



Nordic Employment Law Bulletin - April



Björn Rustare
Advokat, delägare, Head of
Employment, Sweden



Johan Zetterström
Advokat, delägare



Nina Wedsted
Advokat, delägare, Head of
Employment, Denmark



Riikka Autio
Advokat, delägare, Head of
Employment, Finland



Rajvinder Singh Bains
Advokat, delägare, Norway



Per Benonisen
Advokat, delägare, Head of
Employment, 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

- **The Danish Supreme Court has passed a new judgement on the counting and calculation of sick days pursuant to the 120-day rule in section 5(2) of the Danish Act on Salaried Employees.** In section 5(2) in the Danish Act on Salaried Employees, it can be agreed by written contract that the employer is entitled to terminate the employment by giving one month's notice to expire on the last day of a month if the salaried employee has received pay during sickness for a total of 120 days during a period of 12 consecutive months. However, the Act does not address how the 120 days are to be calculated. Therefore, the issue in the case was whether Sundays, public holidays, and other days off work during the period where the employee was absent due to sickness on a full-time basis were to be included in the calculation of sick days according to the 120-day rule in s. 5(2) of the Salaried Employees Act. The Supreme Court found that Sundays, public holidays, and other days off work are to be included in the calculation of the 120-days if the salaried employee has been sick on a full-time basis the day immediately before and the day immediately after the days in question off work.
- **Tripartite agreement on initiatives against sexual harassment.** The Danish Government and social partners have entered into a tripartite agreement on how to combat sexual harassment in the workplace. The agreement will provide the necessary tools for employers to prevent and deal with sexual harassment and support a cultural change in certain workplaces. The agreement presents 17 new initiatives, where some of the initiatives require changes to the law and will be implemented after the reading and adoption process in the Parliament.



Highlights from Finland

- **Supreme Court ruling on post-employment confidentiality clauses** – Until now, there has been some uncertainty and differing views whether rules and restrictions relating to non-competes should be applied to post-employment confidentiality clauses. In addition, it has been argued that an employee should not be bound by both confidentiality and non-compete obligations. On 15 March 2022 the Supreme Court gave a ruling KKO 2022:16 confirming a premise that restrictions regarding non-competes do not apply to post-employment confidentiality clauses unless the clause is formulated in a way it prevents the employee from practising one's profession. An employer and employee may also agree on a post-employment confidentiality clause even if the parties also agree on post-employment non-competition. Furthermore, both restrictions may be sanctioned with liquidated damages and an employee may be obligated to pay both sanctions for breaching the said obligations unless it would be regarded unreasonable taking into account the situation as a whole.
- **Supreme Court ruling on termination grounds** – A CBA included a provision that limited geographically the employer's obligation to offer other work pursuant to Employment Contracts Act Chapter 7 Section 4 to an employee made redundant. The dispute concerned a question whether such a limitation applies also to financial, production related and reorganizational termination grounds stipulated in the Employment Contracts Act Chapter 7 Section 3. The Supreme Court stated in its ruling KKO 2022:17 on 16 March 2022 that redundancy grounds and obligation to offer work must be assessed separately. In addition, the Employment Contracts Act does not allow to deviate from the redundancy grounds with a CBA. Therefore, the geographical limitations of the CBA could not affect and limit the assessment of redundancy grounds. However, CBA's may include provisions that limit the obligation to offer other work.
- **Whistleblowing** – The Government bill regarding implementation of the Whistleblower Directive has been once again postponed. The current estimate is that the Government bill would be presented on week 23 in June 2022.



Highlights from Norway

- **Changes in the Norwegian regulation for home office**

The Norwegian Government has adopted amendments to the Norwegian regulations on work performed in employees' homes. The changes will become effective as of 1 July 2022 and includes, in particular:

- the general rules regarding working hours in the Norwegian Working Environment will be applicable for home office work
- a clarification of that the home office regulation does not apply to short-term or sporadic work from home
- an exception from the requirement for a written agreement where homework is due to an order or recommendation from the authorities (e.g., the covid-pandemic). In such cases, the employer may instead provide information to the employees after discussions with the employees elected representatives
- a clarification that requirements to the psychosocial work environment also apply when the employee works from home
- the Norwegian Labor Inspection Authority (Nw. Arbeidstilsynet) is given the authority to supervise the home office regulation. This does however not mean that the Authority will carry out inspections in the employee's home.

- **Decision regarding summary dismissal due to breach of loyalty**

Two employees who were summarily dismissed from a transport company claimed that the summarily dismissals were unlawful and demanded compensation and redress. A unanimous Court of Appeal rejected the employees' appeal against the district court's judgment, which acquitted the employer. The two employees had during the employment started their own business which was in direct competition with the employer. Further, the employees had marketed the new business during working hours and to the employer's customers. The Court of Appeal found that these actions constituted breaches of the employees' duty of loyalty and exceeded what an employee lawfully can do to prepare competing business activities while still employed.

- **Focus areas for the Labour Inspection Authority for 2022**

The Labour Inspection Authority has announced that they will focus on prevention of work-related accidents and injuries for 2022. They will prioritize industries and companies where the employees may be exposed to:

- carcinogenic exposure, such as asbestos
- work-related accidents with serious injury, such as accidents related to falls, crushing or accidents in which an employee is hit by an object.
- work-related muscle or skeletal disorders due to, for example, heavy lifting, stressful working positions, vibrations, high work pressure or little control over one's own work situation.
- work-related mental disorders that can be linked to, for example, violence and threats, harassment, high emotional demands, or role conflicts



Highlights from Sweden

- **Industrial action against Russian ships** - The Swedish dockworkers union has announced a nationwide blockade against Russian ships, effective as of 28 March 2022. The blockade, which is carried out in sympathy with the Ukrainian people, means that Swedish dockworkers will not handle any Russian flagged ships, ships going to and from Russia, or ships carrying Russian import and export cargo.
- **Upcoming changes to the Employment Protection Act** - The legislative process for the implementation of significant changes to the Employment Protection Act is proceeding at a rapid pace. After having obtained the opinion of the Council on Legislation (Sw. *Lagrådet*) in early March 2022, the Swedish government has now presented its proposal to the Swedish parliament. The proposed changes will e.g. make it easier for employers to safeguard key employees when making reductions in force, remove the possibility for employees to claim reinstatement in case of wrongful termination disputes and shorten the permitted duration for fixed term contracts. If implemented, the changes will be effective as of 30 June 2022 and shall be applied as of 1 October 2022.
- **Working conditions and work-life balance** - The Swedish Government has proposed to incorporate the EU directives on transparent and predictable working conditions (Sw. *Arbetsvillkorsdirektivet*) and on work-life balance for parents and carers (Sw. *Balansdirektivet*) into Swedish law. The changes are proposed to come into effect on 29 July 2022 and 2 August 2022 respectively. The changes are intended to improve working conditions for employees by promoting clearer and more predictable employment conditions, for example in relation to working hours and compensation regarding over time work. The suggested changes would also mean that employees who request flexible working hours due to care needs in relation to children under eight years, or to close relatives, will be awarded additional legal protection.