



# **RAINBOW CHECKLIST**

**For Collective  
Labour Agreements**

**NETWERK REGENBOOG |**

# RAINBOW CHECKLIST FOR COLLECTIVE LABOUR AGREEMENTS

**This checklist provides an overview of the possibilities for organising (collective or other) employment contracts in such a way that different lifestyles, forms of relationships, gender-expressions and other expressions of sexual and gender diversity are given equal rights, and discrimination and exclusion of lesbian women, gay men, bisexuals and transgenders, and intersex-people is prevented and confronted.**

**The checklist is intended for two purposes and target groups:**

- For trade unions (executive) members, companies and Employee Participation Council members: they can use it to pinpoint how the Collective Labour Agreement advocates for sexual diversity within their company or institution;
- For collective bargaining parties: to make proposals for the improvement of collective labour agreements and to screen proposals from the employers' side. Through the checklist we want to provide as many concrete bases as possible to improve collective labour agreements and other regulations. Ultimately, trade unions have an important role to play in promoting a positive diversity policy. And a good diversity policy is not only in the interest of all employees but also in the interest of the company or institution: it prevents any harm to employees.

Collective labour agreements are one thing, complying with them is another. Therefore, the checklist also addresses issues of how much effort an employer wants to put into complying with the agreements (and what resources are made available for this purpose) and whether agreements and regulations are being properly and thoroughly reviewed (monitoring).

In the past period, the checklist has been used to adjust the Collective Labour Agreement of the Municipal Transport Company in Amsterdam and hopefully more companies will follow.

The checklist has recently been updated to include new issues, such as multiple parenthood and rights of LGBTI expats.

In addition, this checklist will be updated regularly, in order to keep it up to date. We would like to hear if the suggestions are clear and especially where the checklist can be further improved.

## 1. GENERAL

Article 1 of the Constitution states that discrimination may not take place on any grounds; the Dutch General Equal Treatment Act (AWGB) is the concretisation of this. It prohibits discrimination on the grounds of homosexual or heterosexual orientation. The Government intends to examine whether the discrimination on grounds of gender identity and gender expression should also be explicitly included in the AWGB as prohibited forms of discrimination<sup>1</sup>, although the European Court of Justice has already ruled that this form of discrimination is not permitted in any case because of the ban on discrimination on the grounds of gender<sup>2</sup>. The Government has also indicated that intersex is a new subject on the emancipation agenda<sup>3</sup>.

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**G CHECK:** Does the Collective Labour Agreement or other regulations make it clear that discrimination on the grounds of race, origin, national or ethnic origin, religion, beliefs, political affiliation, gender, homosexual, heterosexual or bisexual orientation<sup>4</sup>, gender identity or gender expression will not be allowed, and that, in addition, also unequal treatment on the grounds of intersexual status must also be prevented and combated?

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## 2. DIVERSITY CHARACTERISTICS, CHARTERS ETC.

In a number of countries and provinces<sup>5</sup> diversity charters have been in use for a number of years: a new type of social contracts, with the signature of employers indicating that they are serious about preventing and combatting discrimination. In its advice on combatting discrimination in the labour market, the Dutch Social and Economic Council (SER) advised<sup>6</sup> that the commitment to diversity should be strengthened at the top group of companies and institutions in the Netherlands, and, with the support of the government, a diversity charter should be drawn up and used. The Minister of Social Affairs and Employment has now informed, by letter<sup>7</sup>, the Dutch Lower House of Parliament to follow this advice. In addition, there are already some hallmarks, often covering a more limited area, such as the Pink Carpet<sup>8</sup>, or score lists for employers who indicate their 'gay friendliness'.

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**G CHECK:** Has the employer signed a hallmark or (sexual) diversity charter<sup>9</sup>?

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**G CHECK:** Do they contain clear criteria?

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**G CHECK:** If the employer has signed such a hallmark or charter, is it also mentioned in the collective bargaining agreement?

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**G CHECK:** In addition to effort obligations, are there also result obligations?

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**G CHECK:** To what extent are there procedures, within the institution or company, which do not directly concern the employees themselves but which indirectly set standards with regard to, for example, patient relationships (e.g.: as visit for a seriously ill patient his brother is admitted, but not his partner)?

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**G CHECK:** To what extent does the company or institution visibly demonstrate that it attaches value to combating discrimination and (sexual) diversity, for example by facilitating a LGBTI business group or by participating in events such as Pink Saturday, Canal Pride, etc.

