Nordic Employment Law Bulletin - September 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

- **The evolution of working hours in Denmark.** In Denmark, working hours have been gradually reduced over time. Apart from the 48-hour rule which states that an employee's average weekly working hours must not exceed 48-hours in a reference period of four months, there is no legislation about weekly working hours. However, it is usually regulated in collective bargaining agreements ("CBA") or individual employment contracts. In 1900, the normal working hours were 60 hours per week. Since then, it has been gradually reduced, and in 1990 the normal weekly working hours was reduced to 37 hours spread over five days. Today, the normal weekly working hours are still 37 hours. However, we experience a development where some employers – both private and public - offer their employees a four-day working week. Whether this will be the new normal remains to be seen.

- **Parliamentary year.** On 1 October 2024, the new parliamentary year begins. Here we expect news about upcoming legislation within employment law.

Highlights from Finland

- **Discrimination based on trade union activities**
  In its recent ruling (KKO 2024:47), the Supreme Court held that an employer had discriminated against some of its employees based on trade union activities. The claimants were members of a trade union which had declared a ban on overtime for a certain period. During the overtime ban, the claimants' employer had offered some of its employees the opportunity to work overtime on weekends as contract work. The compensation for the contract work contained not only the calculated hourly wage and overtime pay but also Sunday work compensation and weekly rest compensation, even though the overtime was not performed on Sunday. The Supreme Court held that the employer had provided an additional benefit to its employees who had agreed to work overtime during the trade union's overtime ban. By its conduct, the employer had discriminated against the claimants on the basis of their trade union activities compared to employees who were not bound by the overtime ban and was therefore liable to pay them compensation under the Non-Discrimination Act.

  The decision also leaves room for interpretation that under different circumstances the outcome could have been different. In any event and in anticipation of the upcoming collective labour agreement negotiations and related industrial actions, any incentives with the purpose of keeping employees at work and operations running should be carefully considered.

- **Can personal contact details be published at the workplace?**
  A decision by the Deputy Data Protection Ombudsman outlined rules on publishing employees private contact details at the workplace. A bus operator had published on its intranet the personal phone numbers of 300 bus driver employees in a way that the phone numbers were available to all bus drivers in the company. According to the Deputy Data Protection Ombudsman, the publication of personal phone numbers constituted a disclosure of personal data to third parties, and there were no legal grounds for the disclosure. Communication between bus drivers can also be organized in a way that is less privacy-intrusive, such as with work phones. Employees' personal phone numbers or email addresses should only be used when it is not possible to use a work phone number or work email address. Moreover, employees' personal data should only be processed by persons whose duties include the processing of such data, such as managers or persons working in HR management. A warning to the bus operator was issued for breaching data protection legislation and it was ordered to change its practice.

- **Changes to unemployment benefits**
  As of September 2024, an employee's right to unemployment benefits in case of layoff or termination will change. The amount of the benefits payable shall decrease gradually during unemployment. In addition, the employment history required to be eligible for unemployment allowance, also known as the employment condition, will be doubled to 12 months. The employment condition will also become income-based instead of working time- based which could mean at least to some part-time employees that the employment condition will accrue more easily than before.

Highlights from Norway

- **Summary of amendments to the Working Environment Act as of 1 July 2024:** New requirements and amendments to the Working Environment Act are effective as of July 1, 2024. The main new requirements and amendments include:

  - **Expanded minimum requirements for the content of an employment agreement:** Employers must now provide additional details in written employment agreement, including information about work location flexibility, paid leave rights, procedures for termination, specific salary components, and arrangements for varying work hours. For existing employees, the new minimum requirements will only apply if the employee specifically requests an updated employment agreement.

  - **Shortened deadlines for providing an employment agreement and notifying changes**: Employers must now provide a written employment agreement within seven days of the employee starting work if the employment is expected to last more than a month. Any changes to the terms of employment must be included in the contract by the day the change takes effect.

  - **Restrictions to the probationary periods**: The probationary period for temporary positions cannot exceed half the duration of the employment period, with some exceptions for extended periods due to employee absences. Additionally, employers cannot impose a new probationary period if the employee continues in the same or a similar role. In the case of permanent employment, a new probationary period may nevertheless be agreed if the employee's previous period of employment and new probationary period together do not exceed six months. The same option is not available for temporary employment

  - **New upper limit for administrative fines:** The upper limit for administrative fines under Section 18-10 of the WEA has been changed from the previous maximum level of 15 times the National Insurance basic amount (referred to as "G") to 50 G or up to 4% of the enterprise's annual turnover. As per 1 May 2024, 50 G corresponds to NOK 6,204,400. The highest amount shall constitute the upper limit in each individual case. If the enterprise belongs to a group, as defined in the WEA, it is the group's annual turnover that shall be used as a basis.

