

Are hospitalisation insurances for retirees business-related?

As a result of a judgement of 6 May 2014 by the Brussels Court of Appeal, there has been some uncertainty about whether or not the hospitalisation insurances for retirees are business-related.

The distinction, however, is important when considering the various consequences that are linked to this:

- **Business-related hospitalisation insurances** are insurances that the policyholder concludes for insured persons that are professionally associated to the policyholder at the time of affiliation. In principle, for these insurances, freedom of contract with regard to the duration, premium and cover of the insurance applies. The person who loses coverage of a business-related insurance can continue it on their own.
- **Non-business-related hospitalisation insurances** form the residual category and these insurances run, in theory, for a lifetime. Once contracted, the insurer cannot terminate these. The premium, deductible and benefits can only be adapted on the basis of the consumer price index, the medical index or via a request made to the National Bank upon impending loss.

In a judgement of 6 May 2014, the Brussels Court of Appeal expressed its opinion on the question of whether an insurance for (pre-) retirees is business-related in nature or not business-related. The Court came to the conclusion that health insurance which exclusively provides coverage for the retirees of an employer is not a business-related insurance.

For employees switching to this system from 2018 onwards (formerly known as a bridging pension), the years not worked will have a more serious impact on the final calculation of their state pension.

Time of affiliation

As based on a strict interpretation of the legislation, the Court asserts that the time of affiliation should be considered in order to evaluate whether or not the insurance contract has a business-related nature. According to the Court, when retirees begin membership with a new collective insurance (concluded with another insurer), a relationship no longer exists between the policyholder and the retirees and therefore a business relationship with the employer no longer exists.

This interpretation of the “business-related insurance” concept was never the intention of lawmakers. An interpretative law (Article 78 of the law of 29 June 2016 containing provisions concerning the economy) specifies that, in order to determine whether an insured person is business-related to the policyholder at the moment of affiliation to this insurance, only the very first affiliation of the insured person should be considered, and this regardless of whether later changes to the insurance contract were made or a change of insurer took place.

This interpretative law has retroactive effect to the introduction date of the “business-related contract”. This should dispel any further debate about the interpretation of the “business-related” concept, for both current contracts and for the retirees who were subscribed to a business-related contract in the past.

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