



The Danish Act on employers' and employees' rights and duties under the salary/wage compensation scheme has now been passed

On 24 March 2020, the Danish Parliament passed *the Danish Act on employers' and employees' respective rights and duties concerning salary/wage compensation to businesses in connection with COVID-19* (in Danish "Lov om arbejdsgiveres og lønmodtageres retsstilling ved lønkompensation af virksomheder i forbindelse med covid-19"). The Act was passed as a result of the tripartite agreement between the Danish Government and the two sides of industry on temporary salary/wage compensation for employees on the private labour market, which was announced on 14 March 2020.

The Act means that private-sector businesses registered in the Danish Central Business Register (CVR) and faced with having to give notice of dismissal due to COVID-19 to at least 30 per cent of their staff or more than 50 employees can instead lay off their employees with full salary/wage for a period of time and obtain salary/wage compensation from the Danish State.

A condition for the right of private businesses to salary/wage compensation from the Danish State is, however, that the individual employee for whom the business is seeking salary/wage compensation must take a least five days of holiday or days off in lieu during the compensation period. The businesses

will not receive any salary/wage compensation for these five days. If the employee has no holiday/time off in lieu etc. corresponding to five days owing to him/her, the employee must take days off without any salary/wage or take days of holiday from the new holiday year. A further condition is that the business does not opt for any existing scheme for lay-offs without salary/wage and that the business does not obtain cover for the same costs under any other relief package. Moreover, the right of businesses to salary/wage compensation from the Danish State is conditional upon the employer paying the employee's agreed salary/wage during the lay-off period.

The salary compensation for a full-time salaried employee will amount to 75 per cent of the employee's monthly gross salary (but only up to a maximum of DKK 23,000 per month). For non-salaried employees, the compensation may amount to up to 90 per cent (but only up to a maximum of DKK 26,000 per month).

As a general rule, private businesses may apply for salary/wage compensation only once during the period 9 March-9 June 2020. If a need for further lay-offs arises, it will be possible to apply for salary/wage compensation again. If the business gives notice of dismissal or dismisses employees for financial reasons during the period when it receives salary/wage compensation, the right to salary/wage compensation will be forfeited.

Dismissals prior to joining the salary/wage compensation scheme

Businesses may seek assistance under the salary/wage compensation scheme even if, prior to joining the scheme, they have dismissed employees due to the COVID-19 outbreak. However, no salary/wage compensation can be made in respect of employees already dismissed even if these employees continue to work for the business during their notice periods.

There are no requirements as to the period of time that must pass from dismissals made by the business until the business joins the scheme for other staff groups.

A condition for salary/wage compensation is that, during the compensation period, the business dismisses no employee for financial reasons. If, at a later date, the business dismisses any employees, the scheme will be discontinued for the entire business, but only prospectively. The business will be able to keep any compensation received covering the period until the time of leaving the scheme.

At what notice can employees be laid off?

Under the Bill that has just been passed, employees intended to be comprised by the salary/wage compensation scheme may be laid off at one day's notice. Lay-off at one day's notice means that the lay-off becomes effective as from the first calendar day after the employee has been informed of the lay-off.

Requirement to take holiday during the salary/wage compensation period

A condition for the salary/wage compensation is that the individual employee for whom the business seeks salary/wage compensation must take holiday and/or time off in lieu for a total of five days during the compensation period. If the employee has no holiday/time off in lieu, etc. corresponding to five days owing to him/her, the employee will have the option of taking up to five days of holiday earned during the period from 1 January 2019 until 31 August 2019 and otherwise to be taken during the holiday year beginning on 1 May 2020, or the employee may opt to take time off without any salary/wage during the period.

Businesses cannot receive any salary/wage compensation for these five days. In connection with the second reading of the Bill in the Danish Parliament, it was clarified that the number of days of holiday required to be taken will be reduced proportionately if the salary/wage compensation period is shorter than three months. If, for instance, an employee is laid off for only one month, the period without any entitlement to salary/wage will be one third of five working days, i.e. 1.67 working days.

