Labour Law in Denmark

PricewaterhouseCoopers

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The Danish labour market is in many ways significantly different from what you may have experienced in other jurisdictions. If you have employees in Denmark, it is extremely important to know both the legal obligations imposed on you as an employer and your rights in relation to the employees. The purpose of this booklet is to give you an overall idea of the Danish labour market and to point out some of the aspects you need to consider as an employer in Denmark.

Characteristics of the Danish Labour Market

Historically, the labour market parties, i.e. the trade unions and the employers' associations, have played a very active and significant role in the development of the labour market. In 1899, the employers' associations formally acknowledged the workers' right to organise in trade unions, and, in return, the trade unions acknowledged the employers' right of management. This is referred to as the September Compromise.

The September Compromise is still considered the foundation of the labour market today where the vast majority of employment terms and working conditions are determined by agreement between the labour market parties as opposed to statutory regulations. As a consequence, there are relatively few statutory labour and employment rules in Denmark, and the statutory rules that do exist are often the result of EU legislation.

The Danish labour market is characterised by a high unionisation rate. In January 2009, approximately 2 million employees were members of a trade union, equivalent to 72% of the total work force in Denmark.

Types of employment

When hiring an employee it is important to determine the legal status of the employee. There are 3 groups of employees: Executive officers, salaried employees (white-collar) and workers (blue-collar). The legal status of the employee in question is important because it determines the legal framework of the employment. Whereas there are only very few rules applicable to executive officers, other employees are protected by a number of statutory rules from which deviation cannot be made to the detriment of the employee.

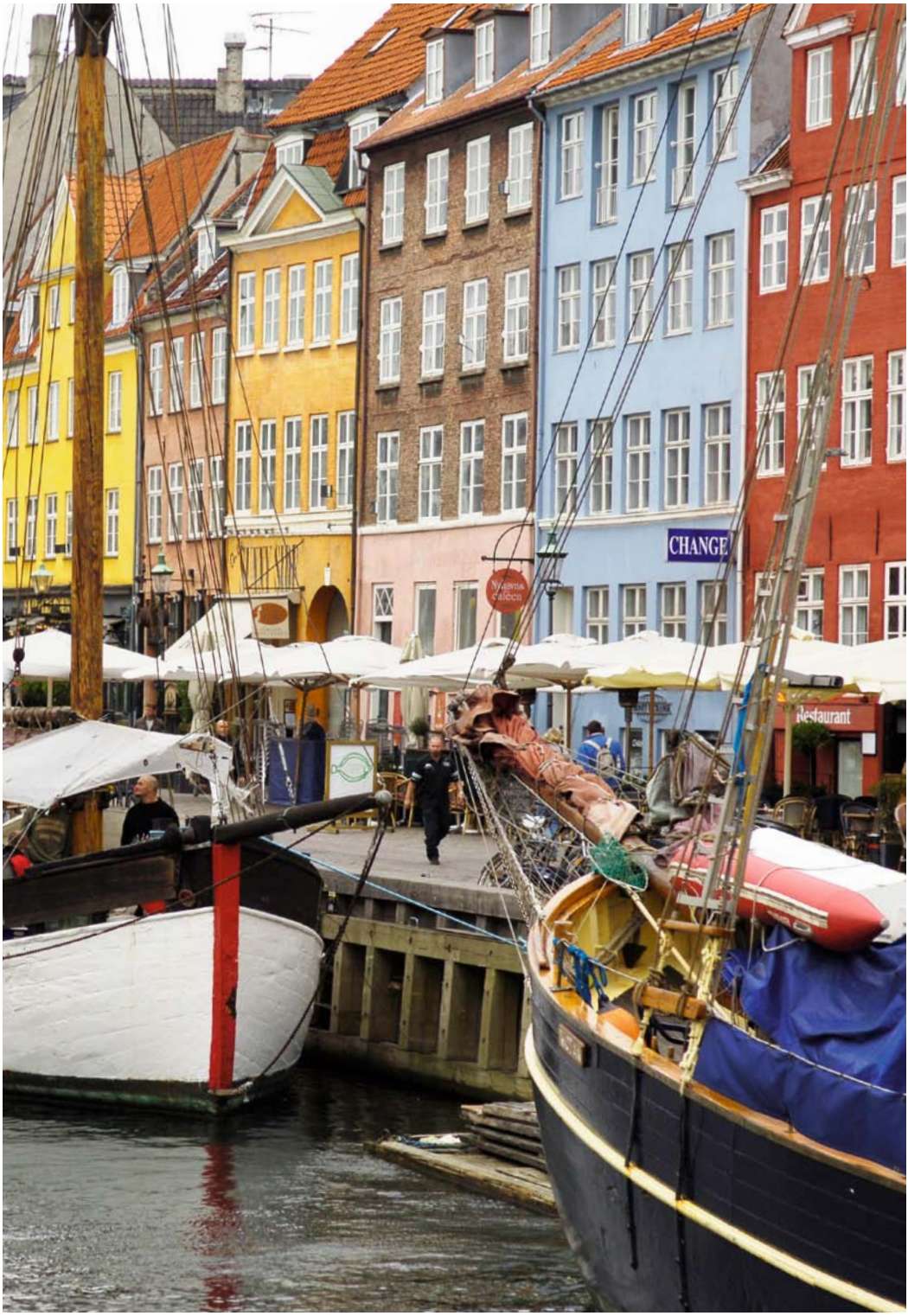
When determining the terms of employment it is therefore necessary to know the statutory rules that must be complied with in order to avoid employment terms that are not in compliance with applicable law.

