





Denmark



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SCOPE OF EMPLOYMENT REGULATION

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Laws applicable to foreign nationals

In general, the statutes regulating employment relationships apply to all persons working in Denmark, regardless of both:

- Their nationality and country of residence.
- Any choice of law in the employment contract.

Therefore, they also apply to foreign nationals working in Denmark. They include statutes on:

- Employment contracts (see *Question 5*).
- Working hours (see *Question 8*).
- Holiday entitlement (see *Question 9*).
- Leave (see *Questions 10 and 11*).
- Temporary workers (see *Question 13*).
- Non-discrimination (see *Question 15*).
- Information and consultation (see *Questions 24 and 25*).
- Transfers of undertakings (see *Questions 24 and 26*).
- Employers' use of non-solicitation and no-hire restrictions (see *Question 36*).

In addition, the Salaried Employees Act (*Consolidated Act No. 81 of 3 February 2009*) plays an important role. It protects salaried employees (which includes most white-collar employees).

However, as legislation has traditionally played a secondary role to collective bargaining agreements (CBAs), many statutes do not apply if a CBA containing rules on the subject of the statute in question covers the employment relationship.

Laws applicable to nationals working abroad

The employment statutes do not generally apply to Danish nationals working abroad. However, depending on various factors, some statutes can also apply to employees posted from Denmark to a foreign jurisdiction regardless of any choice of law agreement in the employment contract.

RESTRICTIONS ON MANAGERS AND DIRECTORS

2. Are there any restrictions on who can be a manager or company director?

Age restrictions

There are no general age restrictions on managers or company directors. However, registered managers and company directors of the following must be at least 18 years old:

- Public limited companies.
- Private limited companies.
- Foundations carrying out business activities.

Nationality restrictions

There are no nationality restrictions on managers or company directors.

RECRUITMENT INCENTIVES

3. Are any grants or incentives available for employing people? If so, please give details.

Various public grants (pay subsidies) are available to employers as an incentive for recruiting and training certain groups of people, for example:

- Unemployed people.
- People with a reduced capacity for work.
- Disabled people.

PERMISSION TO WORK

4. What prior approvals do foreign nationals require to work in your country?

Visa

Foreign nationals must generally apply for a visa to enter Denmark, unless they are:

- Nationals from the European Economic Area (EEA).
- Nationals from most North and South American countries (including the US and Canada).



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Procedure for obtaining approval. Employees must apply for a visa to the Danish Embassy or General Consulate of their country of origin or the country in which they have legally resided during the preceding three months.

Cost. The cost for a visa is usually around DKK450 (as at 1 August 2011 US\$1 was about DKK5.2).

Time frame. Visas usually take four to six weeks to obtain.

Permits

Foreign nationals (apart from EEA and Swiss nationals) must usually obtain both work and residence permits in order to work in Denmark.

Procedure for obtaining approval. Employees must generally obtain work and residence permits before entering Denmark. Employees must apply to the Danish Embassy or General Consulate of their country of origin, or the country in which they have legally resided during the preceding three months.

The permits are granted if substantial occupational or labour-related conditions warrant it and the salary and employment conditions correspond to Danish standards. However, special rules apply to employees qualifying for either the Positive List scheme (highly qualified employees) or the Pay Limit scheme (employees with a minimum annual salary of DKK375,000).

Cost. The cost for a work and residence permit is between DKK1,600 and DKK6,100, depending on the scheme under which the permit is applied for. The cost is DKK3,025 for a permit under the Positive List scheme and the Pay Limit scheme.

Time frame. Work and residence permits usually take about:

- One month for employees qualifying for a permit under either the Positive List scheme or the Pay Limit scheme.
- Three months for other employees.

