Nordic Employment Law Bulletin - March 2024

Nina Wedsted
Partner, Head of Employment, Denmark

Per Benonisen
Partner, Head of Employment, Norway

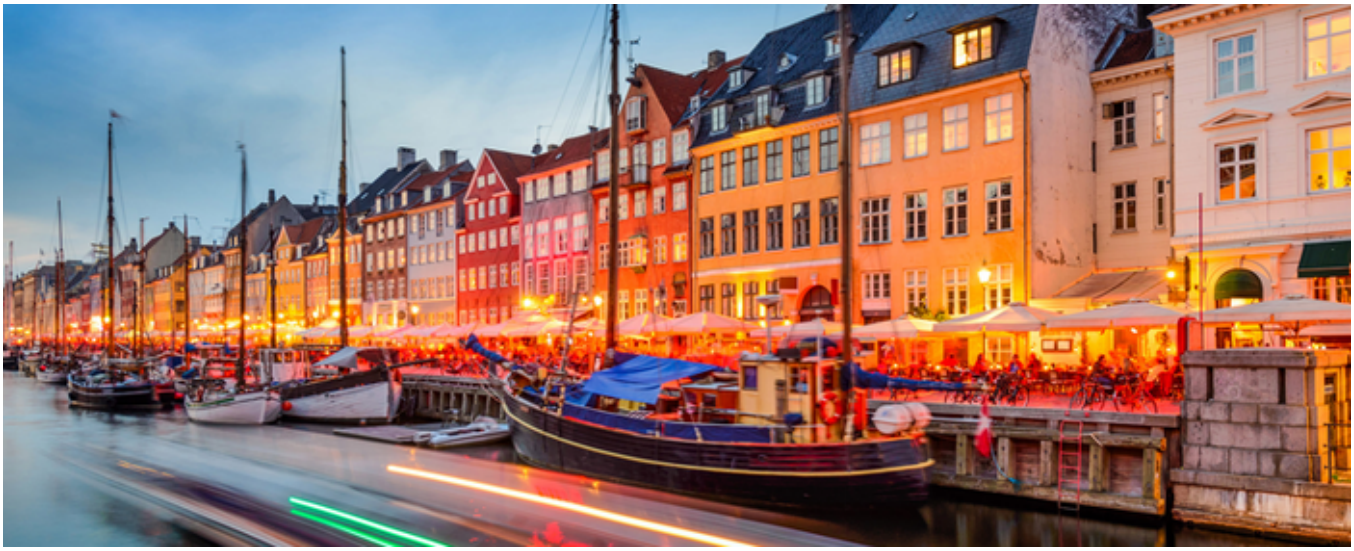
Björn Rustare
Partner, Head of Employment, Sweden

