NautaDutilh

The Dutch Future Pensions Act

5 things you need to know

Intro

The Netherlands are moving towards a new pension system. This transition must be completed by 1 January 2028, which requires a great deal of effort from all parties involved: employers, employees, trade unions, works councils, pension providers and asset managers.

#1 Defined benefit schemes will disappear and pension funds can no longer make retirement income promises

#2 There are three types of defined contribution schemes

#3 The transition is based on a transition plan, an implementation plan and the binding of all (former) employees

#4 Accrued pensions will be transferred to the new pension scheme

#5 Employers do have duties of care

The Dutch Future Pensions Act (Wet toekomst pensioenen; Wtp), which came into force on 1 July 2023, represents a significant transformation in the Dutch pension system. These reforms have been introduced to address the changing demographics, financial sustainability, and the evolving needs of all Dutch pension beneficiaries. Our Employment & Pensions team describes the key changes and their implications.

#1

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Pensions can only be accrued under a defined contribution scheme, with assets managed and invested collectively for all participants.

Defined benefit schemes will disappear and pension funds can no longer make retirement income promises

One of the reasons for changing the system is the desire to achieve a better balance between the pension outcome and the contribution rate. This means a shift away from nominal security, allowing collective buffers and future investment returns to be used (directly) for pensions. On the other hand, the aim is to provide a more personal and transparent system based on solidarity.

The new system provides for the accrual of a pension as part of an individual pension capital, combined with the benefits of collective risk sharing. At the heart of the changes is the abolition of the system of average premiums, whereby one premium is paid for each individual, regardless of age. Defined benefits are no longer possible; the new pension system will be contribution-based. Pension funds will invest the contributions to the pension scheme and record the personal part of the collective pension assets for each of their members.

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In the new system, there will be three variations of the defined contribution plan to choose from.

There are three types of defined contribution schemes

Pension assets are built up at the individual level by investing contributions. The Act introduces three types of defined contribution schemes: (i) the solidary contribution scheme; (ii) the flexible contribution scheme; and (iii) the contribution-payment scheme (only for pension insurers). All three have flat-rate contributions (regardless of age), which are subject to a tax ceiling (currently up to 30%). The main difference between the three types of schemes is the level of participant involvement in the investment of the contributions and the collective risk sharing through the use of a reserve in case of disappointing investment returns.

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The employer needs to develop a transition plan that outlines the new scheme and justifies why the transition is considered to be balanced.

The transition is based on a transition plan, an implementation plan and the binding of all (former) employees

Each transition must be based on a transition plan. Such a plan covers, among other things, the type of new pension scheme chosen, the effects vis à via (former) employees, compensation measures and the way in which current pension rights will be converted. These plans are drawn up by the employer in consultation with the unions or the works council, based on input from the pension administrator.

The pension administrator then has to draw up an implementation plan and decide whether to accept and adopt the administration of the scheme. The final step is to bind the (former) employees to the new scheme. Depending on the circumstances, this may be done by obtaining (tacit) consent, by applying a unilateral right of amendment or by means of a collective agreement. If the pension scheme is administered by an occupational pension fund, the employer must submit the transition plan to the fund by 1 January 2025. If the scheme is administered by a pension insurer or premium pension institution (PPI), the deadline for submitting a transition plan is 1 October 2027. The whole process must be completed by 1 January 2028 at the latest.

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The pension accrued under the current scheme will be transferred by default to the new pension system and its rules.

Accrued pensions will be transferred to the new pension scheme

A particular element in the transition of pension schemes operated by pension funds is that the new rules do not only apply to future pension accruals. As a rule, the already accrued pensions must also be transferred to the new scheme (‘invaren’). Contrary to common practice, the Act stipulates that participants and inactive persons do not have an individual right to object to this transfer. The law only stipulates that the transfer, like the entire transition, must be ‘balanced’.

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Employers have to provide their employees with adequate pension information. The pension fund or insurer can often help with this.

Employers do have duties of care

Employers have a duty of care in relation to pensions. Case law has established that they must provide employees with adequate information about life events and changes to the pension scheme. This is particularly important during and after the Wtp transition, when the risks will shift from the pension provider to the participant. The fact that the Wtp also imposes a duty on pension providers to provide guidance to employees does not detract from these duties of care. The employer knows its employees best and remains primarily responsible for the change process.

About the Employment & Pensions team

The many demographic, societal and economic changes, the renewal of the pension system and the increasing cost and regulatory burdens mean that the pensions sector will face significant challenges in the coming years. Our team has many years' experience of supporting the various players in the pensions market: pension providers such as pension funds and pension insurers, and employers. We understand the dynamics of pensions and the different areas of law involved, and are happy to offer our extensive knowledge and experience in an integrated manner appropriate to each market player.

Contact

Do you have questions about any of the above? We are here to help.

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