Universiteit van Amsterdam

AMSTERDAM INSTITUTE FOR ADVANCED LABOUR STUDIES

FLEXIBILITY AND SOCIAL PROTECTION

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Working paper 2003-15

February 2004

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FLEXIBILITY AND SOCIAL PROTECTION

TABLE OF CONTENTS

INTRODUCTION

Recent developments in the Netherlands

In the Netherlands the issue of (the need for enhanced) flexibilisation of the labour market and (a concern for) protection and security of the workers involved has been on the agenda since the mid 1980s. As of the mid 1990s deliberate policy efforts have been undertaken to balance and reconcile both flexibilisation and security in the labour market. These policies can be referred to as "flexicurity" strategies (Wilthagen, 1998), the core of which is represented by the Flexibility and Security Act, that came into force on 1 January 1999 (see Verhulp, 2001). This law has significantly altered both the scope and content of protection for flexible workforces in the Netherlands. Therefore I will start with a brief history and explanation of this law and its consequences. Next I will describe some important aspects of the most widespread categories of flex work in the Netherlands. This may foster the understanding of the regulations, facilities, issues and problems identified further in this report.

A new approach was adopted at the end of 1995 when the Dutch Minister of Social Affairs and Employment, Ad Melkert (Labour Party), attempted, in a memorandum called 'Flexibility and Security' (Flexibiliteit en Zekerheid, December 1995), to strike a balance between flexibility and (social) security. This memorandum contains an interrelated set of starting points and proposals for modifying the dismissal protection enjoyed by employees in standard employment relationships (shorter probationary period, shorter notice periods, greater scope for extending fixed-term contracts without the obligation to give notice and apply for a permit), abolishing the permit system for temporary work agencies (TWA's) in respect of their placement activities and, at the same time, enhancing the legal position of temporary agency workers, whose relationship with the agency is to be defined as far as possible as a standard employment contract. Another important policy document was the government's 1996 memorandum "Working on security" (Werken aan zekerheid) in which the government deliberates whether flex workers' access to the social security system (in particular the Unemployment benefit system) is too restricted. At the time sufficient evidence was lacking, the government argued, and therefore research was commissioned (see section 4).

It is important to note that these flexibility and security measures put forward by the Dutch government pertain first and foremost to the legal position of employees, i.e. to their position in labour law (focusing on employment and job security) rather than directly to their social security position (though these positions are evidently related). Back then in the Dutch coalition government, nowadays referred to as the first 'purple' coalition of Labour, Liberals and Social Liberals, no agreement on the flexibility and security proposals could be reached. Subsequently, the

Labour Foundation was asked for its advice on this matter. The Labour Foundation is a consultation and advisory body at central level, which was established at the end of the Second World War (1945). Its members constitute the largest confederations of employers' and workers' organizations. Unlike the Socio-Economic Council, the Labour Foundation has no members or representatives from the government.

Under the umbrella of the Foundation, which in the early 1990s was recovering from a period in the doldrums, employees' and employers' confederations managed to hammer out a detailed agreement on flexibility and security that was published in a memorandum of the same name on 3 April 1996 (publication no. 2/96). Moreover, on 2 April 1993, the employers' organizations, the trade unions and the non-profit-making employment agency START had reached agreement on regulating the legal position of temporary agency workers after the new laws came into force. They had decided on a collective agreement that was to run for five years (see below; the collective agreements is currently be re-negotiated).

The initiatives of the social partners were very much welcomed by the government. Nearly all the recommendations were taken up in a set of proposals for new bills. On 7 March 1997, the Flexibility and Security Bill was submitted to the lower house of the Dutch parliament, together with the Allocation of Workers via Intermediaries Bill (Wet allocatie arbeidskrachten door intermediars, WADI), which provided for the abrogation of TWA permits. The new legislation came into force on 1 January 1999, its main aspects are summarized in Figure 1 below.

Figure 1: Central aspects of the Dutch Flexibility and Security Act[1]

Flexibility	Security
- Adjustment of the regulation of fixed term employment contracts: after 3 consecutive contracts or when the total length of consecutive contracts totals 3 years or more, a permanent contract exists (this used to apply to fixed-term contracts that has been extended once) - the obligation for TWAs to be in possession of a permit has been withdrawn. The maximum term for this type of employment (formerly 6 months) is abolished as well. - The notice period is in principal 1 month and 4 months at maximum (used to be 6 months). - The Public Employment Service (PES) dismissal notification procedure has been shortened and employees are no longer required to file a pro forma notice of objection to the Regional Director of the PES in the event of dismissal on economic or financial grounds in order to substantiate a claim for employment benefit	- Introduction of 2 so-called presumptions of law which strengthen the position of atypical workers (regarding the existence of an employment contract and the number of working hours agreed in that contract); the existence of an employment contract is more easily presumed - a minimum entitlement to three hours' pay for on-call workers each time they are called in to work - regulation of the risk of non-payment of wages in the event of there being no work for an on-call worker: the period over which employers may claim that they need not pay out wages for hours not worked has been reduced to six months - a worker's contract with a TWA is considered a regular employment contract; only in the first 26 weeks are the agency and the agency worker allowed a certain degree of freedom with respect to starting and ending the employment relationship - special dismissal protection has been introduced for employees engaged in trade-union activities - dismissal cases at the district court (so-called rescission cases): the judge must check whether or not it is prohibited to terminate the employment contract with an employee, e.g. in the case of employees on sick leave; in the latter case the employer has to produce a re-integration plan for the employee to enable the judge to assess the feasibility of reinstatement

The "normalization" of contingent work was further prompted and regulated by collective agreements. At the same time as the social partners operating under the umbrella of the Labour Foundation reached agreement on the outline of a Flexibility and Security Act, the employers (represented by the General Association of Temporary Work Agencies (*Algemene Bond Uitzendondernemingen, ABU*), an association covering 90 per cent of all TWA's and trade unions in the temporary agency work sector, concluded a collective agreement for the years 1999-2003 to deal with the consequences of the new law. The most important innovation in this collective agreement, which is binding at firm level for ABU members, is the introduction of a four-phase model in which temporary agency workers gradually acquire more rights, including rights to pension and training, as the length of the employment relationship increases.[2] The four-phase model, which will be a relevant issue in section 2 of this report, is summarized in Figure 2 below.

1 Taken from Wilthagen and Rogowski, (2002). It should be noted that by means of a collective agreements it is possible to deviate from a nummer of provisions of the law.

2 Another collective agreement in the sector, that of the Dutch Association of Placement and Temporay Work Enterprises (*Nederlandse Bond van Bemiddelings- en Uitzendondernemingen, NBBU*) also includes the 4-phases system.

Figure 2 The four-phase model as laid down in the Dutch collective agreement on temporary agency work3

Phase	When	Rights for agency worker
I	First 26 weeks of temporary work	None in particular, parties may agree that the employment relationship ends without notice if the client firm runs out of work
II	Next 6 months	Entitlements to pensions and training: the agency must discuss the worker's training needs. If training is offered this has to be laid down in writing and the training goals and amount of training have to be specified
III	At further continuation of the employment relationship or when entering a new one within 1 year	The worker gets fixed-term contracts for one or more 3-month periods
IV	After a total of 18 months at the same client firm or after 36 months of working at different client firms	Worker gets a permanent contract

The four-phase model came into effect in June 1999. Trade unions feared that TWA's would not continue to deploy large numbers of agency workers or that they would delegate those workers to agencies not covered by the collective agreement in order to prevent them from getting a permanent contract. This scenario did not in fact transpire, with no more than 1200 agency workers having their employment relationships terminated. At the beginning of 2000, it was estimated that about 20 per cent of all temporary agency workers had a fixed term (phase 3) or permanent (phase 4) contract with the agency.

For a good understanding of the Dutch situation it should be kept in mind that over the past years the Netherlands have witnessed a high employment growth (notably in part-time jobs, flex jobs and, in general, as a result of increasing female participation in the labour market), a subsequent decrease of unemployment (towards a level of some 2.5 percent) and a very tight labour market. These circumstances have recently resulted in a slight decline of flex work (for workers it is easier to get a permanent or fixed term contract nowadays) and, moreover, in a relatively strong position for flex workers in terms of job or employment security. In these circumstances social protection is less of an issue than in a declining business cycle and relaxed labour market.

