



Nordic Employment Law Bulletin - December



Björn Rustare
Partner, Head of Employment,
Sweden



Nina Wedsted
Partner, Head of Employment,
Denmark



Riikka Autio
Partner, Head of Employment,
Finland



Per Benonisen
Partner, Head of Employment,
Norway



Johan Zetterström
Partner, Sweden



Rajvinder Singh Bains
Partner, Norway

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

Termination of an employee on maternity leave was justified. An employee was dismissed during maternity leave. The Eastern High Court had to decide whether the termination was reasonable, including whether the employer had violated the Danish Act on Equal Treatment by terminating the employee's employment during maternity leave. The employment was terminated due to falling sales. It was not possible to relocate the employee since her duties only concerned marketing and she did not have the necessary customer service and sales skills to take up another position. The Eastern High Court found that the termination was reasonable justified by the circumstances of the company. Therefore, the reversed burden of proof was "lifted" and the Eastern High Court ruled that the employee's maternity leave was not the reason for the termination of the employment.

How do we do attorney-led investigations in Denmark. The Danish Bar and Law Society have published a guidance on attorney-led investigations. The aim is, among other things, to create a larger transparency about the process on investigations, which has become an effective tool when gathering and systemizing a large amount of information in order to define a course of events. Moreover, investigations are a fast, effective and flexible way to gain an understanding of a sequence of events and at the same time provide a basis for a decision. DLA Piper Denmark conducts such investigations in a variety of areas including employment law. Currently, a team of attorneys from DLA Piper Denmark are leading an investigation on bribery. In the specific case, an employer received a report on bribery and DLA Piper Denmark has conducted several interviews and gathered information in order to prepare a report defining the course of events.



Highlights from Finland

Status alert for the national Whistleblowing Act. The second hearing in the Parliament for the proposal for the national Whistleblowing Act has been held today 2 December 2022. It's close - stay tuned!

Partial reform of the Non-discrimination Act as of June 2023. Among other, the Act will be clarified as to how an employer should assess its policies and practices in respect of non-discrimination requirements and what the non-discrimination plan must include. An employer is obliged to draft a non-discrimination plan if it employs 30 employees. Furthermore, new authorities will be introduced to the non-discrimination ombudsman to investigate suspected discrimination at the workplaces and to the Health and Safety Authority.

Amendments to the Act on Personnel Funds in April 2023. The Government is introducing reliefs in establishing personnel funds. At the moment, companies employing at least 10 employees and with turnover of over EUR 200 000 are able to establish a fund. The Government proposes that as of April 2023, the headcount threshold would be 5 and the turnover threshold EUR 100 000.



Highlights from Norway

Changes to the Posted Worker Regulation. As of 1 January 2023, changes to the Norwegian Posted Workers Regulation will enter effect. The changes are generally based on the implementation of the EU Directive 2018/957 amending Directive 96/71/EC (the Posted Workers Directive) and involve a strengthening of rights for all employees posted to Norway and in addition, specific strengthening for posted workers who work in Norway for more than 12 months.

Proposal for employee friendly changes to the Working Environment Act (WEA) 18 November 2022. The Norwegian Government has proposed amendments to the Norwegian Working Environment Act, including inter alia:

- Clarification of the "employee" definition in the WEA, including on the distinction between employees and independent contractors intended to.
- Changes to the rules regarding entitlement to permanent employment after fixed term employment, reducing the period to 3 years.
- Extended rights for employees in corporations forming a group of companies; extension of preferential rights to new employment within the group and a duty to seek for other suitable work in the group before redundancy-dismissal.
- Reduced thresholds for requirement for safety representatives and working environment committee.

The amendments will be presented to an appointed committee in the parliament; and thereafter voted during Q1 2023. Given the political climate in Norway at present, we expect the proposals to be adopted, further enhancing employment protection for employees.

New case law regarding reclassification of a consultant as an employee. A unanimous Court of Appeal concluded that an independent contractor engaged as a singer in a cathedral was in fact an employee. The court's conclusion was based on an overall assessment of the nature of the engagement. The court stated that the fact that the singer also was engaged as an independent contractor by others could in this case not be decisive. This is because multiple engagements often will be the case for people working part time. To emphasise this criterium would make it more difficult for part time workers to be reclassified as employees. In addition, the Hålogaland Court of Appeal ruled that the employee was entitled to be enrolled in the employer's pension scheme as of the first day of employment, namely 1 January 2013. The court concluded that the entitlement for the employee to be enrolled in the employer's pension scheme was not subject to statute of limitation in accordance with the general rules for statute of limitation (generally 3 years) due to a specific interpretation of Norwegian pension laws in combination with the statute of limitation.



Highlights from Sweden

Steep raise requested by the unions. As readers of this newsletter will know, many collective bargaining agreements in Sweden are now up for renegotiation. A total of approximately 450 agreements, covering some 2.3 million employees, are now being renegotiated. The employees have recently seen almost a decade's worth of real wage increases be devoured by record inflation, and as expected, the employees want to be compensated. The unions have made an opening bid of 4.4 percent's raise for next year, which is their highest demand in 25 years. The employers are expected to provide their counter offer shortly.

Platform worker – employee or agency worker? A person doing food deliveries on behalf of Foodora was suspended from the app and claimed to have been wrongfully terminated. The Labour Court deemed that the person was not – as the union claimed – employed by Foodora, but by the staffing agency that Foodora contracted with for delivery resources. This case helps to further clarify platform workers' legal situation in the new economy.

Trust, but (don't) verify? The saying "trust, but verify" apparently does not apply to medical certificates in Sweden. The Swedish National Insurance Office denied the payment of state benefits to an employee on sick leave who was diagnosed with fatigue. The reason for the refusal was the lack of objective medical assessments by the doctor in the medical certificate, i.e. the certificate was essentially based only on the employee's personal opinions, without any objective findings by the doctor. The court of first instance ruled in favor of the sick employee, while the court of appeal sided with the National Insurance Office. Eventually, the Labour Court ruled in favor of the employee, arguing that in case of psychiatric conditions, the doctor's assessment cannot be based on anything other than the doctor's observations of the employee's subjective information. The case seems to underscore that it is often the employees themselves who decide if they are well enough to work or not.

