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Act of 21 December 2005 No. 124

Act on mandatory occupational pensions

Section 1 Scope

(1) This act applies to employers that have:

- (a) at least two persons in their employment, both of whose working hours and pay constitute 75 per cent or more of a full-time position,
- (b) at least one employee without a proprietary interest in the firm whose working hours and pay constitute 75 per cent or more of a full-time position, or
- (c) persons in the firm each of whose working hours and pay constitute 20 per cent or more of a full-time position, and who together perform work corresponding to at least two full-time positions.

(2) The following are regarded as employers: private limited companies, public limited companies, general partnerships, sole proprietorships and any other legal entity having an employee in its service.

(3) This act does not apply to employers that have a pension scheme in accordance with law or collective agreement for central or local government employees.

(4) The King may by regulations make further provision to supplement or delimit the provisions of the present act. The King may also by regulations or administrative decision make exemptions from the act in respect of individual or specific groups of employers or employees.

Section 2 Obligation to have an occupational pension scheme

(1) Employers indicated in section (1), subsection (1), shall have a pension scheme under the Defined Benefit Pensions Act, the Defined Contribution Pensions Act or the Occupational Pensions Act that secures their employees retirement pension in accordance with the requirements of the present act.

(2) The pension scheme shall be established within six months of the conditions of section (1), subsection (1), being met.

(3) If the employer has parallel pension schemes, each of the schemes shall meet the requirements of the present act. If the employer has a combined scheme, the section with defined benefit retirement pension shall meet the requirements of the present act.

(4) Finanstilsynet may determine by administrative decision whether an employer is covered by the present act, and whether the employer has a pension scheme that meets the requirements of the present act.

Section 3 *Rights for employees*

(1) Employees of an employer with an obligation to establish an occupational pension scheme pursuant to section (2) are entitled to have an occupational pension scheme established in accordance with the present act. This does not apply to employees who can be excluded from the employer's pension scheme under the rules of the Defined Benefit Pensions Act, the Defined Contribution Pensions Act or the Occupational Pensions Act.

(2) If the employer neglects the obligation to establish an occupational pension scheme, employees as referred to in subsection (1) shall be entitled to have contributions in accordance with the minimum requirements of the act, reckoned from the time that the obligation to establish an occupational pension scheme was triggered, paid into a pension scheme for the employees.

Section 4 *Minimum requirements on pension schemes with defined contribution pension or defined benefit pension*

(1) Where an employer establishes a pension scheme with defined contribution pension, the employer shall pursuant to the contribution plan each year pay contributions to retirement pension for the members. The contribution shall constitute at least 2 per cent of salary between 1 and 12 G¹ that the individual member receives from the employer over the course of the contribution year; see the Defined Contribution Pensions Act, section 5-5. The King may make further rules regarding calculation of contributions.

(2) Where an employer establishes a pension scheme under the Occupational Pensions Act, the employer shall pursuant to the contribution plan each year pay contributions to retirement pension for the members. The annual contribution shall constitute at least 2 per cent of salary between 1 and 12 G that the individual member receives from the employer over the course of the premium year; see the Occupational Pensions Act, section 4-3. The King may make further regulations regarding calculation of the annual contribution.

(3) The rules governing the pension scheme shall, for members who become disabled, make provision for waiver of premium for disability based on the degree of disability if the degree of disability is 20 per cent or more. The degree of disability shall be determined under the rules of the Occupational Pensions Act, section 8-4. The waiver of premium shall run for as long as the degree of disability is 20 per cent or more, but not beyond the member's sixty-seventh birthday. The overall accumulation of rights to retirement pension based on employment income and waiver of premium shall at no time exceed the accumulation of rights corresponding to 100 per cent of a full-time position. The employer shall cover premium expenses related to a waiver of premium for disability in addition to contributions under subsection (1).

(4) The costs of administration of the pension scheme shall be met by the employer in addition to contributions under subsections (1) and (2). The costs of revising an investment portfolio pursuant

¹ 'G' is the basic amount under the National Insurance Scheme.

to the Defined Contribution Pensions Act section 3-3, subsection (1), shall be borne by the account holder.

(5) This section applies *mutatis mutandis* to pension schemes with retirement pension paid in a lump sum under the Defined Benefit Pensions Act.

(6) The King may make regulations to supplement or delimit the provisions of this section.

Section 5 *Minimum requirements on pension schemes with defined benefit pension*

(1) Where an employer establishes a pension scheme with defined benefit pension, the pension plan shall be designed so as to provide retirement pension that at least meets the minimum requirement set by subsection (2) or (3). Section (4), subsection (3), applies *mutatis mutandis* to waiver of premium during disability but none the less such that the same minimum requirement as to degree of disability can be applied as for disability pension under the pension scheme.

(2) If the pension plan has a payment period of 10 years from the age of pension entitlement, a clear majority of the employees shall be assured a retirement pension that at minimum corresponds to the retirement pension from a pension scheme with defined contribution pension that meets the minimum requirements of section (4).

(3) If the pension plan has a payment period of more than 10 years from the age of pension entitlement, the additional value thereof shall be given weight in the decision of whether a clear majority of the employees are assured a retirement pension that at minimum corresponds to the retirement pension from a pension scheme with defined contribution pension that meets the minimum requirements of section (4).

(4) Where an employer avails itself of the right under the Defined Benefit Pensions Act section 3-9, subsection (2), to exclude employees with fewer than 10 years remaining to the age of pension entitlement from the pension scheme, the employer shall establish a defined contribution pension scheme for those employees that meets the requirements of section (4).

(5) The King may by regulations make further rules to supplement or delimit the provisions of this section, including rules on the assumptions that are to underlie the calculation of retirement pension benefits under a defined contribution pension scheme in accordance with the minimum requirements of section (4).

Section 6 *Procurement arrangement*

The employer retains the right of management and control of its pension scheme even where the employer leaves it to an interest organisation or other association to enter an agreement with a pension provider on its behalf. The individual employer is also responsible towards the pension provider for payment of contributions to the pension scheme.

Section 7 *Information in annual accounts or trading statement*

Employers under a statutory obligation to maintain accounting records shall in a note to the annual accounts disclose whether they are under an obligation to have a pension scheme, and in such case whether the scheme meets the requirements of the present act. Employers that are not under a

statutory obligation to maintain accounting records shall disclose the same information in the trading statement.

Section 8 *Orders and coercive measures*

Finanstilsynet may order an employer that does not have a pension scheme in conformity with the present act to rectify the circumstance within a set deadline. If an order issued by Finanstilsynet is not complied with by the deadline, Finanstilsynet may decide that the employer shall pay a recurrent fine until such time as the circumstance is rectified. Any fine imposed shall be enforceable by distraint.

Section 9 *Entry into force and transitional rules*

(1) This act enters into force on 1 January 2006.

(2) Employers who upon the entry into force of this act are under an obligation to have a pension scheme pursuant to section (2), subsection (1), shall have established by the end of 2006 a pension scheme for their employees in accordance with the requirements of the present act, or made necessary changes to the existing pension scheme should it not provide retirement pension in accordance with the requirements of the present act.

(3) The pension scheme, or the changes made therein, shall at all events apply with effect from 1 July 2006 or earlier, however such that waiver of premium or waiver of contribution for disability shall have been established with effect from 1 January 2007 at the latest.

(4) Employers not covered by subsection (2) who become obligated to have a pension scheme under section (2), first subsection, in the course of 2006, shall establish a pension scheme within the deadline stated in section (2), second subsection. If this deadline expires in 2006, the deadline shall however be moved to the end of 2006.

Section 10 *Amendments to other acts*
