360°Benefits I News

Overview of legislative developments and reforms in the 2nd pillar as of 2024

Various legislative changes came into force on January 1, 2024. In addition, further reforms are planned in the coming years, which will also have an impact on the 2nd pillar. Pension funds should already have largely implemented the requirements of the Data Protection Act, which came into force on September 1, 2023, as well as the 1st pillar old age insurance (AHV) reform. Currently, there is a need for action mainly for the technical administrations regarding the new disability pension calculations.

Regulation is becoming increasingly complex. We will be happy to support you in keeping an overview and making any necessary adjustments. Feel free to contact us if you have any questions or suggestions. You can find an overview of our range of legal services and our legal advice team here.

Table of contents

Adjustments before or as of January 1, 2024

1. Data Protection Act

On September 1, 2023, the new Data Protection Act (DSG), the new Data Protection Ordinance (DSV) and the new Ordinance on Data Protection Certifications (VDSZ) came into force. Swiss data protection law is thus based on the European Union's General Data Protection Regulation (GDPR), but goes less far than the GDPR in some areas.

Pension funds are likely to have already largely implemented and adapted their processes and documentation in accordance with the new data protection regulations. Among other things, pension funds that (also) provide mandatory benefits are considered federal bodies under the data protection law and therefore had to implement more extensive obligations than companies that are considered private individuals under data protection law. For example, federal bodies must register the records of processing activities with the Federal Data Privacy and Information Commissioner (FDPIC) and appoint and register a data protection advisor (see 360°Benefits | News Legislation 2022 and 360°Benefits I News Legislation 2023) .

> **Note**: We recommend systematically monitoring compliance with the new data protection regulations so that data protection violations and sanctions can be avoided. Federal bodies should be supported and advised in this by their mandated data protection advisor. Other institutions can voluntarily mandate a data protection advisor to support them in monitoring data protection compliance and making any necessary adjustments, or to assist with projects such as the selection of a new service provider or the introduction of new software. We also support pension funds as data protection advisor and are happy to answer any questions you may have on data protection topics.

2. AHV reform

The 1st pillar old age insurance (AHV) reform came into force on January 1, 2024. It also has an impact on the 2nd pillar. Among other things, the reference age for women for normal retirement in both the 1st and 2nd pillars will be increased in four stages to 65 and retirement has become more flexible. Retirement under the occupational pension scheme is still possible between the ages of 58 (55 in the case of restructuring) and 70. Partial retirement (including partial early retirement or partial deferral) is now mandatory. Pension funds should already have implemented the AHV reform in their plan rules. Certain practical issues will likely be further specified through case law or tax practice.

> **Note**: With the implementation of the AHV reform, practical questions arise in particular with regard to existing disability pensions or the tax treatment of the new, more flexible retirement options.
> Planning retirement has become more challenging for insured persons with the new options. Insured persons need information and advice in this regard. However, pension funds and employers should avoid advising insured persons, in particular on topics that go beyond guidance on the options available under the specific plan rules of the pension fund.
> In certain cases, the employer's consent is also required, e.g. for a reduction in working hours or continued employment beyond the reference age.

3. Amendment of the 1st pillar disability insurance

An amendment to the Ordinance on Disability Insurance (IVV) came into force on January 1, 2024. In the 1st pillar, the assessment of the degree of disability of insured persons for whom it is not possible to compare the actual income before and after the disability was adjusted. The hypothetical residual income previously applied was criticized as being too high and is now reduced by a flat-rate deduction of 10% in order to take account of restrictions on the labour market. This might lead to higher disability pensions and increased retraining. The amendment to the ordinance also includes a transitional provision for current disability pensions to be reviewed by the end of 2026 at the latest.

Note: The amendment to the IVV primarily affects the 1st pillar, but also has an impact on occupational benefits insurance. Typically, pension funds base their disability definition on the disability definition in the 1st pillar. In these cases, as soon as the 1st pillar disability insurance adjusts its disability pension (increase or new pension), the pension fund may also have to adjust the disability pension from occupational benefits insurance. The same applies to the calculation of overcompensation if a hypothetical residual income is taken into account as disability income. It is not necessary to adjust the pension fund plan rules in this context.

4. Modernization of supervision in the 1st pillar / optimizations in the 2nd pillar

The modernization of supervision in the 1st pillar and optimizations in the 2nd pillar came into force on 1 January 2024. Among other things, the new Art. 53e^bis BVG regulates the takeover of pensioner portfolios and pensioner-heavy portfolios. Pension funds may only take over such portfolios if the corresponding obligations are sufficiently financed, which must be confirmed by the scheme actuary (Art. 52e para. 4 and Art. 53e^bis para. 1 BVG). The supervisory authority of the acquiring pension fund must now check in advance of a takeover whether the conditions for a takeover are met and formally approve the takeover. The takeover may only take place after the decree has become legally binding. Art. 17 and 17a BVV2 define in more detail what is considered a pensioner-heavy portfolio and how the pension obligations must be financed. Even after a takeover, the supervisory authority now ensures that the pension capital and technical provisions formed for the transferred pensioner portfolio are only adjusted in justified cases. To this end, it can request a report from the scheme actuary and, if necessary, order measures to be taken.

