Nordic Employment Law Bulletin - December 2024

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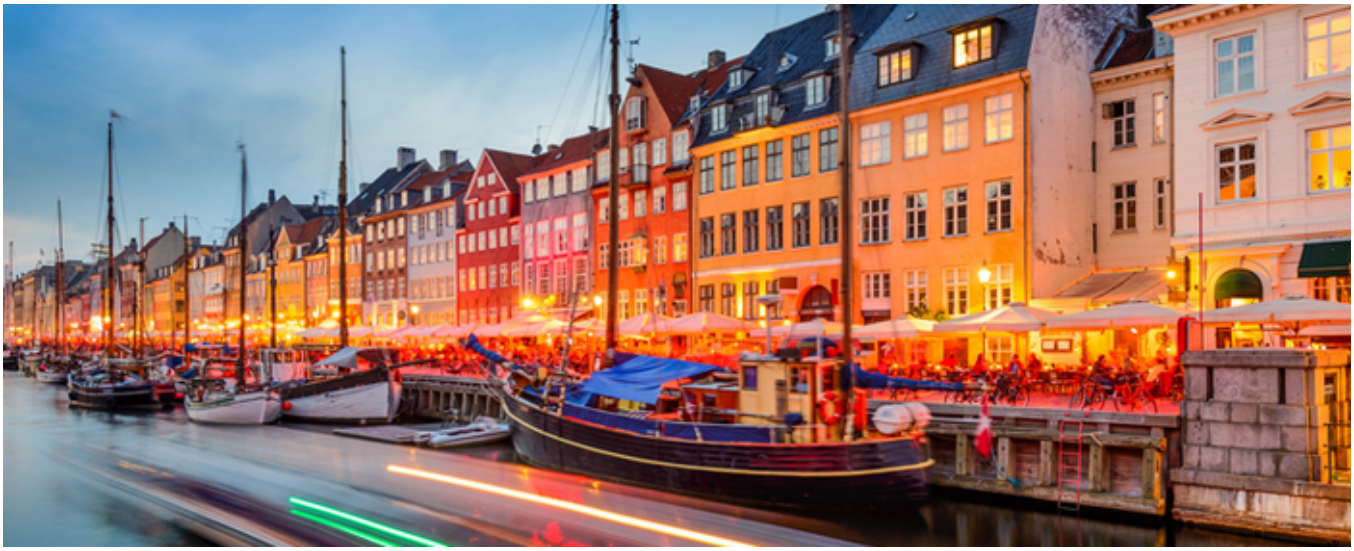
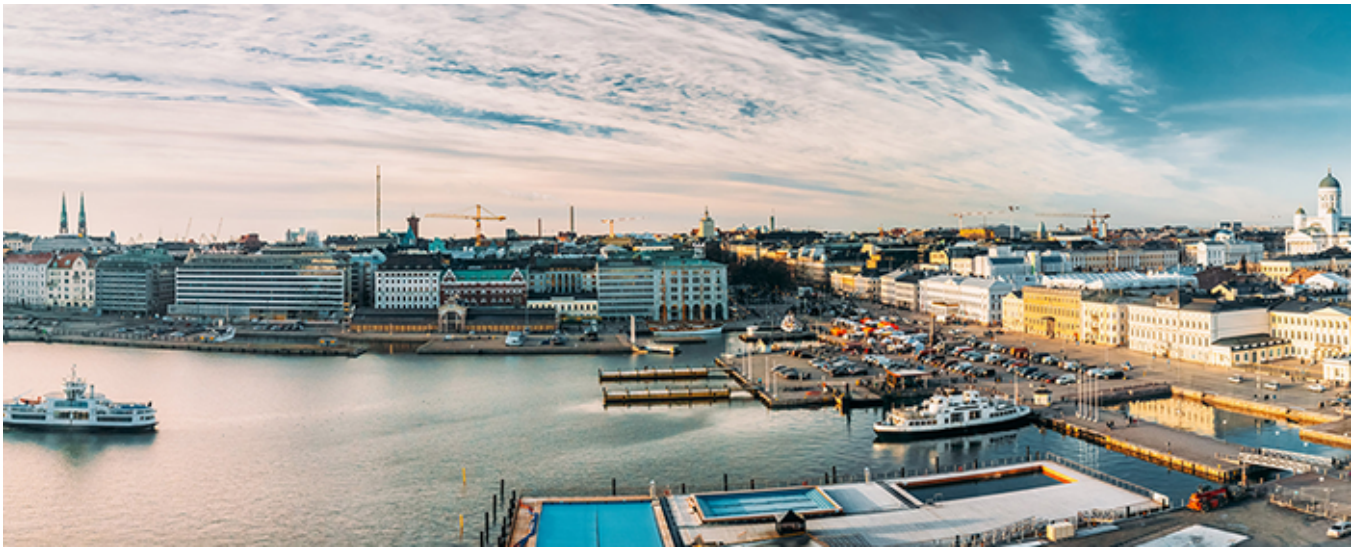
In our monthly Nordic Employment Law bulletin our employment lawyers across the Nordic region highlight relevant news and trends on the Nordic employment market scene. The bulletin intends to provide high-level knowledge and insight. Want to learn more? Our experts will be happy to hear from you.



