

Ius Laboris Webinar

Restructuring companies in the Nordic countries during the pandemic

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13:00 – 13:45 (CEST)



SPEAKERS



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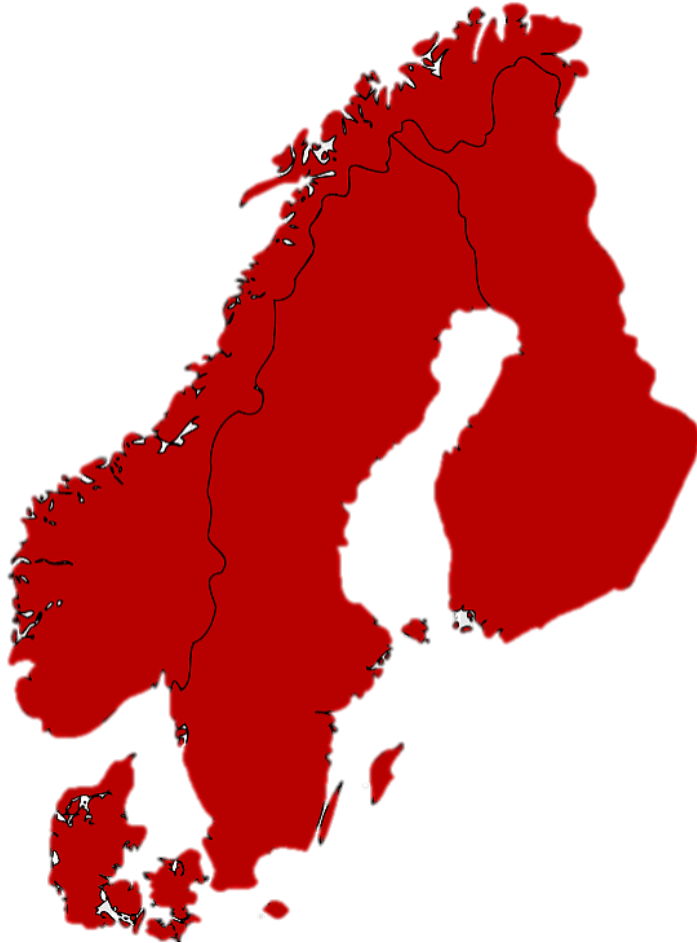


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THE NORDICS – SAME BUT DIFFERENT?



- The Nordic countries are often treated as one region/country
- Legislation in general, including employment law, has often been inspired by what the neighbouring countries are doing, but it differs in the details
- Finland, Norway and Sweden tend to have more formal procedures and employment protection, whereas Denmark has the concept of ‘flexicurity’ but with stronger protection against discrimination
- In this webinar we will look at the main features of restructuring in each country and the differences between them

COVID-19 REDUNDANCY ISSUES

RESTRUCTURING IN THE WAKE OF COVID-19:

Before deciding to restructure, companies need to address two main questions in each country in which they want to make changes:

- **QUESTION 1:**
 - **Is coronavirus leading to bans or limitations on redundancies or other policies aimed at reducing redundancies?***
- **QUESTION 2:**
 - **If there is no ban, what issues must a company consider before carrying out a major restructuring?**

***NOTE:** Generally, redundancies are not banned in EU countries, but there are slight differences in the approaches different countries take

SWEDEN

KEY DIFFERENTIALS

- There are no general restrictions on redundancies.
- There is a state support scheme in Sweden for short-time work, by which employers receive support of up to 53 % of salary costs (capped at SEK 44,000) with reduced working hours of 20, 40 or 60%.
- Possibility to reduce working hours by up to 80% and state support of 72% of salary costs for May, June and July.
- Employers can make employees on short-time work redundant and can receive state support at the same time, according to a newly-introduced exception in the law (applicable only until 31 December 2020).

