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

According to the Norwegian Working Environment Act ("WEA"), an employee is protected against unjustified termination of the employment relationship. The employer therefore cannot terminate the employee's contract unless there are justifiable reasons for such termination based on circumstances relating to the enterprise, the employer or the employee.

The specific situations when an employee can be dismissed with – or without – notice are not stipulated in the WEA. Termination of employment due to circumstances relating to the enterprise (redundancy) will in most cases be considered justifiable if it can be established that there is a long-term need for the enterprise to curtail operations, rationalise, restructure, or something similar. Case law has detailed further rules on the execution of rationalisation processes that should be carefully observed before a decision on such execution is made.

Termination of employment due to the employee's circumstances must be based on the employee's breach of contract or duties. In essence, the applicable provisions are meant to ensure that each individual employee's situation is considered and weighed against the employer's situation. The threshold for termination based on the employee's circumstances is high and the employer must document objectively justifiable reasons for the dismissal.

Summary dismissal (i.e. the employee must leave the workplace immediately) is only permitted if the employee has committed a gross breach of contract. Examples of breaches that may constitute grounds for summary dismissal are severe insubordination, the flouting of safety requirements, embezzlement or any similar serious situation.

A termination of employment that lacks justifiable reason may be ruled invalid by a court if requested by the employee, with the effect that the employment relationship continues.

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?

The WEA does not make any distinction between different kinds of redundancies in terms of justification for the termination. The threshold for having justifiable reason to terminate an employment contract is the same regardless of the number of employees being made redundant.

If the employer terminates the contracts of 10 or more employees within 30 days, this is deemed to be "collective redundancies" pursuant to the WEA, which triggers certain procedural rules. The number of employees leaving the company as a result of severance agreements within the 30-day period is included in the number of relevant terminations in relation to this statutory provision. Planned collective redundancies cannot take effect earlier than 30 days after the Norwegian Labour and Welfare Organisation has been notified. Furthermore, an employer that is considering collective redundancies is obliged to initiate consultations as early as possible with employee representatives. Any measures to avoid the unfortunate sides of dismissals should be consulted upon, and the employer is obliged to provide the employee representatives with all relevant information, including the number of planned terminations, the groups of employees affected, the timing of the dismissals, selection criteria etc., in writing.

3. What, if any, additional considerations

apply if a worker's employment is terminated in the context of a business sale?

Norwegian law regarding the rights of employees in the event of a transfer of a business activity or part of a business activity comply with the provisions set forth in the relevant Transfers of Undertakings Directive of the EU. A transfer of undertaking as defined in the directive does not constitute justifiable reason for terminating an employment contract. The statutory provisions therefore prohibit the employer from terminating the employment solely due to a transfer of undertaking. However, a sale of shares does not amount to a transfer of undertaking, and the relevant provisions on transfer of undertaking are thus not triggered.

4. 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 minimum length of notice for both the employer and employee is one month. However, most employment agreements in Norway typically specify a mutual notice period of three months. For employees employed for a trial period, the minimum notice period is 14 days.

Furthermore, a longer notice period may follow from statutory rules, based on age and seniority:

- Employees employed for at least five consecutive years – at least two months' notice.
- Employees employed for at least 10 consecutive years – at least three months' notice.
- Employees who have been employed for at least 10 consecutive years and are over 50 years of age – at least four months' notice,
- Employees who have been employed for at least 10 consecutive years and are over 55 years of age – at least five months' notice, and

Employees who have been employed for at least 10 consecutive years and are over 60 years of age – at least six months' notice.

5. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

Norwegian statutory law does not state any rules regarding the payment of compensation as a basis for terminating the employment contract. However, the employer may enter into an agreement with an employee according to which the employment contract is severed in return for the payment of compensation to the employee and/or garden leave (see question 6 below). The employee will always be entitled to payment for his/her notice period. This is not considered as severance payment.

The agreement can only be entered into in connection with a possible termination of employment. It cannot be agreed in advance in the employment contract that the employee is obliged to waive his/her rights under the WEA. However, this does not apply to the general manager position. A general manager may relinquish his/her rights against severance in the employment contract.

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

According to statutory provisions under Norwegian law, an employee has a right to work during the notice period. In connection with the issuance of the notice of dismissal, employees may however agree to relinquish their right to remain in their position throughout the notice period.

7. 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.

The procedure differs depending on whether the termination is based on circumstances relating to the employer (redundancies) or the employee.

