principle (see [Recent Developments](#)).

Recent Developments

The Dutch Government has recently introduced new legislation on DEI, as well as some legislative proposals that are currently pending.

The Ratio Between Men and Women on Boards and Supervisory Boards

The More Balanced Ratio Between Men and Women on Boards and Supervisory Boards Act (*Wet Evenwichtiger verhouding tussen mannen en vrouwen in bestuur en raad van commissarissen*) entered into force on 1 January 2022. This new Act, among other things, imposes a quota on the

Supervisory Boards of listed companies, requiring at least 33% of the seats on the Supervisory Board of such companies to be held by women and at least 33% by men (new Article 2:142b, Dutch Civil Code (*Burgerlijk Wetboek*) (DCC), introduced by the new Act) (see [Affirmative Actions and Quotas](#)).

Further, large public and private limited companies must determine appropriate and ambitious targets for the men to women ratio on their management board, supervisory board and in lower top management. Companies are considered "large" if the annual account of the company meets, for at least two years in a row, two of the following conditions. The company has:

- A balance sheet of more than EUR20 million.
- A net turnover of more than EUR40 million.
- More than 250 employees.

These companies must report their targets to the Dutch Social Economic Council (*De Sociaal Economische Raad*) (SER) annually within ten months after the financial year has ended (new Article 2:166, DCC, introduced by the new Act).

Legislative Proposal: Equal Remuneration Between Women and Men

The Equal Remuneration between Women and Men (*Wet gelijke beloning vrouwen en mannen*) legislative proposal is currently pending before the Senate.

This proposal seeks to amend the Equal Treatment (Men and Women) Act (*Wet gelijke behandeling van mannen en vrouwen*) and address unequal pay between men and women. According to the drafters of the proposal, current legal provisions do not offer sufficient solutions to combat the problem of unequal pay. The legislative proposal provides for several solutions in respect of unequal pay:

- A certification obligation for companies with at least 250 employees. Such companies must obtain a certificate every three years, proving that women and men who are working in the same position and for the same number of hours are being paid equally.
- Moving the burden of proof of equal pay when faced by unequal pay claims by individuals to the employer. Companies that have not obtained the required certificate are faced with a heavier burden of proof. In that case, there is a presumption of discrimination in pay.
- For companies where a Works Council is present, a duty to provide information to the Works Council (see [Work Councils and Worker Representation](#)). Such companies must provide information to the Works Council once a year about any pay differences between women and men in comparable positions.
- Companies that employ at least 50 employees must include information regarding pay differences between women and men in comparable positions in the directors' report or a comparable report (that is, a report on events and the policy pursued by a company. This report must also include certain other information, such as the financial state of the company and the forecasts for the next period. Depending on the size of the company, there exists an obligation to deposit the report at the trade register or make it available for inspection at the company's office. See also Article 2:394(4) and Article 2:391, DCC). If the pay ratio is skewed, companies

must explain in the directors' or comparable report why that is the case and what will be done to reduce the pay differences.

- Right of access. Companies that employ at least 50 employees must provide, on request, access to anonymised data regarding the remuneration of other employees in the same or comparable positions.

Legal Requirements

In the Netherlands there is a general prohibition against discrimination, which is rooted in Article 1 of the Dutch Constitution (*Grondwet voor het Koninkrijk der Nederlanden*). The Article provides that everyone shall be treated equally in equal circumstances, and prohibits discrimination on the grounds of religion, belief, political opinion, race, sex or on any other grounds whatsoever. This constitutional right has both vertical and horizontal effect (although the latter is limited). The vertical effect means that individuals can invoke Article 1 of the Dutch Constitution in their relationship with the Dutch government, while the horizontal effect implies that individuals can also invoke this fundamental right in relation to private parties (such as other citizens and companies, for example their employer). The horizontal effect for Article 1 is limited to substantiating open standards in civil law. If an employee wants to base their claim on an infringement of Article 1 of the Dutch Constitution, they will be limited to these open standards. In practice, this could be used to substantiate a claim of bad employment practice by the employer, which is an open standard (see Article 7:611, DCC). However, usually an employee will base a discrimination claim on a breach of the various Acts and their limited grounds (that is the prescribed protected characteristics), rather than on the Constitution, as basing a claim on the specific Acts cited below will give the employee the best chance of a successful outcome. In summary, the Constitution states the general prohibition, but the specific Acts implement and action the constitutional principle.