Will it be possible to scale up or down during the salary/wage compensation period?

As a general rule, businesses may apply for salary/wage compensation once during the period from 9 March until 9 June 2020. A business may, in its application, specify one continuous period for each of the employees the business expects to lay off. There is thus no requirement that the same period must be reported for all employees affected. In the event of any special need arising – for instance if a business unexpectedly receives new orders – laid-off employees comprised by the salary/wage compensation scheme may be called back to work for a period of time. As part of the subsequent audit, the business must repay the salary/wage compensation for the period when the employees in question were called back to work. If a need arises for further lay-offs than initially applied for, it will be possible to apply again.

What may the employee do during the lay-off period?

The employees under threat of dismissal may not work during the compensation period and the employees must be available for being called back to work at a day's notice.

It is our opinion that the requirement that the employee may not perform any work relates to work for the individual employer. This issue may be relevant in cases where the employee is employed part-time and also performs work for another employer. Consequently, the requirement that the employee may not work during the lay-off period applies in respect of the specific employer and the number of hours for which the employee is employed.

It is as yet unclear whether the requirement that the employee may not perform any work during the lay-off period also means that the employee may not take online courses, further training, etc. during the lay-off period. On the face of it, this opportunity for the employee to take such courses etc. seems to be well aligned with the purpose of the salary/wage compensation package, which is indeed to mitigate the employment impact of COVID-19 – as long as the employee continues to be available to the business at a day's notice.

Lay-off with 'agreed salary/wage'

The employees under threat of dismissal will be laid off during

the compensation period with their agreed salary/wage. The agreed salary/wage, which must be taken to mean the full salary/wage, corresponds to the general concept of salary/wage under Danish law. Consequently, employees comprised by the salary/wage compensation scheme are to be paid their full salary/wage, i.e. including pension etc. forming part of their fixed salary/wage (on a monthly or hourly basis), in order for the employer to obtain salary/wage compensation. As a result, the full salary/wage may also include hardship allowance, night work allowance, weekend allowance, etc. The salary/wage compensation will be calculated based on the expected income which will – in the absence of any other basis of calculation – be determined based on the average income for the last three and the preceding twelve months' income in the business for the individual employee.

The fact that the salary/wage is calculated based on an average will be particularly relevant in relation to employees whose salary/wage is variable. This will, however, not prevent the business from concluding an agreement with its employees on a collective salary/wage cut prior to joining the salary/wage compensation scheme. In this case, the compensation will be calculated on the basis of that agreed salary/wage. According to the explanatory notes to the Bill, such an agreement on salary/wage cuts in the business due to the COVID-19 impact must be concluded with an employee representative or with a majority of the employees affected. An employee representative means primarily a union representative or any other usual representative of the employees in a business. In this situation, a business will still be able to join the salary/wage compensation scheme, provided that no further agreements on salary/wage cuts are concluded prior to 9 June 2020. The provision will also extend to businesses that have concluded salary/wage-cut agreements after 9 March 2020 if the relevant agreement meets the criteria specified above, including that the time of conclusion of the agreement is prior to the time of application. If a salary/wage-cut agreement has been concluded, see above, an employee who is laid off under the salary/wage compensation scheme will be entitled to his/her agreed salary/wage during the entire period and so five days of holiday or days off without salary/wage will not be deducted.

Once the lay-off and compensation period ends, the employees who were laid off will again be subject to the employment terms applying at the time of lay-off and in accordance with relevant applicable agreements, including notice periods. The employee will also retain his/her length of service.

Are executive officers and owner managers comprised by the salary/wage compensation scheme?

The salary/wage compensation scheme adopted under the tripartite agreement applies to 'employees', meaning that the salary/wage compensation scheme will (a contrario) not extend

to registered executive officers and owner managers.