Key features of prominent forms of flex work in the Netherlands

In this part I briefly describe certain legal key aspects and definitions of some of the most common and widespread categories of flex work in the Netherlands. This serves to put the social protection issues or the lack of issues with those categories into perspective.

Temporary agency work

3 Taken from Wilthagen and Rogowski, 2002.

This type of flex work has already been discussed above. It is important to notice that a temporary agency work contract is (since the Flexibility and Security Act) considered a normal temporary employment contract between the temporary work agency and the temporary agency worker. Only for the first 26 weeks different rules apply. During this period of time the contract does not automatically change into a regular contract. Notwithstanding the normalization of temporary agency work in the Netherlands, the social security entitlements of temporary agency workers are not always self-evident and complications and limited access to notably the so-called employees insurances (unemployment, sickness and disability benefits) do occur.

On-call work

On-call work (oproepbanen) basically implies that the employers only call upon the worker if there is an actual need for (additional) labour. No fixed (number of) working hours exists. This type of flex work sometimes has major implications for social security entitlements (i.e. the so-called employees insurances). Three main types of on-call work contracts can be distinguished:

- On call contracts with a pre agreement: in this case it is the worker who decides whether he or she will actually accept to do the work. For each period of work (or "call") a new employment contract is being concluded, the conditions of which have been agreed up front. After 4 subsequent contracts a permanent contract may exist. Unless this is the case the employer is not required to continue to pay the worker after a contract has ended.
- A contract without guaranteed working hours ("zero working hours contract"): the worker is required to do the work when he or she is called upon. A continuing employment contract exists but this does not contain provisions on the number of working hours. Pay is only required for the hours worked (this has to be agreed in writing). After six months, however, the employer has to continue payment, whether or not he has actually work to offer (in this case the wage depends on the average number of hours worked during the last three months). In statistical overviews (see section 1 below) this type of work and contract is usually referred to as "substitute workers".
- A contract with guaranteed working hours ("minimum – maximum contract"): A minimum number of (guaranteed) working hours per week, month or year are agreed upon. In addition a maximum number of hours can be agreed for the worker to be called upon by the employer. The worker is required to accept the calls until the maximum number of hours has been reached. The contract is a continuing contract with a guaranteed minimum number of hours (therefore, technically speaking, this contract mirrors a part-time contract rather than a real on call contract). Pay is required for the number of hours worked, but the guaranteed hours have to be paid anyway, whether the worker is called upon or not. If the

worker continues to work more than the guaranteed number of hours the worker can demand that the number of guaranteed hours be raised.

For each call the on-call worker is entitled to be paid for a minimum of three hours in case of a contract for less that 15 hours per week and the lack of an agreement on (fixed) working hours. If conflict or uncertainty about the number of hours exists so-called "presumptions of law" (rechtsvermoedens) may be used. This means that the average number of working hours during the last three months is taken as a starting-point and the employer has to prove that this presumption is incorrect.

Part-time work

In the Netherlands, part-time work is regarded as work that is carried out regularly and voluntarily (on the basis of a employment contract), during working hours that are shorter than the working hours generally customary in the sector or company concerned (i.e. the normal working hours for full-time workers). Employees with a fixed-term contract, temporary employment agency workers and on-call workers – except when the latter actually work part-time - are not considered part-time workers. In Dutch law, the pro rata temporis-principle is strictly applied to part-time workers. This holds true not only for the position of the employee under civil and public labour law, but also for social security law and entitlements. Therefore there hardly is any issue regarding the social protection of part-time workers in the Netherlands. Indeed, part-time work represents a very common and widespread phenomenon in the country, especially among women. Almost 40 per cent of the employed labour force works part-time, while the figure for the European Union as a whole is less than 20 per cent.

Fixed-term work

Fixed-term work as well does not generate major social security issues in the Netherlands, because it usually clear when the employment contract has ended and what the duration of the contract has been. Fixed-term does of course imply a lower degree of job security than a permanent contract.

Additional or subsidized employment

This type of employment does not so much differ from "typical" employment in terms of flexibility but first and foremost in terms of the financing of the jobs involved. In the Netherlands two main types of additional employment exist. The first are the so-called ID jobs, which can be translated as "Inflow and Throughflow" jobs (inflow jobs are less demanding than the "throughflow" counterparts). ID jobs (for persons of age 23 and up and at least unemployed for one year) are based on a permanent contract but in the first year a fixed-term contract of one year may be agreed, on the condition that the intention is stated that a permanent contract will be granted if the

worker performs well. The contract is concluded between the worker (age 23 and up) and the employer. The second type of additional jobs is the WIW jobs. These jobs are based on the WIW scheme, the Wet inschakeling of werkzoekenden or "Law on the Deployment of Job-seekers". In this case the workers is employed by the local municipality, for a maximum of two years (with a possibility of prolongation), and subsequently placed at an employer.

1 QUANTITATIVE DATA ON FLEXIBLE WORK PATTERNS[4]

In this section statistics on flexible workforces are presented for the years 1992-2000 (most recent figures available, source: CBS/Statistics Netherlands):

in absolute figures (table 1)

as a proportion of total employment (table 2)

as a % of new jobs created (to be added)

split by sex (tables 3-5)

Table 1. Employees in flexible work patterns (in thousands), 1992-2000.

Year	Temporary agency workers	On-call workers	Substitute workers	Other flexible employees	Total flexible employees
1992	102	78	39	181	399
1993	98	79	36	179	393
1994	114	91	36	185	425
1995	149	105	34	189	477
1996	187	114	48	188	538
1997	207	121	43	195	566
1998	223	138	49	195	604
1999	210	112	44	205	571
2000	196	87	29	218	530

Source: CBS/Statistics Netherlands.

Table 2. Employees in flexible work patterns (as share of total employment), 1992-2000.

Year Temporary agency workers	On-call workers	Substitute workers	Other flexible employees	Total flexible employees
1992	1.9	1.5	0.7	3.4	7.6
1993	1.9	1.5	0.7	3.4	7.5
1994	2.2	1.7	0.7	3.5	8.1
1995	2.8	2.0	0.6	3.5	8.9
1996	3.4	2.1	0.9	3.4	9.9
1997	3.7	2.1	0.8	3.5	10.0
1998	3.8	2.3	0.8	3.3	10.3
1999	3.5	1.8	0.7	3.4	9.4
2000	3.2	1.4	0.5	3.6	8.7

Source: CBS/Statistics Netherlands.

Table 3. Flexible employment: gender distribution 1995-1999.

Year	Male permanent	Male flexible	Male total	Male flexible % of total	Female permanent	Female flexible	Female total	Female flexible % of total
1995	3436	217	3653	5.9	2285	349	2634	13.2
1996	3494	252	3746	6.7	2332	362	2694	13.4

[4] With thanks to Martijn van Velzen for his assistance in this matter.

1997	3537	314	3851	8.2	2379	408	2787	14.6
1998	3603	312	3915	8.0	2509	474	2983	15.9
1999	3705	317	4022	7.9	2622	488	3110	15.7

Source: CBS/Statistics Netherlands.

Table 4. Flexible employment arrangements as share of male and female employment

Male workers	Temp agency workers	On-call workers	Substitute workers	Other flexible employees
Year				
1992	1.6	0.6	0.2	2.5
1993	1.6	0.7	0.2	2.4
1994	2.0	0.9	0.2	2.8
1995	2.7	1.0	0.2	2.7
1996	3.1	1.0	0.5	2.8
1997	3.3	1.0	0.4	2.7
1998	3.5	1.2	0.4	2.5
1999	2.8	1.1	0.3	2.8
2000	2.7	0.9	0.2	3.3

Female workers	Temp agency workers	On-call workers	Substitute workers	Other flexible employees
Year				
1992	2.5	3.0	1.6	5.0
1993	2.2	2.9	1.4	5.1
1994	2.5	3.2	1.4	4.8
1995	2.9	3.5	1.3	4.9
1996	4.0	3.8	1.5	4.6
1997	4.2	3.9	1.4	4.7
1998	4.2	4.2	1.5	4.6
1999	4.3	3.0	1.3	4.2
2000	3.9	2.1	0.9	3.9