Several Acts are specifically aimed at equal treatment in the employment relationship. These Acts apply to both private and public sector employers.

The following Acts are of relevance:

- General Equal Treatment Act (*Algemene wet gelijke behandeling*). This Act prohibits discrimination on the basis of religion or belief, political orientation, race, gender, sexual orientation and marital status.
- Equal Treatment (Men and Women) Act (*Wet gelijke behandeling van mannen en vrouwen*). This Act provides for the equal treatment of men and women in relation to employment.
- Equal Treatment (Disability or Chronic Illness) Act (*Wet gelijke behandeling op grond van handicap of chronische ziekte*). This Act prohibits discrimination on the grounds of disability and chronic illness. Employers must make all reasonable efforts to employ disabled or chronically ill persons and make any necessary workplace adjustments.
- Equal Treatment in Employment (Age Discrimination) Act (*Wet gelijke behandeling op grond van leeftijd bij de arbeid*). This prohibits employers from discriminating on the grounds of age in relation to employment (in particular, recruitment and appointment, employment finding, promotion, employment terms, and dismissal), unless this discrimination is objectively justified.

- Article 7:646 of the DCC. This prohibits employers from discriminating between men and women:
 - when entering into employment contracts;
 - when providing training;
 - with regard to employment and working conditions;
 - in relation to their promotion; and
 - on termination of an employment contract.
- Article 7:648 of the DCC. This prohibits discrimination on the basis of difference in working hours (for example, part-time and full-time) as regards employment conditions, or termination, unless objectively justifiable.
- Article 7:649 of the DCC. This prohibits discrimination (through different employment conditions) on the basis of the type of employment contract (such as whether the employment contract is entered into for a fixed term or an indefinite term), unless objectively justifiable.
- Dutch GDPR Implementation Act (*Uitvoeringswet*) (AVG), which implements the requirements of the General Data Protection Regulation (EU) 2016/679 (GDPR) on the collection and processing of personal data.

In the Netherlands, there is also a specific prohibition against harassment and sexual harassment, which is considered to be a form of discrimination (Article 1a, General Equal Treatment Act) (see *Discrimination and Harassment*).

Affirmative Action and Quotas

Affirmative Action

Dutch law provides that a company can implement an affirmative action policy, with the aim of improving the position of disadvantaged groups in the business, to attempt to eliminate inequality within a company.

There are various forms of affirmative action policies. They can include:

- Where a job applicant from a disadvantaged group is given preference.
- Quotas, where a percentage of vacancies are reserved for people from a disadvantaged group (see *Quotas*).

Affirmative action policies are subject to strict conditions mandated by Dutch law, for example Article 5 of the Dutch Equal Treatment of Men and Women Act and European case-law (such as European Court of Justice (ECJ), 17 October 1995, C-450/93, (*Kalanke*); ECJ 11 November 1997, C-409/95, (*Marshall*); ECJ 28 March 2000, C-158/97, NJ 2000/532 (*Badeck*) and ECJ 6 July 2000, C-407/98, (*Abrahamsson and Anderson*)). Affirmative action policies can by law only be implemented for:

- Women.
- Persons belonging to a certain ethnic or cultural minority group.
- Persons with a disability or chronic illness.

The implementation of a preferential policy that aims to improve the position of men, or people with a specific sexual orientation, for example, is not permitted.

Further, there are other requirements for an employer to implement an affirmative action policy:

- The policy should serve a legitimate aim, for example improving on a lack of women in certain positions.
- The employer must be able to evidence (that is, numerically) the deprivation of the disadvantaged group, in relation to the available labour supply in the relevant labour market.
- Vacancies must state that the employer has an affirmative action policy in place and that everyone can still apply for the job.
- During the application process, the employer must assess all applicants objectively. The nomination of a job applicant from the disadvantaged group (as opposed to another applicant) is only allowed if that applicant is equally suitable for the position when compared to other applicants.
- The policy must be proportionate to the aim. This implies that the policy is suitable to achieve the aim. In that regard, employers should also consider whether other measures can be taken to achieve the aim, that make no or less distinction between people. Finally, it is necessary to weigh all interests involved.