REGULATION OF THE EMPLOYMENT RELATIONSHIP

5. How is the employment relationship governed and regulated?

Written employment contract

A written employment contract is recommended but not required. However, employees working at least eight hours a week on average, and whose periods of employment are intended to last at least one month, must be notified in writing of all material employment terms (*Employment Contracts Act (Consolidated Act No. 240 of 17 March 2010)*). This notification must be given to them within one month after the date on which their employment begins. At a minimum, the notification must include details regarding:

- The names and addresses of the employer and the employee.
- The place of work.

- The job title or position, or a description of work duties.
- The date of commencement of employment.
- In the case of temporary employment, the expected length of employment.
- Entitlement to paid holiday.
- Notice periods.
- Remuneration, including benefits-in-kind and pension contributions, and the intervals at which remuneration is paid.
- The standard daily or weekly hours of work.
- CBAs governing the employment.

The Employment Contracts Act contains additional minimum requirements for employees posted from Denmark to work in another jurisdiction. These employees must receive the notification before they are sent abroad and no later than one month after the date on which the employment begins.

Implied terms

Terms are implied into employment contracts by statute, CBAs and case law. Among the most significant are:

- The mutual duty of trust and confidence.
- The duty to give notice if there are material changes to employment terms.

A term can also be implied due to a custom or practice.

Collective agreements

CBAs with trade unions and employee representatives are very common in many industries and the majority of the Danish workforce is covered by a CBA. Therefore, employment conditions are to a wide extent regulated by CBAs, for example, hours of work, minimum pay, notice period, and so on.

6. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

All material changes to terms and conditions of employment must be notified to the employee with the employee's contractual notice before the changes can be implemented. Notice of material changes to terms and conditions basically constitutes a notice of termination accompanied by an offer to continue on new terms and conditions after the end of the notice period. It must be decided in each individual case if the changes in question qualify as material, but a change in pay will normally always qualify as material. If the changes are not material, they can normally be implemented without notice, or with only a few weeks' notice.

It must also be decided in each individual case if material changes to an employee's terms and conditions are objectively justified by the employer's circumstances. If not, the employee can be entitled to compensation for unfair dismissal (*see Question 18, Protection against dismissal*).



MINIMUM WAGE

7. Is there a national (or regional) minimum wage?

There is no statutory minimum wage. CBAs often set out minimum wages, which frequently differ:

- For employees below or above the age of 18.
- According to the employees' years of experience.

RESTRICTIONS ON WORKING TIME

8. Are there restrictions on working hours?

Working hours

Unless otherwise agreed in a CBA, the average working hours during a seven-day period must not exceed 48 hours, including overtime, over a period of four months. In addition, average nightly working hours must not exceed eight hours for each 24-hour period (*Working Time Act (Consolidated Act No. 896 of 24 August 2004)*).

Rest breaks

Employees are entitled to a (*Working Environment Act (Consolidated Act No. 1072 of 7 September 2010)*):

- Daily rest period of 11 consecutive hours for every 24-hour period.
- Weekly rest period of 24 consecutive hours for every seven days, which must immediately follow a daily rest period. The weekly rest period should generally fall on Sundays and be at the same time for all employees working in the company.

There are exceptions to both the daily and the weekly rest period.

Shift workers

The daily rest period can, in certain situations, be reduced to eight hours for employees working in shifts.

HOLIDAY ENTITLEMENT

9. Is there a minimum holiday entitlement?

Minimum holiday entitlement

Employees are entitled to a minimum of 25 days' holiday in each holiday year (1 May to 30 April) (*Holiday Act (Consolidated Act No. 407 of 28 May 2004)*). Employees earn the right to 2.08 days' paid holiday for each month of employment in the calendar year preceding the calendar year in which the respective holiday year begins.

Employees whose notice period is one month or more, and who are entitled to be paid on public holidays and during sick leave (for example, salaried employees (*see Question 1*)), receive their full salary during paid holidays and a holiday allowance amounting to 1% of their salary in the previous calendar year.

All other employees who are entitled to paid holiday receive holiday pay equivalent to 12.5% of their income in the previous calendar year.

Payment in lieu of holiday can only be made in respect of the last five days' holiday. CBAs and individual agreements often provide employees with more favourable holiday entitlements.