Source: CBS/Statistics Netherlands

Table 5. Distribution of part-time work among male and female workers, 1995-2000

Gender	Year	Part-time workers (thousands)	Total employment (thousands)	Total employees (thousands)	Part-time employment as share of total employment	Part-time employment as share of all employees
Total male and female workers	1995	2505	6063	5357	41.3	46.8
	1996	2626	6187	5459	42.4	48.1
	1997	2744	6400	5644	42.9	48.6
	1998	2877	6609	5874	43.5	49.0
	1999	2990	6805	6072	43.9	49.2
	2000	3086	6917	6117	44.6	50.4
Male workers	1995	688	3814	3322	18.0	20.7
	1996	742	3872	3367	19.2	22.0
	1997	789	3951	3427	20.0	23.0
	1998	837	4047	3541	20.7	23.6
	1999	873	4121	3624	21.2	24.1
	2000	895	4174	3629	21.4	24.7
Female workers	1995	1817	2249	2035	80.8	89.3
	1996	1885	2315	2092	81.4	90.1
	1997	1955	2450	2216	79.8	88.2
	1998	2040	2562	2333	79.6	87.4
	1999	2117	2684	2449	78.9	86.4
	2000	2191	2743	2488	79.9	88.1

Source: Statistics Netherlands

Main existing national quantitative sources in the Netherlands relevant to this survey:

- Statistics Netherlands (CBS) (www.cbs.nl) the main source for statistics. CBS also conducts, among other things, the Labour Force Survey (*Enquête Beroepsbevolking EBB*), as of 1987, which has turned into a "rotating"" panel study as of 1999, as well as the Socio-Economic Panel Study (*Sociaal-Economisch Panelonderzoek, SEP*), as of 1984;
- Ministry of Social Affairs and Employment, annual publication of the "Social Memorandum" (*Sociale Nota*), studies by the Labour Inspectorate on e.g. collective agreements and the so-called Employers Panel Survey (which contains data on 11,000 employees) (www.minszw.nl);
- Social and Cultural Planning Office (*SCP, Sociaal Cultureel Planbureau*) (www.scp.nl), publication of the annual Social and Cultural Report and (as of 1975, but not on a annual basis) a survey concerning the way people spend their time (*Tijdbestedingsonderzoek*);
- OSA/Institute for Labour Studies (www.osa.uvt.nl), which manages among other things the OSA Labour Market Supply Panel Data, a longitudinal data set for the period 1985-2000.
- The Dutch Confederation of Trade Unions (FNV) in cooperation with the Amsterdam Institute of Advanced Labour Studies (AIAS) of the University of Amsterdam has recently established an electronic databases on collective agreements and another one on wages and wage differences (*CAO-Databank*), www.fnv.nl and www.uva-aias.net

- The General Association of Temporary Work Agencies (*Algemene Bond Uitzendondernemingen, ABU*) publishes in and outflow surveys of temporary agency workers – www.abu.nl These surveys are conducted by the NEI (Netherlands Economic Institute): www.nei.nl/en/
- TNO Work and Employment (*TNO Arbeid*): Two-yearly TNO Work Situation Survey (no cohort study, sample changes, but the questions remain unchanged). TNO Work and Employment has also access to and made analysis of the Employers Panel Study mentioned above (see Goudswaard, 2000); www.arbeid.tno.nl

2 SOCIAL PROTECTION FOR FLEXIBLE WORKERS

2.1 UNEMPLOYMENT BENEFITS

2.1.1 GENERAL INFORMATION

Workers in dependant labour are mandatory insured against the consequences of the loss of income and against medical costs (on the latter see section 2.6). Self-employed persons and so-called "professionals" (freelance workers, musicians) are not included in these "employees insurance" schemes: the Unemployment Benefits scheme, the Sickness Benefits scheme and the Disability Benefits scheme. As of 1998 self-employed persons can rely on a specific (modest) disability scheme (see section 2.5) and self-employed persons with low income are (as of 1 January 2000) mandatory insured under the National Health Insurance (*Ziekenfonds*).

The major criterion for access to the employees insurances deals with the existence of an "employment relationship" (*dienstbetrekking*) (cf. Article 2 of the three distinct laws on unemployment, sickness and disability schemes). However, some labour relations can "socially" be put on par with a proper employment relationship (Articles 4-5 of the three laws and the Royal Decree of 1986). In these cases the work has to be conducted "in person" by the worker and three specific requirements have to be met:

- work is usually being conducted during at least two days per week
- the labour contract has been concluded for a continuous period of time of at least 30 days and
- the gross wage usually amounts to at least 40 percent of the legal minimum wage.

As will be described further on in this report some categories of flex workers encounter problems with these very criterions.

A number of schemes exist to provide workers with an income in case of unemployment. The most prominent scheme is the Unemployment Benefits scheme (*Werkloosheidswet, WW*). Workers that are not or no longer entitled to an unemployment benefit can apply for a benefit on the basis of the General Assistance or Welfare scheme (*Algemene Bijstandswet, ABW*) or the Law on Income Provision to Elderly or Partially Disabled Workers (*Wet inkomensvoorziening oudere en gedeeltelijk arbeidsongeschikte werknemers, IOAW*). The latter scheme will be dealt with in this section, whereas the General Assistance scheme will be dwelled upon in the next section.

The Unemployment Benefits scheme is meant for workers that have lost their job and provide insurance to workers below the age of 65, including flex workers and people that work in so-called sheltered workplaces (*sociale werkplaatsen*). Under certain conditions homeworkers, musicians and other artists as well fall into the scope of this scheme.

2.1.2 ACCESS

A person is entitled to a full-blown "wage-related" unemployment benefit if he or she meets the following conditions:

He or she has lost at least 5 working hours per week (or at least half of the working hours in case of a working week of less than 10 hours). This is the so-called weeks-criterion. Moreover, he or she has no entitlements to wages pertaining to the lost hours and should be available for paid work.

- The so-called "29 out of 39 weeks" condition: the workers should have worked for at least 26 weeks during the last 39 weeks previously to the first day of unemployment. This is the so-called weeks-requirement. It is not required that these 26 weeks are full working weeks: one day per week is sufficient to have this week qualifying to a "working week". Moreover, holiday weeks in which wages have continued to be paid count as working weeks. For some professions, e.g. musicians, artists and seasonal workers the requirements are less strict (either 13, 16 or 20 weeks suffice).
- The "4 out 5 years" condition: the worker should have worked for a minimum of 52 days during at least 4 (calendar) years during the 5 years preceding the first day of unemployment. It is not required that these 52 days be an continuous/uninterrupted period of time (so one day per week is enough) and the number of hours of work are irrelevant. (Calendar) years during which a person has taken care for children below the age of 6 are fully taken into account in this calculation and years in which one has taken care for children between the age of 6 and 12 count for 50 percent.
- There is no reason for exclusion from this scheme, such as the fact the a person has a benefit on the basis of the Sickness Absenteeism scheme or a Disability benefit in case of full disability (see section 2.5).

A number of additional requirements apply to persons in unemployment benefit schemes, such as the fact that the unemployment should not be "culpable" (i.e. not caused by any act of behaviour of the applicant which could be known to result in unemployment). E.g. in some cases where the worker quits a permanent job to conclude a fixed-term contract the issue of culpability may arise.

Furthermore persons in the unemployment scheme should actively engage in job seeking, accept suitable job offers (*passende arbeid*) and comply with administrative procedures.

2.1.3 RATE AND DURATION

The Unemployment Benefit scheme contains three different types of benefits:

- The *short-time benefit* for a maximum of 6 months. This benefit applies to the worker that meets the "weeks-requirement" but does not meet the "years-requirement" (see above). The benefit represents 70 percent of the legal minimum wage (see section 2.2) and is available on the first day of unemployment.

- The *wage-related benefit*, which applies to a person that meets with all the conditions and requirements. The benefit represents 70 percent of the daily wages (*dagloon)*, calculated on the basis of the average daily wages during the 26 weeks preceding unemployment (leaving aside those elements of the wages that do not have a permanent status). For this calculation a maximum daily wage exists of € 159.95 in 2002 (new daily wages are being set twice a year). The duration of the wage-related benefit scheme depends on the work record of the person (the longer one's record, the longer the duration). The maximum duration is 5 years. See table 2.1 below.

