Nordic Employment Law Bulletin - February 2025

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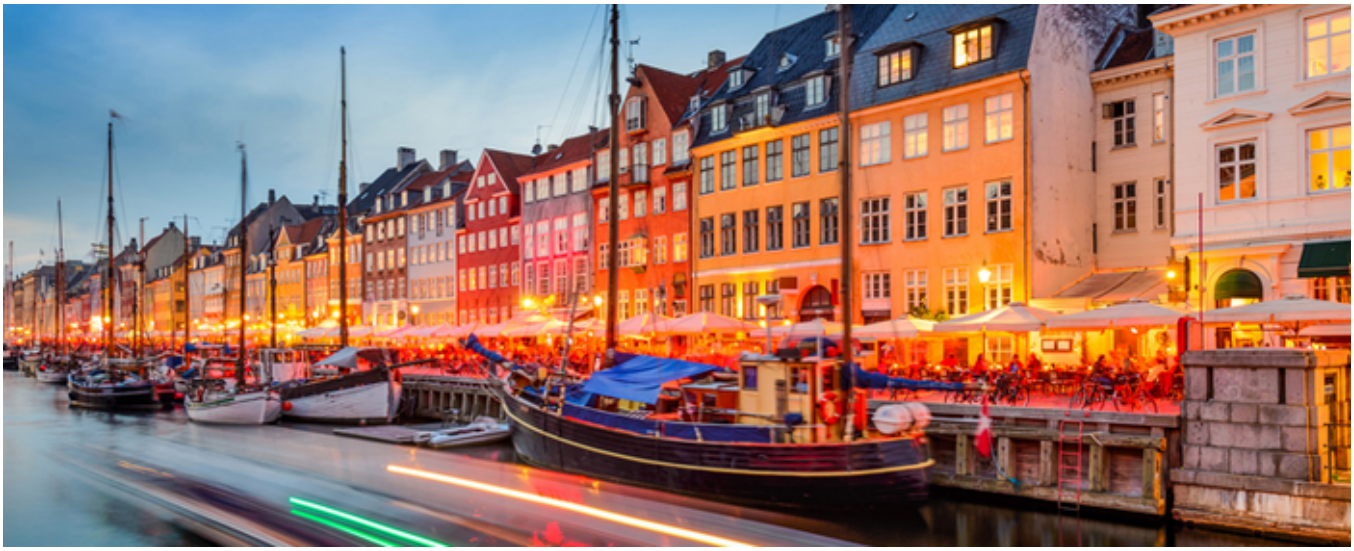
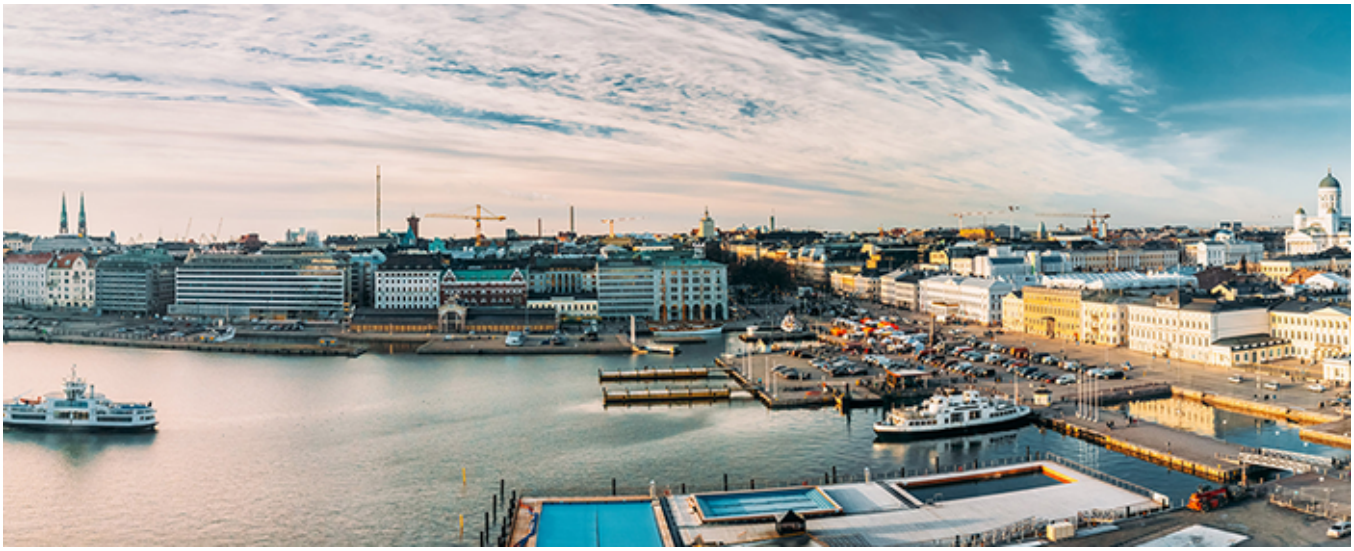
In our monthly Nordic Employment Law bulletin our employment lawyers across the Nordic region highlight relevant news and trends on the Nordic employment market scene. The bulletin intends to provide high-level knowledge and insight. Want to learn more? Our experts will be happy to hear from you.