Public holidays

In addition to the minimum holiday entitlement, there are 14 public holidays, some of which can fall on a Saturday or a Sunday in some years.

ILLNESS AND INJURY OF EMPLOYEES

10. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Can an employer recover any of the cost from the government?

Entitlement to time off

Employees can lawfully be absent from work in the case of illness or injury if their illness or injury renders them unable to perform their work.

Entitlement to paid time off

During absence, the following are entitled to receive full salary from their employer without any time limit:

- Salaried employees (*Salaried Employees Act*).
- Employees covered by certain CBAs.

Other employees are entitled to statutory sickness benefits from (*Sickness Benefits Act (Consolidated Act No. 85 of 7 February 2011)*):

- The employer for the first three weeks if they have worked with the employer for a period of eight weeks or more before the sick leave, and worked at least 74 hours during this period. It is generally not possible for the employer to recover these payments from the state or the local authority.
- The local authority for the remaining period if one of various occupational conditions is met (for example, that they have been employed with one or more employers for a continuous period of at least 13 weeks before the sick leave, and worked at least 120 hours in total during the past 13 weeks). This also applies to the first three weeks of sickness if employees do not fulfil the conditions entitling them to statutory sickness benefits from their employer during this period (*see above*).

Statutory sickness benefits cannot generally be paid for more than 52 weeks during a period of 18 months. The amount of benefit depends on the employee's hourly pay and weekly working hours. In 2011, it cannot exceed DKK103.51 an hour and DKK3,830 a week.

Recovery of sick pay from the state

If an employer pays employees their salary while they are absent due to sickness, the employer can obtain compensation from the local authority in an amount equivalent to the statutory sickness benefits to which the employees would otherwise have been entitled.



STATUTORY RIGHTS OF PARENTS AND CARERS

11. What are the statutory rights of employees who are:

- **Parents (including maternity, paternity, surrogacy, adoption and parental rights, where applicable)?**
- **Carers (including those of disabled children and adult dependants)?**

Maternity rights

Female employees are entitled to maternity leave with statutory benefits (see below, *Parental rights*) for four weeks before the expected date of birth and 14 weeks after the birth (*Act on Childbirth (Act No. 1084 of 13 November 2009)*). Female employees are entitled to paid time off in connection with pregnancy-related health examinations that cannot take place outside working hours (*Act on Childbirth*). However, they are generally not entitled to paid time off for other pregnancy-related activities, for example, antenatal classes, breastfeeding, or fertilisation treatment. If, however, the need for fertilisation treatment is caused by a disorder of the female employee's ability to become pregnant, female employees may be entitled to receive statutory sickness benefits (see *Question 10*).

Paternity rights

Male employees are entitled to paternity leave with statutory benefits for two weeks following the birth.

Surrogacy

Surrogacy is not legal in Denmark. It is therefore impossible to say which rights a female employee will have if acting as a surrogate mother. However, a surrogate mother would probably have the same rights as a female employee who is pregnant or has given birth to her own child. If the child is given up for adoption within 32 weeks after the birth, however, the mother will only be entitled to leave on statutory benefits until two weeks after the adoption.

Adoption rights

In the case of adoption, employees generally have the following rights (*Act on Childbirth*):

- **Pre-adoption rights.** If the adopted child is from Denmark, each parent is generally entitled to pre-adoption leave with statutory benefits for one week before the child arrives. The period of leave is generally four weeks if the adopted child is from abroad.
- **Initial adoption rights.** After the child's arrival, one of the parents is entitled to initial adoption leave with statutory benefits for 14 weeks. During this period, the other parent is entitled to leave with statutory benefits for two weeks, and the remaining 12 out of the 14 weeks' adoption leave can be divided between the parents (with one parent being on leave at a time).
- **Additional adoption rights.** The parents are entitled to additional adoption leave with statutory benefits corresponding to the entitlement to parental leave in the case of childbirth (see below).

