The wage guarantee: a case of ‘no work, yet pay’ or a social investment?

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Abstract

The need to address overuse of the social insurance program for disability, to reduce the labor distortions caused by such program, and the desire to shift the emphasis in the disability program away from mere maintenance of the benefits more toward rehabilitating the disabled and assisting them to returning to productive work, have motivated reform measures. Different states have taken different reform measures. In the Netherlands, it was decided to impose upon individual employers the duty to continue to pay wages in case of worker sickness or disability for a period of two years. In the economics literature on social security, this two-year period is considered as a desirable introduction of a mandatory waiting period during which the employer can take steps to prevent disabilities to aggravate, effectively reducing the enrollment into the disability insurance program. In this paper, the duty to continue to pay wages is approached in two different ways. First, it can be seen as a individually funded income support program administered by individual employers. As such, it can be contrasted and compared with the collectively funded income support program which is bureaucratically administered. Second, it can be seen as a regime of ‘no work, yet pay’ and as such it can be contrasted and compared with a regime of ‘no work, no pay’ which is the general rule in employment contract law in case work is not performed.

1. Introduction

Since a wage is considered a quid pro quo for work performance, in principle, it has to be paid only if work has been performed. ‘No work, no pay’ is the general rule, but to this rule exceptions exist. In European states, the set of statutory exceptions is broad and generous. Examples are the annual paid holiday, special leave for which statutorily continued payment is guaranteed, and the guaranteed continued salary in case of worker illness. In 2004, the

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Netherlands decided to extend the period during which an individual employer is obliged to continue to pay wages in case of worker illness or disability, to two years.\(^1\) Even for European standards, a 2-year wage guarantee in case of worker illness is exceptionally long. What has motivated the Dutch legislator to take such an unusual measure?

In 1996, the Dutch government decided to reform its social insurance system for disability. The old system provided public insurance against income losses due to sickness or disability: employees who were unable to perform work, were entitled to public sickness benefits from the first day of sick leave onwards, and for a period of 52 weeks. After this period they were entitled to public disability benefits until retirement. At the time of introduction of the system (1967), the expectation was that about 200.000 persons would make use of it.\(^2\) However, in 1991, more than 900.000 people received public disability benefits. The public system was heavily overused. So in 1996, the Dutch government decided to reform its social security system by creating an environment in which individual employers and employee would take more responsibility in dealing with the problem of disability. To that end, a duty for individual employers to continue to pay wages in case of employee sickness during a period of 52 weeks, was introduced.\(^3\) Only after this initial period of 52 weeks (during which the employee had to continue wage payment), were disabled employees entitled to enroll in the public disability insurance program. However, this measure did not seem to lead to a reduction in the enrolment into the public disability insurance program. In a new round of programme restructuring (2002), the Dutch required employers to rehabilitate and accommodate their sick workers.\(^4\) At the beginning of 2003, 993.000 people received public disability benefits, the highest number ever, both in absolute terms as well as in relative terms: 13 out of every 100 persons of the labor population. This led to a call for further regulation. In 2004, the duty to continue to pay wages was extended to 104 weeks.\(^5\) The risk of income loss due to disability is regulated by civil law, at least during the first two years

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\(^1\) The obligation is laid down in article 7:629 of the Dutch Civil Code: Inability to work due to sickness, pregnancy or the delivery of a child
- 1. Where the employee is unable to perform the contracted work due to sickness, pregnancy or the delivery of a child, he remains entitled to 70 % of his wages fixed in money terms for a period of 104 weeks, as far as these wages are not higher than the maximum daily wages meant in Article 17 paragraph 1 of the Financing Social Security Act, on the understanding that during the first 52 weeks of his inability to work he is at least entitled to the minimum wages as set under law for a person of his age.

The obligation to continue to pay the salary is imposed on individual employers but market insurance is available.


\(^3\) Law on the Extension of the Obligation to Continue Sick Pay (Wulbz, 1996).

\(^4\) Law on the Improvement of Gatekeeper or Gatekeeper Protocol (WVP, 2002).

