



Nordic Employment Law Bulletin - May 2024



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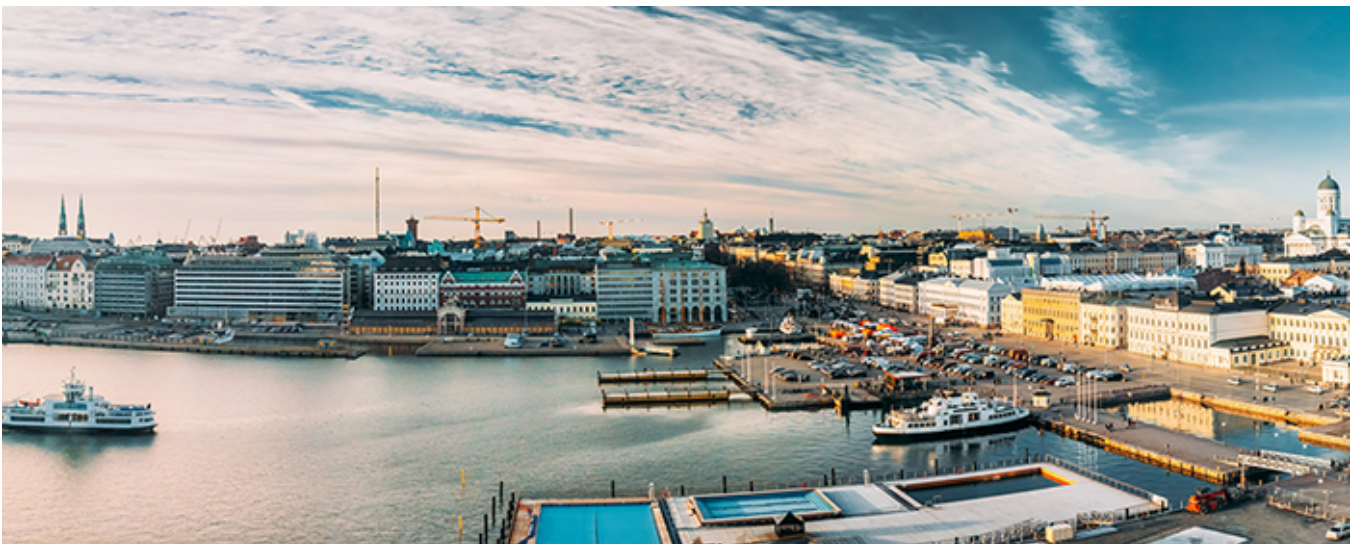
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In our monthly Nordic Employment Law bulletin our employment lawyers across the Nordic region highlight relevant news and trends on the Nordic employment market scene. The bulletin intends to provide high-level knowledge and insight. Want to learn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



Highlights from Denmark

- **New guidance on the Danish Act on Anti-Discrimination:** The Ministry of Employment has issued a new guidance on the Danish Act on Anti-Discrimination which was last updated in 2019. The purpose of the guide is to provide employers etc., with a tool to understand the act and the intentions behind it. The guide includes, among other things, a section on the amendments to the Danish Act on Anti-Discrimination made in 2022. In 2022, employers were prohibited from screening job applicants based on age. The guidance replaces the previous guidance on the Danish Act on Anti-Discrimination from 2019.
- **Parents who have two or more live-born children:** Parents who have two or more live-born children at the same birth are each entitled to 13 weeks of additional absences if the children are born on 1 May 2024 or later.



Highlights from Finland

- **Political strikes:** The political strikes initiated by the Central Organisation of Finnish Trade Unions SAK to protest against the planned changes in employment laws and especially concerning local bargaining and political strikes have not continued since 8 April 2024 after continuing for several consecutive weeks. Regardless of the strikes, the Government proposal regarding limiting the length of political strikes has proceeded and it is being currently handled by the Finnish Parliament. The new rules are expected to enter into force by July 2024.
- **May CBA's include discriminatory provisions?:** The Ombudsman for Equality has issued new statements regarding family leaves and CBA based one-time salary increases. The statements concern different CBA's. In its statements, the Ombudsman assessed the wordings of the CBA's and the purpose and nature of the salary increase provisions in question and therefore the statements cannot necessarily be applied as such in all sectors covered by different CBA's. In these cases, it was considered that an employee on part-time family leave should not receive the one-time increase only pro-rated and, when the salary increase is considered as salary, employees on family leaves will be entitled to the increase even though the family leave would be unpaid at the time of the increase. The Ombudsman for Equality instructs the labour parties to reassess their CBA's and practices and also reminds employers that they are eventually liable that their practices are not discriminatory.



