

## Modernisation of Sickness Benefits Act (ZW) (BeZaVa – Sick Pay and Incapacity Benefit Limitation Act)

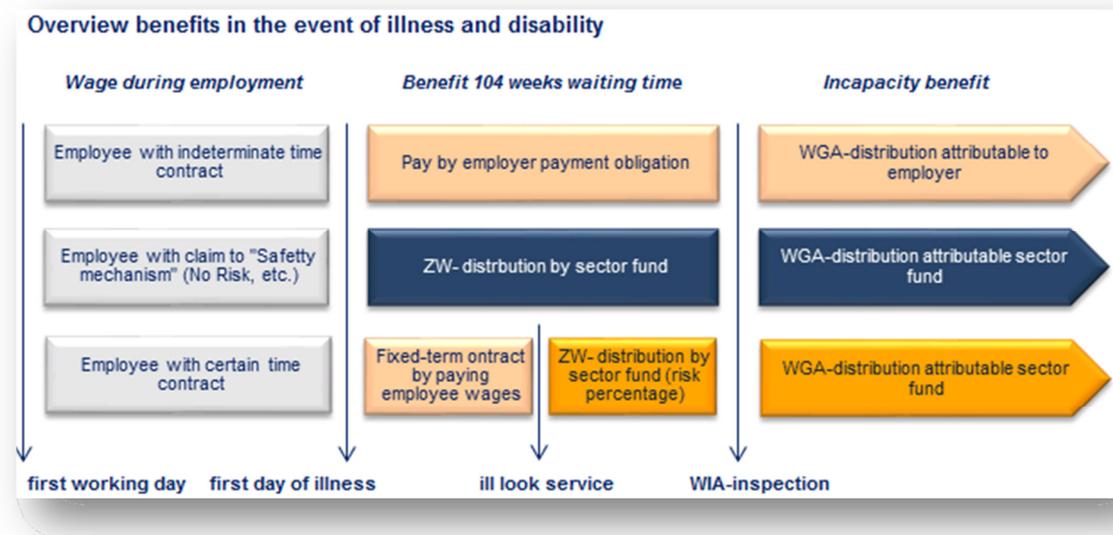
In recent years a number of measures have been taken by the government to reduce the costs of sickness and incapacity. All these measures didn't have a positive effect on so-called flex workers (temporary workers and agency workers). To reduce these costs the government has laid the responsibility on the (former) employers. Ultimately each enterprise will cover "their own loss"; for each employee, irrespective of the type employment contract.

Sickness Benefits Act (ZW) and the WIA (Work and income according to working capacity act)  
 Employees with an employment contract for a fixed period (hereinafter called: flex workers) who have to take time off sick during the mandatory period for the continued payment of wages no longer receive their wages from their (former) employer. These ex-employees receive a benefit under the Sickness Benefits Act (ZW) from the UWV (Employees Insurance Agency), prior to the WIA examination. In these cases both the ZW benefit and subsequent WGA (Rules on resumption of work by employees potentially fit for work) benefit are financed by the sector fund. An employer is hence not faced with ZW and WGA premium charges. This has changed as from 1 January 2014.

The ZW part is divided into 4 pillars: pregnancy, sick unemployment benefit recipients, flex worker and other. The Flex worker is again divided into two groups, namely: agency staff and end of employment temporary contract and possible after-effect due to reporting sick within 28 days after termination of employment.

If an employee has acquired a No Risk status due to a disability or a previous incapacity benefit a right also exists to a ZW benefit during their absence. This also applies for unemployment benefit recipients and sickness due to pregnancy. The ZW benefit and subsequent WGA benefit are therefore covered by the sector fund.

Diagram of situation up to 1 January 2014



## WIA loss is increasing sharply

Since the introduction of the Wet WIA (Work and income according to working capacity act) the inflow into the WIA has increased sharply. The total number of awards of WIA benefits has increased by over 70% compared with 2006. Each year the inflow has increased: of all WIA benefits granted in 2011, around 80% are WGA benefit. These WGA benefits also lead to a higher WGA loss than expected which is caused mainly by:

- much greater WGA 80%-100% (not permanent) assessment (72%) than previously estimated
- remaining longer in the WGA than previously estimated (little recovery or progression to IVA (Income Provision (Fully Disabled Employees) Regulation)

Around 55% of all WGA awards relate to flex workers. The UWV, which in these cases is responsible for the Wet Verbetering Poortwachter (Eligibility for permanent Incapacity benefit (Restrictions) Act), has proved unable to prevent the inflow into the WGA and promote the outflow. The increased WIA inflow by flex workers is the reason for laying more responsibility on the employer.