Parental rights

Each parent is entitled to take 32 weeks' parental leave, which can be extended for a further eight or 14 weeks (the employer's consent is not required). However, the parents are jointly entitled to receive statutory benefits in an amount corresponding to full statutory benefits for only 32 weeks. Both parents can take

parental leave at the same time. Alternatively, the leave can be partly staggered or taken by one parent after the other.

Any statutory benefits are paid by the local authority and the right to receive the statutory benefits during leave are generally subject to compliance with one of various minimum occupational conditions (for example, that the employee must have been employed with one or more employers for a continuous period of at least 13 weeks before the leave, and worked at least 120 hours in total during the past 13 weeks). The amount of statutory benefits corresponds to that of statutory sickness benefits (see *Question 10*).

Employees generally have no statutory right to be paid their salary during periods of leave. However, salaried employees are entitled to receive 50% of their salary from the employer during maternity and paternity leave (*Salaried Employees Act*). In addition, better salary conditions during leave are often set out for both salaried and non-salaried employees under their individual employment contracts or CBAs. If an employer pays employees their salary (in full or in part) during a period of leave, the employer can obtain compensation from the local authority in an amount equivalent to the statutory benefits to which the employees would otherwise have been entitled. However, the compensation cannot exceed the salary that the employer pays. The employer can also be entitled to receive additional compensation from a maternity fund established by either the state or an employer's organisation.

Employees who have been on any of the above types of leave are entitled to return to either their previous job or an equivalent position. The employment conditions must not be less favourable than before the leave. In addition, the employees are entitled to any improved employment conditions that they would have been able to claim if they had not been absent due to the leave.

Carers' rights

Employees are entitled to take unpaid leave where (*Act on Leave from Work Due to Special Family Reasons (Act No. 223 of 22 March 2006)*):

- The employee's immediate presence with a relative is urgently needed due to sickness or accident.
- The employee has been employed by a local authority to nurse a relative who is dying, or who is either seriously handicapped or ill.

The Act applies to a relative who is a child, parent or spouse, or to another family member who is particularly close to the employee.

Many CBAs give either parent the right to paid time off on the first day (or first two days) of a child's illness.

CONTINUOUS PERIODS OF EMPLOYMENT

- ### 12. Does a period of continuous employment create any benefits for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

Benefits created

Some statutory employment protection rights can depend on the employee's period of continuous employment. These include the employee's rights to:

- A notice period and severance pay (see *Question 17*).
- Compensation for wrongful or unfair dismissal (see *Question 18*).



This also often applies to rights under a CBA.

Consequences of a transfer of employee

If employees are transferred to a new entity and the transfer is considered a transfer of an undertaking (in whole or in part) under the Act on Transfers of Undertakings (*Consolidated Act No. 710 of 20 August 2002*), the employees retain their period of continuous employment. In other situations, employees generally only retain their period of continuous employment if this is stated in their employment contracts. However, if a transfer is made to a group entity, employees may be entitled to retain their periods of continuous employment, even though this is not stated in their employment contracts.

TEMPORARY AND AGENCY WORKERS

13. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees?

Temporary workers

Temporary workers are entitled to the same statutory rights and benefits as permanent employees. With regard to non-statutory rights and benefits, they are generally entitled to the same rights and benefits as those that apply to a “comparable permanent employee” (*Act on Temporary Employment (Act No. 907 of 11 September 2008)*). A “comparable permanent employee” is defined as an employee in the same establishment:

- With an employment contract or relationship of indefinite duration.
- Engaged in the same or similar work or occupation, with due regard being given to qualifications and skills.

No qualifying period applies.

Agency workers

Agency workers are entitled to the same statutory rights and benefits as permanent employees. No qualifying period applies.

In relation to non-statutory rights and benefits, agency workers' rights generally depend on the terms and conditions that, based on their individual employment contracts and/or a CBA, apply to their employment relationship with the agency in which they are employed. However, if a CBA applies at the company to which the agency workers provide their services, the company may have to ensure that, at a minimum, the agency workers have the same rights and benefits as the company's employees.

