

Employee's objection period only two weeks against an industry-wide pension fund exemption decision

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Dutch labor law provides (in Article 7: 686a of the Dutch Civil Code) for relatively short (expiry) periods for submitting a petition by an employee. For example, a period of two months applies if the employee wishes to contest a cancellation of his employment agreement. A period of three months applies to claiming a transition payment.

Significantly shorter time limits apply in administrative law. If an employee therefore appeals to an administrative body or the administrative court with an objection or appeal, the employee will have to guard against the inadmissibility of the objection due to a non-excusable time limit.

The latter happened to an employee who believed that the pension plan of her employer, which was placed with a pension insurer, was not equivalent to the pension plan of the industry pension fund Zorg & Welzijn (PFZW). Only in September 2016 did the employee complain about this to her employer. She claimed retrospectively the same pension build-up as with PFZW.

Her complaint followed the message from her employer sent in August 2016 that PFZW had exempted him from compulsory participation in the pension fund. The exemption decision of PFZW, however, dates from the end of 2015 and covered the period from 2007 to 2017, while the employee had already started working for the employer in 2007. The employee first objected to the exemption at the employer. Only later did she object to the administrative court and on appeal to the Trade and Industry Appeals Tribunal. In both instances, the employee's appeal was declared unfounded.

An employer who is obliged to participate in an industry-wide pension fund (BPF) can request exemption on a number of grounds (referred to in the Exemption Decree Act BPF 2000). A BPF is, for example, obliged to grant an exemption to an employer if an employer is part of a group of companies and another pension scheme applies within this group, which was established in consultation with the trade unions. A BPF will also have to grant the exemption request from the employer and trade unions if the employer has entered into a collective labor agreement with the trade unions, of which a pension scheme forms part. Finally, a BPF can also exempt the employer from compulsory participation for other reasons to be assessed by the BPF, but often the BPF pursues a very cautious policy on this point.

An exempted employer must - as a counter condition - enter into an actuarial and financially equivalent pension plan for the employees of another pension provider. If the employer does not do this, the BPF will be able to withdraw the exemption and the employer and his employees will

still have to (retroactively) join the mandatory industry-wide pension fund.

A BPF only discloses the exemption decision to the applicant and the interested party to whom the decision is addressed, ie to the employer and, in the case of a joint request, also to the trade unions. An objection can be filed against the exemption decision within six weeks from the day on which the decision was announced (Article 6: 7 of the General Administrative Law Act (Awb)). However, the Awb and the Exemption Decree Act BPF 2000 do not oblige the BPF to (also) disclose the exemption decision to the employees of an exempt employer.

An employee may be interested in the exemption decision and object to the administrative body that took the exemption decision (the BPF), if he / she believes that the employer has not concluded a pension scheme equivalent to the BPF. According to settled case-law, an interested party who has not been informed by means of notification or publication of an exemption decision that has been duly disclosed must, in principle, object to this within two weeks after he / she is aware of its existence. It is not required that the employer informs the person concerned of the precise content and wording of the exemption decision. It is sufficient that the person concerned is aware of the existence of the exemption decision, for example because the employer has informed the employee (s) about this. From that moment the (very) short objection period of two weeks for the employee starts.

So if the employee wants to take action himself, he will have to submit a legally valid notice of objection to the BPF and not the employer, as the employee had done in the introduction to this blog. If the employee exceeds this objection period, the objection is inadmissible. If the employee is on time, the objection may have to be substantiated at a later stage with pension-based actuarial calculations. Challenging the exemption decision is therefore (for several reasons) a difficult task for the employee.

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