



Nordic Employment Law Bulletin - February 2024



Nina Wedsted
Partner, Head of Employment,
Denmark



Riikka Autio
Partner, Head of Employment,
Finland



Per Benonisen
Partner, Head of Employment,
Norway



Rajvinder Singh Bains
Partner, Norway



Johan Zetterström
Partner, Sweden



Björn Rustare
Partner, Head of Employment,
Sweden

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

- **Amendments to the Danish Act on Working Time:** On 23 January 2024, the Danish Parliament adopted the bill on amendments to the Danish Act on Working Time. From 1 July 2024, the main representative labor market parties in Denmark can agree that employees can work more than 48 hours a week on average if the employer and employee agree upon it. Moreover, employers must introduce an objective, reliable and available working time recording system that makes it possible to measure the daily working hours of each employee. The amendments will enter into force on 1 July 2024.
- **Bill on amendments to the Danish Act on Maternity Leave and Maternity Benefits:** On 17 January 2024, the Danish Minister of Employment submitted a bill which amends the Danish Act on Maternity Leave and Maternity Benefits. It is proposed that parents who have two or more live-born children at the same birth are each entitled to 13 weeks of additional absence. If the bill is adopted, the amendments will enter into force on 1 May 2024.



Highlights from Finland

- **Political strikes continue in February:** The strikes will concern several sectors between 31 January and 2 February 2024. These include, among other, aviation, public transport, trains and buses. The Finnish ports will be closed and strikes have also been announced to major factories, grocery stores and hotels. Public and private kindergartens will be closed from 31 January to 1 February 2024. In addition, the Confederation of Unions for Professional and Managerial Staff Akava ry decided on implementing coordinated two-hour walkouts on 6 February 2024 at 2pm at least in Helsinki metropolitan area, Turku and Tampere.
- **Should bonus accrue during family leaves?:** In a recent decision by the Ombudsman for Equality, possible discriminatory provisions of an employer's bonus scheme were assessed. According to the scheme in question, employees who are absent from work for more than 6 months (regardless of the reasons) were not at all entitled to a performance bonus for the year in question. Thirty days of maternity leave were, however, counted as equivalent to active employment.

From the perspective of the Act on Equality between Women and Men, the bonus scheme was considered discriminatory and thus in violation of mandatory law. The Ombudsman based its decision on the ruling of the Court of Justice of the European Union C-333/97 (Lewen case) and stated that the pregnancy leave of 40 working days (105 days prior to the family leave reform 2022) provided for in the Finnish Employment Contracts Act, i.e. the period for which the employee is entitled to the pregnancy allowance, must be counted as equivalent to active employment. In addition, with respect to other types of family leaves, the employee must have a right to a proportional share of the year's performance bonus according to the pro rata temporis principle. The Ombudsman did not take a stand on whether the bonus scheme would be discriminatory with respect to other leaves than family leaves.

- **Employee's litigation costs paid by the employer considered as taxable salary:** According to a decision by the Supreme Administrative Court, litigation costs paid by an employer on behalf of an employee shall be taxed as salary. In this case the employer had paid the employee's litigation and legal advisory costs in a criminal case where the employee was suspected of a crime. The employee was a journalist and had been suspected and eventually prosecuted due to an article written by the employee and published by the employer. According to the Supreme Administrative Court, being prosecuted was not part of the employee's work tasks even though it was a consequence of performing the employee's tasks, and therefore the costs paid by the employer were taxable salary. This ruling applies in all situations where an employee is suspected of a crime in the work context, such as occupational health and safety offences. Several statements and initiatives have been taken to amend the tax laws for the employers to be able to pay for employees' litigation costs under similar circumstances.