DATA PROTECTION

14. What data protection rights do employees have?

Employees are covered by the Data Protection Act (*Act No. 429 of 31 May 2000*). When processing personal data (ordinary and sensitive), employers must comply with various data protection principles. These generally require data to be:

- Fairly and lawfully processed.
- Only used for limited purposes.
- Adequate, relevant and not excessive.

- Accurate.
- Not kept for longer than is necessary.
- Processed in accordance with the employee's rights.
- Secure.
- Not transferred to countries, outside the EEA, which do not ensure adequate protection.

Unless employees have given their express consent, employers can generally only process data if this is necessary to pursue a legitimate purpose, where this interest is not overridden by the employees' interests. However, employers are generally not allowed to process sensitive personal data, that is, data relating to:

- Racial or ethnic origin.
- Health.
- Sexual orientation.
- Sex life.
- Political, religious or philosophical beliefs.
- Membership of trade unions.

Employees have a general right of access to processed data.

DISCRIMINATION AND HARASSMENT

15. What protection do employees have from discrimination or harassment, and on what grounds?

Protection from discrimination

Legislation prohibits discrimination on the following grounds:

- Sex and marital status.
- Sexual orientation.
- Age.
- Disability.
- Race, colour, nationality and social or ethnic origin.
- Religion or belief, including political beliefs.

Direct discrimination can never be justified. However, indirect discrimination (where an employer applies a neutral requirement that has a disproportionate effect on a protected class) is possible where it can be justified.

The rules on disability discrimination are largely similar, with some minor differences. In particular, in relation to disabled persons, employers must make reasonable adjustments to the provisions, criteria or practices that they follow and to the physical features of the premises that they occupy.

Legislation protects against victimisation of employees treated less favourably by employers because they have made an allegation of discrimination (or harassment (*see below, Protection from harassment*)).

Claims based on discrimination are not subject to any qualifying periods.



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Protection from harassment

Legislation prohibits harassment on the same grounds as discrimination (see above, *Protection from discrimination*). Harassment is unwanted conduct that has the purpose or effect of either:

- Violating another person's dignity.
- Creating an intimidating, hostile, degrading, humiliating or offensive environment for another person.

Claims based on harassment are not subject to any qualifying periods.

WHISTLEBLOWERS

16. Do whistleblowers have any protection?

There is no specific protection for whistleblowers. They have only the same protection against dismissal as other employees (see *Question 18, Protection against dismissal*).

DISMISSAL OF EMPLOYEES

17. What rights do employees have when their employment contract is terminated?

Notice periods

Depending on the period of continuous employment, salaried employees are entitled to a notice period of between one and six months (*Salaried Employees Act*). However, during a probationary period of up to three months, the notice period can be reduced to two weeks.

Under case law, non-salaried employees are entitled to a fair notice period dependent on the period of continuous employment. CBAs usually contain rules on notice periods. Some protected employees (see *Question 18, Protected employees*) are entitled to a longer notice period than non-protected employees. The notice period is the same irrespective of whether it is an ordinary dismissal or an unfair dismissal. Employees are generally entitled to receive their usual salaries during notice periods.

Severance payments

There are no general statutory rules on severance pay, which is separate from compensation for wrongful or unfair dismissal (see *Question 18, Protection against dismissal*). However, salaried employees are entitled to the following severance pay (*Salaried Employees Act*):

- One month's salary if they have been continuously employed with the same employer for at least 12 years, but less than 15 years.
- Two months' salary if they have been continuously employed with the same employer for at least 15 years, but less than 18 years.
- Three months' salary if they have been continuously employed with the same employer for at least 18 years.

Some CBAs contain rules on severance pay based on employees' years of continuous employment.