Quotas

Quota Supervisory Boards – Listed Companies.

On 1 January 2022, the More Balanced Ratio between Men and Women on Boards and Supervisory Boards Act entered into force (see *Recent Developments*). This Act imposes a quota on the Supervisory Boards of listed companies, under which at least 33% of the seats on the Supervisory Board of such companies must be held by women and at least 33% by men (Article 2:142b, DCC). An appointment to the Supervisory Board that is contrary to the quota can be annulled, leading to an "empty seat" on the Supervisory Board.

Jobs and Quota Labour Restrictions Act.

The Jobs and Quota Labour Restrictions Act (*Wet banenafsprak en quotum arbeidsbeperkten*) was created by agreement between the Dutch Government and Dutch social partners (that is, trade unions and employers' organisations) to create extra jobs for people with an occupational disability.

This Act provides that by 2026, compared to 1 January 2013, there must be 100,000 extra jobs for people with an occupational disability in the private sector and 25,000 in the public sector (see page two of the Explanatory Memorandum on the Jobs and Quota Labour Restrictions Act). These numbers are divided over the years, with specific targets for each year. Whether the number of extra jobs per year is achieved is not monitored per individual employer but per sector. If this voluntary job agreement between the Government and social partners does not create enough extra jobs for people with an occupational disability, the so-called quota scheme can enter into force. In that case, the Government will determine a percentage of jobs employers should create in their company for people with an occupational disability. If those quotas are not met, the Government can impose a levy. Imposing levies was originally postponed until 1 January 2022 due to the envisaged simplification of the underlying law. By letter of July 2021, the Minister of Social Affairs and Employment decided not to impose levies until 2024.

Currently, the quota scheme has entered into force for the public sector, as the public sector has not met its targets to date. The private sector, however, has met its targets.

Collection of Personal Data

Regulation of Collection of Personal Data

The collection of personal data is subject to the GDPR (General Data Protection Regulation ((EU) 2016/679) (GDPR)) and the Dutch GDPR Implementation Act.

Processing personal data requires a legal basis (Article 6, GDPR). This could be that:

- The employer has a legitimate interest (such as banishing discrimination in the employer's organisation).
- The processing is necessary to execute an agreement (such as an employment agreement).
- The data subject gives its consent to the collection and processing of data.

Some personal data qualifies as "special category personal data" under the GDPR (Article 9, paragraph 1), which includes among other things race or ethnicity, political belief, religion and sexual orientation (see Article 9 GDPR, exemptions are found in this Article and in Chapters 3 and 4 of the Dutch GDPR Implementation Act, (*Uitvoeringswet Algemene verordening gegevensbescherming*)). Special categories of personal data can only be processed if one of the exemptions in the GDPR or the Dutch GDPR Implementation Act applies and a valid legal basis exists.

Obligations to Collect Personal Data

When employees enter employment, employers must check their employees' identity through their passport or ID. In accordance with Article 28 of the Wages and Salaries Tax Act 1964 (*Wet op de loonbelasting*), an employer must keep a copy of the employee's ID in its wage administration for (among others) tax purposes. An employer is generally not allowed to monitor the diversity of its applicants or hires. The only exception to this is if there is a legal and valid affirmative action policy in place, as described above. (Article 25, GDPR Implementation Act).

An employer is not allowed to collect and process the nature and cause of an employee's disability. However, an employer must collect and process information regarding the activities that the employee

can or can no longer conduct (that is, functional limitations of the employee in relation to their work, reintegration possibilities and implications for the type of work that the employee can still conduct) (Article 6 (1) (j), Arrangements for the procedure for the first and second year of illness (*Regeling procesgang eerste en tweede ziektejaar*)).

Pay Equity

Laws

Pay equity is based on the Equal Treatment of Men and Women Act. This Act provides the right of every employee (male or female) to receive equal pay for equal work. The right to equal pay (*gelijke beloning*) also derives from Article 7:646 of the DCC. The general underlying principle is that equal work must be paid equally.

