

## Legal insights: **Retirement**

As of July 1<sup>st</sup>, 2020, the entitlement age to old age pension (AOV pension) has been increased from 62 years to 65 years. That prompted me to think again about the end of an employment agreement when reaching this age. Again, because when the AOV pension was increased in Curaçao in 2013, I researched this topic extensively to advise clients. I also had a personal interest in this subject because the increase of this age affected my mother's retirement directly.

I noticed that in Sint Maarten many employees continue to work after reaching the AOV pension entitlement age. I imagine that has to do with the amount of pension and the high cost of living in Sint Maarten. Many employers in Sint Maarten do not have a pension plan for their employees, which makes it financially difficult to retire.

A misconception can be that the employment agreement ends automatically when the employee reaches the age of entitlement to AOV pension. The employment agreement only ends automatically when parties agree in the employment agreement that it will end when the employee reaches such age. This can also be agreed in a collective labor agreement.

If such a clause is not included in the employment agreement or the collective labor agreement the employer will have to recur to the legal available paths to terminate an employment agreement. The employer will be required to request a permit at the labor office to give notice to the employee or request the court to dissolve the employment agreement.

According to case law of the Supreme Court reaching the AOV pension age is a valid reason to terminate an employment agreement. Furthermore, the guidelines of the labor office for issuing permits to terminate an employment agreement determine that generally the permit will be granted unless the employee makes it plausible that he is not able to provide for himself in a socially acceptable manner after termination of the employment agreement. In that case the employee needs to prove that he is physically and mentally able to perform the labor agreed on.

When an employment agreement comes to an end the employee is entitled to Cessantia in accordance with article 3 of the Cessantia Ordinance. Cessantia is a financial compensation based on the tenure of the employee with the company. The employee is not entitled to receive Cessantia from the employer if the employee is to blame for the termination of the employment agreement or the employment agreement ended because of a circumstance that has to remain for the employee.

Thus, the employee of which the employment agreement ends or is terminated when he reaches the AOV pension age is also entitled to payment of Cessantia by the employer. The Cessantia can be a hefty amount if the employee has a long tenure with the company. If the employee has a pension plan that gives the right to a pension of a higher amount than the AOV pension, the employer is not required to pay Cessantia.

I would recommend employers to include a pension retirement clause in their employment agreements or to negotiate the inclusion of such a clause in the collective labor agreement. Then it is clear to both parties when the employee will retire. I would recommend to not include an exact age in the clause as the AOV pension age is subject to change. An exact age will cause discussions and interpretation problems if the AOV pension age is increased.

Further, it may be worth considering providing pension plans to employees. This will give employees more security when the employment ends. It will prevent the employer from having to pay a hefty sum at once at the end of the employment agreement and will stimulate a better balance in the ages of employees working for the company.

A personal thought as a millennial is that there will not be an AOV pension by the time I reach old age. My choices are working till I die or saving for retirement. Millennials and younger generations should start thinking about retirement now if they ever want to retire. Tomorrow will be too late.