Table 2.1

Duration of unemployment benefit scheme

Work record	Duration
4 years	6 months
5 - 10 years	9 months
10 - 15 years	1 year
15 - 20 years	1,5 year
20 - 25 years	2 years
25 - 30 years	2,5 years
30 - 35 years	3 years
35 - 40 years	4 years
40 years and more	5 years

A *continued benefit*. After the expiration of the wage-related benefit scheme a person may be eligible for a continued benefit. This benefit represents 70 percent of the legal minimum wage instead of 70 percent of the person's own wages. For persons that were younger than 57,5 year on the first day of unemployment this benefit is limited to 2 years, whereas persons of the age of 57.5 and up are entitled to a benefit for a maximum period of 3,5 years. In case the daily wage is less than the legal minimum wage, the continued benefit will be based on this lower amount. Supplements are means-tested. The scheme, as all unemployment schemes, is individualized, i.e. the income position of a partner is irrelevant.

After the maximum duration of an unemployment benefit a person can apply for a social assistance benefit or, if he or she is of the age of 50 and up, apply for a benefit on the basis of the Law on Income Provision to Elderly or Partially Disabled Workers (*IOAW*). The latter benefit can possibly be supplemented by an extra allowance (*toeslag*) in case the benefit falls below the social minimum that applies to this person. For the self-employed a similar scheme exists. Both schemes are related to the legal minimum wage and are (partially) means-tested; the IOWA limits means-testing to other revenues from paid work.

2.1 MINIMUM GUARANTEED INCOME SCHEMES.

2.2.1 GENERAL INFORMATION

In Dutch social laws the concept of the social minimum is frequently used. The social minimum is the amount of money that a person needs for his or her necessities of life. The social minimum is derived from the legal minimum wage. For a workers aged 23 or up the minimum wage (in case of a full working week, i.e. up to a maximum of 40 hours) is – as of 1 January 2002 - € 55.68 per day, € 278.40 per week and € 1206.60 per month. The rate of the social minimum depends on a person's situation, e.g. the social minimum for a single person is lower than for a person with children. The social minimum for 3 groups is presented in table 2.2 below.

Table 2.2 Social minimum for different situations

Situation	% of minimum wage	amount
23 year or more:	70%	€ 844.62
single parents:	90%	€ 1085.94
married people/people living together	100 %	€ 1206.60

To prevent unemployment or (full) Disability benefits from falling below the social minimum so-called increases (*kopjes*) exist to supplement these benefits. Generally, social assistance is considered a supplement for social insurances. The main forms of social assistance are the General Assistance Scheme (*Algemene Bijstandswet, ABW*) and the income provision schemes for elderly workers and self-employed which have already been discussed briefly in section 2.1.

2.2.2 ACCESS

The General Assistance scheme is open to every person that has insufficient means to deal with the costs of subsistence. It provides a minimum income and it is explicitly considered a supplementary scheme. Additional income is being taken into account and affects the benefit. The General Assistance scheme is of an individualized nature: every single case is being judged on its own merits. National standards and norms exists but can be supplemented by extra allowances. This scheme, also referred to as "welfare" in other countries, consists of two parts: general assistance and special assistance. General assistance is being provided for the general costs of subsistence existence (food, drinks, housing, electricity, water et cetera), whereas special assistance is aimed at specific situations, circumstances and needs. Every person that resides legally in the Netherlands and has insufficient financial means to cover the costs of subsistence is entitled to a General Assistance benefit, flexworkers included. Exceptions are young people below the age of 18, prisoners, students who have received an educational allowance from the government et cetera.

A number of – general - conditions and requirements apply. A person that is granted a General Assistance benefit is expected to take every effort to try and cover his or her own costs of

subsistence. His or her partner can also be expected to seek for a paid job, depending on the (social and medical) circumstances. A person that takes care of a child below the age of 5 is exempted from actively applying for a job; in case of children between the age of 5 and 12 it depends on the individual circumstances whether such an exemption will be issued. The Municipal Welfare Services that implement the General Assistance benefit scheme will offer training or work experience programmes to those persons that do not manage to find a job. The recipient's property is taken into account, leaving certain minimum amounts aside.

2.2.3 RATE AND DURATION

National norms/standard rates exist for persons between 21 and 65 on the one hand and persons of the age of 65 and up on the other. The law distinguishes between single persons, single parents and married persons/unmarried persons living together. There is a so-called norm rate for each group. For persons age 21 - 65 the following norms apply:

- 50% of the netto minimum wage for a single person
- 70% of the netto minimum wage for a single parent
- 100% of the netto minimum wage for married persons/persons living together

Extra allowances are possible up to 20 percent of the netto minimum wage for single persons and single parents (but additional income will be taken into account in that case).

Norm/standard rates are set twice a year. The General Assistance rates as of 1 January 2002 are as follows (table 2.3):

Table 2.3 Standard rates for General Assistance (situation January 1 2002)

18 - 21 year, without children	per month	holiday allowance	total
Married couples/persons living together, both < 21 year	€ 361.84	€ 18.24	€ 390.08
Married couples/persons living together – one person < 21 year	€ 704.43	€ 35.52	€ 739.95
Single person	€ 180.92	€ 9.12	€ 190.04

18 - 21 jaar, with children	Per month	holiday allowance	total
Married couples/persons living together, both < age 21	€ 571.24	€ 28.80	€ 600.04
Married couples/persons living together – one person < age 21	€ 913.83	€ 46.08	€ 959.91
Single parent	€ 390.32	€ 19.68	€ 410.00

21 - 65 year

	per month	holiday allowance	total
Married couples/persons living together	€ 1.047.02	€ 52.79	€ 1.099.81
Single parent	€ 732.92	€ 36.95	€ 769.87
Single person	€ 523.51	€ 26.40	€ 549.91
Maximum extra allowance	€ 209.40	€ 10.56	€ 219.96

65 years and up

	per month	holiday allowance	total
Married couples/persons living together, both age 65 and up	€ 1093.60	€ 55.14	€ 1148.74
Married couples/persons living together, one person age < 65	€ 1102.61	€ 55.59	€ 1158.20
Single parent	€ 985.55	€ 49.69	€ 1035.24
Single person	€ 776.16	€ 39.13	€ 815.29

2.3 RETIREMENT SCHEMES

2.3.1 GENERAL INFORMATION

Every inhabitant in the Netherlands is entitled to a state pension as of the age of 65 (first pillar or tier). This pension is based on the Old Age Pensions Act (*Algemene ouderdomswet, AOW*). Workers (i.e. those in paid work) usually have a supplementary pension from a sector or company pension fund (second tier) and they themselves can also provide for additional private pension, if they wish so and can afford it (third tier).

2.3.2 ACCESS

The state provided old age pension is granted to every resident of the country and also to those persons that have paid taxes on wages or salaries in the Netherlands. Beyond the age of 65 entitlements to (the continuation of) other social security benefits is fairly limited.

Many, but certainly not all workers are entitled to a supplementary pension paid by a company/branch pension fund. These entitlements are part of the working conditions, negotiated by employers, employees and their representatives. For an individual employer it is not mandatory to provide a company pension scheme, except when a pension funds exist in his or her sector of business. Usually both the employer and the worker contribute to the pension fund (pension premium) – sometimes the worker is exempted from contributions or only has to contribute beyond a certain income level. No taxed and social premiums have to be paid with respect to pension premiums. Increasingly flexible pension and pre pension schemes are established that enable a worker – on the basis of a saving scheme - to retire before the age of 65 and/or retire part-time

first and full-time later (these flexible schemes tend to replace the existing early retirement schemes, *VUT, vervroegde uittreding* in Dutch, which are no longer supported fiscally by the government).
One of the main problems regarding the second tier or pillar pension is the so-called "breach of pension" phenomenon (*pensioenbreuk*), which occurs when the participation in a company or sector pension funds is halted. This can e.g. happen when a worker changes jobs, becomes unemployed or disabled. Workers that temporarily quit paid employment to take care of their children can also suffer from a loss of pensions. Legal measures have been (and are being) taken to reduce this problem. E.g. regulations exist for the transfer of worth of pensions, thus enabling workers to transfer their pension entitlements to the company fund of their new employer without suffering a loss (or reduced worth) of entitlements.

