

## EXAMPLE EMPLOYMENT AGREEMENT FOR AN INDEFINITE PERIOD

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If a collective labor agreement (CAO) applies, its contents must be followed. This may require substantive adjustments that this model/template does not provide for.

There are many variations and extensions possible to the text and provisions included in this model/template. However, certain provisions/data are mandatory to arrange in writing pursuant to Article 7:655 of the Dutch Civil Code. Thus, restrictions apply when changing or removing provisions. Furthermore, some matters are mandatory law and cannot be derogated from to the detriment of the employee. The parts that still need to be included or supplemented in this template are indicated with yellow highlighting.

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## EMPLOYMENT AGREEMENT FOR AN INDEFINITE PERIOD

### THE UNDERSIGNED:

1. [NAME OF EMPLOYER AND LEGAL ENTITY, FOR EXAMPLE, 'The private limited liability company .... B.V.'] legally established and having offices in [(ZIP code) CITY] at [Address] registered with the Chamber of Commerce under number [number] herein legally represented by [name, jobtitle] (hereinafter referred to as the “Employer”);

and

2. [Mr./Ms./Mrs.] [EMPLOYEE NAME] born on [DATE] residing in [(ZIP code) CITY] at [Address] (hereinafter referred to as the “Employee”);

Parties 1 and 2 are hereinafter jointly referred to as “Parties”;

### CONSIDERING THAT:

Parties have agreed to enter into an employment agreement for an indefinite period under the conditions stated in this agreement (hereinafter to be referred to as “the Employment Agreement”).

### DECLARE THE FOLLOWING HAS BEEN AGREED:

#### Article 1. Commencement and Duration

1.1 The Employee shall enter the employment of the Employer per [DATE].

1.2 The Employment Agreement is entered into for an indefinite period.

#### Article 2. Termination

2.1 Parties may terminate the Employment Agreement with due observance of the statutory notice period. Termination must be done in writing to the end of the calendar month. [NOTE: this article does not prejudice the statutory dismissal protection. This means that employers require authorization from the UWV for termination (alternative is a termination by mutual agreement of both parties or dissolution of the employment agreement by the subdistrict court. The statutory notice period is one month for employees. For employers, it is 1 to 4 months depending on the length of service.)]

#### Article 3. Probationary Period [OPTIONAL]

3.1 A two months probationary period applies [NOTE: 2 months is the maximum in an agreement for an indefinite period]. During the probationary period, Parties may terminate the Employment Agreement with immediate effect.

#### Article 4. Position

- 4.1 The Employee will hold the position of [POSITION]. The duties and responsibilities of the position are outlined in the job description, that is attached to this agreement (**Appendix 1**).
- 4.2 Upon the Employer's request, the Employee will also perform other tasks that are appropriate for the position.

#### Article 5. Location

- 5.1 The Employee shall, in principle, perform [his/her] duties at the office of the Employer in [CITY]. If it is desirable for the proper exercise of the position, the Employee shall perform duties in other locations as well.
- 5.2 Employer is entitled to change the place of work of the Employee. [NOTE: for this, the employer must have a justified interest that is so significant that the interest of the employee against the change must be overridden.]

#### Article 6. Working Hours and Times

- 6.1 The Employee shall perform work for [NUMBER] hours per week.
- 6.2 The work will, in principle, be carried out between [TIME] and [TIME] with a lunch break of [30 minutes].
- 6.3 [OPTIONAL: If required for the proper performance of the position or if the Employer makes a reasonable request to do so, the Employee is expected to work overtime. The Employee is not entitled to overtime compensation; any overtime compensation is considered to be included in the salary.]

#### Article 7. Salary, Holiday Allowance [and Variable Pay]

- 7.1 The gross monthly salary of the Employee amounts to € [AMOUNT], excluding 8% holiday allowance, based on a [NUMBER] hours working week.
- 7.2 The Employer will pay the salary at the end of each month to the Employee, after deduction of all statutory deductions.
- 7.3 The holiday allowance is accrued monthly over the period from May 1<sup>st</sup> to April 30<sup>th</sup> of the following calendar year. The accrued holiday allowance is paid out annually over the preceding year in the month of May.

[OPTIONAL: The Employer may provide the Employee a variable compensation if the conditions as detailed in the attached Bonus Plan (Appendix 2) are met. It is entirely at the Employer's discretion to determine whether it will pay out a variable compensation and the amount thereof. Any variable compensation granted in one year does not entitle the Employee to receive a variable compensation in any other year.]

