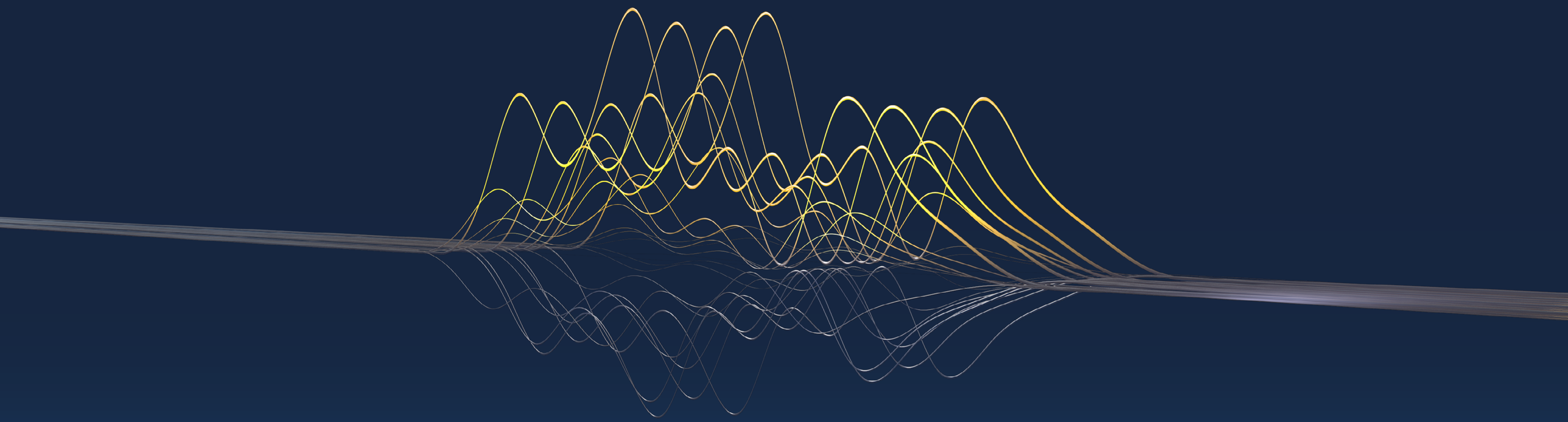
The Nordic Employee Invention Laws Guide



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Introduction

The national regimes relating to employee invention laws across the world differ considerably and there is no harmonization of national employee invention laws in the European Union. The structural differences and divergent approaches in the laws have direct implications on employee invention incentives and rewards of companies operating 'cross-border'.

However, the laws relating to employee invention in the Nordics are considerably similar. Employee inventions are regulated as special law in all countries and the legal provisions are based on the same idea: the employer may acquire rights to an invention made by the employee under certain conditions, however the employee is entitled to reasonable compensation.

The majority of all patented inventions derive from employee inventions. Building an effective employee invention strategy that encourages development and stimulates investment and growth, while at the same time ensuring the company's title to employee invention, is consequently of great importance. This requires that strategies and policies correlate with the structure of the national laws relating to employee invention, and companies operating cross-border must find a structure that sufficiently addresses the divergent approaches in the different national laws.

This guide provides clients with a practical overview of the employee invention laws in the Nordics and may be a useful tool when developing incentives and award programs tailored to the different legal regimes, as well as creating strategies for handling potential disputes arising from employee inventions.

DLA Piper is the leading business law firm in the Nordic region, and the only law firm with a truly pan-Nordic presence. With five Nordic offices, located in Denmark, Finland, Norway and Sweden, we are able to assist companies operating cross-border in the Nordics with a versatile employee invention strategy and provide a full-service team of lawyers from all offices.

Contents

Norway

National regime

In Norway, employee inventions are regulated under special law, in the Norwegian Employees' Inventions Act of 1970 **("EIA")**. The act applies to inventions patentable in Norway made by employees in public or private sector. The EIA covers inventions made in Norway and in other countries, by Norwegian nationals and/or individuals of a foreign nationality.

The rights of the employer to an employee's invention

WHAT RIGHTS DO EMPLOYERS HAVE TO AN INVENTION?

