

Newsletter

January 2012



Employment Law

This Employment Law Newsletter of the Holland Van Gijzen Employment Law Section is to provide you with concise information on recent case law, legislation and current developments in the Dutch employment law arena.

This edition of the Employment Law Newsletter focuses on a number of legislative changes that came into force on 1 January 2012, or will be introduced in the near future, in the area of employment law. We have compiled a list of the most important legislative changes, and give a brief explanation of what they entail.

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ATTORNEYS AT LAW AND
CIVIL LAW NOTARIES

1. Amended vacation legislation

The new vacation legislation, as we informed you in the Employment Law Newsletter of June 2011, came into effect on 1 January 2012. To briefly reiterate, the most important changes are as follows:

- Long-term sick employees retain their full entitlement to the statutory number of paid vacation days during sickness. In the past, these employees only accrued vacation during the last six months of sickness.
- It is possible to take vacation during sickness.
- Employees must take the statutory vacation days within six months after the end of the calendar year in which the vacation days were accrued. If these vacation days have not been taken, they will expire after six months, unless the employee has been unable to take the vacation days.

2. Repeal of temporary relaxation of rule on successive fixed-term employment contracts ("chain rule")

The Temporary Relaxation of Rule on Successive Fixed-Term Employment Contracts Act (in Dutch: *Wet tijdelijke verruiming ketenregeling*) came into force on 9 July 2010. This Act allowed employers with employees under the age of 27 to enter into four successive fixed-term employment contracts - instead of the usual three - before the employment contract would be converted *ipso jure* into an open-ended employment contract. The Act also made it possible to work for four years - instead of the usual three - on the basis of a fixed-term employment contract. The temporary relaxation of this "chain rule" has been repealed as from 1 January 2012.

3. Salary savings scheme and life-course savings scheme abolished

From 1 January 2012 the life-course savings (in Dutch: *levensloop*) scheme and salary savings (in Dutch: *spaarloon*) scheme can no longer be used. Both of these schemes have been abolished and they will be replaced by a new "vitality savings scheme", which will be introduced gradually in 2012 and 2013. For employees who are already participating in the life-course savings scheme, the following transitional arrangements apply:

Employees with a savings balance of more than EUR 3,000

Employees who have accrued a savings balance in the life-course savings scheme of at least EUR 3,000 on 31 December 2011 can continue to save, under the existing conditions regarding the maximum amounts and withdrawal for unpaid leave, until they reach the pensionable age; or they can transfer the savings balance tax-free to the vitality savings scheme in 2013. If the employee wishes to transfer the savings balance after 2013, a maximum amount of EUR 20,000 will apply. The balance above EUR 20,000 will be paid out, and will be taxed within the income tax system.

Employees with a savings balance of less than EUR 3,000

Employees who have accrued a savings balance of less than EUR 3,000 on 31 December 2011 are not permitted to make any further deposits in the life-course savings scheme. However they are permitted to withdraw their savings balance - after tax - for leave in 2012 and 2013, or to transfer the savings balance tax-free to the vitality savings scheme in 2013. If neither of these options is used, the savings balance on 31 December 2013 will be taxed as salary.

For all employees, i.e. regardless of the amount of the savings balance, no more tax credit for leave under the life-course savings scheme will be accrued as from 1 January 2012. However the entitlements that have been accrued up to 1 January 2012 can still be encashed.

Salary savings scheme

Transitional arrangements have also been made for the abolition of the salary savings scheme. Its abolition entails that no new deposits can be made and the statutory "blocking" rules have been lifted, so employees who participate in the salary savings scheme can withdraw the savings balance tax-free from 1 January 2012. The participants can also choose to leave the accrued balance in the "blocked" account and to use the exemption in Box 3. The accrued balances will then be released in parts on an annual basis.

4. Health & Safety Inspectorate, Social Security Information & Investigation Service and Work & Income inspectorate merged to form Social Affairs & Employment Inspectorate

As from 1 January 2012 the Health & Safety Inspectorate (in Dutch: *arbeidsinspectie (AI)*), the Social Security Information & Investigation Service (in Dutch: *Sociale Inlichtingen- en Opsporingsdienst (SIOD)*) and the Work & Income Inspectorate (Inspectie *Werk en Inkomen (IWI)*) have been merged to form the Social Affairs & Employment Inspectorate (in Dutch: *Inspectie Sociale Zaken en Werkgelegenheid (Inspectie SWZ)*). The Social Affairs & Employment Inspectorate has been established with the aim of creating better working conditions, fairer work relationships and a well-functioning system of work and income. The merger of the three bodies will cut costs and allow more focused and selective operation, because among other things it will enable better and easier information exchange with other services.

