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Norway

Employment and Labour Law

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Norway.

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Norway: Employment and Labour Law

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

An employer must have a valid reason to lawfully terminate an employment relationship in Norway. According to Section 15-7 of the Norwegian Working Environment Act, termination of employment must be objectively justified in reasons related to the employee, employer or the undertaking in order to be valid. In the event of a dispute about the termination, the employer must be able to substantiate that such cause exists.

The most common reasons related to the undertaking is redundancy processes i.e. due to the financial situation or production needs, as well as discontinuation of certain positions/tasks making certain positions redundant. Such reasons may constitute a valid reason for terminating the employment. In short, the following requirements must be fulfilled for a termination due to redundancy to be valid:

- The employer must be able to document the business rationale for the redundancy, and alternatives to workforce reductions should be explored.
- The selection of redundant employees must be made from a relevant pool of employees. The general rule is that the entire legal entity in Norway is the relevant selection pool – not only affected positions or departments. Norwegian courts have in certain circumstances accepted that the selection pool can be limited to certain locations or departments provided that there is valid reason to limit the selection pool. This implies that only employees in those locations/departments are included in the selection of redundant employees.
- The selection of redundant employees must be based on fair and reasonable selection criteria, which must be determined before the process is initiated. Such selection criteria must be applied fairly, objectively and in a manner which can be documented and verified.
- Common selection criteria are seniority/length of service, competence (formal qualifications and experience) and weighty social considerations. Applicable collective bargaining agreements may impose restrictions on the company's use and weighting of selection criteria.
- The domino principle applies when selecting redundant employees, which implies that it is not necessarily the employees holding positions that will be terminated that are made redundant. Such employees can compete for other remaining positions in the entity, potentially making other employees redundant instead.
- Although the current position of an employee is removed, the employer is obliged to investigate whether there is other suitable work within the undertaking or the group (if applicable) that the relevant employee(s) is/are qualified for.
- The employer must also make an individual assessment for each employee at risk of being terminated before the final decision is made.
- The requirement that the termination must have a just and reasonable cause, also implies that the employer must comply with certain procedural requirements in connection with termination of employment, in addition to the assessments outlined above. This includes, inter alia, consultation meetings with the employee representatives and individual discussion meetings with the affected employees (see response to question eight below).
- Additional requirements may follow from applicable collective bargaining agreements.

In case of termination due to reasons related to the employee, the requirement for justifiable cause means that the reasons for termination must be legitimate, that the circumstances are of sufficiently significance. Typical reasons for termination of employment due to circumstances relating to the employee is underperformance (over a longer period), cases of disloyalty, refusal of orders, harassment, illegitimate absence from work or fraudulent behaviour etc. The interests of both the employee and the employer must be weighed against each other in an individual assessment and the consequences for the relevant employee. If a termination has a particularly severe impact on the employee, the employer is obligated to take this into account when making a decision.

The employer can also, e.g. in situations where there are strong social reasons or the breach of trust only relates to certain types of positions, have an obligation to investigate whether there is other suitable work the employee may be qualified for. The termination must –

after a concrete and overall assessment – not be viewed as a disproportionate reaction (compared to, e.g. issuing a written warning).

An employer may dismiss an employee with immediate effect (summary dismissal) if the employee is guilty of gross breach of duty or other material breach of contract. Typical reasons for summary dismissal may be clear cases of refusal to comply with orders, illegitimate absence of significance, severe cases of harassment or repeated behaviour, serious breaches of the duty of loyalty, private business during working hours, violence or threats of violence, embezzlement, theft etc. The threshold is generally high, and the employer carries the burden of proof. The summary dismissal must be proportionate, and the employer must consider whether the purpose can be achieved by a termination with notice, which is considered a less burdensome reaction.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

A collective redundancy arises where notice of termination is given to ten or more employees within a 30-day period without being warranted by reasons related to the individual employees, cf. Section 15-2 of the Working Environment Act. Other forms of termination of contracts of employment not warranted by reasons related to the individual employee shall be included in the calculation, provided that at least five persons are made redundant. The threshold of ten employees will apply individually to all separate legal entities, but there might be a risk that several entities in one group might be assessed together if they de facto work closely together.

