Nordic Employment Law Bulletin - June 2023

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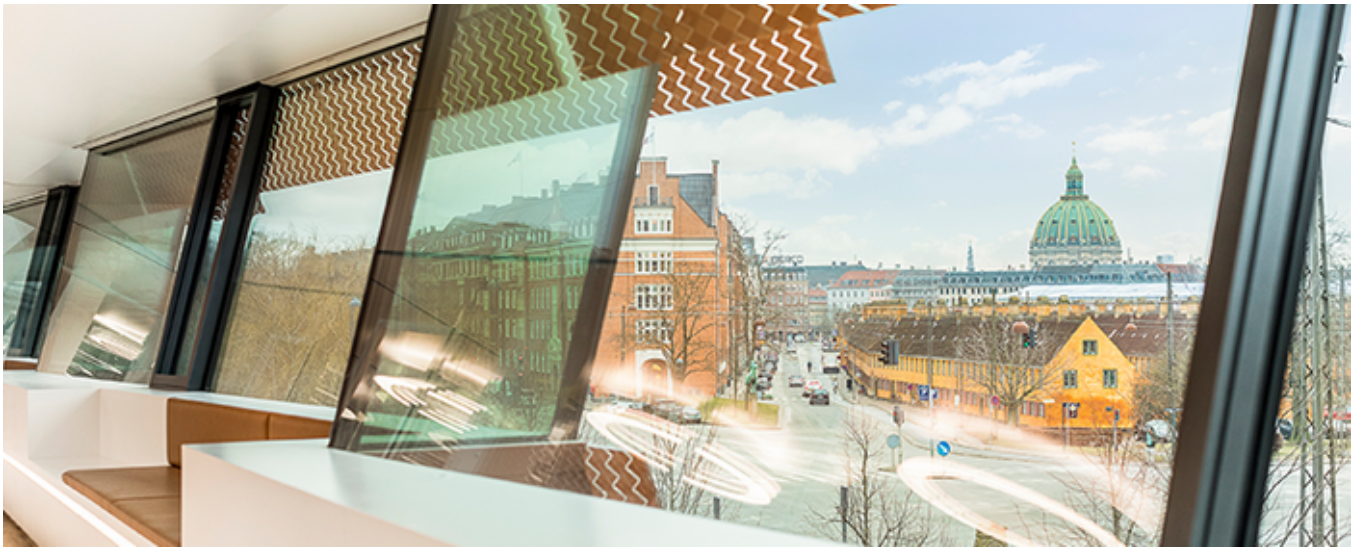
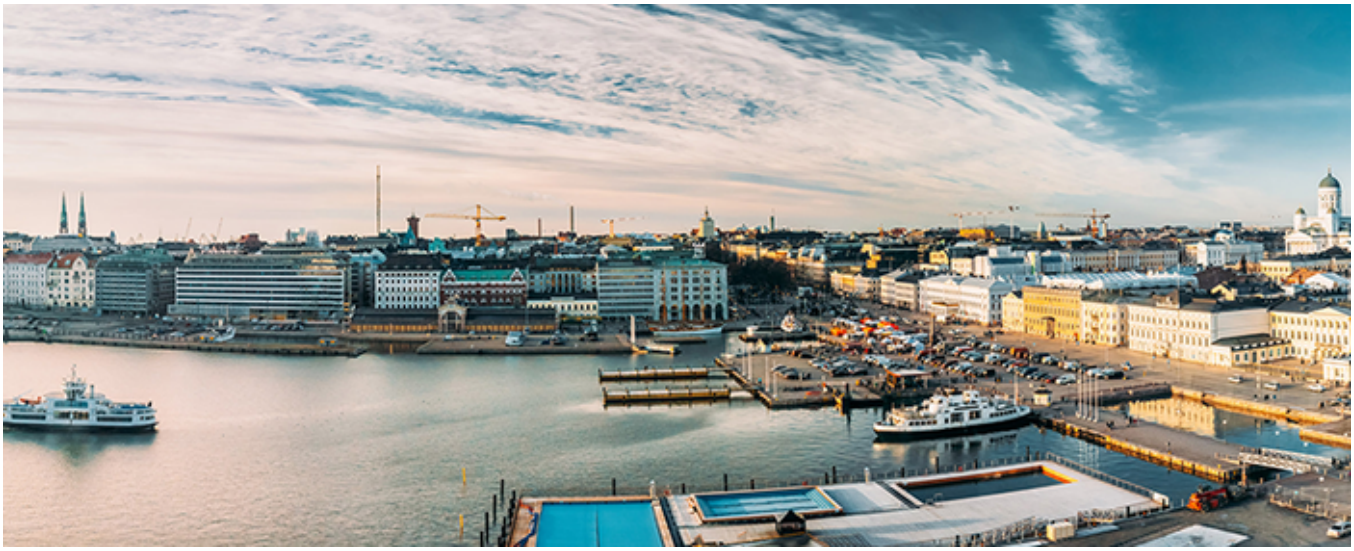
In our monthly Nordic Employment Law bulletin our employment lawyers across the Nordic region highlight relevant news and trends on the Nordic employment market scene. The bulletin intends to provide high-level knowledge and insight. Want to learn more? Our experts will be happy to hear from you.