Procedural requirements for dismissal

Unless collective redundancies are being made (see *Question 19*), there are no general statutory procedural requirements relating to dismissals made by private employers. Special procedural requirements can apply in relation to some protected employees (see *Question 18, Protected employees*). A CBA can also set out procedural requirements for non-protected employees. If procedural requirements apply and if the employer does not comply with these requirements, the validity of the dismissal may be affected and the employer can be ordered to pay a penalty for breach of the CBA.

18. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Protection against dismissal

Employees have no protection against dismissal unless one of the following applies:

- The employee:
 - receives protection from the Salaried Employees Act and/or a CBA;
 - on the date of receiving notice, has been continuously employed for a certain period of time (one year for a salaried employee and often less under a CBA).
- The employee is a protected employee (see below, *Protected employees*).
- The employment contract offers protection.
- The dismissal is based on discrimination or harassment (see *Question 15*).

Where the Salaried Employees Act or a CBA provides protection, the employer must justify a dismissal by either:

- The employee's conduct (for example, disloyalty, co-operation issues, non-performance or long-term illness). In most cases, the employer must (usually depending on the employee's period of continuous employment) give one or more written warnings before dismissal.
- The company's circumstances (for example, dismissals due to the employer's financial situation).

It is generally more difficult for employers to justify dismissals of protected employees (see below, *Protected employees*).

If a dismissal is not reasonably justified, the dismissal cannot generally be set aside. Instead, the employee is entitled to compensation for unfair dismissal. The amount of compensation depends on both the:

- Statute and/or the CBA covering the dismissal.
- Employee's period of continuous employment.

If the Salaried Employees Act applies, compensation of between one and six months' pay can be awarded. This is usually also the case under a CBA.

The amount of compensation is often higher for dismissals that are based on discrimination or harassment. In these cases, there is, in principle, no limitation on the compensation that can be awarded, but in practice it varies between three and 18 months' pay.



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For protected employees (see below, *Protected employees*), the amount of compensation is usually limited to between six and 18 months' pay.

Protected employees

There are a number of categories of protected employees, of which the most relevant are:

- Shop stewards (see *Question 24, Consultation*).
- Employees who have been elected as safety representatives under the Working Environment Act.
- Employees who are representatives:
 - on a company's board (see *Question 24, Management representation*);
 - under the Act on Information and Consultation (*Act No. 303 of 2 May 2005*), the Act on Employee Participation in European Companies (*Act No. 281 of 26 April 2004*) or the European Works Councils Act (*Consolidated Act No. 1018 of 27 October 2009*) (see *Question 24, Consultation*).
- Employees under a duty to do military service.
- Employees who are either members of a local council or on a list of candidates to become members.
- Employees who take, inform the employer about their intention to take or have taken:
 - maternity, paternity, parental or adoption leave (see *Question 11, Maternity rights, Paternity rights, Adoption rights and Parental rights*);
 - carers' leave (see *Question 11, Carers' rights*).

REDUNDANCY/LAYOFF

19. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs?

Definition of redundancy/layoff

Redundancy usually means the dismissal of an employee due to company circumstances and, therefore, for reasons unrelated to the employee's conduct. However, Danish legislation generally does not distinguish between redundancies and other dismissals and there is no specific legal definition of redundancy. If, within a 30-day period, a certain number of employees are dismissed for company circumstances, the dismissals will, however, be regarded as collective redundancies under the Collective Dismissals Act (*Consolidated Act No. 291 of 22 March 2010*). This Act applies if both of the following two criteria are met:

- Dismissals are made for reasons that are not related to the employees' conduct.
- The number of employees to be dismissed within a 30-day period is:
 - ten or more in an organisation with between 20 and 100 employees;
 - 10% or more in an organisation with between 100 and 300 employees; or
 - 30 or more in an organisation with more than 300 employees.

However, some provisions of the Collective Dismissals Act do not apply where either:

- Dismissals are the result of insolvency by court order.
- Dismissals are the result of a compulsory composition (a court order to divide the value of the debtor's assets proportionately between the creditors and to cancel the remaining debt).

