Abstract

Pay in different forms of labour relationships

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While there may be various reasons for doing one’s work, people work first and foremost to earn a wage; after all, they must have an income for meeting their daily expenses. Because of the importance of wage, Dutch labour law has several compulsory rules on wages of employees. These labour law provisions provide transparency for the employer and the employee and aim at protecting the employee, who is the ‘weaker party’ in the employment contract.

While most labour relationships in the Netherlands are still based on employment contracts, an increasing number of companies have chosen to outsource (parts) of their production process to other companies or to self-employed persons. Outsourcing is visible in the following forms: temporary agency work, secondments, payrolling, contracting and platform work. Outsourcing of work establishes so-called atypical labour relationships. Often intermediaries are involved, who give the relationship a triangular dimension and ask fees for their role in the outsourcing-process. In such atypical labour relationships it is not always clear whether Dutch labour law provisions have to be applied and if so, whether these provisions can offer adequate protection to the pay of the workers. Currently a lot of these forms of outsourcing do not fall within the full scope of Dutch labour law. This causes and retains uncertainty as regards the salary, in particular its amount, the way in which the level of wage is determined or should be determined (moreover if algorithms are involved), the moment the wage has to be paid and who is responsible for the payment.

The aim of this research paper is to clarify the context with regard to how and by whom pay of the actual workers in atypical labour relationships is currently established and eventually paid to the workers. For this reason, the paper will contain an analysis of two elements: the establishment and the actual payment of the pay. The analysis of these two elements will be carried out with regard to the traditional labour relationship and five forms of atypical labour relationships: temporary agency work, secondments, payrolling, contracting and platform work. The outcome of the analyses of the different labour relationships will be compared with each other. By looking at the forms of outsourcing in which no problems occur, this comparison will highlight the factors in the atypical labour relationships that possibly do cause problems with regard to pay. By doing so an appropriate approach can be found for reducing or solving problematic pay issues in a particular form of labour relationship.