



VRIJE
UNIVERSITEIT
AMSTERDAM

Human
Resource
Management

Re-employment policy

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Herplaatsingsbeleid

Policy rules for the reintegration of VU University Amsterdam employees with a disability or at risk of dismissal

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1. Introduction

In any career, changing jobs or employers from time to time is not considered unusual. In many cases, employees themselves decide when it's time to move on. However, sometimes employees are forced to look for new employment. This may be the result of a situation where re-employment is a logical course of action. In this event, employers are required to help their employees find a suitable position. In addition to the fact that diligent employment practice dictates that employers must perform a re-employment study prior to a dismissal or dissolution of the employment contract to investigate alternative employment options at the university, this practice is also rooted in the Collective Labour Agreement and legislation.¹

Both employers and employees benefit from a careful consideration of re-employment options. In the event that the re-employment study proves successful and leads to re-employment in an appropriate position, the employee avoids unemployment benefit and VU Amsterdam as an own risk bearer will not be liable for unnecessary benefit payments.

Re-employment studies are only successful if all parties involved put in the effort. The employer must seriously investigate options for transfers to other positions. Failure to do so may affect the decision made by the subdistrict court judge or the UWV Employee Insurance Agency regarding any request for dismissal or termination of employment, which could be even denied. Employees who do not actively contribute to the re-employment study may also face the consequences of their actions. For example, refusing a suitable alternative position may lead to (early) termination of the re-employment study, resulting in a possible reduction in their unemployment benefit. Their application for unemployment benefit may even be denied.

In the first part of this re-employment policy, the re-employment study in its current form will be discussed. In the second part of this re-employment policy, a new, additional phase to the process will be discussed which was introduced after the The Work and Security Act (Wwz) came into effect. This additional phase applies only in the event that the re-employment study as described in the first part has not proved successful and the university has no choice but to contact the UWV or the subdistrict court judge in connection with the termination of the employment contract.²

Part 1. The re-employment study

1.1. Persons involved in the re-employment study, organizational units and their roles

The following persons and organizational units are involved in the re-employment study:

- The *supervisor* is responsible for the process surrounding the re-employment of an employee. He or she carries final responsibility until the employee has been successfully transferred to another position or until the employment contract is terminated.
- The *Head of the Human Resource Management Advice & Development department* assesses logical options for re-employment at the university and, in the event that re-employment is possible, registers the employee as a re-employment candidate.³
- *The employee who has been considered as a re-employment candidate* (see 1.3.) actively participates in the re-employment study and is required to accept a suitable position should one be offered.
- *The unit (faculty or service)*, except in the event of special circumstances, is obliged to assist in the possible transfer of a re-employment candidate to any available position suitable for him or her.
- *The HRM Expertise Centre for Development* has been informed of all vacancies and uses its specific expertise and contacts to play an important role in the re-employment study and in the internal or external relocation of all re-employment candidates.

¹ This includes Article 9.12 of the Collective Labour Agreement (CAO) for Dutch Universities, the Gatekeeper Improvement Act and Article 7:669, paragraph 1 of the Dutch Civil Code.

² In the event of termination of the employment contract through the UWV or the subdistrict court judge, the employee may as a rule claim eligibility for a transition payment as referred to in Article 7:673 of the Dutch Civil Code.

³ The authority to take decisions under the Re-employment Policy has been mandated by the director of HRMAM to the Head of HRM Advice and Development. He or she is advised by a VU Amsterdam labour lawyer.

- The *personnel consultant* registers the employee with the HRM Expertise Centre for Development, acts as an intermediary and provides the necessary (documentary) information about the employee. In any internal or external trial placements outside of the current unit, the personnel consultant maintains contact with the new unit and new employer. The personnel consultant has an advisory, and, if needed, a supporting role, in the re-employment process.

1.2. Situations in which employees become re-employment candidates

Employees can become re-employment candidates:

- a. as a consequence of a reorganization as defined in the Collective Labour Agreement (see Article 9.1 of the CAO), the position ceases to exist in full or in part, and dismissal of the employee is therefore imminent, or
- b. as a consequence of organizational changes not formally defined in Article 9.1 of the Collective Labour Agreement, the position ceases to exist, or
- c. the Department of Occupational Health, Safety and Environment's occupational health physician or the Employee Insurance Agency (UWV) has determined that the employee is unable to continue in the present position because of temporary or permanent, partial or full work disability, but may be considered fit to perform different work, or
- d. cooperation or performance issues have arisen in the current workplace, and it has been ascertained by or on behalf of the most senior supervisor of the unit concerned, and confirmed by the Director of HRM – if necessary after mediation – that the problems cannot be resolved and the employee is not at fault.

