

REPORT

for the period from 1 June 2011 to 1 June 2016, made by the Government of the Netherlands, in accordance with article 22 of the Constitution of the International Labour Organisation, on the measures taken to give effect to the provisions of the

EMPLOYMENT INJURY BENEFITS CONVENTION, 1964 (No. 121)

Ratification of this Convention was registered on 2 August 1966.

Changes in laws and/or regulations

For an overview of the changes made in the legislation for medical care, the Government would like to refer the Committee to the combined report on Convention 102, 128 and 130.

Observation

Articles 7 and 8 of the Convention in conjunction with Article 26. Definition of industrial accident and occupational disease. The Committee requests the Government to indicate whether the national labour or occupational safety and health legislation contains definitions of industrial accident and occupational disease, as well as a list of such diseases, established for the purpose of reporting and monitoring industrial accidents and occupational diseases. The Committee also requests that the Government provide information on accident and disease investigations by the labour inspectorate on the imposition of appropriate sanctions, and on the elaboration of measures for preventing industrial hazards, developing occupational health services, and determining employer liability for damages to workers' health. Please indicate whether the Netherlands collects statistical data on the frequency and severity of industrial accidents and, if so, supply this data with the Government's next report.

Reaction of the Dutch government

Registration, monitoring, Labour Inspectorate and sanctions

EU-legislation requires that member states, for registration and monitoring purposes, have a list of acknowledged occupational diseases. In the Netherlands, occupational physicians have to report an acknowledged occupational disease to the Netherlands Centre for Occupational diseases ('Nederlands Centrum Beroepsziekten'). This Centre has the task to register and monitor the development of occupational diseases and to keep the list updated.

Below we provide an overview of available sources of information on relevant legislation, statistics, etcetera.

<https://OSHa.europa.eu/fop/netherlands/en/legislation/highlights-and-recent-changes-working-conditions-act>. Information can be found a.o. on:

- The Working Conditions Act (WCA). General provisions for employers and employees how to deal with occupational safety and health. The Labour Inspectorate has e.g. the power to impose fines on employers or shut down activities. Of course the WCA contains provisions on risk assessment and on occupational accidents. It also lays the ground for (further development of) professional occupational experts/expertise and OSH-services.

- The Working Conditions Decree (WCD), covers a wide range of specific OSH topics, e.g. provisions on workplaces, workplace design, dangerous substances, noise, vibrations etc.
- The Working Conditions Regulation (WCR), contains very specific provisions. Chapter I, par. 1.4 formulates a definition of occupational disease (in article 1.11).
- Major Accidents Legislation, provides legislation concerning major accidents/hazard related to dangerous substances and relevant risk assessments for preventing industrial hazards

Statistical information

https://OSHa.europa.eu/fop/nether_land/en/nl_developments. Information a.o. on :

- Statistics on occupational diseases 2014, a (periodically published) report compiled by the Netherlands Center for Occupational Diseases (NCvB), commissioned by the Dutch ministry of Social Affairs and Employment (SZW). The report aims at providing an overview of the incidence of occupational diseases and their distribution within the sectors and occupations in the Netherlands in 2013.
- Overview of Dutch Working Conditions 2014. This document presents a summary of findings. The summary encompasses: a description of the Dutch working population, key figures on the quality of work, sick leave, accidents at work and occupational diseases and a number of current themes such as psychosocial working conditions, preventive policy and sustainable employability.
- The Netherlands Working Conditions Survey 2013 (Nationale Enquete Arbeidsomstandigheden, NEA), which is a large scale periodical investigation into the working conditions of Dutch employees (published 2014)
- National Employers Work Survey (WEA) 2012, a two yearly survey among more than 5000 establishments of public and private companies and institutions.
- Work life in the Netherlands (2013). This book deals with relevant aspects of Work life in the Netherlands.

<https://www.arboineuropa.nl/arbo-in-nederland>, which also contains information on tools, campaigns, instruments, codes of practice, publications on accidents at work and occupational diseases, English versions of the Working Conditions Act and other related laws etc. The information can also be consulted in English.

