Salary reduction as a result of Covid-19

In recent months, there have been a substantial amount of court cases regarding alleged salary in arrears. To survive the crisis the covid-pandemic has caused, many employers needed to reduce costs by decreasing the salaries of their employees. In caselaw on Sint Maarten, Aruba and Curacao, it has become clear that the criterion that the Court uses in these kinds of claims, is based on the so-called Stoof/Mammoet jurisprudence. Based on this caselaw, the employer must present a proposal to the employees before working hours and salaries may be reduced. Furthermore, the Court typically requires financial information of the company to verify the need and the appropriateness of the proposed measures. Ultimately, the Court will assess whether the proposal of the employer to reduce salary is reasonable, and whether the employee – in all reasonableness – should have accepted the proposal.

In many of these court cases, the employees won the case. Oftentimes, the employer did not present a proposal to the employees, so the Court did not even assess whether the measures that were implemented were reasonable. In other cases, the Court ruled that the employer did not submit the necessary (financial) information to determine the need and appropriateness of the measures and awarded the claims of the employee(s).

However, in its judgment of February 24, 2021, the Court of First Instance of Sint Maarten ruled in favor of the employer. The Court considered that the employer's proposal to reduce working hours and salary to 80% for employee who had agreed to multitask, and to 50% for employees who did not want to multitask (and stayed home) was reasonable. Please note that the employees did not accept the proposal of the employer, but the Court explicitly considered that the employees could not have refused the reasonable offer. The measures are temporary, namely until June 2021, or until a certain volume of business has returned. It is important for employers to formulate a proposal that is limited in time. The chances that the Court considers that a temporary measure is reasonable is bigger if the measure is limited in time.

Furthermore, it is essential to realize that these kinds of cases are casuistical. An employer cannot simply argue that – because of this judgment – he is also allowed to reduce working hours and salaries to 80% or 50%.

In conclusion: based on this recent caselaw, but also based on similar caselaw post-Irma, we strongly recommend that employers who are forced to take cost-cutting measures as a result of an act of God, like a hurricane or pandemic, seek a dialogue with the employees and the Union. The employer must make a proposal in order to stand a chance in Court. If the employees refuse the proposal, the employer can consider to implement the measures anyway, and wait for the employees to go to Court. Alternatively, the employer could take a pro-active approach and ask the Court to determine that the measures are reasonable and that the employees are bound by them.

Our firm has represented both employers and employees in these types of cases and we are pleased to advise you or your company in your particular situation.