



Nordic Employment Law Bulletin - May 2023



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

- **Agreement on a future-proof working environment and action against social dumping:** On March 30, 2023, a broad majority in the Danish Parliament agreed to allocate a historic large appropriation to the Danish Working Environment Authority's efforts to improve the working environment and combat social dumping over the next four years. The agreement aims to strengthen the psychological working environment and to prevent physical wear and tear. Moreover, it aims to ensure a strong effort against social dumping. Furthermore, the agreement includes an initiative on blacklisting of companies, that have been found guilty of using illegal labor, from public tenders. The agreement presents 17 new initiatives, where some of the initiatives will require legislative changes.
- **Extra leave for parents with twins:** The Danish Government and the contracting parties have on April 24, 2023, entered into an agreement on the Finance Act for 2023. The agreement introduces a new initiative to help parents of twins by setting aside a framework of resources to introduce 26 weeks of additional leave with maternity benefit for parents of twins. In 2023, the Minister for Employment will discuss the implementation of the framework with the parties to the agreement, including how to support parents taking the additional leave at the same time. The entry into force will depend on the specific model.
- **Discrimination on the grounds of disability:** The Board of Equal Treatment has that a company's dismissal of an employee was contrary to the Discrimination Act on the grounds of disability. A disabled employee suffering from anxiety and PTSD was dismissed after nine years in a flexi-job. The company had continuously tried to adapt the work, including through redeployment. Nevertheless, the Board of Equal Treatment found, that the company had not done enough and had therefore disregarded its obligation to adapt. The employee received compensation equivalent to 12 months' pay.



Highlights from Finland

- **A new trade union branch established for food couriers:** Food couriers have established an association for couriers of platform companies. The trade union for employees in private service sectors, Service Union United PAM, has accepted the association as its member and a trade union branch on 18 April 2023. Members of PAM Couriers Finland ry are entitled to same membership benefits, rights and obligations as other members of PAM but self-employed couriers are not able to join the union's unemployment fund.
- **Changes in the Aliens Act:** New rules on applying residence permit on the basis of work both impose new obligations for employers but also they aim to ease the immigration process. Among other, under the new rules the employers are obliged to confirm the terms of employment in order for the immigration process to commence. Employers must provide information about the employees' necessary level of competence and professional ability in the terms of employment and also supplement each employee's application by filling in the terms of employment. In addition, the 90 days' period during which qualifying specialists are entitled to work in Finland without a residence permit has been specified to be available during any 180 day period. Also a new concept of employer certification has been introduced to simplify the process. The certification can be granted, upon application, to an employer who recruits a large number of foreign workforce and who has been found to be a reliable operator in residence permit matters.
- **Is a high salary request an acceptable reason for not selecting a job applicant?** According to Helsinki Court of Appeal, not necessarily. In a recent case, a job applicant was not interviewed for an open position because the applicant's salary request was considered high. The person eventually selected for the position was of opposing gender and the rejected applicant claimed indemnity from the employer for breaching the Act on Equality between Women and Men. The Court of Appeal firstly stated that even though the applicant was not interviewed, such a claim is possible as the applicant had been part of the selection phase of the process.

Furthermore, after assessing the requirements of the role on the basis of the job ad and witness statements, the court compared the experience and education of the rejected applicant and the selected employee and found the rejected applicant more merited which establishes assumption of discrimination based on gender. To revoke this assumption, an employer must prove that its decision in connection with recruitment was not made based on gender but on the basis of other acceptable reason. In this case the employer invoked to the applicant's higher salary request. The Court of Appeal stated that as the request was only 1 000 Euros higher than the request by the selected employee and only 1500 Euros higher than the employer was willing to pay, and as the salary request could not be in this case considered as an unconditional demand, the employer did not have an acceptable reason to reject the applicant in the process.

The Court ordered the employer to pay 5 000 Euros to the applicant. The period for appealing to the Supreme Court is still ongoing. Lessons learned: The Court of Appeal also reminded that even though the employer's motives are not discriminatory, the effects of its actions may be and result in liability for discrimination and that equality legislation in practice requires that employers do merit comparison in case there are applicants of opposing gender in the recruitment process. In addition, even in the private sector, it is not irrelevant how employers communicate their decisions in connection with recruitment process and that the actual requirements of a role must be in line with the job ad.



Highlights from Norway

- **Employers Management Prerogative:** The Supreme Court issued a new ruling regarding the possibility to make deductions from tip/gratuity from guests in the hospitality sector (HR-2023-728-A). The case stems from a legislative amendment back in January 2019, which required employers to report and make advance deductions, as well as pay employer's contributions on tip. The case concerns two hotels in Oslo that introduced a percentage deduction on tip to cover employer's contributions and administration costs. The Supreme Court sustained the employees' claim to retain the received tip without the employer being able to make deductions for costs related to mandatory employer's contributions and administration.