However, depending on the circumstances, executive officers and owner managers may be comprised by the salary/wage compensation scheme for self-employed and freelancers, which was passed by a unanimous Danish Parliament on 19 March 2020. The scheme means that small self-employed experiencing more than a 30 per cent decrease in revenue as a result of the COVID-19 outbreak may receive compensation. This measure is aimed at keeping the many Danish self-employed and small traders afloat. The state compensation amounts to 75 per cent of the loss of revenue, but only up to a maximum of DKK 23,000 per month, corresponding to the rates under the salary/wage compensation scheme for salaried employees agreed with the two sides of industry in the tripartite agreement. The compensation may represent up to DKK 46,000 per month where the self-employed employs a spouse in the business.

It will also be possible for a self-employed without a CVR number to receive support under the scheme if a 30 per cent decrease in income not taxed at source has been experienced. In that case, the self-employed can obtain cover amounting to 75 per cent of the loss of income not taxed at source, but only up to a maximum of DKK 23,000 per month. A self-employed or small trader cannot receive compensation for more than three months from 9 March until 9 June 2020.

A requirement is that the business has no more than ten full-time employees. Another requirement is that the average revenue must previously have exceeded DKK 15,000 per month.

Documentation requirements

Several documentation requirements apply to the salary/wage compensation scheme, which private businesses should pay attention to:

- A private business will receive salary/wage compensation based on the information provided by the business to the Danish Business Authority on the number of employees who were to have been dismissed as a result of the COVID-19 situation, but who were instead laid off. This information includes the employees' working percentage, the employees' salary/wage, the lay-off period and a solemn declaration of the accuracy of the information submitted.
- The business must specify and motivate the period during which it expects a shortage of work, but such period may span no more than three months from 9 March 2020 until 9 June 2020.
- Following the payment of salary/wage compensation, the business must provide documentation for:
 1. the salary/wage level of the employees;

2. the employee having been employed since before 9 March 2020;
3. the business having laid off the affected employees during the specified period.

The documentation must include a written confirmation from any union representative that the relevant employees have been laid off.

- The Danish Business Authority may require the businesses to seek the assistance of an auditor. The requirement for audit assistance may be based on, for instance, random checks, the amount of compensation, risk assessment, etc. Furthermore, auditor assistance may be required in connection with documentation already submitted.

The Bill does not govern how to resolve disagreements between employees and employers. Such disagreements will, depending on their nature, need to be resolved according to the applicable rules before either industrial dispute resolution bodies or the civil courts.

Salary/wage compensation scheme – from idea to practice

27 February 2020: The first Danish COVID-19 case is confirmed.

13 MARCH 2020:

The Danish Government and the two sides of industry negotiate a tripartite agreement to mitigate the impact of the COVID-19 outbreak on the labour market.

14 MARCH 2020:

At a press conference, the Danish Government and the two sides of industry present a tripartite agreement, which allows employers to seek salary/wage compensation and also allows a temporary reduction of working hours (short-time working).

17 MARCH 2020:

The tripartite agreement is embedded in parliamentary document 108, which is adopted by the Finance Committee on 17 March 2020. With parliamentary document 108, the financial basis for the implementation of the tripartite agreement is adopted.

19 MARCH 2020:

The Bill "Act on employers' and employees' respective rights and duties concerning salary/wage compensation to businesses in connection with COVID-19" is introduced to the Danish Parliament.

24 MARCH 2020:

The "Act on employers' and employees' respective rights and duties concerning salary/wage compensation to businesses in connection with COVID-19" is passed by the Danish Parliament.

The Danish Business Authority has not yet published any final executive order or guidance relating to the salary/wage compensation scheme. The online solution for submitting applications is available as from 25 March 2020 through the Danish Business Authority: www.virk.dk.

Contact

Please feel free to contact us, if you have any questions or matters you would like to discuss.



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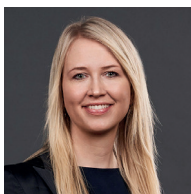
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