There are three different types of rights an employer can have to an employee invention. Which right the employer has depends on the role and duties of the employee and whether/to what degree the invention was made in relation to these. The rights are the following:

1. The right to transfer the rights (whole or in part)
   May be acquired for mission inventions or employment dependent inventions. E.g., the employee is engaged in research work and makes an invention during the performance of this research

2. The right to exploit the invention
   May be acquired for employment-related inventions. E.g., the invention was made outside the employee's duties, but as a result of the experience gained in relation to the employment relationship.

3. **Priority over others to enter into a voluntarily transfer agreement** may be acquired for non-employment-related inventions. E.g., the invention was made at home during the weekends.

WHAT ARE THE CRITERIA FOR EMPLOYERS TO CLAIM RIGHTS TO EMPLOYEE INVENTIONS

There are three minimum criteria for the employer to invoke any of the rights mentioned above: (1) the invention must be patentable in Norway, (2) there must be an employment relationship, and (3) the invention must fall within the sphere of activity of the undertaking.

CAN THE EMPLOYEE AGREE TO ASSIGN ITS INVENTIONS PRIOR TO THEIR INCEPTION?

The employee may agree to assign its inventions prior to their inception. The most common way to do this is to insert an assignment of title clause in the employment agreement. Due to the individual nature of employee inventions, it is not common to regulate employee inventions in Collective Bargaining Agreements **("CBA")**. If the company has a CBA, the employee will usually sign an addendum to the CBA regulating specific individual matters, such as assignment of inventions.

The employee reward

The employee is entitled to reasonable compensation if the right is transferred to the employer or if the invention is exploited by the employer. The right to reasonable compensation applies when the value of the right taken over by the employer exceeds the employee's salary, already granted rewards and incentives for the invention and/or other benefits associated with the employment.

WHAT ARE THE CRITERIA FOR DETERMINING THE QUANTITY OF THE AWARD?

When determining the amount of the compensation, special consideration shall be given to the value of the invention, the extent of the right that the employer has acquired, the employee's conditions of employment and the degree to which the employment may in other respects have contributed to the invention.

IS THE EMPLOYEE GIVEN A RIGHT TO RECEIVE ADDITIONAL COMPENSATION IF THERE IS A SUBSEQUENT SUBSTANTIAL CHANGE IN THE CIRCUMSTANCES WHICH DETERMINED THE INITIAL COMPENSATION?

If there is a subsequent substantial change in the circumstances determining the initial compensation, the employee is given a right to receive additional compensation so that the total compensation is reasonable. E.g., when the value of the invention is different than the value anticipated and has substantially increased after use.

Method of evaluation

HOW IS THE VALUE OF THE INVENTION DETERMINED?

The value of the invention must be documented based on the actual value in the open market, taking the total economic cycle of the invention into account.

There are three alternative valuation methods for determining the value of the invention in the open market

- **The market approach:** Involves determining what a willing buyer would pay for similar property
- **The income approach:** Based on the future cash flow from the inventions potential commercial use
- **The cost approach:** Based on the cost of obtaining an asset of equal utility

ARE THERE ANY PUBLICLY AVAILABLE CALCULATION FORMULAS FOR SPECIFIC INDUSTRIES?

There are to DLA Piper Norway's knowledge, no publicly available calculation formulas for specific industries.

Statutory provisions vs. employment agreements, and opportunity to waive rights

Most legal provisions in the EIA can be waived by agreement, and the parties may agree on automatic transfer of patent rights to the employer.

However, there are two statutory provisions in the EIA that grant the employee minimum rights which prevail over any employment agreement.

ARE THERE ANY NATIONAL EMPLOYEE INVENTION LAWS THAT PREVAIL OVER EMPLOYMENT AGREEMENTS?

First, the employee is entitled to "reasonable compensation" if the right is transferred to the employer or if the invention is exploited by the employer. If there is subsequent substantial change in the circumstances which determined the initial compensation, the employee is also given the right to receive additional compensation. E.g., if the company's standard employee incentive and/or reward program is too low in view of the success of the patent. NB. The employer may not claim reimbursement of payments made to the employee.

Second, agreements restricting the employee's right to dispose of an invention more than one year after termination of employment, are not binding.

In addition, the employee has the right to be named as the inventor when the employer applies for a patent and/or use of the patent. Agreements limiting this right are not binding.

