

Notes and Explanations
on Exemption from Compulsory Insurance
under the Public-Service Supplementary Pension Scheme
 (Section 2 (2) of the Collective Bargaining Agreement for
 Retirement Benefits – ATV)

As at
September 2003

1. The provision in Section 2 (2) of the ATV has the following wording:

(2) ¹Employees pursuing scholarly activities at institutions of higher education or at research establishments, who are appointed on a fixed-term basis, such that, due to the duration of the fixed-term appointment, they cannot fulfil the qualifying period pursuant to Section 6 (1) and who have not previously had compulsory insurance periods in the supplementary pension scheme, shall, on written application, be exempted from compulsory insurance by their employer. ²The application must be made within two months of the commencement of the employment relationship. ³Employees exempt from compulsory insurance in accordance with sentence 1 shall be granted pension entitlements to voluntary insurance (corresponding to Section 26 (3) sentence 1) with contributions in the amount of the expenditure for compulsory insurance due from the employer, including any possible employee contribution in accordance with Section 37a (2), but no more than four percent of the remuneration subject to supplementary benefits. ⁴If the employment relationship in the sense of sentence 1 is extended or continued, compulsory insurance in lieu of voluntary insurance shall commence on the first day of the month in which the extension or continuation of the employment relationship beyond a period of five years was agreed. ⁵Retrospective compulsory insurance from the commencement of the employment relationship shall be excluded.

2. Exemption from compulsory insurance is possible under the following conditions:

- a) Your employment relationship must not be, or have been, established until after 31 December 2002.
- b) The employment relationship must be of fixed term and, due to the fixed term, the qualifying period of 60 months of premium payments must not be fulfilled.
- c) You must make the application within two months of the commencement of the employment relationship. The relevant date is the date of receipt by your employer or by the Landesamt für Besoldung und Versorgung (LBV). If the application is received after the above deadline, an exemption can no longer be granted.
- d) You must be pursuing a scholarly activity. Scholarly activities are scientific/ artistic services that are provided by scientific/ artistic personnel at higher education institutions in accordance with Section 42 of the *Hochschulrahmengesetz* (German Framework Act for Higher Education - HRG). This means higher education lecturers, research assistants and teaching staff with special assignments. The determining factor for NRW is whether the activity is covered by the 5th Part of the *Hochschulgesetz* NRW (NRW Higher Education Act – HG NRW (Sections 45 - 61)) or by the corresponding provisions of the *Kunsthochschulgesetz* (Universities and Colleges of Art Act - KHG). The prerequisite for scholarly activity is normally completed higher education studies.
- e) The scholarly activity must be carried out at an institution of higher education or a research establishment. Higher education institutions are universities, universities of education, universities and colleges of art, universities of technology and other educational institutions that are state institutions of higher education under state law. For NRW, Section 1 of the HG NRW or the KHG is authoritative. Research establishments are state and state-funded research institutions. These include, in particular, the Max Plank Society, the Fraunhofer Gesellschaft, the institutions combined in the Hermann von Helmholtz Association of German Research Centres, as well as the institutes of the Blue List.
- f) You must hitherto have had no compulsory insurance periods with a public-service supplementary benefit provider.
- g) The prerequisites for compulsory insurance must, in principle, have been met (to be verified by the LBV).

3. During (exempted) employment, entitlements to pension benefits are accrued from voluntary insurance.

The employer is obliged to pay contributions on your behalf, amounting to 4% of the remuneration subject to supplementary benefit, into a funded voluntary insurance policy as part of the occupational pension scheme under the VBL (the employee cannot use the contributions for any other pension plan). If remuneration subject to supplementary benefits exceeds a certain threshold defined in accordance with Section 39 (1) of the ATV, further contributions of 8% of the remuneration that exceeds the threshold will be paid into the voluntary insurance scheme.