Highlights from Denmark

- **Bill on Amendments to the Danish Act on Posting of Employees etc -** On 28 November 2024, the Danish Parliament adopted the bill on Amendments to the Danish Act on Posting of Employees etc. From 1 January 2025, service providers must ensure that anyone employed by the company can present valid identification to the Danish Working Environment Authority. From 1 January 2026, a foreign company who is registrable in the Register of Foreign Service Providers (RUT) must upload a copy of the service contract as well as the employment contracts and residence and work permit of the individuals concerned.

- **Allocated funds for initiatives in the Danish Ministry of Employment's area** - The Danish Finance Act for 2025 is in place, and there has been allocated funds for several initiatives within the Danish Ministry of Employment. One of the initiatives is better parental leave conditions for parents of newborn babies hospitalized after birth. Moreover, funds have been allocated to extend the right to benefits during bereavement leave to parents who lose a child and have previously received compensation for loss of income for more than two years because they have cared for their sick child and have been unable to go to work. In the future, they will also be entitled to 26 weeks of leave with bereavement benefits, so they are not disadvantaged compared to other parents who have received compensation for loss of income for less than two years. The initiatives require amendments to the current legislation, however, no bills have been proposed in the Danish Parliament yet.



Highlights from Finland

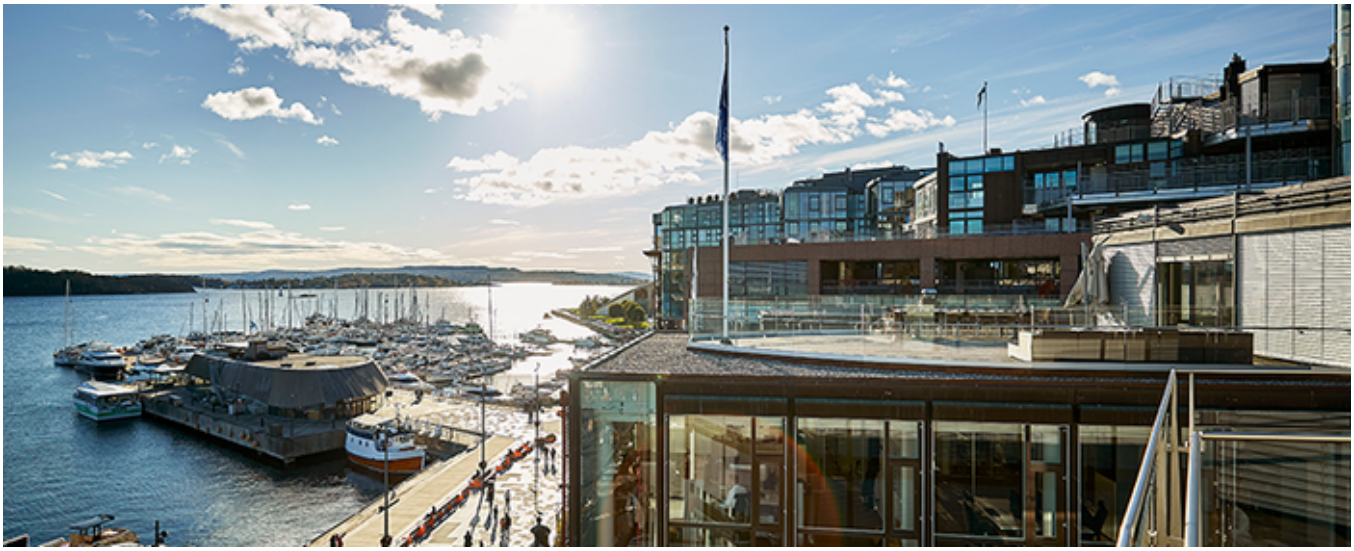
- **CBA negotiations –** It is again time for the CBA negotiations. The agreements in the Technology sector end 30 November and by end of January in the Chemical sector. Sectors, such as Commercial, ICT, Energy Real Estate & Facility Services will follow between end of December and end of March. Agreements in the transportation sector, forwarding and in the Finnish ports will end in January-February 2025. The blue collar trade unions have announced that their target salary increase for the next 2 year term is 10% increase. Needless to say the negotiations will be extremely difficult also this negotiation round. Industrial actions have been announced already in the Technology Sector for early December.

- **Unemployment statistics –** In October 2024 there were 285 500 unemployed job which is 29 100 unemployed job seekers more than in October 2023. Compared to the previous year, there were 50 000 less vacancies in October 2024. The number of long-term unemployed has also been on the rise and amounted to 101 000 which is 11 600 more compared to the previous year. The number of unemployed jobseekers aged over 50 increased with 8 000 and the number of unemployed jobseekers aged under 25 increased with 4 800 from October 2023.

