Nordic Employment Law Bulletin - July 2024

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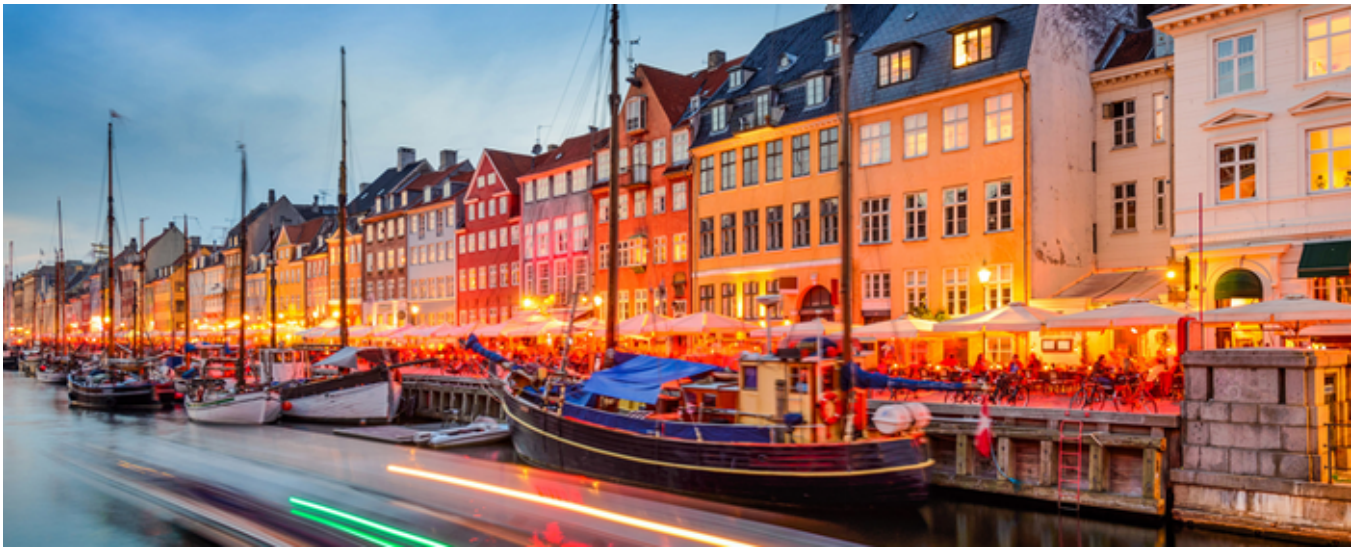
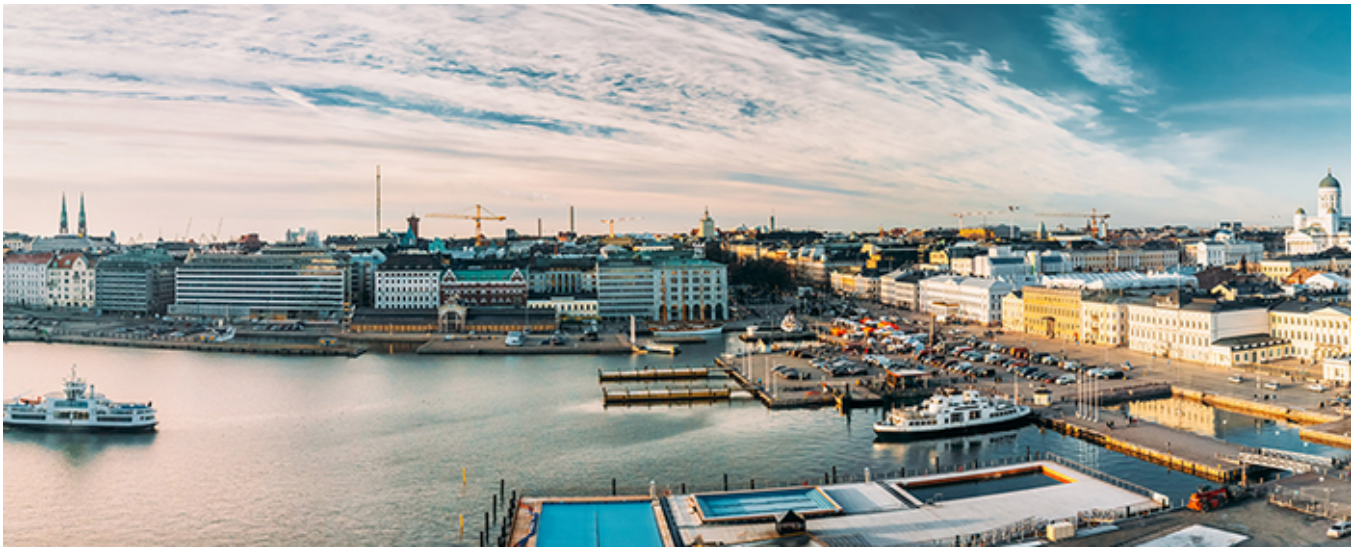
In our monthly Nordic Employment Law bulletin our employment lawyers across the Nordic region highlight relevant news and trends on the Nordic employment market scene. The bulletin intends to provide high-level knowledge and insight. Want to learn more? Our experts will be happy to hear from you.



