

Welcome to the Nordic HR Webinar

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Welcome!



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Today's Program



Welcome and introduction



Internal investigations of HR-related matters



Questions/break



Latest updates on legislative developments and other hot topics

Internal investigations of HR-related matters

Denmark



Denmark | Internal investigations of HR-related matters

Increased focus on investigations into HR-related matters

- An internal investigation in HR-related matters could be triggered by a whole range of issues, such as
 - a suspicion of theft
 - complaints of bullying, harassment or other matters related to health and safety
 - complaints of discrimination
 - violation of internal policies

The employer will often be under a legal obligation to take action when a complaint/report is received from an employee and often it will be necessary to initiate some kind of investigation in order to 1) ensure a fair ground for any potential employment related decisions and 2) ensure that potential future similar misconduct is being prevented

Denmark | Internal investigations of HR-related matters

Increased focus on investigations into HR-related matters

- Very important to be aware of the distinction between the different types of investigation
 - Internal investigation (what we are covering in this webinar)
 - Legal investigation conducted by an external law firm (may be the law firm normally assisting the company, “*ekstern advokatundersøgelse*”)
 - Independent legal investigation conducted by an external law firm (must be another law firm than the law firm normally assisting the company, “*uvildig advokatundersøgelse*”)

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Increased focus on investigations into HR-related matters

- After #MeToo in 2020, there has been debate about and criticism of a number of external investigation processes, including the role of lawyers in these processes
 - "Hears and renders judgment in cases that fall under the Danish Criminal Code"
 - "The lawyer acts as interrogator, prosecutor and judge"
 - "A parallel legal society"
 - "Weak management, which is reluctant to take on independent responsibility, asks a law firm to investigate the matter"

Denmark | Internal investigations of HR-related matters

Increased focus on investigations into HR-related matters

- In September 2022, the Danish Bar and Law Society issued its “Guidelines on legal investigations” (“*Vejledning om advokatundersøgelser*”)
 - The guidelines contain a number of requirements for external and independent legal investigations as well as recommendations to be considered when conducting legal investigations
 - The guidelines do not apply to genuine internal investigations, but due to the criticism raised over the last few years we recommend that companies consider implementing some of the requirements and recommendations set out in the guidelines in their internal investigation processes

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Recommendations to be considered when conducting internal investigations

- Is it necessary to initiate a “legal investigation process”?
 - Perhaps not if the facts of the matter are clear and undisputed
 - Are there better and more suitable alternatives?
- Capacity to conduct the investigation (need for assistance from external experts)?
- Special attention on GDPR compliance
- Attention that review of private correspondence will generally be a criminal offence
- The employees involved should be informed about the scope of the investigation process and what the information collected will be used for
- Specify if there is an obligation under employment law to participate in the investigation process (this will usually be the case)
- Awareness as to whether there is a risk of self-incrimination for the employees involved

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Recommendations to be considered when conducting internal investigations

- Specify that it will be possible to bring a companion (“*bisidder*”) to meetings/interviews in the investigation process
- Consider whether it may be relevant to offer the key employees involved in the investigation process support from a psychologist
- Consider whether there is a need for giving employees the opportunity to prepare for the interviews for which they are invited
- Preparation of written minutes of interviews with key individuals giving the interviewees the opportunity to approve/comment on the minutes
- Inform the affected individuals of the potential consequences that the investigation may have for them

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Recommendations to be considered when conducting internal investigations

- Preparation of written invitation for interviews, describing the following:
 - The purpose and scope of the investigation
 - If there is an obligation under employment law to participate in the interview
 - If the investigation may have consequences under employment law for the person concerned
 - Who participates from the employer's side and their role in the conversation/interview
 - Make it clear that the person involved/affected can bring a companion to the interview (consider if it is relevant to specify whether the employer will cover any expenses)
 - Give the parties involved the necessary time to choose a companion and, if necessary, accommodate a need for changing the date of the conversation/interview

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Recommendations to be considered when conducting internal investigations

- Preparation of written invitation for interviews, describing the following:
 - Emphasise that all involved/affected individuals are bound by a duty of confidentiality in the process for the sake of the investigation process as well as the individuals involved
 - Note that breaks can be requested during the interview, if necessary
 - Specify that the involved/affected individual's explanation will, if necessary, be presented to others as part of the investigation process
 - Emphasise that minutes will be taken of the interview and that the interviewee will be given the opportunity to comment on the minutes
 - Refer to the relevant data protection policy

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Common practical challenges in the investigation process

- How to handle reports/complaints from anonymous sources?
- How to deal with employees wanting to record interviews held in the investigation process?
- How to deal with employees while the investigation process is being carried out – suspension, transfer to other work assignments, remote working or other?
- Legal consequences if the employees involved in the investigation process do not agree with the conclusions being reached in the investigation process?