5. Certificate of pregnancy no longer has to be sent with maternity benefit application

The employer's obligation to send a certificate of pregnancy with the application for a benefit under the Work and Care Act (in Dutch: *Wet arbeid en zorg (WAZO)*) has been abolished with effect from 1 January 2012.

Under the WAZO, women are entitled to a benefit for at least 16 weeks during and after pregnancy. The employer can apply for the WAZO benefit for the pregnant employee. Until the end of last year, the

employer had to send a certificate of pregnancy with the application. This obligation has been abolished from 1 January 2012.

However the employer still has to fill in the expected date of delivery on the application, and keep the certificate of pregnancy in the records for at least one year after payment of the benefit, because the Employee Insurance Agency (in Dutch: *UWV*) can still request it for checking.

6. Simplified procedure for highly skilled migrants for short stay

Highly skilled migrants (“knowledge migrants”) are highly educated people from foreign countries who come to the Netherlands to contribute to the knowledge economy. For these migrants there is a streamlined admission procedure, which only applies for a stay of less than three months.

To make the Netherlands even more attractive for highly skilled migrants, a two-year trial was launched on 1 January 2012 in which a simplified procedure will be used for the application for a work permit for highly skilled migrants who will stay in the Netherlands for less than three months. Using this simplified procedure, the Employee Insurance Agency (in Dutch: *UWV*) will issue a work permit within two weeks, provided that all the conditions are satisfied.

In order to make use of this arrangement, the employer must first have concluded a “highly skilled migrants agreement” with the Immigration and Naturalisation Service (in Dutch: *Immigratie- en Naturalisatiedienst (IND)*).

7. Old-age pension from 65th birthday

An important amendment will come into force on 1 April 2012, affecting the commencement date of the state pension under the General Old-Age Pensions Act (AOW). At present, a distinction is made between the date on which the entitlement to the AOW pension arises and the date of its commencement. The first day of the month in which the person reaches the age of 65 is currently the commencement date of the AOW pension, although the entitlement actually only arises on the 65th birthday. Regardless of whether the 65th birthday is on 1 February or 26 February, the same amount of AOW pension is currently paid.

In the context of the spending cuts, the government has decided that this must be changed. The AOW pension will only be paid from the 65th birthday of the recipient, so the amount payable for the first month will depend on the date on which the birthday falls. This means that in the first month the AOW pension will be lower than under the present system, unless the recipient’s birthday falls on the first day of the month.

For people who receive a disability, unemployment, survivor’s or social assistance benefit, from 1 April 2012 these benefits will continue to their 65th birthday. For people with a pre-pension, the extent to which the pre-pension does not end on the first day of the month in which they reach the age of 65, but continues to their 65th birthday, will depend on their pre-pension scheme. It could therefore be the case that the pre-

pension will end before entitlement to the AOW pension has commenced, and they should be prepared for this eventuality.

In addition to the AOW pension, many people are entitled to a supplementary pension from the age of 65 because, for instance, they participated via their employer in a (company) pension scheme. The commencement date of a supplementary pension of this kind will not be changed by the amendment. Pension schemes usually have three different commencement dates: the first day of the month in which the person reaches the age of 65, the day on which the person reaches the age of 65, or the first day of the month after the person reaches the age of 65. Pension scheme administrators do not have to change these dates, with the result that it can happen, as indeed can already be the case now, that employees will only be entitled to the supplementary pension (at most) one month later than the commencement of payment of the AOW pension.

For employees, this new legislation can have the consequence that they will financially “fall between two stools” for almost one month, because in practice it is often stated in employment contracts and/or a collective labour agreement (in Dutch: CAO) that the contract will end *ipso jure* on the first day of the month in which the employee reaches the age of 65. This could therefore mean that an employment contract will end *ipso jure* on 1 May, but the employee will only become entitled to an AOW pension on 31 May, and will thus have to arrange financial bridging for almost a month because he/she is no longer receiving a salary and not yet receiving a pension. The legislature has detected this problem, and has left it to the CAO parties to make arrangements so that the employment does not terminate before the day on which the employee reaches the pensionable age (under the AOW).

For employers who are not bound by a CAO, but who have included a stipulation in the individual employment contracts (possibly via a personnel manual) that the employment contract will end *ipso jure* on the first day of the month in which the employee reaches the pensionable age, the amendment can give cause for reflection. To redress this situation it is possible to ensure, by means of a change in the employment contract (or personnel manual), that the employee suffers no financial disadvantage. Consent to the change in the employee’s contract is required, however.

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