Employee incentive and reward programs

Most research and development organizations and industrial companies have employee incentive and reward programs. Usually, these programs contain fixed fees and benefits that are relatively low and under the reasonable compensation threshold in the EIA.

HOW OFTEN SHOULD THE PROGRAM BE UPDATED?

In order to avoid disputes, the standard employee incentive and/or reward program should be reviewed annually and if necessary, updated in accordance with relevant price increases.

ARE THERE ANY STATUTORY LIMITATIONS TO SUCH INCENTIVE AND REWARD PROGRAM?

The EIA, however, sets a restriction to employee incentives and rewards program. The fees and benefits cannot be exhaustive, as the employee is entitled to reasonable compensation. Usually, this entails that the employee will invoke the right to additional compensation if the invention has generated income and value for the employer. All research and development organizations and industrial companies should have policies and procedures in place to facilitate such subsequent reward.

Procedural requirements

The EIA sets out procedural requirements relating to employee inventions. Once an invention has been created, the employee must send the employer written notification of the invention without undue delay, including what the invention entails.

If the employer wants to acquire rights to the invention, it must respond to the employee in writing and inform about the acquisition within four months of receiving notification of the invention.

Litigation, mediation and case law

IS THERE AN OFFICIAL NATIONAL LITIGATION AND MEDIATION BOARD?

Any dispute relating to the employee invention may be referred to the Mediation Board for Employee Inventions. This dispute resolution method is voluntarily, but the parties may agree to the board acting as an arbitration court. The service is free, as the expenses are covered by the Norwegian government. All matters relating to the mediation are exempt from public access.

IS THERE ANY CASE LAW CONCERNING DISPUTES ON EMPLOYEE INVENTIONS?

In Norway, there is very little case law on disputes relating to employee inventions. Most cases are brought before the Mediation Board for Employee Inventions.

To our knowledge, there have been 9 cases relating to compensation under the EIA, where the highest compensation awarded to the employee was NOK 3 million. An annual salary is usually the highest amount of compensation; however, exceptions have been made in cases where the invention has generated significant value and income for the employer. Moreover, the amount of compensation appears to be increasing.

According to a report on the Mediation Board for Employee Inventions, the board mediated 38 cases in the period between 1970 and 2018, where the compensation awarded to the employee ranged from NOK 7500 to 9.4 million.

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Finland

National regime

In Finland, employee inventions are regulated by the Act on the Right in Employee Inventions 656/1967 ("AREI"). The AREI applies to employee inventions, i.e., an invention made by an employee (applying also to employment relationships in the public sector) during the employment, and which can be patented in Finland in accordance with the Finnish Patents Act (550/1967). However, the concept of employee in this respect is vague, and the AREI can on rare occasions apply to other persons than employees, who are contracted to work for the employer. In addition, the application of the AREI requires that the employer may benefit from the invention, i.e., the exploitation of the invention falls within the employer's sphere of operations, or within the sphere of operations of a company belonging to the same consolidated corporation.

The rights of the employer to an employee's invention

WHAT RIGHTS DO EMPLOYERS HAVE TO AN INVENTION?

The premises of the AREI is that the employee has the same right in his inventions as other inventors, unless otherwise provided in the AREI or in other legislation.

Regarding employer's rights to inventions, employee inventions can be divided into four different categories:

- Category I) includes inventions resulting directly from the employment or through experience gained at work or as a result of a specific task undertaken by the employee under instruction from the employer. In the latter case, the exploitation of the invention does not need to be within the

employer's field of business. In this category the employer is entitled to the rights of the invention **fully or partly.**

- Category **II**) comprises inventions that have arisen under other circumstances than those relating to above-mentioned Category I inventions but fall within the scope of the employer's field of business. In these situations, the employer is entitled to **acquire the right to use the invention**, and the **priority to negotiate** a transfer of wider rights with the employee.

- Category **III**) includes inventions that fall within the scope of the employer's field of business but do not have any connection to the employee's work. The employer **has no other right to such an invention than the privilege of negotiating** with the employee about the rights relating to it.

- Category **IV**) contains inventions not included in the above-mentioned categories. The employer **has no special right to these inventions, nor does the AREI apply to such inventions.** However, regardless of the category of the invention, the moral rights of the invention, such as employee's right to be mentioned as an inventor, never transfer to the employer.