The Working Environment Act imposes specific consultation and information obligations in the event of a collective redundancy. The employer must as early as possible consult with the employee elected representatives. This means that consultations must be held with the employee representatives before making any decision to start implementing the redundancy process and before commencing the selection of employees. The employer is obliged to enter into consultations even if the contemplated redundancies are caused by someone who controls the employer, such as the group management of a group of companies.

The employer must consult with employee representatives on mandatory topics as set out in Section 15-2 of the Working Environment Act, including but not limited to the reason for the redundancy, number of affected employees, selection criteria, potential severance packages etc. The objective is to reach an agreement to avoid collective redundancies or to reduce the number of persons made redundant. If the employer is considering closing down its activities or an independent part of them and this will involve collective redundancies, the possibility for further operations (including the possibility for activities being taken over by the employees) shall be discussed. The consultations shall also cover possible social welfare measures aimed, inter alia, at providing support for redeploying or retraining workers made redundant.

The employer must provide the employee representatives written information on all mandatory topics. Such information shall be given at the earliest opportunity and, at the latest, at the same time as the employer calls for a consultation meeting pursuant to the Working Environment Act Section 15-2.

Corresponding notification shall also be sent to the Norwegian Labour and Welfare Service (“NAV”). NAV must be notified of the collective redundancy at the same time as the employee representatives are summoned to the consultations. The employee representatives may comment on the notification directly to NAV. NAV may invite the parties to meetings to discuss the situation. The notice period will not take effect until, at the earliest, 30 days after notification has been sent. Hence, missing notification implies an economic risk for the employer as the terminations will be postponed.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

A business sale containing transfer of business (i.e. asset purchase, merger or demerger etc.) will constitute a transfer of undertaking under Chapter 16 of the Working Environment Act. Note that share purchases do not trigger the rules concerning transfer of undertaking. Chapter 16 implements the so-called Acquired Rights Directive, and the Norwegian regulations must be interpreted in accordance with case law from the Court of Justice of the European Union. Generally, the Norwegian legislation is similar to and contains the same elements as other EU/EEA countries, only with a few exceptions. The regulations are mandatory and cannot be derived from to the employees' disadvantage.

The transfer of undertaking regulations ensure that employees are not granted adverse terms and conditions

as a result of changes in the employer due to a transfer of business. A transfer cannot in itself constitute a valid reason for termination. This implies that the terms and conditions of the employment of affected employees are transferred unchanged to the new employer. The new employer is however entitled to change the terms and conditions of employment in the future in accordance with applicable law, to the same extent as the former employer.

The requirements concerning transfer of undertaking in the Working Environment Act imply that the transferring and acquiring companies have information and consultation obligations towards affected employees and their representatives concerning the transfer on mandatory topics. Affected employees must receive a transfer letter containing mandatory topics before the transfer can take place. Additional requirements regarding consultation and information may follow from collective bargaining agreements, but these will to a large degree correspond to the obligations set out in the Working Environment Act.

Further, Norwegian law on transfer of undertaking contains certain rules that elaborate the rules of the Acquired Rights Directive. Employees possess a right of reservation in the event of a business transfer, allowing them to oppose the transfer of their employment to a new employer. The right to reservation must be exercised within a deadline set by the current employer (minimum 14 calendar days). If the right is exercised, the right results in the termination of the employment relationship on the transfer date without further notice or notice period. Employees who utilize the right to reservation have a preferential re-employment with the current employer for a period of 12 months following the transfer date. The preferential right to re-employment only applies to employees who have been employed for at least 12 months during the last two years before the transfer date and only applies to positions for which employees are qualified.

