



Nordic Employment Law Bulletin - October 2023



Nina Wedsted
Partner, Head of Employment,
Denmark



Riikka Autio
Partner, Head of Employment,
Finland



Per Benonisen
Partner, Faggruppeleder
arbeidsrett



Rajvinder Singh Bains
Partner



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

- **Bill on amendments to the Danish Act on Working Time sent in consultation.** The Danish Ministry of Employment has sent a bill for consultation that amends the Danish Act on Working Time. The bill proposes, among other things, that the main representative labor market parties in Denmark can agree that employees can work more than 48 hours a week on average if the employer and employee agree upon it. Moreover, the bill proposes that employers must introduce an objective, reliable and available working time recording system that makes it possible to measure the daily working hours of each employee. If the bill is adopted, the amendments will enter into force on 1 January 2024. DLA Piper Denmark invites to a free webinar on the legislative amendment, which we expect to organize during the fall, when the bill has been introduced.



Highlights from Finland

- **The new Government Programme** – As explained in our June bulletin, the Prime Minister Petteri Orpo's Government has proposed in its Government Programme several measures relevant for employers intended to be implemented during the Government's four-year term in office. There are no Government's proposals to amend the existing legislation yet but recently trade unions have initiated and implemented demonstrations, walkouts and work stoppages to protest the proposals that are regarded as weakening employment terms and social security, and such actions are anticipated to continue during the coming weeks. From employment law perspective, as first steps to implement the Government Programme, the Ministry of Economic Affairs and Employment has set two working groups in July to handle and investigate the questions concerning measures to limit the possibilities to resort to industrial actions and how to advance local bargaining. The task of the working groups is to prepare a report in the form of a Government's proposal and the preparatory work shall then continue on that basis. The aim is that the Government's proposal to amend the legislation concerning industrial actions and labor peace would be submitted to the Parliament during the fall 2023 and concerning local bargaining in the spring 2024.
- **Pension reform** – The new Government is also proposing a pension reform with an aim to save 1 billion Euros. Pension reforms are traditionally prepared with labour parties and also this time the labour parties are asked to prepare their proposal by end of January 2025. The measures how the pension system shall be renewed are therefore not known yet. One option is to increase the amount of the contributions, and according to the Prime Minister Orpo, the need to increase the contribution level is circa 1 percentage point.
- **Employment statistics August 2023** – At the end of August, the number of unemployed jobseekers totalled 249 500 which is 10 400 jobseekers more than a year ago but 29 200 fewer than in the previous month. The number of laid off employees increased with 4 900 employees since August 2022 and the number of new vacancies has decreased by 30 700 from August 2022.



Highlights from Norway

- **The Supreme Court on retrospective enrollment in occupational pension plan (HR-2023-1637-A)** - The Supreme Court ruled on whether a musician, who had been performing concerts in a cathedral for an extended period, is entitled to retrospective enrollment in the parish's pension plan with effect from 2011, as the Court of Appeal already concluded that the musician had been employed by the parish since 2011 (LH-2022-44364). The Supreme Court concluded that the request for retrospective enrollment in the pension plan should be considered as an ordinary monetary claim, or other benefit subject to ongoing statute of limitations. Based on the limitation periods in the Limitation Act, the Supreme Court concluded that retrospective enrollment for the musician in this specific case should take effect from 2018.

This recent Supreme Court ruling underscores the importance of verifying statute of limitations in claims brought by employees dating back to a distant past. The Limitations Act and its deadlines can be found in Norwegian here: <https://lovdata.no/pro/lov/1979-05-18-18>

- **Court of Appeal decision regarding salary placement and pension rights following a transfer of an undertaking (LH-2023-54199)** in which The Court of Appeal addressed two primary questions. The first question concerned the employees' claim for salary placement with the acquiring entity based on the combined seniority with the old and new employer, which would have clearly resulted in higher salaries than the employees had with the old employer at the time of the transfer. The Court of Appeal concluded that this claim cannot succeed, neither based on the Working Environment Act Section 16-2, paragraph one stating that the rights and obligations of the former employer on the date of transfer shall be transferred to the new employer, nor on any other legal basis. The Court of Appeal emphasized that seniority with the transferring entity that triggers financial rights, does transfer to the acquiring entity if the employee would otherwise be placed in a worse position financially with the new employer.

The second question concerned the transfer of a compensation scheme related to pensions, as the acquiring entity applied its already existing collective pension scheme to the transferred employees. From the general rule that an employee's rights and obligations transfer from the old to the new employer, there is an exemption concerning pensions, as outlined in Working Environment Act Section 16-2, paragraph three, "the pension exemption". The Court of Appeal conducted a specific assessment of what constitutes a "collective occupational pension" according to the conditions outlined in the pension exception cf. the Working Environment Act Section 16-2. In this particular case, it was established that the pension scheme was collective, despite having several individual characteristics, included being limited to a specific group and the compensation scheme being calculated individually for each member.

- **New Guidelines on monitoring the employees' use of electronic equipment** - Digital work tools can collect vast amounts of information about employees, and such surveillance is, in principle, illegal under Norwegian law. As it might be challenging for both employers and employees to discern what information can or is being collected, what can be stored, and how this information is being handled by the employer, the Data Protection Authority ("*Datatilsynet*") has recently published guidelines that address when the prohibition on monitoring employees' use of electronic equipment applies and what exceptions exist. The guidelines also provide a range of advice for both employers and employees on how to best navigate the prohibition and

prevent inadvertent violations. The Datatilsynet's guidelines are for now only available in Norwegian and can be read here: [Overvåking av ansattes bruk av elektronisk utstyr | Datatilsynet](#)



Highlights from Sweden

- **Parental leave - not just for parents** - The Swedish government has proposed to make it possible for parents to transfer days of parental benefit to another person close to them. According to the proposal, parents with joint custody would be able to transfer 45 days each, while a parent with sole custody would be able to transfer 90 days. A person who has acquired the right to parental benefit through a transfer would be entitled to take leave from his or her employment during the period in which he or she takes such parental benefit. The amendments are proposed to enter into force on 1 July 2024.
- **Removal of state aid for sick pay** - The Swedish government has initiated a process to remove state subsidies for employers who receive compensation for high sick pay costs. The entitlement has enabled employers to receive compensation for the part of the sick pay costs that exceeds a certain fixed proportion of the wage costs. The purpose of the compensation has been to encourage employers to recruit additional employees. The compensation will be phased out from 2024 and the last allowance will probably be paid in 2025. The announcement, which has not been received enthusiastically by all, has been criticized for making it more difficult for people with a medical history to enter the labor market and for affecting smaller companies that are more sensitive to high sickness costs.
- **Tricky teacher takes advantage of Swedish system** - In Sweden, the requirements for dismissing a person for personal reasons are high and the potential damages significant. This has led many employers to play it safe and choose to make costly settlements rather than testing whether they have enough for a unilateral dismissal. In September, Swedish media reported on a male teacher who has taken advantage of this and systematically tried to be paid off by his future employers before he even started his job. He did this by taking a new job, spreading false rumors about himself, claiming that he had behaved in a sexually inappropriate manner, including having sex with a confirmation student. He made sure that the rumors reached both the principal and the teachers at the school and that a fictitious group of parents emailed the school demanding that he quit. He then contacted his future employer and said that he understood that he could not take the job due to the circumstances and suggested that he should instead be paid several months' salary. The municipality of Kungälv paid SEK 90,000 (appr. EUR 9,000) to get rid of the teacher, but in the municipality of Varberg it all stopped and he has now been reported to the police for attempted fraud.