

EMPLOYMENT LAW OVERVIEW

NORWAY 2021-2022

Storeng, Beck & Due Lund (SBDL) / Proud Member of L&E GLOBAL



TABLE OF CONTENTS.

| | | |
|-------|---|----|
| I. | GENERAL OVERVIEW | 03 |
| II. | HIRING PRACTICES | 06 |
| III. | EMPLOYMENT CONTRACTS | 08 |
| IV. | WORKING CONDITIONS | 10 |
| V. | ANTI-DISCRIMINATION LAWS | 13 |
| VI. | PAY EQUITY LAWS | 16 |
| VII. | SOCIAL MEDIA AND DATA PRIVACY | 17 |
| VIII. | TERMINATION OF EMPLOYMENT CONTRACTS | 18 |
| IX. | RESTRICTIVE COVENANTS | 21 |
| X. | TRANSFER OF UNDERTAKINGS | 23 |
| XI. | TRADE UNIONS AND EMPLOYERS ASSOCIATIONS | 24 |
| XII. | EMPLOYEE BENEFITS | 27 |



I. GENERAL OVERVIEW

1. INTRODUCTION

Norwegian labour law generally refers to the rules and regulations governing individual and collective relationships between employers and employees. Norwegian employment law is quite employee-friendly compared to the USA and many European countries. Employers must comply with the requirements of the Working Environment Act (WEA), which is the main employment legislation. The WEA regulates matters such as employment, whistle-blowing, requirements for work environment, working hours, rights to leave, protection against discrimination, termination of employment, rights of employees in case of a transfer by undertaking and rules regarding disputes concerning termination of employment. It is not possible to waive the rules by agreement in advance, to the detriment of the employee. The WEA applies to all employees including employees in leading positions and managerial positions. To a great extent, the WEA cannot be deviated from for employees working in Norway for foreign employers. Self-employed workers are not subject to the WEA.

2. KEY POINTS

- The Working Environment Act is mandatory, and the employee may not, in advance, renounce his or her rights as provided by the law.
- Collective agreements are quite common, and an employer/confederation for enterprises and a trade union may, where specifically stated in the WEA, enter into collective agreements that deviate from provisions in the WEA.
- The main rule is that an employment shall be indefinite/fixed. The opportunity to enter into temporary employment contracts is limited and rather strictly regulated.
- The employer may only terminate the employment contract if it is objectively justified. The employer has the burden of proof regarding the grounds for termination.
- There is no statutory right to severance pay upon terminating an employment contract. Severance pay is however quite common, and must be assessed on a case-by-case basis.

3. LEGAL FRAMEWORK

- The Constitution of 1814
- The Working Environment Act of 2005
- The State Employee Act of 2017
- The National Holiday Act of 1988
- The National Insurance Act of 1997
- The Personal Data Act of 2018
- The Gender Equality and anti-discrimination Act of 2017
- The Industrial Disputes Act of 2012
- The Act of Conclusion of Agreements of 1918
- Case law, especially the judicial decisions of the Supreme Court
- Collective agreements
- Individual employment contracts

4. NEW DEVELOPMENTS

A. LEGISLATION

In 2017, the regulations on working hours were changed, in terms of reduced restrictions on evening work and a somewhat extended access

to except workers from the working hours regulations due to the nature of their position as executives or independents. Also, the regulations regarding whistle-blowing were changed. The most important changes were that almost all employers are now required to have written policies regarding whistle-blowing. It was made clear that employees are entitled to report to public authorities, anonymously, of censurable conditions.

In 2018, a new pension scheme in the public sector was introduced. The new pension scheme for the public sector is adjusted to a model more similar to most pension schemes in the Norwegian private sector. The pension scheme in the Norwegian private sector is usually a defined contribution scheme, where the employer pays a certain percentage of the employee's salary to a pension fund. The current pension scheme in the Norwegian public sector is a defined benefit pension scheme, which gives the employee a pension equivalent to a certain percentage of their salary. The government's aim is to ensure employees in the public sector a pension scheme that is more sustainable, and that encourages employees to work for more years. The new pension scheme for the public sector still accommodates those who have to retire early. The new pension scheme also aims to make it easier for employees in the public sector to switch to the private sector, without it negatively affecting their future pension entitlements. The scheme will be set into effect from 2020, and will only apply for employees who are born after 1963.

From 1 January 2018, a new Act on Gender Equality and Anti-Discrimination came into effect in Norway. The definition of sexual harassment is now to be based upon more objective criteria, and employers are more restricted as to which information they may gather from job seekers. The Act applies to all areas of society. Employers may not ask job applicants about pregnancy, adoption and plans to have children, ethnicity, religion and beliefs, disabilities, sexual orientation, gender identity and gender expression. The Act also opens up for a higher degree of special treatment of men for the purpose of gender equality.

As for rest of the EU/EEA, Norway has implemented the GDPR (General Data Protection Regulation), which has involved several changes in Norwegian labour law-legislation. It is now more clearly

defined as to when the employer may save data about the employees in connection with processes such as recruitment, and also after the employment relationship has ended. The employee's right to have information about his or her registered data and the right to have this deleted or corrected, has also been clarified. Employers must be aware that not complying with the GDPR may result in significant fines from the authorities.

On 1 January 2019, a new regulation on prohibition of so-called "zero-hour" contracts and restrictions on the hiring of workers in the construction industry, will come into effect. Firstly, there will be a new and clear definition of the content of permanent employment. The definition requires, among others, that the employee is secured a certain predictability in his/her employment (e.g. a defined percentage of employment). Thus, a zero-hour contract, meaning a contract with no guarantee of work, will not comply with the proposed change. Secondly, the new regulation will involve new requirements regarding written contracts, concerning predictability with regards to when the work shall be performed. Thirdly, there will be a new regulation regarding the legal basis for temporary employment in temporary-work agencies when hiring out employees to temporary positions in the hiring company. There will be rules of transition for such contracts that already exist.

On 1 January 2020, new rules on whistleblowing at the workplace came into effect. The changes in the relevant chapter in the Working Environment Act mainly contribute to clarification on current law, but also include some material changes. Among the changes, the personnel sphere covered by the whistleblowing regulations is expanded to include students and prisoners among others, when these persons are performing work. Further the employer's obligation to follow-up a notification on censurable conditions is now stipulated in the law. In addition, the notion of censurable conditions, in which is the scope of the rules, is exemplified in the law so as the prohibition of retaliation is defined in the law. For employers in the day-to-day work, an important practical change is related to the requirement to the undertakings notification procedures.

B. CASE LAW

There has recently been a large amount of new case law in the employment-law area from the Norwegian Supreme Court. The most interesting cases are referred to here.

The Supreme Court recently decided that traveling allowance constitutes “salary and cost coverage”, and is part of the basic working and employment conditions of a temporary agency worker due to the principle of equal treatment. A temporary staff recruitment agency hired a person to work for a company. Some days the company’s employees had to travel to a location, different than their ordinary place of work. As a compensation for travelling time to the other location, the company gave their permanent employees travelling allowance. The employee from the temporary staff-recruiting agency did not receive such allowance. The Norwegian Supreme Court concluded that this was a breach of the principle of equal treatment, as the salary allowance was to be considered as “salary and cost coverage”.

In another ruling from the Supreme Court, a dismissal of a pregnant employee was ruled void, because the employer had failed to make it highly probable that the dismissal was based on grounds other than the pregnancy. Norwegian law, which here is based on EU-law, prohibits dismissal of pregnant employees on grounds of the pregnancy. Further, pregnancy shall be deemed to be the reason for the dismissal of a pregnant employee, unless other grounds are shown to be highly probable. The burden of proof lies on the employer. The Norwegian Supreme Court’s view was that the company’s need for workforce reduction was not proven to be highly probable, and the dismissal was void. The ruling shows how important it is for employers to be able to document the assessments that have been made prior to the dismissal.