Highlights from Denmark

- **Amendments to the Danish Act on Aliens.** On 4 June 2024, the Danish Parliament adopted a bill on amendments to the Danish Act on Aliens. As of 1 July 2024, the requirement for a Danish bank account will be abolished in relation to residence and work permit according to the researcher scheme, the fast-track scheme's pay limit track, researcher track, short-term track and educational track. For other schemes, the deadline for opening a Danish bank account is extended from 90 days to 180 days.

- **Bill on Requirements for Employer-provided Accommodation for Employees sent out for consultation.** On 12 June 2024, a bill on Requirements for Employer-provided Accommodation for Employees was sent out for consultation. However, the bill has not been introduced in the Danish Parliament yet. The purpose is to introduce certain minimum requirements for the accommodation that employers provide for their employees. It is proposed that employers, among other things, ensure that the accommodation is not unhealthy to the employees. Furthermore, the Danish Working Environment Authority will monitor compliance with the requirements. If the bill is introduced in the Danish Parliament and adopted, the Danish Act on Requirements for Employer-provided Accommodation for Employees will enter into force on 1 July 2025.



Highlights from Finland

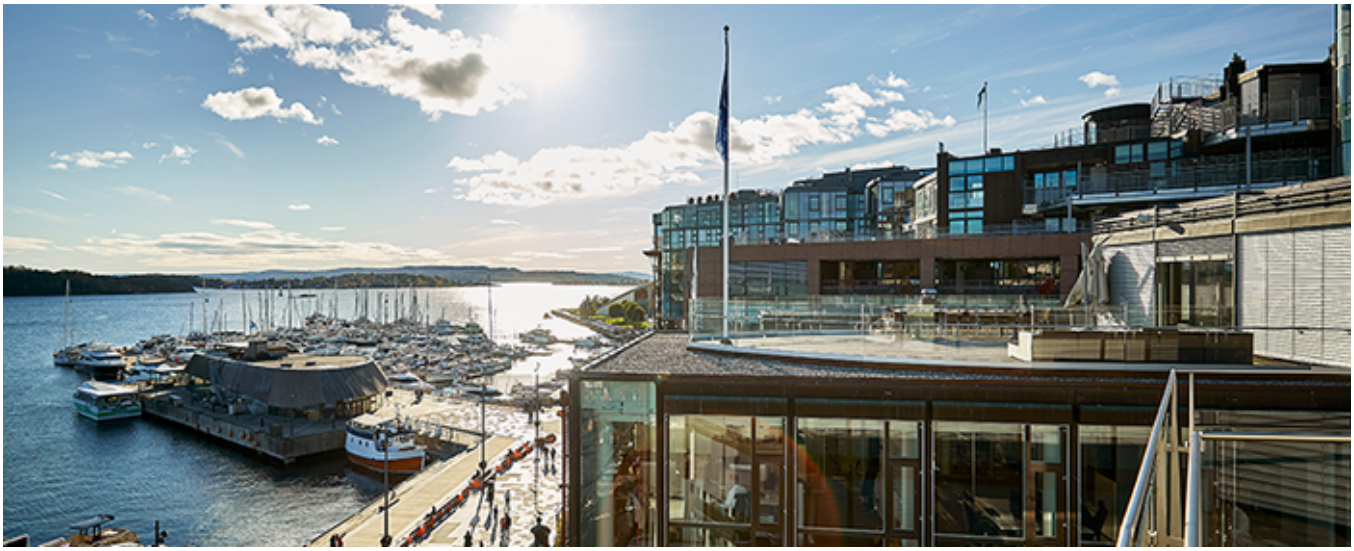
- **Reasonable accommodations and remote work:** An employee who was undisputedly considered as a disabled employee in a case decided by Vaasa Court of Appeal had been working mainly remotely since 2005 for reasons relating to the employee's health. The employer terminated the remote working arrangement in 2019 due to alleged difficulties in e.g. communication and interaction and the employer's right to supervise work even though the occupational healthcare had recommended remote work for the employee for health-related reasons still in 2019. Also according to medical statements the employee's health required remote working.