Riikka Autio
Partner, Head of Employment, Finland

Rajvinder Singh Bains
Partner, Norway

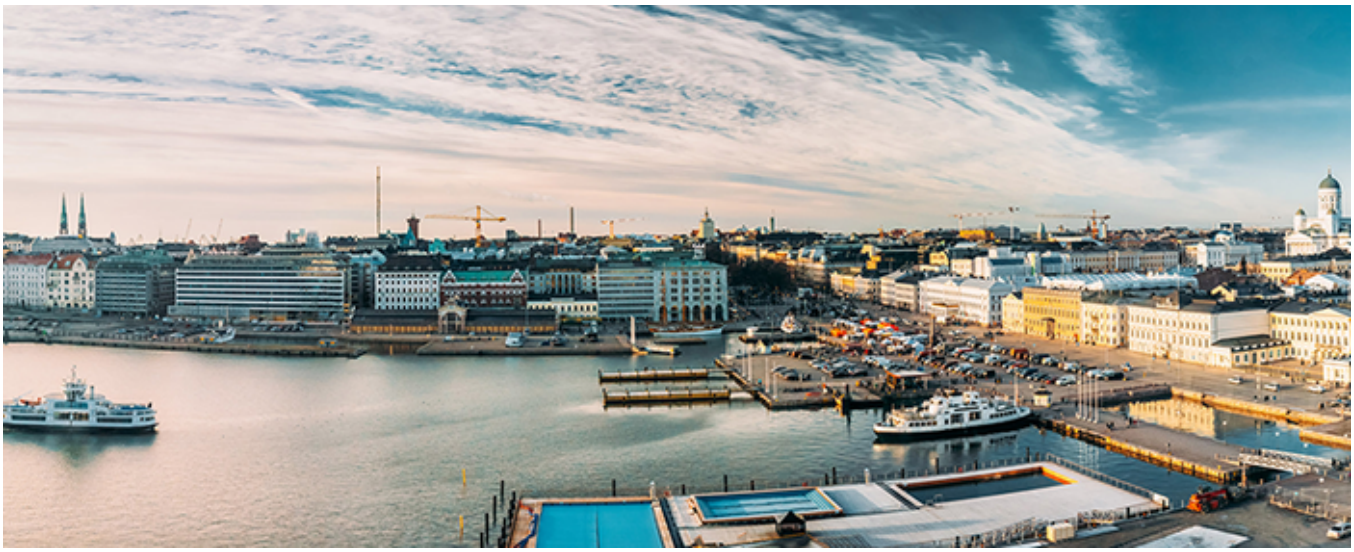
Johan Zetterström
Partner, Sweden

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 judgment on the counting and calculation of sick days pursuant to the 120-day rule in section 5(2) of the Danish Salaried Employees Act.** In section 5(2) in the Danish Salaried Employees Act, 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. In order for such termination to be valid, notice must be given immediately after the expiry of the 120 sick days and while the employee is still sick. In the case, an employee had 120,17 sick days and the day after the employee returned to work. The employee continued to work for some weeks after which she called in sick. While the employee was sick and on the 123,17 sick day her employment was terminated with one month's notice according to the 120-day rule. The issue in the case was whether the employment was terminated immediately after the expiry of the 120 sick days. The employment was terminated 48 calendar days after the expiry of the 120 sick days, but on the 123,17 sick day. The Danish Supreme Court found that the notice was not given immediately after the expiry of the 120 sick days, because 48 calendar days had passed after the expiry of the 120 sick days.



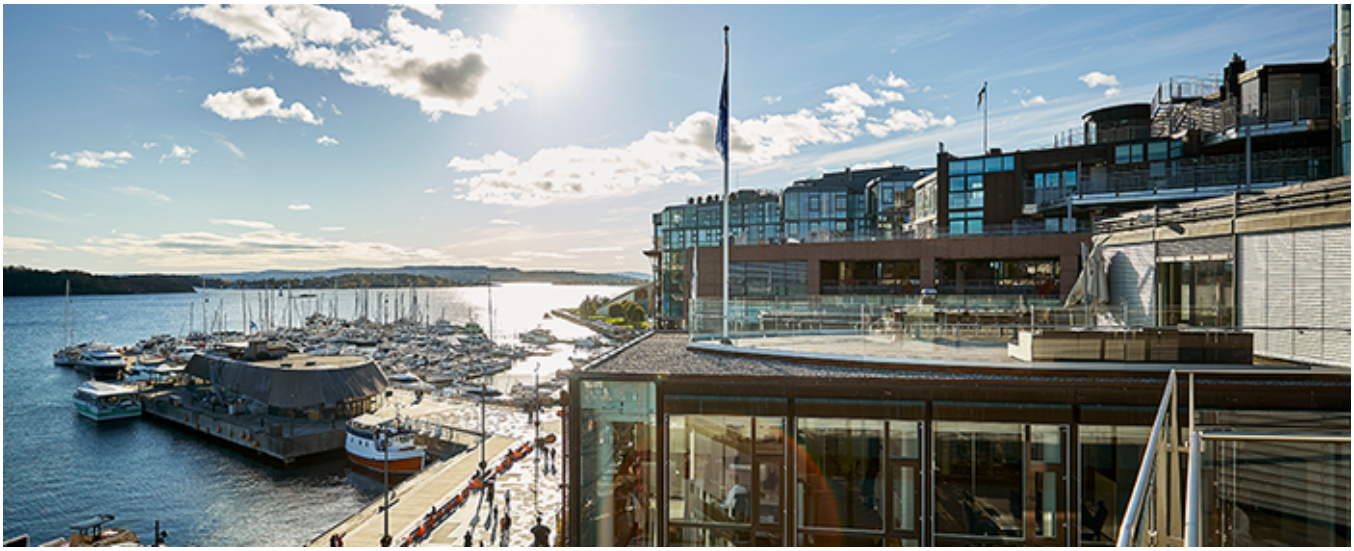
Highlights from Finland

- **Government's proposal regarding industrial actions:** The Finnish Government submitted its proposal for amendments to industrial peace legislation on 29 February 2024. The proposal includes the following changes to the current legislation:
  1. The amount of compensatory fines to employer association for an unlawful strike would be increased from EUR 37 400 to maximum of EUR 150 000 and the minimum of EUR 10 000.
  2. An employee who continues industrial action which the Labour Court has found to be unlawful could be sentenced to a compensatory fine of EUR 200.
  3. When the obligation to maintain industrial peace is in force, a solidarity action cannot be carried out if its harmful consequences for those not party to the main dispute would be disproportionate.
  4. Maximum duration of political work stoppages would be limited to 24 hours and the maximum duration of other industrial action to 2 weeks.
  5. A 7 days' notice must be given prior to organizing a solidarity action or political industrial action in the form of a work stoppage.

If accepted, the above changes would into force on 1 July 2024.

The Government is preparing also other significant changes to employment laws, such as relating to consultation obligations and local bargaining. Please note that none of these changes are in force yet.