For some time now, it has been unclear whether an employee’s travel time should be considered as working time. In a recent ruling from the Norwegian Supreme Court, a police officer’s travel time was considered working time. A police officer who had traveled to different assignments considered his travel time as working hours and demanded overtime payment from the employer. The case concerned the interpretation of the notion

“working time” within the meaning of Article 2 of The EU Directive on working time (2003/88/EC). The EFTA Court answered questions from the Norwegian Supreme Court. The EFTA Court noted that the concept of “working time” consists of three conditions, namely the employee must be: 1) carrying out his activity or duties; (2) at the employer’s disposal; and (3) working or at work. In their judgement, the EFTA Court considered the travel time as working time according to the directive, based on an individual assessment of the case. The Norwegian Court followed the EFTA court’s judgement, but did not grant the employee overtime payment for most of the assignments, based on an interpretation of the applicable collective agreement.

In a recent ruling, a redundancy of an employee was ruled void, because the employer had not offered the employee a suitable vacant position in another part of the company. According to Norwegian law, a termination of employment due to curtailed operations or rationalisation measures is not objectively justified if the employer has other suitable work in the company to offer the employee. The employee won the case against his previous employer, concerning whether the redundancy was unjust and should be ruled void. In this case, the employer had downsized one part of the company, and at the same time hired new employees in another part of the company. The Supreme Court stated that when a company is downsizing in one part of the company, the duty to offer the employees other suitable work concerns the entire company. The Supreme Court stated that the employer should have considered whether the employee was suitable for the new vacant positions in the other part of the company, and if so, should have offered him such position, before terminating the employment. This ruling means that employers who are up-sizing one part of the company at the same time as they are downsizing another part, need to align the two processes.

II. HIRING PRACTICES

1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

Foreign employees from outside the EEA/EFTA area, including self-employed individuals, must hold a residence permit, which may be obtained at the Foreign Service Mission or the Norwegian Directorate of Immigration, that entails the right to work in Norway. There are different types of permits depending on whether someone is a skilled worker, an unskilled worker (such as seasonal workers and seafarers aboard foreign ships), a specialist, a student, a researcher, etc. A residence permit may be obtained at the Foreign Service Mission or the Norwegian Directorate of Immigration.

2. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

When a foreign employer wants to hire an employee in Norway, there is no requirement to establish or work through a local legal entity in Norway. However, all foreign enterprises that will operate business activities in Norway are required to register with the Norwegian Register of Business Enterprises (Foretaksregisteret). An enterprise is considered a foreign enterprise in Norwegian law if the company does not have its main office in Norway or on the Norwegian continent. Business operations are operations where the enterprise intends to profit from a certain scope and duration. If the business has a turnover of a minimum of NOK 50,000 (equal to approx. EUR 5155) within a 12 month period, and the activity is running for more than 90 days, the enterprise is considered to perform business activities, and thus have an obligation to register.

Also, the employer has to register with the Value Added Tax Register, the Welfare authorities' (NAV) AA register, Statistics Norway and the Corporate Taxation Data Register. Depending on the type of business and whether the employer will establish a legal entity in Norway, the company may also have to register in other public registers in Norway.

To register a foreign enterprise in Norway, the enterprise needs to complete the form "Coordinated register notification" (Samordnet registermelding) and send the form in to the Norwegian Register of Business Enterprises (Foretaksregisteret). The form can be downloaded online at: <https://www.brreg.no/business/other-types-of-entities/norwegian-registered-foreign-business/form-and-guide-for-the-registration-of-an-nuf/>

3. LIMITATIONS ON BACKGROUND CHECKS

Background checks may include verification of information given by the candidate, or more thorough investigations for mapping personal characteristics. It is common to check education, professional experience, business interests, credit, identity, address and references, as well as performing a media search. It is less common to check work permits, "CV-holes", alcohol or drug issues, salary, medical history, and the reason for termination of the former employment. The employer usually has an extensive right to verify the information given by the candidate.

As a general rule, the employer has a right to hire whomever he wants, based on self-chosen criteria (limited by the principle of impartiality). The legislation does not directly regulate the employer's right to perform a background check. However, the legislation provides restrictions in different rules and regulations regarding obtaining information on the appointment of employees. The same restrictions are also applicable to executing background checks.

According to the Working Environment Act Section 13-4, the employer must not, when advertising for new employees or in any other manner, request applicants to provide information concerning their views on political issues or whether they are members of trade unions. Nor may the employer obtain such information through background checks.

Furthermore, the employer may not gather information as referred to in section 30 of the Equality and Anti-Discrimination Act, with regards to family life, religious point of view, ethnicity, functional disability, and sexual orientation (unless such information is of fundamental importance for the performance of the work required in the position).

In spite of the prohibitions laid down above, information regarding ethnicity, religious point of view, functional disability and personal cohabitation arrangements, may be gathered if such information is of fundamental importance for the performance of the work required in the position.

The employer may gather information regarding the candidate's personal cohabitation arrangements or religious views (this line of inquiry must be stated when advertising the vacancy), if the establishment has a main objective to promote specific religious or fundamental values, and the employee's position will be of importance to accomplish such objective. In addition to these limitations, the employer must comply with the relevant personal data regulations when carrying out background checks, in particular, the use of social media. The employer may have a legal basis to review publicly-available information about a candidate on social media, in order to be able to assess specific risks regarding the candidate for a particular function, but only if it is necessary for the job and the candidate is correctly informed (for example, in the text of the job advert).

4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

In order to find the right candidate for the vacant position, the employer needs information about the applicants. Furthermore, the employer may need documentation to verify the information

that the candidate offers. In order to protect the candidates as the weaker party in the hiring process, restrictions apply regarding the actual information the employer may ask for from the employee. The restrictions are found in different rules and regulations.

The employer cannot ask for certificate of good conduct. The only exception is if the law regulating that particular position or profession requires that the candidate has a certificate of good conduct. Furthermore, information about whether or not the candidate has a clean record is considered as sensitive personal data. The processing of such data is strictly regulated by law, and the Norwegian Data Protection Authority has stated that the employer cannot acquire such information.

The employer can only obtain a credit report of the candidate, if the vacant position is high-ranking and entails great economic responsibility. In addition, credit reports may only be obtained for candidates selected in the final rounds of the recruitment process.

The employer may only ask for information regarding the candidate's health to the extent that the tasks involved with the position have special health requirements. For example, the employer may ask if the candidate can complete heavy lifts if this is a relevant task in the job, and the employer may ask if the candidate suffers from any illnesses that would be particularly incompatible with the position at hand. It is however prohibited to ask general questions about the risk for future health problems. The employer may not obtain this information from others either. Medical checkups of any kind can only be obtained when provided by statutes or regulations, for posts involving particularly high risks or when the employer finds it necessary in order to protect the employee's life or health.

When the employer conducts an interview with the candidate, the employer cannot ask for information concerning sexual orientation, their views on political issues or whether they are members of trade unions.

III. EMPLOYMENT CONTRACTS

1. MINIMUM REQUIREMENTS

The Working Environment Act requires the employment contract to be in writing and must contain, at a minimum, certain elements pertinent to the employment:

- Identification of the parties to the employment.
- The place of work.
- A description of the work or the employee's title, post or category.
- Date of commencement.
- Estimate of the employment duration for temporary contracts.
- The basis for temporary status must appear from the temporary work contract.
- Work hours.
- Trial period (if any).
- Total number of vacation days and vacation pay rate.
- Notice periods.
- The wage and wage payment procedures as well as other supplements and remunerations not included in the pay, if any.
- The duration and disposition of the agreed daily and weekly hours. In case the work is performed periodically, the employment contract shall stipulate or provide the basis for calculation, when the work is performed.
- Length of breaks.
- Arrangements regarding working time.
- Applicable collective agreement.