  The Court of Appeal stated in its decision that the employer should have assessed the need for reasonable accommodations before terminating the remote work arrangement and that remote working may be considered as one option to accommodate work. Only the employer's needs do not allow the employer to deviate from the requirement to accommodate work when the requirements set out in the Non-Discrimination Act are met and therefore the employer in this case had not been able to invoke any necessary reason relating to the employee's work that would have required the employer to end the remote working arrangement, such as that the employee's tasks could only be performed at the workplace. Given the employer's size and financial means in this case, accommodating the work would not have been unreasonable for the employer either. On the opposite, terminating the remote working arrangement was unreasonable for the employee and the length of service also spoke for accommodating the work. The employer was obliged to pay indemnity to the employee amounting to EUR 20 000 for violating the Non-Discrimination Act.

  In this case the employee had also claimed that remote working had become an established employment term comparable to an agreement but as the employee had resigned, the court considered there was no longer any need to take a stand on this issue.

- **Local bargaining:** The government proposal to enhance the use of local bargaining among companies who are not members in employer associations is now expected end of August on week 35 instead of the originally planned week 24 in June.

- **New guidelines on drug testing:** The Ministry of Social Affairs and Health has provided new guidelines on drug testing in working life. The guidance is for the occupational healthcare and concerns e.g. the testing itself, informing an employee of the test result and certificates to be provided to the employers. However, the guidance has raised questions whether the wording of the guidance may lead to situations where drug use cannot be detected and intervened in a way as before. According to the Ministry, needs to update the guidelines are under consideration at the moment. The guidelines can be found in Finnish and Swedish here.



Highlights from Norway

- **Amendments to the Working Environment Act (WEA) regarding additional minimum requirements for the content of employment contracts enter into force on 1 July 2024:** The amendments will implement the EU directive on transparent and predictable working conditions in Norwegian law and aim to ensure clearer and more predictable terms of employment.

  From 1 July 2024 all new employment contracts shall, in addition to the current requirements, include additional information regarding:

1. Place of work,
2. Description of daily and weekly working hours, including details on any working hour variations,
3. Different types of absence that entitle you to payment from the employer,
4. Procedures for termination of employment,
5. The different elements that make up the employee's salary and other remunerations that are not included in the basic salary, which shall be listed separately,
6. Working hours, changes to shift arrangements and information about overtime supplements,
7. The identity of the undertaking hiring labour, if the employee is hired out from a staffing agency,
8. The employee's possible right to competence development,
9. Social benefits paid for by the employer (pension, insurance, etc.).

   The amendments are primarily relevant for employment relationships entered into after 1 July 2024. Employers are not required to update current employment contracts to be compliant. However, if an employee requests that his/her contract be updated to reflect the new requirements, the employer is obliged to do so as soon as possible and not later than two months after the request.

- **Amendments to the WEA regarding trial periods in employment relationships enter into force on 1 July 2024**: The WEA currently states that the parties in an employment relationship may agree on a trial period of employment for up until six months. Currently this time period applies for employees in both temporary and permanent positions.

