

COVID-19: NOW 3

On 9 October 2020, the third emergency program regarding protecting and maintaining employment (NOW 3) was published. This Law Alert provides a practical overview of the conditions for NOW 3. On 9 December 2020 the Dutch Ministry of Social Affairs and Employment announced, among others, some relaxations of NOW 3, 2nd tranche which are explained in this Law Alert as well.

NOW 3: three tranches

After a long wait, the NOW 3 was published on 9 October 2020. NOW 3 will consist of three tranches of three months each, with the conditions (partly) varying per tranche:

Tranche	Period	Expected loss in turnover	Subsidy
1	1 October until 31 December 2020	Minimal 20%	80% of the wage bill
2	1 January until 31 March 2021	Minimal 20%	80% of the wage bill
3	1 April until 30 June 2021	Minimal 30%	60% of the wage bill

- ▶ The first tranche will cover the period from 1 October until 31 December 2020 and will be available for employers who expect at least 20% loss in turnover in a continuous three-month period from 1 October to 28 February 2021. They can apply for an allowance amounting to a maximum of 80% of the wage bill in this tranche, related to the loss in turnover.
- ▶ The second tranche will apply in the period 1 January until 31 March 2021 and can be applied for in the event the employer expects at least 20% loss in turnover in a successive period of three months from 1 January to 31 May 2021. The amount of subsidy in this second tranche is lower, as this amounts to a maximum of 80% of the wage bill.
- ▶ The third tranche runs from 1 April until 30 June 2021 and can be requested if the employer expects at least 30% loss in turnover in a continuous period from 1 April to 31 August 2021. The subsidy in this tranche is maximum 60% of the wage bill.
- ▶ An employer can apply for the subsidy once per payroll tax number and once per tranche.

If the employer has applied for NOW 2, the turnover loss period of NOW 3 should in principle follow-up on the turnover loss period in NOW 2. In the event the

employer intends to reapply for NOW 3 in a subsequent tranche of NOW 3, that subsequent tranche must also follow-up on the turnover loss period of the tranche under NOW 3 the employer previously applied for.

- ▶ The distinction between the group scheme and operating company scheme remains to exist. An operating company scheme can only submit the NOW application, if the group has less than the required percentage loss in turnover.
- ▶ The employer is obliged to inform the works council, other form of personnel representation, or in the absence thereof, the employees regarding the granted subsidy.
- ▶ The UWV will grant an advanced payment of 80% of the subsidy, which can be paid in three installments.
- ▶ The final determination of the NOW subsidy will take place afterwards. In line with the previous NOW schemes, an auditor's report or statement from a third party may be required, depending on the amount of subsidy and which scheme (group or operating company) was used.

Conditions NOW 3

Under the NOW 3, the following conditions apply:

- ▶ For all tranches, the wage bill of June 2020 will be used as reference period.
- ▶ The definition of turnover will remain the same as under NOW 2.0. The turnover in 2019 will be used as reference period.
- ▶ The fixed increase of the wage bill will remain 40%.
- ▶ For the third tranche (starting April 2021) the subsidy will be limited by introducing a maximum of once the maximum daily wage € 4,845,- per month per employee.
- ▶ The restrictions regarding bonus and dividend payments and the purchase of own shares remains to apply. In that respect, our Ministry has clarified that for these restrictions it is only relevant to which year these payments can be related to. It is therefore also prohibited to pay the bonuses right after adopting the annual account over 2020 (for example).

- ▶ The employer may decrease the wage bill with a certain percentage without risking a reduction of the subsidy. This so called exemption rate is 10% for the first two tranches, and 20% for the third tranche and is meant to allow the employers room to re-organize or restructure its company.
- ▶ The sanctions that applied under NOW 1 with respect to dismissal due to business economic reasons through a UWV procedure do not apply to NOW 3.

Education and guidance

- ▶ The amendments in NOW 3 aim to give companies the opportunities to adapt their organization to the “new standards”. The expectation is that this will possibly lead to (more) layoffs. For this reason, the obligation for employers to make an effort with regard to training and work-to-work guidance is a fundamental topic in NOW 3.
- ▶ When applying for the NOW 3 subsidy, employers must state that they will meet the abovementioned obligation to make an effort. In that respect, the “NL Leert Door” program (part of the emergency package) will be extended to 2021.
- ▶ The “best efforts” obligation of the employer in providing guidance from work-to-work will apply for all employees, also in the event the employment agreement shall not end during a subsidy period of a tranche but the intention to terminate such agreement already exists. Employers are only exempted from this obligation in the event the employee is retiring.
- ▶ Employers are obliged to contact the NOW helpdesk at the UWV by phone before submitting a request for dismissal due to economic reasons. If the employer fails to do so, the subsidy will be reduced by 5%.

Application and establishment NOW 3

- ▶ NOW 3 is also available for employers who did not apply for the previous NOW schemes.
- ▶ NOW 3 can be requested in the period 16 November 2020 until 13 December 2020 for the first tranche; 15 February 2021 until 14 March 2021 for the second tranche and 17 May 2021 until 13 June 2021 for the third tranche.
- ▶ The final determination of NOW 3 subsidy should be requested within 24 weeks after 1 September 2021. For this, a form will be developed. In the event an auditor’s statement is required, the application period will be extended to 38 weeks.
- ▶ The request for final determination of the subsidy should be submitted separately per tranche.

What HVG Law can do for you

The coronavirus affects the Netherlands severely. We are ready to help you with all challenges in these disrupting times. We understand your business and partner you through uncertainty with practical advice and solutions, so you can focus on what needs your attention most.

COVID-19 helpdesk

Contact our helpdesk via info@hvglaw.nl or visit our special coronavirus webpage for more alerts: hvglaw.nl/corona-updates



Huub van Osch
Lawyer | Labor & Employment
E: huub.van.osch@hvglaw.nl
T: + 31 6 55 44 20 48



Emilie Boot
Lawyer | Labor & Employment
E: emilie.boot@hvglaw.nl
T: +31 6 29 08 48 56

About HVG Law

HVG Law LLP (HVG Law) ranks amongst the top Dutch law firms and is characterized by an entrepreneurial, innovative and solution-driven approach. With more than 150 dedicated and pragmatic lawyers, including (candidate) Civil Law Notaries, HVG Law offers high-quality, legal services in a broad and multidisciplinary context. Our lawyers are active in all legal areas and sectors relevant to business, directors, shareholders and government authorities and have knowledge of your business and your market. At our offices in Amsterdam, Rotterdam, Utrecht, The Hague, Eindhoven, New York, Chicago and San Jose (i.e., Donahue & Partners LLP in the USA), we are able to offer our legal services to national and international clients. HVG Law is part of the global EY Law network and we have a strategic alliance in the Netherlands with Ernst & Young Belastingadviseurs LLP.