2. FIXED-TERM/OPEN-ENDED CONTRACTS

The main rule is fixed employment. If a person is employed temporarily, certain requirements in the Working Environment Act must be met, for

instance that the employee shall work for someone who is temporarily absent or that the nature of the work justifies the use of a fixed term contract. If the requirements are not met, the consequence is that the employee is considered permanently employed. The same rule applies for employees who have a fixed term contract for more than four consecutive years in the same company.

In addition, temporary employment on a general basis is possible under certain conditions. This means that the worker is temporarily employed without the employer having to justify the need for temporary employment. This type of temporary engagement may not exceed 12 months. After 12 months, the employment contract may be terminated, or the employee may be employed permanently or in one of the temporary engagements described above. If the employee is not offered a new position, the employer cannot hire a new person temporarily on a general basis to perform the same type of work.

Temporary employment engagements shall not exceed 15% of the total number of employees in the undertaking, of course it is always permissible to enter into such engagement with at least one employee in the company.

3. TRIAL PERIOD

An employment contract may include a "trial period" for a maximum of six months. To be valid, the trial period must be regulated in the written employment contract. During the trial period, the threshold for a legal dismissal with a notice period due to circumstances related to the employee is considered to be somewhat lower. The notice period within the trial period cannot be shorter than is 14 days, and runs from day to day. The trial period may be extended if the employee is absent during parts of the trial period, and such absence is not caused

by the employer, provided that the employee has been informed of this extension possibility in writing at the time of his appointment. This is normally done by including a clause in the written employment contract. Also, the employee must receive written information about the prolongation prior to the expiration of the trial period.

4. NOTICE PERIOD

During the trial period, the notice period is only 14 days. The employment contract may provide for a shorter or a longer notice period. The notice period may also be agreed upon through collective agreements. Notice of termination given during the trial period runs from the date the employee received the notice.

Notice of termination given to the employees hired on a permanent basis must be minimum one month and starts on the first day of the month following the date the employee has received the notice in writing. For employees who have been employed for at least five consecutive years with the same employer when termination is given, a mutual period of notice of at least two months applies. If an employee has been employed for at least ten consecutive years with the same employer when terminated, the mutual period of notice is at least three months. It is common for employment contracts to have a mutual notice period of three months.

If an employment contract is terminated after at least ten years of continuous employment with the same employer, the notice period is prolonged to at least four months if it takes place after the employee has reached 50 years of age, at least five months after the age of 55, and at least six months after the age of 60.

IV. WORKING CONDITIONS

1. MINIMUM WORKING CONDITIONS

Employers and employees are free to negotiate the terms and conditions of their employment relationship. However, the Working Environment Act lays down the minimum requirements for the work environment, the workplace, working hours, employment contracts, employment protection, dismissal, redundancy and summary dismissal.

2. SALARY

There are no statutory regulations concerning minimum wages. However, wage levels and minimum wages are generally laid down in collective bargaining agreements. If the employment contract is part of a collective bargaining agreement, its regulations apply to matters of salary as well as to work and recruitment conditions.

For some specific sectors, the salaries laid down in the collective agreements also apply to employers in the sector without the collective agreement. Examples of such sectors are construction, cleaning, shipbuilding and seafood production. The collective agreements are only generally applicable in relation to pay and working conditions. The objective of generally applicable agreements is to prevent lower pay and working conditions for foreign workers, than that which is otherwise common in Norway.

3. MAXIMUM WORKING WEEK

In general, the maximum normal working hours shall not exceed nine hours in twenty-four hours and forty hours in seven days. For certain groups,

such as shift workers, the normal working hours shall be less. Upon agreement between the employer and the employee, the maximum normal working hours can be calculated as an average over a maximum of fifty-two weeks, but with a limit of ten ordinary hours of work per twenty-four hours, and forty-eight hours per seven days. Other arrangements can also be made through agreements between the employer and the employees' elected representatives in undertakings bound by a collective pay agreement or by consent from the Labour Inspection Authority.

The Working Environment Act also gives employees the right to flexible working hours insofar as this does not cause considerable inconvenience to the employer. The above mentioned rules shall not apply to employees in leading positions or employees in particular independent positions.

From the age of 62 years, employees are entitled to reduced working time if the reduction in working hours can be completed without significant inconvenience to the business. Furthermore, the same applies if an employee claims reduced working time for health, social or other weighty welfare reasons.

The age limit for termination of employment because of age is 72 years. However, an employer may choose to have an in-house age limit of 70 years if the age limit is made known to the employees, is practiced consistently and the employee has a satisfactory occupational pension. The employer must discuss in-house age limits with the employee-representatives.

4. OVERTIME

Overtime is only permitted when there is an exceptional and time-limited need for it. Overtime cannot exceed 10 hours in 7 days, 25 hours in 4

consecutive weeks, and 200 hours during a period of 52 weeks. Upon agreement between the employer and the employees' elected representatives in undertakings bound by a collective pay agreement, or by consent from the Labour Inspection Authority, this limit may be extended. As a rule, the total working hours shall not exceed 13 hours in 24 hours and 48 hours in 7 days.

Upon agreement between the employer and the employees' elected representatives in undertakings bound by a collective pay agreement, the limit of 24 hours may be extended to 16 hours in 24 hours. The limit of 7 days may be calculated as an average over a maximum of 8 weeks. For overtime work, the employee shall receive extra pay in addition to what he receives for corresponding work during ordinary working hours. The extra pay shall be at least 40 percent more than what the employee makes during a regular working hour. The above mentioned rules shall not apply to employees in leading positions or employees in particular independent positions.

5. HEALTH AND SAFETY IN THE WORKPLACE

The working environment in the undertaking shall be fully satisfactory when the factors in the working environment that may influence the employees' physical and mental health and welfare are evaluated both separately and as a whole. The standard of safety, health and working environment shall be continuously developed and improved in accordance with developments in society. The law requires that, when planning and arranging the work in the workplace, emphasis shall be placed on preventing injuries and diseases. The organisation, arrangement and management of work, working hours, compensation systems, including use of performance-related pay, technology, etc., shall be arranged in such a way that the employees are not exposed to adverse physical or mental restraint, and that due regard is paid to safety considerations.

A. EMPLOYER'S OBLIGATION TO PROVIDE A HEALTHY AND SAFE WORKPLACE

In order to safeguard the employees' health, working environment and safety, the employer shall ensure that systematic health, environment and safety work is performed at all levels of the undertaking. This shall be carried out in cooperation with the employees and their elected representatives. In order for the employer to maintain a healthy and safe workplace, there are several requirements for both the physical working environment and the psychosocial working environment

With regard to the physical working environment factors, such as factors related to buildings and equipment, indoor climate, lighting, noise, radiation and the like, shall be fully satisfactory with regard to the employees' health, environment, safety and welfare. The workplace shall, among others, be equipped and arranged in such a way as to avoid adverse physical strain on the employees.

When it comes to the psychosocial working environment, the work shall be arranged in a way that ensures the employees' integrity and dignity. Then employer shall make efforts to arrange the work in a way that enables the employees to have contact and communication with other employees of the undertaking. The employer shall ensure that the employees are not subject to harassment or other improper conduct. Furthermore, the employer shall, as far as possible, protect the employees against violence, threats and undesirable strain as a result of contact with other persons.

The working environment in the undertaking shall be fully satisfactory and the standard of safety, health and working environment shall be continuously developed and improved in accordance with developments in society.

When planning and arranging the work, emphasis shall be placed on preventing injuries and diseases. The organisation, arrangement and management of work, working hours, pay systems, including use of performance-related pay, technology, etc., shall be arranged in such a way that the employees are not exposed to adverse physical or mental strain and that due regard is paid to safety considerations.

