

# Restructuring for international employers in the time of coronavirus

**Key issues for employers in Denmark, Finland, Norway and Sweden**

May 2020

# COVID-19

At this time, when businesses are facing serious disruption and financial challenges, many companies are reflecting on how to protect the business and promote recovery. For some, government support through the crisis, plus measures such as furloughing will be enough, but for others, more radical change will be needed for the long term. Ius Laboris works with a large range of organisations throughout the world in cross-border corporate restructuring assignments and is here to help with the advice you need.

# Do:



**Access government support:** take advantage of the various government funds that are available for as long as possible before embarking on a restructuring.



**Make the most of what you've got:** try to maintain the employees you have now to avoid unnecessary restructuring. For example, ask them to do other useful activities, even if they cannot do their normal job. You could also consider temporarily leasing, furloughing, offering sabbaticals, using annual leave and modifying compensation and working time. But be careful only to change what you are entitled to change unilaterally, otherwise you may trigger claims.



**Think long term and plan well:** try to consider the long-term effects of workforce reduction, beyond your business' needs in this time of crisis. If you need to restructure, make sure the plan is justifiable from a business perspective and conducted fairly.



**Communicate well:** common sense might suggest that this means fully and frequently communicating with your employees and in fact, in most countries, transparency is the key. But be aware that there are rules in some places that restrict how you should communicate and at what stage, so take local advice and communicate appropriately.



**Comply with the law:** this may sound obvious, but restructuring law is complex and easy to get wrong and the rules vary widely across the world (covering time limits, consultation rights and collective redundancy thresholds, to name but a few), so ensure to take legal advice in each jurisdiction. The cost of not doing so can be high.



**Consider reputation:** factor in any possible reputational fall-out from a decision to restructure, particularly in terms perceived social responsibility in a time of crisis (noting that the strength or weakness of this factor varies widely across the world and so taking local advice is wise).

# Don't:



**Don't restructure whilst salaries are being reimbursed by the government** - unless you are sure you are allowed to do this. In some countries, there are rules to prevent you restructuring if you are benefitting from a government coronavirus support scheme.



**Don't restructure based solely on coronavirus** - unless you are sure you have the right to do so. In some places, coronavirus is not a good enough reason. You may also not yet know enough about the financial impact of the pandemic on your business to make a justifiable restructuring decision.



**Don't downsize in small, repeated exercises if you can avoid it.** Generally, a one-off exercise, though deeper, will maintain morale much better.



**And Don't forget** - how you act at this time to support staff will be remembered for a long time.





# International Restructuring **Report.**

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# Denmark

## Norbom Vinding

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### **1. Restrictions on restructuring based on state programmes aimed at reducing the effects of the coronavirus**

No special measures relating to downsizing or restructuring have been implemented in Denmark as a consequence of the coronavirus.

The government has introduced a wage compensation scheme in consequence of the coronavirus. In summary, under the scheme, you can, subject to various conditions, send employees home with full pay and receive compensation of 75-90% of the employees' pay, to a maximum of DKK 30,000. The scheme is aimed at incentivising businesses to keep employees on board and is currently in force from 9 March 2020 until 8 July 2020.

Businesses that have yet to apply for the wage

compensation scheme may only submit an application covering a period from the date of their last dismissal due to economic reasons. For businesses already receiving wage compensation under the scheme, any dismissals due to economic reasons will result in the business losing the right to receive compensation from the date of dismissal. If a business has already received wage compensation under the scheme and chooses to dismiss an employee for economic reasons, the business will be required to repay any compensation relating to the period after the date of dismissal.

### **2. Restrictions on restructuring by trade unions, works councils and other external bodies**

Trade unions, works councils and other external bodies have no legal tools to enable them to impose restrictions on restructuring processes or dismissals.

### **3. Length of the process (including consultation**

**requirements) and whether there is criminal liability for failure to conduct it properly**

Employers may be required to inform and consult with the works council (or all employees, if no works council exists) regarding any expected restructuring process, even if the threshold for constituting a collective redundancy exercise has not been met. This is usually not considered onerous and will often – depending on the specific circumstances – be possible to complete within a day or a few days.