The main rule is that by exercising the right of reservation, the employment will end on the transfer date. Norwegian case law has however stated that, under specific circumstances, employees may be entitled to continue their employment with the current employer if the business transfer leads to not insignificant negative changes in the employee's situation. This is an exception and may apply, for example, if the business transfer leads to the significant loss of pension accrual or significant increase of travel time.

4. Do employees need to have a minimum period of service in order to benefit from termination rights? If so, what is the length of the service requirement?

The termination rights explained in question 1 applies for all employees, regardless of their length of service with the employer. Additionally, the Working Environment Act provides rules on protection against termination of employment during trial period. These rules apply to employees employed with trial period. The trial period can be agreed for a period of up to six months.

For employees on trial period, the termination of employment must be on the grounds of the employee's lack of suitability for the work, or lack of proficiency or reliability. The aim is to give the employer opportunity to assess the employee's suitability for the work and to reduce the risk of wrongful hiring. The threshold for termination at these grounds is somewhat – not entirely insignificantly – lower than what generally applies.

5. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

The statutory minimum notice periods in the Working Environment Act are determined by the employee's age and length of service as follows:

a. Trial period: 14 days (unless otherwise agreed in writing or a collective pay agreement)
b. Up to five years of service: one month
c. Five to ten years of service: two months
d. More than ten years of service: three months
e. More than ten years of service and above the age of 50: four months
f. More than ten years of service and above the age of 55: five months
g. More than ten years of service and above the age of 60: six months

In practice, it is common for employees in Norway to agree to a notice period of 3 months, while a 6-month notice period is market standard for executive positions. The statutory minimum notice periods will prevail over contractual notice periods if the statutory notice period is longer. Note that employees fulfilling the requirements in e) to g) above, may in any case terminate the employment with three months' notice.

The notice period begins on the first day of the month following the notice being given. There are no formal requirements for an employee's resignation notice, although written notice is recommended. For employer, the notice of termination must be provided in writing, include specific information, and be delivered either in person or via registered mail in order to be valid. The notice period during trial period can be calculated from date to date.

6. Is it possible to make a payment to a worker to end the employment relationship instead of giving notice?

When an employer intends to terminate an employment, the company must comply with statutory requirements, including providing the required notice period and valid grounds for termination. The Working Environment Act does not allow for an employee to enter into a pre-agreement where the employee waives the employment protection rights against severance pay or other forms for financial compensation (save for the chief executive, as stated below in question 19). However, the employer and employee can mutually agree to enter into a termination agreement in connection with the termination of employment, which may include a payment in lieu of notice and/or garden leave. In such cases, severance pay is often a component of the agreement in return of a waiver for the termination agreement to be legally binding. There is no statutory guidance on the level of severance pay; this is commercial and subject to negotiations between the parties. Factors typically considered in these negotiations include length of service, future job opportunities, age, competence, and legal risks.

7. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during their notice period but require them to stay at home and not participate in any work?

The employer may offer the employee the option to be relieved of their work obligations during the notice period. However, the employer cannot unilaterally put the employee on garden leave during the notice period unless there is mutual agreement or in special and severe cases linked to employees with access to sensitive data moving to competitors. It is common to include garden leave provisions in termination agreements as part of an amicable solution concerning the end of employment.

8. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

There are several procedural requirements in the Working Environment Act that the employer needs to follow to achieve an effective termination of employment relationship.

There are formal requirements regarding notice letter itself needed for the validity of a termination notice. The employer must provide written notice, which must be delivered in person or sent via registered mail to the employee's specified postal address. This notice must contain mandatory information, including inter alia information about the employee's right to negotiate and pursue legal action, the right to remain in their position, and the applicable time limits for requesting negotiations, initiating legal proceedings, and remaining in their post. Additionally, the notice must identify the employer and the appropriate defendant for any legal matters.

If the termination of employment is related to circumstances concerning the undertaking, the notice must also include information about preferential rights at the employer and any group companies. If the employer is part of a group, the notice must specify which companies are included in that group at the time of termination.