The employer must assess whether there are any special risks associated with working alone in the undertaking. Measures necessary for preventing

and reducing any risk of working alone shall be implemented in order to meet the statutory requirements regarding a fully satisfactory working environment.

The employees and their elected representatives shall be kept continuously informed of systems used in planning and performing the work. They shall be given the training necessary to enable them to familiarise themselves with these systems, and they shall take part in designing them.

The design of each employee's working situation shall pay regard to professional and personal development, the individual employee's capacity for work, the opportunity for self-determination and employees shall as far as possible be given the opportunity for variation and for awareness of the relationships between individual assignments. Furthermore, adequate information and training shall be provided so that employees are able to perform the work when changes occur that affect his or her working situation.

Physical working environment factors such as factors relating to buildings and equipment, indoor climate, lighting, noise, radiation and the like shall be fully satisfactory with regard to the employees' health, environment, safety and welfare.

The workplace shall be equipped and arranged in such a way as to avoid adverse physical strain on the employees. Necessary aids shall be available to the employees. Arrangements shall be made for variation in the work and to avoid heavy lifting and monotonous repetitive work. Machines and other work equipment shall be designed and provided with safety devices so that employees are protected against injuries.

When handling chemicals or biological substances, the working environment shall be arranged in a way that the employees are protected against accidents, injuries to health and excessive discomfort. Chemicals and biological substances shall be manufactured, packed, used and stored in such a way that employees are not subject to health hazards.

Chemicals and biological substances that may involve health hazards, shall not be used if they can be replaced by other substances or by another process that is less hazardous for the

employees. Furthermore, the employer shall have the necessary routines and equipment to prevent or counteract injuries to health due to chemicals or biological substances and keep a record of hazardous chemicals and biological substances.

B. COMPLAINT PROCEDURES

If an employee believes that the working environment is in violation of the requirements as prescribed by law, the employee has the right to notify censurable conditions at the undertaking. See also section VIII. part 6. on regarding whistleblowing.

Further, the employee may notify the Norwegian Labour Inspection Authority on matters regarding the working environment in the workplace. The Labour Inspection Authority has, like other public authorities, a duty to keep the employee's identity confidential. The Labour Inspection Authority supervises the employer's obligation to ensure that the employees have the possibility to notify censurable conditions in the undertaking and may review the employer's assessment on whether it is necessary to carry out such measures. In such cases, the Labour Inspection Authority may consider the allegations and follow up with inspection, orders or report the case to the police if deemed necessary.

V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

The Working Environment Act sets out rules on protection against discrimination within the workplace. Protection against discrimination in working life is, however, not only governed by the Working Environment Act, but also by the Gender Equality and Anti-Discrimination Act. The law regulates gender equality and anti-discrimination rules related to gender, pregnancy, leave related to birth and adoption, caring tasks, ethnicity, religion, belief, disability, sexual orientation, gender identity and gender expression, age and a combination of these grounds.

In addition to the material rules on anti-discrimination, the law stipulates diverse rules on the employer's duty to actively carry out work on gender equality. This includes the employer's duty to disclose an annual statement on the undertaking's work on gender equality, preferably in the undertaking's annual report. Employers should further note that the authorities have the right to access information on the undertakings work on gender equality.

2. EXTENT OF PROTECTION

The regulations regarding anti-discrimination apply to all aspects of an employment relationship and areas of society and set out protections against both direct and indirect discrimination. The application of exceptions will vary from case to case, so that the line between legal and illegal unequal treatment often must be drawn up in practice. However, it can nevertheless be said that indirect discrimination more often will be legal than direct discrimination. Positive action is a special form of substantive

discrimination. Positive action is therefore allowed in certain cases.

The laws regarding protection against discrimination also include rules on shared burden of proof. If the employee can present information that gives reason to believe that there has been unlawful discrimination, the employer must substantiate that discrimination still has not taken place. The Working Environment Act sets out a prohibition against direct and indirect discrimination on grounds of political views, membership in a trade union or age. Furthermore, the Working Environment Act sets out a prohibition against direct and indirect discrimination of workers who work part-time or who are temporarily employed.

Additionally, the law regarding protection against discrimination also includes rules applicable to hiring processes. The Gender Equality and Anti-Discrimination Act states that a vacant position cannot be announced as vacant for only one gender and the announcement cannot give the impression that the employer expects, or prefers, one gender over the other for the position. The law also establishes rules that prohibit the employer from collecting specific information about the applicant. An applicant, who believes he was denied a position in violation of the provisions of this chapter, may require that the employer provide information in writing about the education, experience and other clearly demonstrable qualifications of the person who was hired.

3. PROTECTIONS AGAINST HARASSMENT

Harassment based on the grounds of gender, ethnicity, sexual orientation or handicap is considered as direct discrimination and thus prohibited by the anti-discrimination laws. Furthermore, the Working

Environment Act prohibits harassment on the grounds of membership in trade unions, political views or age. Harassment on other grounds is also regulated in the Working Environment Act, which stipulates that employees shall not be subjected to harassment or other improper conduct. The word harassment is not defined in legislation or in case law.

The Norwegian Labour Inspection Authority defines harassment as cases where an employee is subjected to negative actions, over time, by one or more persons. For example, unwanted sexual attention, leaving someone out, taking away his or her work tasks or hurtful teasing. The Labour Inspection Authority furthermore assumes that the strength of the parties involved are uneven, so that the person being harassed will have a more difficult time defending him or herself. Thus, it is not normally considered harassment if two colleagues on an equal level in the company are in conflict, or if it is only a single incident.

According to case law, employees are not often granted compensation on the grounds of being harassed in the workplace pursuant to the Working Environment Act. The reason for this is that case law stipulates an objective norm for what qualifies as harassment, and the individual's own assessment of whether or not he or she has been harassed is not decisive in determining whether harassment has taken place. Furthermore, the employee must be able to prove that he has been harassed, which can be difficult. If the court finds that harassment has taken place, the employee may claim compensation for economic losses. However, claims for tort are rarely granted, as the court rarely finds that the employer has acted with intent or culpable negligence when it did not put an end to the harassment.

4. EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

The anti-discrimination legislation prohibits direct and indirect discrimination on the basis of religion or disability. Employers should ask the employee what they expect of accommodation to practice

their religion, and be clear about which expectations may be met. Fundamental issues related to religion in the workplace should be implemented in the company's HSE procedures.

The Working Environment Act requires employers to give due consideration and attention to the individual, in the planning and organisation of occupational activities, but an employee usually cannot refuse to perform a task because of their religion.

Disabled persons are entitled to suitable individual accommodation of workplaces and tasks to ensure they can obtain or retain employment, access to training and other skills development as well as perform and have the opportunity to progress in the work on an equal basis with others. This right applies, provided that it does not involve undue burden for the employer. In assessing whether the arrangement involves a disproportionate burden, particular emphasis is on the effect of the dismantling of the accommodation, the necessary costs and the employer's assets.

5. REMEDIES

Two independent administrative agencies enforce the anti-discrimination rules, the Equality and Anti-discrimination Ombud and the Equality Tribunal. The Ombud makes no binding statements. The rulings of the Equality Tribunal are administratively binding. The Tribunal may order halting, correction or other measures that are necessary to stop discrimination, and may order daily fines if the deadline to comply with the decision is missed. The Tribunal's decisions can be brought before the courts.

Workers or applicants subjected to unlawful discrimination may be entitled to compensation for both economic and non-economic loss. The Ombud and the Tribunal may comment on any claims, but cannot order the employer to pay such compensation. This must either be a voluntary arrangement or the employee must take action in the ordinary courts.

Provisions in collective agreements, employment agreements, regulations, statutes, etc. that are in breach with the anti-discrimination rules in the Working Environment Act can be voided. The

other anti-discrimination laws do not contain any equivalent provision. Such a claim must therefore be submitted to the ordinary courts.