  As of 1 July 2024, the probation period for temporary employments must not exceed half the duration of the employment relationship, and not in any case exceed six months. As such, an employee hired on a temporary basis for six months or less may no longer be under probation for the entirety of his/her employment. However, the probation period can, like today, be extended if the employee has been absent from work during the probation period, although the extension cannot exceed the length of the absence.

  Furthermore, a new probation period cannot be agreed if the employee is to continue in the same position or in a position which is substantially similar to the position formerly held by the employee with the same employer. In the case of permanent employment, a new probation period may nevertheless be agreed if the employee's previous period of employment and the new probation period together do not exceed six

months.

- **Court of Appeal ruling regarding breach of the rules of preferential treatment, cf. WEA section 14-3 (LG-2023-42172)**: The case involved a part-time teacher at a school who applied for an advertised full-time position, emphasizing his preferential right under Section 14-3 (1) of the WEA, which states that part-time employees have a preferential right to extended positions before the employer employs a new employee. The school rejected his application, citing a lack of necessary qualifications. The teacher sued the employer, alleging a breach of preferential rights and sought compensation for lost income and redress.

  Contrary to the District Court, the Court of Appeal found a clear violation of the teacher's preferential rights under WEA Section 14-3. The evidence presented did not substantiate the employer's claim of insufficient qualifications, proving the teacher was both professionally and personally qualified for the position.

  The Court of Appeal also criticized the employer's unsatisfactory case management. While courts generally exercise restraint in overriding an employer's judgment on employee suitability, they can intervene when case management is unsatisfactory, and the employer's decision lacks objective justification.

  The teacher was awarded a total of NOK 756,674 for lost income and NOK 50,000 in redress. Additionally, the teacher was exempted from all legal costs.

Highlights from Sweden

- **Equal Pay Tango: Sweden's Dance with Salary Equity**: As mentioned in the last bulletin, the Swedish Government has presented the results of its official report on implementing the Pay Transparency Directive in Sweden. The report acknowledges that Sweden already meets some of the requirements and proposes legislative changes more extensive than those mandated by the directive. Despite Sweden's overall progress in achieving equal pay, there however remains work to be done to achieve full pay equality between women and men. While the gender pay gap narrowed over a decade, it stagnated in 2019. Surprisingly, recent statistics from the Swedish National Mediation Office reveal that the pay gap has started widening again. Women now earn only 90% of men's salaries, and even after accounting for employment levels and occupation, an unexplained pay gap of 4.8% persists. The largest gap exists among civil servants in the private sector, reaching 7.2%. In summary, the implementation of the Pay Transparency Directive couldn't be more timely.
- **Bye-Bye, Paper Receipts!** The Swedish Parliament has decided on new archiving rules under the Accounting Act which include changes to the transfer of accounting information. For example, until now companies that scan or photograph paper invoices or receipts with intention to save the accounting information in a different form or format than the original had to retain the original material for three years after transferring. As from 1 July, paper receipts and invoices may be disposed once the accounting information has been scanned/photographed, i.e. once it has been transferred to another document. But not only the finance departments will be relieved about this - HR departments will also benefit from this change, as employment related documents that constitute accounting material, such as termination agreements with severance pay, will also be affected. In other words, it's time to start thinking about what companies can do with all the extra storage space going forward.
- **Yet another TUPE case on bus traffic:** The Labour Court has ruled in yet another case concerning transfer of undertaking of bus traffic. Similar to earlier cases, the question was whether a transfer of undertaking had occurred between two service providers. The business in question was public transport by bus and in general such activities are highly dependent on tangible assets, the most central of which are the buses. The successful bidder, however, only acquired 31 out of 196 buses, which would indicate that it was not a transfer of undertaking. According to case law, this fact could be overlooked if the reason for not transferring the majority of assets was due to the customer's procurement requirements – which the union argued here. However, ultimately the Labour Court found that the decision to only transfer 31 buses were due to other considerations, meaning that the main rule applied; no majority of buses, no transfer of undertaking.

Tjänster	Employment