There may be rules regarding consultation in the applicable collective agreement (if any) and those rules will normally be described in detail in that agreement. The obligations vary, but can include consultation with the relevant trade union and shop stewards before dismissals are carried out. Consultation is usually not considered as being onerous.

**Collective redundancies:**

Statutory rules apply to collective redundancies unless the employees are covered by a collective agreement that contains provisions on collective redundancies.

The statutory rules apply to employers with more than 20 employees, where a certain number or percentage of the employees are dismissed. The specific threshold depends on the total number of employees.

A collective redundancy process typically takes between one and four weeks, but can be completed in an even shorter period.

You must consult with the employees or any representatives and notify the regional labour market council of your intention to commence the consultation process. The consultation should take place as soon as possible, but always before a final decision is made, in order for it to be a genuine consultation process. After the consultation has ended, the employer must inform the regional labour market council of the outcome.

Failure to consult or notify the relevant regional labour market council is a criminal offence for which you could be fined. In addition, failure to consult in good faith may result in your being required to pay compensation to dismissed employees, equivalent to between 30 days' and 8 weeks'

pay, depending on the number of employees and the percentage of dismissed employees. Employees' pay during the notice period is deducted from this amount.

Depending on the number and percentage of employees dismissed, the dismissals cannot take effect (i.e. the notice periods cannot expire) until at least 30 days or 8 weeks after the last notification to the regional labour market council, unless otherwise provided by an applicable collective agreement.

**4. Risk of reputational damage**

Workforce reduction normally has some level of negative impact on the reputation of a company, but in the current situation, it will generally be recognized that many companies will have no choice but to reduce their headcount. As the cause (COVID-19) is external and unforeseen, it seems unlikely that it would have a notable impact on the reputation of the company.

**5. Do's and Don'ts in Denmark**

**Do** consider making use of government funded economic stimulus packages, such as the wage compensation scheme.

**Do** consider the long-term effects of any restructuring and take into account longterm business needs. As part of this, consider alternatives to restructuring, such as working time or salary reductions.

**Do** consider the process of selecting employees for redundancy thoroughly to reduce the risk that affected employees file claims, e.g. on grounds of discrimination.

**Do** communicate clearly and in a timely way with employees and/or their representatives.

**Do** ensure to comply with the law and any applicable collective agreements before starting the restructuring process.

**Don't** dismiss employees during the compensation period under the wage compensation scheme – unless you are ready to leave the scheme entirely.

**Don't** 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.

**Don't** forget the collective redundancy thresholds, as it is essential to know whether the Danish Collective Redundancies Act applies to a restructuring process.

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# Finland

## Dittmar & Indrenius



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### **1. Restrictions on restructuring based on state programmes aimed at reducing the effects of the coronavirus**

The Finnish Government has not introduced any programmes restricting the future restructuring of businesses.

### **2. Restrictions on restructuring by trade unions, works councils and other external bodies**

In Finland, neither the trade unions nor any other external bodies can stop employers from starting a restructuring or staff reductions. There is a theoretical risk of industrial action, but this is unlikely to occur during the height of the pandemic.

### **3. Length of the process (including consultation**

### **requirements) and whether there is criminal liability for failure to conduct it properly**

Collective redundancies in Finland require the amount of available work to have diminished substantially and permanently for financial or production-related reasons or as a result of restructuring. The restructuring of the employer's business must therefore have a clear impact on the amount of work the employer can offer. If employees could be reassigned or retrained instead, the employees may not be made redundant.

It takes approximately three or seven weeks, depending on whether the number of employees to be made redundant is more or less than ten, to complete the redundancy process and fulfil the negotiation obligation set out in law. After this, notice periods dependant on the length of employment apply, ranging from 2 weeks to 6 months.

Regarding layoff (i.e. temporary suspension of work without pay), the Finnish Government has temporarily shortened the co-operation consultation periods for layoffs and layoff notice periods to five days. This amendment is in force until 30 June 2020. Layoffs may be implemented either as fixed-term arrangements, or until further notice. In addition, the employer must issue a written proposal five weekdays prior to commencement of the consultation process. In principle, layoffs may therefore be implemented within just over two weeks.