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Common practical challenges in the investigation process

- How to deal with the employees in the aftermath of an investigation process?
 - Employment related consequences
 - Warning
 - Relocation
 - Dismissal
 - Summary dismissal
 - Mediation process?
 - Psychological support?
 - Transfer to other work assignments?
 - Separation agreement?

Denmark | Internal investigations of HR-related matters

GDPR – basic principles related to processing of personal data

- GDPR art. 5
 - Lawfulness, fairness and transparency
 - Purpose limitation
 - Data minimisation
 - Accuracy
 - Storage limitation
 - Integrity and confidentiality

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GDPR – legal basis of processing

- Legal basis – general personal data (private companies)
 - **Article 6(1)(f) of the GDPR** (necessary to pursue a legitimate interest) – three-step procedure
 - The processing must pursue the interests of the controller or a third party
 - The processing must be necessary in relation to the purpose
 - The interests of the data subject etc. that require the protection of personal data must be balanced against the legitimate interest of the controller and must not override this interest
 - If there is a presumption of misconduct prior to the start of the investigation the balancing of interests will most often be in favour of the controller

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GDPR – legal basis of processing

- **Section 8(3) of the Danish Data Protection Act** – legal basis for processing personal data on criminal offences
 - If necessary to pursue a legitimate interest
- **Section 12(1) of the Danish Data Protection Act** – provides a legal basis for employers' processing of personal data in order to comply with the controller's or the data subject's employment-related obligations or rights as established in the applicable law or collective agreements

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GDPR – legal basis of processing

- When complying with the duty of information under **Article 14 of the GDPR**
 - The employer must inform the data subject if the processing of data is based on other legislation (which will very often be the case in internal investigations of HR-related matters), e.g. if the personal data is processed due to the employer's obligations under, for example, the Danish Gender Equality Act, the Danish Working Environment Act and the Danish Equal Treatment Act

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GDPR – legal basis of processing

- Special categories of personal data
 - **Article 9(2)(f) of the GDPR** (necessary to establish, exercise or defend legal claims)
 - Legal claims must be understood broadly – can e.g. arise from employment law or contractual sanctions, exclusion from a party or claims for compensation or damages from other employees, customers, etc.
 - "... stricter requirements must be set for the necessity of including such personal data, including in relation to the group of persons on whom data is processed"
 - Do not collect data defined in Article 9 beyond what is necessary – how to do this in practice?

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Article 14 of the GDPR – the duty of information

- Purpose of the processing
- Categories of information processed (general or special category information)
- Potential recipients of the information
- Legal basis
- Data subject rights
- Controller's contact information
- Retention period
- Sources of information
- Information on how data subjects may file a complaint

Denmark | Internal investigations of HR-related matters

Statutory follow-up on whistleblower reports

- If the investigation is carried out as part of the statutory follow-up on a report received in the company's whistleblower system, special requirements/obligations/protection will apply under the Danish Whistleblower Act
 - **The legal basis** for processing the data will depend on whether or not the whistleblower scheme is legally required
 - **Protection against retaliation** – strong protection against retaliation of the whistleblower
 - **Duty of confidentiality** – the whistleblower unit is subject to a strict duty of confidentiality under the Danish Whistleblower Act, and the system must ensure that reports are handled confidentially
 - **Duty of information** – data protection policy regarding the processing of personal data must be prepared and made available to whistleblowers
 - Due to the duty of confidentiality, the duty of information does not have to be met in relation to the individual being reported on or other individuals mentioned in the report

Internal investigations of HR-related matters

Finland



Finland | Internal investigations of HR-related matters

- **Very limited legislation or recommendations/rules** on internal investigations
- At the same time, investigations on HR-related matters are becoming **more and more typical**
 - Conducted either by the employer or by an external advisor
- Why **investigations conducted by an external advisor** have become more popular?
 - Especially workplace health and safety questions and suspected discrimination
 - For instance, bullying or harassment
 - Employer's statutory obligation to investigate and to intervene – no specific rules on the process
 - Strict penalties for non-compliance with the employer's obligations, incl. even criminal law sanctions for the representatives of the employer
 - Way to evidence that the employer has acted diligently
 - Conflicts of interests within the employer's organization (e.g., top management cases)
 - Specific legal understanding both in the subject matter and in the investigation process
- The role of **police investigation**?