- **Harmonizing salaries:** After TUPE transfers, employers must consider whether there is an obligation to harmonize salaries and close pay gaps. A key question is that what is the timeframe when pay gaps must be closed. In its recent ruling, the Supreme Court stated that a general maximum time – such as 2 or 5 years – cannot be set but what can be considered as a reasonable timeframe will depend on the circumstances as a whole and on the employer's actual possibilities to harmonize the salaries. It is also important for an employer to draft a credible and realistic plan on harmonizing the salaries – and naturally to implement the plan.
- **Alleviations to unemployed foreign employees?** The Prime Minister Petteri Orpo's Government has proposed in its Government Programme that if a foreign employee working on work-based residence permit becomes unemployed, the employee should exit Finland unless the employee becomes re-employed within 3 months by concluding a new employment agreement. Such an obligation is not in force yet and the legislative changes are only under preparation. However, at the moment the original proposal has been alleviated in a way that specialists, startup entrepreneurs, and ICT experts would have 6 months to find a new job before their permit is revoked.



Highlights from Norway

- **Extended obligations for employers within a group of companies in relation to inter alia reorganizations/redundancies**: With effect from 1 January 2024 employees, employed by undertakings being part of a group of companies, who are affected by redundancies, have been granted further protection in the Working Environment Act (WEA).

  If a notice of dismissal is due to a reduction in operations or rationalization measures, this is not objectively justified if the employer has other suitable work in the company to offer the employee. This right to other suitable work has been extended. As of 1 January 2024, if the employer belongs to a group (as defined in the WEA), the dismissal is not justified if there is other suitable work to offer the employee in other Norwegian enterprises in the group.

  Further, an employee who is dismissed due to redundancy has, subject to certain criteria, a preferential right to new employment in the same undertaking, unless it concerns a position for which the employee is not qualified.

  As of 1 January 2024 this preferential right to new employment was extended. If the employer belongs to a group (as defined in the WEA) the employee also has a preferential right to new employment in other Norwegian enterprises in the group, unless it concerns a position for which the employee is not qualified.

  Additionally, the employers' general obligation to provide information and engage in discussions about issues that affect the employees is expanded. Following the amendment, this obligation extends to the parent company, which shall establish a satisfactory framework for cooperation, information and consultation within the entire corporate group. The obligation applies for corporate groups that have undertakings that jointly employ at least 50 employees.

- **Court of Appeal ruling regarding application of regulations in terminated collective bargaining agreements (LG-2023-36045):** A unanimous court of appeal ruled in favor of four employees in a case regarding whether a local collective bargaining agreement that had been terminated by the employer should be given individual retroactivity (Nw: individuell ettervirkning).

  The employees' salary and supplements were regulated in a local collective bargaining agreement, and the court of appeal ruled that the employees were entitled to continued payment of the supplements, regardless of the employer's termination of the agreement. The court of appeal referred to case law from the supreme court and states that the rules regarding individual retroactivity also apply for local collective bargaining agreements, as long as the local agreement does not include regulations in contrary to another collective bargaining agreement that the parties are bound by.

- **Court of Appeal ruling regarding bonus agreement (**LB-2023-81244**):** The Court of Appeal considered whether an employer was bound by a bonus agreement entered into by the head of department with an employee. The employer argued that the agreement was void because the head of department did not have sufficient authority to bind the employer to such an agreement. However, the Court of Appeal ruled in favor of the employee, finding that the employee had a legitimate expectation that the head of department was

authorized to make such arrangements and that the employee had acted in good faith. In its assessment, the Court of Appeal also emphasized that the employer had not prepared any instructions or guidelines clarifying the authority of the head of department and that the employee had therefore been misled as to the authority of the head of department.

Highlights from Sweden

- **High time to review staffing arrangements:** Faithful readers will recall the "greatest reform of Swedish employment law in modern times" that was undertaken in 2022. One notable change was the introduction of a rule that says that when an agency worker has worked a customer site for more than 24 months in aggregate over a 36-month period, the agency worker is entitled to be offered a permanent employment with the customer, or be paid the equivalent to two months' salary (or three, in some CBAs). This particular rule entered into effect on 1 October 2022, meaning that the first 24 months will be up later this year. Employers who rely on external labour are therefore encouraged to review their agency worker arrangements in order to avoid either having to increase headcount or to pay the additional fee to the agency workers.

- **Proposal on even more stringent requirements on labour immigration:** Shortly after the recent raise in the minimum wage required for work permits, the Swedish government has received a report proposing even stricter requirements for labour immigration. Among other things, the report is to address the exploitation of labour immigrants. The proposal also serves to enable Sweden to attract more qualified employees. For example, the investigation proposes an additional increase in the minimum wage level for labour immigrants, a level that in the future can be required to be in line with the median wage in Sweden, which amounted to SEK 34,200 in 2023. It now remains to be seen how the Swedish government will respond to the report.

- **No such thing as free severance:** Due to an administrative oversight, a teacher who had resigned from his job nonetheless remained on payroll for six months after the employment should have ended. Only after six months of collecting full pay did he reach out to his former employer, asking for how long the payments would continue. The teacher, who said that he had felt forced to resign, claimed that he thought the continued payments were a severance payment negotiated for him by the trade union. As there were no union consultations, nor any discussions about any severance prior to the resignation, this argument did not convince the court. While the court found it odd that the employer did not notice the mistake themselves, the court nonetheless ordered the former teacher to repay the funds.

Services	Employment