\(^5\) Law on the Lengthening of the Obligation to Continue Sick pay (Wulbz, 2004)
when the employer is obliged to pay 70 percent of the wage.\(^6\) Obligations to rehabilitate employees have become stricter. The employer is obliged to take efforts to rehabilitate (reintegrate) disabled workers either within the company or outside. A failure to provide sufficient effort to re-integrate worker is sanctioned by a duty to continue to pay wages during a third year of disability. The measures taken seem to have been effective. The number of people who receive public disability benefits has indeed decreased both in absolute as well as in relative terms.\(^7\) In June 2016, 810,000 persons received public disability benefits: 10 out of every 100 persons of the labor population.\(^8\)

At the end of the 20\(^{th}\) century, the high level of Disability Insurance enrolment was considered to be one of the major social and economic problems of the Netherlands; indeed, the Netherlands was characterized as the country with the most out-of-control disability program of OECD countries.\(^9\) Since then, reducing enrolment levels have become almost a policy goal on its own, justifying almost every measure, including the use of a very heavy dose of legal pressure on individual employers. There is a tendency to evaluate the desirability of the measures taken solely in terms of their ability to reduce the level of disability insurance enrolment. Economic studies do measure the effect of the measures taken on disability enrolment levels and do provide explanations of how the measures work. Koning and Lindenboom provide evidence that disability enrolment levels have decreased and attribute this to the introduction in the Netherlands of a mandatory waiting period (during which employers continue to pay wages) during which the employer is given incentives to take action at an early stage to prevent that disabilities aggravate, effectively reducing enrolment levels into the disability insurance program.\(^10\)

But of course reduction in disability insurance enrolment levels is not all that matters in Dutch social policy. A well-functioning social security system and a well-functioning labor

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\(^7\) Dutch central bureau for statistics

\(^8\) Total labour population in 2016: 8.9 million.


market are important too. The duty to continue to pay wages should therefore not only be evaluated in terms of its ability to reduce enrollment in the disability insurance program. In this paper the duty to continue to pay wages is approached in two different ways. First, it can be seen as a individually funded income support program administered by individual employers. As such, it can be contrasted and compared with the collectively funded social insurance program which is bureaucratically administered. Second, it can be seen as a regime of ‘no work, yet pay’ and as such it can be contrasted and compared with a regime of ‘no work, no pay’ which is the general rule in employment contract law in case work is not performed.

2. The duty to continue to pay wages: an individually funded support program, administered by individual employers

Modern welfare states usually have a social insurance program for disability. This social insurance program insures workers against the risk of income loss due to sickness or disability. The characteristic features of social insurance programs is that they are collectively funded income support programs which are bureaucratically administered. Such a system has advantages compared with older system that provided economic security, but has also disadvantages. Under the current Dutch regime, the risk of income loss due to sickness or disability is shifted to individual employers during the first two years. It is implemented by a civil law duty to continue to pay wages during a period of two years. This new regime can be considered as an individually funded support program, administered by individual employers and be compared with the collectively funded social insurance programs which are bureaucratically administered.

2.1 Advantages and disadvantages of social insurance programs

2.1.1 Advantages

All peoples throughout all of human history have faced the uncertainties brought on by unemployment, illness, disability, death and old age. In the realm of economics, these
inevitable facets of life are said to be threats to one's economic security. For the ancient Greeks economic security took the form of amphorae of olive oil. Olive oil was very nutritious and could be stored for relatively long periods. To provide for themselves in times of need the Greeks stockpiled olive oil and this was their form of economic security. These then are the traditional sources of economic security: assets; labor; family; and charity.

After World War II, welfare states adopted a system of social insurance to provide economic security to workers. Workers are insured against the risk of income loss due to unemployment, disability, and old age. Social insurance programs are collectively funded and governmentally administered transfer programs. The governmentally operated program has well-defined eligibility criteria, benefit formulae, and the like. And the program is administered by a bureaucracy with a minimum of discretion of these rules.

Modern social insurance programs are generally considered as a huge improvement compared to old systems of poverty relief, private charity, and the development of formal organizations to protect the economic security of their members.

In the Middle Ages, Europe witnessed the development of formal organizations of various types that sought to protect the economic security of their members. Probably the earliest of these organizations were guilds formed during the Middle Ages by merchants or craftsmen. Individuals who had a common trade or business banded together into mutual aid societies, or guilds. These guilds regulated production and employment and they also provided a range of benefits to their members including financial help in times of poverty or illness and contributions to help defray the expenses when a member died. These guilds provided financial help in time of poverty or illness, but the guild also artificially restricts competition and as a result generates rents for its members. The rents not only cause income inequality but also price distortions and labor distortions.  

