



Nordic Employment Law Bulletin - November



Björn Rustare
Partner, Head of Employment,
Sweden



Nina Wedsted
Partner, Head of Employment,
Denmark



Riikka Autio
Partner, Head of Employment,
Finland



Per Benonisen
Partner, Head of Employment,
Norway



Johan Zetterström
Partner, Sweden



Rajvinder Singh Bains
Partner, Norway

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 promoting public employees' freedom of speech.** The Danish Government has entered into a political agreement focusing on implementing initiatives to promote public employees' freedom of speech. The aim is to raise awareness of the right to freedom of speech for public employees. One of the initiatives is to create a statutory form of the public employees' freedom of speech in order to provide an overview of the rules.
- **Danish Act on the Requirements for Employers Providing Accommodation for Employees.** On the 5 October 2022, the Danish Minister of Employment proposed a bill that, among other things, introduces a general requirement, for an employer who provides accommodation for one or more employees in Denmark, where the employer must ensure good and up-to-date housing conditions. Moreover, the Danish Working Environment Authority can carry out an inspection of whether the employer complies with the requirements in the Danish Act on the Requirements for Employers Providing Accommodation for Employees. If the above is being adopted, the rules will enter into force on 1 January 2024.



Highlights from Finland

- **Collective labour agreement negotiations have commenced** – In general, during this negotiation round the purpose would be to agree on salary settlements for 2023. If no settlement is reached, a party to the collective agreement may give notice to terminate the agreement. Technology and chemical sector have started the negotiation round and service sector will follow. In the technology sector, no salary settlement was reached, and the trade unions of all employee groups have given termination notices to terminate the collective agreements. In chemical sector, the trade union for blue collars have given notice to terminate the agreement. This negotiation round is expected to be very difficult given the past few years and the current economic situation as well as the 5-year salary settlement reached in the municipal sector that exceeded the general salary level.
- **Termination due to sexual harassment** – One could ask whether the current societal atmosphere and changed attitudes on what is considered as unacceptable behavior at workplaces could affect how cases concerning termination due to sexual harassment are assessed in courts. However, a recent decision from Helsinki Court of Appeal reminds employers that termination grounds in a sexual harassment case shall be assessed as a whole considering the same aspects as in connection with any termination case and sexual harassment does not constitute an automatic right to terminate an employment without a prior written warning.
- **New legislation to promote employment rate of employees at least the age of 55 and their well-being at work** – As of 1 January 2023, if an employee is made redundant and if the employee at the time of termination is at least the age of 55 and the employment has lasted 5 years (continuously or with max. 30 days' interruptions in total), the employee shall be entitled to longer employment leave during notice period compared to younger employees or employees with shorter service. The employee shall also be entitled to change security allowance amounting to 1 month's salary and training arranged by the TE Office. The value of the training shall amount to 2 months' salary. The security allowance and training shall be financed by employers through unemployment insurance contributions. Upon termination the employer must inform the employee of the above-mentioned rights. In addition, an employee's right to part-time work shall be strengthened if the employee is at least 55 years old.



Highlights from Norway

- **Aviation industry and transfer of undertaking.** On 30 September 2022 Gulating court of appeal ruled on whether the change of a ground handling service provider on several Norwegian airports constituted a transfer of undertaking ("**TUPE transfer**") in accordance with chapter 16 in the Norwegian Working Environment Act ("**WEA**"). The matter concerned the transfer of ground handling services on behalf of SAS from SAS' previous service provider Widerøe Ground Handling to Aviator Airport Alliance. For the TUPE-regulations in the WEA to apply, the business transferred has to be an autonomous unit that retains its identity after the transfer.

The majority of the judges in the court of appeal found that the transfer did not constitute a TUPE transfer as the "autonomous unit" requirement was not fulfilled. The basis for this conclusion was, according to the court, that no specific teams of employees employed by, or equipment owned by Widerøe were assigned to service SAS only. Further, Widerøe Ground Handling continued to offer their services to other aviation companies after their loss of the SAS contract, hence the SAS contract was not so material in size that the transfer of the contract itself was sufficient to establish that an "autonomous unit" had been transferred.