The main collective agreement for the temporary work agencies (*ABU-CAO*) stipulates that temporary agency workers at the age of 21 and up who have worked for 26 weeks for the same temporary work agency have a right to be included in a pension scheme. In the case the worker starts working for another temporary work agency he will continue to participate in the pension scheme. However, if he interrupts work for 1 year or more this participation ends and he or she will have to "build up" another 26 weeks before participation can be resumed. The pensions entitlements that were already obtained are maintained. Participation in the pension scheme is mandatory for the temporary agency worker. The premium rate is 3.5 percent of the gross wage. The worker himself or herself pays a maximum of one third of the premium. To give an example: Randstad, on of the major TWA's has created a pension scheme for its workers called "Flexicurity".

Certain categories of workers, notably the self-employed, are depending on private pension schemes to create supplementary pension payments (besides the general old age pension provided by the state). Annuity insurance represents the most common example of private pension schemes: the worker pays a premium to the insurance company (tax-deductible to a certain extent, also depending on the individual's – calculated – pension gap) and in return receives a certain fixed benefit at a certain age.

The Dutch Confederation of Trade Unions *FNV* has estimated in the past that some half million workers lack a supplementary pension scheme (it is not clear how accurate this estimation is for the present situation). This is referred to as the "blind spot" in pension schemes. Partly this pertains to companies and sectors that have not created any provision at all and partly this pertains to categories of workers that are being excluded from existing schemes, such as some groups of flex workers. As far as women are excluded this may represent cases of unequal treatment and a violation of European treaties and guidelines. Currently 91 percent of the employees are "building

up" up a so-called supplementary pension in addition to the state pension (in 1985 the figure was 85 percent).

2.3.2 RATE AND DURATION

The old age pension ends at the death of the recipient. The rate of the pension is derived from the minimum wage (see section 2.2) and the recipients' private situation. A distinction is made between

- unmarried single persons: 70% of the minimum wage
- unmarried single persons with a child below the age of 18: 90% of the minimum wage
  married persons: each 50% of the minimum wage
- unmarried persons living together: each 50% of the minimum wage

Recipients with a partner below the age of 65 receive a pension of 50% of the minimum wage and may be entitled to an extra allowance, depending on the younger partner's income and on the date on which the pension has been granted, i.e. before or after 1 February 1994 (this provision expires for persons becoming 65 as of January 1 2015). As of 1 January 2002 the following rates apply (see table 2.4):

Table 2.4 Old age pension rates

	gross per month	Gross holiday allowance per month
Married person, partner < age of 65	€ 598.07	€ 31.04
Married person with maximum extra allowance	€ 1196.14	€ 62.08
Married persons, without extra allowance , partner < age 65	€ 869.24	€ 43.45
(Old age pension before February 1 1994)		
Unmarried persons	€ 869.24	€ 43.45
Unmarried persons with a child < age of 18	€ 1077.54	€ 55.87
Maximum allowance € 326.90 per month (pension before 1 February 1994)		
Maximum allowance € 598.07 per month (pension since 1 February 1994)		

Concerning supplementary company pension benefits, the standard pension age is 65. Full company pension benefits are normally being obtained over a period of 40 years. The most common used standard of a full pension (including the state-provided old age pension) amounts to 70 percent of last earned income. That means that per year 1.75 percent of the pension is being "build up" (1.75% x 40 = 70%).

2.4 PARENTAL ALLOWANCES, SERVICES, AND ACCESS TO FACILITIES

2.4.1 GENERAL INFORMATION

Parental allowances are meant as a contribution to the coverage of the costs of raising children and caring for them. In the Netherlands "family allowance" (*kinderbijslag*) is one of the national insurances (such as the old age pension discussed here above). This implies that generally every inhabitant of the country, younger than 65, with children has an entitlement to family allowance (General Act on Family Allowance). The access, rates and duration of family allowances will be discussed in the next (sub) sections. As will be explained, family allowances are a national facility that is unrelated to employment status and work records. At the end of this section of the report (section 2.4) specific attention will also be paid to the access, rates and duration of leave schemes, as a type of facilities which are *not* unrelated to employment status and work records.

2.4.2 ACCESS

Inhabitants of the Netherlands and also foreign persons that work in paid employment in the country have a right to family allowance for their own children, stepchildren of foster children up to the age of 18. Flex workers are no exception to this rule. For children between the age of 16 and 18 there is an entitlement to family allowance if those children are in education, unemployed or disabled and have a limited income of their own. Income from paid employment by the child can have consequences for family allowance, as this income is considered to (partially) contribute to the coverage of the child's costs of subsistence. An exception is made for a netto amount of € 1135 per quarter of the year (family allowance is paid each quarter of the year) in 2002 (€ 1606 for children not living at home). Children in education as of the age of 18 are entitled to student grants from the government. Parents are obliged to inform the authorities on relevant changes (change of address, divorce, stay abroad et cetera).

2.4.3 RATE AND DURATION

Family allowance rates depend on the age of the child and on the number of children in the family; the latter only for children born before 1 January 1995. Norm rates are set twice a year. As of January 1 2002 the following rates apply per quarter (see table 2.5):

Table 2.5 Family allowances rates (as of January 1 2002)
Children born before January 1 1995

	6 – 11 year	12 -17 year
Number of children in family		
1	€ 205.06	€ 241.25
2	€ 231.63	€ 272.51
3	€ 240,.9	€ 282.93
4	€ 259.96	€ 305.84
5	€ 271.64	€ 319.58
6	€ 279.43	€ 328.74

Children born on or after January 1 1995 (irrespective of family size)

Age	Allowance
0 - 6	€ 168.88
6 - 12	€ 205.06
12 - 18	€ 241.25

2.4.4 LEAVE SCHEMES

As in many other countries in the Netherlands increasing facilities (have come to) exist for a variety of leave: parental leave, maternity leave, calamity and short-term absenteeism leave, career break leave, short-term care leave et cetera. In this report we will refrain from presenting and discussing the distinct features of these schemes, but rather look at the restrictions for (types) of flexible workforces to make use of these schemes. For the majority of statutory leave schemes, which have recently been brought under the heading of the new Law on Work and Care (*Wet Arbeid en Zorg, WAZ*; in force as of 1 December 2001) there is an important requirement of "employeeship", as defined in article 1.1 of the Act, which refers to the existence of either an employment contract under private law or an appointment under public law (e.g. as a civil servant). This means that the entitlements of some categories of flex workers are limited. Self-employed persons, musicians and artists e.g., can only get a benefit on behalf of maternity leave or adoption leave (unless their relationship with a client *de facto* represents an employment contract).

On-call workers who are free to work the hours they prefer and who do not have fixed hours cannot claim calamity or care leave at his or her employer. This is different when the worker does work on fixed moments. On-call workers will usually be entitled to maternity and adoption leave, but if his or her work pattern is very irregular it may be difficult to determine the actual length of the leave period. This problem has been softened by the 1999 Flexibility and Security Act that

stipulates (in article 7:610b of the Civil Code) that if an employment contract has lasted for at least three months, the agreed work in the next month can be assumed to equal the average of the last three months. The length of the maternity leave can thus be calculated. On-call workers are entitled to parental leave (versus their employer) provided that they have worked for their employer for at least one year. The statutory regulation of parental leave does not contain an entitlement to continued pay (5% of the collective agreements do), so that the calculation of the loss of income is no issue here.

Workers on a fixed term contract and temporary agency workers have the same entitlements to leave schemes as workers with a permanent contract. In practice these categories of workers will also have some difficulties with the requirement of the one year reference period in the case of parental leave and in the case of career break leave (in the latter leave scheme financial compensation will be rather modest: about € 3 per weekly hour of leave with a maximum of € 490.54 per month as of 1 January 2002). To prevent employers from rendering these rights illusory by repeating concluding short-term (less than 1 year) employment contracts with a worker the Work and Care Act stipulates (in article 6:3 and 7:7 sub 1) that employment contracts between the same parties will be added up on behalf of the calculation of the one-year-period, provided that the interruptions have been shorter than three months. Similar provisions apply in the case of employment contracts with more employers, which can be considered successors (e.g. a temporary agency worker who works for 6 months for the agency and subsequently is hired directly by the same employer).

In case a fixed term contract or a temporary agency work contract expires during a period of maternity or adoption leave, the right to payment of the benefit will not be affected. The law (article 3:10) contains a so-called "aftereffects" provision that is relevant to this situation. However, if such a contract ends during career break leave, than the entitlement to financial compensation ends as well. Finally, if a worker takes unpaid leave his employment contract and insurance for the Unemployment Benefit scheme continues (only the obligation to work and the entitlement to a wage have been postponed). For the Sickness Benefits Act and the Disability Act, however, it is assumed that no employment relationship exists during unpaid leave. Therefore these insurances do not continue (as there is no income, no loss of income is assumed to occur). After the period of unpaid leave (a maximum of 6 months) these insurances will be re-activated.