In the ruling, the Supreme Court established that tip is a payment from guests to the employees, and not to the business. Furthermore, the Supreme Court stated that the obligation to pay employer's contributions lies entirely with the employer, cf. the National Insurance Act section 23-2, and that administration costs are equated with other operating costs that a business must report to fulfill statutory obligations. As a result, the Supreme Court concluded that the introduced deduction scheme fell outside of the scope of the employer's management prerogative, and that employees have a legal entitlement to receive tip without deductions for employer's contributions and administration costs. The judgement is expected to have a significant financial impact for employers in the industry and could cause discussions re. gratuity schemes as such at the workplace going forward.

- **Results of the strike:** On April 16, 2023, LO, YS and NHO confirmed that there was a breakdown in the wage negotiations, and as of Monday April 17 2023, 25 000 employees went on strike. After four days of the strike, the parties reached an agreement on a framework for a 5,2 percent wage increase. Additionally, a general wage increase of 7,5 NOK per hour was agreed upon. These numbers will now establish a framework for further negotiations. The result of the strike may pose a challenging cost increase for many companies that are already struggling financially due to inflation and increased operating costs.
- **Proposal for new amendments to the Regulation on Posted Workers:** The Ministry of Labour and Social Inclusion has submitted proposals for amendments to FOR-2005-12-16-1566 on posted workers. The purpose of the proposed changes is to ensure full compliance with Directive EU 2020/1057 on the establishment of specific rules for posting drivers in the road transport sector. The changes aim to strengthen control over the wages and working conditions of foreign drivers on assignments in Norway by clarifying when drivers employed in foreign transport companies performing road transport to and from, or in Norway should be considered as foreign workers.

In addition, the Ministry proposes that foreign transport companies must register certain information about the company, driver, vehicle and assignment with the Norwegian Labour Inspection Authority (Nw: Arbeidstilsynet) before entering Norway. They must also ensure that certain documents are available in the vehicle at all times, and be able to respond to specific inquiries about wages and other relevant issues from the Norwegian Labour Inspection Authority after posting. When foreign transport companies send drivers on assignments in Norway, it is required that they are subject to Norwegian wage and working conditions. Such adaptation to the Norwegian wage level might cause increased costs in certain companies.

Highlights from Sweden

- **Trade unions going after tech giants** - Early this year, Spotify announced redundancies that would affect around 6% of its global workforce. Following the downsizing, Spotify has been criticised for including clauses in termination agreements that prevent employees from talking openly about the company. Several of the major Swedish trade unions have now joined forces and submitted a request to Spotify to negotiate a collective bargaining agreement. The unions have been outside Spotify's offices to inform the employees about the benefits of collective agreements. Spotify has taken counter action by distributing flyers explaining why their T&Cs are better than what follows from the collective bargaining agreement. If the parties do not reach an agreement, it could be decided to terminate the negotiations or call a strike. Earlier this year, some trade unions also joined forces and demanded negotiations on collective agreements at Klarna.
- **The EU Commission puts Sweden on the spot** - The EU Working Time Directive requires that all employees must be entitled to at least 11 hours of daily rest per day, a rule that exists to protect the health and safety of employees. The European Commission has criticised Sweden because a number of collective bargaining agreements do not comply with the rules of the directive. Employers and unions in the public sector have therefore rewritten their agreements on working time, effective from 1 October 2023. However, negotiations are still ongoing for emergency services and personal assistants. While many welcome the change, hundreds of firefighters have in April protested against the new rules, arguing that this could lead to mass resignations. Since many people in the emergency services have their personal situation set up so that they can work, for example, 24-hour shifts and then have a long uninterrupted period of leave, they argue that it will be impossible for them to make their everyday life work with the requirement of 11 hours of daily rest. The firefighters and other emergency services are now hoping that the labour market parties will succeed in negotiating an exemption for emergency services employees. However, no decision has been made so far.
- **Employer sues employees for wildcat strike** - Wildcat strikes, i.e. strikes that are not sanctioned by the unions, are very unusual in Sweden, as trade unions that have a collective bargaining agreement with an employer is obliged to maintain industrial peace. Nonetheless, a wildcat strike crippled the commuting trains in Stockholm earlier in April. The background is that a few years ago, Region Stockholm (responsible for all publicly-financed healthcare and public transport in Stockholm County) decided to replace the train attendants on the commuter trains in Stockholm with cameras. Since then, unions and employees have been trying to stop the removal of the train attendants. The unions argue that work environment laws are not respected when train drivers become solely responsible for the safety on the commuter trains. The company charged with operating the trains, on the other hand, states that neither the safety nor the working environment for the train drivers is reduced. In the middle of negotiations on a new collective bargaining agreement for the rail transport industry, a wildcat strike broke out on Stockholm's commuter trains. The train company has now filed a lawsuit against the train drivers who participated in the wildcat strike for SEK 6,000 (appr. EUR 600) in damages per person and a claim for SEK 100,000 (appr. EUR 10,000) from the local union club of the commuter train.