Collective bargaining agreements

Because of the important roles of the labour market parties, there are many collective bargaining agreements in force on the Danish labour market. Typically, a collective bargaining agreement applies to a specific area of work, e.g. office work, technical work, the industry, etc. A collective bargaining agreement contains employment terms such as wage, salary, working hours, overtime pay, holidays, pension, notice periods, etc.

An employer may become a party to a collective bargaining agreement in 3 ways: (1) Through membership of an employers' association, (2) by making a collective bargaining agreement directly with a trade union, or (3) by signing an adoption agreement to the effect that the employer undertakes to comply with the terms and conditions of a specific collective bargaining agreement.

An employer who is not a party to a collective bargaining agreement may at any time be presented with a request from a trade union that a collective bargaining agreement be made. It is entirely up to the employer if he wants to be bound by such a collective bargaining agreement, and he may refuse such a request in which case the trade union may initiate industrial action against the employer. In practice, it will often be extremely difficult for an employer to conduct his business if the trade union has initiated industrial action. In many cases, it is advisable to meet the request.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It is important to note that once you are a party to a collective bargaining agreement, it is in practice very difficult to be released from the collective bargaining agreement.

When entering the Danish labour market, an employer should therefore be aware of the options in relation to the trade unions, and how a possible request for a collective bargaining agreement should be handled.

Act on the employers' obligation to inform the employee of the employment terms

According to the Act on the employers' obligation to inform the employee of the employment terms ("Employment Contracts Act") an employer is under a legal obligation to ensure that the employee

receives written notification of all essential employment terms. Failure to comply with the Employment Contracts Act could result in the employer becoming liable to pay compensation to the employee in question. Such compensation could amount to 13 weeks' salary, under aggravating circumstances the amount could go up to 20 weeks' salary.

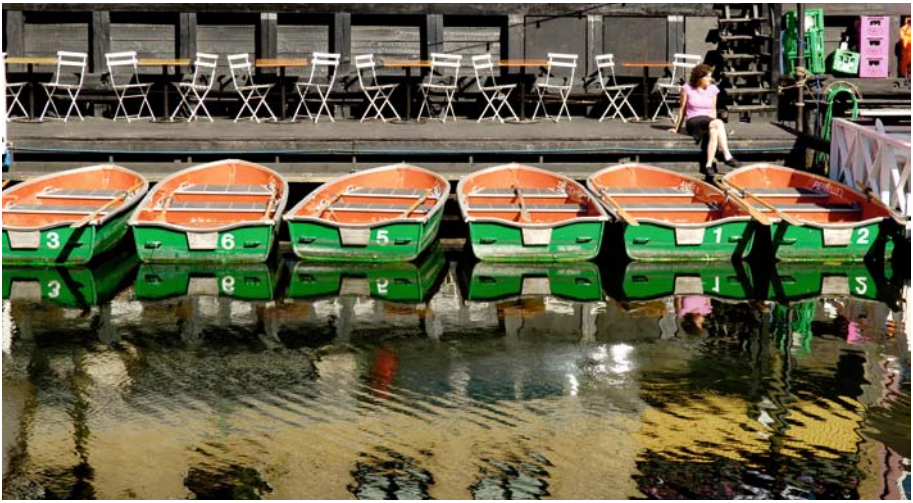
It is therefore important that the employment contract or the statement of employment terms is in compliance with the Employment Contracts Act to avoid any potential liability.

Holiday

The Holiday Act applies to all employees in Denmark except executive officers. For some employees the holiday rules have been implemented in the collective bargaining agreement applicable to the employment. In such case, the employees' holiday rights are determined by the collective bargaining agreement and not by the Holiday Act.

All employees are entitled to 25 holidays annually. Whether the employee has qualified for salary during the holiday depends on whether (s) he has been employed by the employer during the preceding year. The Danish Holiday system is complex and contains a number of mandatory rules from which deviation cannot be made to the detriment of the employee. Failure to comply with the Holiday Act is punishable by a fine.

As an employer it is necessary to have good knowledge of the holiday system in order to get an exact overview of both rights and obligations arising from the Holiday Act. This will help you minimise the costs connected with the employees' holidays.



Pregnancy and childbirth

A pregnant employee is entitled to absence from work from 4 weeks before the expected birth. After the child is born, the mother is entitled to 14 weeks' maternity leave during which period the father may take 2 weeks' paternity leave. After the first 14 weeks, each parent is independently of each other entitled to parental leave for 32 weeks that may be prolonged by up to 14 weeks. Each childbirth gives the parents a legal right to 52 weeks maternity pay from the government.

