Question 1:

Are there explicit legal provisions concerning camera surveillance especially at working places?

There is no explicit legal provision concerning camera surveillance at working places.

The use of camera surveillance, however, falls within the scope of the Dutch Data Protection Act (DDPA), which contains the general standards concerning the processing of personal data. Article 2 DDPA states that the DDPA applies to wholly or partly automated processing of personal data and the not-automatic processing of personal data that are included in a filing system or intended to be included therein. Camera surveillance by digital techniques therefore falls within the scope of the DDPA. The DDPA does not apply to (analogue) video cameras that do not record images, or to webcams that are intended to show images of public spaces, without focusing recognisably on the individuals that are using these spaces.

Also relevant is article 7:611 of the Dutch Civil Code (Burgerlijk Wetboek, hereafter “BW”), which states that an employer and an employee should behave towards each other with “good faith and fair dealing”. This principle also plays a part in monitoring situations. This principle is a guideline in determining whether the chosen form of monitoring is proportional given the goal and whether the sanctions applied by the employer are reasonable.

Furthermore, article 27 of the Dutch Works Council Act (Wet op de ondernemingsraden, hereafter “WOR”) bears relevance. The employer needs the consent of the Works Council when the employer intends to implement, change or withdraw rules regarding the processing of personal data. The WOR also states that Works Councils have the right of approval in respect of a decision to introduce an employee monitoring system and in respect of the decision to introduce a system that could be used to monitor employees.

Note also:
- article 7:660 BW. This article states that an employee has to follow the instructions he receives from his employer. So an employer has a right to give instructions in what way the job should be carried out;
- article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

- article 10 and article 13 of the Dutch Constitution (Grondwet).

**Are there collective agreements defining the circumstances and conditions for the introduction and use of camera surveillance?**

Provisions regarding camera surveillance can be included in collective agreements, although this is not very common in the Netherlands.

**Question 2:**

**Is it obligatory for the employer to define the purpose of the use of camera surveillance?**

Yes, an employer is in principle obliged to determine the purposes of the use of camera surveillance prior to the processing of the personal data. Reference is made to article 7 of the DDPA. Note that there are exceptions to this rule. These exceptions are specified in article 43 DDPA.

**Is this bound to certain purposes (for instance security and safety, the protection of the property of the enterprise, the control of production process, the control of the performance of the worker etc.)?**

According to the DDPA, camera surveillance is allowed when it is necessary for an employer to defend his legitimate interest (article 8f DDPA). The interest of the employer must be weighted against the interests and rights of the employees. An employer must be able to substantiate this weighing process towards his employees, the works council and - where necessary - with the Dutch Data Protection Authority (Commissie Bescherming Persoonsgegevens, “CBP”) or a court of law. The use of camera surveillance must also endure the test of proportionality and subsidiarity. This means that the privacy infringement should be proportionate to the objective of the camera surveillance. The employer must also consider whether he might use a less restrictive tool in order to reach the same goal. If possible, a less restrictive tool must be used.

The protection of property is one example of a legitimate interest. Video surveillance that has been introduced in order to protect employees and customers could also be a legitimate interest.

There are specific rules on the use of hidden cameras. The use of hidden cameras is only allowed if the employer has a legitimate interest and there are no other alternatives to secure that interest.
The use of hidden cameras is only allowed in occasional situations and for short periods of time. This would for example be the case, should an organization experience a high level of theft, which situation that employer has been unable to resolve despite various efforts on his part. In these circumstances an employer is permitted to install a hidden camera on a temporary basis, as a last resort in the attempt to identify the culprit. The employer must ensure that all employees and the works council are informed beforehand of the possibility that, in general, hidden cameras can be used.

**Is it allowed to use camera surveillance for the surveillance of a certain employee or certain employers at the workplace?**

It is allowed to use camera surveillance for the surveillance of a certain employee or certain employees as long as (i) the employer has a legitimate interest to use the camera surveillance, (ii) there are no other ways to reach that interest (iii) the infringement of the privacy is proportionate to the objective of the camera surveillance, (iv) the works council knows that the cameras are used for the surveillance of certain employees and (v) the employees were informed regarding the use of camera surveillance.