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**G CHECK:** If the company or institution operates internationally, to what extent do the same rules apply for the protection of employees against discrimination and for sexual diversity, including in foreign branches?

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<sup>1</sup> Letter from the *Minister van Onderwijs*, Minister of Education, Culture and Science on emancipation policy. Dutch Lower House of Parliament 30 420 no. 180, 10 May 2013.

<sup>2</sup> Ruling of 30 April 1996 in the case of P vs S and the Cornwall City Council.

<sup>3</sup> Second progress report on emancipation policy, Dutch Lower House of Parliament 30 420, no. 177, 26 November 2012

<sup>4</sup> During the parliamentary discussion of the AWGB Bill, Minister Dales explained that the grounds for the discourse "homosexual or heterosexual orientation" should also include bisexual orientation (Acts of the Dutch Lower House of Parliament 10 February 1993).

<sup>5</sup> This is how Chancellor Merkel promoted the German diversity charter in 2006. The diversity charters already played a role in France (2004) and the Brussels-Capital region (2005). They started in Spain and Italy in 2009, followed by Austria and Sweden in 2010.

<sup>6</sup> SER advice 2014/03: 17 April 2014 (Commission on Labour Market and Education Issues) Discrimination does not work! Advice on combating discrimination in employment.

<sup>7</sup> Letter from the Minister of Social Affairs and Employment to the Chairman of the House of Representatives of the Netherlands, 16 May 2014, concerning the Action Plan for Labour Market Discrimination and Government response SER advice 'Discrimination does not work!'

<sup>8</sup> An initial initiative from Nijmegen (rolled out nationwide after 2008) to assess the LHBTI friendliness in institutions in the elderly care and welfare sector. ANBO, COC Nederland, Movisie and Viland developed the toelichting scan in cooperation with the KIWA certification body and with the support from the Ministry of Health, Welfare and Sport.

<sup>9</sup> See note vi.

### 3. RECRUITMENT AND SELECTION

Several companies and institutions not only place advertisements in national newspapers, but also in “multicultural” and “pink” media. Some have a stand at Pink Saturday where staff is recruited. This makes it clear that the diversity policy of such a company or institution is not a policy on paper, but actually represents something.

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- G CHECK:** When recruiting staff, is there attention for recruitment through “pink channels”?
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- G CHECK:** It is worth investigating whether LGBTI+ employees are more often being offered temporary contracts. Do the Works Council or Management Board take action if there are any signs of a biased ratio between temporary and permanent contracts (form and scope) when hiring, or extending the contracts of, LHBTI+ employees?
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- G CHECK:** Are there any agreements to prevent LGBTI+ employees from being affected more strongly in case of reorganisations or mergers?
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- G CHECK:** In the event of an outflow, does the Works Council or Management Board verify through exit interviews whether there are suspicions that LHBTI+ employees will be disproportionately affected?
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- G CHECK:** If psychological tests are part of the selection procedure, are they gender-neutral?
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### 4. GENDER IDENTITY

Sometimes personnel administrations show little flexibility. As a result, transgenders often encounter problems, when applying for jobs and in new workplaces, if they are registered under the gender assigned to them at birth and if the personnel administrator does not allow this to be changed if the employees are of a different gender. The starting point should be that if registration by gender takes place, this is done on the basis of the employee’s own wishes.

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- G CHECK:** Does the personnel administration use a gender indication, or is there a gender-neutral registration?
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- G CHECK:** Is the personnel administration based on the gender as assigned at birth or the gender as indicated by the employee himself/herself?
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- G CHECK:** Does the personnel administration give the opportunity to correct the gender? Can an employee have this done himself without much procedural hassle?
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- G CHECK:** If the gender of an employee has been changed in the personnel administration, does this apply from the date on which the change was made or from the start of employment? (e.g. a testimonial or reference issued subsequently in which the “former gender” of the employee could suddenly appear)?
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- G CHECK:** If the company/institution issues a testimonial or reference with a “former gender, can the employee in question easily have it changed?
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- G CHECK:** Does the employer offer safety and discretion to transgender employees?
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- G CHECK:** Does the transgender employee have the opportunity, during or after a transition, to keep his or her job and be transferred?
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- G CHECK:** Does the company/institution provide support with information to colleagues and manager at transitional periods of transgender employees?
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- G CHECK:** To what extent does the company/institution adopt a flexible attitude, for example clothing regulation or the use of sanitary facilities, if it concerns transgender employees?
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## 5. EMPLOYEES AND THEIR RELATIONSHIPS

In the Collective Labour Agreement, certain rights are linked to the fact that the employee may have a partner. It is important who defines the Collective Labour Agreement as a partner. If, for example, the employee has to cohabit with the partner, if it is implicitly or explicitly assumed to be a partner of the opposite sex from the employee itself, if there must be a lasting relationship, for how long it is considered to be a lasting relationship and whether proof of this must be provided (for example through with a notarial deed). Our starting point here is that the employee is given maximum freedom to define his or her relationship.

