

Curaçao, *February 2, 2016*

AMENDMENTS OF THE PENSION ORDINANCE FOR PUBLIC SERVANTS (PB 2013, no. 27) AS OF JANUARY 1, 2016

HBN *Law*
SINCE 1938



Introduction

The General Pension Insurance plan (“AOV”) has been amended on March 1, 2013. The state pension age (the pension age) was thereby raised from 60 to 65 years. As a result, anyone that was younger than 59 years on March 1, 2013, will no longer qualify for the pension benefit at the age of 60, but at the age of 65. Those who reached the age of 57 or 58 on the introduction date of the amended AOV plan, can still opt to receive the pension benefit at the age of 60, however, they will receive a lower pension benefit instead. Those who were already 59 years of age on March 1, 2013, will still become pension beneficiaries, within the meaning of the AOV plan, when they turn 60 years of age.

The AOV plan does not entail any legal obligation for the employer to raise the pension age to 65 years. The current pension plans of many employees are calculated with the inclusion of the AOV-deductible. In the event the company does have such pension plan (private) and a pension age of lower than 65 years, a pension-gap will be created, resulting in a lower pension claim on the side of the employee. The employers are therefore, partly in view of the good employment practices, obligated to look for a solution.

The pension benefit of the General Pension Fund of Curaçao (“APC”) is also calculated with the AOV-deductible, which means that the AOV amount has to be deducted from the pension pay. The pension amount of APC is to be considered a supplement to the AOV. The fact that the pension age was raised to 65 years, while the pension age of APC is still 60 years, is the underlying cause that the pension-gap was created.

The pension-gap is threefold:

- During the period between 60 and 65 years when no AOV-payment is received;
- During the period between 60-65 years that the full premium AOV/AWW has to be paid;
- During the period between 60-65 years where, if applicable, a higher premium BVZ has to be paid (7.1 % extra).

The Pension Ordinance for public servants (PB 2013, no. 27), hereinafter to be referred to as the Pension Ordinance, was amended on January 1, 2016, in order to mitigate abovementioned damage for the pension beneficiaries.

Amendments Pension Ordinance

The Pension Ordinance regulates the retirement pension and is applicable for public servants. Some employees (non-public-servants) are also subject to the Pension Ordinance since they have been given access to the Pension fund of APC¹ by means of a designation

¹ According to this Ordinance, employees of a legal entity that, in the view of their objectives and financial affair with the Country, were appointed by a decree as a body by which its staff are also considered to be public servants within the meaning of this Ordinance.



pursuant to article 5 of the Pension Ordinance. The provisions of the Pension Ordinance apply mutatis mutandis to all employees that are members of the pension fund of APC (hereinafter: "APC-employees") after the admission to the pension fund. These APC-employees are then qualified as public servants in the meaning of the Pension Ordinance. Consequently, companies that employ APC-employees will have to implement the amendments of the Pension Ordinance.

The pension age as stated in article 21 subsection 1 of the Pension Ordinance has been amended from 60 to 65 years as per January 1, 2016. The created pension-gap for public servants, within the meaning of the Pension Ordinance, has been closed due to the raised pension age. Based on the Pension Ordinance an honorable discharge for a public servant no longer takes place at the age of 60 but at the age of 65. However, the employment agreements are not automatically amended to the age of 65 for APC-employees based on the Pension Ordinance. Therefore, their employment agreements have to be amended accordingly.

The amended Pension Ordinance has the following transitional provisions and compensation arrangements:

- a. Members that were born in 1956 (59 years) and members that chose to use the early retirement plan, maintain the pension age of 60;
- b. Members that were born in 1956 receive the following compensations between 60 to 65 years:
 - i. AOV-benefit (on the condition of membership as of 1-1-1998);
 - ii. Premiums AOV/AWW (employer's and employee's contribution 16%);
 - iii. Premium difference BVZ (7.1%);
- c. Those who chose the early retirement plan, will only receive a compensation as mentioned under iii (premium difference BVZ);
- d. Those members whose pension age has been raised from 60 to 65 years, will obtain an increase of 30% on the built up pension at the end of 2015 (as a compensation of the raised pension age);
- e. All the members between 55 to 58 years of age (as per the end of December) and all the younger members that have already built up 30 pension years or more, can opt to retire at an earlier age (between 60-65). The built up pension will decrease with 6% for every early retired year. Furthermore, as mentioned under b ii, they will also receive a compensation of the AOV/AWW premium (16%);
- f. The employee's contribution will decrease from 8% to 6%.

The current employer of the APC-employees has to bear the cost of the abovementioned compensation arrangements. However, the premium reduction comes also for the account of the current APC-employees. The costs for the government are reduced and the financial position of APC reinforced, due to the amendments in the Pension Ordinance. Generally, the same applies for companies that employ APC-employees.



Conclusion

The recent amendments in the Pension Ordinance not only have implications for public servants, but also for employees of companies affiliated to APC. The current employer has to comply with the Pension Ordinance and therefore, has to amend the employment agreements accordingly. Also, the current employer is legally obligated to bear the cost of the compensation plan. Since the premiums were reduced, aforementioned costs should in principle be covered.

If your company employs both employees with a private pension insurance as APC-employees, unjustified distinction (discrimination) between employees as a result of the legislative amendment should be prevented. Switching to a uniform pension plan is also a possibility.

CONTACT INFORMATION

If you have any questions on the matters discussed above, please contact:

Darlène A. Matroos-Piar
+5999 434 3300
darlene.piar@hbnlaw.com

© HBN Law

HBN Law
SINCE 1938



HBN Law B.V.
(Netherlands)
Strawinskylaan 1143,
1077 XX Amsterdam,
The Netherlands
T/F +31 20 4715 030
info@hbnlaw.com

HBN Law Holding N.V.
(Aruba)
Beatrixstraat 38
Oranjestad, Aruba
T +297 588 6060
F +297 588 6668
info@hbnlaw.com

HBN Law Holding N.V.
(Bonaire)
Keya Korona 40
Kralendijk, Bonaire
T +599 717 6944
F +599 717 5628
info@hbnlaw.com

HBN Law Holding N.V.
(Curaçao)
Huize Belvédère, L.B. Smithplein 3
Willemstad, Curaçao
T +5999 434 3300
F +5999 434 3355
info@hbnlaw.com

HBN Law Holding N.V.
(St. Maarten)
W.G. Buncamper Road 33
Philipsburg, St. Maarten
T +1 721 542 2272
F +1 721 542 4381
info@hbnlaw.com