

Explanation of conditions for participating in a pension scheme for foreign employees

1. The employee must have an employment contract under Dutch law

Brand New Day's product (and therefore Brand New Day's legal documents) is rooted in Dutch labor law. Which means that relevant laws and regulations apply. If an employment contact is based on foreign law, the accompanying legislation would no longer apply. In fact, foreign rules and regulations might be applicable. Laws that we do not know and are unable to implement and laws that may interfere with parts of our product. Which means we should adapt our product for these specific employees. Of course we do not want that.

2. The employee must be subject to Dutch tax legislation

The Dutch pension scheme uses a system of deferred taxes: the premiums are not taxed, but the benefit is. Therefore, no income tax has to be paid by the employer on these premiums. The entire content of the scheme (offset, years of service, premium percentages and accrual percentages, etc.) is based on this. Without that tax facilitation, the attractiveness of the scheme for both employer and employee lapses, and Brand New Day has problems with the tax authorities.

This means that employees for whom the employer does not pay income tax in the Netherlands are not included in the scheme. It is therefore up to the employer and the (foreign) employee to determine, in consultation with the tax adviser of the employer, whether the employer pays income tax for this foreign employee or whether he uses tax treaties, exceptions, etc. for this employee.

To give you an idea of the complexity of the 'foreign worker' or the Dutch worker attached this [link](#). We are not going to deal with this. The following applies to us: if the employer pays income tax for an employee in the Netherlands, this employee can be included in the pension scheme at Brand New Day.

3. The employee must be subject to Dutch Social Law

In order to be able to make use of, for example, the incapacity for work module, extra death benefits or other facilities in the pension scheme, it is important that the participating employee is subject to Dutch social law. For example, the pension scheme assumes in it's a accrual at least a partial Dutch state pension, when there is no state pension or the like at the retirement age this significantly changes the employees situation. The same applies to the incapacity for work module: we (a.s.r.) follow the decisions about the WIA / IVA of the UWV. If no WIA or IVA benefit can be arranged for the foreign employee, there will therefore never be a waiver of premium, while this is paid for in the scheme.

A second reason why employees who do not subject to Dutch social law cannot be included in the scheme is that they may be subject to the social law of another country. This legislation might (just as in Dutch social law) contain "mandatory law" provisions that we should therefore be adopted. Our expertise is Dutch law. It is true that the Netherlands has entered into treaties with many other countries in this area, but it does not alter the fact that we do not want to be 'committed' to the law of that country by means of the foreign workers. This is not only our position but also that of a.s.r.

An exception to this applies to employees with a Dutch or European employer and whose country of origin is an EU country: Regulation 593/2008 (Rome I). On the basis of Rome I, the mandatory legal provision of the country of employment applies. So if the employer in the EU declares that the employees in the Netherlands work from a permanent establishment (see form Foreign employer), we will not be affected by mandatory provisions of another European country with regard to the implementation of the pension agreements. This does not apply to employees with employers from other (non-EU) countries. You can see that this requirement has many interfaces with having a Dutch employment contract. An employer can indicate that this is the case via the [Foreign Employer](#) form.