Violation of anti-discrimination policies can also result in criminal sanctions.

6. OTHER REQUIREMENTS

Preferential treatment is legal if it is reasonable that it will promote gender equality or contribute to prevent discrimination due to pregnancy and leaves related to child birth and adoption, work in the home, ethnicity, religious views or beliefs, functional disabilities, sexual orientation and gender expression, age or a combinations of these mentioned grounds. Such preferential treatment is only legal if there is a reasonable relationship between the aim of such treatment and how invasive the preferential treatment is for those who then will be put in a less favorable position. The preferential treatment has to cease to exist as soon as the aim of the treatment has been achieved.

VI. PAY EQUITY LAWS

1. EXTENT OF PROTECTION

The Gender Equality and Anti-Discrimination Act declares that women and men shall receive equal pay for work of equal value. The rule applies to all sorts of remuneration, such as bonus and overtime payments. Discrimination in compensation based on grounds other than discrimination on gender, is regulated by the general prohibition against discrimination.

An employee who suspects discrimination in pay-setting, may demand that the employer provide written confirmation of the pay level and the criteria for the setting of the pay for the person or persons with whom the worker is making a comparison

2. REMEDIES

An employee challenging an equal pay practice may file a claim with the Norwegian Anti-Discrimination Tribunal. The Tribunal handles the cases on the basis of written statements from the parties. The Tribunal may decide that the illegal practice comes to an end and/or decide that the employee is entitled to compensation for the unlawful practice. The decision of the Tribunal may be subject to legal proceedings for the ordinary courts.

3. ENFORCEMENT/ LITIGATION

There has not been any significant litigation or enforcement concerning equal pay practices in Norway.

4. OTHER REQUIREMENTS

There are several requirements related to the employer's active equality efforts. All employers shall, in their operations, make active, targeted and systematic efforts to promote equality, prevent discrimination on the basis of gender, including equal pay. Employers with more than 50 employees, shall issue a statement on the actual status of gender equality in the undertaking and what the undertaking is doing to comply with the activity duty. The statement shall be issued in the annual report or another document available to the general public. Further, employees of an undertaking and their representatives, the Anti-Discrimination Tribunal, the Equality and Anti-Discrimination Ombudsman and researchers, shall have a right to disclosure of documentation relating to equality work.

VII. SOCIAL MEDIA AND DATA PRIVACY

1. RESTRICTIONS IN THE WORKPLACE

The employer is free to restrict the employee's use of Internet and social media, as long as the restriction is not against any agreements between the employee and the employer, or against any statutes of the company. In addition, the restriction must have an objectively justified reason. It is not common to restrict the employee's Internet use in general, since the Internet is necessary for most work. However, it is quite common that the use of social media can be restricted.

A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW THE EMPLOYEE'S ELECTRONIC COMMUNICATIONS?

The employer's right to monitor, access and review the employee's electronic communications is restricted to the employee's e-mail account given by the employer for work related purposes, the employee's personal areas in the company's data network, and other electronic equipment the employer has provided for the employee to use in his or her work. The restrictions apply to both current and past employees in the company.

The employer may only access information from such mentioned places when it is necessary to ensure the daily management or other legitimate interests of the undertaking, or when the employer has a justified reason to suspect the employee's misuse of his or her work e-mail account, or other work related electronic equipment, which constitutes a severe breach of the employee's duties in the employment relationship, or that may constitute a reason for dismissal of the employee without a notice period, or termination with a notice period. The employer may not monitor the

employee's use of electronic equipment, hereby the Internet use, unless the aim of such monitoring is to either administrate the undertaking's computer network, or to look for, or investigate, security issues in the network.

2. EMPLOYEE'S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

Whether the employee is free to disparage the employer in social media is a question of whether or not his/her claims fall under freedom of speech. The freedom of speech is regulated in the Norwegian constitution. The freedom of speech gives the right to communicate anything that is not prohibited by any other laws – such as the employee's obligation to be loyal to his employer and not say or do anything that is untrue or will harm the employer in an unfair way.

The employee is, in general, free to use social media outside working hours as he or she pleases, and the employer cannot set any restrictions as such. On the other hand, the employee is obligated not to reveal any confidential information that belongs to the company, and this includes using social media to reveal this kind of information. The revelation of confidential information might constitute a breach of contract that may result in termination of the employment. If the breach of confidentiality has caused a financial loss, it may carry liability for damages. Unauthorised revelation of trade secrets is also a legal offence.

VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. GROUNDS FOR TERMINATION

Grounds for termination include: i) dismissal of an employee due to business related reasons; ii) dismissal of an employee due to reasons related to the individual employee; iii) collective dismissal based on objective grounds; iv) resignation by the employee; v) expiration of the contract term or end of the specific job; and vi) employer's death, retirement or permanent illness.

2. COLLECTIVE DISMISSALS

Terminations based on economic, technical, organisational or productivity grounds are deemed collective when at least 10 employees have been given notice of dismissal within a period of 30 days. Other forms of termination that are not warranted by reasons related to the individual employee shall be included in the calculation, provided that at least 5 employees are made redundant.

When an employer considers dismissing a number of employees at the same time, the employer must follow a strict procedure; the most important regulations are found in the Working Environment Act. The employer must hold information and discussion meetings with the employees' representatives and inform NAV (the Norwegian Labour and Welfare Administration) about the mass redundancy. The employer must define the selection group and criteria for the selection of employees, which may receive notice of termination. After the employees are informed, individual meetings must be held with the employees who might be dismissed.

3. INDIVIDUAL DISMISSALS

The Working Environment Act provides that a dismissal must be objectively justified due to circumstances relating to the operation of the business, the employer or the employee. This applies to both individual and collective dismissals.

Norwegian employment legislation does not specify or indicate by way of example what kind of conduct on the part of the employee is sufficient to justify dismissal. This must be determined on the basis of a consideration of all of the circumstances of the case. An employer can assert different reasons for dismissals based on the employee's breach of contractual terms and conditions, such as poor performance, misconduct, lack of attendance to work, lack of discipline, insubordination, etc.

In cases of individual dismissals based on the conduct of the employee, there is no statutory obligation to give a written warning or to consider other suitable available work for the employee, but these are circumstances that are often taken into account in considering whether the dismissal was justified.

Before making a decision regarding dismissal with notice, the employer shall discuss the matter with the employee and an elected representative of the employee, unless the employee himself does not desire this. The notice of termination itself needs to be in writing and shall fulfill certain minimum requirements.

In case of severe breach of obligation, either party can also terminate the employment for cause with immediate effect without observing a notice period. Among the valid reasons for immediate termination are crimes against the employer.

A. IS SEVERANCE PAY REQUIRED?

There is no statutory right to severance pay in Norway. The only payment that the employee is entitled to is ordinary salary payment and additional contractual benefits during the period of notice in accordance with the terms of employment. Many undertakings are immediately bound by different collective agreements to offer employees severance pay. In addition, employers who are not bound by any collective agreement may choose to offer some kind of severance package including, for instance, job-training, education, release from the duty to work, severance pay, etc. The right to such benefits is normally conditional upon the employee entering into a termination agreement whereby the employee, inter alia, waives the right to institute legal proceedings pursuant to the Employment Act. Termination agreements may be entered into before the employee receives notice, or the parties may reach an agreement after notice is given.

4. SEPARATION AGREEMENTS

A. IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?

It is not required for the parties to enter into a settlement agreement. However, to obtain clarity between the parties, it is considered best practice.