Through case law and major collective agreements, a requirement has developed for there to be an information and consultation process involving elected employee representatives prior to the decision to reorganize a company being made by the board of directors. There is no mandatory requirement to inform and consult with employee representatives unless 10

employees or more are to have their employment terminated, the company is bound by collective wage agreements or has more than 50 employees. However, the court will always intensify the test of the "objectively justifiable reasons" if a redundancy process was not subject to consultations before the decision was made.

The selection of each employee to be dismissed must be based on a selection process where objectively justifiable criteria are applied. A selection circle and selection criteria must be established, upon consultation with employee representatives. The selection criteria must be objective and possible to verify. We regularly see the use of an overall assessment based on seniority, competence (both education and experience) and social circumstances. The employer must furthermore ensure that it has updated and correct information on each employee as regards the selection criteria. The selection process must be done in a conscientious way, with documentation on how each employee is considered for each relevant position in the selection circle, based on the selection criteria.

Before the issuance of a dismissal, the employer needs to notify the employer of an individual consultation meeting. This applies both where the background for the termination is redundancies and where it is related to the employee. The aim of the meeting is to ensure the employer has all relevant information before making the decision on termination. The employee is entitled to receive assistance in such discussions from an elected employee representative or another advisor.

The notice of dismissal must be in writing. It must be handed over to the employee personally or sent by registered mail. The notice must include information on the right to dispute the validity of the termination of employment, and additional information regarding

- the right to demand a negotiation meeting with the employer,
- the right to remain in one's post after the end of the notice period until a final ruling is made by the court,
- the right to claim compensation for damages,
- any preferential right if made redundant, and
- within what time period the various claims must be made against the employer or lodged in court by the employee.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

If the employer does not comply with the procedural rules, there is a high risk that the court will find that the process conducted by the employer was not justifiable and that the decision to terminate employment would not have been made if a fair and due process had taken place. In addition to continuing to be employed, the employee may claim compensation for his/her economic and non-economic losses.

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

Collective agreements will mainly be relevant with regards to the obligation to inform and consult with elected employee representatives as "soon as possible" and before any decisions affecting the employees are made. Furthermore, some collective agreements stipulate a stricter use of the seniority criterion when employees are made redundant. Additionally, some collective agreements provide employees enhanced preferential rights should the employer at a later stage need to recruit for positions the employee may be qualified for.

10. 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?

No approval from a government agency is required when terminating employment. However, the Norwegian Labour Welfare Organisation has to be notified if 10 or more employees are affected by a redundancy process (please see the answer to question 3 above).

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

The Norwegian Equality and Anti-Discrimination Act stipulates prohibitions against discrimination based on gender, pregnancy, leave of absence in connection with birth or adoption of a child, care responsibilities, ethnicity, religion, beliefs, disabilities, sexual orientation, gender identity, gender expression or age.

According to the WEA chapter 13, employees are also protected against discrimination based on political views, membership of a trade union or age.

Discrimination is prohibited at all stages – during the recruitment, course of employment and when terminating the employment.

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

The dismissal may be found invalid. Anyone that has been discriminated against or harassed may claim redress and compensation regardless of whether the employer can be blamed. The employee may also be entitled to non-pecuniary damages.

13. 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 on fixed-term contracts for more than a year are entitled to a written notification from the employer on the end date of their employment. Such information must be provided to the employee at least one month prior to the expiry of the agreed fixed-term period. If the employee is on a temporary contract for more than three years (as a substitute) or more than four years as a temporary employee (for instance project-based), he/she is considered as a permanent employee with all the protection against unfair dismissal.

Employees on family leave are protected against termination of employment on grounds related to such leave. The same applies to pregnant employees and employees on military service. Employees on sick leave cannot be dismissed on such grounds during the first year of the sick leave.

Employees who are elected employee representatives have additional protection against termination when employees are made redundant.

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

Pursuant to chapter 2 A of the WEA, a whistle-blower is protected against retaliation. If the employee submits information that gives reason to believe that retaliation has taken place, it shall be assumed that such retaliation has taken place unless the employer proves otherwise.

15. 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?

The employer cannot terminate an individual contract and offer a new contract on less favourable terms if the position is identical as before.

16. 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?

There are risks for applicants being discriminated based on race, gender, age, sexual orientation, religion etc. By relying on artificial intelligence there is a risk that applicants could be disqualified based on criteria which would be against the Norwegian Equality Anti-Discrimination Act.

