



Kingdom of the Netherlands

COVID19 and US Business for Dutch Companies¹

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This report serves as a basic initial guide for Dutch companies wanting to learn about doing business in the Northeastern US and COVID-19. For specific questions about New York and the Northeastern US and support, please contact us at nyc-ea@minbuza.nl

Introduction

Businesses worldwide have been severely impacted by the outbreak of COVID-19 and the subsequent containment measures that have been implemented nationally and internationally. These measures have raised many questions for businesses and their employees.

This document specifically discusses the impact of COVID-19 on Dutch businesses in the United States and what support is available in helping Dutch entrepreneurs mitigate the effects and interruption of the coronavirus on their US business.

Providing a roadmap of information Dutch companies should take into account and resources they can consult when doing business in the US, this document will zoom in on:

- Legal matters to consider in these challenging times: force majeure, office rental options, non-performance issues
- How are travel restrictions and visas impacting companies?
- What are the options for employers and employees when workforce reduction is necessary?
- What needs to be taken into account when employing from home?
- Netherlands government network support
- Resources

1. US Legal Issues & Strategies

US government support for business is not at the same level as in Europe. Therefore, Dutch companies should look carefully at what their legal agreements say and what rights Dutch companies have in the US under those agreements.

1.1 “Force Majeure”

If a contract or circumstance allows it, businesses can request to invoke force majeure to suspend, defer or to be released from its duties to perform contract obligations without liability. Most contracts require that you give notice to the counterparty. First step is to find out what the governing law is (Dutch, US).

Under Dutch law you are able to claim “unforeseen circumstances”. That isn’t an option in the US and NY state law interprets force majeure provisions narrowly. Important steps when you are considering a force majeure claim:

- Analyze your contracts
- Meet notice requirements

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- Carefully document force majeure events
- Do contingency planning
- Anticipate litigation
- Know local regulatory rules
- Be consistent in your response

1.2 US Employment

The US is one of the few countries in the world that has “at will” employment but there are exceptions. US employment law is complex and not always logical.

There are several cost-cutting strategies that companies may consider. Each have their own requirements e.g. notification period and exceptions to obligations: Layoffs; WARN Act (Workers Adjustment and Retraining Notification); Furloughs (mandatory time off without pay); Reduced hours; and Salary reductions. The most relevant exception to employment obligations during COVID-19 is the Unforeseen Business Circumstance exception.

Be aware of employment discrimination and immigration law issues when considering any of the above employment measures. Unemployment benefits are available to all terminated employees in NY state. Under the new federal CARES Act, employees may be eligible for additional unemployment compensation.

With NY state requiring all non-essential businesses to reduce their in-person workforce by 100%, employers must continue to comply with wage and hour obligations and establish protocols to maintain confidentiality and workplace safety.

Under the new federal Families First Coronavirus Response Act (FFCRA), companies are required to pay sick leave and family leave under the provisions.

2. US Immigration & Travel

In the US, immigration is covered by federal law. The current COVID-19 measures do not address immigrants directly, making it a grey area with little guidance for employers.

Currently, travel restrictions are in place both on the US side and the Dutch side. Routine consular services have been suspended and no in-person interviews are conducted at the moment. US Citizenship and Immigration Services (USCIS) has also temporarily suspended in-person services. Paper petitions (e.g. H1B) can be submitted.

Dutch employees whose legal status is tied to employment must leave the US within 30 days if they are not employed. Keep this in mind if you have Dutch employees that are essential to your business. The safest way is to hold on to their employment as it is currently unknown to what extent the US government is willing to be flexible and taking into account humanitarian concerns. Please note that spouses will also lose the employment authorization (EAD) linked to the main visa status holder. If employees hoping to find new employment stay in the US for more than 180 days, they will be barred from returning to the US for three years.

Offsite working is temporarily allowed but salary stipulated in contract still needs to be paid.

3. Coronavirus Aid, Relief and Economic Security (CARES) Act

The federal government passed an extensive economic infusion law to support the US economy and entrepreneurs. This CARES Act consists of the following elements:

3.1 Tax filing & payment extensions and tax relief measures

To help with cash flow, the deadline for corporate income tax filing for fiscal year 2019 has been moved to 15 July 2020 with estimated tax payments for fiscal year 2020 not due until 15 October.

Companies that keep their employees on payroll even if they are not able to work, will receive Employee Retention Credit. Employer taxes payment may be referred to 2021.

Some other tax relief measures include Net Operating Losses (NOLs) modification, accelerated Minimum Tax Credit (CMT) and increased deductibility of interest expense.

3.2 Paycheck Protection Program (PPP)

This program allows small businesses (<500 employees) that have been substantially impacted by COVID-19 to keep employees on their payroll for a maximum of 2.5 months. The Small Business Administration (SBA) loans provided under this PPP program may be used for payroll support, mortgage payments, insurance premiums etc. No collateral or personal guarantees are required for this program.

3.3 Emergency Economic Injury Loans and Grants

The Economic Injury Disaster Loan (EIDL) that was already in place has been specified by the SBA for COVID-19. It is a loan for a maximum of \$2 million with 3.75% interest rate that can be used for paid sick leave, maintaining payroll, covering increased costs for supply chain and to pay off business obligations e.g. rent or mortgage. There is a 3-day turnaround time for the application and no repayment of the \$10k advance is required.