Employers are also prohibited from discriminating in general (see Article 5 (1) (g) of the Equal Treatment Act which prohibits discrimination on the grounds of religion, belief, political opinion, race, gender, nationality, sexual orientation or marital status) in relation to their employees' promotion and career development. Qualifications for a higher position that seem to be objective might conflict with the prohibition against indirect discrimination against female employees if the possession of those qualifications cannot be objectively justified. For example, it would be indirectly discriminatory to require from someone who has worked part-time due to parental leave the same or more management experience than someone who has always worked full time, when there is no justification for not considering their experience to be of equal value as that of their colleague.

The DCC includes a specific rule that prohibits the employer from discriminating against employees on the basis of their working hours (Article 7:648, DCC). This means that employers may not discriminate against employees that work part-time in relation to the terms and conditions under which they are employed, nor with respect to decisions to continue or terminate their contract of employment, unless that is objectively justifiable. A part-time employee therefore has the right to the same remuneration as their full-time colleague, pro-rated to the number of working hours.

From a pay equity perspective, it is also worth noting that employees who are hired through a third-party agency (generally, an individual is employed or engaged by a temporary work agency and is made available to provide services on behalf of the temporary work agency to the agency's end-client) are entitled to the same level of remuneration as employees working in the same or comparable position at their material employer (the temporary work agency's end-client where the individual performs their work) (Section 8, Workforce Allocation Act (*Wet allocatie arbeidskrachten door intermediairs*)).

Reporting Requirements

There are currently no mandatory reporting requirements in the Netherlands with regard to pay equity. It is also not customary in the Netherlands to report on pay equity. However, there is a pending legislative proposal which requires companies to start reporting any pay gaps (see [Recent Developments](#)).

Discrimination and Harassment

Article 1 of the Constitution provides that all persons in the Netherlands are to be treated equally in equal circumstances and that discrimination for any reason is prohibited.

Further, under Dutch law, it is prohibited to discriminate based on religion or belief, political orientation, race, gender, pregnancy or maternity, nationality, sexual orientation, marital status, age and disability or chronic illness. The prohibition on discrimination also includes a prohibition of harassment and sexual harassment (see [Legal Requirements](#)).

Direct and Indirect Discrimination

Direct discrimination occurs, for example, when:

- A female employee is dismissed because she is pregnant. This has directly to do with her gender.
- A job applicant is rejected because of their religion.

Dutch law provides that direct discrimination is in principle always prohibited, because the underlying idea is that direct discrimination based on nationality, gender, race, age, religion, illness or disability, political affiliation, sexual orientation or marital status cannot be justified. This also includes discrimination based on the number of working hours or the type of employment contract (see [Laws](#)). An exception to the prohibition of direct discrimination is only possible if it is provided by law. For example, in cases of an affirmative action policy, or in some cases when there is an objective justification (see Article 7:648 (1) and Article 7:649 (1), DCC).

Indirect discrimination, considered under Article 1 (b) and (c) of the General Equal Treatment Act, is where a seemingly neutral provision, criterion or practice puts members of a certain group at a disadvantage. For example, the criterion for a job applicant to be fluent in Dutch can lead to indirect discrimination. At first glance this seems to be a neutral requirement for the job, but in practice it could lead to a proportionally higher number of people with a different nationality being excluded. Indirect discrimination can be justified by an objective justification. This must serve a legitimate purpose and the means for achieving that purpose must be appropriate and necessary, which means that they must pass the proportionality test. The proportionality test requires that any interference with a person's right not to be discriminated against must be the least invasive and necessary means of achieving an objective justification.

Complaints under the equal treatment legislation can be submitted to the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*), which is the successor of the Equal Treatment Committee (*Commissie Gelijke Behandeling*). In addition, the equal treatment legislation can also be directly invoked in civil proceedings between employees and employers (see [Enforcement](#)).

Harassment

Harassment is behaviour that:

- Has the purpose or effect of violating an individual's dignity.
- Creates an intimidating, hostile, degrading, or offensive environment towards the individual.
- Is related to any of the above-mentioned protected characteristics.
- Sexual harassment means any verbal, non-verbal or physical behaviour with a sexual connotation that has the purpose or effect of violating an individual's dignity, more specifically

when it creates an intimidating, hostile, degrading, or offensive environment towards the individual.

Harassment and sexual harassment are classified as direct discrimination. Neither can be justified.