Furthermore, there are additional procedural requirements that, while not strictly conditions for validity, are considered important regulations. These provisions are regarded as order regulations, and in the event of a dispute regarding the validity of a termination, any breaches of these provisions will be one of several factors taken into account when assessing whether the termination is objectively justified. Hence, it is recommended to comply with these requirements.

Before making a decision on terminating an employment, the employer must invite the employee to an individual discussion meeting. The purpose of this meeting is to explain the reasons for the potential termination and the employer's rationale behind it. The employee will have the opportunity to provide feedback and additional information during this meeting and may bring a representative along for support. After considering all relevant facts and completing the discussion meeting, and finalizing minutes of meeting, the employer will make a decision and may issue a notice letter. There are examples in case law where absence of discussion meeting have been decisive in determining that the

termination was unjustified, and thus invalid. In the case of termination due to inadequate performance, the employer must, before the discussion meeting, ensure sufficient documentation showing that the employee have been followed up and given the opportunity to improve within reasonable time.

Because fair selection of employees is a requirement in a redundancy process, additional procedural steps are typically necessary before the individual discussion meetings. The material requirements concerning the termination of employment in the event of redundancy process as set out in question 1 and 2 above, contain procedural elements that must be complied with for the termination to be valid. Required procedural steps include resolution from competent corporate body, consultations with employee representatives, mapping meetings of employees' competence etc. before preliminary selection etc.

9. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?

If the employer fails to adhere to the prescribed procedure for termination, the general rule is that the notice of termination will be deemed invalid. Lack of complying with the formal requirements of the notice letter, will automatically lead to the termination to be considered invalid provided that the employee institutes legal proceedings within four months from the date that notice is given. There are exceptions in such cases where special circumstances render automatically invalid termination to be clearly unreasonable. This exception is primarily aimed at preventing abuse, particularly in situations where the employee has no genuine interest in maintaining the employment relationship. Regardless, the employee may still be entitled to compensation for any damages incurred as a result of the improper termination process.

Lack of complying to the other requirements does not automatically lead to invalidity but may affect the assessment of whether the termination of employment is objectively justified. Norwegian courts have shown increasing scrutiny on how employers carry out the termination process, and all steps of the process should therefore be carried out and properly documented. Poor case handling may itself lead to the termination being considered invalid.

It should be noted that if an employee wishes to contest the validity of the termination, he/she may claim negotiations and instigate legal proceedings.

Negotiations must be demanded within 14 days from receiving the notice of termination, and legal proceedings must be instigated within eight weeks after the conclusion of the negotiations or after notice of termination was given if negotiations have not been held. If the employee only claims damages, the deadline for instigating legal proceedings is six months.

If the employee contests the termination, the employee is as a main rule entitled to remain in the position until the dispute is finally settled by the courts, which implies a right to work and receive salary. If the employee is successful in his/her claim of unlawful termination, the employee will normally be awarded his/her job back and damages for both economic (including suffered and future loss) and non-economic loss. The employee may also only claim damages in disputes of the validity of the termination.

If termination agreement is entered into as an alternative to termination, the employee will waive his/her rights to sue for unlawful termination and lawsuit may then be avoided. In redundancy processes, it is also common that the employee in the termination agreement also waives the preferential right to re-employment in the employing-entity and the group.

10. How, if at all, are collective agreements relevant to the termination of employment?

The regulations governing the termination of employment are primarily outlined in the Working Environment Act. However, collective bargaining agreements may include additional provisions that enhance employment protection. For instance, the Basic Agreement between the Confederation of Norwegian Enterprise (NHO) and the Norwegian Confederation of Trade Unions (LO) establishes supplementary termination of employment procedures for employee and union representatives and includes specific provisions regarding length of service as a selection criterion and notice period. In addition, certain collective bargaining agreements state that union representatives have certain protection in termination processes, implying that the employer must take specifically into account the union representative's role in the company and organisation before making a decision on termination.

11. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to

validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

The employer does not need to obtain permission from a third party to validly terminate an employment relationship. However, in the case of collective redundancies, the employer is required to notify NAV, as detailed in the response to question 2, in which the terminations will not be effective until such notification has been issued. Further, certain collective bargaining agreements contain specific procedural requirements if an employee/union representative is terminated, i.e. that the termination of the employee/union representative must be discussed in a work committee (containing members from the employer and employees/union members). Failure to adhere to these procedural requirements may lead to delays in the termination process.

12. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

The employee's right to protection against discrimination and harassment (including sexual harassment) is governed by the Working Environment Act and the Equality and Anti-Discrimination Act. The Working Environment Act addresses cases of direct and indirect discrimination based on political views, trade union membership, or age. In addition, the rules on discrimination in the Working Environment Act also applies to employees employed part-time and/or on temporary basis. The Equality and Anti-Discrimination Act covers discrimination related to gender, pregnancy, leave of absence in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity or gender expression.

Both the Working Environment Act and the Equality and Anti-Discrimination Act explicitly prohibit direct and indirect discrimination. Harassment or sexual harassment on the basis of any of the categories as set out above, is prohibited and regarded as discrimination. This protection applies to all aspects of the employment from recruitment to termination, including appointments, training, working conditions, and other employment-related aspects.

Direct or indirect discrimination occurs when there is direct or indirect differential treatment that is not considered lawful. Direct differential treatment occurs when an individual is treated less favourably than others in similar circumstances due to a discriminatory ground, for example ethnicity. In essence, it refers to situations where individuals who are otherwise comparable are treated differently solely based on one of the specified grounds for discrimination.

Indirect differential treatment, on the other hand, involves seemingly neutral provisions, conditions, practices, actions, or omissions that inadvertently place certain individuals at a disadvantage compared to others due to the aforementioned factors. This means that individuals with different needs and circumstances may be treated uniformly, but the outcome of such equal treatment results in discrimination.

The indirect or direct differential treatment is lawful and not considered discrimination if one of the following two exceptions are met. The first exception pertains to lawful differential treatment, which must meet several criteria. Firstly, it must have an objective purpose. Secondly, it should be a suitable means to achieve that purpose. Additionally, it must not result in a disproportionate negative impact on the individual or individuals subjected to the differential treatment. In the context of working life, it is also necessary that the characteristic in question is of decisive importance to the work or profession.

The second exception relates to positive differential treatment, which must also adhere to specific requirements. The positive differential treatment should be designed to promote the purpose of the Equality and Anti-Discrimination Act and must be proportionate. Further, positive differential treatment should cease once its intended purpose has been achieved.

13. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

If a worker has been discriminated or harassed in the context of termination of employment, the termination of employment will most likely be considered invalid.

In addition, the employer may be liable for damages under the Working Environment Act and the Equality and Anti-Discrimination Act. The affected worker has the right to claim damages for economic and non-economic loss, regardless of whether the employer can be held liable for the discriminatory act or the harassment. This means that the employer may be held responsible even if they did not intend to discriminate. The damages will cover any financial losses resulting from the discrimination,

including lost wages, benefits, or other economic damages incurred as a result of the discriminatory termination. In addition to financial losses, the employee may also be entitled to compensation for non-economic loss, such as emotional distress or suffering. The amount of this compensation will be determined based on what is deemed reasonable, taking into account the extent and nature of the damage, the circumstances of the parties involved, and other relevant circumstances of the case.

14. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

Employees employed on a temporary and part-time basis are protected from discrimination under Chapter 13 of the Working Environment Act. This implies that there is a prohibition from discrimination on these bases, any provision violating this prohibition is invalid, right to claim damages for economic and non-economic loss etc. (see question 12 and 13 above).