- **New ruling from the Supreme Court** - **HR-2024-1188-A:** In its recent ruling, the Supreme Court clarifies the extent of an employer's obligation to offer alternative employment. A healthcare worker in Oslo municipality's home care services was dismissed after losing his professional authorization due to insufficient skills. Unable to continue in his role, he argued that the municipality was obligated to offer him another suitable position, which he claimed had not been fulfilled.

  The Supreme Court has acknowledged that, in certain situations, an employer may be obligated to offer an alternative position to an employee, even when termination is based on circumstances related to the employee. This obligation applies if the employer has a suitable position available and if the employee has a particularly strong interest in continuing their employment with the company. In this specific case, the Supreme Court acknowledged that the employee's age and seniority were significant factors indicating that the municipality had a duty to offer an alternative position.

However, the Supreme Court emphasized that even if there is an exceptional and limited obligation to offer reassignment in cases of termination due to the employee's circumstances, emphasis must be placed on the employer's prerogative to manage the business. This implies that there is no obligation for the employer to create a position for which they do not wish to allocate resources. Additionally, there must be an appropriate and vacant position within the company for such reassignment to be considered. Further, the Supreme Court clarified that the statutory preferential right to a new appointment must take precedence in such cases, meaning that in companies that have undergone downsizing in the past 12 months, an employee subject to termination due to their own conduct cannot be protected at the expense of those who were previously terminated during the downsizing process.

- **Proposed amendments to the rules regarding the Labour Inspection Authority's mandate:** The Norwegian Ministry of Labour and Social Inclusion (Nw: *Arbeids- og inkluderingsdepartementet*) has suggested both new and strengthened measures to bolster the authority and effectiveness of the Labour Inspection Authority (Nw: *Arbeidstilsynet*). The proposed amendments include i.a. a duty for third parties to provide information, a right to secure evidence in cases where businesses under inspection fail to comply and an explicit right for the Norwegian Labour Inspection Authority to issue infringement fines when visiting a company. Furthermore, there is a suggestion to extend the statute of limitations for fines from 2 to 5 years. The possibility of imposing fines directly on individuals within a business, rather than just on the company, is also under consideration, especially in cases where penalizing the company alone would be ineffective.

  The suggested proposals are particularly focused on addressing situations where entities deliberately evade the Authority’s standard supervisory processes through frivolous or unlawful actions. The deadline for submitting any consultation responses is 15 October 2024.

Highlights from Sweden

- **Sweden's New Game Plan: Vocational Training to Tackle the Highest Unemployment in a Decade**
  Sweden finds itself in the midst of a prolonged economic downturn, with unemployment rates reaching their highest in a decade, excluding the pandemic years. The situation is particularly challenging for those born abroad. Currently, the unemployment rate for individuals aged 15-74 stands at 8.3%. While this figure is unchanged from the previous quarter, it represents an increase compared to the same period last year.

  To address this issue, the Swedish government has allocated substantial resources in the 2024 budget bill, with a strong emphasis on vocational training. As a result, Sweden finds itself in a tight spot, ranking joint third with Finland in Europe for unemployment rates.

- **New rules on temporary workers: Time to Check Your Calendars!**
  Remember those new temporary work agency laws we have flagged over the past two years? Well, they are about to enter into effect. If a company has had a temporary agency worker on-site for 24 months within a 36-month period calculated as of 1 October 2022, they need to either:

1. Offer them a permanent position, or
2. Give them a payout equivalent to 2 months' salary (or 3 months, according to certain CBAs).

   Why the reminder now? As the rules came into force 1 October 2022 the 24 months are soon up. So, here is a friendly nudge: Check the assignment time for any temporary workers and make sure to track this closely going forward.

- **35-Hour Workweek: A Recipe for Bliss or Chaos?**
  In a bold move that has everyone in Sweden talking, a working group within the Social Democrats has proposed reducing the full-time workweek from 40 to 35 hours, with no pay cut. This change is suggested to be implemented gradually and fully realized by 2035. The Social Democrats believe this would improve many people's health, work-life balance, and overall life puzzle. Plus, with more tasks needing to be spread across more people, there's also the potential to reduce unemployment (and as you can see above – Sweden is not doing well on that front).

  To move forward, a pilot research project involving 5,000 public sector workers is proposed. These workers will shift to a 35-hour workweek for a year to gather data on the impacts of shorter working hours. Based on the findings from this pilot project, the plan is to gradually introduce the 35-hour workweek across all sectors by 2035.

  Unsurprisingly, the proposal has met with both cheers and jeers. While some hail it as "the freedom reform of the century," others claim it will be "the straw that breaks Sweden's back" and that "the proposal will plunge Sweden into an economic ice age with worse welfare". Only time will tell if this move will lead to a brighter future or unforeseen challenges.

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