See as well the following sites

https://OSHa.europa.eu/fop/netherlands/en/nl_developments and <https://www.arboineuropa.nl/arbo-in-nederland> with information on the system of notification, accidents at work and the statistics of occupational diseases. The WCA contains legislation on reporting lethal and serious occupational accidents and diseases (article 9). Moreover, we would like to mention the database called ‘Storybuilder’, that aims at analyzing serious occupational accidents. More specifically ‘Storybuilder’ is used to analyze the causes of accidents reported in the relevant data on Construction of the Labour Inspectorate. Based upon ‘Storybuilder’, a specific instrument for accident reporting and analysis is being developed for the Construction sector.

http://www.inspectieszw.nl/Images/Klachten-en-ongevallenrapport-2015_tcm335-372842.pdf contains an analysis of the Labour Inspectorate of occupational accidents from 2011 – 2014.

Medical care and allied benefits

The Committee requests the Government to explain whether there remain any type of public health services or medical institutions in the area of occupational health and rehabilitation and, if so, whether health-care insurers are encouraged to use these services and institutions for the treatment of employment injuries.

Reaction of the Dutch government

In the Netherlands no distinction is made between employees and insured persons in general. As stipulated in the previous report, all persons legally residing in the Netherlands and all non-residents who work and pay income tax in the Netherlands, are insured under the Long Term Care Act (previously Exceptional medical expenses act). Moreover everybody insured under the Long term care act is obliged to take out health insurance under the Health Insurance Act.

There are no specific *public* health services or medical institutions in the area of occupational health and rehabilitation. However, health services and medical institutions focussed on occupational health and rehabilitation do exist and are contracted by the health insurers operating under the Health insurance act.

Health insurers are private entities that can, through selective contracting, stimulate and promote improvements in quality. This means that health insurers can contract certain health services with medical institutions specialised in occupational health and rehabilitation in order to optimally fulfil their statutory duty of care.

Articles 4 and 9. Coverage by the health insurance scheme and conditions of entitlement to benefits.

- The Committee requests the Government to indicate how many employees were found by the Health Insurance Board to lack health insurance coverage and whether the employer has any obligation to check that its employees have the proper health insurance coverage.

Reaction of the Dutch government

As explained in the previous report, under the Health Insurance Act anyone who legally resides or any non-resident who works in the Netherlands is required to enroll with a health insurer within four months of arrival to cover medical expenses. Any registered person residing and/or working in the Netherlands for more than thirteen months is insured under the Health Insurance Act.

If a person enrolls within four months, the insurance is valid from the day the obligation for enrolment started. This means that someone who has failed to or has been unable to take out health insurance during those first four months, but who does require healthcare will be able to obtain healthcare without having to incur the costs him- or herself.

If a person fails to enroll within four months of arrival he or she will receive a letter from the Dutch Healthcare Institute (Zorginstituut Nederland, formerly the Health Insurance Board) reminding the person to take out a mandatory health insurance within three months. If the person fails to take out insurance during these three months, the person will be fined € 366,99 (2016). In case the person still does not enroll within the following three months another fine of € 366,99 (2016) will be incurred. If the person, after again another three months, fails to take out insurance, he or she will be insured by the Dutch Healthcare Institute. This means that there is a nine-month-period, between the first letter sent by the Dutch Healthcare Institute and the moment of insurance by the Dutch Healthcare Institute in which

someone can be uninsured. Effectively this means that only during the time the person is fined, he is not insured and has to meet the expenses for any healthcare consumed.

Every month the Dutch Healthcare Institute sends out 3000 letters to people who still have to enroll with a health insurer according to the public records. These are mainly foreign students and foreign seasonal workers. In the case of students without a job, there is no need to take out health insurance and they are taken out of the records.

Any insured person who fails to pay his or her health insurance premium for more than six months, will be reported to the Dutch Healthcare Institute by their health insurer. The Dutch Healthcare Institute will, from that moment onwards, register the person as a defaulter and take responsibility to insure this person. The premium the defaulter has to pay to the Dutch Healthcare Institute, is higher and directly taken from the person's income. A defaulter will always be insured through the Dutch Healthcare Institute, regardless of whether he or she is able to pay the premium.