1.3. Procedure for registering re-employment candidates

Procedure for registering re-employment candidates:

- The unit's personnel consultant submits a request to the HRMAM service's head of HRM Advice & Development to register the employee as a re-employment candidate, indicating the reasons for this (see 1.2).
- In the event that the HRM Advice & Development's department has determined that a re-employment study is appropriate, the department will register the employee as a re-employment candidate and the personnel consultant will notify the HR Development Expertise Centre.
- Subsequently, the employee will receive written notification of their new status as a re-employment candidate.⁴
- The employee receives the following information:
 - a. The reason why the employee has been registered as a re-employment candidate;
 - b. The date of commencement and the duration of the re-employment study;
 - c. The date on which the first intake interview will take place with a supervisor from the HR Development Expertise Centre;
 - d. A copy of this relocation policy.

1.4. Suitable position

There is a suitable available position if the work required in this position corresponds to the employee's training, experience, and abilities, unless it cannot be accepted for physical, mental or social reasons (determined in case of incapacity for work by the company doctor and/or the UWV).⁵

The following matters are relevant in this respect:

- the nature of the position and the level of remuneration (one scale lower is generally considered acceptable for re-employment candidates);
- a change of position is possible;
- The FTE level (slightly more or less may be acceptable depending on the circumstances);
- travelling time;
- individual factors (family composition, health issues, conscientious objections)

⁴ The employee may be notified by email or letter.

For the term suitable position, also see the Government Gazette 2015 Issue No. 12685 from May 11, 2015⁵

1.5. The duration of the re-employment study

The duration of the re-employment study in the event of:

Reorganization or job ceases to exist (see 1.2. under a. and b.)

Articles 9.11 and 9.12 of the Collective Labour Agreement specify the period within which there will be no dismissal because of reorganization (or because the position ceases to exist as a result of something other than a formal reorganization as defined in the CAO), and the period to be allowed for the re-employment study. In accordance with Article 9.12 of the CAO, a re-employment study will commence during the employment protection period in accordance with Article 9.11 and the term of notice as defined in Article 8.11, paragraph 2, of the Collective Labour Agreement.

The duration of the re-employment study in the event of reorganization or because a position will cease to exist, is ten months and will be continued in the event that re-employment was not possible before the term of notice is up.

Long-term illness / disability (see 1.2. under c.)

In the event that the Department of Occupational Health, Safety and Environment's occupational health physician or the Employee Insurance Agency (UWV) has determined that the employee is unable to continue in the present job because of temporary or permanent, partial or full work disability, but may be considered fit to perform different work, a re-employment study is required. In the event of partial or temporary disability, the scope of the re-employment study should be widened to include finding suitable work (as determined by the occupational health physician or the UWV Employment Insurance Agency) outside the university as well, if necessary by hiring an external reintegration agency (a process which is also known as the second track).

The re-employment study in the event of long-term illness or work disability ends when the employment protection period of two years has elapsed (see Article 7:670 of the Dutch Civil Code) or as early as the transfer to a another suitable position at or outside the university can be achieved. In the event of long-term illness or work disability, the employment contract will be terminated if the situation has persisted for two years or more and the degree of occupational disability is at least 35% and if it can be demonstrated that internal or external re-employment is impossible, even after training.

Issues involving working relationships or performance-related problems (see 1.2. under d.)

In the event that issues involving working relationships or performance-related problems have arisen in the current workplace, and it has been ascertained by or on behalf of the most senior supervisor of the division concerned, and confirmed by the Director, that the problems cannot be resolved and cannot be attributed to the employee, for whom – despite demonstrable efforts – it has transpired that no suitable job or work exists or will materialize in the same unit within a reasonable period, it may be determined that a re-employment study should commence.

The duration of the re-employment study is three months in this situation.

1.6. Conducting the re-employment study

The re-employment study will be conducted or commissioned by employees from the HR Development Expertise Centre, and supported by the personnel consultant or service department at the re-employment candidate's current or former faculty where necessary. The study may be concerned with either internal or external re-employment, and will accommodate the employee's specific wishes and development potential to the extent possible.

1.7. The individual supervision plan

Before the re-employment study commences, the HR Development Expertise Centre draws up an individual supervision plan in consultation with the re-employment candidate. This plan includes all actions to be taken during the study and the relevant data. The individual supervision plan should include the following information:

- the type and nature of the positions or jobs that the candidate would be suitable for;
- which efforts from both parties may be expected in the search for suitable employment, including any training or retraining options;
- the maximum duration of the re-employment study, taking into account the applicable regulations for reorganization, illness and occupational disability (see 1.5);
- and whether or not the re-employment study will be conducted internally or externally.

