



Nordic Employment Law Bulletin - March 2023



Nina Wedsted

Advokat, delägare, Head of
Employment, Denmark



Riikka Autio

Advokat, delägare, Head of
Employment, Finland



Per Benonisen

Advokat, delägare, Head of
Employment, Norway



Rajvinder Singh Bains

Advokat, delägare, Norway



Björn Rustare

Advokat, delägare, Head of
Employment, Sweden



Johan Zetterström

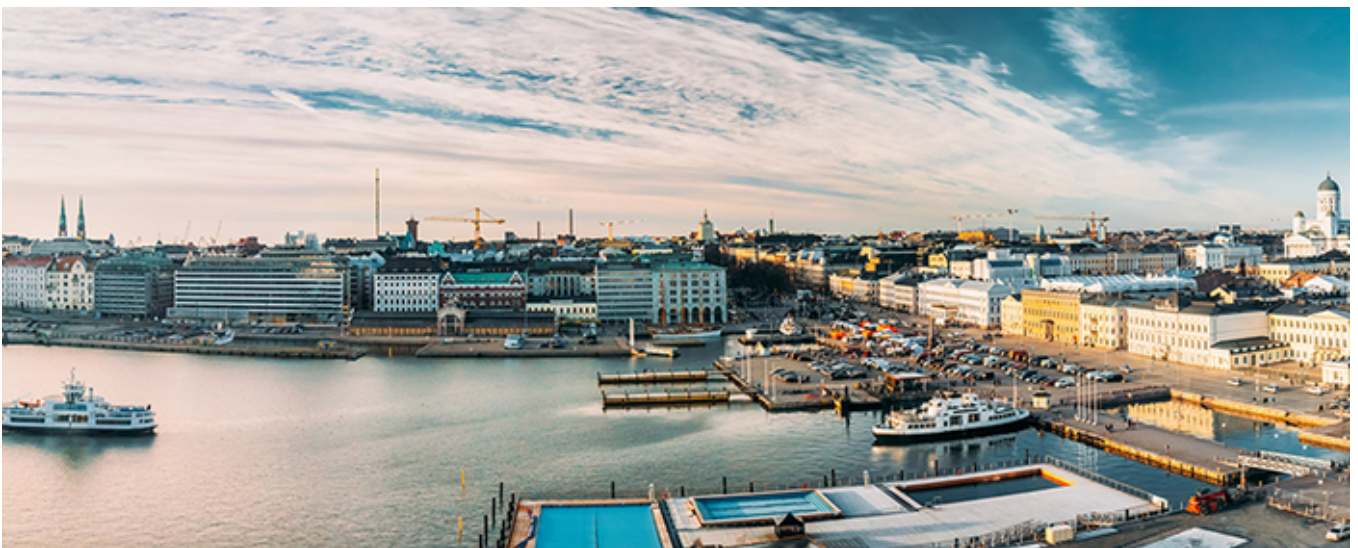
Advokat, delägare

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 amendments to the Danish Act on Equal Treatment of Men and Women.** The Minister of Employment has submitted a bill to the Danish Parliament to amend the Danish Act on Equal Treatment of Men and Women. It is proposed that persons who have been subject to sexual harassment in the performance of their work may be awarded a severance pay by the employee who committed the violation. We expect that the amendments will enter into force on 1 July 2023.
- **New amendments to the Danish Act on Aliens.** On 9 February 2023, the Danish Minister of Immigration and Integration submitted a bill to the Danish Parliament to amend the Danish Act on Aliens. The aim is to make it easier for Danish companies to recruit foreign workers. Among other things, it is proposed that a supplementary pay limit scheme shall be established, whereby an employee could be granted a work permit if the employee has an annual salary of at least DKK 375,000. Moreover, it is proposed that the fast-track scheme is extended so that it is a requirement that the company have at least 10 full-time employees. If the amendments are adopted, they will enter into force on 1 April 2023.



Highlights from Finland

- **Progress in the CBA negotiations** – During February, many sectors have been able to reach a mutual understanding regarding salary increases for the coming CBA terms. These sectors include, among other, commercial, chemical, technology and IT service sector. The negotiations continue in, e.g. ICT and construction sector. In addition to mandatory salary increases, provisions relating, for example, to redundancies and consultation obligations, working time or pay obligations during family leaves have been updated and employers should therefore review the terms of their applicable CBA in its entirety.
- **Status of industrial actions** – Strikes initiated by the Finnish Transport Workers' Union AKT continue. In the stevedoring industry the strike that begun on 15 February is announced to continue until further notice. The strikes in different industries of the sector, e.g. bus transportation, truck industry, terminal operations and tanker and oil products industry shall begin on 1 March and continue until 8 March unless agreements regarding salary increases are reached. At the moment the operations in the Finnish ports are practically shut down for now.
- **Reform of sexual offences in Criminal Code** – The reform of the chapter concerning sexual offenses in the Criminal Code entered into force on 1 January 2023. The purpose of the reform is to strengthen everyone's right to sexual self-determination and personal integrity. As part of the reform, it was redefined what kind of acts may constitute punishable sexual harassment. Previously mainly physical acts, such touching, could be regarded as sexual harassment on the basis of the Criminal Code. Since the reform, when the act is sufficiently severe, sexual harassment can be committed through acts other than touching. Thus, sexual harassment may involve, for example, verbal harassment or sending or showing a message or a picture. The reform does not, as such, require any immediate actions at the workplaces but the new legislation is worth noting for example in the harassment policies and training.