Highlights from Denmark

Employees claim for stay-on bonus did not have status as administration expenses: Prior to the employer's bankruptcy, three employees entered into separate agreements on stay-on bonus. If the employees stayed in their positions for a certain period, they were entitled to a stay-on bonus equivalent to three months' salary. However, the employer was taken into bankruptcy and thus the estate in bankruptcy entered into the employment relationships of, among others, the three employees. The Danish Supreme Court should decide whether the stay-on bonusses was covered by the legal concept "remuneration for work" in the Danish Act on Bankruptcy and thus had status as an administration expense. The question was whether it was remuneration for a continuing work performance. The Supreme Court found that the stay-on bonusses did not constitute remuneration for work and thus the bonusses were not administration expenses.

The Danish Act on Employment Certificates and Certain Working Conditions has been adopted: On 11 May 2023, the Danish Parliament adopted the Danish Act on Employment Certificates and Certain Working Conditions. The rules will enter into force on 1 July 2023. Employers should be aware that the Danish Act on Employment Certificates and Certain Working Conditions scope of application has been extended. The Act will apply to all employees working more than an average of 3 hours per week, or where working hours are unpredictable. Therefore, a larger group of employees will be entitled to receive an employment certificate.



Highlights from Finland

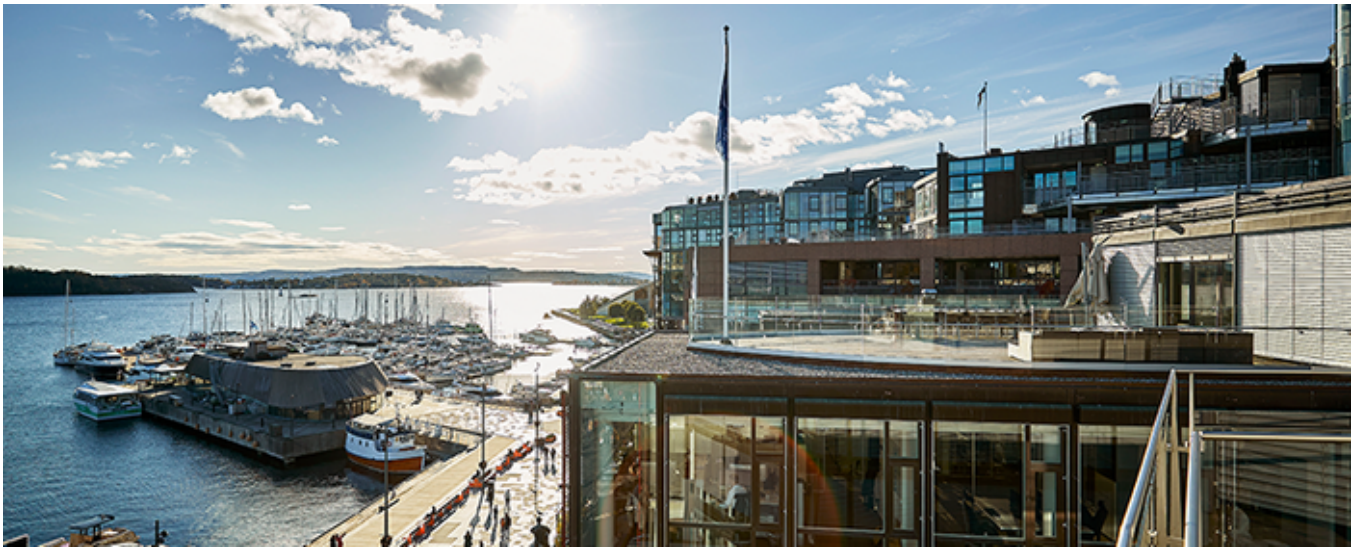
Collective labour agreements discriminatory? The family leave reform entered into force in August 2022. The reform enables parents to divide childcaring responsibilities and family leaves more equally as, among other, parental leave days may be divided equally. The law does not stipulate pay during family leaves but most collective labour agreements do and traditionally mothers have been entitled to a significantly longer paid family leave period than fathers. During the last negotiation round, the pay obligations were not equalized to all collective agreements. The Ombudsman for Equality has now issued a statement that if a pay provision in a collective labour agreement is not equal for both parents, the provision is discriminatory and employers should not comply with the provision but pay salary during a family leave for an equally long period for both parents. The statement is not legally binding but it is recommended employers review their family leave policies in this respect.