Finland | Internal investigations of HR-related matters

- Following the implementation of the Whistleblower Directive, employers have recently established reporting channels – mostly for reporting any type of misconduct or infringements
- Two types of investigations: **Investigation under the Whistleblower Act vs. investigation in other matters**
 - **Note:** Partially different legislation applies to reports on different types of breaches, depending on whether the report concerns matters under the Finnish Whistleblower Act or not
 - Investigation process, information obligation, privacy legislation, whistleblower protection etc.
- Most detailed rules on how to conduct internal investigation derives from **privacy legislation**
 - Limitations on the sources of information used in the investigation
 - The rights of the person suspected of the violation
 - **Note:** Privacy of communication as Finnish constitutional right also applies to work email!
 - Legal risks related to privacy legislation in cases of non-regulated investigations?
- Documents prepared during the investigation process – a risk or an opportunity?

Internal investigations of HR-related matters

Sweden



Sweden | Internal investigations of HR-related matters

Increased focus on investigations into HR-related matters

- Why?
 - The new whistleblowing legislation with mandatory whistleblowing channels
 - Increased awareness among employees
 - Several different legal grounds for example to report as
 - Victimization (Swe: *kränkande särbehandling*)
 - Harassment and/or sexual harassment
 - Other work environment related matters, for example cooperation/interaction between colleagues

with an obligation for the employer to initiate an investigation

Sweden | Internal investigations of HR-related matters

Increased focus on investigations into HR-related matters

- Challenges in general
 - Swedish “leadership style” – pros and cons
 - “Easy” to go on sick leave – and stay
 - High number of absence for stress-related reasons

Sweden | Internal investigations of HR-related matters

Investigation procedure

- Specifics for the Swedish investigation process
 - In general, very similar to Denmark throughout the whole process
 - However, no explicit guidelines or best practice how to conduct an investigation; could be internal or external
 - IT-tools/e-mails etc. can be checked provided that there is a policy in place and/or there is a serious suspicion of disloyalty or criminal actions
 - Considerations if the persons involved can bring a companion, often a (local) trade union representative – appropriate?
 - Involving a safety officer (usually elected among the employees in the workplace) at some point of the investigation?

Sweden | Internal investigations of HR-related matters

Investigation procedure

- Common practical challenges in the investigation process
 - In general, very similar to Denmark
 - Anonymous sources and/or “I want you to know but I am not willing to testify”
 - What if the conclusion is that e.g. harassment has not occurred but it is actually about e.g. personal clashes between the parties involved – what to do?
 - Employment related consequences v. other?
 - Against one of involved or both/all?
 - May any consequences be seen as retaliation?

Internal investigations of HR-related matters

Norway



Norway | Internal investigations of HR-related matters

Increased focus on investigations into HR-related matters

Whistleblowing activity in the Norwegian working life

The most reported concerns from whistleblowers in Norway*:

1. Destructive leadership practices that harm the working environment (23%)
2. Bullying and harassment (15%)
3. Working conditions that may cause a danger to life or health (13%)

* Statistics from independent social science research foundation Fafo
(Fafo Report 2019:14)

Trends

- More frequently are reports filed regarding personnel conflicts, professional disagreements, and the employers' priorities *etc.*
- Not every complaint is a whistleblowing by statutory legislation

Norway | Internal investigations of HR-related matters

Investigation procedure

Specifics for the Norwegian investigation process:

- In general, very similar to Denmark throughout the whole process
- Internal investigations of HR related matters are not governed by any specific Norwegian procedural law
- However, employers are required to conduct investigations of reported issues of concern from employees and hired workers pursuant to the Norwegian Working Environment Act (WEA)
- The Norwegian Bar Association has provided guidelines related to handling of external investigations carried out by lawyers (indicative only)
- The EU Directive on Whistleblowing has not yet been implemented in Norwegian law
- Statutory legislation for investigation of e-mails/IT-tools and electronic information

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Whistleblowing under the WEA

1. Employees and hired workers have the right to report issues of concern in the employer's undertaking
2. For the purposes of the WEA, issues of concern include breaches of legislation, written ethical guidelines in the undertaking or ethical norms on which there is broad agreement in society, for example, circumstances that may involve
 - a. a danger to life or health
 - b. a danger to climate and the environment
 - c. corruption or other economic crime
 - d. the abuse of authority
 - e. an unsatisfactory working environment
 - f. breach of personal data security
3. Complaints that only relate to the employee's work situation shall not be considered whistleblowing unless the matter also involves issues of concern as described in the second paragraph
4. Retaliation against an employee who reports issues of concern is prohibited

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Conducting investigations in accordance with the WEA

1. Upon receipt of the report from the employee/whistleblower
 - i. Register the report and confirm receipt
 - ii. Assess whether the complaint is a whistleblowing
 - iii. Ensure impartiality and confidentiality
2. Conducting investigation
 - i. The matter must be 'adequately investigated' within a 'reasonable time' (no specific qualitative or quantitative requirements set out in the WEA)
 - ii. Ensure contradiction and documentation
3. Outcome
 - i. Conclusion and information to the involved parties
 - ii. Relevant measures
 - Disciplinary actions? (Warning / Relocation / Dismissal)
 - Police report?

Norway | Internal investigations of HR-related matters

Investigation procedure

- Common practical challenges in the investigation process
 - In general, very similar to Denmark
 - Should the investigation be conducted internally or externally?
 - The investigation must be tailored to the specific matter and its severity
 - Does the WEA and /or any internal policy apply?
 - The employee has a duty to contribute by answering questions and providing information to the employer
 - Anonymous sources and/or “I want you to know but I am not willing to testify”
 - No duty to answer questions that may incriminate him or her
 - The individual being reported (if any) must be given information and the opportunity for contradiction
 - All relevant dialogue with the involved parties should be documented
 - Prepare minutes from meetings/interviews, written statements and other documentation from the involved parties
 - The employer must ensure a fully satisfactory working environment during the investigations

Questions/break



Norway | Latest legislative updates and other hot HR legal topics

**Changes in the Norwegian
Working Environment Act
(WEA) going into effect on
1 January 2024 and 1 July 2024**

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New employer obligations for group entities

- New obligations entails expanded rights for employees terminated due to redundancies when working in a group entity.
- This includes:
 - An obligation to present information and to consult important issues with employees' representatives if the group entities together have 50 or more employees and the matter concerns more than one corporate group entity
 - An obligation to offer any vacant suitable work also in all other entities within the same corporate group
 - The preferential right to re-employment is also extended to all entities within the same corporate group

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Temporary employment gives the right to claim permanent employment after 3 years – WEA § 14-9 (7)

- Being temporarily employed consecutively for a certain period of time gives an employee the right to claim permanent employment, including equal rights to employment protection
 - Prior to 2024 the threshold was either 3 or 4 years, depending on the basis for the temporary employment
 - From 2024, only the three year rule is applicable
 - The legal basis for the temporary employment is irrelevant

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New threshold for when safety representatives and working environment committees are statutory

Safety representatives:

- Prior to 2024: Required if 10 or more employees
- From 2024: 5 or more employees
- The calculation of the threshold also includes temporary, part time and hired employees.

Working Environment Committees:

- Prior to 2024: Required if 50 or more employees
- From 2024: 30 or more employees.