- **Legislation reforms** – In addition to enhancing local bargaining and company specific CBA's, other reforms based on the government plan are expected to proceed in the coming months. The final government proposal to amend the Co-operation Act was issued on 28 November. The government proposes that as of 1 July 2025.

  - Employers that regularly employ 2049 employees would be required to conduct change negotiations in connection with redundancies only if the employer is considering measures to reduce the number of at least 20 employees over a 90day period.
  - Lay-offs lasting maximum of 90 days would not require change negotiations.
  - The minimum duration of the change negotiations would be 3 weeks or 7 days, depending on the planned measures and the company's headcount.
  - An employee's employment could not end before 30 days have elapsed from the date the proposal to commence change negotiations was submitted to the employment authority.
  - The obligation for the continuous dialogue would remain in companies regularly employing 2049 employees but the procedures would be amended.

  More government proposals may be expected in the spring of 2025. The government will be proposing that a fixed-term agreement could be signed without a justified reason for maximum of 12 months, that the layoff notice period would be reduced to 7 days, that the post-employment re-employment obligations would apply only in companies with 50 employees and that termination for reasons relating to the employee's person would no longer require proper and weighty reasons but only proper reasons. needs in good time if need arises and, based on the ruling, at the employer's own initiative.



Highlights from Norway

- **Norwegian rules for hiring workers from staffing agencies do not conflict with the EEA Agreement** – On November 20, 2024, the EFTA Court issued its advisory opinion regarding Norway's tightened and strict regulations on the hiring of workers from staffing agencies, which came into effect on April 1, 2023. The court found that the rules are not inherently incompatible with the EEA Agreement, but they do constitute a restriction on the right of establishment under the Agreement. To comply, such restrictions must serve overriding public interests, such as protecting hired workers, ensuring health and safety in the workplace, or maintaining a well-functioning labor market. The EFTA Court emphasized that the restrictions must be proportionate and suitable for achieving these objectives, not exceeding what is necessary, but concluded that the Norwegian rules as such did not constitute a violation of the EEA Agreement.