NORWAY

KEY DIFFERENTIALS

- There are no general restrictions on redundancies, but redundancies have so far not been particularly relevant in Norway because of the widespread use of layoffs
- During the pandemic there is a state support scheme in operation for layoffs, by which the employer's obligation to pay salary is significantly reduced and, at the same time, there are increased payments to employees during layoff.
- Other state support measures:
 - to reduce the number of days employers are obliged to pay salary to workers on sick leave and care benefits
 - to defer the deadline for payment of VAT, tax and employers' contributions

DENMARK

KEY DIFFERENTIALS

- There are no general restrictions on redundancies in the wake of Covid-19
- The Danish government has introduced a wage compensation scheme under which employers can send home employees with full pay and receive compensation (9 March 2020 until 8 July 2020)
 - There can be no redundancies during the compensation period
 - Redundancies will end the employer's right to wage compensation from the date of dismissal
- The Danish government has eased the rules regarding work distribution schemes and any redundancies within the department/production unit in which the work distribution scheme will cause the scheme to end

FINLAND

KEY DIFFERENTIALS

- There are currently no general or coronavirus-related national programmes restricting redundancies
- Currently, two financial support schemes are being prepared by the Finnish Government
 - support to restaurants for re-employment and compensation for restrictions imposed on activities
 - general support for businesses severely affected by the coronavirus to cover their costs
- Support schemes may include a payback obligation to limit redundancies by employers who benefit from them

COVID-19 REDUNDANCY ISSUES

TURNING TO OUR SECOND QUESTION:

If there is no ban on collective redundancies, what issues must a company consider before carrying out a major restructuring?



DENMARK

COVID-19 REDUNDANCIES

- There may be information and consultation obligations (under the Danish Act on Information and Consultation of Employees) prior to carrying out a major restructuring
- If the thresholds in the Collective Redundancies Act are met, a special process must be followed
- The Act applies to businesses intending to dismiss within 30 days:
 - 10 or more employees (if the business normally employs between 20 and 99 employees)
 - 10% or more of all employees (if the business normally employs between 100 and 299 employees)
 - at least 30 employees (if the business normally employs 300 or more employees)

DENMARK

COVID-19 REDUNDANCIES

- The employee representatives (or the employees) must be informed and consulted before a final decision is made to carry out redundancies
- The authorities must be kept informed during the process
- An applicable collective agreement may contain consultation obligations
- In the end, it is the employer's decision whether to plan and carry out a major restructuring and it is generally possible to complete any information and consultation process within a short period
- The employer must pay attention to any fairness requirement when deciding on the selection criteria for redundancy

SWEDEN

COVID-19 REDUNDANCIES

- There are no restrictions on collective dismissals as a result of COVID-19
- There is no distinction in Sweden between the dismissal of one employee and the collective dismissal of a larger number of employees. The redundancy process is the same in both situations
- There is a far-reaching obligation to consult with trade unions before any decision to restructure (i.e. representing the employees, as opposed to individual employees or employee representatives). ***However, the employer is free to organise its business, including restructuring, and the decision to do this cannot, of itself, be questioned***
- Instead, employees are protected by the ‘last-in-first-out-principle’ which means that employees with longer service have priority to remain employed (though not necessarily in the same job) provided they have ‘satisfactory qualifications’ for continued employment

NORWAY

COVID-19 REDUNDANCIES

- There are no restrictions on collective dismissals as a result of COVID-19
- There is no distinction in Norway between the dismissal of one employee and the collective dismissal of a larger number of employees. The redundancy process is the same in both situations, although the formal procedure that must be gone through before the final decision is different
- There is a far-reaching obligation to consult with employee representatives and/or unions before any redundancy decision if:
 - the company is bound by a collective agreement.
 - it is a potential mass redundancy (more than 10 employees at risk)
- The employer must conduct a selection process amongst all employees based on justifiable criteria (e.g. qualifications, length of service, social circumstances etc.). Length of service is a mandatory criterion if a collective agreement applies.