These contributions are tax-free in accordance with Section 3 no. 63 of the *Einkommensteuergesetz* (German Income Tax Act - EStG) up to an annual amount of 4% of the contribution assessment ceiling in the retirement scheme (2003 = €2,448 Euro). Any contributions made beyond this amount are deemed to be pay subject to taxation and will be taxed according to

your individual tax circumstances. Until 31 December 2008, tax-free contributions are also exempt contributions under social insurance.

The contribution payments may give rise to an entitlement to an occupational pension from the VBL in the event of retirement. Furthermore, you have the option of taking out your own voluntary insurance with the VBL and topping up the above-mentioned employer contributions with payments of your own.

You can obtain information about voluntary insurance directly from

VBL	Telephone	(0180) 5 00 62 29 (€ 0.12/min.)
Freiwillige Versicherung	Fax	(0721) 15 58 78
76128 Karlsruhe	E-mail:	freiwillige.versicherung@vbl.de
	Internet	www.vbl.de

4. Exemption from compulsory insurance may give rise to disadvantages in the event of subsequent compulsory insurance:

- a) In order to receive a benefit from compulsory insurance, it is necessary to complete a qualifying period of 60 months of compulsory insurance premium/ contribution payments. The period of voluntary insurance does not count towards the qualifying period. If the insured event occurs before the end of the qualifying period, you will not be entitled to an occupational pension under the compulsory insurance scheme.

Example:

Following an initial four years under voluntary insurance, an employee's employment relationship is continued for an unlimited period. After four further years in compulsory insurance, the employee becomes fully incapacitated and cannot continue his employment. In this case, he will receive his pension from the voluntary insurance scheme for the four years during which contributions were made. He will not receive a pension under compulsory insurance from the supplementary benefit scheme, as he has not completed the qualifying period of 60 months.

- b) In cases of a premature departure from an employment relationship, entitlements under compulsory insurance participate in the distribution of bonus points in accordance with Section 19 of the ATV only if at least 120 months of premium / contribution payments have been completed.

Example:

An employee is initially insured for four years in the voluntary insurance, rather than the compulsory insurance, scheme. After four years, the employment relationship is continued for a further seven years. As premium payment months are to be taken into account for only seven years in the compulsory insurance scheme, he does not meet the progression requirement during the subsequent contribution-free insurance. His entitlement from compulsory insurance therefore remains static from the end of the employment relationship until the insured event occurs or compulsory insurance resumes.

- c) Benefit legislation for voluntary insurance differs from benefit legislation for compulsory insurance at the VBL.

For example,

- voluntary insurance based on the points model (VBL extra) does not give rise to any entitlement to social components in accordance with Section 9 of the ATV (e.g. in the case of parental leave, occurrence of the insured event due to diminished work capacity or on the death of the insured party).
- only the contributions paid in, not the interest revenue, are guaranteed under the fund-linked pension scheme (VBL dynamik).

5. Despite a valid exemption, compulsory insurance may come into effect at a subsequent point in time.

If an employment relationship is extended or continued beyond five years, compulsory insurance, rather than voluntary insurance, commences on the first day of the month in which the extension or continuation of the employment relationship beyond the five-year period was agreed. This ends the employer's obligation to pay contributions into the voluntary insurance scheme; in other respects, the voluntary insurance scheme continues to exist.

Example:

An employee is appointed on a fixed-term basis for four years on 1 February 2003. According to the contract of employment, the employment relationship is due to end on 31 January 2007. On 10 January 2007, the parties to the contract of employment agree to continue the employment relationship for an unlimited period; compulsory insurance therefore commences on 1 January 2007. This means that, already as of January 2007, no further obligatory contributions have to be paid into the voluntary insurance scheme or contributions already paid into the voluntary insurance scheme need to be reversed, with premiums, contributions and *Sanierungsgelder* (additional contributions paid by employers to compensate higher costs due to transition to the "points system") instead being paid into the compulsory insurance scheme.

Pursuant to Subsection 2 sentence 5, retrospective compulsory insurance from commencement of the employment relationship onwards is excluded. This means that, in the example above, compulsory insurance cannot apply to the period before 1 January 2007.