



Nordic Employment Law Bulletin - June



Nina Wedsted

Partner, Head of Employment,
Denmark



Riikka Autio

Partner, Head of Employment,
Finland



Per Benonisen

Partner, Head of Employment,
Norway



Rajvinder Singh Bains

Partner, Norway



Johan Zetterström

Partner, Sweden



Björn Rustare

Partner, Head of Employment,
Sweden

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 how to calculate an employee's commission based salary under the temporary salary/wage compensation scheme due to covid-19.** In March 2020, the Danish Parliament passed the temporary Act on employer's and employee's respective rights and duties concerning salary/wage compensation to business in connection with covid-19 (the Act). According to the Act, employers were able to lay off their employees with full salary/wage for a period of time and obtain salary/wage compensation from the Danish state. In a new passed judgement, the Danish Supreme Court has ruled that a dental hygienist – who was commission paid – was entitled to her full salary, including the commission payments that the employee would have been entitled to receive if there weren't any extraordinary circumstances (covid-19). In practice, the salary, including the commission payments, shall be based on an average of the employee's earnings prior to the lay off.
- **The Danish high court has passed a new judgement where the employer was liable in damages for an employee's industrial injury because sufficient measures to prevent bullying had not been taken.** In Denmark, employers have a legal obligation to ensure that work at all stages is planned, organized and carried out in such a way that the effects on the psychological working environment are fully adequate in terms of health and safety. In this case, the question was whether an employer was liable in damages for mental health issues suffered by a social and healthcare worker as a result of bullying by her co-workers. The high court ruled that that the mental health problems had triggered the social healthcare worker's sick leave that led to the conclusion of a severance agreement, and therefore the high court ruled that the social and healthcare worker had suffered an industrial injury due to workplace bullying.
- **The Current unemployment rates in Denmark.** In March 2022, the unemployment rate was on 2,7%.



Highlights from Finland

- **Supreme Court ruling on obligation to offer work to a redundant employee** – A large national company had sent to its terminated employees a general weekly letter informing of all vacancies in the company. The letter was not tailored to the recipient and did not include requirements and contents of the vacancies. The employees were asked to inform the company which positions they were interested in. The Supreme Court stated that an employer has an active obligation to offer work to employees made redundant and this obligation cannot be transferred to the employees. The company had not fulfilled its obligation by sending unspecified recruitment letters. In addition, the Court stated that especially the employee's age and re-employment possibilities may emphasize the employer's obligation to seek alternative work for a terminated employee.
- **Supreme Court ruling on accessing employee's e-mail post-employment** – The representative of the employer had kept an employee's work email address open and instructed other employees to monitor the email after the employee's employment had ended. The employer had the employee's consent to access the email during the employment relationship for the purpose of carrying out work duties during the employee's absence but the employee had not given such consent to apply after employment. The Supreme Court held that the employer's representative was guilty of breach of communications secrecy and stated that the Act on Privacy in Working Life stipulates the requirements under which the employer may access the employee's work email and those requirements cannot be deviated from even if the employment ends.
- **Supreme Court ruling on employees' right to elect a shop steward** – The Supreme Court stated in its ruling that the right of organized employees to elect a shop steward is based on the Constitution and the international ILO conventions which are binding on Finland. Thus, even if the employer is not a member of an employer association, organized employees have a right to elect a shop steward on the basis of the applicable collective labour agreement.
- **Whistleblowing** – The Government bill regarding implementation of the Whistleblower Directive has been once again postponed until September 2022.
- **Unemployment statistics** – At the end of April, there were in total of 238 800 unemployed job seekers in Finland which is 79 600 less than a year ago and 11 900 less than at the end of March 2022.



Highlights from Norway

- **New Act regarding transparency of companies' compliance with fundamental human rights and working conditions enters into effect on 1. July 2022.**

The Act relating to companies' transparency and work on fundamental human rights and decent working conditions ("Transparency Act") will enter into effect on 1. July 2022. The purpose of the Act is to promote companies' respect for fundamental human rights and decent working conditions in connection with the production of goods and the provision of services in Norway and ensure the general public access to information regarding how companies address adverse impacts on fundamental human rights and decent working conditions. The companies subject to the Transparency Act have to carry out due diligence in accordance with the OECD Guidelines for Multinational Enterprises and get an overview of the consequences their business, supply chains and business partners have on fundamental human rights and working conditions. Furthermore, companies have to publish an account of the due diligence.

The Act applies to "larger companies" as defined in section 1-5 of the Accounting Act, (i.e., public limited companies, listed companies and other accounting entities) or that on the date of financial statements exceed the threshold for two of the following three conditions:

- over 70 MNOK in sales revenue,
 - over 35 MNOK in balance sheet total,
 - on average more than 50 full-time equivalent employees in the financial year.
- **Employers have to implement changes to pension scheme within 30 June 2022.** Changes to the rules relating to mandatory occupational pension schemes were implemented with effect from 1 January 2022. All employees from 13 years of age and regardless of the percentage of their position shall be entitled to pension contribution from their employer if they earn more than NOK 1000. Employers must adapt their pension schemes to the new rules within 30 June 2022, at the latest.
 - **The current unemployment rates in Norway.** As of April 2022, the unemployment rate in Norway was 1,9% of the full workforce. The rate including individuals who are partly unemployed and who participate in labour market schemes was 3,3 percent. The current unemployment rate in Norway is the lowest since 2009.



Highlights from Sweden

- **Significant changes are coming.** On 8 June 2022, the Swedish parliament are expected to vote on the implementation of significant changes to Swedish employment law. The amendments are expected to enter into force on 30 June 2022. Most of them will be implemented in the Employment Protection Act (Sw. lagen om anställningsskydd).

The changes have been described as the "greatest reform of Swedish employment law in modern times" and are intended to make the Act more flexible and predictable for both employers and employees. The changes will e.g. make it easier for employers to safeguard key employees when making reductions in the force, reduce the employer's cost exposure in case of litigation while balancing this increased flexibility in relation to permanent staff by reducing the permitted term of fixed-term contracts from 24 to 12 months.

- **The Swedish Tax Agency does a 180 on home offices.** On 13 May 2022, the Swedish Tax Agency (STA) published new guidelines regarding its view on when a home office constitutes a permanent establishment (PE) for the employer for tax purposes, thereby changing the STA's position in the matter from 2015. The guidelines especially affect employees of foreign companies which may commute to their office in a nearby country, for instance Denmark and Norway, but wish to work from their home in Sweden. The new guidelines will likely mean that PEs will arise in fewer situations than before.

- **The Swedish market in numbers.** The Swedish labor market has made a strong recovery after the pandemic and according to the Swedish Public Employment Service unemployment is now lower than before the pandemic. Compared to 12 months ago, the unemployment rate is down by 1.2 percentage points to 8.2 percent. However, long-term unemployment remains high. After a rapid increase, the inflation rate is now 6.4 percent (April 2021). The rapid raise is due, among other things, to the aftermath of the pandemic in the form of disruptions in global supply chains, rising energy and commodity prices, Russia's invasion of Ukraine and lockdowns in China.

