

Changes in legislation on disability in the Netherlands

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In the early 1990's, The Netherlands faced an extremely large number of benefit recipients, for both short-term disability (sickness benefits) and long-term disability benefits. Nationally as well as internationally, this was called the "Dutch disease". Changes in the disability programs in 1987 did not have the expected results of a decreased influx into the disability schemes.

The efforts to solve the problem in the 1990's have been directed to both disability programs: short-term and long-term. Special attention was paid to the transition from short-term to long-term disability.

The basics of the numerous changes in the disability area are:

- a shift in responsibility from the administering organization to employers and employees; financial incentives to enhance return to work;
- work first: a focus on capabilities to work instead of a focus on incapacity;
- making work attractive: better off working than being on benefit rolls.

SHORT-TERM DISABILITY

Formerly, the Sickness Benefits Program provided benefits out of public funds for those unable to perform their own work, due to a medical condition. This benefit could last for 52 weeks. The system lacked incentives for both employer and employee to invest in activities to return the employee back to work as soon as possible.

In 1996, the first step was set to make employer and employee feel the pain of sickness absenteeism. A period of continued wage payment by the employer was introduced. This period was 6 weeks for larger enterprises and 3 weeks for the small ones. The effect of this measure was positive, and therefore Government decided to enlarge this period to the full 52 weeks of the Sickness Benefits Act, starting 01 January 1998. The employer's obligation to continue wage payment was accompanied by the obligation for the employers to contract out the health and safety activities to a private, certified, institution. The employer is obligated to use the criteria of the Sickness Benefits Act in assessing the employee's incapability to perform his work. If the employee does not cooperate in return to work activities, the employer is no longer obliged to continue the wage payment. Eventually, dismissal of the non-cooperative employee became possible.

To increase the pressure on employers, by 01 April 2002 a new law was enacted: the Improved Gatekeeper's Act. This Act requires that employer and employee give proof to UWV that sufficient rehabilitation efforts have been undertaken in the 52 weeks preceding the claim for a long term benefit. If UWV is of the opinion that not enough activities have been performed, the claim for a long term disability benefit will be denied, and the period of continued wage payment will be prolonged for a period of up to one year. Employer and employee have to report the progress in the rehabilitation process to UWV. After 6 weeks, the Health and Safety Organization has to develop a problem analysis. Subsequently, employer and employee have to develop an action plan to return the employee back to work, at the own employer or elsewhere.

The latest change in the short-term disability scheme was enforced on 01 January 2004. From that date, the 52 weeks continued wage payment was prolonged to 104 weeks. Combined with the Improved Gatekeeper's Act, the employer who does not fulfill his obligations, may face a continued wage payment of up to 3 years.

The Sickness Benefits Act is not completely privatized. For certain categories of employees this Act is still valid and therefore this Act functions as a safety net, e.g.:

- employees who lost their job during the period of continued wage payment;
- temporary workers working for employment agencies;
- employees whose employer goes bankrupt;
- unemployed persons;
- sickness during the first 5 years of employees hired while on disability benefit.

For these categories of the "safety net", UWV is responsible for case handling and reintegration.

LONG TERM DISABILITY

The short-term disability program is limited in time. Until 01 January 2004 this period was 52 weeks, from 01 January 2004 104 weeks. After this period, a person may qualify for a long term benefit. At the end of the short-term time disability, the client has to file a claim at UWV. The claim has to be accompanied by an overview of actions undertaken to bring the employee back to work.

General features of the Dutch system of long term disability

- No separate work injury program
The Dutch program does not differentiate as to the cause of the disability. Required is that the disability results from disease or impairment; it is not relevant whether the disability is work-related or not.
- Economic criterion
Disability is assessed by comparing the wage the person earned before the onset of disability to the value of the labor he can still perform with his disability. This means that there is no direct link between the severity of disease or impairment and the level of disability. The disability assessment, therefore, is not a mere medical affair, but the result of a combined assessment by a medical doctor and a labor expert.