Note: Recently, the supervisory authorities have considered the transfer of pensioner portfolios to be permissible in exceptional cases only. For example, in the event of the bankruptcy of a company and the involuntary retention of a pensioner portfolio in the pension fund, but not if a pensioner portfolio is voluntarily separated from an overall portfolio with active members, regardless of whether or not a pensioner portfolio is sufficiently financed. In our view, this is a restrictive interpretation that could be legally challenged. It remains to be seen whether this interpretation will stand up to judicial review. Until then, the transfer of pensioner portfolios remains de facto severely restricted. The revision of the law described above does not change this, as it only regulates the modalities of a transfer, but not the underlying question of whether and under what circumstances the transfer of a pensioner portfolio is permissible.

5. Leave of the other parent

Changes to parental leave were introduced on January 1, 2024: In the event of the death of a parent shortly after the birth of a child, the surviving parent will now receive longer maternity or paternity leave to adjust to the stroke of fate. The additional leave is paid from the income compensation scheme.

If the mother dies within 14 weeks of giving birth, the surviving parent receives an additional 14 weeks' leave, which must be taken immediately after the death and without interruption, in the same way as maternity leave. If the other parent dies, the mother receives an additional 2 weeks' leave, which can be taken on a weekly or daily basis within 6 months of the death in the same way as the other parent's leave (paternity leave). It is also clarified that the mother's wife is also recognized as a legal parent and is entitled to paternity leave (Art. 329f para. 3, Art. 329g and Art. 329g^{bis} CO; Art. 16c and 16k^{bis} EOG).

Note: What is new in particular is that if one parent dies shortly after the birth of the child, the other parent is entitled to additional parental leave corresponding to the entitlement to parental leave of the deceased parent.

Pension funds must ensure that the previous coordinated salary remains valid during the "leave of the other parent" unless the insured person requests a reduction (Art. 8 para. 3 BVG). Depending on the current wording, the pension fund regulations must be adapted.

6. Key figures 1st and 2nd pillar benefits, inflation adjustment, minimum interest rate

The minimum interest rate for occupational pensions was increased from 1% to 1.25% as of January 1, 2024.

The 2nd pillar (BVG) key figures were not adjusted as of January 1, 2024, as the minimum 1st pillar (AHV) retirement pension for 2024 was not adjusted. You can find the details of the key figures here.

The survivors' and disability pensions in the BVG mandatory scheme that have been running since 2020 will be adjusted to inflation for the first time. The adjustment rate is 6.0%.

In accordance with Art. 36 BVG, pensions that exceed the BVG mandatory amount must be adjusted according to the financial possibilities of the pension fund. The Board of Trustees of the pension fund must decide annually whether and to what extent pensions are to be adjusted and explain the decisions in the annual financial statements or the annual report.

Note: An inflation adjustment is not mandatory for pension funds providing mandatory and over-mandatory benefits, as long as the BVG minimum benefits are paid. Nevertheless, adjustments should be considered within the framework of the pension fund's financial possibilities. In terms of equal treatment, different generations of pensioners and the benefits paid to active insured persons must also be taken into account.

Outlook and future developments

1. Reform of 2nd pillar pension benefits (BVG 21)

The BVG 21 reform was approved by Parliament on March 17, 2023. Among other things, the conversion rate shall be lowered, the savings process strengthened and a pension supplement granted for the transitional generation (see 360°Benefits I News Legislation 2023). A referendum was successfully taken against the reform and a public vote is expected to be held in summer/autumn 2024.

> **Note**: The outcome of the public vote is open and remains to be seen. The pension supplement for the transitional generation is particularly controversial.

2. Adjustment of 1st pillar widow's and widower's pensions (AHV)

In a ruling of October 11, 2022, which is binding for Switzerland, the European Court of Human Rights (ECtHR) deemed the unequal treatment of women and men in Swiss 1st pillar (AHV) survivors' benefits to be unlawful. There is currently a transitional arrangement in place under which widowers with children are to be treated in the same way as widows with children. Now, the legal provisions on AHV widow's and widower's pensions are to be amended to ensure legal equality between widows and widowers, adapt the system to today's social realities and reduce the burden on the federal government. The consultation period for this legislative amendment lasts until March 29, 2024.

The following measures are planned as part of this adjustment:

- Survivors' pension for parents in principle until the youngest child reaches the age of 25, regardless of the parents' marital status.
- Transitional pension for two years for surviving dependents without dependent children (married persons and divorced persons who received a maintenance contribution from the deceased).
- Support within the framework of supplementary benefits (EL) for widows/widowers aged 58 and above who no longer have dependent children, provided the death constitutes a poverty factor.
- In accident insurance: granting of a pension also for widowers if they have children who are no longer entitled to a pension when their spouse dies, or if the person has reached the age of 45.

Transitional provisions:

- Two years after the amendments come into force, current widow's/widower's pensions for widows/widowers who have not yet reached the age of 55 and have no dependent children will be discontinued. For older widows and widowers their current pensions will continue to be paid.
- Current pensions for widows/widowers aged 50 and above who receive supplementary benefits to the AHV/IV will be continued.

