

SER DIVIDED ON A GREATER SAY FOR EMPLOYEES OVER WORKING HOURS

18 October 2002

Within the Social and Economic Council of the Netherlands (SER), opinions are divided on a private members' bill to give employees a greater say over working hours. These opinions were presented in an advisory report drawn up by a committee chaired by Professor P.F. van der Heijden and adopted at the SER council meeting of 18 October 2002. This report was drawn up in response to a request for advice from the Senate (Eerste Kamer) which was currently discussing the private member's bill at that time.

The bill deals with two main issues: (1) the position of the employer and the individual employee in relation to work deemed necessary on a Sunday due to business circumstances, and (2) the question as to the extent to which the employer should, to a greater degree than at present, take the employee's personal circumstances into consideration when establishing his or her working patterns. The bill was put forward by two members of the Dutch House of Representatives (Tweede Kamer), Ms Jet Bussemaker and Mr Leen van Dijke.

The union representatives on the Council, together with two of its Crown-appointed members (Asscher-Vonk and Cramer) support the private members' bill. They are of the opinion that the employer should take the employee's personal circumstances (and any changes in those circumstances) into consideration. These SER members believe that an employer should only be allowed to refuse an employee's request to adjust working hours if the employer could not reasonably be expected to accept it.

These members also feel that labour law should support employees in having Sunday as a day of rest or contemplation or for leisure activities with others, and that employees should therefore only have to work on a Sunday if they agree to do so. In the view of these SER members, the fact that for incidental business circumstances the employer then depends on the voluntary cooperation of employees or on temping or outsourcing companies does not put the employer in an impossible position. A sufficient number of employees are usually available and willing to work on a Sunday.

The employers' representatives on the Council feel that the bill distorts the existing balance between the interests of the employer and the employees. In the evaluation of the Working Hours Act, it emerged that the employers, works councils and employees questioned were all of the opinion that in establishing working hours the interests and personal circumstances of employees are, in general, already taken into consideration. Giving employees a greater say over working hours would jeopardise the quality of the organisation of work and could lead to an unequal division of benefits and burdens, as the granting of one employee's wishes often has negative consequences for other employees.

Six of the Council's Crown-appointed members (Van Duyne, Goudswaard, Kolnaar, Van der Nat, Wijffels and Wilke) do not feel that the social issues underlying the private members' bill warrant further legislative provisions. Although these members appreciate the objective of the bill, they are of the opinion that the problems outlined can be resolved within the existing social context and with the current legislation. Any possible problems concerning personal circumstances and work on a Sunday can be resolved at both an individual and collective level in the consultation between employer and employee.