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New rules for classification of Employee vs. Independent contractor – WEA § 1-8

New provision in force from 2024, emphasizing and clarifying the definition of an employee

- Enhances criteria for the assessment, including:
 - whether the individual provides his or her labor on a running basis
 - whether the individual must submit to directing, management and control
- Establishes a presumption for an employee relationship and places the burden of proof to demonstrate otherwise on the employer or hiring company
 - Similar presumption rule is included in the proposed EU Directive on Platform Work

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New presumption rules for temporary and part-time workers to strengthen the right to full-time and permanent employment

From July 2024, the WEA § 14-6 will establish two new presumption rules:

1. The presumption that unless stated explicitly in the employment contract, the employment should be presumed permanent unless temporary employment is proved highly probable by the employer
2. The presumption that unless the «%» of the part-time position is stated explicitly in the employment contract, the employee's claim will be indicative unless another extent is proved highly probable by the employer

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Implementing EU Directive on Transparent and Predictable Working Conditions - New minimum requirements for employment contracts

Shorter deadline for when a written contract must be in place; from 1 month to seven days

From July 2024, the employment contract must set out:

- Whether the employee can freely decide his or her workplace
- Right to other paid leave aside from statutory holiday
- The procedure for dismissal
- All different elements the salary consists of
- How changes to the work schedule or shifts might be adjusted
- The employees right to training, if applicable
- Information on employer benefits that provide social safety, including information about third parties receiving payments in this regard

Latest legislative updates and other hot HR legal topics

Sweden



Sweden | Latest legislative updates and other hot HR legal topics

Major changes as from 1 October 2022 in the employment protection legislation with still no guidance in case law on how to interpret the ? not foreseen by the legislation

- Redundancy and seniority rules (the so-called "last-in-first-out" principle)
 - Possible to exempt 3 employees from seniority list – regardless of the size of the employer
 - The exempted employees shall be of "particular importance" for the continued work
 - Exemptions can only be made every third month
 - More favourable rules for employers (i.e. more employees to exempt) if the employer is bound by collective bargaining agreement
- A user undertaking shall offer a temporary agency worker an indefinite term employment
 - If the agency worker has been placed at the user undertaking workplace for 24 months during a 36 months' period and
 - If accepted, the employment with the agency is ended on the day the new employment starts (i.e. no formal resignation/notice period required by the agency worker)
 - Alternatively, the user undertaking can choose to pay a compensation of two months' salary instead

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- Fixed term employments
 - The employment type “General” fixed term has become “Special” fixed-term
 - Only possible to agree upon for 12 months (instead of 24 months before) during a 5 year-period
 - (Possible to derogate from in collective bargaining agreement)
- Objective grounds for termination has become “objective reasons”
 - Aiming at making the assessment of terminations for personal reasons more predictable
 - Focus on the seriousness of the employee’s breach of the employment agreement
- Disputes in case of termination of employment
 - The employment will no longer automatically continue after the end of the notice period in case the employee has initiated a court procedure with a claim to be reinstated
 - Punitive damages are instead to be increased in case the employee is successful with his/her claim

Latest legislative updates and other hot HR legal topics

Finland



Finland | Latest legislative updates and other hot HR legal topics

The new Finnish Government Programme introduces ambitious plans for labour market reforms, including the following:

- Changes in the **cooperation and consultation obligations**
 - The scope of application of the Finnish private sector employee consultation law (Act on Co-operation within Undertakings) to be raised from 20 to 50 employees.
 - Minimum periods for change negotiations required for downsizing of staff or other material changes in the terms of employment to be reduced by half, *i.e.*, from 14 days/6 weeks to 7 days/3 weeks.
- The **re-employment obligation** following redundancies to be abolished for employers with fewer than 50 employees.
- **Temporary lay-off notice period to be shortened** by half, *i.e.*, from 14 to 7 days.
- **Local bargaining** possible for non-unionized employers.

Finland | Latest legislative updates and other hot HR legal topics

- Possibility to conclude **fixed-term employment** contracts for up to one year without special grounds.
- **Dismissing an employee** for reasons related to the conduct or performance of the employee will be made easier for the employer.
 - “*proper and weighty grounds*” → “*proper grounds*”
- A number of measures **restricting industrial actions**.

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- **New Flexiwork working time model** (*Fi: joustotyö*)
 - The most flexible working time model in Finland.
 - The model is very similar to informal practices at many Finnish workplaces.
 - Suitable for employees who are free to determine at least 50 % of their working time and place of work.
 - The employee's obligation to balance the working hours to the agreed weekly working time (typically 36-40 weekly hours) within a four month reference period.
 - Longer work days on the initiative of the employee do not constitute overtime.
 - The primary responsibility of working hours recording is also on the employee.
 - Specific agreement with each individual employee required to set up the flexiwork model.

