

## An internship agreement or an employment contract?

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Interns and employees enjoy different legal protection. For example, an intern is neither protected against dismissal nor entitled to minimum wage. However, sometimes an internship agreement can be regarded as an employment contract and thus the intern will be protected as an employee. This blog provides points of reference to prevent an internship agreement from qualifying as an employment contract.

### *The employment contract*

Whether an internship agreement qualifies as an employment contract follows imperatively from the law. A contract is an employment contract if the following three essential elements are fulfilled: (i) the employee's obligation to perform work, (ii) the employer's obligation to pay salary and (iii) the presence of a relationship of authority.

### *The internship agreement*

The internship agreement is not specifically regulated by law. The parties are therefore in principle free to agree on the conditions under which the internship agreement will be concluded. Due to the three essential elements of an employment contract, an internship agreement could in fact be an employment contract.

However, the Supreme Court ruled that there is no "work" within the meaning of an employment contract if the activities are primarily meant to expand the knowledge and skills of the intern, also in the light of the completion of his/her study programme. If this is the case, the relationship between the company and the intern will not qualify as an employment contract.<sup>1</sup>

### *Notional employment relationship*

If the internship agreement is not an employment contract but an internship allowance is paid, then the internship agreement will be qualified as a so-called notional employment relationship (for taxation and social security purposes). This means that the intern who receives an internship allowance must be included in the payroll records, since the company in that case must also deduct income tax, national insurance contributions and employer's levy under the Healthcare Insurance Act from the internship allowance.<sup>2</sup> However, there is no question of an internship

allowance in this context if the allowance only covers reasonable and actual expenses incurred, such as travel expenses.<sup>3</sup>

### ***Best practices***

To prevent internship agreements from being regarded as employment contracts as much as possible, the following best practices can be followed:

- Mention in the recitals of the internship agreement that the agreement was concluded to help the intern to expand his/her knowledge and skills within the company and that the parties explicitly do not intend to conclude an employment contract within the meaning of article 7:610 Dutch Civil Code;
- Use terms like “internship provider” and “intern” rather than “employer” and “employee”;
- Conclude, where possible, a tripartite agreement between the internship provider, the intern and the educational establishment;
- Agree that the intern will receive an evaluation in the interim period and at the end of his/her internship, preferably in the light of the educational objectives;
- Ensure that the intern can expand his/her knowledge and skills and that the educational objectives therefore prevail over the performance of productive work;
- Limit the duration of the internship agreement to a maximum of six months, unless the intern requires a longer internship with regard to his/her study programme; and
- Pay a significantly lower internship allowance than the minimum wage.

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1. Dutch Supreme Court 9 October 2015, ECLI:NL:HR:2015:3019 (Logidex/SNCU).

2. Employee insurance contributions are not owed, see Handbook Payroll Taxes 1 July 2018 (Dutch: Handboek Loonheffingen 1 juli 2018) of the Dutch Tax Department, section 16.10.

3. Article 3(1)(e) of the Dutch Wages and Salaries Tax Act 1964.

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