CAN THE EMPLOYEE AGREE TO ASSIGN ITS INVENTIONS PRIOR TO THEIR INCEPTION?

The employee may agree to assign its inventions prior to their inception. The most common way to do this is to agree on the matter in the employment agreement. It is not common to regulate employee inventions in Collective Bargaining Agreements ("CBA").

The employee reward

In case the employer decides to claim the rights, the employee is entitled to receive a reasonable compensation for the rights that the employer may obtain from the invention even if it was agreed otherwise before the invention was made. It is not possible for the employee to waive his/her right to compensation.

WHAT ARE THE CRITERIA FOR DETERMINING THE QUANTITY OF THE AWARD?

When determining the fairness, i.e., the amount of the compensation, the value of the invention, the scope of the right which the employer acquires, the terms of the employment contract, and other circumstances of the employment connected to the emergence of the invention must be considered. A reasonable compensation paid to an employee shall always be assessed on a case-by-case basis. More specifically, the criteria for determining the reasonable compensation paid to the employee are laid down in the Decree on the Right in Employee Inventions 527/1988. According to the Decree, a reasonable compensation must in principle be defined partly as a lump sum payment and partly as a royalty. However, in some cases paying the latter is not required.

IS THE EMPLOYEE GIVEN A RIGHT TO RECEIVE ADDITIONAL COMPENSATION IF THERE IS A SUBSEQUENT SUBSTANTIAL CHANGE IN THE CIRCUMSTANCES WHICH DETERMINED THE INITIAL COMPENSATION?

If the employer and the employee have already expressly agreed on a reasonable compensation, the employee can demand that the amount of the compensation be reassessed in case the circumstances have substantially changed.

Method of evaluation

HOW IS THE VALUE OF THE INVENTION DETERMINED?

The lump sum payment usually consists of notification and patent fees and possible additional payment. The royalty part may, for example, be paid as a "user fee".

The calculation method of the lump sum payment and the royalty varies between different industries and is heavily dependent on prevailing circumstances. Therefore, the selection of a suitable calculation method is ultimately conducted on a case-by-case basis. Furthermore, at the stage of the invention it may be impossible to estimate e.g. future revenues that an invention may lead to. Hence, it is common practice to establish at a company level a compensation scheme for employee inventions. The standard compensation is quite often at a level between EUR 1500 and EUR 3 000, however for inventions that have a significant commercial value to the employer the employee is entitled to a specific compensation in addition to the standard compensation. The payment of a standard compensation may be based on an agreement between the employer and the employee, or it may be based on a unilateral decision made by the employer. In case of the latter, the employee has not specifically accepted it as a reasonable compensation as set out in AREI and, thus, still has a right to raise a request for a reasonable compensation.

ARE THERE ANY PUBLICLY AVAILABLE CALCULATION FORMULAS FOR SPECIFIC INDUSTRIES?

For certain specific industries there are more detailed calculation formulae publicly available. For reference purposes, the calculation formulae recommended for Bioindustry Start-up and Growth Companies is: K = M x P x V x T x Z minus compensation already paid, where K = user fee, M = revenue generated by the invention in a year, in FIM (sales revenue, royalties, contractual fees or other income), P = percentage of what it would cost the company to acquire a corresponding invention from an outside supplier. This licensing percentage varies between 0.5% and 6%.,V = the readiness multiplier that is estimated on the basis of how ready the innovation is for commercial use [between 1 (fully ready) to 0 (not ready at all)]. , T = the employment connection multiplier that denotes the degree to which the employment connection has contributed to the generation of the invention [between 0,1 (the invention is linked to a task originating from the employer) to 0,4 (the invention is not connected to a task set by the employer)], Z = 1 for parent invention, <1 for secondary invention. When dealing with a parent invention, Z =1. In the case of a secondary invention, generated to support the parent invention, the value of Z is on a range from 0.1 to 0.5.

Statutory provisions vs. employment agreements, and opportunity to waive rights

The provisions of the AREI are mostly dispositive, that is they apply insofar as nothing else has been agreed upon or can be considered to appear from the employment contract or from other circumstances. The employee cannot e.g. waive his/her right to receive a reasonable compensation, any agreement clause according to which the employee waives his/her aforementioned right shall be void.