> **Note**: The amendment to the AHV has no direct effect on the 2nd pillar, as the survivors' benefits in occupational pension schemes do not have any different eligibility requirements based on gender and are therefore not discriminatory. However, the intention is to link the AHV to the relationship with the dependent child, irrespective of the relationship and marital status of the parents. It is possible that this concept will also be adopted in occupational pension schemes in the future. The consultation draft does not yet provide for any changes in this regard. Occupational pension schemes already have the option, based on Art. 20a BVG, to provide, among others, for the benefit of life partners and dependents for death benefits in the pension fund regulations, which the legislator considers to be sufficient.

3. Introduction of 13th AHV pension

The popular initiative "For a better life in old age (initiative for a 13th AHV pension)" was adopted in the public vote on 3 March 2024. This will increase the AHV retirement pension by an additional 13th monthly pension. The financing and implementation modalities have not been addressed and must now be worked out.

It is currently expected that the 13th AHV pension will lead to a pension increase of 8.33% and that this will be paid out monthly from 1 January 2026. In terms of financing, an increase in employee and employer contributions (increase in AHV salary contributions from currently 8.7% to 9.4%) and an increase in VAT (from currently 8.1% to 9.1%) or a combination of the two are being discussed. The introduction of the 13th AHV pension for all will lead to considerable additional costs for the AHV, which will continue to rise in future due to the expected sharp increase in the number of pensioners.

The popular initiative only includes an increase in AHV old-age pensions, but not survivors', children's and disability pensions. However, there are already demands for disability pensions in the 1st pillar to be adjusted accordingly.

Note: In occupational benefits schemes, the introduction of the 13th AHV pension will have an impact wherever occupational benefits schemes are based on the AHV pension, i.e. in particular with regard to the BVG threshold amounts, the BVG benefits and the AHV bridging pensions. It is to be expected that the pension funds will have to adjust their pension fund regulations accordingly in due course.

4. Subsequent purchases into pillar 3a

An amendment to BVV 3 is planned, which would allow to close contribution gaps in pillar 3a. In future, tax-deductible purchases in pillar 3a should be possible retroactively for up to 10 years, thereby strengthening individual pension provision. However, only new gaps arising from 2025 onwards can be closed; retroactive filling of existing gaps is not permitted, which excludes an entire generation of employees. Such an additional purchase can only be made once the ordinary annual contribution has already been paid in full and is limited to the so-called "small amount" (max. CHF 7,056 in 2024). The consultation period for this adjustment will last until March 3, 2024.

Note: A retrospective purchase into pillar 3a (as well as the ordinary contribution) requires income subject to AHV contributions in Switzerland. Subsequent payments of AHV contribution gaps are possible retroactively for up to five years. Purchases into the pension fund are generally possible during the entire insurance period, provided there is still room for purchases and no insured event has yet occurred. The possibility of closing contribution gaps in pillar 3a in future would introduce a further option for strengthening old-age provision.

5. New regulation of default interest

As part of Fabio Regazzi's parliamentary initiative "Federal default interest rate. Adjustment to market interest rates", the National Council's Legal Affairs Committee is proposing the inclusion of a new flexible default interest rate in the Swiss Code of Obligations (CO). The default interest rate in accordance with Art. 104 CO applies to occupational pension schemes if no default interest rate has been defined in the plan rules.

The proposed default interest rate should be composed of the SARON interest rate compounded over three months plus two percentage points. The resulting interest rate would be rounded up or down to the nearest whole number in accordance with commercial rounding rules. In any case, it would correspond to a minimum of 2% and a maximum of 15% per year.

Note: An amendment to the default interest regulation in the Swiss Code of Obligations would also have an impact on occupational benefits insurance. If Parliament approves the proposal, the default interest provisions in the pension fund regulations should be reviewed.

6. Other developments

On 3 March 2024, a further public vote was held on the popular initiative "For a secure and sustainable old age pension (pension initiative)". The initiative proposed increasing the retirement age for men and women to 66 by 2033 and then automatically linking it to life expectancy. This initiative was clearly rejected by the electorate. However, we expect that there will be further attempts in this direction in order to secure old-age provision in the future. On March 14, 2023, the motion "Amendment of the BVG in line with the Swiss sustainability goals" was submitted to the National Council. The Federal Council is instructed to amend the 2nd pillar pension benefits act (BVG) so that compliance with sustainability in line with the Swiss sustainability goals becomes part of the fiduciary duty. The pension funds should report on this annually. The Federal Council welcomes the efforts of the pension funds to achieve greater sustainability, but continues to rely on voluntary solutions and recommended rejection of the motion in its statement of May 17, 2023.

Furthermore, the motion "Abolition of old-age child pensions and simultaneous increase in supplementary benefits for parents with maintenance obligations" was submitted to the National Council on January 18, 2024. With a view to economic sustainability and social justice for all generations, this motion aims to abolish old-age children's pensions in the AHV and occupational pension schemes.

We are monitoring further developments for you and are happy to inform and advise you on regulatory changes.

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