2.5 SICKNESS AND DISABILITY

2.5.1 GENERAL INFORMATION

In the Netherlands a number of schemes exist that offer (income) protection in case of (long-term) sickness and disability. Some of these schemes are specifically designed for employees: the 1996 Law on the Extension of Pay in Case of Sickness (*Wet uitbreiding loondoorbetaling bij ziekte, WULBZ*), the

Sickness Benefits Act (*Ziektewet*) – for workers without employer - and the 1967 Disability Benefits Act (*Wet op de arbeidsongeschiktheidsverzekering, WAO*). Next to these social insurances for employees other schemes exist for other categories of workers: the 1998 Disability Benefits Act for the Self-employed (*Wet arbeidsongeschiktheidsverzekering zelfstandigen, WAZ*) and the 1998 Disability Benefits Act for Early-disabled Persons (*Wet arbeidsongeschiktheidsvoorziening jonggehandicapten, Wajong*). Before I discuss the access, rates and duration of these schemes it is important to notice that social security in the Netherlands in case of sickness and disability is based on the principle of "risque social" (as opposed to "risque professionel", which is the dominant principle in most countries). That is, workers who are unable to work because of sickness or disablement are entitled to social security benefits *irrespective* of the cause of the sickness or disablement. Whether the cause of sickness or disability is work-related or not is irrelevant under this principle.

2.5.2 ACCESS

Continuation of pay in case of sickness – the first scheme – depends on whether a person is an employee and has an employment contract. In that case it is the employer who is obliged to continue payments during the first year of sickness (in fact this measure represents a form of privatisation of sickness benefits aiming at enhancing employers' responsibility for preventive policy and improving working conditions).

If an employee is not entitled to continuation of pay, he or she may be entitled to a benefit based on the Sickness Benefits scheme (*Ziektewet-uitkering* or *ziekengeld*) starting on the third day of sickness absenteeism. Workers with a fixed-term contract are entitled to a Sickness Benefit on the first day after the expiration of the contract (during the contract period they are entitled to continuation of pay by the employer). The employer is also obliged to continue payment in the case of on-call (stand by) workers who have a guaranteed (minimum) number of working hours. If such a guarantee is missing the work pattern during the 26 weeks preceding sickness is the decisive factor for determining whether an entitlement to continued pay exist. In case of temporary agency work the temporary work agency is obliged to continue pay after 26 weeks of – uninterrupted – work.
No entitlement to continued pay exists if the worker has deliberately caused the sickness or if sickness results from ailments on which he or she has deliberately given false information in the recruitment stage.

If no entitlement exist to continued pay by the employer (e.g. because the employment contract ends during the period of sickness, which is only possible under certain conditions, as there exist a general legal ban on dismissal during a period of sickness for the first two years) the Sickness Benefit

Act offers a safety net provision (financed by unemployment benefit premiums and reduced pay funds) to notably the following categories of workers:

- Workers with a temporary employment contract whose contract has expired, such as flex workers. On-call workers e.g. generally are neither entitled to continued pay nor to Sickness benefits apart from the periods when they are called upon. However, some exceptions exist in the form of a "after effect" of the insurance in the following situations: the worker has worked (nearly continuously) for two months and falls ill within one month following the last working day *or* the worker has worked at least 16 days during the last two months and falls ill within the 8 days following the last working day *or* the workers receives an Unemployment benefit.
- Specific categories such as homeworkers, musicians, artists and students on work placement/trainees
- Unemployed persons who are sick
- Women on maternity leave and women whose illness is related to pregnancy
- Workers whose employer has gone bankrupt
- Persons that donate organs
- Formerly disabled persons who have resumed work and subsequently fall ill;

The voluntary insured and former Disability Benefit recipients during a period of 3 years after the start of the employment contract.

If after one year the worker is still not able to resume work he or she is entitled to a Disability benefit on the basis of the Disability Benefits Act (*WAO*). This scheme insures the worker against the consequences of disability and the premium is to be paid by the employer to enhance his responsibility and his policies to prevent disability. This premium is split into a basic premium and a differentiated premium fixed per company depending on the disability costs the company has produced. A company is not obliged to pay the differentiated part and may in stead itself bear the risk to having to pay for the first five years of disability of its employees (this risk can be insured against in private insurance).

To be eligible for this benefit a worker must still be at least 15 percent disabled for common labour after 52 weeks (the waiting period during which normally sickness benefits are granted).

2.5.3 RATE AND DURATION

The Law on the Extension of Pay in Case of Sickness stipulates that employers are obliged to continue paying sick employees 70 percent of their wages during the first year (52 weeks), starting on the first day of sickness (unless differently agreed in a collective agreement, then payment starts at the third day). The employer has to pay a minimum of 70 percent of the "benefit daily wage"

(*uitkeringsdagloon*) (with a maximum of € 159.99). If this amount is less than the legal minimum wage, the employers is required to pay the minimum wage. Collective agreements or individual employer contracts can, however, stipulate that the employer is required to pay 100 percent of the wage (this is often the case). The employer may deduct (legal) benefits or income that the employee receives during the period of sickness from his payment. If an employee falls ill again within the first 4 weeks after his or her recovery than his or her first week of sickness is added to the new period of sickness (in calculating the 52 weeks period).
The employer may "re-insure" the financial risks of continued pay in case his employees fall ill at an insurance company (this is particularly relevant to small businesses). Both the employer and the employee himself have strong and extensive obligations to promote the reintegration of the worker. This responsibility has recently been enhanced by the new Improvement of Gatekeeper Act (*Wet verbetering poortwachter*), in force as of 1 April 1 2002. This law and many other laws aim at preventing long-term disability and the subsequent reliance on disability benefits – which is considered a major problem in the Netherlands as almost 1 million people are labelled disabled to work nowadays.

A benefit on the basis of the Sickness Benefit Act is set at 70% of the so-called day wage. Generally that is 70 percent of the average gross earnings per day during the 13 weeks that precede the workers' sickness. The maximum day wage is set at € 159.99. For some categories of workers, such as flex workers, the entitlement to a Sickness benefit takes effect on the third day of sickness (see below).
A sickness benefit will be paid during a maximum period of 52 weeks uninterrupted sickness. Successive periods of sickness with an interruption of less than 4 weeks are added up. The Sickness Benefit Act is being implemented by the Workers Insurances Agency (*Uitvoeringsinstituut Werknemersverzekering*, a newly established – as of January 1, 2002 – national agency which replaces existing semi-private agencies). Workers have to report sickness and recovery within 2 days to their employer (or directly at the UWV if they do not have an employer) and employers have to inform the agency within one day.

The entitlements of temporary agency workers to continued pay and sickness benefits differ across the phases in which the flex worker finds himself or herself concerning his work record and status at the temporary work agency (see the introductory section to this report on these phases). In the case of agency workers in phase 1 and 2 the employment contract (temporary agency agreement) ends immediately after the person has called in sick (this is stipulated by collective agreement). The worker will then receive a Sickness Act benefit directly from the UWV: 70% of the average day wage over the last 13 weeks. The collective agreement in the temporary work sector stipulates that

the temporary work agency has to supplement this benefit up to 91% (possibly less if the worker has worked less than 13 weeks or has taken more days off than he or she had reserved). The benefit takes effect on the third sick day – the first days are "waiting days" (the worker will receive some compensation for the second waiting day in the form of an extra allowance added to the gross hourly wage, either 0.71 percent - personnel in the health care sector - or 1.16% for technical professions).
Workers in phase 3 and 4 receive continued pay at a rate of 91 percent of their wages as of the second sick day (the first day is a waiting day) for a maximum of one year or shorter if the temporary work contract expires earlier. If the worker remains ill afterwards he or she may be entitled to a sickness benefit (on the basis of the Sickness Benefit Act) or a Disability benefit (see below).