WORK AND INCOME ACCORDING TO LABOR CAPACITY (WIA)

January 2006, the WIA Act came into force as a successor of the previous Act on disability insurance for employees. Clients whose first day of disability was on or after 01 January 2004 are subject to the new Act. The decision, mentioned before, to prolong the period of continued wage payment by the employer to 104 weeks instead of 52 weeks, is, therefore, directly linked to the introduction of the new long term disability legislation.

The Work and Income according to Labor Capacity (WIA) consists of two parts:

- **Benefits Act for the fully Disabled (IVA)**
Persons will be granted an IVA-benefit if the disability is over 80 per cent and the disability is "durable". These are cases where no perspective exists to return to work. Beneficiaries are exempt from rehabilitation activities. The benefit is 75 per cent of the last wage, until the age of 65.
- **Benefits Act for the partly Disabled (WGA)**
Clients can be granted a WGA benefit if the degree of disability is 35 per cent or more. (If the degree of disability is less than 35 per cent, it is the responsibility of employer and employee to find suitable work.)

The focus here is on what the partly disabled person still can do. Reintegration is the major point of concern. The structure of the benefit system is stimulating work.

The first phase of the benefit for the partly disabled is wage-related. The duration of this period depends on the client's work history, and lasts from 3 months to a maximum of 38 months. This scheme is adopted from the Unemployment Act. The benefit is 70 per cent of the monthly income minus income from work. The formula "0,7(monthly income minus income from work)" means that realizing the remaining earning capacity is profitable. The higher the income from work is, the smaller the part is that is reimbursed for 70 per cent. Roughly speaking, every extra Euro means an income increase of EUR 0,30. For the sake of simplicity, I will not discuss specific anti-accumulation provisions regulations.

After the wage-related period, the client may be eligible for a continued benefit.

The degree of disability is calculated by comparing the wage before the onset of disability to the value of generally accepted labor the person still can perform. This leads to a certain percentage of disability, graduated in classes of disability, each with a corresponding benefit percentage. The benefit is no longer based on the former wage, but on the legal minimum wage.

Class of disability	Benefit percentage legal minimum wage
0 – 35 per cent	0
35 – 45 per cent	28
45 – 55 per cent	35
55 – 65 per cent	42
65 – 80 per cent	50.75

If the benefit is solely this percentage of the legal minimum wage depends on how successful the beneficiary is in realizing his remaining earning capacity, i.e. the value of labor he is assumed to be able to realize. If the actual income from labor is less than 50 per cent, the total income of the beneficiary will be this income from labor plus the benefit based on the minimum level. If the beneficiary succeeds in realizing the remaining earning capacity for 50 per cent or more, the WGA will supplement the wage by 70 per cent of the difference between the former wage and the remaining earning capacity (to a large degree a continuation of the calculation system in the wage-related period). This means on the one hand that realizing at least 50 per cent of the remaining earning capacity is profitable, on the other hand that it still is profitable to realize as much as possible of this earning capacity.

REASSESSMENT OF BENEFITS UNDER THE OLD REGIME OF THE DISABILITY ACT FOR EMPLOYEES

For those who entered the long term disability program before the WIA came into force on 01 January 2006, the Disability Insurance Act remained applicable. However, it was decided that beneficiaries younger than 45, on 01 October 2004, were to be reassessed on the basis of more stringent criteria. We will present the preliminary results of this reassessment.

REINTEGRATION

During the first 104 weeks of disability, the employer is responsible for reintegration activities if he has the obligation to continue the wage payment. For those still covered by the Sickness Benefits Act, the responsibility lies with UWV, the administering institute.

Beneficiaries receiving a long-term disability benefit for the partly disabled are legally obliged to cooperate in reintegration activities. UWV is responsible for the administration of reintegration. The construction is that UWV makes use of private reintegration institutes. The actual reintegration, therefore, is privatized. At present, 60 private reintegration institutes are contracted by UWV to assist client in reintegration. The institutes are paid on the basis of "no cure, no pay", or "no cure, less pay", depending on the distance of individual clients to the labor market. The client has a free choice between the reintegration suppliers. Apart from the contracted institutes, the client can opt for a personal reintegration budget (IRO) that gives him the opportunity to select whoever seems best to assist him in returning to labor.

