



Proposal: Labor Law Reform for Economic Stimulus

May 19, 2020

Introduction

As a result of the most recent article IV consultation in Aruba in May of 2019, the International Monetary Fund concluded there is a pressing need to address structural challenges. Amongst the key policy recommendations, the IMF advised to foster labor market flexibility. The fund observed that labor market regulations in Aruba are rigid and structurally impede growth. More specifically, procedures for terminating employment contracts appear cumbersome and costly—creating disincentives for voluntary resignations and hiring, thereby impeding labor mobility and job growth. SER and other organizations have also recommended labor law reform in the past to enable a more productive economy.

Since the corona crisis, the need for labor market flexibilization is furthermore underlined by the Dutch experience: The Dutch minister of social affairs on the 8th of May 2020 suggested that businesses subscribing to the wage subsidy program in the Netherlands will be able to dismiss employees from June 2020 onwards. According to the minister, the rationale allows businesses to restructure and addresses the inevitability that some businesses will go bankrupt and that some employees will lose their jobs. The measure, which introduces additional flexibility in the labor market, is intended to offer businesses the opportunity to adapt to the new reality and avoid incurring labor costs that threaten their solvency.

In response to the COVID crisis, on May the 1st 2020, the Council of Ministers for the Dutch Kingdom approved a wage subsidy program similar to the program implemented in the Netherlands. However, given Aruba's reliance on the tourism industry, the COVID crisis has impacted the local private sector to a greater extent and threatens the solvency of a great number of businesses on the island. Furthermore, the recovery period of Aruba's tourism is expected to be gradual and slow. The extent to which tourism demand, and therefore profitability in the tourism industry, will recover in the medium term remains uncertain. Consequently, a greater sense of urgency exists to enact the labor flexibilization recommendations of the IMF. The swift recovery of the private sector and future strength of our economy will depend to a great extent on the island's ability to minimize exposure to the COVID shock or other crisis and adjust employment accordingly to maintain solvency.

Objective

Contemporize the labor law and eliminate the restrictions that impede:

1. A nimble economy with emphasis on viable employment
2. More employment opportunity
3. Entrepreneurial experimentation
4. Increased productivity to support a stronger economy



Proposal

A complete labor law review and reform is needed; however, we hereby propose the most urgent and effective changes for immediate action:

1. Fixed term contracts

With the exception of Aruba, all countries within the Kingdom of The Netherlands allow for parties to agree on fixed term labor contracts.

Aruba, however, introduced a law in 1992 to abolish fixed term contracts, with only 4 exceptions:

1. Seasonal labor as a result of increased business activity in the company.
2. Replacing an employee who is temporarily absent.
3. A specifically described job or project.
4. Casual labor.

These restrictions were placed in art. 7A:1613x paragraph 2 of our Civil Code. Additionally, even for those limited 4 exceptions in which a business can enter into a fixed term contract, the Civil Code stipulates various restrictions for the extension of such fixed term contracts.

The proposal is to allow fixed term contracts at any time, up to a maximum of 3 back to back, by:

- a. Deleting article 7A:1613x paragraph 2 through 6 of the Civil Code.
- b. Amending article 7A:1615f Civil Codes.

2. Mandatory Pension

An agreement between employer and employee that agrees on an end date, is currently prohibited as per art. 7A:1613x paragraph 2 through 6 of our Civil Code. This means that even if employer and employee agree that the labor contract will automatically end when the employee reaches the AOV-age, such agreement is deemed to be a 'fixed term contract', which is against the law in Aruba as per article 7A:1613x Civil Code.



In practice this means that Aruban labor agreements do *not* automatically end when the employee reached the AOV-age. This leads to the existence of an elderly workforce and less opportunity for the younger population. This is especially an issue in the horeca-sector where many employees were employed in the late '80's and early '90's.

In 2013, an exception was made for those labor agreements that were entered into after April 1, 2013: Only those labor agreements dated after April 1, 2013 may validly contain a termination stipulation effective at AOV-age.

This law, combined with the fact that the State Pension is limited, and the fact that General Pension was only introduced a few years back, leads to a situation where employees at retirement age in practice will not leave employment.

Additionally, the law allows for employees to unilaterally extend their own pension age yearly, up to 5 times (Flex Pension). Consequently, an individual employee's AOV age can be 70 if he/she decides to extend (based on AOV age of 65). The employer has no influence on this decision.

Many labor agreements in Aruba do not contain a stipulation that the contract ends when the employee reaches AOV-age, which is why a removal of art 7A:1613x Civil Code will not have the desired effect of an automatic ending at AOV-age.

The proposal is to:

- a. Introduce a law that stipulates an automatic termination of the labor agreement at AOV-age. Note: because of the possibility to 'Flex', even if the law includes the proposed automatic termination at AOV-age, that age might be 70 years of age (if AOV age is 65).
- b. Add to art. 3.1 of the State Ordinance that Cessantia is also due if the employment contract ends automatically based on the employee reaching the AOV-age, unless the employee is not entitled to Cessantia based on art. 3.4.

3. Flexible working hours

In 2013, the law was amended and art. 7A:1613aa paragraph 2 Civil Code was added. As a result, regardless of what parties agree upon, the employer must pay an employee in any given month a salary based on the average hours worked during the previous 3 months.



This agreement is disadvantageous to both parties, as the employer will be reluctant to hire an employee based on a flexible working hours contract, while on the other hand employees might favor more flexibility as to their working hours.

By comparison: In the Netherlands, parties may agree to flexible hours and pay. In Aruba however, such agreement would be against art. 7A:1613aa Civil Code.

In addition, art. 1613aa paragraph 1 Civil Code stipulates that once an employee works 20 hour per week or 80 hours per month during a period of 3 consecutive months, this automatically constitutes a labor agreement.

The proposal is to:

- a. Remove art. 7A:1613aa Civil Code.
- b. Remove art. 7A:1613aa paragraph 1 Civil Code.
- c. Replace the text of article 7A:1633aa Civil Code with the Dutch equivalent in art. 610a and 610b Dutch Civil Code which does allow for individual agreements between employer and employee regarding flexible hours and does not mandate pay based on the previous 3 months worked.

4. Reduction of working hours.

We propose to introduce a law based on which employers will be allowed to reduce working hours and corresponding pay when they can show that their revenues are reduced for a certain period of time. The specific condition can be discussed, i.e.: "when for a period of x months, the revenues have decreased by xx% compared to a previous period."

5. Maximum amount due to employee when labor agreement is terminated or dissolved.

In the Netherlands the labor laws on *termination* were amended more or less drastically several times in recent years, mainly to boost the economy and employability. There is much discussion on the (dis)advantages of the Dutch laws but one of the changes was that the compensation that the employees can receive when their contract is terminated or dissolved by the Court was transformed in a 'transition allowance' based on 1/3 monthly salary per employment year, with a maximum of currently € 83,000. An exception was made for employees with an annual income of more than € 83,000. In that case, the maximum is 1 year's salary. An employee with an annual income of more than this amount will receive a maximum annual salary.



In the Netherlands, the Court can award an additional amount in damages if the Court finds that the employer acted in gross negligence.

The proposal is for Aruba to also stipulate its own legal maximum to the amount of damages, which would include Cessantia, modeled partly after the system in The Netherlands. For reference: <https://www.rijksoverheid.nl/onderwerpen/ontslag/vraag-en-antwoord/hoe-hoog-is-de-transitievergoeding-als-ik-word-ontslagen>