  The case is however far from resolved. Several Norwegian staffing agencies have filed compensation claims against the Norwegian state, arguing that the restrictions violate the EEA Agreement. Also, a Polish recruitment company has requested to join the case as a party. The final decision on whether Norway's restriction breach the EEA Agreement rests with the Oslo District Court, which must now assess the justification and proportionality of the measures based on the advisory opinion from the EFTA Court.

  This is one of several ongoing disputes related to Norway's hiring regulations. The issue also remains politically contentious, with the opposition party (Høyre) expressing its intention to reverse the rules. Further developments in this field are therefore expected as we move towards 2025.

- **Proposal to remove the option for internal company age limits at 70 years** - The Norwegian government has presented a proposal for an amendment to the Working Environment Act to remove the option for employers to set an internal company age limit at 70 years. Currently, Section 15-13A of the Working Environment Act permits termination of employment when an employee reaches the age of 72, with an exception allowing companies to set a lower age limit under certain conditions, but not below 70 years.

  The government's proposal seeks to abolish this exception, aligning the legal age limit for most workplaces at 72 years. If adopted, the standard age limit under the law will be 72 years, requiring many companies to adjust their current practices.

  Exceptions allowing for specific age limits based on health and safety considerations are proposed, however as a narrow exception which would only be permitted where necessary to address significant health or safety risks in specific professions. The deadline for submitting feedback on this proposal is January 7, 2025. The proposal may be read (in Norwegian only) **HERE**.

Highlights from Sweden

- **New court ruling strengthens whistleblower safeguards -** In a recently published court ruling, the Swedish Supreme Court has upheld the conviction of a manager and an HR specialist, for violating whistleblower protection laws. This case centers around a care assistant at a nursing home, who publicly criticized the company's handling of the COVID-19 pandemic. Following her statements, she received a "written warning" from the employer.

  The Supreme Court granted an appeal to determine whether the written warning constituted a disciplinary action under the law. In its decision, the Supreme Court concluded that the written warning indeed represented a disciplinary action, thus violating the whistleblower protection rules and therefor unlawful.

- **Swedish staffing rules somewhat more clear following latest CJEU plot twist: revealing the true identity of temporary work agencies -** In a plot twist worthy of a legal thriller, the Court of Justice of the European Union has delivered a landmark judgement in case C-441/23, shedding light on the EU Temporary Agency Workers Directive (2008/104). The Court has declared that it doesn't matter what a company calls itself - whether it is a temporary agency, a consultancy or something more exciting. The real test is whether the company is engaged in transferring control of the employees from the formal employer to the client company.

  The Court has explained the concept of "control and direction" on the part of the client company, which means that the company takes on typical employer roles such as organisational and disciplinary supervision. This means that the client company must have the power to set work requirements and monitor the employee's performance, making them an integral part of the employment agreement. This decision serves as a practical guide to distinguish between genuine consultancy services and the activities of temporary work agencies and reinforces previous interpretations of the CJEU, a distinction that is highly relevant in Sweden given the new Swedish rules on enhanced protection for agency workers.
- **The double-edged sword called "background checks" -** A recent government report has just been published, tasked with examining whether there is a need to restrict the constitutional protection of search services that publish personal data on address, telephone number, marital status and other information relating to individuals' personal circumstances, as well as search services that publish personal data on offences.

  Among other things, the report addresses the issue of how personal data is handled in Swedish employment background checks. Currently, there is a plethora of different search functions where employers can dig into the past of potential employees. The report suggests tightening the reins on these search services to better protect privacy. As the changes are proposed to be made to the Constitution, they are not due to enter into force until 1 January 2027. Employers relying on such service providers are recommended to follow this newsletter for updates on further developments.

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