Latest legislative updates and other hot HR legal topics

Denmark



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Abolishment of Great Prayer Day as a public holiday

- Store Bededag/Great Prayer Day was a public holiday falling on the fourth Friday after Easter
- Great Prayer Day was abolished as a public holiday from 1 January 2024, so the day is now (as a starting point) a normal working day
- Any provisions providing special terms and conditions for salary and employment on public holidays in legislation, collective bargaining agreements, individual contracts, company policies, etc. no longer apply to Great Prayer Day
- Employers may place the extra working hours on the former Great Prayer Day or another day

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Abolishment of Great Prayer Day as a public holiday – types of compensation

- Employees with increased effective annual working time must receive compensation
- Employees paid by the hour will receive their agreed (usual) pay when working on Great Prayer Day, including overtime allowance etc. but excluding public holiday allowance, compensatory time off for working on a public holiday, etc.
 - As a clear starting point, no issues in relation to this type of employee
- Employees receiving fixed salary will be entitled to a pay supplement of 0.45% of their annual remuneration if their total annual working time increases due to the abolishment of Great Prayer Day as a public holiday
 - There are various outstanding questions/issues for this type of employee

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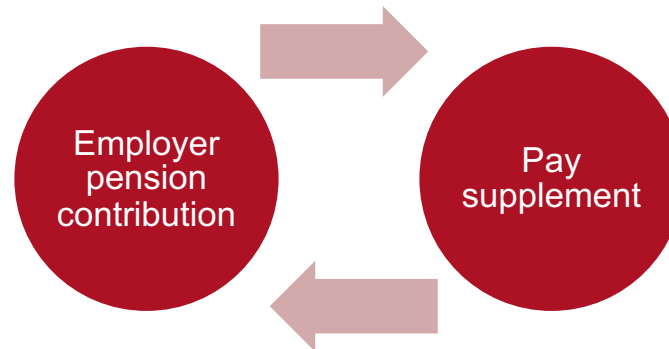
Abolishment of Great Prayer Day as a public holiday – employees receiving fixed salary

- The pay supplement for employees receiving fixed salary
 - Accrues concurrently with the remuneration
 - Is paid either with the regular salary to which it relates, or twice a year (with the salary for May for the period September → May and with the salary for August for the period June → August)
 - Is paid pro rata on termination of employment
 - Is based on the regular/usual annual fixed remuneration, calculated based on the same pay elements as the employee receives during holiday with pay
 - Variable pay elements?
 - Full accrual during childbirth-related leave without entitlement to full usual remuneration

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Abolishment of Great Prayer Day as a public holiday – employees receiving fixed salary

- The pay supplement for employees with fixed salary
 - Potential problem with circular pay elements
 - For example, if an employer must pay employers' pension contributions based on all remuneration elements according to a pension provision and/or pension agreement



- There is no “correct” solution to this issue yet

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Abolishment of Great Prayer Day as a public holiday – employees receiving fixed salary

- Outstanding issues:
 - Still unclear whether employees employed on 1 January 2024 or later are entitled to pay supplement (unless they are covered by a collective agreement, in which case they will be entitled in the same way as if they were employed before 1 January)
 - Still unclear if it is possible to derogate from the legislation and provide extra paid leave either unilaterally or under a mutual agreement with employees, thus avoiding an increase in the effective annual working time and an entitlement to pay supplement
 - Not providing pay supplement to new hires and/or derogating from the legislation entails a risk of claims for pay supplement with retrospective effect if the legislation is clarified or case law renders such agreements void at a later time
 - Derogations (if any) should be drafted to ensure the best possible protection

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Abolishment of Great Prayer Day as a public holiday

- Necessary actions:
 - Decide how to handle the abolishment of Great Prayer Day as a public holiday
 - Provide information to existing employees on the lapse of entitlements and the new entitlement to compensation, if any
 - Update employment contract template to provide the above-mentioned information
 - Update company policies etc. to provide the above-mentioned information

