



NEWS REPORT

Date: 18 December 2013
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Title: Measures affecting the position of older employees in the Dutch labour market
Country: The Netherlands
Context
Issue at stake: Several government proposals to change the position of older employees in the social system and in the labour market
Ground of discrimination: Age
Source: Social Accord, Bill concerning dismissal and the duration of unemployment benefits
Field: Employment
Legislative provisions: -

Content:

In April 2013, a tripartite Social Accord between trade unions, employers' organizations and the Dutch Coalition Government postponed and amended a number of austerity measures previously announced by the Government, and offered a blueprint of the country's social policy for the next decade.¹ From a non-discrimination perspective, it is essential to highlight that the Accord endeavoured to address some developments on the Dutch labour market that disproportionately threatened more vulnerable groups, including elderly persons.

Many of the measures that were agreed upon in the Accord are now incorporated into bills, one notable example being the adjustment of dismissal procedures. Employees with a permanent employment contract have always been well-protected in the Netherlands with respect to dismissal, leading some economists and politicians to argue that the labour market had become too rigid. The proposed Bill will simplify and streamline dismissal procedures, making it easier for employers to dismiss employees. However, the other side of the coin is that the Bill will also extend protection against dismissal to flex-workers.

A second recent proposal is the adjustment of the duration of unemployment benefits, from 38 months now to 24 months in 2016. This measure, like the simplification of dismissal procedures, will affect older employees more than other groups, because it is more difficult for this particular group to find another job after their employment agreement has been terminated (and because a larger share of older people is currently unemployed).

¹ See NL-75 Flash Report NL 2013-4 on this Social Accord.



A third proposal that is particularly relevant to older workers concerns automatic dismissal clauses (*pensioenontslagbeding*). Many labour agreements currently contain such a clause, which stipulates that the agreement ends automatically upon the employee reaching the age of 65. There have been many legal proceedings on the question of whether these retirement dismissal clauses are valid, but in July 2012 it was decided by the Dutch Supreme Court that such a clause is valid, even if it concerns a permanent labour contract.²

The Dutch Government, apart from raising the retirement age, also encourages to continue working after the retirement age. The percentage of people that work beyond the retirement age however is surprisingly low, reaching only 3.9% percent in 2012. One important explanation for this low percentage can be found in the existence of quite a few legal provisions that hinder employees to continue working after reaching the statutory retirement age, such as the automatic dismissal clauses.

The Dutch Minister of Social Affairs and Employment, Mr Asscher, is therefore expected to propose a Bill that will make such automatic dismissal clauses illegal, rendering it easier for those willing to continue working after their retirement age. This is of particularly great importance as it prevents older employees from falling between two stools, i.e. being dismissed at 65 while they do not yet receive retirement benefits due to the increased retirement age (the statutory retirement age will stepwise be raised to 67 in 2023, and will subsequently be linked to life expectancy).

All three proposals will be debated in the Lower House (*Tweede Kamer*) in 2014. At present, it remains unclear when the Bill concerning the automatic dismissal clause will be submitted; the debate on the Bill concerning dismissal and the duration of unemployment benefits is scheduled to take place January 20th. It is difficult to say whether the Bills will be passed, as the Coalition Government lacks a majority in the Dutch Senate, but as by now it seems that a parliamentary majority is in favour.

Address of the webpage:

The full Social Accord may be retrieved at : http://www.stvda.nl/~media/Files/Stvda/Convenanten_Verklaringen/2010_2019/2013/20130411-sociaal-akkoord.ashx

The Minister of Social Affairs and Employment's Bill concerning dismissal and the duration of unemployment benefits can be found at:

<http://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail.jsp?id=2013Z23566&dossier=33818> Both last accessed 18 December 2013.

² Hoge Raad, 13 July 2012, ECLI: NL:HR:2012:BW3367. This verdict may be retrieved at <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2012:BW3367> (last accessed 12 December 2013).