Generally, on-call workers are entitled to 70 percent of the average wage during the last 13 weeks before the sickness. It is possible to agree that no payment is due during the first two days of sickness. The position of on-call workers with a pre agreement or zero hours contract depends on whether they fall ill during a "call period" or not. During a call period the worker is entitled to at least 70 percent of her or his wage (and at least the legal minimum wage). If a worker with a pre agreement remains ill after the call the employment contract ends and the employer is no longer required to continue payment. In that case a right to a sickness benefit may exist.
A worker with a zero hours contract equally gets 70 percent of his or her wage. If the contract stipulates that the worker only gets paid for the hours worked no right to pay exist when the worker remains ill after being called upon. Moreover, as long as the employment contract continues no right to a Sickness benefit exist. The same applies to situations where the worker falls ill outside call periods.
A worker with a minimum-maximum contract gets paid 70 percent of his or wage (and at least the minimum wage) with respect to the guaranteed working hours and the hours worked on top of these hours during a call. If the employment contract expires the worker may have a right to a Sickness benefit.

A Disability benefit can be granted up to the age of 65 (when entitlement to old age pension takes effect). Rates and duration depend on the degree of disability, last earned (daily) wage and age on the commencing date; 7 categories of disability are being distinguished. In the following table 2.6 the rates are presented (in the calculation 100/108 is used because 8 percent of the benefit is reserved for a holiday allowance).

Table 2.6 Disability benefit rates based on disability percentage

Disability %	Rate of benefit
15% - 25%	14% of 100/108 x daily wage
25% - 35%	21% of 100/108 x daily wage
35% - 45%	28% of 100/108 x daily wage
45% - 55%	35% of 100/108 x daily wage
55% - 65%	42% of 100/108 x daily wage
65% - 80%	50.75% of 100/108 x daily wage
80% - 100%	70% of 100/108 x daily wage

For the calculation of the daily wage all elements of the wage of the worker are being taken into account. The maximum daily wage is € 159.99. A Disability benefit consists of two phases: a wage replacement benefit and a continued benefit (depending on the age of the worker) based on the so-called continued daily wage. After one year and subsequently every five years the disability percentage of the beneficiary is re-assed and the rate of the benefit will be adjusted if this has changed. In case of part-time workers it may be somewhat complicated to assess their degree of disability (as well as to answer the question about suitable work for these workers).

If the Disability benefit together with the remaining family income is less than the social minimum (see section 2.2) the recipient can apply for an extra allowance. The Disability Benefits Act is being implemented by the Workers Insurances Agency.

The Disability Benefits Act for the Self-employed (*Wet arbeidsongeschiktheidsverzekering zelfstandigen, WAZ*) offers a benefit to self-employed persons in case of long-term disability, pregnancy and maternity (first period after giving birth). Recipients must be more than 25% disabled to work, under the age of 65 and must have carried out labour in the year preceding disability with the aim of obtaining "insured" income. "Professionals", including authors and freelance workers fall into the scope of this benefit scheme. The rate of the benefit depends on the degree of disability and the actual loss of income and cannot exceed 70 percent of the legal minimum wage. If the benefit falls below the social minimum it is possible to apply for an extra allowance. For the year 2002 the premium for this scheme is 8.8% of the so-called premium income of the self-employed person with a maximum of € 38118 per year. No premium is required for the first € 13160 of one's income.

For early-disabled persons (before the age of 17) and students without a work record a somewhat similar benefit scheme exists: the Disability Benefits Act for Early-disabled Persons (*Wet arbeidsongeschiktheidsvoorziening jonggehandicapten, Wajong*).

2.6 HEALTH CARE INSURANCE

2.6.1 GENERAL INFORMATION

Sickness and disability do not only cause a loss of income but also medical and other costs. In the Netherlands two schemes/insurances deal with these costs. The first one is the General Law on Special Costs of Sickness (*Algemene wet bijzondere ziektekosten, AWBZ*). This scheme covers special costs of sickness such as long-term hospitalisation and home care. The second one is the National Health Insurance Act (*Ziekenfondswet, ZFW*) a scheme that guarantees medical help from a certain programme (package) of services.

2.6.2 ACCESS AND FACILITIES

The General Law on Special Costs of Sickness is a national insurance that implies that every person living in the Netherlands, irrespective of age or nationality, is insured. For long-term care in a hospital or institution a (either modest or high, depending on the person's situation) contribution is required. The premium for this scheme is paid in the form of a wage tax to the national insurances and is set at 10.25% in 2002. The scheme is implemented by the national and private health services.
The National Health Insurance Act is an employees insurance (though, due its extending scope, it increasingly bears the characteristics of a national insurance), which generally also applies to recipients of social security benefits. Private insurance companies that have a legal obligation to accept applicants and guarantee a package of services and reimbursements carry out the scheme. No single National Insurance Institute exists (however at the national level two supervisory bodies exist, *CVZ* and *CTU*). This scheme provides entitlements to care facilities and services (not to money), such as medical, doctor, hospital and dentist services. To be insured on the basis of this scheme a person's gross annual wage must be below the "wage threshold", which for the year 2002 is set at € 30700 for persons below the age of 65 jaar and € 19550 for people of the age of 65 and up. In the case of breadwinners his or her partner (up to the age of 65) and children are also insured. The following wage components are being taken into account for the calculation of the right to insurance:

- the common weekly or monthly wage
- holiday allowances
- any other permanent allowances

Self-employed persons have a right to insurance if their average income (for taxes) is less than € 19.650 (2002) on the basis of a statement by the tax services.
Both the employer and the employee are required to inform the National Health Insurance services about the start and the ending of the insurance. The premium consists of two parts: a variable part (7.95% of the wage or benefit; 6.25% of which to be paid by the employer) and a fixed part (€ 155,40 per year in 2002).

Persons that earn more than the wage threshold have to get private insurance (most insurance services offer both private and a "public" insurance, so workers can switch easily in case of crossing the income threshold). For flex workers the situation can be complicated. In general a worker is eligible for national health insurance on the day that he or she (actually) works or, if one does not work, on those days that he or she gets paid at least half of his or her wages (article 6, sub 2 of the National Health Insurance Act). For certain groups of flex workers exceptions on this rule exist. One is e.g. also insured:

in case no work is carried out because of a "normal interruption of work" , e.g. a weekend or national holiday, but this interruption may not last longer than one month and the employment relationship should continue during this period;

if the nature of the employment relationship implies that one only works a certain part of the week or only during certain weeks. In this case one is insured during the other days of the week, but not during the weeks that one would not have worked (if one had not fallen ill).

It is possible for the worker to extend a day or week insurance at the National Health Insurance in order to make sure that one is insured continuously. Furthermore, during sickness the insurance continues, unless one is not paid or does not get a benefit.

The requirement that the employment relationship continues is problematic in the case of on-call/stand by workers who have a pre agreement. This means that the worker is not required to actually (come to) work when he or she is called for. Only if the worker accepts the call a contract comes to exist in the legal sense (and only for that occasion). This is different for those on call/stand by workers who are required by the employer to stand by (either or not for a minimum number of hours) for work – a so-called employment contract with postponed performance. In this case the employment relationship continues beyond the days that one actually works.

The flex worker's health insurance ends when he or she takes more days off (for a holiday) than the number of days during which pay continues. If the holiday takes less than one month, the flex worker must pay a certain fee to the national health insurance agency for the days that he or she was not insured. If the holiday takes longer than one month the flex workers should get private insurance. This should be arranged for previously to the holiday.

In practice on-call workers, holiday workers and other flex workers are often privately insured. However, as the length and nature of the flex workers employment relationship are not fixed, TWA's assume flex workers to be insured for national health insurance (which is referred to as "mandatory insured"). Therefore national health insurance premiums are being withheld from their wages. Premiums paid to the private insurance company can be reimbursed (within certain limits) by the national health insurance agencies.

3. ACTUAL FLEXIBLE EMPLOYMENT PRACTICES: ILLUSTRATION

From the foregoing it should be clear that flex workers are facing problems regarding the so-called employees insurances (unemployment, sickness and disability benefits), as opposed to the national insurances. These problems are particularly related to two issues: 1) whether an employment relationship exist and, thus, whether the worker is insured for the employees insurances or not; this in view of the "loose" nature of the employment relationship in the case of flex work 2) the fact that entitlements to benefits mirror the nature and size of work patterns (this becomes manifest in the concept "daily wage", as used in the employees insurances – see section 2 above).