## Article 8. Holiday

- 8.1 The Employee is entitled to [NUMBER] holidays per calendar year of which ([NUMBER] days are considered as 'statutory' holidays and [NUMBER] as 'non-statutory'. [NOTE: the difference between statutory and non-statutory days is important because different rules apply to the expiration or lapse of days that have not been taken on time. 'Statutory days' are 4 full workweeks per year (so on a full-time basis 20 days, for an employee who works 4 days a week that is 16 days). 'Non-statutory days' are all other vacation days. These will, in principle, lapse after 5 years].
- 8.2 If the Employment Agreement begins or ends during the calendar year or if the working hours change, the number of holidays days is adjusted pro rata.
- 8.3 Holidays are taken in consultation with Employer and as much as possible in the year in which they are accrued.
- 8.4 Statutory holidays accrued but not taken in a calendar year expire per July 1 of the following calendar year. Non-statutory vacation days expire after 5 years. Expired or lapsed holidays are not compensated to Employee. [NOTE: untaken holidays days will only expire or lapse if the employee has been reasonably able to take the days and the employer has given the employee a timely warning that the days must be taken on time]

## Article 9. Pension

- 9.1 The Employee will participate in the pension scheme of the Employer with [name of pension insurer or pension fund]. The conditions of the pension scheme apply (Appendix 3).
- 9.2 [OPTIONAL: The pension premium will be [%] borne by the Employer and [%] borne by the Employee. The Employee's share will be deducted monthly from the Employee's salary.]
- 9.3 [ALTERNATIVE for 9.1: No pension scheme applies to Employee.]

## Article 10. [OPTIONAL:] Expense Allowances

- 10.1 The Employer will reimburse reasonable business expenses incurred by the Employee, provided that they have been approved in writing by Employer beforehand. Expenses are reimbursed upon submission of a claims form with a valid proof of payment (receipt).

- 10.2 The Employee receives a travel allowance for commuting costs to and from work equal to the actual costs incurred using public transport [FIRST/SECOND CLASS] [OPTIONAL: BASED ON A MONTHLY OR ANNUAL SUBSCRIPTION]. Alternatively, Employee can choose a compensation of EUR 0.23 net per kilometer driven. Employee is not entitled to a travel allowance during any period in which no work is performed, regardless of the cause.

## Article 11. Incapacity for Work

- 11.1 If the Employee is prevented from performing the agreed work due to illness, the Employee is entitled to 70% of the gross salary, including holiday allowance, for a period of 104 weeks starting from the first day of incapacity for work.

[ALTERNATIVE for 11.1, where a higher percentage of the salary is paid in the first year of illness:] If the Employee is unable to perform the agreed work due to illness, [he/she] is entitled to continued payment of a percentage of the gross salary, including holiday allowance, for a period of 104 weeks, starting from the first day of incapacity for work. The percentage referred to in the previous sentence is [percentage, e.g., 100 or 90] % for the first 52 weeks and [lower percentage, e.g., 70] % for the subsequent period of 52 weeks].

[NOTE: although not common in practice, it is legally permitted to pay only 70% of the maximum daily wage in case of illness. That requires an adjustment to paragraph 11.1. During (only) the first year of illness the minimum wage must be guaranteed].

- 11.2 The Employee is required to make efforts for [his/her] prompt reintegration during illness and to cooperate with investigations by the company doctor or occupational expert. [OPTIONAL: The conditions for reporting illness and reintegration included in the employee handbook apply (Appendix 4).]
- 11.3 [OPTIONAL: If the Employee's incapacity for work is the result of an event for which another party is liable, the Employee must immediately provide the Employer with all necessary information and do everything within the Employee's power to enable the Employer to exercise the right of recourse as referred to in Article 6:107a of the Dutch Civil Code.]

## Article 12. Confidentiality

- 12.1 Without prior written permission from the Employer, the Employee is prohibited from sharing information about the Employer [and organizations affiliated with, or related to the organization of the Employer] that [he/she] knows or should know is of a confidential nature, both during the term of the Employment Agreement and thereafter. The information mentioned in the previous sentence includes, but is not limited to, information about the organization, working methods, pricing, (potential) customers, and other relations of Employer [and organizations affiliated with, or related to the organization of the Employer] and individuals employed by or working for the Employer.

- 12.2 All (hard copy and digital) documents - including correspondence, notes, drawings, models, automated files, and other data carriers, etc. - created or obtained by the Employee in the course of working for the Employer are and remain the property of the Employer. Such documents must be returned to the Employer at the first request. Upon termination of employment, the Employee must, on [his/her] initiative and no later than the last day of employment, return all documents referred to here to the Employer. The Employee is not permitted to retain or distribute copies of such documents without the prior written consent of Employer.

#### Article 13. [OPTIONAL] Ancillary Activities

- 13.1 The Employee requires prior written consent to perform (paid or unpaid) ancillary activities. The Employer will grant permission for ancillary activities unless an objective reason opposes it. Whether this situation occurs is at the discretion of the Employer. The Employer may attach conditions to its consent.