In addition, a unanimous court of appeal found that the "identity" requirement was not fulfilled as Aviator Airport Alliance had only taken over a limited amount of employees from Widerøe (8.57% of the Widerøe employees in Bergen) and these employees were not specially trained to handle SAS flights. Further, no equipment or IP was transferred from Widerøe to Aviator.

- **Proposal for additional employer's national insurance contribution in the upcoming fiscal budget.** The Norwegian government have proposed to induce an additional employers' national insurance contribution of 5 per cent for employees on salary exceeding NOK 750,000. The proposal will raise the current contribution rate from 14,1 per cent to 19,1 per cent. Players in the Norwegian business market within areas of finance, technology and aviation, including social partners through Confederation of Norwegian Enterprise (NHO) and Finance Norway, have openly opposed to the proposal. The additional employer's national insurance contribution is said to be a temporary change to make up for the extraordinary large expenses in the state budget for 2023 and is proposed to be effective from January 2023.
- **Variable remuneration dispute in the Finance Sector. To be reviewed by the court of appeal in January 2023.** Earlier this year, Oslo court of appeal issued a ruling on bonus payments in the finance sector, subject to special provisions on variable remuneration following the Financial Crisis in 2008. The regulatory framework aims to cope with unintended risk taking and sets rules for accrual and payment of variable remuneration such as cash bonus based on performance.

Two former employees of the company Odin Forvaltning took legal action against their former employer to receive bonus payments that they were awarded before they resigned from the company. The employees demanded to be paid bonuses from 2017, 2018 and 2019. Half of the bonuses had been paid out immediately, while the remaining half was placed in the company's funds and deferred to be paid out on fixed dates over three years.

When the resignations were a fact, the company refused payment of the remaining parts of the bonuses with

reference to internal guidelines governing the terms and conditions for deferred payments in the scheme. The internal guidelines gave the company the option to withhold bonuses if they had not been paid out at the time of a resignation. Oslo district court ruled in favor of the company, relying on said internal guidelines and the special terms of the company's scheme. The case shall be considered by the court of appeal in January 2023 and will likely receive significant attention in the finance sector and asset management industry. Particularly because of the lock-up effect such schemes could have for employees who could be deprived of incentives they contractually may have been expecting.

Highlights from Sweden

- **New government** – As of 18 October 2022, Socialdemokraterna has been succeeded by a new government in Sweden; a conservative coalition consisting of Moderaterna, Kristdemokraterna and Liberalerna, and with parliamentary support from Sverigedemokraterna.

Insofar as the labor market and employers are concerned, their joint platform – the Tidö agreement – does not contain any significant labor law reforms. However, it does state that they want to tighten the requirements for awarding work permits, e.g. by raising the required minimum salary. Among other things, the ruling parties also want to ease the administrative burden for companies and the tax pressure on low and middle income earners. The platform provides for initiatives aimed at increasing possibilities to combine working and family life but does not provide any specifics. Also, employers hiring employees that have been unemployed for a long time should enjoy reduced staffing costs.

Ultimately, however, the new government may not have the budget to carry out many of their initiatives. Their budget will be presented to the Swedish parliament on 8 November 2022.

- **Silence is golden – but free speech is a fundamental right**, at least if you are employed in private businesses in certain sectors funded by the Swedish state. An HR specialist and a regional manager were both held criminally liable by the Stockholm District Court and sentenced to pay a fine after *having issued a written warning* to an employee. The employee had publicly criticized her employer's handling of the elderly at the outset of the pandemic. The warning was deemed to constitute a retaliation against the employee for exercising her right to free speech.
- **If you are just borrowing without asking, is it even stealing?** An employee, a police officer, was convicted of theft by the district court after having taken two packages of ground coffee from the workplace. The officer has now been acquitted by the appellate court. Apparently, there had been a custom of borrowing things at the police station for employees' personal use: tools, trailers, car washes - and a venue to host kids' parties. The case goes to show the importance for employers of maintaining clear dividing lines between what's yours and what's mine. The appellate court was divided, 2:3.

Services

Employment