B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

Two key points in a standard settlement agreement are provisions on termination date and on payments from the employer. The latter includes provisions on salary during the period of notice, any severance pay or damages the parties agree on, holiday pay, pensions, and any financial contributions for outplacement or coverage of legal assistance. Furthermore, a settlement agreement should include provisions on the employer's duty to delete the employees e-mail account and any personal data stored with the employer, and the employee's

duty to return assets belonging to the employer. Finally, a settlement agreement should provide for any confidentiality clauses or competition clauses common to the relevant industry.

C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

No, there is no formal difference between entering into a settlement agreement with either a young or old employee. The employee's age may however be a factor in determining any severance pay, damages etc. In addition, age may call for a longer period of notice period.

D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

When framing a settlement agreement, the parties should keep in mind the consequences the agreement might have on the employee's future rights to social benefits and pensions.

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

An employee is entitled to a negotiation meeting with the employer, but only if the employee has been notified within two weeks after the dismissal. The employee can accept or challenge the termination decision within eight weeks from the conclusion of negotiations, or if a negotiation meeting was not held, within eight weeks from the date when notice of dismissal was received.

If the employee challenges the notice of termination, the employee will be entitled to remain in his or her position until a court has settled the case, provided that the employee has finished his or her trial period. This, in worst-case scenario, may take two to three years. During this period, the employee has the right to keep working as usual and to keep receiving a salary as usual.

6. WHISTLEBLOWER LAWS

The Working Environment Act regulates the employee's right to notify the employer, public authorities, the media or others in whistleblowing cases. According to Section 2-A-1 an employee has a right to notify of censurable conditions at the employer's undertaking. The same applies to workers hired from temporary-work agencies. The employee shall proceed responsibly when making such notification, notwithstanding the right to notify in accordance with the duty to notify or the undertaking's routines for notification. The same applies to notification to supervisory authorities or other public authorities.

Retaliation against an employee who notifies pursuant to Section 2A-4 is prohibited. The same applies for workers hired from temporary-work agencies. The prohibition applies for both employers and hirers. Anyone who has been subject to unlawful retaliation may claim compensation without regard to the fault of the employer or hirer. It is recommended for the employee to seek counselling before notifying of censurable conditions. The Norwegian Labour Inspection Authority, an employee representative, or a lawyer may consult in such matters.

On 1 January 2020, new rules on whistleblowing at the workplace came into effect. The changes in the relevant chapter in the Working Environment Act mainly contribute to clarification on current law, but also include some material changes. Among the changes, the personnel sphere covered by the whistleblowing regulations is expanded to include students and prisoners among others, when these persons are performing work. Further the employer's obligation to follow-up a notification on censurable conditions is now stipulated in the law. In addition, the notion of censurable conditions, in which is the scope of the rules, is exemplified in the law so as the prohibition of retaliation is defined in the law. For employers in the day-to-day work, an important practical change is related to the requirement to the undertakings notification procedures.

IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

Restrictive covenants are agreements restricting competition in employment relationships. The Working Environment Act differs between three different types of restrictive covenants.

2. TYPES OF RESTRICTIVE COVENANTS

The following restrictive covenants are recognised and may be enforceable under the law:

- non-compete clauses;
- non-solicitation of customers;
- non-solicitation of employees.

A non-compete clause is an agreement between the employer and the employee limiting the employee's freedom to take up a post at another employer or to commence, operate or participate in other undertakings following termination of the employment.

A non-solicitation of customers clause is an agreement between the employer and the employee limiting the employee's freedom to contact the employer's customers following termination of the employment.

A non-solicitation of employees clause is an agreement between the employer and other undertakings preventing or limiting the employee's possibility of taking up an appointment in another undertaking.

3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

A. NON-COMPETE CLAUSES

A non-compete clause may only be invoked as far as is necessary in order to safeguard the employer's particular need for protection against competition. The clause may not in any event be invoked for longer than one year from termination of the employment. In order to be valid, a non-compete clause must be entered into in writing.

The employer may not invoke a non-compete clause after dismissal, unless the dismissal is objectively justified on the basis of circumstances relating to the employee. The same applies if the employer has given the employee reasonable grounds to terminate the employment. The employer may terminate a non-compete clause in writing at any time during the employment.

On written enquiry by the employee, the employer shall within four weeks provide a written statement regarding whether and to what extent a non-compete clause will be invoked. In such cases, the employer's particular need for protection against competition shall be in the statement.

If the employee resigns and no binding statement exists, the resignation shall have the same effect as a written enquiry pursuant to the first paragraph. If the employer gives the employee notice of dismissal and no binding statement exists, a statement shall be provided at the same time as the dismissal. If the employer summarily dismisses the employee and no binding statement exists, a statement shall be provided within one week of the summary dismissal.

If a non-compete clause is invoked, the employer shall pay the employee compensation equivalent to 100 per cent of the employee's salary up to eight times the National Insurance basic amount, and thereafter a minimum of 70 per cent of the employee's salary in excess of eight times the National Insurance basic amount. The compensation shall be calculated on the basis of salary earned during the twelve months immediately prior to the date of notice or summary dismissal. The compensation may be limited to twelve times the National Insurance basic amount.

Deductions equal to a maximum of half the compensation may be made in respect to salary or income received or earned by the employee during the period the non-compete clause is in effect. The employer may require the employee to provide information on salary or income from employment during the period. If the employee fails to comply with this requirement, the employer may withhold compensation until the information is provided.

B. NON-SOLICITATION OF CUSTOMERS

A non-solicitation of customers clause may only apply to customers whom the employee has been in contact with, or for whom he has been responsible during the year immediately prior to the statement as referred to in the third paragraph. The clause may not in any event be invoked more than one year from termination of the employment.

A non-solicitation of customers clause must be entered into writing and may not be invoked unless the dismissal is objectively justified on the basis of circumstances relating to the employee. The employer may terminate a non-solicitation of customers clause in writing at any time during the employment.

On a written enquiry from the employee, the employer shall within four weeks provide a written statement concerning whether and to what extent a non-solicitation of customers' clause will be invoked. The statement shall in such case specify which customers the non-solicitation of customers clause applies to. The non-solicitation of customers clause becomes void if the requirement regarding a statement is not met.

C. NON-SOLICITATION OF EMPLOYEES

The employer may not enter into a non-solicitation of employees agreement. A non-solicitation of employees clause may nevertheless be entered into in connection with negotiations on transfer of undertakings, and invoked during the negotiations and for up to six months after completion of the negotiations if they do not succeed. A non-solicitation of employees clause may also be entered into from the date of transfer of the undertakings, and invoked for up to six months if the employer has informed all the affected employees in writing.

4. USE AND LIMITATIONS OF GARDEN LEAVE

Garden leave describes the practice whereby an employee leaving a job is instructed to stay away from work during the notice period. If an employee has resigned, or otherwise had their employment terminated, a period of at least one month's notice shall be applicable to either party, unless otherwise agreed to in writing, or laid down in a collective pay agreement. This means that the employee has a right to remain in his position during the notice period. Note that the notice period is calculated from the 1st in the upcoming month, after the date of the termination. An exception from this rule applies if the employment relationship is terminated when the employee is on a probationary period. If so, the notice period may only be 14 days, counting from the day of the termination. The employer and the employee may agree to disregard the period of notice.

More challenging, are cases where the employer unilaterally wishes to deprive the employee of his right to work during this period. If the right to remain in the position is to be limited by the use of garden leave, the employer has to have "particularly weighty reasons", which depends on an overall evaluation of the interests of the parties; of particular importance is whether the employee's right to remain in the position may result in considerable damage. The employee is nonetheless entitled to the same pay and contractual benefits during the garden leave. The employer cannot legally predetermine the use of garden leave. The use of garden leave has to be determined in connection with the situation at the time of the termination of the employment.

