Nordic Employment Law Bulletin - April 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

- **Bill on amendments to the Danish Act on Maternity Leave and Maternity Benefits:** On 19 March 2024, the Danish Parliament adopted the bill submitted on 17 January 2024, which amends the Danish Act on Maternity Leave and Maternity Benefits. As of 1 May 2024, parents who have two or more live-born children at the same birth are each entitled to 13 weeks of additional absence.

- **The Danish Supreme Court has passed a new judgment on compensation for dismissal in violation of the Anti-Discrimination Act should be determined based on the salary in supported employment:** Two individuals, A and B, who were employed in supported employment by two separate companies, were dismissed in contravention of the prohibition of discrimination in the Anti-Discrimination Act, and therefore, the companies were required to pay compensation to A and B. At the time of dismissal, A was employed with a weekly working hours of 10 hours, while B was employed with a weekly working hours of 2.5 hours. The question before the Supreme Court was primarily whether the compensation should be determined solely based on the salary paid by the companies to A and B, or based on the salary plus the flex wage subsidy paid by the municipality to A and B. The Supreme Court stated that it follows from established practice that in cases of dismissal in violation of the Anti-Discrimination Act, compensation is assessed under the Anti-Discrimination Act - similar to compensation for dismissal under the Equal Treatment Act - based on the salary received from the employer by the employee. The Supreme Court further stated that clear legal provisions would be required to deviate from this principle, and confirmed that there were no such provisions.

Highlights from Finland

- **Political strikes –** The political strikes initiated by the Central Organisation of Finnish Trade Unions SAK to protest against the planned changes in employment laws and especially concerning local bargaining and political strikes have continued for almost four weeks. For now, SAK has not announced new strikes and the ongoing strikes shall end on 8 April.

- **New redundancy selection rules? –** The Supreme Court has assessed in its recent ruling an employer's obligation to offer work as an alternative for redundancy. In this case, an air traffic controller in a smaller airport in Helsinki was at risk of redundancy. The employer had a vacancies to a role of an air traffic controller at Helsinki-Vantaa airport which is the largest airport in Finland. Due to a more comprehensive job description, the work would not have been equivalent to the work defined in the employee's employment agreement and the employee should have been given additional training for the role. It was, however, indisputable that the employee could have been trained for the role but eventually the employer considered the employee would be more suitable for work in a smaller airport in different circumstances and did not offer the role to the employee. External applicants were selected instead. Thus, the employee was not offered the first possible vacancy but was offered another role later on in a smaller airport in another city.

  According to the Supreme Court, an employer does not have an obligation to offer an employee the first possible vacancy as the obligation to offer work continues the whole notice period. Further, if there are several roles the employer could offer, it may choose by using objective and acceptable criteria which role will be offered and to whom but taking into account the employee's interests. The employer could, however, choose not to offer a role even if the role would be more suitable for the employee than some other role if the employer has acceptable reasons. In this case the Supreme Court considered that reasons relating to differences between the airports and aviation safety were acceptable reasons for not offering the employee the first possible vacancy at Helsinki-Vantaa. In addition, the offer regarding the role in the smaller airport was not in any way inappropriate.

  The Supreme Court was not unanimous in its decision. Given the Supreme Court approved the employer's decision on the basis of aviation safety and as the first vacancy was not equivalent to the work agreed in the employee's employment agreement but "only" other work that would have required training the employer was, though, in this case obliged to provide, this decision cannot be applied as a general rule. Redundant employees will still have priority over external applicants withing the limits set out in the Employment Contracts Act. Furthermore, what if there had not been that other role in the smaller airport and the employment had in that case ended?

- **Changes in unemployment benefits –** On 1 April, several changes affecting social security entered into force. Among other, a so-called protective amount of unemployment benefit has been removed. Until April, an unemployed has been able to work and earn EUR 300 a month without any effects on unemployment benefits but from now on other earnings will decrease the unemployment benefits. The change also impacts employees working part-time and employees who are on part-time layoff and who receive adjusted unemployment benefits.

Highlights from Norway

- **New ruling from the Supreme Court regarding the night work exemption (HR-2024-423-A.** The Supreme Court recently made a ruling regarding exemptions from night work as stipulated in the Working Environment Act Section 10-2. The provision allows for an employee who regularly works at night to be entitled to *"exemption from the working-hour arrangement if such exemption is needed by the employee concerned for health, social or other weighty welfare reasons and can be arranged without major inconvenience to the undertaking"*. The Court of Appeal's ruling in this particular case is previously discussed here.

