

Dutch Labour Standards Foundation
The Standard for reliability

Information set about Standard NEN 4400 and the Labour Standards Register

Key terms: NEN 4400-1, NEN 4400-2, temporary staffing sector, contracting of work, fraud, illegality, inspection, reliability, vicarious tax liability

*Temporary staffing
sector
Contracting of work*

Employers who hire temporary staff or outsource work are strongly advised to contract the services of a certified temporary employment agency or contractor of work. A company certified according to standard NEN 4400-1 or NEN 4400-2 and registered in the Labour Standards Register (*Register Normering Arbeid*) offers you greater protection against fraud and illegality.

Vicarious tax liability

The primary aim of the Dutch Labour Standards Foundation (*Stichting Normering Arbeid*) is to protect companies who hire temporary staff or outsource work against claims that may arise from recipients' liability and vicarious tax liability for non-payment of VAT (*omzetbelasting*) and statutory payroll tax (*loonheffingen*) as well as against the high penalties that can be imposed if a company is found to be employing persons who are not entitled to work in the Netherlands or whose identity has not been established or has not been established correctly.

Fraud and illegality

In order to achieve this aim, the Dutch Labour Standards Foundation has been overseeing the correct application of Standard NEN 4400-1 / NEN 4400-2 since October 2006. This standard was developed by the sectors themselves in conjunction with private sector companies and trade unions with the aim of combating fraud and illegality.

NEN 4400

What is NEN 4400?

NEN 4400-1

NEN 4400-1 is a national standard that set requirements for temporary work businesses and contractors of work, including subcontractors, *that have their registered office in the Netherlands* with respect to the payment of taxes and social insurance contributions and the legitimacy of employment in the Netherlands. The aim of the standard is to limit the risk of recovery and penalties for employers from the Dutch Tax and Customs Administration and other government agencies.

NEN 4400-2

NEN 4400-2 has been developed for companies *that have their registered office outside the Netherlands*. This standard includes



requirements for checking and assessing any company having its registered office outside the Netherlands that provides workers for the purpose of working under the supervision or direction of a third party and for testing and assessing any contractor or subcontractor having its registered office outside the Netherlands in order to determine that they are organised in such a way that it may be safely assumed that obligations from employment are complied with.

Inspection body

Conformity with the standard

In order to be able to determine whether a company satisfies the requirements of the standard (conformity), the company is checked and assessed by an accredited inspection body. The inspection body focuses on the following aspects during a conformity assessment (inspection):

Part A The specifications for the company; the extent to which the company as an entity satisfies the minimum requirements set.

Part B The specifications for the accounting records.

Part B.1 The specifications for the personnel administration: the extent to which the registration of commencement and termination of employment has been laid down correctly, fully and in a timely manner and recorded in the personnel administration.

Part B.2 The specifications for the payroll administration: the extent to which the payroll administration has been conducted correctly, fully and in a timely manner and can therefore be considered as reliable.

Part B.3 The specifications for the financial accounting records: the extent to which the financial accounting records have been kept correctly, fully and in a timely manner and the extent to which the ensuing obligations are complied with.

Part B.4 General requirements in specific situations.

*Compliance with
collective agreements*

Does NEN 4400-1 / NEN 4400-2 also contain provisions on compliance with collective agreements?

NEN 4400 focuses primarily on the payment of statutory payroll tax and VAT and monitors the employment of persons who are not entitled to work in the Netherlands or whose identity has not been established or has not been established correctly.

NEN 4400 does not provide for the degree to which a company complies with the applicable collective agreement. The inspection body will have to determine, however, whether a procedure is in place at the company for applying negotiated wage rates.

Is NEN 4400-1 / NEN 4400-2 also applicable to smaller companies?

The standard is applicable to all companies that perform work by commission or that provide manpower. The inspection consists partly of a data check and partly a procedures check. Procedures can be

recorded in writing, may have been entered in a computerised system or, in the case of smaller companies, may have been agreed verbally. The standard is therefore readily applicable also to smaller companies.

Who is responsible for the contents of the standard?

NEN 4400-1 and NEN 4400-2 are issued by the Netherlands Standardization Institute (NNI). The contents are determined by a standards committee (Standards Committee 400 177, obligations from employment). The input for the standards committee is provided by the Central Panel of Experts (*Centraal College van Deskundigen*) of the Dutch Labour Standards Foundation. All organisations concerned are represented in the Central Panel of Experts.

CERTIFICATION

Who is authorised to carry out inspections?

The inspections (establishing conformity) may be carried out by inspection bodies who are accredited according to the requirements in NEN-EN-ISO/IEC 17020 or have an equivalent status. The inspection bodies must also satisfy the independence criteria for a type A assessing body (as defined in NEN-EN-ISO/IEC 17020).

The inspection body must also satisfy the requirements set in standard NEN 4400, such as the requirements made of inspection personnel and the audit method.