Save for female salaried employees who are entitled to 50% of their salary for a total period of 18 weeks, there is no statutory right to salary during absence due to maternity, paternity or parental leave. Whether the parents are entitled to salary during leave depends on the terms of employment as determined either by individual agreement or collective bargaining agreement. It is becoming increasingly more usual for employers to pay salary during leave – in full or in part – for a certain period of the leave. The rules on leave in connection with pregnancy and childbirth are very flexible, and how the leave is to be taken is to a

very wide extent determined by the parents. As a result of this flexibility, the rules may also be highly complex to understand and apply.

There is no prohibition as such against terminating the employment of a pregnant employee or an employee on leave; however, the employer is not allowed to let the pregnancy/birth have any influence on the decision to terminate the employment. The burden of proof rests with the employer and is in fact very difficult to satisfy. In conclusion, you should always be careful about giving notice of termination to a pregnant employee or an employee on leave without consulting your legal advisor beforehand. An employer who is not able to prove that the termination was in no way related to the pregnancy/birth will be liable to pay compensation. Such compensation will at least amount to 6-9 months' salary, possibly a higher amount.

Working time

The average working week in Denmark should not exceed 48 hours. Save for this rule, there are no statutory rules on working time in Denmark. Most collective bargaining agreements contain rules on working hours, and the normal number of working hours is 37-37½ per week. If no such collective bargaining agreements apply to the employment, the parties are in principle free to determine the working hours through agreement. In practice, most employers follow the norm of the collective bargaining agreements.

Termination of employment

Compared to many other jurisdictions, the Danish rules on termination of employment are relatively uncomplicated. The notice period is normally determined by the Salaried Employees Act, collective bargaining agreement or the individual employment contract.

Salaried employees are entitled to a notice period of 1-6 months, depending on the length of employment. In some cases the statutory notice period has been prolonged by individual agreement. The notice periods contained in the collective bargaining agreements vary a great deal, but are typically shorter than those of the Salaried Employees Act.

In relation to some employees, the termination must be reasonably justified either in the conduct of the employee or the circumstances of the employer. Unjustified terminations may cause the employer to become liable to pay compensation to the employee. Before effecting a notice of termination it should be clarified whether the termination will be lawful and the possible consequences of a termination.

Non-discrimination

Under Danish employment law, it is unlawful to discriminate on the basis of the following criteria: Gender, race, colour of skin, religion or religious belief, political belief, sexual orientation, age, handicap, national, social or ethnic origin. The law prohibits both direct and indirect discrimination. As an employer it is important to know the rules in order to avoid non-compliance with the law.

Indirect discrimination occurs where an apparently neutral criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age or a particular sexual orientation at a particular disadvantage compared with other persons, unless the criterion or practice is objectively justified by a legitimate aim.

The prohibition of discrimination applies to all aspects of the employment and must therefore be incorporated in the employer's ordinary employee administration and the exercise of the right of management.

Failure to comply with the Discrimination Act is punishable by a fine or compensation to the employee.

Redundancies

Depending on the number of employees to be made redundant, the Collective Redundancies Act may be applicable. According to this act, the employer is under an obligation to inform and consult the employees before effecting the contemplated redundancies. The act stipulates the type of information to be given to the employees and when the information must be given. The length of the information and consultation procedure depends on the number of employees affected.

Rules on redundancies have also been incorporated in many collective bargaining agreements. An employer who is a party to a collective bargaining agreement containing rules on collective redundancies is obliged to comply with the collective bargaining agreement instead of the statutory rules. The procedure to be followed may vary from one collective bargaining agreement to another.

Before initiating collective redundancies it is therefore very important to identify the procedural rules to be followed in order to comply with applicable law.

Employees' rights in connection with transfers of undertakings

Council Directive 2001/23/EC on safeguarding of employees' rights in the event of transfers of undertakings (Acquired Rights Directive) has been implemented in Danish law through the Transfer of Undertakings Act. The Directive contains minimum requirements, and the national laws of the member states therefore vary from jurisdiction to jurisdiction.

In order to understand and apply the Danish rules, thorough knowledge of the very comprehensive Danish case law is essential. The general principle of the Danish rules is that all rights and obligations vis-à-vis the employees are transferred to/from the transferor to the transferee along with the business or undertaking. This means that as a general rule the transferor will be released from his employer duties and the employees will therefore have to present any claim to the transferee even if the claim dates back to a period before the transfer. In exceptional cases, the transferor and the transferee may be liable jointly and severally via-à-vis the employees.

Our HR Law Department at PricewaterhouseCoopers in Denmark offers professional HR legal advice. Our services are provided by attorneys and legal advisers who have many years of experience of dealing with challenges within the area HR law. The HR legal services we provide comprise i.a. recruitment of employees, holiday and maternity leave, dismissal issues, restructuring or rationalisation among the employees and protection of employer's intellectual property right and competitive position.

If you require further information or would like to contact us for an informal meeting about the HR legal challenges your company is facing, please contact:

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