Further, the Working Environment Act provides special protection against termination during pregnancy or following the birth or adoption of a child. Pregnant employees cannot be terminated solely on the grounds of pregnancy. If a termination is given from the employer, it will be presumed to be due to pregnancy unless the employer can provide highly probable alternative grounds for the termination. Further, for employees on pregnancy leave, leave of absence to care for a child, maternity leave or parental leave for up to a year, any notice of termination from the employer, will not take effect during their absence, provided the employer is aware of the reason for the absence or the employee promptly notifies the employer of the reason. If a lawful termination is given during this period, the notice remains valid but is extended by the duration of the employee's leave. Moreover, an employee who is wholly or partly absent from work due to sickness may not be terminated for that reason during the first 12 months after the first day of the sick leave.

15. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Any form of retaliation against individuals who report censurable conditions in line with the Working Environment Act and/or the employer's whistleblowing policy is prohibited. Retaliation is defined as any unfavourable act, practice or omission that is a consequence of or a reaction to the fact that the worker did report an issue of concern, including termination of employment. Employees who are hired in from staffing agencies enjoy the same protection from the company hiring-in.

Further, in cases where the employees have reported externally to the media or the public, the following requirements must be met in order to be protected by the prohibition of retaliation; the employees must be in good faith regarding the content of the report, the issues are of public interest, and that the issues have been first reported internally or there are reasons to believe that internal whistleblowing would not be appropriate.

16. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

In such cases, termination of employment with offer of suitable alternative employment, will only be valid if the material and procedural requirements for termination of employment due to redundancy are met, as outlined in the response to question 1 and 2. Without complying with these requirements, such a termination would be deemed a circumvention of the statutory requirements for termination of employment and, as a result, would be considered invalid. It should be noted that the threshold for valid cause in such cases, is somewhat lower compared to redundancy processes where employees are not provided with a new offer of employment. In Norway, it is more common to implement redundancy processes, rather than terminate the employment and an offer re-engagement with less favourable terms.

17. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

Generally, there are no statutory provisions that explicitly restrict the use of AI in recruitment or termination decisions, and there have not yet been any court cases addressing this issue.

However, there are inherent risks associated with using AI

in termination processes. Automated decision-making carries the risk of relying on incorrect factual information. In such cases, employers are required to conduct individual assessments. Norwegian law mandates that specific, discretionary evaluations be made in termination decisions, and it is unlikely that the legal framework or courts would fully accept a scenario where a human is not involved in the final decision-making process. If these assessments are performed by AI, there is a risk that important nuances may be overlooked, potentially impacting the fairness and accuracy of the decisions made.

Use of AI may also, in certain circumstances, violate statutory provisions related to discrimination, procedural requirements, and data privacy rights. AI algorithms can introduce bias, potentially leading to discriminatory outcomes, such as the underrepresentation of women or a lack of diversity in hiring. If an AI model fails to provide clear explanations for its decisions, this can result in unfairness and a lack of transparency.

Further, the use of AI must comply with data protection regulations, meaning that sharing personal information with open AI sources could violate employees' rights to privacy protection.

18. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

Employees are entitled to receive ordinary salary and other benefits (i.e. pension contributions, insurance etc.) during the notice period and payment for the holiday pay earned up to the termination date. In addition, employees do not have statutory entitlements to any financial compensation beyond the notice period if the employment is terminated, such as severance pay or the like.

However, to mitigate risks connected with termination of employment made by the employer (i.e. right to remain in position, avoid disputes etc.), it is common to enter into mutual termination agreements with employees. Based on our experience, it is normally feasible to find an amicable solution within a total framework of 12 months salary (including notice period). However, the level of compensation is subject to negotiations and depends on individual circumstances, including age, competence, length of service, future job opportunities etc. It is also common to include garden leave during the notice period, outplacement support and covering legal fees in termination agreements.

19. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Yes, in connection with the termination of employment or after employment has ended, termination agreements can be agreed between the employer and the employee, in which the employee waives his/her rights in accordance with the law in return for compensation. This should be done in a written agreement. It is very common to enter into mutual termination agreements due to the strong employment protection in Norway, procedural and material requirements for termination and the employees' right to remain in their position in case of a dispute. Severance pay provisions are typically a significant component of termination agreements, and often together with garden leave. There are generally no restrictions on the content of the agreement between the parties. However, if the agreement is imbalanced, there is a risk that the agreement may be deemed unreasonable under Section 36 of the Contracts Act. Therefore, the employer must provide the employee with more than statutory entitlements, meaning salary during notice period, in termination agreements.

It should be noted that employers are generally prohibited from making prior arrangements with employees to waive their termination rights in exchange for compensation. An exception exists for the chief executive of the company, who may waive employment protection rights in return for severance pay.

20. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

Restrictive covenants are regulated by Chapter 14A of the Working Environment Act. A non-competition restriction is an agreement between an employer and an employee restricting the employee's ability to accept a position with another employer or to start, operate, or participate in other business ventures after the termination of their employment.

For the non-competition clause to be valid, it must be agreed in writing, and the covenant can only be enforced if and to the extent it is necessary to safeguard the

employer's particular need for protection against competition. The maximum duration for the non-competition restriction is 12 months after the expiry of the notice period. Upon invoking the non-competition clause, a written explanation with certain mandatory content is required and the employee must be compensated during the entire non-competition period. The compensation must at a minimum be to 100% of the employee's remuneration up to 8 G, and 70% of remuneration above 8 G (G being the National Insurance Basic amount currently as per 1 May 2024 equals NOK 124,028) The compensation can be capped at 12 G.

In cases of termination of employment, the employer is prohibited from invoking the non-competition clause if the termination is based on circumstances relating to the company, i.e. redundancy processes.

21. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Yes, the employer can require a worker to keep information relating to the employer confidential after the termination of employment, provided it is agreed upon in for example the employment agreement or in the termination agreement. It is common that such duty of confidentiality includes business secrets, know-how, technical and product knowledge, intellectual property rights, research and development, customer data, marketing strategies, business connections, and any information that could harm the employer or be exploited by third parties.

Additionally, the Norwegian Trade Secret Act establishes provisions to safeguard trade secrets, which apply regardless and in absence of agreement between the employer and the employee. According to the Trade Secret Act, the unlawful use or disclosure of trade secrets that employees have acquired in connection with their employment is prohibited. However, not all use of trade secrets is restricted; employees are allowed to apply their general knowledge and skills gained during the employment in future activities. Whether a particular use is lawful depends on an individual assessment on a case-by-case basis based on the interests justifying the protection of trade secrets, balanced against the interests promoting the dissemination of information, including innovation and employees' opportunities for career advancement.

22. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

The employers are based on mandatory law required to provide a written reference when an employee terminates their employment, regardless of reason for termination. The written reference must include the employee's name, date of birth, the nature of their work, and the duration of their employment. Employees who are dismissed with immediate effect are also entitled to a written reference; however, the employer may indicate that the employee was dismissed with immediate effect. It should be noted that there may be additional provisions regarding references outlined in collective bargaining agreements.

23. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

One of the most common difficulties faced by employers in Norwegian jurisdiction when terminating employment arise from a lack of sufficient documentation to support the grounds for termination. This issue is particularly prevalent in cases involving low performing employees, where the employer may not have made adequate preparations and provided feedback in writing (including warnings). To mitigate these challenges, employers should ensure that they maintain thorough records of employee performance, including regular feedback, performance reviews and potentially written warnings. A common mistake during redundancy processes is that employers lack adequate plan for the process, have limited time to complete it and fail to follow all the procedural requirements.

24. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

No, there are currently no planned legal changes regarding termination of employment in Norway. However, the past year, several changes in labour law legislation have been implemented, including that the employing entity must investigate whether there are any vacant positions among its group companies before making an employee redundant and that preferential right

to employment post-termination has been extended to group companies.

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