*Labour Standards
Register*

The inspection body must have concluded a cooperation agreement with the Labour Standards Foundation in order to register a company.

From among which inspection bodies may you choose?

An inspection body that meets the above requirements – this means in practice that the inspection body has been accredited by the Dutch Accreditation Council (*Raad voor Accreditatie*) to carry out inspections based on NEN 4400 – is authorised to carry out the inspections that lead to an inspection certificate based on NEN 4400-1 or NEN 4400-2.

A current overview of the inspection bodies that meet these requirements and have concluded a cooperation agreement with the Labour Standards Foundation can be found on the Foundation's website: www.normeringarbeid.nl.

What is the result of an inspection carried out by an inspection body?

As soon as the inspection body establishes that a company complies with the requirements of NEN 4400-1 or NEN 4400-2, it issues an inspection certificate.



Inspection certificate

The inspection certificate issued by the inspection body attests to the fact that at the time of assessment the assessed company meets the specifications for the declaration and payment of VAT and statutory payroll tax due in the Netherlands over the preceding period and employs workers who are legally entitled to work in the Netherlands.

The inspection certificate entitles the assessed company to secure a registration in the public Labour Standards Register. Clients of temporary employment agencies and contractors of work, including subcontractors, can consult the register in order to check whether they are dealing with a reliable partner who complies with the requirements of NEN 4400.

The inspection certificate is only valid in combination with registration in the Labour Standards Register. The register of certified companies.

What is the period of validity of an inspection certificate?

There is no defined period of validity for an inspection certificate. An inspection is a snapshot. Based on the inspection that is carried out a risk assessment is made by reference to established standards and it is then decided after how many months the next inspection must take place. The standard has an inspection frequency of three, six and twelve months. The guiding principle in this regard is that inspections are normally carried out every six months.

Payment history report

In addition, the certified company must produce a declaration from the Dutch Tax and Customs Administration every quarter regarding its payment record in respect of wage tax and VAT and social security contributions. A certified company may authorise the Labour Standards Foundation to take care of this automatically on its behalf.

Failure to produce a payment history report will prompt the inspection body to check whether the company concerned still meets the requirements of NEN 4400.

What happens if a company ceases to comply with NEN 4400?

When an inspection body establishes that a company does not comply or no longer fully complies with the requirements of NEN 4400-1 / NEN 4400-2, this is designated as a case of minor and/or major non-conformity.

Minor non-conformity

Minor non-conformity

During the inspection it is established that the company does not comply with a specified requirement from the standard, representing an increased risk in the long term. The inspection body issues the inspection certificate. The company is given the opportunity to take corrective measures. At the next inspection, the inspection body assesses the extent to which the company has rectified the minor



non-conformity. If a sufficient degree of rectification has been realised then the entry in the register will be maintained. If no degree or an insufficient degree of rectification has been realised then the minor non-conformity will be converted into a major non-conformity.

Major non-conformity

Major non-conformity

In the event that one or more major non-conformities (non-compliance with a specified requirement that immediately constitutes a high risk) are established during an inspection, the inspection body will give the company the opportunity to respond in writing to the draft report within 10 working days after the date of the draft report before reaching a final opinion. The inspection body will then, with due regard for the documents and information submitted by the company and, where it considers this necessary, after an additional examination, reach a final opinion.

A final opinion on a major non-conformity results in a suspension of the entry in the register (the company's name no longer appears in the register). The company is given the opportunity to take corrective measures within 30 working days. The inspection body assesses the extent to which the company has rectified the major non-conformity within no more than 30 working days after receiving notification that the corrective measures have been implemented.

If a sufficient degree of rectification has been realised, the inspection body will then issue the inspection certificate and the suspension will be terminated. If no degree or an insufficient degree of rectification has been realised, the suspension will be converted into definitive removal from the register (deregistration).

Can a start-up company apply for certification?

The first inspection at a start-up company can take place immediately after the first payment of VAT and statutory payroll tax, so after the third month.

A start-up company can however notify its intention to register with the Labour Standards Foundation as soon as it goes into business, and can be included in the List of Notified Companies so that the company can show the outside world that it is currently taking steps to obtain the inspection certificate.

LABOUR STANDARDS REGISTER

What is the Labour Standards Register?

The Labour Standards Register is the public register of companies that have been awarded an inspection certificate based on NEN 4400-1 or NEN 4400-2. The Labour Standards Register is

administered by the Labour Standards Foundation in Tilburg. The Labour Standards Register can be consulted at:
www.normeringarbeid.nl.

*List of Notified
Companies*

In addition to the Labour Standards Register, the Labour Standards Foundation also administers the so-called List of Notified Companies. Companies that wish to be certified and become registered are included in this list. Companies may appear only once in this list and for a maximum period of three months.

By having its name included in the List of Notified Companies, a company can show the outside world that it is currently taking steps to obtain an inspection certificate based on NEN 4400.

Why should a company be registered in the Labour Standards Register?