Prevention of Discrimination and Harassment at the Workplace

In the Netherlands, employers must pursue a general working conditions policy that ensures the health, safety and well-being of employees (Article 3, Working Conditions Act (*Arbowet*)). Part of the general working conditions policy is that the employer should pursue a policy that is aimed at the prevention and, or limitation of the "psychosocial workload", which includes discrimination and sexual harassment.

This implies that employers are responsible for providing a work environment that is free from discrimination or sexual intimidation. A policy cannot always prevent discrimination or harassment, though it can play a part in preventing it from occurring. Measures that employers could take against discrimination and sexual harassment in the workplace include:

- A clear procedure that describes the approach when complaints about discrimination or harassment arise.
- Taking adequate disciplinary measures in case discrimination and, or sexual harassment occur.

If a Works Council is present at the employer's organisation, its consent to the implementation of such a policy is required (Article 27, Works Council Act) (*Wet op de Ondernemingsraden*).

Human Rights Laws

Article 1 of the Dutch Constitution, the General Equal Treatment Act and the Equal Treatment (Men and Women) Act all prohibit discrimination. Besides these laws, employees may seek refuge elsewhere in international conventions, such as the UN Covenant on Civil and Political Rights, the EC Directive on Equal Treatment [2006/54/EC] between Men and Women and the European Convention on Human Rights. The employer can prevent human rights violations by implementing a policy aimed at the prevention of direct discrimination and other types of acts of discrimination.

Some provisions have direct effect in the employment relationship between employer and employee and can be directly invoked by the employee. For example, the Court of Justice of the European Union has ruled that the principle of equal pay for male and female employees for equal work or work of equal value is directly applicable in accordance with Article 157 of the Treaty on the Functioning of the EU.

If employees believe they have been discriminated against, they can turn to the Dutch Institute for Human Rights or to the subdistrict court (see [Enforcement](#)). Some Dutch municipalities also have organisations in place that aim to provide legal assistance if employees feel they have not been treated equally.

In a procedure at the Dutch Institute for Human Rights, the Institute can give its opinion on a possibly discriminatory practice. This ruling is not binding, though it is of great authority. The employee could take the decision to court to claim compensation. The judge will then take the decision of the Institute for Human Rights into account in their assessment.

Statement and Policy

In the Netherlands, there is no legal requirement to make DEI statements, nor is there an obligation to have a DEI policy in place.

However, it is becoming increasingly common business practice to implement DEI policies.

Training

No DEI training is required at present.

Work Councils and Worker Representation

Under Dutch law, a company is obliged to establish a Works Council if the company has 50 or more employees. For the purposes of this threshold, this includes employees hired directly by the company and temporary agency workers (that is, persons employed via a temporary employment agency and supplied to the end-client on the basis of a temporary employment agency contract) engaged by the company (the end-client) for at least 15 months. The Works Council has a duty to take initiatives with regard to employment terms, working conditions, equal treatment of men and women, non-discrimination and inclusion of minorities and persons with disabilities (Article 28, Works Council Act (WOR)).

The Works Council must ensure that discrimination does not occur and has a monitoring role with regard to non-discrimination.

In some cases, such as proposing an employer-wide policy, the consent of the Works Councils may also be required by Article 27 of WOR. This section may apply, for instance, when a company wants to implement a DEI policy and makes use of certain personal data in doing so.

Enforcement

If an employee feels discriminated against by their employer, they can bring a claim to the Dutch Institute for Human Rights or to the court (or both).

All individuals (therefore not necessarily only employees) who consider themselves to have been the victim of discrimination, can request an opinion from the Institute for Human Rights. While this opinion is not a binding ruling, it does have a certain degree of force. Such rulings are published (including names of companies) and therefore the discriminatory practices of certain employers can be made public.

In addition, the Institute for Human Rights may bring an action in the civil courts in its own right on the basis that a party's actions are in breach of the applicable anti-discrimination legislation. The Institute for Human Rights may seek an order that the employer's conduct was unlawful, prohibited and/or should be remedied. Such claims are in practice, however, very rare. Most claims are brought to court by an affected employee, who seeks compensation or (in the case of dismissal) reinstatement of employment. The Institute of Human Rights' opinion is nevertheless useful evidence in such proceedings.