**Is camera surveillance allowed in toilets, dressing rooms, staff rooms?**

Employees are entitled to expect the protection of their privacy when using toilet and dressing facilities. Given this requirement, the use of camera surveillance in staff toilets and dressing rooms is in principle not allowed.

Whether camera surveillance is allowed in staff rooms depends on the circumstances. If the use of the camera surveillance meets the requirements as mentioned above, it might be allowed.

**Question 3:**

**To whom are the sequences available?**

Only those people who have an interest in the camera recordings should have access to the sequences (“need to know principle”), so a very limited group of people (for example the manager of the employee or the security people).

**Question 4:**

**How long are they stored?**

According to article 10 DDPA, camera recordings should not be stored longer than necessary for the purpose. The Dutch Data Protection Authority states that recordings should in principle not be stored for a period longer than 24 hours.
However, longer periods of storage are allowed under specific circumstances, for example if in practice it is not possible to verify the video recording within 24 hours.

Note that if the images are stored for a longer period than 24 hours, notifications must be filed with the Dutch Data Protection Authority. No notifications need to be filed if the storage falls under the Dutch Data Protection Exemptions Decree (Vrijstellingsbesluit).

Companies which store for a period of one month are quite common and the Dutch Data Protection Authority has accepted this period of storage.

**Question 5:**

**Is there an obligation to inform employees if camera surveillance is installed?**

Yes, see above. General information can suffice: for example, the employer can implement a regulation that in the event of suspicion of theft, camera surveillance can be installed. The employer does not need to inform the employees each time a camera is installed.

**Do the use of camera surveillance require the consent of employees?**

No.

**Question 6:**

**Is there an obligation to inform the works council or trade unions about the instruction and the use of camera surveillance?**

Regarding the Works Council: the employer needs the consent of the Works Council when the employer intends to implement, change or withdraw rules regarding the processing of personal data. The WOR also states that Works Councils have the right of approval in respect of a decision to introduce an employee monitoring system and in respect of the decision to introduce a system that could be used to monitor employees.

Regarding trade unions: No, unless agreed with the trade unions. This is, however, not common.

**Is there an obligation to have an agreement with the works council or trade unions defining the circumstances and conditions for the introduction and the use of camera surveillance?**

See above.

**Question 7:**
Has the employer (controller, who uses electronic technology to process personal data) the duty to notify the processing to the Data Protection Authority or another authority?

In principle the DDPA must be notified of all images recorded, except where an exemption is possible under the Dutch Data Protection Exemptions Decree (Vrijstellingsbesluit). Article 38 of this Decree states that the obligation to notify the DDPA does not apply to data processing involving the use of clearly visible video cameras where this is undertaken with a view to protection of individuals, buildings, grounds, objects or protection process that have been entrusted to the care of the data controller. However, this type of processing must comply with the requirements laid down in article 38 of the Decree.

Do employers need a permit from the Authority before he can set up the camera?

No, unless data is transferred to countries outside the European Economic Area (EEA).

What are the conditions for the Permission of camera surveillance?

See above.

Has the Data Protection Authority the authority to impose changes in order to make the processing or the surveillance satisfy the requirements of the law?

Yes, if the Dutch Data Protection Authority is of the opinion that certain processing is not in line with the Dutch Data Protection Act, the Dutch Data Protection Authority may apply administrative coercion.

Question 8:

What are the consequences of a failure to comply with the rules of camera surveillance (for instance punishment; liability to pay damages; works council or trade unions or workers can demand the control measures to be stopped and the prior situation to be restored...)?

The employee may recover damages from the employer.

The Public Prosecution Department may prosecute the employer.

The Dutch Data Protection Authority may take action: (i) apply administrative coercion (ii) impose an administrative penalty (only in connection with a small number of violations of the Dutch Data Protection Act under which infringement of notification duties).
If no consent is asked regarding the regulation on camera surveillance (article 36 WCA), works councils can ask the court to cease the processing.