Reminder of legislative updates: The Act on Occupational Health and Safety and the Non-Discrimination Act will be updated as of 1 June:

- The Non-Discrimination Act has been clarified as to what an employer must consider when assessing the status of equality and non-discrimination at the workplace. Different discrimination grounds must be considered and the assessment must cover also recruitment practices. The non-discrimination plan (mandatory for companies with at least 30 employees) must include, not only actions to promote equality, but also how the employer came to the conclusion that the actions in questions are needed, what are the needs in promoting equality and where the potential challenges lie. From the perspective of the supervising authority, the non-discrimination plan should address discrimination grounds and include actions that are relevant to the workplace in question. Furthermore, when considering reasonable accommodations for a disabled person, it is the needs of the person that shall be primarily considered.

- The Act on Occupational Health and Safety has also been clarified to take more effectively into account personal conditions especially relating to age when conducting risk assessment and providing training to the employees. In addition, personal conditions may require individual actions over general actions to secure the employee's health and safety at work. Furthermore, the Act was clarified to emphasize that risk assessment cannot only cover physical risks at work but it must also cover psychosocial risk factors.

Is A1 certificate needed for short business trips? In 2022 the Finnish Centre for Pensions issued instructions on when to apply for the A1 certificate for work abroad. These instructions were interpreted in a way that the certificate would be required even for 1 day business trips. The instructions have been now updated and there is no need to apply for an A1 certificate for short conference, business or recreational trips abroad unless it is known that the receiving country requires the certificate. If needed, the A1 certificate can be applied for retrospectively. Such a need may arise due to a requirement by the receiving country or if an occupational accident occurs during the trip. However, if the work abroad is performed at a construction site or a factory, presenting the A1 certificate may be required for the employee to get onto the site regardless of the length of the stay.



Highlights from Norway

Result of the social security settlement: The social security negotiations between the government and organizations started on May 15, and the government presented its offer on May 23. The national insurance basic amount (G) increased by 6.41 %, which means that from May 1 2023, the basic amount is NOK 118 620. This means that retirement pensions under accrual, disability benefits and other benefits regulated by the basic amount will receive an income increase of 6,41% from May 1, while the annual increase will be 5,88 %.

The results of the settlement are also relevant for compensation in accordance with the Working Environment Act Section 14 A-3 as if a non-competition clause is enforced, the employee has a right to compensation equivalent to 100 % of the employee's wages up to 8 G, and then at least 70 % of the employee's wages above 8 G. In addition, the compensation can be limited to 12 G. The 6,41 % increase of the basic amount means that the monetary limit for 8 G and 12 G will increase accordingly.