The substantiation of any dismissal or application under the Work and Income (Capacity for Work) Act (WIA) requires clear records of the efforts made by the employer and employee, and of the associated results. In all cases, a thorough report of the re-employment study will be drawn up by the Expertise Centre for HR Development as part of the employee's individual supervision plan. The records for fully or partially occupationally-disabled employees are maintained in the reintegration file that is the basis for the reintegration report which must accompany any WIA application.

1.8. Blocking of vacancies

Vacancies that become available within the university must be reported to the HR Development Expertise Centre, in order to investigate the eligibility of any re-employment candidates (matching). If there is a possible match with a re-employment candidate, the concerned vacancy will be blocked for a period of two weeks. If the job is suitable for a specific re-employment candidate, the unit will arrange an interview between the re-employment candidate and the selection committee of the unit to ascertain compatibility between the candidate and job. If compatible, the re-employment candidate will be appointed to the position. During the interview, personnel consultants for both the former and receiving units will be present.

1.9. Ranking of re-employment candidates

A choice will have to be made in the event that more than one re-employment candidate is eligible (or could be made eligible in the foreseeable future) for a vacancy as regards who is to be given priority.

Article 9.13 of the CAO states that an employee at impending risk of dismissal because of reorganization as defined in the CAO, is to be given priority when filling internal vacancies.

The Department of Occupational Health, Safety and Environment's occupational health physician or the Employee Insurance Agency (UWV) has determined that the employee who is unable to continue in the present job because of temporary or permanent, partial or full work disability, but may be considered fit to perform different work should be given priority. It may generally be assumed that an occupationally-disabled employee has fewer job opportunities than other job seekers. This is why occupationally-disabled employees have priority when filling vacancies in other cases of impending dismissal. This means that an occupationally-disabled employee who is eligible, or could be made eligible in the short term, has priority (after those candidates whose re-employment is the result of a reorganization).

Otherwise, the deciding factor is the comparative degree of eligibility of the re-employment candidates for the position, or how soon a re-employment candidate could be made eligible for the position.

1.10. Assessment of suitability for the position

In some cases a re-employment candidate's qualifications may be insufficient at the time of assessment. Among other criteria, the following apply to the assessment of suitability of the candidate:

- the employee must be able to start work in the position in a responsible way: the appointment must not be doomed to failure from the outset;
- when starting in the position the employee must be capable of performing a substantial part of the work without disturbing others disproportionately;
- the employee, possibly after a necessary refresher course or other form of retraining, must be able to work completely independently in the position within six months (in the case of a reorganization and/or position ceasing to exist, based on Article 9.12a of the CAO, no more than 12 months).

The receiving unit must give the candidate a reasonable opportunity for training. If a unit appoints a re-employment candidate who needs professional retraining, the associated costs will be shared by the receiving unit and the unit where the person concerned worked previously, or one of the units, depending on what is reasonable in a specific situation.

If the selection committee or most senior supervisor of the unit responsible for assessing the re-employment candidate's eligibility concludes that the candidate does not (and cannot within a reasonable period of up to six months) meet the job requirements, they must submit their decision in writing and include reasons. The re-employment candidate will be duly informed about this in writing. If there is any difference of opinion between the units involved, the Director of HRM Advice & Development will decide, also deciding on the blocked vacancy.

1.11. Lowering of thresholds, if any

Possible significant drawbacks to taking on someone who is already employed by the university are the social security entitlements (Non-statutory Unemployment Regulation of the Dutch Universities entitlements) built up by the employee. The receiving unit will wish to have certain guarantees against being confronted with financial disadvantages in the unfortunate event of unsuitability for the position, or increasing occupational disability. For this reason, all re-employment candidates may be given a trial period at the receiving unit (see 1.12.).

Furthermore, any costs of benefit or paid sick leave are for the expense of the former unit if within one year of commencement of employment in the receiving unit the employee:

- appears unsuitable for the position and there are no re-employment options, with dismissal inevitably following;
- becomes occupationally disabled in a way connected with the previous work disability.

If the employee is entitled to a Non-statutory Unemployment Regulation of the Dutch Universities (WW/BWNU) benefit at a later date, the benefit costs will be divided on a pro rata basis between the two units. This means that if, for example, the employee worked at the former unit for eight years and spent two years at the receiving unit, the benefit costs will be borne for 4/5ths by the former unit and for 1/5th by the receiving unit.