Although employers do not have an obligation to check that its employees have health insurance coverage, they can choose to conclude a collective insurance (collectivity) with a health insurer. It is up to the employee to decide whether he or she wishes to take out the collective insurance. Moreover, mainly in case of seasonal work, employers decide to provide their employees with an insurance to ensure that their employees are properly insured.

- The Committee wishes the Government to explain in this respect to what extent the improvement of coverage has been achieved through the social assistance mechanism established by the Health Care Allowance Act (Wet op de zorgtoeslag), under which persons for whom the nominal premium is too high in relation to their income may receive an allowance paid by the tax authorities.

Reaction of the Dutch government

In the Netherlands any insured person who is 18 years and over and who earns less than a certain wage (2016: € 27.012) is entitled to a healthcare allowance under the Health Care Allowance Act. The aim of the health care allowance system is to ensure that no one pays more than an acceptable amount for their health insurance premium. The health care allowance is dependent on the income of the insured person and is set at a maximum of € 83 per month (2016) for minimum wage earners. Average monthly health insurance premiums are € 100 per month. This means that for minimum wage earners the net premium is around € 17 per month. This is exclusive of the compulsory deductible set at € 385 (2016), for which the health care allowance also compensates.

No specific research has been done on the improvement of coverage under employees through the health care allowance. A 2011 report on health care allowance does show that out of the 890.000 insured persons earning up to 120% of the minimum wage 92% collect health care allowance.

- The Government is invited to explain how and by virtue of which provisions of the national legislation the necessary emergency and follow-up medical treatment are provided to an employed person who at the moment of an industrial accident or manifestation of an occupational disease did not possess a health insurance contract or whose contract was terminated due to non-payment of premiums.

Reaction of the Dutch government

At all times a person will receive the necessary acute care. Healthcare providers have a duty of care, following from their professional standards and the Hippocratic oath. This duty of care is also laid down in Article 453, Book 7 of the Dutch Civil Code.

Uninsured persons are, in principle, required to pay for the cost of healthcare. If they are not able to meet these expenses, the bill remains unpaid. Ultimately, these costs are reflected in the price of care of all people in the Netherlands as healthcare providers will settle these costs through making other types of (provided) care more expensive.

Article 10(1). Types of care to be provided.

-The Committee would like the Government to explain under which legal provisions and practical arrangements emergency and follow-up treatment in case of employment accident stipulated in Article 10(1)(g) would be provided free of charge at the place of work. Please also indicate under which provisions of the Health Insurance Act care provided by general practitioners and specialists includes domiciliary visiting, as stipulated in Article 10(1)(a) of the Convention.

- Please state what additional measures are foreseen under the Dutch health insurance scheme to provide such care to victims of employment injuries.

Reaction of the Dutch government

Working Conditions legislation applies to OSH-care within companies. Part of these regulations concern occupational health care by occupational doctors and occupational safety and health services. They also contain provisions for emergency response and the operations of first aid in relation to occupational accidents. Relevant articles can be found in the abovementioned legislation, e.g. WCA (articles 14 and 15).

The Government would like to further refer the Committee to the combined report on Conventions 102, 128 and 130.

With regards to the question on additional measures for medical insurance, the Government would like to point out that no distinction is made between employees and insured persons in general in the Netherlands. As stipulated in the previous report, all persons legally residing in the Netherlands and all non-residents who work and pay income tax in the Netherlands are insured under the Long term care act (previously Exceptional medical expenses act). Moreover everybody insured under the Long term care act is obliged to take out health insurance under the Health insurance act.

The system in the Netherlands is set up in such a way that employers are liable for their employees and thus liable for the accidents that occur. This liability is laid down in the Dutch Working Conditions Legislation (*arbeidsomstandighedenwet* <http://wetten.overheid.nl/BWBR0008587/2016-04-01>). Based on this regulation every employer is obliged to provide employees with Occupational Health and Safety services support (OHS) for in-house emergency response. This support is free of charge for employees.

