



Nordic Employment Law Bulletin - April 2023



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

- **Bill on a new Act on employment contracts and certain conditions of work** - On 29 March 2023, the Minister for Employment submitted a bill to the Danish Parliament, which implements the EU-directive on transparent working conditions. The bill provides that the act must apply to all employees where the predetermined or actual working time exceeds an average of 3 hours per week or where working time is unpredictable. Furthermore, it is proposed that certain information must be provided no later than 7 calendar days after the start of the employment. The bill also contains rules on substantive rights in the employment, such as employees' access to outside employment and duties, where the starting point will be that employees are entitled to outside employment etc., unless it will be possible to restrict access to outside employment etc. after a concrete assessment. If adopted, the rules will enter into force on 1 July 2023.
- **Termination of pension scheme** - In a court case from the Eastern High Court, the court should decide 1) whether a termination of a pension scheme constituted a material change meaning that the employee on maternity leave could consider her employment as terminated and 2) whether the employee's maternity leave was the reason for the termination of the pension scheme. The Eastern High Court found that the pension scheme was a decisive condition for her employment and that the employer was aware of this. Therefore, the termination of the pension scheme constituted a material change. Secondly, the employer should prove that the employee's maternity leave was not the reason for the termination of the pension scheme. The termination of the pension scheme was motivated solely by the need to treat all employees in a uniform manner in relation to the question on pension terms. The Eastern High Court found that employee's maternity leave was not the reason for the termination of the pension scheme. Therefore, it was not contrary to the Danish Act on Equal Treatment.



Highlights from Finland

- **First whistleblowing deadline 1 April** – Companies with at least 250 employees should have set up a whistleblowing channel or adjusted their existing channel to meet the requirements of the national act on protection of whistleblowers by 1 April.
- **Inspections by the health and safety authority** – The health and safety authority will continue conducting inspections at construction sites in Southern Finland during weekends. The inspections will concentrate on use of foreign workforce, safety at work and on minimum employment terms. In addition, sectors employing especially employees under the age of 30 will also be targets of inspections this year. These sectors include, among other, hospitality, commercial and event sectors. The inspections may be conducted without prior notice.
- **Pay subsidy reform will enter into force 1 July 2023** – Pay subsidy is a discretionary subsidy aimed at promoting the employment of unemployed jobseekers. As of July, the use of pay subsidy will mostly be reserved to promote the employment of those with reduced working capacity or to unemployed jobseekers who are otherwise disadvantaged. The amount of pay subsidy granted due to the lack of professional skills will amount to 50 % of labour costs. Subsidy granted for persons with reduced working capacity will amount to 70 % of labour costs. The subsidy will no longer cover non-wage labour costs or holiday bonuses payable by the employer. The pay subsidy will usually be granted for five or ten months depending on the duration of the unemployment preceding the pay subsidy period. As part of reform, a new employment subsidy for those aged 55 or over will be introduced. The subsidy will be granted without consideration of expediency, as long as the conditions laid down in the act are met. It will be paid for up to 70 per cent of the eligible labour costs for a maximum period of 10 months.

All employers, except for central government agencies, are eligible for pay subsidy but there are some criteria for granting the subsidy. The employer must apply for the pay subsidy before the employment relationship starts and the subsidy shall be applied from the Employment and Economic Development Office.



Highlights from Norway

- **Strict limitations on temporary hiring of workers from staffing agencies as of April 1st 2023** - Such hiring will now only be permitted for employment as a temporary replacement for other employees or by agreement with the employee representatives for companies bound by a collective agreement with the right of nomination under the Labour Disputes Act. There will be two exceptions that allow temporary hiring from staffing agencies, besides the two already mentioned scenarios: 1) temporary hiring of health personnel to ensure proper operation of health services, and 2) temporary hiring of employees with specialist expertise which will perform advisory and consultancy services in a clearly defined project.

It is discussed whether the above-mentioned rules conflict with the EEA agreement, as they are subject to the EU Directive on temporary agency work (2008/104/EC). ESA has informed that a case has been opened against Norway regarding the new rules and Norwegian authorities are subject to an extended deadline of May 5th 2023 to submit answers to several questions from ESA, including questions about the background for the changes.

- **A new bill intended to further enhance employee protection, was recently adopted by the Norwegian Parliament** - The bill involves changes to the Working Environment Act's definition of an "employee", as well as the employer's liability within a group of companies. The bill also introduces a new presumption rule stating that one shall be considered an employee unless the principal makes it highly probable that a contractor relationship exists. The new regulations could lead to more cases regarding "reclassification" to an employment relationship.

Furthermore, in the event of downsizing, companies that are part of a group of companies will be obliged to offer other suitable work and preferential rights to a new position in other companies which are part of the group of companies. This will in our opinion imply significant logistical challenges for a company that in cases of downsizing will have to document whether there are any other suitable and available positions within the group of companies, what qualifications are needed for a possible position and whether the employee in question fulfills the necessary qualifications. Group companies will therefore have to cooperate more closely in order to meet the new requirements.

The mentioned changes enter into force January 1st 2024. We recommend that preparations for the changes are initiated already now.

- **New definition of "harassment" in the Working Environment Act** - The government is working to reinforce prevention against harassment in the workplace. Therefore, a new definition has been proposed in the Working Environment Act that includes clear definitions of the terms "sexual harassment" and "harassment" in the Working Environment Act Section 4-3 (3) on harassment and improper conduct. The new definitions contribute to strengthening the message that protection against harassment in the workplace also means protection against sexual harassment. The new proposal is not intended to change current law. The government considered the new bill on March 3rd and it has now been sent to the Norwegian Parliament for a final decision.

Highlights from Sweden

- **Record wage increases - new industrial agreement in place** - Faithful readers of this newsletter already know that tough negotiations have been taking place between the labor parties about the upcoming salary raises in Sweden. On the evening of Friday 31 March, just hours before the deadline, the labor parties announced that an understanding had been reached on the wage increases for the coming two years. The increase amounts to a total increase of 7.4 percent over two years, which is the highest annualized wage increase in the 25 year history of the Industrial Agreement. The increase is 4.1 percent in the first year and 3.3 percent in the second year.
- **Swedish pension fund takes a hit as US banks crumble** - When the US banks Silicon Valley Bank, Signature Bank and First Republic Bank collapsed, it was not only the start of a wave of financial worries in the US, but also for Swedes with occupational pensions with the pension company Alecta, who had interests in all three banks. Alecta's total loss from the banking crisis now amounts to just under SEK 20 billion, affecting some 2.6 million white collar employees. Despite the significant loss, the pension company states that the holding in the banks corresponds to such a low percentage of the company's total portfolio that it will not affect their solvency or the individual's occupational pension.
- **To eat or not to eat - taking leftover food from the school kitchen without permission** - Employees in a school kitchen in Stockholm were terminated after being seen taking home leftover food belonging to the school. The district court has now concluded that this was not theft, stating that liability for theft requires that the theft resulted in financial damage to the plaintiff. Since the leftovers taken home by the employees would otherwise have been thrown away or returned to the supplier, the food, according to the court, had no economic value and the taking of it therefore did not constitute theft.