

## LABOUR LAW

# Legal assurance

By Frank W.M. Sonsma

Labour law in several countries contains prevailing mandatory provisions aimed to protect the rights of the employee. This concept of law is regarded as justified since the employee is perceived to be the weaker party (“the employee as the modern version of a slave”).

Nowadays, as a result of globalisation in combination with the search for talent and skilled labour, the position of the employer and employee is more balanced. This trend is reflected in various attempts to adjust the basics of labour law in a number of European countries.

We would like to use this article to put this change in a broader perspective and based on this, to handle a particular issue that is closely connected with labour law.

The impact of social media has opened the doors of enterprises and any information that affects them is widely spread in and instant. Human nature and the appetite for news/information has been the foundation of the success of companies like Google, Facebook, Instagram and the massive use of smart phones in our daily lives.

This technology has changed our perception of the world and has created a need, in fact, even a demand for transparency. Large companies used to be fortresses, but are nowadays forced to be as transparent as glass houses. Human nature’s demand for transparency has compelled companies to disclose information that they regard as important in order to improve and build a positive image. Many corporate websites now contain information reflecting the value drivers of those companies. Currently, this demand for transparency is absorbed by the legislators and is reflected in various acts.

A recent example is the UK Modern



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Slavery Act 2015 that forces companies active in the UK and meet certain criteria to take measures to prevent modern slavery and to annually publish their statement to describe which measures they have taken to prevent slavery and human trafficking. This act can also affect non UK companies that are active in the UK. The scope of this act is to serve as an example that corporate institutions are increasingly subject to laws that have an extraterritorial effect. However, the most important consequence is that corporate institutions may no longer rely on their public statements, but must now also demonstrate their compliance with the rules.

Viewed from this perspective, we can safely conclude that the company stakeholders are no longer shareholders/management/employees/clients/creditors, but also the public. This new type of stakeholding is evident in the rule of transparency and represented by, e.g. environmental/consumer organisations and/or legislators.

It is obvious that companies would like to regain and maintain some kind of control in sharing data with the public, and this is expressed in internal rules

that are reflected in, for instance, codes of conduct. The striving for control affects the current engagement between employer and employee and has consequently become part of labour law.

Despite the wish of companies to regain control and to re-instate their position as fortresses, it cannot be denied that the public has become a stakeholder whose interest must be managed as well as being observed. This may cause potential conflicts that require a framework for settlement. This framework is reflected in the new Whistleblowers House Act that took effect on 1 July 2016 in the Netherlands. Employers with more than 50 employees must introduce internal whistleblower regulations.

This set of rules should stimulate employers to deal with reporting wrongdoing internally and must contain provisions that comply with the Dutch Data Personal Protection Act. In cases where the wrongdoing report cannot be expected to be dealt with internally and/or in cases where the report is not properly handled, a report can be filed with the House of Whistleblowers.

The employee that files a report of suspected abuse in good faith is protected during and after the handling of the report. The employment contract cannot be terminated and the employee is protected against being disadvantaged.

This new act is a clear example that conflicts between employer and employee may no longer be an internal matter, whereby disputes can be ultimately settled by independent courts, but are recognised to have entered the arena of public interest. This higher value empowers the employee to take the initiative serving the need to act and to make a report. The new act also demonstrates that the legislation of contemporary western society has become inevitable and has increased substantially.

The outcome not only affects areas of law like Employment law, but also other segments of law and as a result of an imported claim culture, its consequences are potentially immense. With the extension of stakeholders, the number of parties that may suffer have increased and therefore, the number of potential claims as well.

This changed platform for companies on which to operate has had a huge, but still mainly unnoticed, impact on the organisation of their corporate housekeeping. The demand for transparency and increasing number of (international) rules that must be observed undoubtedly have an impact on the internal organisation. It requires different lines of communication, and sets of rules for behaviour, control, data processing, etc.

If companies wish to regain some kind of control to retain and build a better image, they need to be aware that public values change over time. However, it is even more important to realise that they should be capable of demonstrating that they consistently remain faithful to their published corporate values.

In our view, corporate institutions currently not only require legal advice, but also legal assurance.

Legal assurance is not a set of facts set in stone whose value is limited in time, but should be seen as the development of a framework that enables management to first determine all the legal and compliance risks. Subsequently, management decides on the necessary compliance and internal work processes to mitigate these risks. This risk based management effort is a com-



monly practiced approach to deal with our changing environment and enables companies to regain control without losing transparency.

If you would like to learn more about Legal Assurance, please contact Frank Sonsma, Alea Management B.V. in joint cooperation with TeekensKarstens advocaten notarissen (TK).

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