This includes the provision of occupational physicians and professional first aid.

Article 10(2). Effectiveness of medical care.

The Committee therefore asks the Government to explain what procedures exist to include among reimbursable care new technologically advanced treatments, which might help to restore health in particularly serious cases and whether there exist medical centres specializing in treatment of industrial accidents and occupational diseases that possess

state-of-the-art knowledge in this area. Please indicate whether the Health Care Inspectorate (IGZ) which is entrusted with overseeing the quality of public health, or the occupational health services, possess any system of indicators measuring effectiveness of medical and professional rehabilitation of employment injury victims.

Reaction of the Dutch government

In the Netherlands all diseases and victims of all types of accidents (caused by occupational risks as well as by social risks) are covered by the same system of medical care (insurance). The Government would like to refer the Committee to the combined report on Conventions 102, 128 and 130 for an answer on the question of effectiveness of medical care. In part b of that answer the Government elaborates how quality is assured and promoted in the Dutch healthcare system.

Article 11(1). Participation in the cost of medical care.

-The Committee would therefore ask the Government to conduct a thorough study of the existing limitations and cost-sharing arrangements with respect to the statutory medical benefits, so as to identify and prevent possible situations of hardship that may affect the standard beneficiary (man with wife and two children) who has fallen victim of a serious employment accident or a chronic occupational disease.

- The Committee would ask the Government to consider incorporating similar hardship clauses into the insurance rules covering other types of costly medical care and allied benefits, which may be identified by the study mentioned above.

Reaction of the Dutch government

As explained in the previous report, the healthcare system in the Netherlands is set up in such a way that financial hardship is prevented. It is indeed also the case that no distinction is made between insured persons in general on the one hand and employees on the other. In addition to the several measures to prevent financial hardship explained in the previous report (such as health care allowance and the *income dependent* contribution in case of long term care).

Article 24. Participative management of the health insurance scheme. *The Committee therefore asks the Government to supply full information in its next report on the application of Article 24 of the Convention in Dutch law and in practice.*

Reaction of the Dutch government

The Government would like to refer the Committee to the combined report on Conventions 102, 128 and 130 for an answer on the question of participative management in the health insurance scheme.

The Work and Income (Employment Capacity) Act of 2006 (WIA)

The Committee observes that responding in full to the Government's position would require lengthy explanations of the scope and purpose of different provisions of the Convention in the context of the evolution of international social security law, and this would run into scores of pages, well beyond what can be reasonably accomplished during a single session of the Committee. The Committee further observes that certain questions raised by the trade unions in their disagreements with the Government take the discussion into policy areas and consideration of alternative solutions, well beyond the legal framework of the Convention. *In this situation, the Committee invites the Office to make contact with the Government in order to find the most suitable way of providing it with the necessary background information on the contested provisions of the Convention and thereafter identify the*

remaining issues on which the Government would then still like to solicit the explanations of the Committee. The Committee would like to be informed of these issues sufficiently in advance to be able to respond to them at its next session in November–December 2012, but in any case not later than 1 September 2012.

Reaction Dutch government

The Dutch government welcomes the view of the Committee regarding the debate between the trade unions and the government concerning the legal framework of the convention.

There are no new policy developments with respect to the WIA since 2012.

Regarding the questions posed by the Committee during the debate in 2011-2012 between the Dutch Government and the ILO, the government refers to the letter to the ILO dated 18-10-2011, the work visit to the Netherlands of the ILO-Office (Department of Standards) of 2nd and 3rd July 2012 and the reaction of the Netherlands dated 5-11-2012 in response to the letter of ILO dated 28-09-2012 regarding the letter of the Dutch trade unions (September 2012) .

Copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organisation to the following representative organizations of employers and of workers:

- the National Federation of Christian Trade Unions (CNV)
- the Netherlands Trade Union Confederation (FNV)
- the Trade Union Federation for Professionals (VCP)
- the Confederation of Netherlands Industry and Employers (VNO-NCW) and MKB-Nederland