Denmark | Latest legislative updates and other hot HR legal topics

Introduction of requirement to register working time

- The bill implementing requirements to register employees' working hours was adopted on 23 January 2024
- The working time registration requirement enters into force on 1 July 2024
- The requirement is based on CJEU case C-55/18, CCOO v. Deutsche Bank SAE
- The new bill contains two main elements regarding working time registration:
 - Duty to implement a system to register the employees' daily working hours
 - Option to exempt "self-organisers" from the rules on maximum weekly working hours (48-hour rule), the rules on daily breaks and the rules on night work

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Introduction of requirement to register working time

- Existing, generally applicable, rules on working time:
 - 48-hour rule – maximum 48 hours of work per week on average in any 4-month reference period
 - 11-hour rule – entitlement to 11 hours of rest between each working day
 - 24-hour rule/weekly rest day – entitlement to 1 day off in connection with a daily rest period (11 hours) every 7-day period (week)
 - Daily break – entitlement to one break when working more than 6 hours in a day
 - Night work – maximum 8 hours work per 24 hours on average in any 4-month reference period
- Exceptions and derogations apply in special circumstances, in specific sectors and/or if agreed under a collective agreement

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Introduction of requirement to register working time – system requirements

- Employers must implement an "*objective, reliable and accessible*" system for registering the individual employees' daily working hours to ensure compliance with the rules on daily and weekly rest periods and maximum weekly working hours
- Employees must be able to access the information about their own working hours
- The information must be stored for 5 years (after the expiry of any 4-month reference period)
- It is not further specified how such a system must or can be designed, and the bill emphasises that there is a high degree of flexibility for employers

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Introduction of requirement to register working time – system requirements

- The preparatory works to the bill shows that, according to the legislature, it is sufficient that the system can register the total number of working hours per employee each day
- It is not a requirement that the system can register at what time the work is performed
- In order to ensure compliance with the rules on daily and weekly rest periods, some employers do, however, consider using a system that can register:
 - a) at what time work is performed (e.g. from 9:00-16:00 and 20:00-21:15)
 - b) where work is performed (e.g. at the workplace or at home)

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Introduction of requirement to register working time – “self-organisers”

- A self-organiser is exempted from the requirement to register their working hours if the self-organiser is exempted from:
 - a) the 48-hour rule, the rules on daily breaks and the rules on night work, **and**
 - b) the 11-hour rule and the 24-hour rule/weekly rest day
- Currently, the exemptions under a) and b) do not align completely, but it is expected that a new executive order on daily and weekly rest periods (exemption b) will be adopted to align the exemptions

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Introduction of requirement to register working time – “self-organisers”

- a) Exemption from the 48-hour rule, rules on daily breaks and rules on night work:
 - Applicable to employees 1) whose working hours have a length that cannot be measured or determined in advance, **or** who can organise their working hours themselves, **and** 2) who can make independent decisions **or** who perform managerial functions
 - The exemption must be mentioned in the employees’ employment contract (or an addendum)
 - Except for self-organising managerial employees, it is not clear who will be covered by the exemption
 - In theory, all employees must be assessed on an individual level
 - The scope of application for this exemption is expected to be relatively limited

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Introduction of requirement to register working time – “self-organisers”

- b) Exemptions from the 11-hour rule and the 24-hour rule/weekly rest day:
 - Employees who a) primarily perform managerial work and do not have fixed working hours, or b) hold a special independent position and work within specific sectors
 - Work in specific sectors (e.g. agriculture)
 - Homeworking, when employees work from home part-time **and** a) organise their own working hours, **or** b) their working hours have a length that cannot be measured or determined in advance

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Introduction of requirement to register working time

- Necessary actions:
 - Decide how detailed working time registration you will require and engage a working time registration solution provider (or use self-made solution)
 - Assess whether you have a) any “self-organisers” who should be exempted from the 48-hour rule, rules on daily breaks and rules on night work, and b) any employees who should be exempted from the working time registration requirement
 - Prepare addendum for existing employees and update of employment contract template regarding self-organisers covered by an exemption
 - Prepare/update employment contract template, addendum to employment contract for existing employees and/or company policy regarding registration of working time

Questions



Nordic HR Seminar | Stockholm | 2 September 2024

Nordic HR Seminar 2024

- The Nordic HR Seminar will be on Monday 2 September 2024
- The Nordic HR Seminar will be in Stockholm
- Only physical participation
- More information and registration of interest:
 - <https://iuslaboris.com/event/nordic-hr-seminar-2024/>