A court can hold dismissals of employees to be ineffective if an employee successfully goes to court, raising allegations of discrimination, bringing a claim alleging discrimination or supporting another in

such a claim with reference to the Equal Treatment Act or the equal treatment provisions in the DCC. Such a ruling could lead to the reinstatement of the affected employee.

Cultural Practices and Business Initiatives

Business Strategy

Business Practice

According to the SER, few companies currently have effective diversity policies in place (see the SER report *'Diversity at the top: time for acceleration'* and the SER guide *'More diversity in the workplace and at the top - Just a matter of doing it'*). However, in practice, employers are becoming increasingly involved in developing effective DEI policies.

Corporate Governance Code

A "code of conduct" applies to listed companies, the Corporate Governance Code. The Corporate Governance Code works on an apply or explain principle. Companies are encouraged to comply with the Corporate Governance Code, but they can deviate from the rules if they explain the reasons behind the deviation.

This Code provides that companies should aim to have a mixed composition in the Supervisory Board, meaning, among other things, diversity regarding gender and age. For management reports relating to financial years commencing on or after 1 January 2017, a public corporate governance statement must be made about the company's diversity policy with regard to the composition of the management board and the supervisory board. The company must state the objectives of that policy, the way in which it has been implemented and relevant results.

Regarding the policy, the Code provides that the Supervisory Board must draw up a diversity policy for the composition of the Supervisory Board, the Management Board and, if present, the Executive Committee. This must include concrete objectives with regard to diversity and the aspects of diversity relevant to the company, such as nationality, age, gender, and background with regard to education and professional experience.

If the company does not have a diversity policy, this absence must be explained in a separate chapter of the director's report. This explanation must in any case touch on the following:

- The manner in which the company has departed from having a diversity policy.
- The reasons for this departure.
- If there is no diversity policy for longer than one financial year, an indication of when the company intends to comply with having a diversity policy.
- A description of any alternative measures that have been taken and an explanation of how these alternative measures would achieve the purpose of the diversity policy; or an explanation of how the measures contribute to the good corporate governance of the company.
- (See page 11 of the Dutch Corporate Governance Code, 2016).

Diversity in the Workplace

In the Netherlands, it is recognised that culturally diverse companies perform better. Companies with high diversity have higher turnover, are more innovative, do better in the market and can respond better to developments. In addition, they have a better public image if they present themselves as being diverse. This also seems to be important in attracting employees.

The Dutch Government promotes increasing diversity in the workplace. For example, it recommends that employers train their employees regarding diversity, such as training managers to recognise and use the qualities of culturally diverse personnel. Other employees could gain insight into the qualities of colleagues from a different background than themselves and improve their co-operation.

The Dutch Government has issued a report on "Good examples of cultural diversity, and 'good principles' applied in practice" (*Goede voorbeelden culturele diversiteit en 'good principles' toegepast in de praktijk*) which shares ideas on how to improve diversity within the workforce.

Equity in the Workplace

Equity in the workplace is applicable in the Netherlands to the employment relationship in the broadest sense of the word. It means that all individuals, regardless of their gender, age, sexual orientation, illness, disability, religion, belief, political orientation, marital status, and also working hours, or type of employment contract, are entitled to equal treatment at the workplace. This is also reflected in the several Acts in place under Dutch law that specifically prohibit discrimination on various grounds with regard to employment. These Acts, for example provide, that employees should be given the same opportunities in respect of development, training and promotion and are entitled to equal pay.

Further, employees are by law protected against retaliation following a discrimination complaint. The prohibition on retaliation is guaranteed in multiple articles, for example in Article 8 and 8a of the Equal Treatment Act, Articles 7:646 (14), 7:648 (4) and 7:649 (4), DCC, Article 9a of the Equal Treatment of Disabled and Chronically Ill People Act and Article 10 of the Equal Treatment in Employment (Age Discrimination) Act.

Inclusiveness in the Workplace and Affinity Groups

Diversity committees are becoming increasingly common in the workplace. These committees can contribute to more diversity, for example in the application process. The extent to which they can hold the board accountable or advise the board varies per company.