In addition, agreements restricting the employee's right to dispose of an invention more than one year after termination of employment, are not binding.

In addition, the employee has the right to be named as the inventor when the employer applies for a patent and/or use of the patent. Agreements limiting this right are not binding.

Employee incentive and reward programs

Since it is often challenging to estimate the worth of the invention at the stage of the invention, it is common to establish company-level compensation schemes for employee inventions. In addition, many research and development organizations have employee incentive and reward programs.

HOW OFTEN SHOULD THE PROGRAM BE UPDATED?

In order to avoid disputes, the standard employee incentive and/or reward program should be reviewed annually and if necessary, updated in accordance with relevant price increases.

ARE THERE ANY STATUTORY LIMITATIONS TO SUCH INCENTIVE AND REWARD PROGRAM?

The fees and benefits of the incentive and reward programs should not exhaustive, as the employee is entitled to a reasonable compensation the amount of which is subject to a case-by-case assessment. Research and development organizations and industrial companies should consider having policies and procedures in place to facilitate subsequent rewards for the employee.

Procedural requirements

An employee who makes an invention referred to in section 4 of the AREI shall notify the employer of it in writing without delay and at the same time shall communicate such particulars of the invention as to enable the employer to understand it. At the employer's request the employee shall also inform the employer of what he considers to be the connection between the employment and the conception of the invention.

An employer who wishes to acquire the right in an invention shall, no later than within four months from his receipt of the notification provided by the employee, notify the employee in writing that he will claim a specified right in the invention. The employer shall also exercise the priority given to him under the AREA within the same period of time.

Litigation, mediation and case law

IS THERE AN OFFICIAL NATIONAL LITIGATION AND MEDIATION BOARD?

The Employee Invention Committee is a statutory committee, the task of which is to issue opinions on matters concerning the application of the AREI. The committee functions as an independent body under the Ministry of Economic Affairs and Employment. The employer or an employee may request an opinion from the committee. The opinion may also be requested by a court considering a dispute concerning an invention or the Finnish Patent and Registration Office, when it is considering a patent application. The opinions are free of charge for the applicant.

IS THERE ANY CASE LAW CONCERNING DISPUTES ON EMPLOYEE INVENTIONS?

As a rule, the committee considers all matters in writing. However, an oral hearing may be arranged if the committee considers this necessary. The opposite party will be provided with an opportunity to give a written reply on account of the request for an opinion. The committee may request the parties concerned to provide further information if this is considered necessary. The committee also has the right to obtain from the employer and the companies belonging to the same group as the employer and the employee concerned, the information that is considered necessary for issuing an opinion.

The opinions of the committee are considered as recommendations. They are not binding on the party requesting the opinion or the opposite party. A party to the case must, however, notify the committee whether it intends to comply with the opinion. The notification must be submitted within two (2) months of the end of the month in which the party concerned received its copy of the opinion.

There are cases concerning employee inventions a few of which have been ruled by the Supreme Court of Finland and others by lower court instances, such as the Court of Appeals of Helsinki. The first instance for disputes concerning employee inventions is the Market Court of Finland.

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Denmark

National regime

In Denmark, employee inventions (patents and utility models) are regulated under special law, in the Danish Act on Employees' Invention. The Act applies to inventions made by employees in public or private sector. However, some employees employed in the public sector (universities, public hospitals etc.) are covered by the Danish Act on Inventions at Public Research Institutions.

Furthermore, the Act applies to inventions patentable and creations registrable as utility models in Denmark. Therefore, the Act does not apply to inventions that are solely patentable in foreign countries. Whether an invention is patentable in Denmark is decided by the Danish Act on Patents, and whether a creation is registrable as a utility model is decided by the Danish Act on Utility Models.

The rights of the employer to an employee's invention

WHAT RIGHTS DO EMPLOYERS HAVE TO AN INVENTION?

There is one type of right an employer can have to an employee invention. The right to an invention does not vary depending on the categorization into mission inventions, employment-dependent inventions and employment-related inventions. If the criteria are met, the employer is entitled to claim the right of the employee invention transferred from the employee to the employer.

The transfer of rights is definite meaning that the right belongs to the undertaking even if the employee subsequently leaves the undertaking.

Moreover, the transfer of rights is complete meaning that the undertaking has the right of disposal.