Highlights from Norway

- **Court of Appeal ruling regarding employees' rights to holiday and holiday pay retrospectively following reclassification from independent contractors to employees (LB-2023-32732):**

The case concerned retroactive settlement for holiday allowance owed to previously misclassified employees in a private care company. It had been legally established in previous judicial proceedings that the company's practice of staffing 24-hour care homes with independent contractors/consultants rather than employees was unlawful. As a result, the employees had been deprived of basic employee rights such as overtime pay, sick pay, vacation pay, and pension.

In this new case against the same company, it was undisputed that each individual appellant, as an employee of the company, was entitled to holiday and holiday allowance in accordance with the provisions of the Norwegian Holiday Act. The issue, however, was whether parts of the claims for holiday allowance (for the period 2008-2018) were time-barred in accordance with the statutory limitation period of 3 years. The Court of Appeal ruled that the holiday allowance claims were not time-barred, and based its' view on the fact that holiday allowance is transferred from year to year and is only paid out when the related holiday is taken in accordance with the Holiday Act's system, or when the respective employment relationship is terminated.

Further, the Court of Appeal discussed three other grounds on which the holiday allowance claims could possibly be deemed forfeited or reduced. The Court of Appeal found no legal basis to reduce the vacation pay, thereby holding the company fully liable for the '*pro forma arrangements*' designed to ensure continued work for each individual in the company without them being formally employed.

The company was ordered to pay the reclassified employees close to NOK 60 million in holiday allowance for the years 2008-2018. The ruling highlights the severe consequences that may follow if employees are reclassified, even in cases where there may be some consensus between the parties regarding such arrangement.

- **2024 Wage Settlement update – agreement reached in the front runner sector (Nw. *Frontfaget*):** Norsk Industri (The Federation of Norwegian Industries - NHO) and Fellesforbundet (The United Federation of Trade Unions in private sector in Norway with 170' members - LO) have concluded an agreement regarding the wage settlement on 7 April 2024. For Norwegian industrial workers this entails a general wage increase of 5.2 per cent (which is the same as in 2023).

As the Technical Calculation Committee (TBU) has estimated an inflation rate of 4.1 percent the present year, this means real wage growth for employees unless something dramatic happens to inflation. The frontrunner sector having concluded a framework agreement sets the scene, but the remaining national unions however are negotiating separately with their respective counterparts. The risk of strike is still present depending on the priorities of each union and/or business sector.

- **Court of Appeal ruling regarding dismissed employees' obligation to minimise his financial loss (LE-2023-78403):** An employee was dismissed as part of a redundancy process. The Court of Appeal found that the dismissal was unjustified as the employer had applied too narrow selection criteria, and due to the

fact that the overall procedure was not sufficiently verifiable and justifiable. The Court of Appeal then assessed whether the employee was entitled to financial damages for the wrongful dismissal. The majority of the court did not rule in favour of granting the employee financial damages. The reasoning was based on the fact that shortly after the dismissal, the employee had been offered another position with the same employer, which he rejected. At that point the employee had not yet experienced a loss of income. However, after the end of the notice period the employee was unemployed for six months with a corresponding loss of income.

It is a general principle of contract law that a contracting party has a duty to limit its financial loss, and that failure to fulfil this duty may lead to a reduction in compensation. The Court of Appeal found that the employee's rejection of the previous employer's offer was not reasonable, and that the employee therefore had failed to fulfil his duty to minimize his financial loss. As such, he was not granted financial compensation.

Due to the fact that the notice of dismissal was unjustified the Employee was however awarded redress (Nw. Oppreisning) with an amount of NOK 30 000.



Highlights from Sweden

- **Strike in the healthcare sector:** After lengthy discussions, the Swedish Association of Health Professionals rejected the mediators' proposal for a new collective bargaining agreement. As of 25 April, the trade union and 63,000 of its members refuse any overtime and also block any new hires. The union demands good wages and working conditions for full-time work that are equal and sustainable. The demands are rooted in the challenges facing the healthcare sector; health-queues are growing and there is a shortage of personnel. The employers argue that they are unable to meet the union's demands because of the current financial circumstances.
- **Inflation over unemployment:** While inflation is falling, unemployment in Sweden looks set to rise in the next two years, according to the Swedish government. Around 40,000 more people are expected to be unemployed in 2024 compared to the previous year. The Swedish government is being criticized for the fact that it has not taken sufficient measures to combat the rising unemployment, but instead focuses on lowering inflation in the hope that it will get the economy back on track.
- **Who manages the managers?:** A new report from the Swedish Work Environment Authority shows that the first line managers' work environment is often overlooked. Managers are seen as the employer's representatives and the report shows that there is a risk that companies neglect their work environment. The Swedish Work Environment Authority concludes that managers' work environment needs to be made more visible, since managers are also employees and as such are also in need of a good working environment.