Consider a medieval plumbers’ guild that artificially restricts competition and as a result generates rents for its members. More specifically, the income of plumbers is on average 150 Euro per day (including a 50 Euro rent), while carpenters and bakers make on average only 100, working the same number of hours but without the benefit of a guild. The rents caused not only income inequality but also price distortion, since

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plumber services are artificially more expensive than carpenter services or bakery products. Moreover, the rents cause labor distortion: the carpenters and bakers have an incentive to work less hard than optimal (since they can buy fewer products with their income than they produce), while the plumbers have an incentive to work harder than optimal (since they can buy more products than they produce).

The guild generates rents and inefficiency. The legal system could remove the rents by abolishing the guild that restricted competition, it also reduces the price distortion (as prices return to their competitive level) and the labor distortion (caused by the price distortion).

The very old poor law of the 17th century featured local taxation to support the destitute, discriminated between the worthy and unworthy poor and all relief was a local responsibility. Later there was a limited movement to state financing and the creation of almshouses and poorhouses to "contain" the problem. For much of the 18th and 19th centuries most poverty relief was provided in the almshouses and poorhouses. Relief was made as unpleasant as possible in order to "discourage" dependency. Support outside the institutions was called "outdoor relief" and was looked upon with distrust by most citizens. It was felt that "outdoor relief" made things too easy on the poor who should be discouraged from the habit of poverty in every way possible.\(^\text{13}\)

Social insurance programs, on the other hand, create an entitlement that depends only a few, readily measurable criteria. Is a person without income from paid labor due to job loss or a disability? The system does not make a distinction between deserving and undeserving recipients. It establishes a routine that applies to all cases in which people lack an income through paid labor, regardless of the reason. An entitlement is created which does not have to be justified on a case-by-case basis.

### 2.1.2 Disadvantages

And yet, the social insurance system have shortcomings too. Social insurance programs may distort work incentives and harm the economy.\(^\text{14}\) Elderly persons who receive social security benefits have those benefits taxed if they continue to work. They are given incentives to withdraw from the labor force. A reduced number of workers reduces the output of the economy. On average, people are made less well-off. Unemployment compensation

\(^{13}\) Nevertheless, since it was expensive to build and operate the poor houses, and since it was relatively easy to dispense cash or in-kind support, some outdoor relief did emerge.

subsidizes the marginal allocation of time from work to leisure. Economic output is smaller. The search for work is prolonged and the wages at which the unemployed will accept employment are made to be higher. Disability compensation generates false claims and false medical certification of disability. Reasonably healthy people withdraw from work. Again, economic output is smaller and the material conditions of people is made worse.

Existing social insurance programs could start to change eligibility criteria and benefits level in such a way as to preserve their insurance function with minimal harm to the economy. But social insurance programs have an inherent feature which makes it inherently difficult to solve all problems: they are bureaucratically administered. This makes it difficult to address problems of (a) moral hazard and rent-seeking, (b) common pool problems and (3) the entitlement mentality.¹⁵

a. Moral hazard and rent-seeking

The governmentally operated program must have well-defined eligibility criteria, benefit formulae and the like. The program must be administered by a bureaucracy with a minimum of discretion in the application of these rules. In an ideal system, all people who are rightfully entitled to the benefit, would receive the benefit. And all who are not rightfully entitled would not receive the benefit. In other words, there would be no type I or type II errors. However, it is not possible to create a set of rules that will fully cover every case. Some discretion is necessary in practice. So we have to consider the most common case at the margin.

Moral hazard is a substantial problem in income support programs. For a person can make himself eligible for the insurance benefit by reducing his work effort. Moreover, the transfer payment, is a higher than normal return, created through political means. Economists define ‘rent’ as an economic return in excess of the normal market rate. And the existence of these rents create the incentive of rent-seeking. The potential recipient expends some resources, perhaps simply in the form of foregoing earning power, in order to qualify for the transfer. A person who makes himself eligible for the transfer does not meet the implicit eligibility criteria, namely, being without funds through no fault of his own. When this person presents himself to the social insurance system, the person he encounters may know perfectly well that the does not meet the implicit contractual standard of the program. But because this person

meets the explicit, readily measurable eligibility criteria the bureaucrat has little choice but to approve the transfer. The bureaucrat might feel quite confident that an applicant for aid is a shirker, but she could not prove it. She might not be able to quantify or even articulate her reasons. In a bureaucratically administered program, all of the tacit information about whether a person is simply shirking, or really is in need, is lost; all the tacit knowledge about a person’s specific situation and character is lost to the system.

