



Nordic Employment Law Bulletin - September 2023



Nina Wedsted

Advokat, delägare, Head of
Employment, Denmark



Per Benonisen

Advokat, delägare, Head of
Employment, Norway



Björn Rustare

Advokat, delägare, Head of
Employment, Sweden



Riikka Autio

Advokat, delägare, Head of
Employment, Finland



Rajvinder Singh Bains

Advokat, delägare, Norway



Johan Zetterström

Advokat, delägare

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

- **High Court judgment regarding a non-competition clause.** The case concerned whether a non-competition clause in an employment contract was valid and, if so, whether a former employee had violated the non-competition clause by working for another company. The Eastern High Court found that the employee occupied a very special position of trust with the employer and that the non-competition clause was valid. It was emphasized that in the former employee's position as technical manager, the employee had gained such knowledge of the employer's clientele, price agreements with various suppliers and subcontractors, etc. that his overall knowledge in the area could be exploited to the detriment of the employer by a competing company. In addition, the Eastern High Court found that the non-competition clause had not been violated. It was among other things emphasized that the employer accepted the former employee's new employment, and that the acceptance was not conditional.
- **Parliamentary year of 2023.** On 3 October 2023, the new parliamentary year begins. Here we expect news about upcoming legislation within employment law. Among other things, the Ministry of Employment expects legislation on the 48-hour rule.



Highlights from Finland

- **The Act on Posting of Employees to be updated** – The Act on Posting of Workers will be amended as the current Act does not sufficiently meet the requirements of the Directive on Posting of Workers. The proposed amendments concern, among other, obligations in the construction sector, the requirements set out for the representative of the company posting employees and information required in the notification of the posting of workers that must be submitted to the Occupational Health and Safety Authority before the work in Finland commences. Monitoring of conditions of drivers in the transportation sector shall also be improved.
- **Agreement on cross-border telework** – The Framework Agreement on cross-border telework in the EU, the EEA and Switzerland entered into force on 1 July 2023. According to the agreement, an employee habitually working and teleworking in two different EU countries can be insured, under certain conditions, in the country where the statutory seat of the employer is established instead of in the employee's country of residence. Finland has signed and joined the agreement as of 1 July 2023. In Finland, A1 certificate under the Framework Agreement to certify the employee is covered by Finnish social security legislation shall be applied from the Finnish Centre for Pensions online via its eServices.
- **Deadlines to review variable working hours** – The Employment Contracts Act was amended as of 1 August 2022 in respect of employees working on variable working hours to state that an employer has an obligation to review the clause regarding variable working hours in the employment agreement at least every 12 months. This obligation entered into force after a transition period on 1 August 2023. Thus, an employer employing workforce with variable working hours should have conducted the first review by 1 August 2023. If the employment has commenced later than 1 August 2022, the first point of time to review the working hours clause is by the time the employment has lasted 12 months. The obligation to review the working hours entails that if the number of working hours worked during the 12 months' review period and the employer's need of workforce indicate that the minimum working hours agreed in the employment agreement should be set higher, the employee must be offered minimum working hours that reflect the result of the review. The employee must be informed of the timing of the review and upon request the employee is entitled to receive a report of the result of the review and its basis in writing.



Highlights from Norway

- **Update on the temporary hiring regulations - proposal on changes in the event industry:** The new regulations on temporary hiring have been extensively debated in Norway over the past months, with significant changes and implications for many businesses. On July 19th, the EFTA Surveillance Authority (ESA) initiated proceedings against Norway through a "letter of formal notice". ESA asserts that the restrictions are not proportionate and that Norway has not been able to demonstrate that the restrictions are effectively suited to achieve the goal of increasing stable and direct employment consistently and systematically. They conclude that the new regulations regarding temporary work are in violation of both the Directive on Temporary Agency Work and the EEA Agreement. Norway has now a period of two months to express their point of view before ESA can decide whether to escalate the case further.

The latest update is the Norwegian government's proposal for a limited exemption from the new hiring rules for enterprises within the event industry, allowing for temporary hiring. The proposed exemption is intended solely for employees engaged in rigging and stage-related work for short-term and standalone events, where the work is clearly of a temporary nature, typically including concerts/festivals and specific sporting events. Consequently, it will not apply to businesses that regularly organize events throughout the year. The hiring enterprise will be required to substantiate the basis for the hiring when requested by their own employee representatives. The deadline for feedback submissions from public consultation is September 15, 2023.