Highlights from Denmark

- **Bill on Amendments to the Danish Working Environment Act.** On 18 December 2024, the Danish Ministry of Employment submitted a bill on Amendments to the Danish Working Environment Act in the Danish Parliament.

  It is, among other things, proposed that the Danish Working Environment Authority can order a contractor who has entered into an agreement with a client to carry out work on a construction site to stop all work covered by the contractor's agreement with the client, regardless of whether the work is performed by the contractor or by subcontractors in specific cases. Moreover, it is proposed that the fines for violating the Danish Environment Act are increased with 50%. If the bill is adopted, the amendments will enter into force on 1 January 2026.



Highlights from Finland

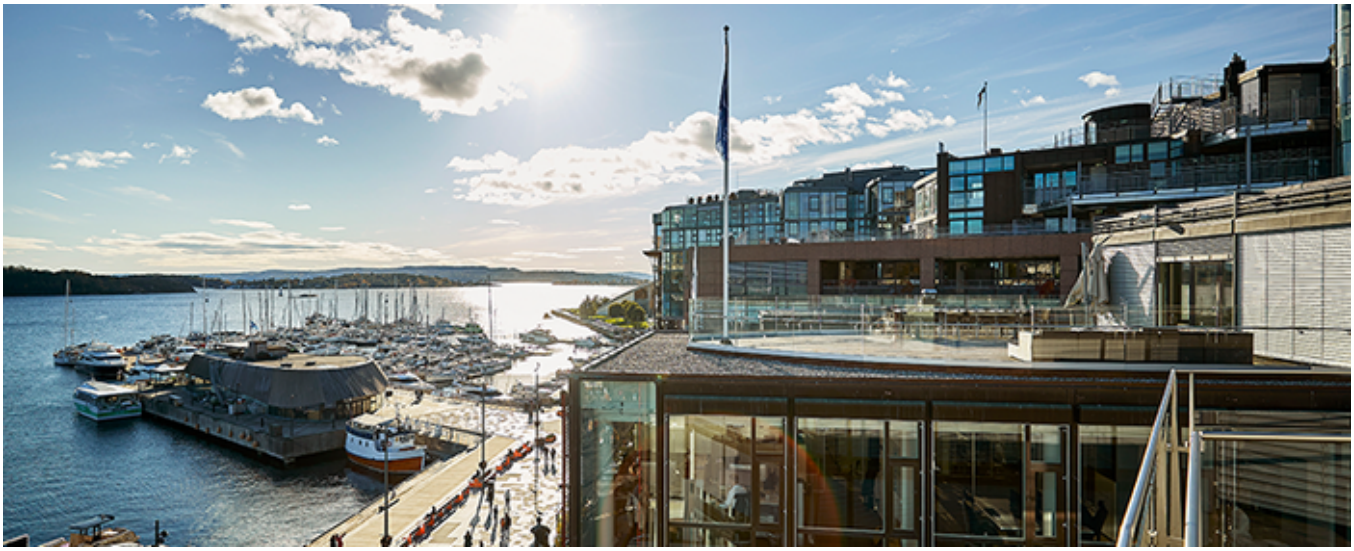
- **Long-term sickness as termination reason –** Traditionally, it has been regarded as a rough rule of thumb that after one year of continuous sick leave of an employee, the employer could consider terminating the employment. In a matter tried in the Labour Court, an employee's employment agreement was terminated due to a significant and long-term reduction in work capacity, as the employee had been unable to work for nearly two years. The Labour Court stated in its ruling TT 2024:64 that the employer did not have a proper and weighty reason to terminate the employee's employment agreement. This was due to a failure to discuss with the employee the possibility of reducing working time to allow for a gradual return to work after the pension insurance company had rejected the application for rehabilitation. Furthermore, the employer had acted against the principle of loyalty by not checking the employee's work ability after receiving new information from the shop steward before the end of the notice period. The shop steward's information indicated that there had been a change in the terminated employee's work ability and that the employee was willing to return to work. As a result, the employer was ordered to pay compensation to the employee for unjustified termination of the employment agreement.

  What are the key takeaways of the ruling? It is important to assess the prognosis of recovery instead of only focusing on the length of the sick leave when considering termination of employment. In addition, the employer must assess the ability to work until the last day of employment and if needed, withdraw the termination. And finally, reasonable accommodations must be considered as alternative for termination.

- **Equal pay in group of companies** – Company X had purchased shares of company Z in 2011. In 2016, company Z had recruited two employees with lower salary compared to employees who had been employed by the company Z before the share deal and whose work was of same or similar value. The two employees disputed their treatment as unequal. The employees' claims were eventually tried in the Supreme Court where the questions to be solved were that a) does a share deal equal a TUPE transfer, b) should the salaries be equal on the group or entity level and c) was there a justified reason for the pay gaps. The Supreme Court stated that a share deal is not a TUPE transfer and given the effects of a share deal to the employees, it is not even comparable to a TUPE transfer. A clear principle is that the employer's obligations towards its employees shall be assessed within the employer entity even though the employer would be part of group of companies. Therefore, obligations relating to equal treatment apply only within the employer entity. However, it cannot be excluded that in some circumstances the employer should consider on a group level whether its employees are being treated equally. As an example, if the group companies would only together as a group constitute an operational and financial entity and the employees perform same or similar work at the same working place but under separate entities, a group level assessment could be justified.