Highlights from Norway

- **Lay-off regulations in the fishing industry** - The government has decided to undertake a review of the lay-off regulation in the fishing industry. Under current regulations, the fishing industry is excepted from paying the salary to laid-off employees for the first 15 days (employer financed period), unlike most other Norwegian employers who lay off their employees. The threshold for when furlough may be permitted and give entitlement to unemployment benefits is also lower in the fishing industry than in other industries, as working hours must be reduced by at least 40% in the fish processing industry, while according to the general regulations, the requirement for decrease is at least 50% reduction of working time. The government has now invited key labor market parties to a working group to examine whether the special rules in the fishing industry are well adapted to the current situation and needs. The working group's proposals shall be seen in the context of the government's goal of increasing the number of employees employed by permanent, regular employment.
- **New case law re. bonus:** Decision from the Court of Appeal regarding eligibility to deferred variable remuneration ("bonus") after resignation. The Court of Appeal decision (LB-2022-74400) furthers the previous decision from the District Court (TOSL-2020-176521), previously discussed (here), in which it was concluded that the employer has no obligation to pay deferred bonus after the resignation of the employee's in question.

The Court of Appeal concluded that whether employees who have resigned their position are entitled to payment of deferred variable remuneration, must be assessed based on the specific agreement between the parties. According to the agreement, the bonus was to be paid in three parts, one part per year. The Court of Appeal found that the wording of the remuneration scheme clearly stated that the employer had a discretionary authority to decide whether the deferred variable remuneration should be reduced fully or in part when the employee has resigned from his position at the time of payment. The Court of Appeal also assessed whether non-payment would be a breach of Section 36 of the Norwegian Contracts Act (Nw. Avtaleloven) which states that an agreement can be set aside completely or partly or changed as far as it seems «unreasonable» or be in conflict with good business practice to enforce it. The Court of Appeal concluded that Section 36 of the Contracts Act does not prevent the employer from withholding an allocated, but not paid bonus after the employee resigns from his/her position. In the assessment, the Court of Appeal has emphasized that the remuneration in question was a bonus that the employees initially had no legal right to, and that the employees had significant fixed wages alongside the variable remuneration. The employer had also offered payment of the variable remuneration, on the condition that the employees accept a final agreement with a competition-, customer- and recruitment clause. The Court of Appeal concluded that the proposed clause was not a breach of the rules in the Working Environment Act Chapter 14A on anti-competitive agreements, as the competition clause would have been compensated for through the payment of the variable remuneration.

- **Annual statement on the status of gender equality in the business.** The annual report must be completed before 30th of June 2023. In this regard, we remind that the annual report of all public businesses (regardless of size) and private businesses with more than 50 employees must, according to a statutory obligation, document and account for active work to create more equality and prevent discrimination at the work place. The account may also be given in another publicly available document, but it must be referred to

in the annual report.

For the mentioned businesses, the annual report must each year give an account of the gender balance in the business, including the balance of each gender for part-time work, temporary employment and parental leave. At least every two years, an account must be given of wage differentials between genders and gender balance for involuntary part-time work. The account must also include the specific measures taken to fulfil the statutory activity obligation; how the work is planned and structured, how risks, obstacles, causes and measures have been identified, main challenges of the business, results of work and measures taken, and plans for further work and measures.

Highlights from Sweden

- **Record number of collective redundancies.** The number of collective redundancies reported to the Swedish Public Employment Service has increased significantly. In the first half of February, 13,000 people were placed at risk, which can be compared with 30,000 people during the whole of 2022. Already towards the end of last year and in January, the number of collective redundancies were increasing. The first month of the year landed at just over 5,300 at-risk employees, the highest January figure since 2015. The Swedish Public Employment Service says this is an indication that we are entering a recession and that the labour market is starting to give way a little.
- **Collective bargaining.** Real wage increases are a thing of the past – at least for the next few years. The National Institute of Economic Research predicts that it will take up to five years before Swedes' wages are back at the 2021 level and real wage increases can be achieved again.

It is under these circumstances that the industrial parties are negotiating the new collective agreements. The industry unions emphasise that they are not demanding compensation for the high inflation, but they do believe that there are reasons for stepping up the pace of wage increases. And they are doing so, to say the least, as they have put forward demands for wage increases of 4.4%, which is the highest ever demand made by the industrial unions. In addition, they want to see an increase in the contractual minimum wages by SEK 1,600.

The employer federations have made a counter-proposal, a 2% wage increase and a one-off sum of SEK 3,000.

What the industry parties will finally agree on is yet to be seen. By 31 March 2023, the industry parties should have reached to an agreement. If this has not been done, the current collective agreement will expire and there will no longer be any obligation to maintain industrial peace.

- **Lights out at midnight in the red light district.** The Swedish Work Environment Authority demanded a fine of SEK 790,680 (appr. EUR 70,000) when a porn club in Stockholm had employees working during the night without permission.

By law, all employees must have at least 11 hours of continuous leave in any 24-hour period and that the time between midnight and 5 am must be included in the daily rest period. However, night work may be carried out if it is necessary in view of the nature of the work, the needs of the public or other special circumstances, and the Swedish Work Environment Authority may grant an exemption from the night work ban in such cases. The Working Hours Act can also be waived in collective agreements, meaning that collective agreements may have different rules for night work. Typical examples of where night work is permitted include healthcare and public transport.

The Swedish Work Environment Authority noted that the porn club did not have a collective agreement nor had they been granted, or applied for, an exemption from the night work ban. On top of that the Authority considered that the activities carried out during the period in question were not such as to allow a deviation from the night work ban on account of the nature of the work, the needs of the general public or the fact that

they had to be carried out between midnight and 5 a.m. for special reasons. The porn club in Stockholm appealed the decision, but the court agreed with the Work Environment Authority.

Tjänster

Employment, Employment
