

Pensions & Retirement Plans

Contributing editors

Steven J Friedman and Melissa B Kurtzman



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GETTING THE
DEAL THROUGH 

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Pensions & Retirement Plans 2016

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Venezuela

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Statutory and regulatory framework

1 What are the main statutes and regulations relating to pensions and retirement plans?

The Social Security Law of 30 April 2012. Currently, there are no regulations regarding private pension and retirement plans.

2 What are the primary regulatory authorities and how do they enforce the governing laws?

The National Social Security Entity. It enforces its rulings by imposing fines on employers.

3 What is the framework for taxation of pensions?

Pensions are not considered taxable income in Venezuela.

State pension provisions

4 What is the state pension system?

The public system is funded by the state and contributions are made by the employer and employees.

5 How is the state pension calculated and what factors may cause the pension to be enhanced or reduced?

The pension is calculated based on the amount of contributions into the system. Employees must make monthly contributions, which are calculated based on weekly salary. Once 750 weekly contributions are made, employees are eligible for a pension if age requirements are met. There is also a cap determined by the national minimum wage. Women aged 55 and older and men aged 60 and older are eligible for retirement.

6 Is the state pension designed to provide a certain level of replacement income to workers who have worked continuously until retirement age?

No. The system is designed to provide at least the national minimum wage.

7 Is the state pension system under pressure to reduce benefits or otherwise change its current structure in any way on account of current fiscal realities?

Yes. The system is damaged. It is sustained only by the contributions of the state, and resources are very limited.

Plan features and operation

8 What are the main types of private pensions and retirement plans that are provided to a broad base of employees?

Defined benefit and defined contribution.

9 What restrictions or prohibitions limit an employer's ability to exclude certain employees from participation in broad-based retirement plans?

Private retirement plans are neither regulated nor prohibited by law.

10 Can plans require employees to work for a specified period to participate in the plan or become vested in benefits they have accrued?

Yes. Private plans are neither regulated nor limited.

11 What are the considerations regarding employees working permanently and temporarily overseas? Are they eligible to join or remain in a plan regulated in your jurisdiction?

Employees working overseas permanently or temporarily may be eligible to join or remain in a plan regulated in Venezuela. Owing to the lack of regulation, private retirement programmes can impose their own regulations.

12 Do employer and employees share in the financing of the benefits and are the benefits funded in a trust or other secure vehicle?

For a plan to be tax-exempt, both employees and employers need to make contributions. Usually, the benefits are held in a trust deposited in a bank or insurance company.

13 What rules apply to the level at which benefits are funded and what is the process for an employer to determine how much to fund a defined benefit pension plan annually?

There are no general rules. The funding process depends on the private pension plan.

14 What are customary levels of benefits provided to employees participating in private plans?

In general, the level is 20 per cent of annual compensation.

15 Are there statutory provisions for the increase of pensions in payment (pension escalation) and the revaluation of deferred pensions?

No.

16 What pre-retirement death benefits are customarily provided to employees' beneficiaries and are there any mandatory rules with respect to death benefits?

No mandatory rules apply. Pre-retirement death benefits will depend on each plan. It is customary to pay beneficiaries a prorated amount based on the age at which the employee would reach retirement.

17 When can employees retire and receive their full plan benefits? How does early retirement affect benefit calculations?

There are no legal rules governing retirement age for private pension plans and retirement benefits. Benefit calculations depend on the private plan terms.

18 Are plans permitted to allow distributions or loans of all or some of the plan benefits to members that are still employed?

There are no legal limitations. Some plans, in fact, allow for such payments while members are still employed. However, this is an exception to the common rule and could affect tax benefits.

19 Is the sufficiency of retirement benefits affected greatly if employees change employer while they are accruing benefits?

It depends on the rules applicable to each plan.

20 In what circumstances may members transfer their benefits to another pension scheme?

Employees can transfer their benefits to a new plan if doing so is permitted by the rules of the plan.

21 Who is responsible for the investment of plan funds and the sufficiency of investment returns?

Usually, the employer is responsible.

22 Can plan benefits be enhanced for certain groups of employees in connection with a voluntary or involuntary reduction in workforce programme?

Yes.

23 Are non-broad-based (eg, executive-only) plans permitted and what types of benefits do they typically provide?

Yes, they are permitted. Usually, these plans provide for a lump sum at the time of retirement or death.

24 How do the legal requirements for non-broad-based plans differ from the requirements that apply to broad-based plans?

It depends on the specific plan. There is no legal regulation governing this type of plan.

25 How do retirement benefits provided to employees in a trade union differ from those provided to non-unionised employees?

It depends on the specific plan rules.

26 How do the legal requirements for trade-union-sponsored arrangements differ from the requirements that apply to other broad-based arrangements?

Here, too, it depends on the specific plan rules. There are neither legal requirements for trade-union-sponsored arrangements nor for other broad-based arrangements.

Enforcement

27 What is the process for plan regulators to examine a plan for periodic legal compliance?

There are no plan regulators. The only issue to consider is whether the plan is tax exempt or not.

28 What sanctions will employers face if plans are not legally compliant?

None. If the plan is not considered tax-exempt, the benefits received by the beneficiaries are taxable.

29 How can employers correct errors in plan documentation or administration in advance of a review by governing agencies?

The employers can correct errors at any time. There are no governing agencies regulating private pension plans. However, the Tax Authority can review the plans for tax-related issues.

30 What disclosures must be provided to the authorities in connection with plan administration?

Any information that demonstrates that the plan is an actual retirement plan and not a way to indirectly compensate the employee must be provided.

31 What disclosures must be provided to plan participants?

Those provided in the internal rules of the plan.

32 What means are available to plan participants to enforce their rights under pension and retirement plans?

Civil and commercial means. Participants can sue the employer or the plan administrator for breach of contract or violation of fiduciary duty.

Plan changes and termination

33 What restrictions and requirements exist with respect to an employer's changing the terms of a plan?

None.

34 What restrictions and requirements exist with respect to an employer terminating a plan?

None.

35 What protections are in place for plan benefits in the event of employer insolvency?

None.

36 How are retirement benefits affected if the employer is acquired?

The new employer must continue with the benefits of the plan.

37 Upon plan termination, how can any surplus amounts be utilised?

It would depend on the rules of the plan.



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Fiduciary responsibilities

38 Which persons and entities are 'fiduciaries'?

Only banks and insurance companies are fiduciaries.

39 What duties apply to fiduciaries?

The highest level of responsibility applies.

40 What are the consequences of fiduciaries' failing to discharge their duties?

They can be sued by the beneficiary and can be sanctioned by the bank authority.

Legal developments and trends

41 Have there been legal challenges when certain types of plans are converted to different types of plan?

No.

42 Have there been legal challenges to other aspects of plan design and administration?

No.

43 How will funding shortfalls, changing worker demographics and future legislation be likely to affect private pensions in the future?

These events will not affect private pension plans in the near future.

Getting the Deal Through

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