WHAT ARE THE CRITERIA FOR EMPLOYERS TO CLAIM RIGHTS TO EMPLOYEE INVENTIONS

Three criteria must be fulfilled before the employer can claim rights to an employee invention: (1) the invention must be patentable in Denmark or the creation can be registered as an utility model in Denmark, (2) the invention or utility model must be made by an employee during the employee's service, and (3) the invention or utility model must fall within the sphere of activity of the undertaking.

CAN THE EMPLOYEE AGREE TO ASSIGN ITS INVENTIONS PRIOR TO THEIR INCEPTION?

It is possible to agree that the employer is automatically deemed to have communicated to the employee that the employer wants to acquire an invention made by the employee. Moreover, it is not common to regulate employee inventions in collective bargaining agreements.

The employee reward

An employee is entitled to reasonable compensation if the employer acquires the right to the employee's invention.

It is not possible for an employee to waive his/her right to compensation. The right to reasonable compensation applies when the value of the right exceeds what the employee may reasonably be expected to produce having regard to the employee's working conditions as a whole.

WHAT ARE THE CRITERIA FOR DETERMINING THE QUANTITY OF THE AWARD?

When determining the amount of compensation, special consideration shall be given to the value of the invention and its impact on the undertaking, the employee's conditions of employment and the degree to which the employee's service has contributed to the invention.

IS THE EMPLOYEE GIVEN A RIGHT TO RECEIVE ADDITIONAL COMPENSATION IF THERE IS A SUBSEQUENT SUBSTANTIAL CHANGE IN THE CIRCUMSTANCES WHICH DETERMINED THE INITIAL COMPENSATION?

It is stated in the Danish Act on Employees' Inventions that agreements etc. regarding compensation may subsequently be amended at the request of one of the parties where the circumstances which governed them have changed substantially or where special circumstances argues for this. Therefore, it may be possible to give an employee a right to receive additional compensation.

Method of evaluation

HOW IS THE VALUE OF THE INVENTION DETERMINED?

The preparatory work of the Danish Act on Employees' Inventions states that the assessment of the value of the invention must be made in the light of its general industrial and commercial significance and not merely in the light of the possibilities of exploitation which the invention will have in the employer's own undertaking.

ARE THERE ANY PUBLICLY AVAILABLE CALCULATION FORMULAS FOR SPECIFIC INDUSTRIES?

There are to DLA Piper Denmark's knowledge no publicly available calculation formulas.

Statutory provisions vs. employment agreements, and opportunity to waive rights

Most of the provisions in the Danish Act on Employees' Inventions can be waived by agreement.

However, there are three mandatory provisions which cannot be deviated from.

After the employee has informed the employer about the invention, the employee is entitled to file a patent, provided that the employee first informs the employer thereof. The employee may not waive this right in advance.

Furthermore, the parties cannot agree that the employee is not entitled to compensation.

ARE THERE ANY NATIONAL EMPLOYEE INVENTION LAWS THAT PREVAIL OVER EMPLOYMENT AGREEMENTS?

Agreements concerning employees' right to inventions made more than one year after the end of the employment are invalid.

Employee incentive and reward programs:

It is common for companies in general to have an employee incentive and/or reward program, however in the context of inventions it is unusual to have incentive programs that rewards employees' inventions.

HOW OFTEN SHOULD THE PROGRAM BE UPDATED?

In order to avoid disputes, the employee incentive and/or reward program should be reviewed annually.

ARE THERE ANY STATUTORY LIMITATIONS TO SUCH INCENTIVE AND REWARD PROGRAM?

The Danish Act on Employees' inventions does not contain provisions on incentive and reward programs. However, the employee is entitled to reasonable compensation. Therefore, it is not possible to agree that a fee/benefit is exhaustive if the fee is not considered as a reasonable compensation.

Procedural requirements

An employee who has made an invention covered by the Danish Act on Employees' Inventions is obliged to inform the employer thereof without undue delay.

If the employer wants to claim the right to an invention, the employer must notify the employee thereof within 4 months of receiving the above-mentioned information.

Litigation, mediation and case law

IS THERE AN OFFICIAL NATIONAL LITIGATION AND MEDIATION BOARD?

There is not an official national litigation and mediation board.