*Ideally, therefore, in the Collective Labour Agreement should be formalised as follows:*

*the employee indicates to the employer who is to be considered as a partner and can change this if the situation has changed. There are no criteria regarding cohabitation, durability or notarial deeds.*

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**G CHECK:** How much freedom does the Collective Labour Agreement offer in the definition of partner?

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## 6. EMPLOYEES AND THEIR CHILDREN (MULTIPLE PARENTHOOD)

Collective labour agreements take into account that an employee may have children and that the care of children may require additional facilities. Collective labour agreements use different definitions of children of employees. It is important that the definition is broad and that foster children, adoptive children, children of more than two parents (such as a female couple raising children together with a male partner) are taken into account. The long-lasting relationship between parent and child is paramount, regardless of their living situation, age or biological relationship. Currently, a recommendation from the relevant state committee for a regulation of multiple parenthood is at the Dutch Lower House of Parliament. If the legislative proposals from this advice will be adopted by the Dutch Lower House of Parliament, a large number of issues concerning parenthood will be regulated by law. Until then, it is important to include these issues in the collective bargaining negotiations.

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**G CHECK:** How much freedom does the Collective Labour Agreement offer in the concept of children?

Can an employee, for example invoke emergency leave, even if it does not concern a biological child?

**G CHECK:** It has recently become legally possible for transgender employees who have gone through a transition from woman to man to give birth to a child<sup>10</sup>. Are there the provisions in the Collective Labour Agreement related to maternity leave formulated in a gender-neutral way?

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<sup>10</sup> After approval by the Dutch Senate with Bill 33 351 (Amendment to Book 1 of the Dutch Civil Code and the Dutch Municipal Personal Records Database Act -Wet gemeentelijke basisadministratie persoonsgegevens- in connection with the modification of the values for and the power to change the indication of the gender in the birth certificate) the requirement that transgenders must undergo sterilisation before they undergo a transition has been abolished since July 2014.



## 7. CARE

In many countries there are provisions that are different from those in the Netherlands regarding taking leave to care for others. In the United States, for example, several collective labour agreements have the system of 'personal days': leave days that an employee can take up to a certain maximum amount per year, without having to account for this to the employer. In Sweden, for example, working parents are legally entitled to 16 months' parental leave at 80% of their regular salary. In Germany, for example, it is regulated by law that when a child is born, the mother receives fully paid leave from six weeks before the calculated date of birth until eight weeks after the birth, and that during the first three years of the child's life, the parents are entitled to 12 months (if only the mother takes it) or 14 months (if both parents take it) of parental leave (65% of salary) with a guarantee of return to work. In addition, additional facilities may be provided for in collective labour agreements.

Our starting point for the Dutch collective labour agreements is that maternity and childcare leave regulations do not inadvertently lead to the marginalisation of mothers in the labour market and in their careers, and that when applying for leave days to care for others, in the event of death or at festive celebrations, employees should give as little account as possible of their relationship with the person or persons concerned.

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**G CHECK:** Can employees decide for themselves under what circumstances they take special leave? Can employees take time off during festivities, mourning or other events relevant to them (maximum number of days per year)?

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**G CHECK:** If it is clear that there is a serious situation requiring the use of employees for informal care, what procedures are in place to arrange leave and offer further support?

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**G CHECK:** Are the possibilities for paid maternity and parental leave more extensive than the legal minimum?

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**G CHECK:** The same for unpaid types of leave?

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**G CHECK:** Do the rules for parental leave also apply to adoption and foster parents, or for step parents (who act in a parental role in addition to the two legally recognised parents)?

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**G CHECK:** Does the company or institution offer a lost pay insurance or regulation for periods during which employees have to provide intensive informal care and as a result have to take unpaid care leave?

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## 8. PENSION

In most cases, the exact pension rights will be arranged through pension regulations, and not through a Collective Labour Agreement. Since the couples pension scheme is related to the way in which partners are defined (Paragraph 3), we will nevertheless discuss it here.