As a result of the pandemic, immediate termination of those on probationary periods is possible on collective grounds. Employers may now also layoff fixed-term employees. Further, the re-employment period for redundant employees who received notice of termination prior to 30 June 2020 has been extended to nine months (normally, four to six months). These amendments are also in force until 30 June 2020. Some major Finnish industrial organisations have recently requested the government to extend these temporary amendments until the end of the year.

If the employer or employer's representative intentionally or negligently fails to observe or violates provisions regarding consultation, a fine is possible. To avoid any dispute, you should keep detailed minutes of the consultation process.

#### 4. Risk of reputational damage

In the current circumstances, the risk of major reputational damage is low. Many companies in Finland are restructuring their businesses because of the situation they face. However, it is important to ensure a proper consultation process is gone through, as that will help to minimise reputational risks.

#### 5. Do's and Don'ts in Finland

**Do** bear in mind that dismissing employees requires quite extensive grounds. Thus, the employer must have a plan of action to help promote the hiring dismissed employees externally, e.g. by offering training.

**Do** consider alternatives to layoffs and dismissals, such as the use of annual leave, salary cuts and reduced working

hours.

**Do** ensure that during the consultation process, any dissenting opinions plus the outcome of the negotiations are noted down in the minutes to prevent any future disputes.

**Do** access any new support schemes under construction by the government before looking at restructuring. However, be aware that the schemes are likely to require repayment of any funds not used to pay salaries and so companies restructuring will have to pay back what they have received under the support schemes.

**Don't** make decisions regarding layoffs or dismissals prior to finishing the consultation with employees. This includes decisions and any other measures that may have a decisive impact on the consultation process.

**Don't** forget there is an obligation on employers to re-employ people made redundant during the pandemic if a need for the same work returns. Thus, the employer must rehire the original employee and cannot choose to offer the role to someone different. This provision has been temporarily extended.

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# Norway

## Hjort



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### **1. Restrictions on restructuring based on state programmes aimed at reducing the effects of the coronavirus**

There are no national programmes restricting employers regarding restructuring businesses. Employers are free to initiate termination for redundancy, meaning business-related reasons for terminations such as economic dismissal.

### **2. Restrictions on restructuring by trade unions, works councils and other external bodies**

The employer may, at its own discretion, decide how to organise its business, including restructuring. Trade unions must, however, be consulted before any decision to restructure takes place if the company is bound by a collective agreement, otherwise not. Further, an employer

has a mandatory obligation (before any decision to restructure takes place) to inform employees and consult with their elected representatives in the case of potential mass redundancies (10 or more employees at risk). The Norwegian Working Environment Act also includes a general obligation to inform and consult if the company employs 50 or more employees. The local Working Environment Committee must also be consulted.

Consultations must cover two issues. Firstly, the restructuring itself, including the economic, financial and technical reasons for it and the alternative measurements and consequences. The trade unions and or employee representatives have the option to 'have their say' but in the end the employer makes the decisions about the restructuring. Secondly, the consultation must cover the selection process, including the selection criteria to be used by the employer when deciding who to dismiss. Length of

service is an important criterion in the selection process, if the employer is bound by a collective agreement. This means that employees with longer service will remain employed (although, not necessarily in their existing jobs) provided they have 'satisfactory qualifications' for the continued work. These questions on length of service, often combined with higher age and satisfactory qualifications are usually the most challenging ones in a restructuring situation in Norway and there is an expectation among employees to be paid severance if they are not followed.

There have not yet been any significant changes to the ordinary restructuring process in the context of the coronavirus.

### 3. Length of the process (including consultation requirements) and whether there is criminal liability for failure to conduct it properly

Depending on whether the company is bound by a collective agreement and whether it is a mass redundancy situation, the process would normally take between 2 and 6 weeks, depending on the complexity of the restructuring and the number of employees affected.

Failure to consult with trade unions may result in employers having to pay punitive damages to the trade unions. Failure to consult with employee representatives in accordance with the Working Environment Act is subject to criminal liability. Failure to consult can also have a negative impact if there are individual dismissal disputes.

### 4. Risk of reputational damage

It is our general assessment that many companies are restructuring their businesses entirely because of the serious financial situation in which they find themselves and therefore the reputational risk is moderate.