IS THERE ANY CASE LAW CONCERNING DISPUTES ON EMPLOYEE INVENTIONS?

There is case law concerning disputes on employee inventions. The case law concerns whether an employee can be considered as inventor and whether the employee should be awarded a compensation. Furthermore, in case law the compensation has usually been set at a modest amount and as a lump sum.

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Sweden

National regime

In Sweden, employee inventions are regulated under special law, in the Act on the Right to Employees' Inventions (Sw: lagen (1949:345) om rätten till arbetstagares uppfinningar ("LAU")). The act applies to any employee in public and private service, with the exception of teachers at universities and other educational institutions, as well as certain military personnel. LAU covers employees who enjoy a relatively permanent employment and does not include persons holding temporary assignment or experts called in for specific cases, e.g., hired staff or consultants. If applicable, it is instead the agency that employs the hired staff or consultants that has a right to the invention under LAU. LAU applies to inventions that are patentable in Sweden.

The rights of the employer to an employee's invention

WHAT RIGHTS DO EMPLOYERS HAVE TO AN INVENTION?

As a general rule, the inventor owns the patent right to their invention. There are three situations where the employer has a claim to their employees' inventions under LAU.

Firstly, the employer has full or partial right to have their employees' inventions transferred to them if the employee made the invention primarily as a result of their work duties, which include research and invention activities, and the invention falls within the scope of the employer's business activity.

Secondly, if the employee has made the invention in an employment context other than in the first category, and the invention falls within the scope of the

employer's business activity, then the employer is entitled to a simple license and may agree with the employee on additional rights.

Thirdly, if the employee has made an invention that falls within the scope of the employer's business activity but has been created outside the context of the employment, then the employer is entitled to a right of priority over other parties to acquire the desired right to the invention through agreement with the employee

WHAT ARE THE CRITERIA FOR EMPLOYERS TO CLAIM RIGHTS TO EMPLOYEE INVENTIONS

If an employee has made an invention outside the context of his or her duties and the invention falls outside of the scope of the employer's business activity, then the employer has no legal right to the invention.

CAN THE EMPLOYEE AGREE TO ASSIGN ITS INVENTIONS PRIOR TO THEIR INCEPTION?

It's common for the relationship between employer and employee to be regulated in a collective bargaining agreement ("**CBA**"), particularly in traditional industries. The leading CBA in the area of inventions is the Agreement on the rights to employees' inventions between Svenskt Näringsliv and the union council for negotiation and cooperation PTK *(Sw: Avtal angående rätten till arbetstagares uppfinningar)* ("**the PTK CBA**"). Under this CBA, the first and second categories of inventions under LAU are labelled as A-inventions. The third category is labelled as B-inventions. If the employer is covered by the PTK CBA, he or she has full or partial right to all A-inventions.

Any agreement between employee and employer that is in breach of a CBA is only valid when it gives the employee better right than the CBA stipulates. For example, if the PTK CBA is applicable, the employee cannot effectively agree to receive a lower compensation than the amount set out in the PTK CBA guidelines. The right to fair compensation under LAU cannot be waived by agreement, and as a result it is not possible for an employee to effectively agree to assign their inventions without compensation prior to inception. Please see the answers to questions 16 and 17 for a further explanation of the mandatory provisions of LAU.

The employee reward

The employee has the right to fair compensation for their invention from the employer under LAU 6 §. This provision cannot be waivered by agreement and cannot effectively be waived prior to the invention's inception. It is, however, possible for the employee to effectively waiver his or her reward after the invention's inception.

WHAT ARE THE CRITERIA FOR DETERMINING THE QUANTITY OF THE AWARD?

For inventions made primarily as a result of the employee's work duties, which include research and invention activities and the invention falls within the scope of the employer's business activity, the employee is only entitled to compensation other than their basic salary if the value of the invention exceeds what they could have been expected to perform in light of their salary and other benefits. If PTK CBA is applicable, the right to compensation for A-inventions starts immediately after the invention's inception. The right to compensation for B-inventions starts when the employer acquires the right to the invention.

IS THE EMPLOYEE GIVEN A RIGHT TO RECEIVE ADDITIONAL COMPENSATION IF THERE IS A SUBSEQUENT SUBSTANTIAL CHANGE IN THE CIRCUMSTANCES WHICH DETERMINED THE INITIAL COMPENSATION?