  An oil service worker employed offshore demanded exemption from night work due to health issues, arguing that an exemption would not constitute a "*major inconvenience to the undertaking*", as the condition is stipulated in the WEA Section 10-2. The employee had health issues that implied a high threshold for what constituted a significant inconvenience to the business. The Supreme Court ruled that the provision in WEA Section 10-2, implementing the EU Working Time Directive (Directive 2003/88/EC), provided better protection for employees than what the directive itself entailed.

  A unanimous Supreme Court ruled, in similarity with the Court of Appeal, that the employee was not entitled to night work exemption as it would pose a major inconvenience to the undertaking. In the specific assessment, consideration was given to the organizational issues that an exemption would entail for the company, the interests of other employees (who would then have to undertake more night work), and the offer of land-based work that the employee had declined to discuss. The wage-related consequences of transferring to land-based work were not considered significant.

- **Preliminary Development in the 2024 Wage Settlement:** The 2024 Wage Settlement (nw: *Lønnsoppgjøret*) constitutes a 'main settlement', which implies that the parties in the labor market are negotiating on all aspects of the collective bargaining agreements, not just wages.

  After the Technical Calculation Committee for Income Settlements (TBU) presented its preliminary report concerning price levels, wage levels, and wage growth in various industries, LO (*Norwegian Confederation of Trade Unions*) decided that this year's wage settlement will be conducted on a federation-by-federation basis, meaning that each individual national union negotiates with its counterpart on the labor side.

  The front runner sector (nw: *Frontfaget*), consisting of Norsk Industri (employers' organisation) and Fellesforbundet (trade union/employees' organisations), commenced the first negotiations on March 18 2024. However, shortly thereafter, Fellesforbundet requested the negotiations to be terminated, which implies that Fellesforbundet and Norsk Industri will require assistance from the National Mediator to progress further in the negotiations of the frontline sector. Only after the frontline sector has reached a framework agreement, the remaining national unions will negotiate with their respective counterparts.

  We are closely monitoring the developments.

- **New proposal for stricter penalties for aggravated exploitation of foreigners:** The Government is focusing on preventing the exploitation of vulnerable foreigners and combating labor market crime and social dumping. As a result, a proposal for a stricter penalty provision to address gross exploitation of

foreigners has recently been submitted for consultation.

Currently, individuals who "facilitate" employment or accommodation for a foreigner can face imprisonment for up to two years if the situation involves undue exploitation of the foreigner's circumstances. The Ministry of Justice and Public Security proposes a more comprehensive penalty provision targeting severe exploitation of foreigners in employment and housing situations. This means that not only those who "facilitate" employment or housing could be penalized but also e.g. employers or landlords themselves. The Ministry also suggests raising the maximum penalty to three years' imprisonment.

The deadline for consultation contributions is set for May 13 2024. Case documents are available here.

Highlights from Sweden

- **New wartime regulations for employers -** After a long process, Sweden became a member of NATO as of 7 March 2024. In view hereof, and given the heightened risk level at the moment, Sweden has reviewed its regulations in case of crisis or war. This may e.g. affect organisations of vital importance to the society, i.e. companies whose business would be of particular importance in a war situation. Companies are themselves expected to assess whether their operations are of such vital importance. Employers may also be affected if their staff are subject to military or civilian service. Employers may not dismiss or lower the salary of an employee who must take leave to serve in the national defence. Also, employees with particularly important skills in times of crisis, such as electricians, engineers, IT technicians or people with medical training, can be commandeered to an operation where they are most useful to the national defence.

- **Increased rate of unemployment** - The Swedish Public Employment Service has reported that unemployment in Sweden rose to 6.8% in February. This means that a total of 359,000 people were registered as unemployed. The figure represents an increase of 18,000 people compared to the same month last year, when unemployment stood at 6.5%. It is also reported that the number of long-term unemployed is increasing.

- **Free coffee for employees saves millions of SEK** - Employee benefits are often a hot topic in workplaces around the world. The employees of Region Västerbotten (in charge of e.g. healthcare and public transportation in that region) used to have to pay for their coffee during working hours, but the coffee machines were so expensive to rent and the payment process was often complicated and time consuming, so the region decided to buy its own machines. Since its introduction in 2019, this has resulted in savings of over two million SEK per year and over four million SEK per year if the lost working time is included.

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