#### Article 14. [OPTIONAL] Non-Compete and non-solicitation clause

- 14.1 Without prior written consent from the Employer, the Employee is both during the term of the Employment Agreement and for a period of [NUMBER] months after its termination—regardless of the reason for termination, not allowed to be active in any form, whether directly or indirectly, for themselves or others, for remuneration or not [in the Netherlands], with any company carrying out activities equal or similar to or competitive with those of Employer. [NOTE: preferably describe the specific trade interests of the employer so that it is clear which activities are considered equal (similar) or competitive.]
- 14.2 The Employee is not permitted to establish or maintain (direct or indirect) business contact with the Employer's [business relations] without prior written consent from the Employer during the term of the Employment Agreement and for a period of [NUMBER] months after its termination - regardless of the reason for termination. In this context, 'business relations' refers to [all (former) customers, prospects and suppliers of the Employer]. [OPTIONAL: with whom the Employee has had contact in the last [two years] of employment.]

#### Article 15. Penalty Clause [OPTIONAL]

- 15.1 In the event of violation of the provisions in articles 12, 13, and/or 14, Employee immediately owes (and thus no notice or default is required) Employer a penalty of € [AMOUNT] at once, plus an amount of € [AMOUNT] for every day or part of a day the violation continues. In deviation from Articles 7:650 paragraphs 3, 4, and 5 of the Dutch Civil Code, the Employee pays the fine directly to Employer.
- 15.2 The Employer may choose to claim damages from the Employee instead of the penalty described in paragraph 1.

15.3 Payment of penalties does not exempt the Employee from the obligations described in articles 12, 13, and 14. With this article, Parties deviate from Article 6:92 of the Dutch Civil Code.

#### **Article 16. [OPTIONAL] Social Media**

16.1 The Employee is aware of the potentially wide reach of statements through social media. If the Employee uses social media (whether or not privately), [he/she] will refrain from expressions that may discredit the Employer [and organizations affiliated with, or related to the organization of the Employer] and/or the Employer's employees or that may damage the good reputation of the Employer. The Employee prevents private expressions via social media from being construed as expressions of the Employer.

#### **Article 17. Company Property**

17.1 All company property provided by the Employer to the Employee in the context of [his/her] position at the Employer remains the property of the Employer and must be returned promptly and in good condition to the Employer at the first request, but no later than upon termination of the Employment Agreement.

#### **Article 18. Unilateral Amendment**

18.1 The Employer has the right to unilaterally amend the provisions of the Employment Agreement. [NOTE: the law stipulates that an employer can only unilaterally amend terms if the employer has such compelling interests that the interest of the employee should, according to standards of reasonableness and fairness, yield.]

#### **Article 19. Collective Labor Agreement [OPTIONAL: and Employee Handbook]**

[NOTE: if a collective labor agreement (CAO) is applicable, one of the 2 alternatives below for 19.1 can be chosen. Depending on the content of the collective labor agreement, further substantive changes must be made to this model/template.]

19.1 No collective labor agreement (CAO) applies to the Employment Agreement.

[ALTERNATIVE 1 for 19.1: The Employment Agreement is subject to the current version and future versions of the collective labor agreement [NAME].]

[ALTERNATIVE 2 for 19.1: Regarding the collective labor agreement [NAME], Articles 9, 12, 13, and 14a of the Collective Agreement Act apply. This means the Employer applies (future versions of) the collective labor agreement [NAME] to the Employment Agreement. After a possible future transfer of the company as referred to in Article 7:660 of the Dutch Civil Code, the binding to the collective labor agreement [NAME] ends at the moment described in Article 14a of the Collective Agreement Act.]

19.2 [The current and future versions of the Employee Handbook apply to this Employment Agreement. The current version of the Employee Handbook is attached to this agreement as Appendix 4.]

[NOTE: It is not mandatory to have an employee handbook, but it is useful, as topics can be elaborated in more detail. Article 7:655 of the Dutch Civil Code stipulates that the employee must also be informed about forms of paid leave and about the different ways in which the employment contract can be terminated. We recommend that these topics be elaborated in the Employee Handbook.]

## Article 20. Article 20. Applicable Law

20.1 This employment agreement is governed by Dutch law.

THIS AGREEMENT HAS BEEN MADE AND SIGNED IN DUPLICATE AT [PLACE] ON [DATE] BY:

On behalf of [Employer]

Employee

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[NAME]

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[NAME]

Attachment(s):

Appendix 1: Job Description

[OPTIONAL Appendix 2: Bonus Plan]

Appendix 3: Pension scheme

Appendix 4: Employee Handbook version [date]