Benefits, Flexible Working and Retention Policies

Maternity and Partner Leave

When it comes to pregnancy, pregnant employees, regardless of their length of service or hours at work, are entitled to a total of 16 weeks of maternity leave, (Article 3:1, Work and Care Act (*Wet arbeid en zorg*)). During maternity leave, employees are entitled to continued salary payments of up to 100% of the maximum statutory daily wage, which is currently EUR4975.53 gross per month and EUR228.76

per day (as of 1 January 2022). The benefit is paid by the Dutch Employee Insurance Agency (UWV) (*Uitvoeringsinstituut Werknemersverzekeringen*), but usually supplemented by the employer to 100% of the normal salary.

Self-employed females are also entitled to a maternity benefit up to a maximum of the statutory minimum wage (EUR1725 gross per month as of 1 January 2022) (Article 3:17 of *Work and Care Act*). The benefit depends on the profit the self-employed individual has made in the preceding year.

The mother's partner is also entitled to paid birth leave for a maximum of one time the agreed working hours (namely, one week's leave). (Article 4:2, *Work and Care Act*). The employer must pay full salary during this leave. Additionally, as of 1 July 2020, the mother's partner is entitled to additional birth leave, after they have used the one week of birth leave first. The maximum duration of additional birth leave is five times the agreed working hours (namely, five weeks' leave). During the additional birth leave, the partner will receive a benefit from the UWV of a maximum of 70% of the maximum daily wage (that is, maximum 70% of EUR4975.53 gross per month and EUR228,76 per day as of 1 January 2022).

Parental Leave

An employee who is a parent of a child under the age of eight is entitled to take parental leave (Article 6:1, *Work and Care Act*). Parental leave can amount to a maximum of 26 times the amount of agreed weekly working hours (that is up to 26 weeks' leave). Parental leave is unpaid. Some collective agreements however provide for a more generous provision and provide for taking paid parental leave for a certain period of time.

Employees should notify their employer of their intention to take parental leave at least two months before the intended commencement date. Employers are in principle not allowed to refuse to grant the leave, but they may change the way in which the leave can be taken, after consulting with the employee, in case the employer has a significant company concern or interest. This could for example be if business continuity may be jeopardised.

If employees change jobs and have not used their full entitlement to parental leave, the remaining part of the parental leave may be taken over and used in the service of the new employer.

Leadership

Leadership plays a crucial role in achieving greater diversity in the workforce.

Good leadership characterises itself by recognising individual differences, commitment and providing a safe environment. Further, it is important that the highest leaders take decisions that guarantee the importance of diversity. Leaders must also be aware of the need for certain abilities such as cultural empathy, flexibility and being open-minded. Diversity leads by example: if managers show it to their subordinates, they will also implement it.

According to the Dutch Government report "Good examples of cultural diversity, and 'good principles' applied in practice" (*Goede voorbeelden culturele diversiteit en 'good principles' toegepast in de praktijk*), the characteristics of good leadership needed to achieve a diverse workforce are:

- Recognising individual differences.

- Commitment.
- Setting an example for management with regard to managing cultural diversity and creating support.
- Group abilities and competencies of managers aimed at facilitating and managing teams.
- Ensuring a safe environment where one can learn from mistakes.

It is also important to select, train and assess managers on their diversity awareness as this plays a part in promotion-related decisions.

Measuring Success

Cultural Diversity Barometer

Employers with 250 employees or more can use the Cultural Diversity Barometer (*Barometer Culture Diversiteit*), (BCD) to validate or determine the company's progress in regard to DEI. Upon the employer's request, the Netherlands Statistics Bureau (*Centraal Bureau Statistiek*) (CBS) can review an anonymised version of the personnel file. It is not necessary for employers to provide special category personal data (such as race or ethnicity, political belief, religion and sexual orientation). The information received by the BCD cannot be traced back to individual employees and is provided in an aggregated form.

Questionnaires or Surveys

Employers may also use other options to measure diversity in their organisation to implement a successful diversity policy. This could for example be a questionnaire or survey, which aims to collect (special) personal data.

When employers collect (special category) personal data, they must comply with the GDPR and the Dutch GDPR Implementation Act. Whether employers are allowed to collect and process the various types of (diversity) data depends on what type of data is going to be included in the survey (see [Collection of Personal Data](#)).

Conducting such surveys requires advice on a case-by-case basis.

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