FINLAND

COVID-19 REDUNDANCIES

- Employers have a far-reaching obligation to consult with employees or their representatives prior to making restructuring decisions. The employer must not make decisions before finishing the consultation process or take any action that would decisively affect negotiations before their conclusion.
- Collective redundancies require extensive grounds. The amount of work available must have diminished substantially and permanently for financial or production-related reasons or as a result of restructuring. To be able to dismiss employees, the restructuring of the employer's business must therefore have a clear impact on the amount of work available. If employees can be reassigned or retrained, the employees may not be made redundant.

FINLAND

COVID-19 REDUNDANCIES

- The Act on Cooperation within Undertakings does not apply to employers with fewer than 20 employees, making the restructuring process straightforward for small employers. For employers with at least 20 employees, the minimum negotiation period is 14 days or 6 weeks, depending on whether the number of employees to be made redundant is at least 10 or less than ten
- In addition, recent temporary legislative amendments allow the dismissal of employees on probation for collective reasons until 30 June 2020. The re-employment period for redundant employees has also been temporarily extended from 4 and 6 months to 9 months and applies to employees made redundant before 30 June 2020
- In general, employers are relatively free to decide which employees to retain, as long as the decisions are not discriminatory. Factors that the employer may take into account include the competence, experience and length of service of the employee

DOS AND DON'TS

**WHAT ARE THE MAIN DOS AND DON'TS TO
CONSIDER IN EACH OF OUR COUNTRIES?**



NORWAY

DO:

- **Plan** any restructuring carefully in advance
- **Assess** potentially difficult cases based on selection criteria and find out if the company is willing to make settlements in order to facilitate the process and/or keep key employees
- **Keep employee representatives and employees informed** on a regular basis, e.g. town-hall meetings, updated FAQs etc.
- **Remember:** Collective agreements impose more limitations and obligations, both in terms of the process and the selection criteria

DON'T:

- **Forget** to have a plan and strategy already in place when consulting employee representatives and unions
- **Forget** to notify the local Labour and Welfare Administration in the case of a possible mass redundancy
- **Forget** to complete consultations before the company makes the final decision to carry out the redundancies
- **Forget** to document the process
- **Forget** to conduct formal individual 1:1 consultation meetings before any decision to dismiss individuals

DENMARK

DO:

- **Consider** making use of government funded economic stimulus packages, such as the wage compensation scheme.
- **Consider** alternatives to restructuring, such as working time or salary reductions.
- **Communicate** clearly and in a timely way with employees and/or their representatives.
- **Ensure** to comply with the relevant legislation and any applicable collective agreements before starting the restructuring process.
- **Consider** the process of selecting employees for redundancy thoroughly to reduce the risk of claims, e.g. on grounds of discrimination.

DON'T:

- **Dismiss** employees during the compensation period under the wage compensation scheme – unless you are ready to leave the scheme entirely.
- **Restructure** in small, consecutive steps. If you know that you are going to effect multiple dismissals, then consider one major process so as to avoid confusion, uncertainty and demotivation amongst employees.
- **Forget** the collective redundancy thresholds, as it is essential to know whether the Danish Collective Redundancies Act applies to a restructuring process.

SWEDEN

DO:

- **Plan** any restructuring carefully in advance
- **Assess** potentially difficult cases based on 'last-in-first-out' and find out if the company is willing to make settlements in order to keep key employees
- **Keep employees informed** on a regular basis, e.g. town-hall meetings, updated FAQs etc.
- **Remember:** a collective dismissal in Sweden is usually quite easily dealt with compared to many other European countries (and may only take 3-8 weeks in total, depending on the number of dismissals)

DON'T:

- **Forget** to have a plan and strategy already in place when consulting the trade unions
- **Forget** to ask the employees about trade union membership (if the company does not have a collective bargaining agreement)
- **Forget** to make a risk assessment from a work environment perspective involving the company's safety officers (if any)

