



# Occupational Health and Workplace Accidents Conference PEOPIIL

**Claims from hospital and nursing home workers for  
(long term) consequences of COVID**

**15 June 2023**



# Introduction



- **Article 7:658 Dutch Civil Code**
- **1.** The employer should (...) give instructions and take reasonably necessary safety measures to prevent the employee from suffering damage during the performance of his work.
- **2.** The employer is liable towards the employee for damage which the employee has suffered from activities performed in the course of his work, unless he shows that he has complied with the obligations mentioned in paragraph 1

# 1. Damage suffered in the course of the work

- Burden of proof: employee
- Reasonable degree of certainty
- What is known about the disease and the origins

# 1. Damage suffered in the course of the work

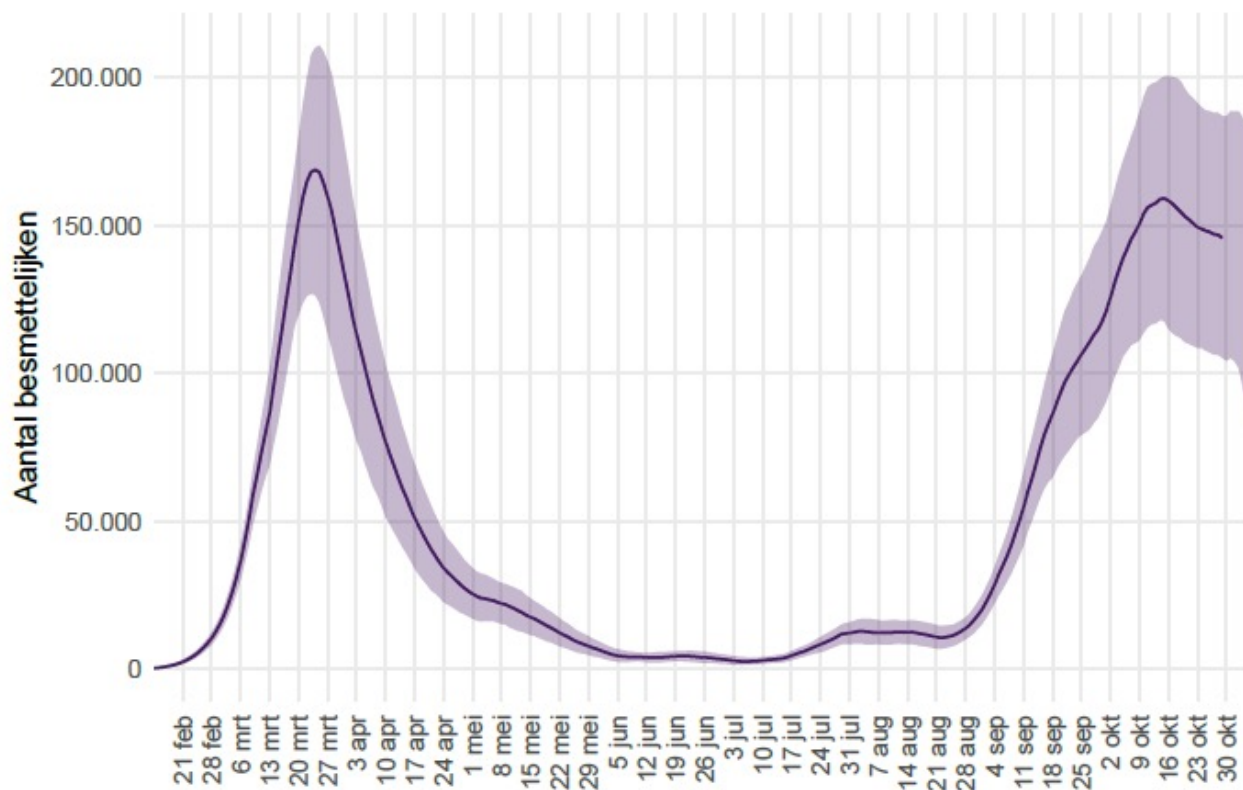
- Court of Amsterdam 16 December 2022, ECLI:NL:RBAMS:2022:7569
  - 9 April 2020: close contact with patient who develops symptoms next day
  - 10 April: home quarantine
  - 10 and 12 April: unprotected care given to 2 patients
  - 10 or 11 April: visited by parents in garden
  - 17 April 2020: nurse develops symptoms

# 1. Damage suffered in the course of the work

- Court of Amsterdam 16 December 2022, ECLI:NL:RBAMS:2022:7569
  - Evidence infection during work, 100% certainty is not necessary.
  - Nurse had been exposed to Covid-19 during working hours on 9, 10 and 12 April
    - Could have caused the infection: incubation time
  - Chance of infection in private atmosphere is insignificant
    - From 10 April: quarantine, no public transport, no supermarket
    - Visit of parents took place in garden, parents not infected
    - Chances of infection before 10 April not likely enough: lockdown, people complied with this lockdown.

# 1. Damage suffered in the course of the work

- Chance of infection in private atmosphere





## 2. Safety measures

- Dutch Civil Code: give instructions and take reasonably necessary safety measures
- Reasonably necessary: depends on specific circumstances. Change of accidents, severity of the consequences, costs/disadvantages of safety measures
- Burden of proof: employer

## 2. Safety measures

- Examples of specific circumstances:
  - Number of infections
  - Nature of the work
  - Vaccination rate of employees
  - Carefulness of employees
    - Employer should take into account that employees can be careless





## 2. Safety measures

- Court of Amsterdam 16 December 2022, ECLI:NL:RBAMS:2022:7569
  - Hospital did not provide sufficient protection equipment
  - Therefore: hospital did not take reasonably necessary safety measures



## 3. Conclusions

- Step 1: High burden of proof for employee
  - In the course of the work
  
- Step 2: High burden of proof for employer
  - Reasonably necessary safety measures



# Questions?

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