In determining the amount of compensation, LAU stipulates that particular account shall be taken of the value of the invention. Further, the extent of the right to the invention assumed by the employer, as well as of the importance of the employment for the creation of the invention, shall be considered.

It is possible for employees to seek additional compensation for their inventions if they consider the initial compensation to be unfair. A previous agreement is no hinderance for the compensation amount to be tried in a court of law at a later stage. An example of a situation in which the employee could be entitled to further compensation is when the employer has significantly increased its profits by increasing turnover or reducing production costs as a result of the invention. Additionally, the agreement may be subject to adjustment according to general principles of contract law and the provisions on adjustment of contracts in the Contracts Act *(Sw: lag (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område).*

Method of evaluation

HOW IS THE VALUE OF THE INVENTION DETERMINED?

As a general rule and starting point, the value of the invention should reflect the value the invention holds at the time of the transfer of the right to the invention to the employer. The future commercial value of the invention should also be taken into account. Factors that could be of importance in this regard include whether the marked for the invention is growing or whether the employer has invested major costs to develop the invention. The amount the employer would have to pay for the invention on the open market can also be used as a reference point when calculating the value.

ARE THERE ANY PUBLICLY AVAILABLE CALCULATION FORMULAS FOR SPECIFIC INDUSTRIES?

The PTK CBA states that compensation should be paid out according to a predetermined standard amount. The guidelines for such an amount should be decided upon at corporate level. The minimum amount should, according to the PTK CBA guidelines, be no less than ½ price base amount (SEK 26,250 in 2023, i.e. approx. EUR 2,300), and where the invention is deemed to have a significant value to the business, the standard amount should reach at least one price base amount (SEK 52,500 in 2023, i.e. approx. EUR 4,600).

Statutory provisions vs. employment agreements, and opportunity to waive rights

CAN THE RIGHTS OF THE EMPLOYEE BE WAIVED BY AGREEMENT?

The provisions set in LAU can mostly be waived by agreement, but some are binding and will prevail over employment agreements. Firstly, the employee's right to fair compensation for the invention. Secondly, any agreement between employer and employee, that is restricting the employee's right to dispose over his or her invention that is made more than a year since the end of the employment, shall be without effect.

Also note, that in the presence of a CBA, any other agreement between employee and employer that is in breach with the CBA is only valid when it gives the employee better right than follows in the CBA.

Employee incentive and reward programs:

Employee incentive and reward programs are commonly implemented by companies in industries that heavily rely on research and development work, thus relying on their patent portfolio. In order to keep rates and compensation up to date, we recommend reviewing the programs at a regular interval, in particular if the compensation levels are close to the minimum amount set in the PTK CBA guidelines.

ARE THERE ANY STATUTORY LIMITATIONS TO SUCH INCENTIVE AND REWARD PROGRAM?

Employee incentive and reward programs are subject to the employee's right to receive fair compensation. Please see our answers under "The Employee reward" and Method of evaluation" for further information on the compensation to the employee and how to determine the value of the invention.

Procedural requirements

The employee is obliged under LAU to notify the employer about an invention without undue delay. The employer must respond no later than four months after the employee's notification, notifying the employee that they wish to acquire the right to the invention.

Litigation, mediation and case law

IS THERE AN OFFICIAL NATIONAL LITIGATION AND MEDIATION BOARD?

Arbitration Board for Invention and Non-Competition Clause Disputes *(Sw: Skiljenämnden i uppfinnar- och konkurrensklausulstvister)* ("the Arbitration Board") is the competent Court for disputes where the PTK CBA is applicable. If the employee and employer cannot agree, local negotiations followed by central negotiations with the trade union may ensue, and only if these are fruitless, the dispute may be settled in the Arbitration Board. If the employee is not a union member, the Arbitration Board may also take on disputes where the employee and employer have agreed upon this.

The rulings of the Arbitration Board are not made available to the general public.

There is also a National Advisory Board on Patent Rights and Compensation Settlements for Inventions at Work *(Sw: Statens nämnd för arbetstagares uppfinningar),* which is responsible for issuing opinions under LAU. The transparency in the Board's operations is limited, as their opinions are not made publicly available and are few in number.

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