The Norwegian government has also introduced a guide explaining the rules for temporary hiring, aimed at conveying the Ministry of Labour and Social Inclusion's understanding of various aspects of the new legislation. As of now, the guide is available only in Norwegian: [Veileder: Innleie av arbeidskraft - regjeringen.no](https://veileder.innleie.av.arbeidskraft-regjeringen.no)

- **Amendments to the Procurement Act aimed at eliminating social dumping and labor market crime** came into effect on June 16, 2023. These changes constitute the first step in the "Norwegian Model" for public procurement, as presented by the government in November 2022. A new Section 5 A, has been added to the Procurement Act, granting the Ministry the authority to issue regulations that impose obligations on state, county, and municipal authorities, as well as public-law entities, to among other things, include contract clauses regarding payment methods for fulfillment of the contract and limitations within the supplier chain.

Additionally, changes have been made to Section 6, providing the Ministry with the authority to require principals to now also ensure compliance with the WEA and Compulsory Occupational Pensions Act, as well as maintenance of health, environment, and safety standards at individual workplaces for service, construction and building contracts

As of now, these changes only give the authority to issue regulations that impose obligations the mentioned obligations, and will become significant upon the formulation of such regulations issued in accordance with the new law. However, it is advisable that principals already take heed of the introduced rules and incorporate the requirements into their procurement processes, in order to be well prepared when the regulations are issued.

- **The government aims to tighten the requirements for the use of apprentices in public contracts:** The government's objective is to increase the number of apprenticeships and skilled workers, and therefore also making vocational education more appealing, by strengthening the obligation to demand the use of apprentices in public contracts. Therefore, the proposal is to introduce a requirement that a minimum of 10%

and always at least 1 person participating in the work to fulfil the contract must be an apprentice, when there is a particular need for apprenticeships in the industry. In assessing whether there is a particular need, the principals should base itself on the Norwegian Directorate for Education and Training's statistics regarding applicants for apprenticeships and concluded apprenticeship contracts. If the statistics indicate that there are more applicants for apprenticeships nationwide than the number of contracts entered into, this demonstrates a need for additional apprenticeship positions. Since the government's proposal does not distinguish between large and small contracts, the changes will have a significantly larger impact on bigger contracts where the use of apprentices will be more extensive. These changes are also a step in the government's efforts towards the aforementioned "Norwegian Model," involving national integrity requirements for all public procurements. The proposed changes are now being sent out for public consultation, and the deadline for submissions is November 15, 2023.

Highlights from Sweden

- **Surprisingly low level of sick leave in Sweden** - The Swedish Social Insurance Agency has analysed the level of sick leave in eight Western European countries and found that Sweden has an unexpectedly low level of sick leave. The reason why it is considered to be unexpectedly low is that while a high proportion of the population is working, Sweden also has, by international comparison, a strong health insurance scheme that provides financial compensation in the event of illness, which risks leading to a high level of sickness absence.

The reasons why Sweden stands out are believed to be changes in legislation, such as restrictions on the length of time for which sickness benefit can be paid. However, the report is not all positive: Swedish women have 62% higher absence due to illness than men, which is the largest gender difference of all the countries in the report. According to a representative from the Swedish Social Insurance Agency, one explanation for this may be that a relatively high proportion of women in Sweden work full-time compared to other countries, while still taking greater responsibility for the household. In many other countries, women's greater household responsibilities lead to fewer women working full-time, which results in lower sickness absence.

- **Increased number of redundancies** - The Swedish Public Employment Service's figures show that almost 3,500 people were placed at risk of redundancy in July. Normally, the number of redundancy notices is lower in July as the management of companies usually does not make such announcements in the middle of the summer. Apart from the pandemic year 2020, the number of redundancies in July is the highest in 10 years. In July last year, the number of notices was just under 1,200 people, meaning that there has been an increase of around 2,300 people.
- **World Cup bronze despite lack of collective bargaining agreement** - Since December last year, the players in the Swedish women's football top division have been training and playing without a collective bargaining agreement (CBA), after the interest organisation Elitfotboll Dam unilaterally terminated the agreement with the counterpart Spelarförbundet. According to Elitfotboll Dam's secretary general, the terminated CBA was an amateur agreement, and instead they want an agreement similar to that of Svensk Elitfotboll (the equivalent on the men's side). The lack of a CBA has so far not meant any major changes for the players, as the clubs themselves have undertaken to comply with the old CBA while waiting for a new one.

However, it will have consequences in the fall, as there will have to be negotiations to avoid players being transferred to permanent contracts. This is since the clubs are no longer able to deviate from the Employment Protection Act and the Annual Leave Act in the way that the CBA allowed. The clubs have for instance previously been able to sign agreements for fixed-term employment to a greater extent than the Employment Protection Act allows. Without this possibility, players' agreements will in the future be converted to permanent agreements, making it more difficult, if not impossible, for the clubs to build a competitive team.