Highlights from Norway

- **Changes to the Working Environment Act (WEA) and the Norwegian Private Limited Liability Companies Act (Companies Act) with effect from January 1 2024:** Several amendments to the Working Environment Act have been adopted and will take effect on January 1, 2024. In summary, the following changes apply from the turn of the year:
 - The definition of an employee is clarified to make the distinction from independent contractors clearer. A new presumption rule is introduced according to which it shall be assumed that an employee relationship exists unless the alleged employer makes it highly probable that an independent contractual relationship exists. Certain employer obligations related to downsizing now apply to all companies that are part of a group. This means that companies within a group are obligated to offer other suitable employment and preferential rights to a new position to employees in other companies within the same group. Additionally, new rules regarding information and consultation with the employees representatives at group level is introduced.
 - The right to permanent employment is strengthened, granting all temporary employees the right to permanent employment after three consecutive years of service, regardless of the basis for the temporary employment.
 - The threshold for the obligation to establish a working environment committee has been lowered from 50 to 30 employees. Further, the threshold for the obligation to elect safety representatives has been lowered from 10 to 5 employees.
 - Clarification that protection against harassment in the Working Environment Act also encompasses protection against sexual harassment. New definitions of harassment and sexual harassment have been introduced, along with a clarification of the responsibilities of the safety deputy regarding the psychosocial work environment.
 - New requirements for gender composition for the board of directors, stating that limited liability companies subject to gender representation obligations must have a board composition that meets specific criteria as outlined in the law. The changes and requirements are further detailed [here](#).
 - Changes to the employer's obligation to consult, requiring consultation with employees on the use of part-time work, temporary employment, and hiring if either party demands it. Furthermore, the employer's consultation obligation related to staffing should also apply to the use of independent contractors and purchase of services from other companies.
- **New approval scheme for staffing agencies:** Amendments to the regulation on staffing agencies mandate that businesses engaging hiring out labor (staffing agencies) must obtain approval from the Norwegian Labor Inspection Authority (nw: *Arbeidstilsynet*) in order to operate legally.

It is illegal for businesses to hire labor from staffing agencies that are not approved. However, during the period from January 1 2024, to March 31 2024, hiring is allowed from businesses that have submitted an

application for approval, pending review.

- **New significant ruling from the Supreme Court addressing the question on whether an e-mail from union representative constituted whistleblowing - HR-2023-2430-A:** The Supreme Court decided on whether an e-mail sent from an employee representative to a manager in the company, constituted whistleblowing under section 2 A-1 and 2 A-2 of the WEA. The employee representative had assisted a work colleague in a meeting with an HR manager. On the following day, the employee representative sent an e-mail to a manager in the company, in which he criticized the HR manager's behavior in the meeting. In a subsequent meeting, the employee representative received a written warning as a result of the e-mail he sent, after which he was reassigned.

The Supreme Court ruled in favor of the employee representative and concluded that the e-mail met the requirements for whistleblowing. This meant that the employee was protected from any form of retaliation from the employer.

Highlights from Sweden

- **Change of focus at the Migration Agency:** The Swedish Migration Agency has been assigned the task of improving the recruitment of highly qualified labor immigration. This is to be done through special information initiatives aimed at employers and employees in highly qualified professions, as well as other initiatives that create good conditions for completed applications and shorter administration times. Among other things, the certification system will be removed (i.e. the "fast-track system" that existed for certain certified operators) and replaced with a "new way of working" that will provide better service and shorter administration times). The new method involves sorting applications for work permits based on profession and industry in a new way. It will also be easier to distinguish at an early stage between applications ready for decision and applications that need to be supplemented.
- **Too much overtime at Apotea?:** The union Unionen is suing the online pharmacy Apotea because of the company's extensive use of overtime. Unionen argues that this is unlawful overtime and that the company does not have a staffing level that corresponds to its sales. According to Unionen, there are over 19,000 hours of unlawful overtime and they are claiming damages to the union of just over SEK 10 million for breach of the collective bargaining agreement.
- **Gimme! Gimme! Gimme! (A Man After Midnight) – No, Spotify is not allowed to do that:** By law, all employees must have at least 11 hours of continuous leave in any 24-hour period and that the time between midnight and 5 am must be included in the daily rest period. However, night work may be carried out if it is necessary in view of the nature of the work, the needs of the public or other special circumstances, and the Swedish Work Environment Authority may grant an exemption from the night work ban in such cases. The Working Hours Act can also be waived in collective agreements, meaning that collective agreements may have different rules for night work. Typical examples of where night work is permitted include healthcare and public transport.

The Swedish Work Environment Authority rejected the music company Spotify's application for an exemption from the night work ban. Spotify chose to appeal the decision. The Administrative Court has now ruled in favor of the Swedish Work Environment Authority, stating that Spotify's activities are not sufficiently important to society to be granted an exemption.

Spotify has previously approved a penalty of SEK 356,000 for night work without an exemption or collective agreement in 2022.