In order to limit the risk of substantial claims for non-payment of VAT and statutory payroll tax as well as sizeable penalties, for employing persons who are not entitled to work in the Netherlands, for example, enterprises that hire temporary staff or outsource work are placing increasingly high quality demands on companies that offer temporary workers or contract work. Furthermore, mindful of their responsibility in terms of respectable employment practice, they are casting an increasingly critical eye over such companies.

Reliability

By obtaining a registration in the Labour Standards Register you are expressing your quality awareness and reliability and you are also helping your business partners to avoid unnecessary claims and penalties. Moreover, a listing in the Labour Standards Register gives you an edge over non-registered competitors.

*Covenant
Tax and national
insurance numbers*

The Labour Standards Foundation has concluded three covenants with the Dutch Tax and Customs Administration under which payment history reports are supplied by automated means, indications of fraud are followed up on expeditiously, and companies listed in the Labour Standards Register can take advantage of a fast-track procedure when applying for tax and national insurance numbers (*sofinummers*) for their foreign employees.

What is the procedure for certifying and registering a company?

A company registers with the Labour Standards Foundation using the registration form (including the authorisation form that will allow the Labour Standards Foundation to ask the Tax and Customs Administration for statements concerning VAT and statutory payroll tax). These documents can be downloaded from:
www.normeringarbeid.nl.

After receiving the registration form, including the authorisation, the Labour Standards Foundation will enter the company's name in the

List of Notified Companies (listing for a maximum of three months) and will then inform the inspection body stated on the registration form of the registration.

After receiving notification from the Labour Standards Foundation, the inspection body concerned will conclude an inspection agreement with the company and make an appointment for the initial inspection. The outcome of the inspection (conformity, minor non-conformity or major non-conformity) determines which action will be taken further.

Conformity

No non-conformities are established during the inspection. The company is fully compliant with NEN 4400. The inspection body issues the company with an inspection certificate. The inspection body will inform the Labour Standards Foundation that the certificate has been issued. The Labour Standards Foundation will then remove the company's name from the List of Notified Companies and enter the company's name in the Labour Standards Register (register of certified companies).

Minor non-conformity

Minor non-conformity

During the inspection it is established that the company does not comply with a specified requirement, representing an increased risk in the long term. The inspection body issues the inspection certificate. The inspection body will inform the Labour Standards Foundation that the certificate has been issued. The Labour Standards Foundation will then remove the company's name from the List of Notified Companies and enter the company's name in the Labour Standards Register (register of certified companies)

The company must nonetheless take corrective measures to resolve the minor non-conformities that have been established. At the next (periodic) inspection, the inspection body assesses the extent to which the company has rectified the minor non-conformity. If a sufficient degree of rectification has been realised then the entry in the register will be maintained. If no degree or an insufficient degree of rectification has been realised then the minor non-conformity will be converted into a major non-conformity.

Major non-conformity

Major non-conformity

In the event that one or more major non-conformities (non-compliance with a specified requirement that immediately constitutes a high risk) are established during an inspection, the inspection body will give the company the opportunity to respond in writing to the draft report within 10 working days after the date of the draft report before reaching a final opinion. The inspection body will then, with due regard for the documents and information submitted by the company and, where it considers this necessary, after an additional examination, reach a final opinion.

In the case of an initial inspection, a final opinion on a major non-conformity results in the non-issuance of a certificate. The company is given the opportunity to take corrective measures within 30 working days. The inspection body assesses the extent to which the company has rectified the major non-conformity within no more than 30 working days after receiving notification that the corrective measures have been implemented.

If a sufficient degree of rectification has been realised, the inspection body will then issue the inspection certificate. If no degree or an insufficient degree of rectification has been realised, the initial inspection will be concluded (without the inspection certificate being issued).

The inspection body will inform the Labour Standards Foundation of the result of the initial inspection (issue of the inspection certificate or refusal of the certificate). Where a certificate is refused, the Labour Standards Foundation will remove the company's name from the List of Notified Companies. In the event that an inspection certificate is granted, the Labour Standards Foundation will enter the company's name in the Labour Standards Register (certified companies).

Annual contribution

What are the costs?

The costs of registration in 2014 are EUR 238 per year, excluding VAT. New entrants pay an additional one-off entrance fee of EUR 165, excluding VAT. The costs of the inspections by the inspection body are charged directly to the company by the inspection body. These costs vary from one inspection body to the next and generally depend on the size of the company.

How many companies are registered in the Labour Standards Register?

The number of registered companies is updated daily. Companies are registered based on inspection certificates that have been issued. In addition, companies are regularly deregistered or suspended because they no longer comply with the requirements of the standard.

A current list of registered companies can be found at: www.normeringarbeid.nl. In November 2013, approx 3,600 companies were registered in the Labour Standards Register. In addition, more than 200 companies appeared in the List of Notified Companies pending certification according to NEN 4400.