b. Common pool problem

A common pool resource is one which belongs to a group. The tragedy of the commons is a particular problem for common pool resources. Everyone in the group has a right to sue the resource freely, with little or no accountability to the rest of the group. Similarly, tax funded social insurance programs have a common pool resource quality to them, and so are susceptible to the tragedy of the commons. The person who spends the money is not the person who earned it, or who raised it. The money flows to the social insurance bureaucracy, independently of the actions of any particular bureaucrat. Bureaucrats do not have, and cannot have, a personal stake in how the money is spent. The programs are bureaucratically administered, by people who are accountable neither to the recipients of the transfers nor to the contributors (donors). The agency is accountable only to the procedures that have been created for it by the legislature.

c. Entitlement mentality

There is one further problem to the creation of an entitlement that depends on only a few, readily measureable criteria. Roback Morse calls this problem “the entitlement mentality”.

People come to take seriously the claim that all that matters is whether they meet the legally stated, explicit criteria of the program. If they are entitled to the benefit, why no claim it? Indeed as more and more people take part in the program, the person on the margin of participating might argue to himself: “Everyone else is doing it. If I do not take the opportunity to use this program, I will feel like a sucker. In the entitlement mentality, the Prisoner’s problem emerges dramatically. Why should I restrain myself from opportunistic behavior, when I know that other people are not restraining themselves?

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16 Roback Morse, 1997, p.541.
2.2 The duty to continue to pay wages in case of worker sickness and disability

The Dutch disability insurance system as it was conceived since the second half of the 20th century suffered from all of the problems described in the previous section. It was heavily overused. The current duty of individual employers to continue to pay the wages in case of worker sickness and disability means that the risk of income loss due to sickness or disability is shifted from the social insurance system to the individual employer, for the first two years. Is a system of private social disability insurance a better system than a public social disability insurance system? Above, it was said that a public social insurance system has features which make it inherently difficult to solve problems of moral hazard and rent-seeking, the common pool problem, and the entitlement mentality problem, all present in income support programs. Whereas a social insurance program is a collectively funded, bureaucratically administered program for income support, the duty to continue to pay wages is best seen as an individually funded program administered by individual employers. An individually funded (by the individual employer) income support system does not have a common pool problem. The person (individual employer) who gives income support is also the one who earns it or raises the money. The individual employer has a personal stake in how the money is spent. There is no common pool problem on the funding side or on the monitoring side. The individual employer who provide income support knows the person to whom he is giving it (his employee). The recipient (employee) knows the person who is giving the income support (his employer). This kind of encounter is personal. It has the potential to capture all of the implicit, tacit knowledge that the bureaucratically system cannot. This short chain of personal relationships cuts the temptation for shirking on the side of the recipient (employee), and for the capriciousness on the side of the administrator. Seen as such, the system has features of the private charity system. But it is of course not a private charity system. The employee is entitled by law to continued pay while his is sick or disabled to work. The ‘entitlement mentality’ problem still exists. Seeing co-workers making use of their entitlement to sick pay, may ‘seduce’ other workers to do the same. Under an individually funded program resources are not pooled. However, when employers are risk-averse they may benefit from risk pooling schemes as it reduces the costs of risk-bearing. In the Netherlands this problem can be solved, because market insurance for sickness and disability costs is available.
3. The duty to continue to pay wages: a case of ‘no work, yet pay’

The current Dutch regime in which an employer has a duty to continue to pay wages in case of sickness and disability is a case of ‘no work, yet pay’. The employer has to continue to pay wages while the employee has not performed the work contracted for. ‘No work, yet pay’ is contrary to the general rule of employment contract law being, ‘no work, no pay’.

3.1. General rule of employment contract law: ‘No work, no pay’

An employment contract is a special kind of contract, but it is a contract, a consensual relation between two parties involving an exchange: work in return for pay. Just as in the case of other contracts, events may prevent the promisor (employee) to fulfill the contract. When the contract is signed, the promisor (performing party) expects to be paid for his performance and the promisee (paying party) expects the work to be performed. When the contractual exchange does not take place, both parties lose: the promisor foregoes the benefit of being paid and the promisee foregoes the benefit of the work performed. The general law of contracts has to solve the following question: Who should bear the risk of contractual non-performance?