1.12. Special forms of re-employment⁶

Trial placement

Trial placements may be suitable in situations where both parties would like to find out if the employee is suitable for a specific position that he or she has not held before. A trial placement may be agreed if there is any doubt as to whether the re-employment candidate is able to perform satisfactorily in the position, or if the re-employment candidate could be made more eligible through a refresher course, professional retraining, or otherwise. The maximum length of a trial placement is six months (in the event of a reorganization or if a position ceases to exist the maximum length may be 12 months based on Article 9.12 paragraph 2 of the CAO), unless the receiving unit has compelling demonstrable objections to this period, or a shorter period is determined in consultation with the parties involved. In case of disagreement, the HRMAM service department's head of HRM Advice and Development makes the final decision. The parties involved make written agreements for a trial placement covering supervision, education, and other matters, including evaluation times.

External re-employment/ temporary secondment

In case of external re-employment, the re-employment candidate is expected to commence employment with the new employer as soon as possible, ending the working relationship with VU Amsterdam. However, both the re-employment candidate and the new employer may be in favour of a probationary period, while employment with VU Amsterdam continues. This could take the form of a temporary secondment. The circumstances of the case will determine the length of a temporary employment of this kind.

1.13. Penalties for employees

The re-employment study ends when the agreed period elapses, as soon as re-employment proves to be successful, or it becomes clear that successful re-employment is unlikely within a reasonable period because of a lack of cooperation on the part of the employee. Employees who fail to accept suitable work, are acting in a manner not befitting a good employee, or may be breaking the law, and there may be grounds for starting (early) dismissal proceedings, or in the event of occupational disability, paid sick leave could first be suspended as a warning.

1.14. Penalties for the unit

Should it be known, or become apparent in the course of a dismissal or termination procedure, that a unit has failed to cooperate in a potential re-employment option, and for this reason a dismissal permit was refused by the UWV Employee Insurance Agency or by the court, then all wages or damages are for the expense of this unit.

1.15. Cost of re-employment study

The costs for re-employment and the associated study are for the expense of the unit for which the employee previously worked. Any supporting policy for reorganizations may have different rules. For the sake of completeness, reference is made to public facilities and provisions, which, for example, allow for wage dispensation for necessary adjustments or modifications to the workstations of employees who are less productive as a result of a functional impairment.

⁶ Article 9.12, paragraph 4 of the CAO applies to re-employment candidates who are given a trial placement at a new unit or are on secondment, when, as a consequence of a reorganization as defined in the Collective Labour Agreement (see Article 9.1 of the CAO), their previous position ceases to exist in full or in part.

Part 2. The additional phase according to the The Work and Security Act (Wwz)

Introduction

If during the re-employment study as described in part 1 of this re-employment policy, transfer to another suitable position has not been possible, VU Amsterdam will have no choice but to terminate the employment contract. This is because the position the employee previously held has ceased to exist and another suitable position has not been found.

In all cases, the employer and employee may, by mutual agreement, that is, without the intervention of the UWV or the subdistrict court judge, decide to terminate the employment contract. If this turns out to be impossible, the university will have to contact the UWV Employee Insurance Agency or the subdistrict court judge for the dissolution of the employment contract. The provisions in Article 7:669 of the Dutch Civil Code, that entered into force on 1 July 2015 under the Work and Security Act, apply.

The first sentence of Article 7:669 of the Dutch Civil Code is as follows:

“The employer may terminate the employment contract if there are reasonable grounds and if re-employment of the employee to a suitable position, with or without training and within a reasonable term, cannot reasonably be assumed to be possible.

This means that the university, as an employer, must prove to the subdistrict court judge or the UWV Employee Insurance Agency that re-employment in another suitable position is unlikely to be possible within a reasonable period of time. The university will of course report on all of their re-employment activities and the results of these activities pursuant to part 1 of this re-employment policy. The reasonable period of time referred to in Article 7:669, paragraph 1 of the Dutch Civil Code is a different term than the term specified in part 1.5 of this re-employment policy (see 2.4.). The subdistrict court judge or the UWV Employee Insurance Agency also needs to see evidence of the additional re-employment study and the fact that the additional re-employment study did not give any options for re-employment of the employee.

In the following paragraph this additional re-employment study will be described in greater detail.

2.1 When is a supplementary re-employment study required pursuant to the Work and Security Act (Wwz)?

As mentioned above, the supplementary re-employment study laid down in Article 7:669 paragraph 1 of the Dutch Civil Code is required only if the re-employment study described in part 1 has not been successful and the employment contract is dissolved with the intervention of the UWV Employee Insurance Agency or the subdistrict court judge. If the employment contract is terminated by mutual agreement between employer and employee, the parties are free to waive the additional re-employment study.

