



Nordic Employment Law Bulletin - October



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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

- **New agreement on how to improve the system on industrial injuries.** The Government and a majority of the Danish parties in the Parliament have entered into an agreement on how to improve the system on industrial injuries. Among other things, the agreement introduces a scheme where individuals who suffer from an industrial injury will be entitled to 83 % of their former salary while taking a new education. Moreover, the agreement introduces a number of initiatives on how to shorten the processing time for cases on industrial injuries.
- **The Danish Supreme Court has passed a new judgment on measures towards disabled persons in employment.** According to the Danish Act on Prohibition against Differential Treatment on the Labour Market, the employer has an obligation to take expedient measures to consider the specific requirements for granting a person with disability access to employment, to work or to success in employment. However, the obligation adjustment does not apply if the employer would as a consequence have a disproportionately heavy burden imposed upon him or her.

In this specific case, the employee was diagnosed with anxiety, chronic depression and ADHD. The employee was employed in a temporary flexible job where she worked as an athletics coordinator a few hours per week. As an athletics coordinator the employee had to teach swimming. The job had various needs for modified duties, including a fixed structure and a steady contact person. After one year of employment, the employee received a notice of termination due to the fact that she was not able to take a lifeguard test, and due to the fact that the employer could not accommodate the employee's needs of having a steady contact person. The Danish Supreme court found that the employer has adjusted to its obligation to take expedient measures in order for the employee to success in the employment, i.e. her temporary flexible job. The Court ruled that it would not have been possible to relieve the employee of the swimming lessons or to provide a steady contact person due the company's character, size and budget.



Highlights from Finland

- **Government bill to implement Whistleblower Directive** – The Government bill regarding implementation of the Whistleblower Directive has been issued. The national act on the protection of a whistleblower is proposed to enter into force “as soon as possible”. Our estimate is that this would mean December 2022 at the earliest. As of the date the act enters into force, companies with at least 250 employees will have 3 months to set up or adjust their existing whistleblowing channel to meet the requirements of the act. Companies with 50-249 employees will have until 17.12.2023 to adapt to the new requirements.
- **Reminder of forthcoming deadlines for HR's** – There are few things to do **by end of 2022:**
 - To avoid compensating an employee's post-employment non-compete restriction, unnecessary non-competes that have been concluded before 2022 should be terminated. Termination will be possible without applying a notice period. As of 1 January 2023 all post-employment non-competes will be subject to the new rules that entered into force in January 2022.
 - Old personnel and training plans under the old Act on Co-operation negotiations must be adjusted to meet the requirements of the work community development plan pursuant to the new Co-operation Act. This obligation applies in companies with at least 20 employees.
- **EU Transparent and Predictable Working Conditions Directive**– Finland implemented the Directive on time in August 2022. On a general level, the implementation did not result in major changes in the Employment Contracts Act (“ECA”) and the employer's obligation to inform employees of their employment terms. From now on employees must also be informed of their right to training and of the insurance company where the employer has arranged the employees' pension and accident insurance coverage. Further, in case an employee does not have one fixed place of work, the principles on how place of work is determined should be defined. However, ECA now includes more detailed obligations to inform of employment terms if an employee works under variable working hours agreement or if the employee is a leased employee. The Working Hours Act was also amended concerning shift planning of an employee working under variable working hours agreement. In addition, ECA now obliges employers to provide reasons whether it is possible or not to extend the working hours of a part-time employee or the length of employment of a fixed-term employee. The reasons must be provided upon the employee's request, in writing and within the time limits set out in ECA.



Highlights from Norway

- **Temperature in the workplace.** Many private and public employers want to turn down the temperature in the workplace to reduce the consumption of electricity due to high electricity prices. The Working Environment Act does not contain specific requirements to the temperature, but the Labour Inspection Authority does not recommend having temperatures below 19°C in the workplace. The Labour Inspection Authority also recommends to involve the employees in deciding what the temperature in the workplace should be.
- **Whistleblowing.** The public hearing regarding Directive 2019/1937 (the EU Whistleblower Directive) was completed 16 September 2022 in Norway, but it is not yet clear if and/or when the directive could be incorporated in the EEA-agreement ("EØS-avtalen"). However, the proposal at this point is that the minimum requirements of the directive are implemented in a new act regarding EEA-whistleblowing along with relevant regulations. Not to mention, the Norwegian Working Environment Act ("WEA") already sets out rules on whistleblowing within selected areas (e.g. danger to life or health or to climate and the environment, corruption or other economic crime, unsatisfactory working environment etc.). Worth noting is that Undertakings that regularly employ at least five employees are obliged to have routines for internal notification/whistleblowing. Undertakings with fewer employees shall also have such routines if the conditions at the undertaking so indicate. The written routines shall be prepared in connection with the undertaking's systematic health, environment and safety activities (cf. WEA section 3-1) in cooperation with the employees and their elected representatives.
- **Restrictive covenants for employees who are also shareholders in the company.** Non-competes for share- and stakeholders is a recurring issue in companies. DLA Piper partner Rajvinder Singh Bains has recently analyzed how the provisions on restrictive covenants in the Norwegian Working Environment Act section 14 A affects non-compete agreements entered into with shareholders who are also working in the capacity of employees. Are shareholder's "automatically" subject to protection intended for employees? Not necessarily, he concludes. The article is published in the first edition of Arbeidsrett 2022, the Norwegian professional employment journal. Please reach out to our Norwegian team if you would like to learn more.



Highlights from Sweden

- **The time has come** – As of 1 October 2022, the changes to Swedish employment law that were introduced as part of "The Greatest Reform of Swedish Employment Law of Modern Times" are now in effect. As mentioned in earlier editions of this bulletin, this means changes *inter alia* to the Employment Protection Act, the Agency Work Act and the Trade Union Representatives (Status at the Workplace) Act.
- **Upcoming changes to the ITP pension plan** – As of 1 January 2023, changes will be implemented to the ITP1 plan, the standard pension plan for white collar employees in private companies bound by collective bargaining agreement. Among other things, a cap will be introduced on pensionable income, meaning that no premiums are due on salaries (which includes bonus) over 30 income base amounts (presently SEK 177,500, or appr. EUR 16,000). The changes all relate to the ITP1 plan, which is the defined premium element of the ITP plan. There are no proposed changes to the ITP2 plan (the defined benefit element).
- **To compensate or not to compensate for inflation – that is the question.** The Swedish trade unions and employer federations are gearing up for heated discussions as part of the upcoming salary negotiations. Inflation is at its highest peak since the early 90s and employees claim compensation for the reduction in their real wages. The largest white-collar union Unionen have yet to present a specific figure but argue that Swedish companies stood strong through the pandemic and that the union will claim what the employees are rightfully owed. The neutral National Mediation Office encourages the trade unions to consider the long-term effects.