Our starting point is that there should be as much freedom as possible for employees to define who their partners are (where, naturally, the accrued rights of ex-partners are not at issue).

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**G CHECK:** How easy or difficult is it for employees to have their partners recognised as such by the pension scheme applicable to them? Will self-declarations suffice, or will marriage certificates, cohabitation registers or notarial contracts be copied as evidence? Is cohabitation a requirement?

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**G CHECK:** Is it possible for concealed relationships to be recognised for partner's pension retrospectively (with earlier effective date)?

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In accordance with the reality at some pension funds, it is possible that someone has several partners who accrue (partial) pension rights as a partner.

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## 9. CONTACT WITH CUSTOMERS, CLIENTS, PATIENTS, PUPILS, PARENTS AND OTHERS

Pursuant the Health & Safety Act, the employer and the employees are responsible for the (physical and psychological) well-being of employees.

Our starting point is that the employer's policy must also lay down clear procedures that prevent as far as possible, and, if this is not possible, combat offensive or discriminatory statements made by employees of third parties in relation to the work they perform.

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**G CHECK:** Does the company or institution have a specific regulation for situations in which one or more of their clients, (visits from) clients, patients, pupils or parents behave in a disrespectful manner, insulting or discriminating against employees? Is explicit attention paid to insults etc. on the grounds of sexual orientation or gender identity? Is this regulation also known at all employees? Has an inventory been made of whether the regulation is used and to what results this leads?

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## 10. UNDESIRABLE BEHAVIOUR: BULLYING, SOCIAL EXCLUSION, (SEXUAL) HARASSMENT, DISCRIMINATION AT WORK

The Dutch Occupational Health and Safety Act (Arbowet) stipulates that employers must ensure the health and safety of the employees. This also includes the protection against psychosocial stress. They must draw up a policy for this and actually implement it. Appointing a confidential contact person can be an important part of this policy. A confidential contact person is there for employees who have reports or complaints about undesirable behaviour such as aggression and violence, sexual harassment/unwanted intimacy, bullying, social exclusion or discrimination.

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**G CHECK:** Does the Collective Labour Agreement have such a regulation or is it linked to the Collective Labour Agreement?

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**G CHECK:** Does this regulation pay specific attention to undesirable behaviour based on (alleged) gender identity or gender expression or homo or bisexual orientation?

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**G CHECK:** Does the confidential contact person possess adequate knowledge and skills to identify discriminatory and exclusionary mechanisms and complaints and to handle complaints properly?

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## 11. EXPATS

Many Dutch companies have branches abroad. The government also has an extensive network of embassies and consulates in various parts of the world. Employees can be instructed to work in such a branch. A problem can occur if this branch is located in a country where homosexuality is banned or criminalised. Do LGBTI employees have the right to refuse secondment to such a country, without labour law repercussions. If they wish to cooperate, does the employer cooperate with regulations to have partners come over, without the employee and partner being at risk. First and foremost is the right to be together. The employer contributes to ensuring that this can take place in a safe way. Furthermore, the employer is prepared to contribute to combating discrimination against LGBTI+ employees in the country concerned.

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**G CHECK:** Does the Collective Labour Agreement allow employees of international companies to refuse secondment in a country where homosexuality is banned or criminalised?  
Does the Collective Labour Agreement offer the employee and employer the possibility to make arrangements in a flexible way for visits made by the partner, where the safety of the employee and partner is paramount?

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## 12. QUALITY ASSURANCE, MONITORING AND EVALUATION

Unfortunately, agreements on paper are not always sufficient guarantee for real action. A good anti-discrimination and diversity policy requires that those responsible for its implementation also have the right attitude, knowledge and skills (quality), that their finger is regularly kept on the pulse (monitoring) and that on the basis of working developments it is examined whether the agreements made need to be adjusted (evaluation).

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**G CHECK:** Are the resources for combating discrimination and diversity policy allocated and deployed?

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**G CHECK:** Are the agreements made also fulfilled? Is it verified whether they have been implemented?

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**G CHECK:** Do managers, HRM officers and confidential contact persons receive regular training?

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**G CHECK:** Are (as far as known) LGBTI+ employees involved in surveys or other investigation into the staff well-being within the work organisation?

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**G CHECK:** Does the company or institution also take action timely based on the signals that are expressed?

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**G CHECK:** Are efforts and results of the policy on sexual diversity and anti-discrimination reported for example when information is provided to the Works Council or Management Board? Is mention made of it in the annual social report?

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