### 5. Do's and don'ts in Norway

**Do** plan any restructuring carefully in advance

**Do** 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.

**Do** keep employee representatives and employees informed on a regular basis, e.g. town-hall meetings, updated FAQs etc.

**Do** remember that collective agreements impose more limitations and obligations on employers, both in terms of the formal process and the selection criteria.

**Don't** forget to have a plan and strategy already in place when consulting employee representatives and unions.

**Don't** forget to notify the local Labour and Welfare Administration in the case of a potential mass redundancy.

**Don't** forget to complete the consultations before the company makes the final decision to implement redundancies.

**Don't** forget to document the whole process.

**Don't** forget to conduct formal individual 1:1 consultation meetings before you make any decision to dismiss individuals.

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# Sweden

## Elmzell

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### **1. Restrictions on restructuring based on state programmes aimed at reducing the effects of the coronavirus**

There are no national programmes restricting employers regarding restructuring their business. An employer may initiate termination for redundancy, meaning business-related reasons, such as economical dismissals.

During the coronavirus crisis, Sweden has implemented new legislation for short time work allowances, which means that the employer and employees can agree to reduce working hours and salaries, at the same time as receiving a state contribution. The contribution can be received even if the employees are made redundant. However, the employees receive a smaller percentage of the salary during the short time work, which the employer must top up during the notice period.

### **2. Restrictions on restructuring by trade unions, works councils and other external bodies**

The employer may decide at its own discretion how to organise its business, including restructuring. However, the trade unions must be consulted before any decision to restructure takes place. If the employer is bound by a collective bargaining agreement (CBA), the consultations should be either with the trade unions party to the CBA or, if the employer is not bound by a CBA, with any trade unions that affected employees are members of.

Consultations must cover two issues. First, the restructuring itself, including the economic, financial and technical reasons for it, any alternative measures and their consequences. The trade unions can 'have their say' but in the end, it is up to the employer to decide to restructure.

Second, the consultation must cover who to dismiss and the so-called 'seniority list'. The seniority list protects employees with longer service based on the 'last-in-first-out-principle'. This essentially means that those with longer service have priority over to remain employed (although, not necessarily keeping their current position) provided they have 'satisfactory qualifications' for the work. Questions relating to last-in-first-out and satisfactory qualifications are usually the pinch-points in restructurings in Sweden, and there is an expectation among employees that they will be paid severance if the rules are not followed.

There have yet not been any significant changes to the ordinary restructuring process in the context of the coronavirus.

### **3. Length of the process (including consultation requirements) and whether there is criminal liability for failure to conduct it properly**

Depending on whether the company is bound by a CBA, the process normally takes between three and eight weeks, but this depends on the complexity of the restructuring and the number of employees affected.

Failure to consult with trade unions may result in employers having to pay punitive damages to the trade unions. Criminal liability, however, would not occur.

### **4. Risk of reputational damage**

Generally, companies are restructuring their business out of pure economic necessity and therefore the risk to their reputation is moderate.

### **5. Do's and Don'ts in Sweden**

**Do** plan your restructuring carefully in advance.

**Do** assess any potentially difficult cases in terms of the last-in-first-out rules and think about whether you are willing to make settlements in order to keep certain key employees.

**Do** keep employees informed on a regular basis, for instance, with 'town-hall' meetings, up-to-date FAQs etc., during the redundancy process.

**Do** remember that a collective dismissal in Sweden is usually quite easily dealt with compared to many other European countries (but could take anywhere between three and 8 weeks in total).

**Don't** forget to already have a plan and strategy in place before consulting the trade unions.

**Don't** forget to ask employees about trade union membership (if the company does not have a collective bargaining agreement).

**Don't** forget to make a risk assessment from a work environment perspective and involve the company's safety officers (if any).

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# Ius Laboris

## Geographical Coverage



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Ius Laboris is a close-knit alliance of leading employment law firms working together in one global practice.

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#### In a nutshell:

- Chambers Elite Band 1 Alliance
- 5 continents
- 59 countries
- 1,500 HR law practitioners
- 1 common language: English



For more information on the evolution of the coronavirus crisis and its impact on the working world, visit our **Coronavirus Resource Hub**:  
[theword.iuslaboris.com/hrlaw/coronavirus](http://theword.iuslaboris.com/hrlaw/coronavirus)

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