Workx Advocaten

# WHAT DOES IT COST IF A FREELANCE ENGAGEMENT TURNS OUT TO BE EMPLOYMENT?

If a freelancer (zzp'er) in reality works as an employee, they will retrospectively have an employee's rights. Back contributions and taxes may also be claimed. In principle, the core of what was agreed remains in place.

## 01. WHAT THE WORKER CAN CLAIM

### BACK **PAY**

**5** years back

If the fee was lower than what they were entitled to as an employee (minimum wage, collective labour agreement pay, allowances), up to five years back (Article 3:308 of the Dutch Civil Code).

Possibly with a **statutory increase** for late payment (Article 7:625, which the court may reduce) and **statutory interest** (Article 6:119).

### HOLIDAY **ENTITLEMENT**

Statutory days in principle lapse six months after the year of accrual, but not if the employee could not reasonably take them. Extra-statutory days become time-barred after five years. Arrangements to the employee's detriment are void.

### HOLIDAY **ALLOWANCE**

Due in principle. Possibly not if the invoices clearly state that the holiday allowance is already included in the rate.

### PENSION **ACCRUAL**

If there is a mandatory pension fund or a pension scheme for the other employees, the worker is entitled to full accrual (possibly with an employee contribution).

### DISMISSAL **PROTECTION**

If you terminate the assignment, the worker may rely on dismissal law and have the termination annulled (Article 7:681). A short time limit applies.

### COLLECTIVE LABOUR AGREEMENT **AND CHAIN RULE**

A collective labour agreement (cao) may apply through membership, a declaration of general applicability or an (even tacit) agreement. Successive assignments that prove to be employment count towards the chain rule (Article 7:668a).

## 02. WHAT THE AUTHORITIES CAN CLAIM

PENSION FUND

**5** years, possibly longer

The fund can recover contributions from the employer. Limitation: in principle five years after they fell due or after mandatory participation was or could have been known. Whether a longer period may apply is still debated.

Recoverable from worker? × NO

EMPLOYEE INSURANCE SCHEMES

**From** 1 January 2025

The employee is retrospectively insured under the employee insurance schemes. The contributions can be claimed from the employer (five-year limitation period) for the period from 1 January 2025.

Recoverable from worker? × NO

TAX ADMINISTRATION

**Back taxes**

If there turns out to be employment, the Dutch Tax Administration (Belastingdienst) can impose additional payroll tax assessments or require a correction for the future.

Recoverable from worker? ✓ YES, IN PRINCIPLE

### CERTAINTY **IN ADVANCE**

**Prior consultation**
Submit a specific situation to the Tax Administration in advance.

**Formal decision**
Request a formal decision for certain positions (Article 57 of the Social Insurance Financing Act, Wfsv).

**Model agreement**
An approved model is no guarantee: what matters is how the work is actually done.

Based on the rules in force in 2025

This document does not constitute legal advice and is for illustrative purposes only.

### NEED MORE TIPS **OR ADVICE?**

We are happy to help. Get in touch with us!