New court decision from the Court of Appeal regarding the principle of equal treatment in the Working Environment Act Section 14-12a (LG-2022-124221): The case raises question whether employees in a staffing agency, providing hiring out services to onshore businesses and the offshore industry, are entitled to equal salary with the hirer's own employees when hired out to work on offshore vessels. In the assessment, the Court of Appeal considered whether the Ship Labour Act fully or partially applied to this type of employment relationship, and consequently, whether the employees were not entitled to supplementary payment of salary as the Ship Labour Act does not have an equivalent principle of treatment as the Working Environment Act.

The Court of Appeal found that the principle of equal treatment applies based on how the hiring out business was organized. In this particular matter, the Court of Appeal emphasized the fact that the working conditions, to a significant extent, fell within the scope of the Working Environment Act as the references in the employment contract were made to the Working Environment Act, the workplace was indicated as the employer's business address, and the working hours did not provide sufficient evidence to suggest that it was assumed that the Ship Labour Act applied.

The Norwegian Authorities submitted their view on whether the new rules on temporary hiring from staffing agencies conflict with the EEA agreement in their letter to ESA of 5th of May 2023: In the response to ESA, the Norwegian Authorities maintain that the tightening of the hiring rules is in line with the EEA Act and Agreement, and point out that permanent and direct employment is central to the Norwegian working life model. The Authorities also refer to information and statistics on the development of the use of temporary agency workers in Norway.

The restrictions are mainly justified in "general interests" and negative consequences of temporary agency work. The Norwegian Authorities also point out that EEA Act leaves the state with a wide margin of appreciation and therefore also a possibility to develop appropriate and efficient measures within the national context. Regarding the prohibition in construction sector in Oslo, Viken and formerly Vestfold, the Authorities points out that the measure is proportionate in order to ensure a well-functioning labour market within this sector.

You can read the letter from the Norwegian Authorities here

Highlights from Sweden

Redundancies deemed lawful in case of change of service provider: The trade union Kommunal sued the bus company Nobina for wrongful terminations when Nobina dismissed a large number of bus drivers after losing a contract to a competitor, Keolis. Nobina terminated the employees up to the last day of the contract. The terminations took place about six months before the contract expired. Kommunal argued that this was a transfer of undertaking and that there was therefore a ban on termination. Kommunal claimed general damages of SEK 150,000 per employee (appr. EUR 15,000).

The Labour Court stated that at the time of the termination, it should at least have been clear that the majority of the employees in the business would be taken over by Keolis in connection with the change of contractor in order for there to be a transfer of undertaking.

However, Keolis had not entered into any employment contracts with any of Nobina's employees at the time of termination, and since Nobina did not know how many of the employees Keolis intended to employ, the Labour Court found that it was not clear at the time of the terminations that the majority of the employees in the business would be taken over by Keolis, which meant that there was no ban on termination and that Kommunal's action should therefore be dismissed. Kommunal was ordered to pay Nobina's legal costs of approximately SEK 950,000, appr. EUR 95,000.

Higher minimum wage requirement for immigrants: The Swedish government has decided to raise the income requirement for labour immigrants. The current requirement entails that anyone coming to Sweden from a non-EU/EEA country to work must have a minimum wage of SEK 13,000 (appr. EUR 1,300) per month to be granted a work permit. However, from 1 October 2023 the requirement will be raised to SEK 26,560 (appr. EUR 2,660). The government is also making an assessment of which professions that will be exempt from the income requirement and has announced that when the review is complete, the intention is to raise the income requirement again, that time to SEK 33,200 (appr. EUR 3,320).

New unit for highly qualified labour immigration: The Swedish government has announced that the Swedish Migration Agency will introduce a new unit working on international recruitment. The new unit will focus on highly qualified employees and will implement a new model, which will be developed during the year through discussions between the labour partners. The new unit shall provide faster processing times and the new model shall be more adapted to the needs of companies. One of the intentions behind the new unit is to maintain Sweden's position as an attractive country in the global labour market for highly qualified labour.

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