X. TRANSFER OF UNDERTAKINGS

The Working Environment Act Chapter 16 provides rights for the employees in case of a transfer of undertaking. According to the Working Environment Act Article 16-1, a condition for these rights to be applicable is that the undertaking must be an “autonomous entity, which retains its identity after the transfer”. The term is meant to implement the definition of transfer in Council Directive 2001/23/EC Article 1 No. 1 litra b and shall be interpreted in accordance with relevant case law from the Court of Justice of the European Union.

1. EMPLOYEES’ RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

The rights and obligations of the former employer ensuing from the contract of employment or employment relationships in force on the date of transfer shall be transferred to the new employer. The new employer is also bound by any collective pay agreement that was binding upon the former employer. This does not apply if the new employer, within 3 weeks after the date of transfer, declares in writing to the trade union that the new employer does not wish to be bound. The transferred employees have, however, the right to retain the individual working conditions that follow from a collective pay agreement that was binding upon the former employer. This shall apply until the collective pay agreement expires or until a new collective pay agreement is concluded that is binding upon the new employer and the transferred employees.

The employee’s right to earn further entitlement to retirement pension, survivor’s pension and disability pension in accordance with a collective service pension scheme shall also be transferred to the new employer. The new employer may, however, decide to make existing pension schemes applicable to the transferred employees.

An employee may oppose the transfer of the employment to the new employer. An employee who objects to the employment transfer must notify the former employer of this within the time limit specified in the information given to the employees (see below). The period may not be shorter than 14 days after the information is given.

Employees who have been employed for a total of 12 months over the last 2 years before the date of transfer, and who object to the transfer of employment, have the right to new employment with the previous employer for one year from the date of transfer, unless the employee is not qualified for the position. The right to new employment lapses if the employee has not accepted an offer of employment in a suitable position within 14 days after receiving the offer.

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

The previous employer and the new employer are obliged to discuss the transfer of the undertaking with the employees’ elected representatives as early as possible. This information shall include reasons for the transfer, date or proposed date of the transfer, the legal, economic and social implications for the employees, changes in circumstances relating to collective pay agreements, measures planned in relation to the employees, rights of reservation and preference and the time limit for exercising such rights. The same information shall also be given to the affected employees as early as possible. Most collective agreements also contain regulations in regard to information and discussion.

XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

The basic legal framework of collective bargaining and collective dispute resolution is set out in labour dispute legislation, which consists essentially of the 1927 Labour Disputes Act and the 1958 PSLDA. This legislation is based on the principle of freedom of collective bargaining and contains no specific limitations on the scope of bargaining issues.

A union, according to the Labour Disputes Act, is defined as “any associations of workers or workers’ associations when the association has the purpose and interests of promoting workers’ interests to their employers.” There is no requirement that the union have its own statutes, a board, etc. A union is, however, often a member of a larger association or confederation.

The two main unions are the LO (Norwegian Federation of Trade Unions), representing employees, and the NHO (Confederation of Norwegian Business and Industry), representing employers. Both unions are umbrella organisations and consist of a number of smaller unions.

The affiliated unions to LO are often vertically organised, including both blue and white collar workers, and cover both the private and the public sectors. They are actively involved in both political and judicial issues and have become powerful actors in Norwegian community and social life.

2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

The rights of trade unions are regulated in the Labour Disputes Act. Generally, trade unions have a right to enter into collective agreements. Collective bargaining agreements between employees and employers organisations are usually negotiated every other year. LO and NHO are involved in most of the collective bargaining agreements entered into in Norway and have developed the so-called Main Agreement. The Main Agreement is a framework agreement that contains the general rights and basic rules in the workplace.

The Main Agreement is incorporated into the first part of all collective bargaining agreements entered into by affiliated organisations. The Main Agreement obliges the parties to maintain industrial peace for the duration of the collective bargaining agreement, known as “the peace period”. This means that measures such as strikes and lockouts, etc., may not be employed during labour conflicts until the collective bargaining agreement has expired. Such action shall only be performed during the negotiations.

Disputes about the validity or content of collective bargaining agreements and disputes arising out of the collective bargaining agreements are heard by a separate tribunal, the Labour Court.

3. TYPES OF REPRESENTATION

Employee representatives to represent the organised employees shall be elected at every enterprise where the enterprise or the employees so demand. At enterprises with up to twenty-five employees, two employee representatives may be elected.

A. NUMBER OF REPRESENTATIVES

The number of employee representatives at enterprises with over 25 employees shall be:

| | |
|--------------------------|-----------------------------|
| from 26 to 50 employees: | 3 employee representatives |
| from 51 to 150: | 4 employee representatives |
| from 151 to 300: | 6 employee representatives |
| from 301 to 500: | 8 employee representatives |
| from 501 to 750: | 10 employee representatives |
| over 750: | 12 employee representatives |

B. APPOINTMENT OF REPRESENTATIVES

Employee representatives shall be appointed from among workers of recognised ability, with experience and insight into working conditions at the enterprise. Whenever possible, they shall have worked at the enterprise or in the company as a whole for the last 2 years. Employees who act as the employer's representative to a large extent, for instance employees in such positions of particular trust as manager or personal secretary to the management, or who represent the employer in negotiations or decisions concerning wage and employment conditions for subordinate personnel, may not be elected as employee representatives. Elections are for one calendar year. The chairperson, vice-chairperson and secretary may be elected for 2 years.

4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

Employee representatives shall be recognised as the representatives and spokespersons of the

organised employees. Employee representatives have the right to comment on matters that concern the entire workforce or groups of employees in so far as this is not precluded by a collective agreement. It is a precondition that whenever they consider it necessary the shop stewards will submit questions to their fellow workers before reaching decisions. The enterprise is entitled to an answer without undue delay.

Employee representatives have the right to deal with and to try to settle amicably any grievance individual employees may have against the enterprise or the enterprise may have against individual employees. When employee representatives have a matter to discuss, they shall address themselves directly to the employer or the employer's representative at the place of work.

They are also entitled to receive information and discuss with the management of the enterprise matters relating to the financial position of the enterprise, its production and its development – matters immediately related to the workplace and everyday operations – general wage and working conditions at the enterprise, concerning matters of reorganisation of operations and concerning matters of company law, etc.

5. EMPLOYEES' REPRESENTATION IN MANAGEMENT

The Norwegian Constitution gives employees the right to participate in the management of the workplace. Both the Private Limited Liability Companies Act of 1997 and the Public Limited Companies Act of 1997 entitle employees to representation on the board of directors. A majority of the employees may demand one member of the company board as well as one observer along with a deputy representative if a company has more than thirty employees and they don't have a corporate assemble. If a company has more than fifty employees and they do not have a corporate assembly, a majority of the employees may demand that up to one-third and at least two of the company board members are employees' representatives along with their deputy representatives.

6. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

Safety representatives shall be elected at all undertakings subject to the Working Environment Act. At undertakings with less than ten employees, the employees and the employer may agree to a different arrangement. If so, the arrangement has to be in writing. Such arrangement may involve agreeing that the undertaking shall not have a safety representative.

Furthermore, undertakings that regularly employ at least 50 employees, shall have a working environment committee, wherein the employer, the employees and the occupational health service are represented. Working environment committees shall also be formed in undertakings with between 20 and 50 employees when so required by any of the parties at the undertaking.

The working environment committee shall make efforts to establish a fully satisfactory working environment in the undertaking. The committee shall participate in planning safety and environmental work and shall follow up on questions relating to the safety, health and welfare of the employees.

XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

The legal framework for social security is derived primarily from the National Insurance Act of 1997. Persons who work or are residents in Norway are, as a rule, obliged to be members of and to pay contributions to the Social Security Scheme. Employers have to pay social security contributions on wages and other remuneration that the employers have to report. The obligation to pay employer's social security contributions does not follow the membership of the employee and can apply even if the employer is not engaged in activity in Norway and even if the employee is not liable to pay taxes in Norway. The employer's social security contributions are stipulated as a percentage of the reported amount. The contributions are differentiated, with rates that vary between different geographical zones. Employees' social security contributions are stipulated as a percentage of personal income.