Three different arrangements are possible:

(1) The risk can be absorbed entirely by the promisor: this is the case when the promisee can claim damage compensation for non-performance; the shorthand notification for this arrangement is ‘contract breach’;

(2) The risk can be split between the parties: this is the case when the promisee cannot claim damage compensation whereas the promisor cannot claim the return performance (i.e. payment); the shorthand notification for this arrangement is ‘contract discharge’;

(3) The risk can be transferred entirely to the promisee: this is the case when the promisee cannot claim damage compensation for non-performance, whereas the promisor can claim the return performance (i.e. payment). This arrangement is not very common, but it may apply in case of promisee default in taking delivery (hindering delivery), whereby any expenses and risks arising there from are borne by the promisee.

Each one of these arrangements allocates the risk of contractual non-performance in a different way. Under arrangement 1, the risk is allocated to the promisor; under arrangement 2, the risk is shared between the parties; under arrangement 3, the risk is allocated to the
promisee. Efficiency requires the risk to be absorbed by whichever party can bear it more cheaply. In this view, the key question is which party to the contract is the superior risk bearer, that is, which party is able to bear more cheaply the risk of the contract not being performed.\textsuperscript{17}

Translated to employment contracts, the three possible arrangement are:

(1) the risk can be absorbed entirely by the employee: this is the case when the employer can claim damage compensation for non-performance;
(2) the risk can be split between the parties: this is the case when the employer cannot claim damage compensation whereas the employee cannot claim the counter-performance (i.e. the payment of the wage); a shorthand notification for this arrangement is ‘no work, no pay’: the employer does not receive the benefit from the work being performed whereas the employee does not receive the benefit of being paid;
(3) the risk can be transferred entirely to the employer: this is the case when the employer cannot claim damage compensation whereas the employee can claim the counterperformance (i.e. the payment of the wage); a shorthand notification for this arrangement is ‘no work, yet pay’: the employer does not receive the benefit of the work being performed, whereas the employee does receive the benefit of being paid.

There are differences between the general law of contract and employment contract law. The general rule under \textit{general contract law} is that the promisee has to pay damage compensation in case of contractual non-performance. It means that the risk of non-performance is entirely absorbed by the promisee. However, there are exceptions to this general rule. In the case that breach of contract is clearly efficient (costs of performance are higher than the value of performance), the promisee does not have to pay damage compensation. It means that risk is split between the parties through the legal doctrine of contract discharge.\textsuperscript{18}

Employment contract law is different. The general rule under \textit{employment contract law} is \textit{not} that the employee has to pay damage compensation to the employer in case the work is not performed, but instead the general rule in employment contract law is the rule of ‘no work, no pay’. In case of contractual non-performance, the employer is not entitled to damage

compensation and the employee is not entitled to the return performance (i.e. the payment of the wage). This means that risk of contractual non-performance is split between the parties.

Example. Article 7:627 Dutch civil Code specifies: “When no work has been performed there is no entitlement to wages. No wages are due of the period during which the employee has not performed the contracted work.”

In the Law & Economics literature on employment contract law, the differences between employment law and the general law of contracts have been explained by making reference to the specific economic characteristics of the employment contract: ex ante contract drafting cost are high (uncertainty about the future), ex post contract drafting costs are high (bilateral monopoly problems), monitoring costs are high (problem of non-observability), and enforcement costs are high (problem of non-verifiability).\(^{19}\) More specific to the issue addressed in this section, De Geest, Siegers and Vandenberghe have provided an economic rationale for why employment contract law (in contrast to general contract law) does not let the employee (promisee) absorb the risk of contractual non-performance entirely; why, stated differently, employees do not have to pay damage compensation in case of contractual non-performance. From an incentive point of view, it would be problematic to impose a legal sanction (i.e. damage compensation) on the employee for not performing his work. Employees are usually paid a fixed wage, independent of their productivity. Because monitoring costs are high, employees decide to a large extent themselves how hard they will work. What motivates an employee to do more than what is minimally required? Many employees are intrinsically motivated. They work hard, because they like working hard or because they want to do good for their employer. The application of expectation damages in case work has not been performed, would compensate the employer for his lost profits. Under this damage measure, a hard working employee (who produces more on any given day) would have to pay more than a low productivity worker. Paradoxically, an employee could mitigate the expected sanction, \textit{ex ante}, by lowering his work effort. In other words, expectation damages would destroy the intrinsic motivation to work hard.\(^{20}\) The need to preserve intrinsic motivation in employment contracts provides an argument for the


application of the rule of ‘no work, no pay’ in case of contractual non-performance rather than to make the employee liable for non-performing.