3.4 NYC Local Initiatives

There are several local New York City programs in place for Dutch companies that are located within the five boroughs to look into:

- NYC Small Business Continuity Fund
- NYC Employee Retention Grant Program

3.5 Loan Application Requirements

Dutch companies with US subsidiaries that want to apply for a loan or grant, need to meet the following requirements:

- US entity recorded profits in previous year
- Corporate Income Tax filings for fiscal year 2018 were submitted
- US operation has seen a decrease in revenue of >20% since the COVID-19 outbreak
- Some loans and grants require guarantors with Social Security Number (SSN) or Individual Tax ID Number (ITIN)
- The parent company has an Employer Identification Number (EIN) (*IRS application lead times are long*)

4. Netherlands Government Network in the US

The Netherlands government network consisting of the Embassy, Consulates, NL Innovation, Netherlands Business Support offices (NBSO) and honorary consuls, is represented in all important US business hubs and available to assist Dutch entrepreneurs active in the US.

In addition to providing regular information and consular services, the network closely monitors COVID-19 initiatives by the federal and state authorities that might affect the US subsidiaries of Dutch companies. The economic teams are sector content experts and can support Dutch entrepreneurs in dealing with local government agencies and interpreting new US guidelines and regulations. The regular services and instruments, such as the Partners in Business program and business partner scans, also

remain available. The Netherlands Enterprise Agency (RVO) continues to inform on special Dutch government programs and funds available to entrepreneurs that are affected by COVID-19.

5. Resources

Measures taken to prevent the spread of COVID-19 follow each other up quickly. It is advised to inform yourself on a daily basis about new measures that are being implemented and the consequences for doing business in the US.

Weblinks

Doing Business

- The Netherlands Enterprise Agency web page for doing business in the United States during COVID-19:
<https://english.rvo.nl/coronavirus/covid-19-doing-business-united-states-america>
- FAQ about COVID-19 and doing business in the US:
<https://www.rvo.nl/onderwerpen/internationaal-ondernemen/landenoverzicht/verenigde-staten/veelgestelde-vragen-over-het-coronavirus-de-verenigde-staten> (Dutch only)
- US Chamber of Commerce guidance mobilizing the business community to combat COVID-19:
<https://www.uschamber.com/coronavirus>
- US Small Business Administration's guidance & loan resources:
<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
- US Chamber Foundation resources on business resilience and disaster recovery:
<https://www.uschamberfoundation.org/reports/coronavirus-response-resources>
- AICPA (American Institute of Certified Public Accountants) info re. State taxes and deadlines:
<https://www.aicpa.org/news/aicpa-coronavirus-resource-center.html>
- National Tax Foundation: tracking legislative responses to COVID-19:
<https://taxfoundation.org/coronavirus-tax-tracker-covid19/>
- TABS COVID-19 extensive resource guide:
<https://www.tabsinc.com/covid-19-support-and-general-information-for-business/>
- NautaDutilh overview of Dutch government-backed financing, aid and tax-relief for start-ups and scale-ups
<https://www.nautadutilh.com/en/coronavirus/start-ups-and-scale-ups-an-overview-of-government-backed-financing-aid-and-tax-relief-in-the-netherlands>

Travel

- Register with your local Dutch Embassy as a Dutch citizen abroad and download the travel app:
<https://informatieservice.nederlandwereldwijd.nl/>
- Travel advice for Dutch citizens:
<https://www.nederlandwereldwijd.nl/landen/verenigde-staten-van-amerika/reizen/reisadvies>
- KLM - Latest flight info:
https://www.klm.com/travel/us_en/prepare_for_travel/up_to_date/flight_update/index.htm
- Q&A for entry into the Netherlands (travel ban):
<https://www.netherlandsandyou.nl/latest-news/news/2020/03/18/q-and-a-for-entry-into-the-netherlands-travel-ban>
- The US Department of State:
<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html>
- The International Air Transport Association:
<https://www.iatatravelcentre.com/international-travel-document-news/1580226297.htm>

US Stay

- The United States Citizenship and Immigration Services (USCIS):
<https://www.uscis.gov/contactcenter>
- Questions regarding ESTA:
www.esta.cbp.dhs.gov
- White House policy:
<https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-2019-novel-coronavirus/>

Health Info

- Government of the Netherlands:
<https://www.government.nl/topics/coronavirus-covid-19>
- The Center for Disease Control and Prevention (CDC):
<https://www.cdc.gov/media/dpk/diseases-and-conditions/coronavirus/coronavirus-2020.html.cdc.gov>
- New York City department of Health:
<https://www1.nyc.gov/site/doh/index.page>
- New York State Department of Health:
<https://coronavirus.health.ny.gov/home>
https://health.ny.gov/contact/contact_information/

Webinar recordings

- [COVID19 and US Business an Update for Dutch Companies](#)
- [Summaries of COVID19 webinars](#)

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This overview is an internal document and is by no means intended to provide a complete overview.

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