

🕒 Reorganisation checklist

Many companies are forced to reorganise. In this process, the employer and employees have a lot to deal with. Here is a checklist of the most important topics and concerns.



What is the ground for the reorganisation?

- ✓ The employer must sufficiently substantiate the reasons for the reorganisation. Possible reasons include: poor financial position, reduction of work, organisational or technological changes, termination of (part of) the business activities and company relocation.
- ✓ Each reason has specific requirements regarding substantiation, which are explained in more detail in the [UWV's Implementation Rules](#). These Implementation Rules contain the basic rules for reorganisation.



Which positions expire and then what is the order of dismissal?

- ✓ First, establish in which job groups positions will have to disappear.
 - Is the job which will cease to exist a **unique job** or is it **interchangeable** with other jobs? Jobs are interchangeable if they are similar in terms of content, the required knowledge, skills and competences, as well as equivalent in terms of level and remuneration.
- ✓ Which employees are then eligible for dismissal?
 - If an entire job category/group of interchangeable positions is eliminated, all employees are eligible for dismissal.
 - If only part of the job will cease to exist, the **balancing principle** (in Dutch: *afspiegelingsbeginsel*) must be applied in each interchangeable job category.
 - For this purpose, employees are divided into age groups (15-24; 25-34; 35-44; 45-54; 55+). Shrinkage is distributed equally among the age groups so that the age structure within the function remains the same as far as possible.
 - First, it is necessary to say goodbye to external workers, such as seconded workers and temporary workers, as well as pensioners and workers with temporary employment contracts with a maximum of 26 weeks remaining.
 - Then, for the employees with open-ended contracts, we look at who is employed the shortest by age category.
- ✓ Are new positions also being created? If so, a **musical chair method** (in Dutch: *stoelendans*) might be applied, see our [blog](#) for more on that topic.
- ✓ Are any employees incapable to perform work due to illness? For employees for whom recovery is not expected in the next two months, there is, in principle, a ban on dismissal. The next employee who is 'next in line' on the basis of the balancing principle is then eligible for dismissal. The dismissal prohibition does not apply if the employee reports sick *after the* dismissal procedure with UWV has started by submitting the A-form.

Is redeployment possible?

- ✓ Before dismissal can take place, the employer is obliged to make demonstrable efforts to redeploy the employee to a **suitable position** within the group, including internationally. The initiative lies with the employer and merely referring to vacancies on the website is insufficient.
- ✓ Timing is important: at least before offering a settlement agreement or starting UWV proceedings, hold and document a re-employment interview with the employee.

Works Council involvement?

- ✓ Does the company have a Works Council? Then it usually has an **advisory right** regarding the proposed decision to reorganise.
- ✓ Here too, timing is important: advice must be requested in time, so that the Works Council can still influence the decision. The Works Council must be given a reasonable period of time to formulate the advice and consult on it. If the Works Council advises negatively, the entrepreneur must wait one month before implementing the decision, unless the Works Council does not object to implementation.

*Is there no Works Council, but ≥ 10 employees and will the reorganisation result in $\geq 25\%$ of employees being laid off? Then the employer must ask the employees for their opinion in a staff meeting.

Collective redundancy (≥ 20 employees)?

- ✓ If the employment contracts of ≥ 20 employees, working within one working area, are terminated in a three-month period, based on the Collective Dismissal Act (in Dutch: *WMCO*) the 'collective dismissal' must be reported to trade unions and UWV. A possible collective labour agreement may also contain an obligation to consult or inform trade unions.
- ✓ For the number of 20, only indefinite employment contracts terminated for an economic or organisational reason count. Therefore, non-renewal of temporary employment contracts does not count, nor does termination due to performance issues or during the probationary period.

Dismissal due to reorganisation

- ✓ In the event of a reorganisation, the employment contract can be terminated in two ways: (1) after a dismissal procedure at UWV and (2) by mutual agreement, with a settlement agreement.
- ✓ For both employer and employee, it is often most comfortable to conclude a settlement agreement. The content is sometimes agreed with unions or the Works Council in a **social plan**, which includes agreements on severance payments, legal advice, budget for employability, outplacement, etc.
- ✓ It is also possible to offer a voluntary departure scheme to avoid forced redundancies.
- ✓ If employer and employee do not come to an agreement together, the employer can submit a dismissal request to the UWV, initially online using [dismissal forms](#).
- ✓ In practice, the procedure usually takes three to five months.
- ✓ To avoid dismissal protection during illness, it may be wise to submit the A-form to the UWV 24 hours before an employee is informed of the redundancy and is offered a settlement agreement.

Marble and reorganisation

- ➔ Marble advises both employers and employees on all aspects of reorganisations. Feel free to contact us to see what we can do for you!