BUREN BASICS EMPLOYMENT | PART 2:

THE DUTCH PENSION SYSTEM

JULY 2019

BE UNSTOPPABLE

BUREN

LEGAL | TAX | NOTARY

The Dutch pension system is a so-called "three-pillar" system and consists of the following: (i) state pension, (ii) supplementary collective pension and (iii) individual arrangements.

1. AOW-pension

The AOW is the state pension. Under the General Old Age Pensions Act (in Dutch: *Algemene Ouderdomswet*, in short: "**AOW**"), all persons living or working in the Netherlands are in principle automatically insured under the AOW scheme, and accrue pension rights annually.

Persons in the Netherlands receive AOW pension from the day they reach their pension age. Since 2012 the pension age increases from 65 to 67 in 2021, and is currently 66 years and 4 months. Recently, Dutch employers, unions and the government agreed upon a pension agreement (in Dutch: *Pensioen akkoord*) based on which (i) the current pension age is to be fixed for two years (2020 and 2021), (ii) the increase of the pension age will slow down by three years, to reach 67 in 2024 and (iii) the pension age after 2024 is to be increased by eight months for every year of extra life expectancy. The pension agreement must be approved by the Dutch Senate (in Dutch: *Eerste Kamer*), after which it is expected that this new legislation will enter into force as per 1 January 2020.

Please be informed that the AOW pension is just a modest amount of pension. Therefore, AOW pension usually forms a basic pension only.

2. Supplementary collective pension

In addition to AOW pension, it is common for employees to participate in a pension scheme during their years of employment.

In principle, employers are not under any obligation to provide pension schemes for their employees, except in the following cases:

- Employers could be required to participate in mandatory sectoral pension funds (in Dutch: *bedrijfstakpensioenfonds*). Mandatory participation in a sectoral pension fund is based on a Decision for Mandatory Participation (in Dutch: *Verplichtstellingsbesluit*). In the event that the business activities of employers fall within the Decision's scope employers (and employees) must in principle participate in that sectoral pension fund.
- A Collective Labour Agreement (CLA) applies, based on which employees are entitled to a pension scheme. In that case the employer must offer the employees the pension scheme specifically prescribed by the applicable CLA.
- The employer provides a pension to a certain defined group of employees, for example employees holding the same position within the company (Article 7 Pension Act). In case an employee is part of that group, the employer is required to provide that employee with the same pension scheme. Please note that in defining a group of employees who may participate in a pension scheme no unjustified distinction may be made between employees (e.g. based on sex, age).

Please note that, irrespective of whether the employer provides a pension scheme, the employer must inform the employees within one month after they commence employment whether or not they can participate in a pension scheme. It is customary to include this in the employment contract.

Typically, collective pension schemes are arranged between employers, employees and independent external pension funds ('triangular relationship'). The

legal basis of collective pension schemes consists of a pension agreement (in Dutch: *pensioenovereenkomst*) in which employers and employees agree on the conditions of the pension. The pension agreement is commonly included in individual employment contracts or in the CLA. Employers delegate the execution of pension agreements to pension providers. Arrangements between employers and pension providers about the execution of pension plans (premium contribution, indexation, etcetera) are included in administration agreements (in Dutch: *uitvoeringsovereenkomst*). Relationships between pension providers and employees are governed by the pension scheme rules (in Dutch: *pensioenreglement*), which are determined by the provisions in the pension agreements and the administration agreements. The pension scheme rules lay down the individual pension rights and pension obligations of employees with regard to the respective pension fund.

Furthermore, Dutch law in general provides for two types of pension schemes:

- “Defined Contribution Scheme”: the pension entitlement depends on the contributions paid by the employer to an insurance company, a sectoral pension fund or a (company) pension fund. The investment earned and the cost of purchasing pension return on retirement.
- “Defined Benefit Scheme”, in which the pension benefit on retirement is not dependent on the contributions paid, but will be defined when the employee enters into the scheme. The Defined Benefit Scheme can be set up in several ways and can be subdivided into (i) an average pay scheme, where the amount of pension depends on the average salary earned by the employee, and (ii) a final pay scheme, where the amount of pension depends on the last earned salary before the employee retires.

3. Private individual pension

In addition to the abovementioned two pillars under the Dutch pension system, employees can individually and voluntarily arrange for additional pension schemes (e.g. annuity insurance, life insurance).

Key contacts

Suzan van de Kam
Partner
s.vandekam@burenlegal.com
T +31 (0)70 318 4297

Maaike Postma
Associate
m.postma@burenlegal.com
T +31 (0)70 318 4876