2.2 What is the difference between the additional re-employment study in accordance with the Work and Security Act (Wwz) and the re-employment study described in part 1?

The additional re-employment study in accordance with the Work and Security Act differs from the re-employment study in part 1 of this re-employment policy in two important ways: Whereas the re-employment study in part 1 mainly focuses on vacancies that *have become available* during one of the two terms described under 1.5, the re-employment study in accordance with the Work and Security Act mainly focuses on vacancies that *could become available* in the future. Another difference between the two is that the re-employment study described under part 1 includes the period prior to the application for a dismissal permit from the UWV Employee Insurance Agency or the application to make an employee redundant with the subdistrict court judge, whereas the additional re-employment study based on the Work and Security Act relates to the future term of notice that applies to the employee pursuant to the Dutch Civil Code (see 2.4.).

2.3. How is a supplementary re-employment study conducted pursuant to the Work and Security Act (Wwz)?

The supplementary re-employment study based on the Work and Security Act is conducted by making a digital scan or print-out of the current VU Amsterdam workforce. The scan should relate to the legal term of notice for the employee involved (see 2.4.) and should focus on suitable positions/places of employment that meet the criteria described under 2.5.

The re-employment study will be conducted or commissioned by the personnel consultant for the employee's current faculty or department.

2.4. The duration of the reasonable period mentioned in Article 7:669, paragraph 1 of the Dutch Civil Code

The duration of the reasonable term in which re-employment is possible, pursuant to the Work and Security Act, which is equal to the employee's *statutory* term of notice, is:

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|---|----------|
| - For 0 – 5 years of employment: | 1 month |
| - For 5 – 10 years of employment: | 2 months |
| - For 10 – 15 years of employment: | 3 months |
| - For more than 15 years of employment: | 4 months |

If the employee is occupationally disabled, the reasonable term is 26 weeks. The term is calculated from the moment the UWV Employee Insurance Agency or the subdistrict court judge takes a decision on the request for dismissal. This means that the employer has to support any request for dismissal with reasoned arguments as to why re-employment within the applicable reasonable term is not possible. If the request for dismissal is submitted to a judge before 1 February of a specific year, then the judge may reasonably be expected to make a decision on this matter by Mid-March. Assuming that the employee involved has been employed by the university for 8 years, the dismissal procedure must justifiably show that it is not possible to re-employ the employee before the mid-May.

2.5. Which jobs must be included in the additional re-employment study, pursuant to the Work and Security Act (Wwz)?

The focus of this study should be on finding one or more suitable positions. A position is suitable when it follows on from the employee's studies as much as possible, when it matches their experience and skills, or if it can reasonably be assumed that the position will be suitable for the employee after some training. As a rule, the work associated with this position will generally reflect a similar level as the work performed by the employee in his or her previous position, but this is not always the case. For example in the event of poor performance, a suitable position may be one that is at a lower level than the position the employee currently holds. This makes sense if the reason for the poor performance has to do with the employee's inability to function or function any longer at the level required for the position.

As part of the study, suitable positions are assessed in terms of their suitability for the employee who faces dismissal, and the following jobs are considered: ⁷

- for which a vacancy exists or for which a vacancy will be created within the legal term of notice for the employee concerned;
- positions that are not currently occupied by temporary employees or workers for no more than 26 weeks:
 - o on the basis of a temporary employment contract, which ends within the reasonable period;
 - o based on a temporary employment contract for secondment;
 - o on the basis of an employment contract that does not include the scope of the work;
 - o positions that have been made available by someone other than by a payroll employer;
 - o that are occupied by persons who have reached the statutory retirement age, or;

⁷ From the 2016 UWV Implementation Rules on Dismissal for Economic Reasons/Dismissal due to long-term occupational disability

- o other than on the basis of an employment contract, unless this work was done as part of business operations or as a self-employed worker, this work is performed by or on behalf of natural persons or legal entities registered with the Chamber of Commerce, and if the work performed was necessary for efficient management and could not have been performed based on an employment contract.

2.6. How to act if a possible suitable position is found through the supplementary re-employment study that was conducted pursuant to the Work and Security Act (Wwz)?

If the supplementary re-employment study yields a potentially suitable position for the employee, the university may decide to temporarily suspend or rescind the request for a dismissal from the UWV Employee Insurance Agency, or the application for a dismissal from the subdistrict court judge. For the remaining activities, the provisions in 1.8 through 1.15 from part 1 of this re-employment policy apply.