While the general rule of employment contract law is the rule of ‘no work, no pay’, there are instances in which employment contract law transfers the risk of contractual non-performance entirely to the employer (‘no work, yet pay’).

Example. Art.7:628 sub 1 Dutch Civil Code specifies: “The employee preserves the right to wages that are fixed in money terms if he has not performed the contracted work due to a cause which, reasonably, should be for account of the employer.”

Cases in which ‘no work, yet pay’ applies are (1) the case in which the employee is willing and able to perform work, but the employer negligently fails to accept the work (2) the case in which the employer is in a better position to prevent or insure the risk of non-performance (e.g. late delivery of the goods or machine breakdown) and (3) the case in which performance of the work by the employee would be harmful (suspension of the employment contract).

3.2 The duty to continue to pay wages in case of worker sickness or disability

The reality for Dutch employers under the current system is that they have to continue to pay wages for work not performed in case of worker sickness or disability and that for a period of two years. It is a regime of ‘no work, yet pay’ which contrasts with the general rule of employment contract law, ‘no work, no pay’. The general rules of employment contract law are not chosen arbitrarily. According to the law & economics literature on employment contract law, the rules exist to facilitate employment exchanges by lowering the transaction costs. A change in the general rule (without a corresponding reduction in transaction costs) may reduce the surplus from labor exchanges. As a result, fewer exchanges will take place.

Nowhere in Europe has the rate of self-employed and flexible work relationships grown as much as in the Netherlands since 2005.21 The high proportion of workers employed on temporary rather than on permanent contracts, led to a new call for regulation. In 2015 a law was adopted limiting the number of temporary contracts an employer could have with an

individual employee. Before this law, the rule was that an employer could renew a temporary contract with a particular employee three times. If the contract was renewed for a fourth time, the employee was entitled to an indefinite term contract. The new rule is that a temporary contract can only be renewed for two times. The expectation was that more temporary workers would be offered an indefinite term contract sooner. But as it turns out, the law has adverse effects. The law leads to more flexibility because temporary employees have to change between employers more frequently. Employers are very reluctant to offer an indefinite term contract. Why? Because of the duty to continue to pay wages in case of worker illness and disability and the obligations to re-integrate employees with disabilities.

4. Conclusions

Governments and legislator often take radical measures in the face of social and economic problems, especially if comparative country reports show that the country is doing much worse than other countries. This was the case in the Netherlands at the end of the 20th century when the country had a very high enrolment in the disability insurance program compared to its neighboring countries. While divergent results in otherwise similar countries may indeed be a good signal for the existence of a system failure, calling for a system reform, there is a risk that the government may over shoot. The reduction of the level of disability enrolment became almost a goal in itself, justifying radical measures putting a heavy dose of legal pressure on employers to take measures to rehabilitate employees with a disability and obliging employers to continue to pay wages during a period of 2 years. Evaluation of the measures taken does take place, but mainly in terms of their effects on disability insurance enrolment levels. If the results are disappointing, stricter measures are taken. If the measure works but has side effects, new regulation is adopted to address the side effects. In this paper I argue that measures, such as the duty to continue to pay wages in case of sickness and disability, should not only be evaluated in terms of reaching a single policy goal (i.e. a reduction of enrolment levels in the disability program) but should also be evaluated and compared with the systems and rules they replace. The duty to continue to pay wages is an individually funded income support program administered by individual employers. It replaces (for the duration of the duty) the collectively funded social insurance program which is bureaucratically administered. It is also a case of ‘no work, yet pay’ and as such it replaces the rule of ‘no work, no pay’ which is the general rule of employment contract law. The law

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22 The Work and Security Act (Wet Werk en Zekerheid, 2015)
& economics literature has shown that existing legal systems and rules are not chosen arbitrarily. They usually exist (or continue to exist) because they reduce transaction costs, provide better incentives or allocate risk efficiently. Governments and legislators faced with a crisis of some sort, often adopt *ad hoc* measures to contain a particular problem. But these measure often do more. They replace or undermine existing systems or rules, thereby eliminating whatever benefits the existing system or rules may have, the reason of their existence. This is not to say that *ad hoc* measures are always bad. Particular problems may need to be addressed. But the principle of transparency requires decision makers to reveal what they are giving up when taking *ad hoc* measure to address particular problems or needs.