The same will apply when employers carry through termination decisions. Artificial intelligence used to select employees to be made redundant involves risk for wrongful dismissals. A decision to terminate an employee is by law based on and overall assessment and artificial intelligence will in many cases not be sufficient or accurate to decide whether a dismissal is justifiable or not.

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

There are no statutory provisions regarding severance pay. In larger redundancy processes, many employers offer severance packages. Such severance packages are normally calculated based on the employee's monthly salary. The number of months paid for is often based on length of service (for instance one month's severance pay for each year of service) and/or type of job.

18. 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.

An employee may waive his/her rights by entering into a severance agreement. Employers tend to enter into such agreements as an alternative to starting a termination process, or if an employee disputes a termination. The conclusion of severance agreements is not regulated by the WEA. However, case law has underlined the importance of employees making an informed and voluntary choice to sign such an agreement, and that no pressure to sign has been inflicted. In the opposite case, a court may find that the severance agreement is to be viewed as a dismissal from the employer.

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

Under Norwegian law, it is possible to restrict or limit an employee's freedom to take up a position with a new employer or to commence, operate or participate in other undertakings following the termination of employment. To do so, the employer and employee must have agreed to a non-compete clause in writing before the termination. Such a clause is often included in the employment agreement. However, a non-compete clause may only be invoked in so far as it is necessary to safeguard the employer's particular need for protection against competition, and never for a period longer than 12 months following the termination of employment.

If the non-compete clause is invoked, the employee is entitled to his/her salary for the duration of the non-compete period, if the salary is less than 8 G (G = the national insurance basic amount, approximately NOK 111 000). For salary above this threshold, the employee is entitled to at least 70% of his/her salary. The compensation may be limited to 12 G. The employer may furthermore reduce the salary by up to 50% if the employee receives other remuneration during the non-compete period.

Such a non-compete clause can only be invoked if the employee resigns or is summarily dismissed or if the dismissal of the employee is objectively justified based on circumstances relating to the employee. A non-compete clause cannot be invoked if the employee is made redundant.

Importantly, the employer is obliged to give a written statement to the employee regarding whether and to what extent the non-compete clause will be invoked. The employer's particular need for protection shall be explained in the statement.

Such written statement must be provided within the following time limits:

- Within four weeks if the employee requests a written statement during the employment.
- Within four weeks if the employee resigns.
- Within two weeks if the employee is summary dismissed
- If dismissed due to circumstances relating to the employee, at the same time as the dismissal with notice is issued.

If the statement is not given within the limits stipulated, the non-compete clause is considered as lapsed.

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

Under statutory Norwegian law, an employee who has obtained knowledge of a trade secret in connection with his/her employment shall not exploit or communicate the secret. Furthermore, an employer may include a post-termination confidentiality clause in the employment contract or in a severance agreement.

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

The employee is entitled to a written reference from the employer. The reference shall as a minimum state the employee's name and date of birth, the nature of the work and the duration of the employment.

22. 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?

Any termination of employment due to circumstances relating to the enterprise may be contested by the employee, who can then claim a statutory right to remain in employment (in his/her position) until the question of the validity of the termination has been decided by a final court judgment. The employer may request an interim ruling stating that the employee should leave immediately, but unless a company is to cease all activities and wind up the entire business, the courts will normally rule that the employee is entitled to remain in employment.

The result of this statutory right is that many employees claim the right to remain in their post, which basically means that employees are entitled to continue working for the employer for a period of at least six to eight months after the expiry of the notice period. If a judgment in a lower court is appealed against, the "extended period of employment" imposed by this legislation may be substantially longer.

This causes employers to agree to severance packages in order to obtain efficient closure of the employment relationship even in cases where it is obvious that the employer had objectively justifiable grounds to dismiss the employee due to circumstances relating to the enterprise. Economically, this often makes the most sense. However, it does pose some fundamental concerns regarding providing such compensation to employees where the dismissal is based on strong evidence related to misconduct of the employee and the rub-on effect this may have to cases.

23. 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?

The government has proposed new legislation where the responsibility for some employment functions is applied to every Norwegian company that is part of a group of companies. This applies to employee job protection. I It is proposed that not only the employer, but the companies that form part of a group, are obliged to offer the employee other suitable work before termination. Additionally, group companies will be required to provide employees that have been made redundant from other group companies, priority to vacant positions after termination. If adopted, this will impact employers that are part of a group of companies and will necessitate close cooperation between such companies in any redundancy processes, as well as recruitment processes following such redundancy processes in another group company.

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