FINLAND

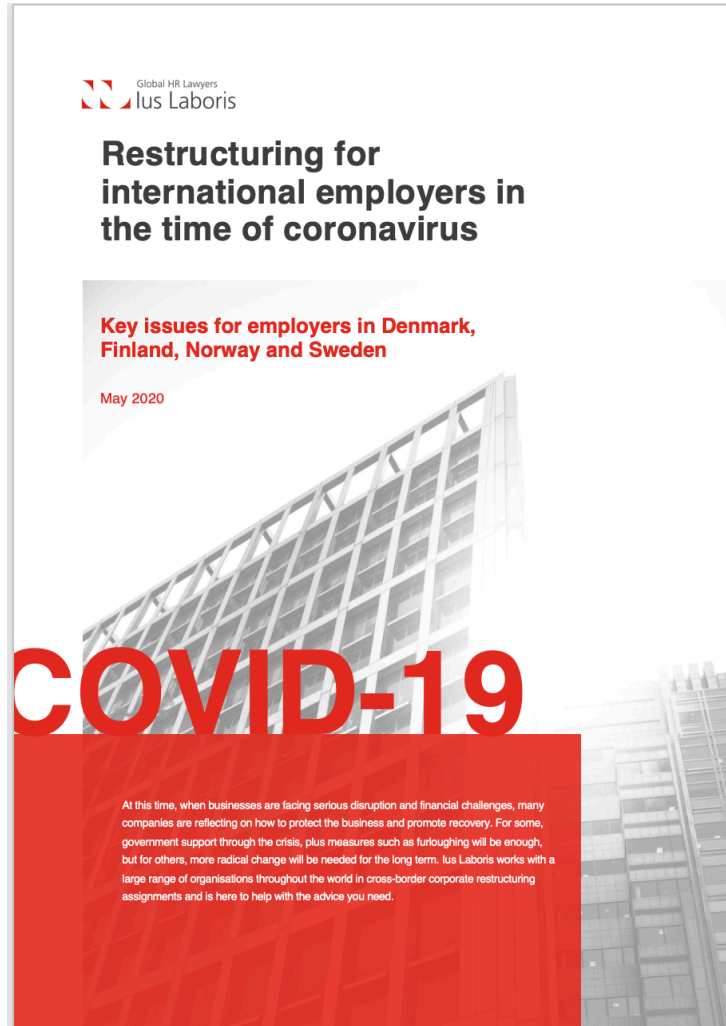
DO:

- **Thoroughly plan** any restructuring in advance and assess how you will hold on to valued staff.
- **Make use of alternatives** to restructuring, such as state support, holidays, salary cuts and reduced working hours.
- **Communicate** with your workforce and keep them continuously updated.
- **Keep detailed minutes** of the consultation process to avoid future disputes.

DON'T:

- **Make** decisions regarding dismissals or decide on any measures that would *de facto* constitute a decision, prior to ending the consultation with employees. This is to ensure the process is genuine.
- **Forget** to have a statutory plan of action to promote the re-employment of dismissed employees or fail to have in mind your re-employment obligations.
- **Discriminate** in deciding which employees you will retain.

RESTRUCTURING FOR INTERNATIONAL EMPLOYERS



QUESTIONS?