  The Pay Transparency Directive implies that a group level assessment could be required. It therefore remains to be seen whether the Finnish law will eventually follow this Supreme Court ruling 2024:80.

- **CBA negotiations –** As assumed in our bulletin end of last year, the CBA negotiations have not progressed smoothly. Strikes have taken place in the Technology sector and Chemical sector, and the The Finnish Transport Workers' Union AKT has announced a blockade in all Finnish ports commencing on 3 February until 8 February. The blue collar trade unions have announced that their target salary increase for the next 2 year term is 10% increase.



Highlights from Norway

- **The Norwegian Supreme Court on financial settlement following misclassification of employees as independent contractors – HR-2024-2368-A:** The case involved three healthcare workers employed by a company that provided health and care services, who had been incorrectly classified as independent contractors rather than employees. They had received payment for their work through monthly invoicing.

  In determining the financial settlement following their reclassification as employees, the majority of the Supreme Court, comprising three judges, relied on the mandatory provisions of the Working Environment Act to calculate the additional compensation owed to the employees, unless a valid agreement stipulated otherwise.

  In the absence of such an agreement, work performed beyond the statutory normal working hours was classified as overtime. If the payments already made fully or partially covered the claims presented, deductions were required to prevent overcompensation. Such deductions would depend on a case-specific assessment, with the burden of proof for overcompensation resting on the employer.

  The Supreme Court also unanimously ruled that the employees' claims for holiday pay were not time-barred.

- **Significant ruling regarding classification of "leading positions" under the Working Environment Act – LE-2024-29878:** The case concerned a claim for overtime compensation and holiday pay by an employee working at a café. The Court of Appeal's assessment of the overtime compensation claim was based on whether the employee held a "leading position" in accordance with the Working Environment Act section 10-12.

  In this particular case, the Court of Appeal concluded that the employee's job title was of secondary importance, and that the decisive factor was the actual content of the position and the role the employee had within the organization. After a comprehensive assessment based on these criteria, as well as an interpretation of the employee's employment contract, the Court of Appeal concluded that the employee did not hold a managerial position and was therefore entitled to overtime compensation pursuant to the provisions of the Working Environment Act.

  Following a specific assessment, the Court of Appeal determined that the employee was entitled to compensation for 450 hours of overtime and holiday pay for 2020 and 2021.

- **Strengthening of fairness and compliance in the Norwegian Labour Market:** The Norwegian government has allocated an additional 18 million NOK to the Labour Inspection Authority to combat workplace crime, social dumping, and unprofessional practices. This funding will enhance inspections and enforcement measures, ensuring stricter compliance with labor regulations. The initiative reflects the government's commitment to creating a safer and more equitable working environment across Norway. This increased funding also signifies a robust step toward securing a fair labor market, reducing exploitation, and ensuring that businesses operate on equal terms, ultimately strengthening trust and integrity within the Norwegian workforce.

The allocation letter can be read in full HERE (in Norwegian only).

Highlights from Sweden

- **Swedish Job Market Blues -** The Swedish job market is currently facing challenges, with unemployment reaching its highest level in three years. This increase applies across the board, for both men and women, nationals and foreigners. Despite the mild economic downturn, its prolonged nature has led to an additional 10,000 long-term unemployed compared to last year. If that was not enough, 2024 has seen nearly 50,000 fewer jobs posted per month on the Public Employment Service's job board compared to 2023. However, on the bright side, the number of layoffs has decreased in recent months.

- **Proposed tax reliefs for R&D -** The Swedish government is currently looking into ways of enhancing the competitiveness of Swedish R&D regulations. On 15 January 2025, a committee proposed several changes, the aim of are to increase business investment in R&D, e.g. by increasing the reduction in taxable income for foreign experts from 25 to 30 percent. The new definitions for research and development are designed to expand the range of R&D activities that qualify for deduction rules. Additionally, the proposal includes removing the requirement for employees to work on R&D for at least 15 hours per month. It is also proposed that the work does not need to be systematic, meaning that it will no longer need to follow a specific plan or method. These changes are proposed to enter into force on January 1, 2026.

- **Wage negotiations** - Currently, negotiations are ongoing regarding collective bargaining terms for employees in several industries, including the retail and warehouse sector. The trade unions wants to raise entry-level wages, while the employer-side wants to keep them at their current level of SEK 25,243 per month for a full-time salary. Furthermore, the question of remuneration for part-time employees is important and the parties seem to have difficulty reaching agreement here too. As it is today, part-time workers are only paid for additional hours (Sw. mertid) if they work more than the contract stipulates (up to fulltime), with a lower compensation than the overtime pay that applies to full-time workers. Fueled by recent EU case law, the trade unions have taken a hard line on this and say they want to end the exploitation of part-time workers by employers.

Services	Employment