Empirical research supports these conclusions. Vriend and Korpel (1990) showed that the judgments of social insurance officers (at the social insurances agencies) varied significantly in (fictitious) cases of flex workers applying for benefits. Deviations with respect to the Unemployment benefit scheme were related to the assessment of a (renewed) entitlement to a benefit, the calculation of the loss of working hours, the duration of the basic benefit period and, notably, the rate of the benefit. Regarding the Sickness benefit scheme nearly all variety in judgements was related to the rate of the benefit due to the obscurity in the law with respect to the reference period.

Based on interviews with experts in the field Baenen and Bosch (1998) concluded that the legal position of flexible workforces is unclear or not regulated in a number of respects. E.g. it is not always clear whether a person conducts work on the basis of an employment contract. Home workers, freelance workers and on-call workers are frequently not insured for the Sickness benefit scheme and the Unemployment benefit scheme. This applies notably to on-call workers without guaranteed working hours during the periods when they are not working. These workers may also be, without knowing, not insured for the National Health scheme during these periods. Moreover, many flex workers are not being enlisted by their employer at the insurance agencies. Lack of knowledge of both employer and workers thus results in the under-use of social insurance (estimation: 5-10 percent of the total population of persons entitled to social insurance). Other problems are related to insurance for the Sickness benefits scheme during unpaid leave, to the combined (weeks and years) requirements for the Unemployment benefits scheme and to the so-called period requirements (i.e. the days that work is actually conducted) which, in turn, influence the calculation of the daily wage (this wage can thus vary, depending on the period that is taken into account).

Klein Hesselink et al. (1998) studied a (representative) sample of 1030 flex workers. They calculated that 10.4 percent of the Dutch working populations could be referred to as "flex worker". Their main conclusions are that two third of the flex workers is protected against the loss income due to

sickness. Besides some 80 percent of the flex workers meet the weeks requirement in the Unemployment Benefits scheme and thus are entitled to a benefit in case of unemployment. Yet, many flex workers do not use the opportunities to receive a benefit and only a minority of those workers (13.5 percent) has been denied a benefit. A much greater share of the workers has not applied for a benefit, either because they do not think they are entitled to a benefit or do not need one. Especially unemployed flex workers usually have other sources of income, either of their own or from a partner in their household, and refrain from applying for a benefit.

The studies summarized above were all conducted before the Flexibility and Security Act came into force (1 January 1999). As indicated in the introduction to this report, this law aims at improving the social protection of flex workers while at the same time enhancing flexibility in the labour market. However, the emphasis is first on labour law and employment protection and more indirectly on social security. Not withstanding the introduction of the so-called presumptions of law regarding the possible employee status of flex workers and the minimum hours on-call workers have to be paid, the general opinion is that the social security position of flex workers has not changed significantly.

There is growing evidence on the effects of the flexibility and security legislation. A first 'scan' revealed 'mixed feelings' among employers, workers and their representatives, which are largely the result of the need to think through and implement the consequences of the new legislation and to reorganize administrative procedures (Grijpstra et al., 1999). A second evaluation indicated that, following the introduction of the Flexibility and Security Act, there has been a shift from temporary to permanent employment contracts (Klaver et al., 2000). About 145,000 existing temporary contracts have been converted into new temporary contracts and nearly 72,000 temporary contracts have been converted into permanent contracts. A total of 86,000 temporary contracts were not renewed. The contracts of 25,000 on-call workers were not renewed, and a further 93,000 on-call workers became either temporary agency workers or changed to fixed-hours or fixed-term contracts.

In comparison with the first evaluation, positive experiences among both employers (including TWA,s) and flexible workers now generally outweigh negative experiences. Half of the employers involved in the second evaluation had a favourable opinion of the Act (compared to a third in 1999). However, the views of those running TWAs are less favourable, with only a third expressing positive opinions (in 1999, a quarter of the these employers had been positive about the Act). Flexible workers are less likely to attribute negative developments in their employment relationship to the Act. The researchers conclude that firms and workers are getting used to the new rules. Knowledge of the law is fairly widespread, though it is still important to provide information for those engaged in collective bargaining as well as to individuals (Klaver et al., 2000). The Minister of Social Affairs and Employment stated that he agreed with the researchers that the results of the

study are influenced by the current favourable economic conditions, but he also concludes that the legislation on flexibility and security does not represent a barrier to favourable developments in the labour market.

The results of a recently conducted, comprehensive evaluation (Van den Toren et al., 2002) are much in line with the previous evaluations. A first observation is that the share of flex workers has decreased between 1998 and 2000, notably due to a decline of on-call workers. The presumptions of law, which were introduced by the law, appear to have had a preventive effect in the form of differently and more adequately formulated contracts. Yet, only in a minority of cases (about 10 percent) where workers work more hours than agreed by contract, an appeal is made on the basis of presumptions of law. Many flex workers do not rely on the presumptions in order to maintain *their* flexibility towards the employer. The legislator's expectations regarding the guaranteed wage for on-call workers have not been met yet. One sixth of the employers state that they do not pay the guaranteed minimum of 3 hours, whereas one third of the on-call workers contend not to be paid according to the legal requirements.

The 4-phases system is well known among temporary agency workers; half of the workers reports to be informed by the agency on the phase that applies to them. The majority of temporary work agencies (90%) has introduced a pension scheme for the temporary workers; more than half of the worker reports that they are building up pension rights. As mentioned in section 2 temporary agency workers in phase 1 and 2 are entitled to a Sickness benefit and workers in phase 3 and 4 are entitled to continued pay. One third of the latter category of workers is not aware of this entitlement and a quarter of the workers do not receive a benefit when they fall ill. Workers in phase 3 and 4 seem to have more problems than their counterparts in phase 1 and 2.

Most flex workers that involuntary quit their job and become unemployed do not receive an Unemployment benefit. The most prominent reason for this is that the workers do not apply for such a benefit (the largest category of these workers, some 25 percent, refrain from applying for a benefit because they already have a new job, or expect to have one soon; 17 percent of the workers reports "no need" for a benefit, 15 percent think they are not entitled to a benefit and 7 percent feels applying for a benefit is too much bother). In 80 percent of the applications the benefit is granted by the social insurance agency. Cases in which the application is turned down are often related to the existence of a continued pay obligation on the part of the employer. The social insurance agencies have become more strict in view of this continued pay obligation: workers are being referred back to their employer, but then stop pursuing their rights (notably in the building and agricultural sectors) or must take more efforts to carry through their claim. In the latter case a higher income is obtained, in the former case this has a negative effect on flex workers' income protection.

4 PROSPECTS

On short notice no reform of the social security system is being considered on behalf of the position of flex workers. Rather, attention is paid to possible (and fundamental) reform of the system to match the increasing diversity and variety in people's life cycles, life courses and career patterns and preferences, as well as to promote and facilitate the balancing of work and care commitments (see Ministry of Social Affairs and Employment, 2001 and 2002; Trommel, 1997). Evidently, flex workers can be expected to benefit from this reform.

Specific reform measures, aimed at the position of flex workers – on-call workers in particular – may evolve from the evaluation of the Flexibility and Security Act, as described in section 3 of this report. As already indicated, one of the key issues is the calculation of entitlements on the basis of reference periods. Since 1996 it has been repeatedly suggested (e.g. by the Dutch Labour Party and the Confederation of Trade Unions, see FNV, 2001) that entitlements be based on the number of hours worked, rather than on days or weeks). In such a system a worker would be "building up" entitlements to benefits by the hour. Though this system may seem attractive because of its simplicity, complications are being envisaged. Workers need to be insured from the first day of work against certain events that may lead to long-term reliance on social insurance, irrespective of the short duration of the insurance.

A second point of attention pertains to pension entitlements for flex workers. Though this issue has been discussed extensively (e.g. in the Dutch Labour Foundation) and the Dutch system is being praised for its state pension rights, it is clear that ongoing reforms are needed.

Third there is the availability of facilities and arrangements for workers in general to balance work and private responsibilities. In 2004 a Law on basic facilities for childcare will be introduced that will support parents in arranging for childcare facilities.

Fourth and last to be mentioned are the unremitting attempts and discussions with respect to the reform of the Disability Benefit scheme in view of the high disability rates in the Netherlands (almost one million persons being labelled disabled to work among a working population of some 7 million people, cp. Oorschot & Boos, 2001). At this point it hard to predict what the direction of this reform will be and whether it will be to the advantage or disadvantage of flex workers.

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