Claude A. Lenth , Partner

Norway

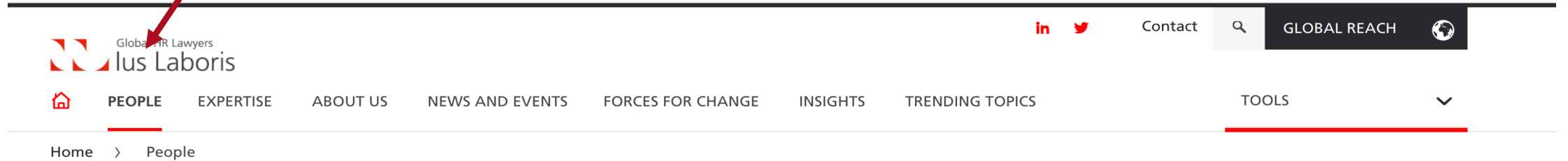
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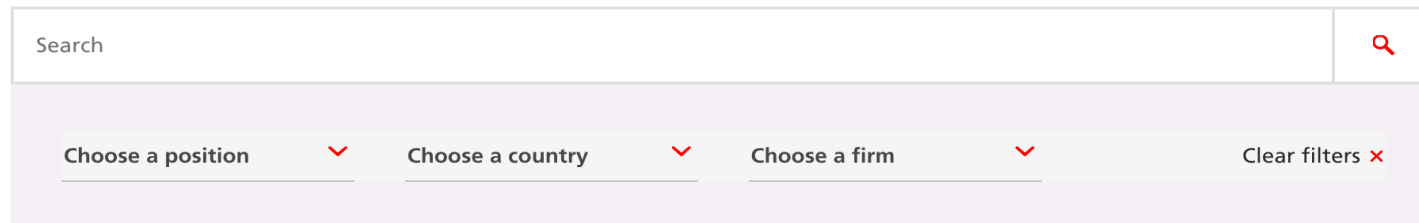
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100% focus: labour, employment and pensions law



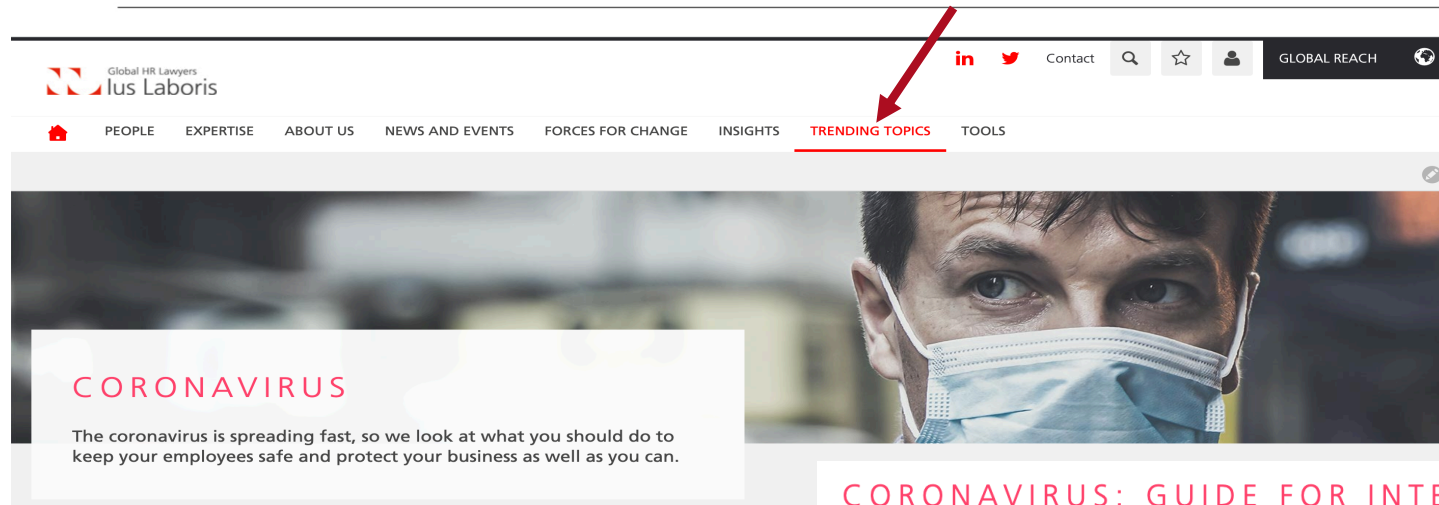
This section contains a search bar with the placeholder text "Search" and a red magnifying glass icon. Below the search bar is a filter bar with three dropdown menus: "Choose a position" (with a red downward arrow), "Choose a country" (with a red downward arrow), and "Choose a firm" (with a red downward arrow). To the right of these dropdowns is a "Clear filters" link with a red 'x' icon.

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