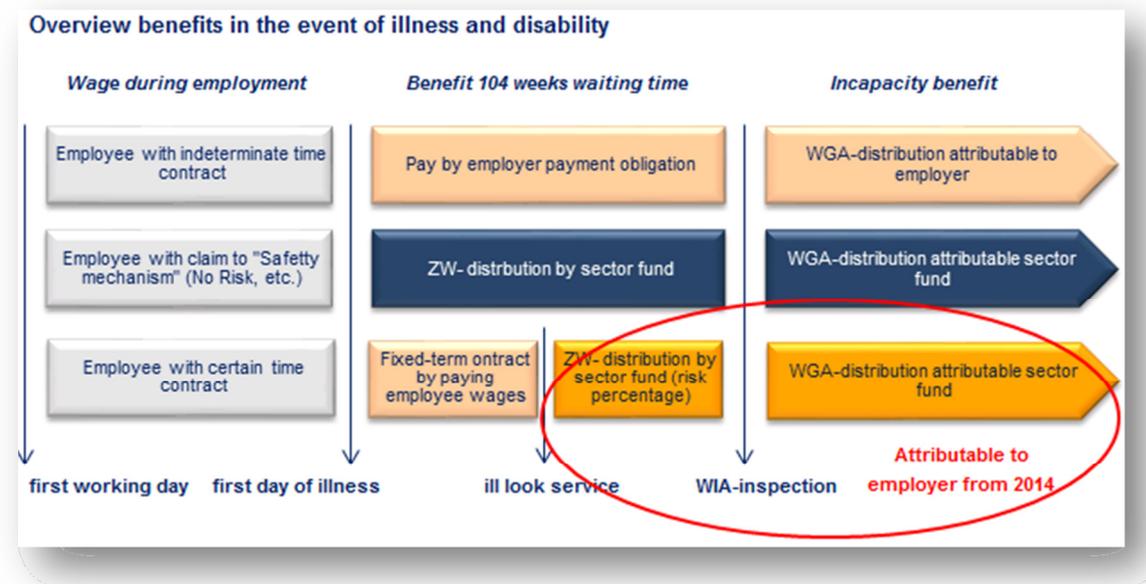
## Tightening of Sickness Benefits Act (ZW)

The aim of the BeZaVa (Sick Pay and Incapacity Benefit Limitation Act) is to reduce the costs of sick leave and incapacity of so-called safety-netters (ex-employees who upon sickness have no right to continued payment of wages by the employer). These are mainly sick agency staff and sick employees with an employment contract for a fixed period that expires while they are on sick leave.

The Sickness Benefits Act also exists for special situations such as employees for whom the No Risk policy applies (for example young disabled people (Wajongers) or WIA recipients who are employed), unemployment benefit recipients or in case of pregnancy. The proposed changes do not however relate to this group of sickness benefit recipients. In this situation the safety net regulation is a subsidy regulation that remains unchanged.

The key point is that the Sickness Benefits Act (ZW) and WGA charges for flex workers will from 1 January 2014 be charged directly to the former employer.

### Situation from 1 January 2014



**This amendment of the act thus has consequences for both the employer and the ex-employee!**

### Consequence for ex-employees

The sickness benefit rights of ex-employees who go off sick are limited as a result of the change in the law. The main change for ex-employees is:

- Adjustment of ZW criterion: in the first year of sickness, sickness is deemed to apply once an ex-employee is not able to carry out the last work he performed. After the first year's sickness an examination is carried out at which the ZW criterion is made the same as that of the WIA. As a result generally accepted work is taken as a criterion and not the original work. The result of this is that sickness is no longer deemed to apply if there are sufficient (theoretical!) opportunities to carry out other work and hence to earn income (earning capacity)

### Consequences for employers

When evaluating the Sickness Benefits Act and the WIA it was found that employers are better able to help sick and incapacitated employees back to work than the UWV. The change in the law provides more financial incentives for employers. The main changes for the employer are:

- Premium differentiation under ZW: to finance the safety net payments the premium for large ~~big~~ employers (more than 100 employees) will be differentiated based on the ZW payment charge to be attributed in the past. The system is the same as the method by which the WGA premium is differentiated at present. For small employers (less than 10 employees) the premium will continue to be determined at sector level and for medium-sized employers (between 10 and 100 employees) a combination will be made of the differentiation at employer and sector level. This came into force as from 1 January 2014.
- Premium differentiation WGA flex; the WGA benefits of flex workers are from 1 January 2014 attributed to the (last) employer by means of a differentiated premium. The WGA premium differentiation for small, medium-sized and big employers is identical to the ZW premium differentiation.

It is possible to execute the ZW oneself. You can choose to bear your own ZW excess. You then no longer have to deal with the ZW premium differentiation.

If you remain a WGA excess bearer, as from 1 January 2016 you will have to decide whether you wish to extend the risk with the WGA flex or wish to return to the public insurance with the UWV. In the latter case you do not pay the minimum premium, but any WGA safety net payments to your ex-employees may lead to a higher public premium.

### ZW excess bearer status

Because from 1 January 2014 the Sickness Benefits Act (ZW) and WGA charges for flex workers are attributed directly to the former employer you have every interest in limiting this loss as far as possible. In case of public insurance with the UWV, you only have control over this loss while the employee is still employed. After that the UWV takes over the re-integration and you are charged the costs of sickness benefits, WGA and re-integration via the differentiated premiums.

You can however also choose not to be dependent on the UWV and to take control of the re-integration yourself or to contract it out to a third party. You then opt for ZW excess bearer status. In that case no differentiated ZW premium is payable, but you bear directly the risk of ZW benefits to be paid out. You can of course also take out private insurance for this, where, in addition to the financial risk this also covers the execution of ZW excess bearer status. Just as for the WGA, twice a year you have the option to become an excess bearer for ZW (as of 1 January and 1 July).