2. HEALTHCARE AND INSURANCES

The National Insurance Scheme covers a range of benefits including sick pay, work assessment allowance, disability pension, unemployment benefits, retirement pensions, survivor's pension, occupational injury benefits, healthcare allowance, benefits to single parents and benefits during pregnancy, birth, adoption and parental leave.

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

Minimum holiday rights for employees are outlined in the Holiday Act, which grants an employee a minimum right of 25 working days of holiday leave per year. The term "working days" includes Saturdays. Employees over 60 years of age are

entitled to an additional 6 working days of holiday leave. The holiday year runs from 1 January to 31 December. Many collective agreements grant extended holiday rights. Five weeks of holiday is now quite common in Norway.

As a general rule, an employee is entitled to 18 consecutive working days of holiday leave during the period 1 June and 30 September. An employee is also entitled to take the remaining seven working days of holiday leave together.

Holiday pay is earned the year before it is paid (the holiday year). Holiday pay is 10,2 percent of the wages paid during the earning year. The amount is normally 12 percent if an employee is entitled to five weeks' holiday under an individual or collective agreement. For employees over 60 years of age who are entitled to an additional week, the holiday pay is either 12,5 or 14,3 percent, depending on whether the employee is entitled to five or six weeks of holiday.

In addition, there are 10 (ten) public nonworking days per year.

B. MATERNITY AND PARENTAL LEAVE

Pregnancy leave: a pregnant employee is entitled to a leave of absence for up to twelve weeks during pregnancy. Absence because of sickness is regarded as sickness leave and shall not be deducted from the leave. The right to pregnancy leave is combined with the right to maternity benefits pursuant to the National Insurance Acts. Unlike the mandatory leave for six weeks after birth, leave during pregnancy is voluntary and may be used at any time during the pregnancy. However, according to the preparatory works, such leave shall be taken on a continuous basis unless practical circumstances make it necessary to split the leave period.

Maternity leave: after giving birth, the mother shall have a leave of absence for at least the first six weeks, unless she produces a medical certificate stating it is better for her to resume work.

Parental leave: parents have the right to a total leave of 12 months, including the right to pregnancy leave and the right to maternity leave. In addition, each parent has the right to 12 months of leave for each birth. The leave must be taken immediately after the parent's pregnancy leave and maternity leave.

Leave of absence to care for a child: in connection with childbirth, the father or co-mother of the child, is entitled to two weeks' leave of absence in order to assist the mother. If the parents do not live together, the right to leave of absence may be exercised by another person who assists the parent. Adoptive parents and foster parents shall be entitled to two weeks' leave of absence when taking over responsibility for the care of the child. However, this will not apply when adopting stepchildren or when the child is over 15 years of age.

Maternity leave, including compensation, lasts for a maximum of 59 weeks. 3 weeks before the birth and the first 6 weeks after birth are reserved for the mother, and are compulsory. 15 weeks are reserved for the father. If the father does not utilise the father's quota, the benefit period will be shortened accordingly as the quota may not be transferred to the mother. The remaining period may be shared by the parents in any way they see fit.

The employees have the right to compensation during maternity and paternity leave. The compensation is either 80 percent of the salary for 59 weeks or 100 percent for 49 weeks. Compensation during this period is covered by the National Insurance Scheme and covers the loss of income within an index maximum limit 6 times the base amount (G), (1G is currently NOK 96 883), but many public and private sector employers make up any difference between their employees' actual salary and the statutory entitlement. In addition, parents have the right to take a leave of absence for an additional year without compensation.

C. SICKNESS AND DISABILITY LEAVE

The employment contract, in principle, is about creating mutual obligations. However, when an employee has a right to leave due to sickness, he also has a right to sick pay (the salary is fully compensated), which is customarily split between the employer and the National Insurance Scheme.

The responsibility of issuing the sick pay is customarily split between the employer and the National Insurance Scheme (NAV). The employer is normally responsible for the payment of the compensation for the first 16 days of the employee's sickness leave, provided the employee has been employed at least four weeks (the qualifying period). Following the employer's period of responsibility, the National Insurance Scheme is responsible for the payment.

The employee's right to sick pay is conditioned by documentation. Provided the employee has been employed for a period of at least two months, he has a right to self-certification of sickness for a limited period. The certification may cover up to three calendar days at a time, and may usually be used up to four times a year. A medical certificate is required if the employee has not obtained the right to self-certification, if the sickness leave lasts beyond the period of self-certification, or if the employee has more than four periods of sickness leave in 12 months without medical certification.

Under the Working Environmental Act Section 15-8, the employee is protected against dismissal on the grounds of sickness leave, during the first 12 months after the beginning of the period of absence due to such reasons.

In principle, disability leave is not a concept recognised under the laws of Norway.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

Retirement pensions are divided into three levels:

Level 1: retirement pensions from the National Insurance Scheme ensure an income in old age. Drawing from a retirement pension can begin the

month after a person turns 62, as long as sufficient pension rights have been accumulated. A person who is retired can work as much as he or she wants without their pension being reduced. They accumulate rights to a retirement pension when they work or otherwise have a pensionable income before turning 75. The pension rights are adjusted in accordance with the general life expectancy of the population.

Level 2: employers must provide mandatory occupational pensions in addition to retirement pensions. Therefore, at least 2 percent of an employee's gross income is paid into pension funds.

Level 3: private savings, irrespective of employment and the Norwegian pension scheme.

Kari Bergeius Andersen
Partner,
Storeng, Beck & Due Lund (SBDL)
kari.andersen@sbdl.no
+ 47 22 01 70 50



STORENG, BECK & DUE LUND (SBDL)

NORWAY

Storeng, Beck & Due Lund (SBDL) is a commercial law firm based in Oslo, Norway, focusing on employment and labour law. The Legal 500 and Chambers and Partners recommend the firm and its lawyers. SBDL represents national and international businesses, employers, labour unions, governmental organisations, municipalities as well as individuals, which means that their lawyers possess a unique understanding of employment law.

As employment law experts, SBDL has considerable experience in negotiations, mediation and proceedings before the courts for both employees and employers. They can therefore offer valuable insight in negotiations beneficial to both sides. Their legal experts provide legal advice on all aspects of the planning and implementation of workforce reductions, outsourcing and matters related to business acquisitions. They assist employers in legal issues relating to competition clauses and drafting of compensation agreements, including option agreements and employment contracts.

This memorandum has been provided by:

Storeng, Beck & Due Lund (SBDL)

St. Olavs gate 27 | P.O. Box 1234

Vika, 0110 Oslo

Norway

+ 47 22 01 70 50

www.sbd.no

CONTACT US

For more information about L&E Global, or an initial consultation, please contact one of our member firms or our corporate office. We look forward to speaking with you.

L&E Global
Avenue Louise 221
B-1050, Brussels
Belgium
+32 2 64 32 633
www.leglobal.org





L&E GLOBAL

an alliance of employers' counsel worldwide

This publication may not deal with every topic within its scope nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice with regard to any specific case. Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on this document alone. For specific advice, please contact a specialist at one of our member firms or the firm that authored this publication.

L&E Global CVBA is a civil company under Belgian law that coordinates an alliance of independent member firms. L&E Global does not provide client services of any kind. Such services are solely provided by the member firms in their respective jurisdictions. In certain circumstances, L&E Global is used as a brand or business name in relation to and by some or all of the member firms. L&E Global CVBA and its member firms are legally distinct and separate entities. They do not have, and nothing contained herein, shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners or joint ventures. No member firm, nor the firm which authored this publication, has any authority (actual, apparent, implied or otherwise) to bind L&E Global CVBA or any member firm, in any manner whatsoever.