Clients and employers can qualify for a large number of facilities to facilitate the entrance into labor.

RESULTS

Accepted claims under WIA (Work and Income according to Labor Capacity) 2006

IVA (total and durable disabled)	3,795	21 per cent
WGA (partially disabled)	14,212	79 per cent
total	18,007	100 per cent

These figures are far less than the assessments made when WIA was prepared. Government, partly based on estimations by UWV, expected a number of 42,000 accepted benefit claims: 18,000 IVA benefits and 24,000 WGA benefits. It is still too early to draw very far-reaching conclusions, based on the figures of only one year. The first months of 2007, however, show a continuation of the 2006 picture.

It is clear that the Improved Gatekeeper's Act works. Employers and employees invest seriously in reintegration activities, and very often this leads to resumption in former labor, adapted labor, or placement in other work, at the own employer or another employer. Apart from that, the gatekeeper's role of UWV works: employers and employees are well aware that they have to proof of sufficient reintegration efforts. The combination of these factors results in the fact that half of the initial claims for WIA-benefits are rejected.

Until 2003 the annual influx into long-term disability was around 100,000 persons. The decrease to 18,000 in 2006 is very drastic. The development since 2001 is:

**Influx into long-term disability:
until 2006 WAO (Disability Insurance for Employees),
from 2006 WIA (Work and Income according to Labor Capacity)**

	2001	2002	2003	2004	2005	2006
WAO	103,900	92,300	66,300	59,200	19,900	11,000
WIA	0	0	0	0	0	21,000
Total	103,900	92,300	66,300	59,200	19,900	32,000
<i>Disability risk (per cent)</i>	1.55	1.34	0.95	0.85	0.29	0.46

The year 2005 is a transitional year, because due to the extension of the short-term disability from 52 to 104 weeks, only exceptional cases entered the long-term disability program.

The development is very clear towards a drastic decrease in numbers of disability beneficiaries. To explain this development, however, is not easy. The reason is that a number of changes in legislation took place in the last years. Therefore, it is not possible to clarify the exact effects of these different changes.

It is clear though, that the gatekeeper's role of UWV is important. About: half of the initial claims are rejected.

The number of initial claims, however, decreased drastically, with 42 per cent, when the Improved Gatekeeper's Act came into force. UWV estimates the effect of the extension of the short-term disability from 52 to 104 weeks, on a further decrease of initial claims by 25 to 35 per cent.

The reassessment of beneficiaries younger than 45 in receipt of a WAO-benefit resulted in 27 per cent of the cases in termination of the benefit, and in 14 per cent of the cases to a reduction of the benefit. UWV started reintegration tracks, and the percentage of clients returning to work shows an increase from 38 per cent to 51 per cent after 18 months.

Although it is not possible to give a comprehensive explanation for the successful attempts to decrease the number of disability beneficiaries, the pressure on employer and employee to invest in reintegration measures, including heavy financial incentives, appears to be very decisive.

Summarized, the effects of the changes in legislation since 2002 are:

Granted benefits 2000-2002	100,000
Of which	
- first claims	95,000
- re-opened benefits	5,000
First claims 2000-2002	95,000
<i>Minus effect Improved Gatekeeper's Act</i>	<i>-42,000</i>
First claims after Improved Gatekeeper's Act	53,000
<i>Minus effect Prolonged Wage payment by employer</i>	<i>-13,000</i>
<i>Minus effect reassessment WAO-beneficiaries</i>	<i>-5,000</i>
<i>Minus effect WIA</i>	<i>-7,000</i>
Structural level first claims	28,000
<i>Introduction effects WIA</i>	<i>-7,000</i>
Influx 2006	21,000