Procedural requirements

There are no general procedural requirements with regard to dismissals which do not qualify as collective redundancies under the Collective Dismissals Act (see *Question 17, Procedural requirements for dismissal*). If an employer is considering carrying out dismissals which will qualify as collective redundancies under the Collective Dismissals Act, the procedural requirements that must be met include the following:

- The employer must consult the employee representatives (or the employees themselves) as soon as possible and before any decision on the dismissals has been made. The consultation must discuss ways of avoiding, reducing the number and/or mitigating the consequences of the dismissals. It must be undertaken with a view to reaching agreement.
- Before the consultation, the employee representatives must be given all relevant information, some of which must be in a written statement. A copy of this statement must be forwarded to the Regional Labour Market Council (RLMC).
- If, after consultation, the employer still wishes to proceed with the dismissals, a notification of dismissals and certain information must be given to the RLMC. Where the employer has 100 or more employees and at least 50% of the workforce is to be dismissed, the RLMC cannot be notified until at least 21 days after the consultation.
- Dismissals cannot take effect until 30 days after the date on which the RLMC is notified of the dismissals. However, if the employer has 100 or more employees and at least 50% of the workforce is to be dismissed, the dismissals cannot take effect until eight weeks after notification.

These requirements do not affect an employee's right to the notice period set out in the employment contract, a relevant CBA or the Salaried Employees Act (see *Question 17, Notice periods*).

Redundancy/layoff pay

An employee generally has the same rights on termination of employment irrespective of whether the dismissal is for reasons that are related to company circumstances or the employee's conduct. Consequently, the fact that dismissals are regarded as collective dismissals under the Collective Dismissals Act will not provide the employees with better rights with regard to, for example, notice period and severance pay than what generally applies for dismissals (see *Question 17, Notice periods and Severance payments*, and *Question 18*). However, if the procedural requirements for collective redundancies mentioned above (see above, *Procedural requirements*) are not met, dismissed employees are entitled to compensation corresponding to either 30 days' salary, or eight weeks' salary less any salary paid during the notice period. In addition, the employer can be fined.



COUNTRY Q&A

TAXATION OF EMPLOYMENT INCOME

20. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Foreign nationals

Foreign nationals are only liable to pay tax in Denmark if they meet the requirements for either:

- **Full tax liability.** This applies to foreign nationals who are either residents in Denmark or stay in Denmark for an uninterrupted period of not less than six months (including short stays abroad due to holiday). Those foreign nationals are liable to pay tax on all their employment income.
- **Limited tax liability.** This applies to foreign nationals who are resident in a foreign jurisdiction and who receive income for work performed in Denmark for an employer that either has its domicile (registered office) or a permanent establishment in Denmark. These foreign nationals are only liable to pay tax on the portion of the employment income relating to work actually performed in Denmark.

If foreign nationals are liable to pay tax on the same income in another jurisdiction, relief from double taxation is usually available under a relevant double taxation treaty, Danish tax legislation or the tax legislation of the country in which they are tax resident.

Nationals working abroad

The rules on tax liability for Danish nationals working abroad are the same as those for foreign nationals working in Denmark (see above, *Foreign nationals*).

21. What is the rate of taxation on employment income? Are any other taxes or social security contributions levied on employers and/or employees?

Income tax

To calculate tax on employment income in a tax year (calendar year), it is necessary to distinguish between labour market income, personal income, capital income and taxable income:

- Labour market income is calculated as taxable employment income less:
 - any employee pension contributions to a tax approved pension scheme (see *Question 28*);
 - any employee social security contributions (see below, *Social security contributions*).
- Personal income is calculated as labour market income less any labour market tax.
- Capital income is generally calculated as the difference between interest earned and interest paid by the employee.
- Taxable income is calculated as personal income less any negative capital income and various deductions, including a personal allowance of DKK42,900 (in 2011).

Income tax rates are progressive. In 2011, the rates are:

- Labour market income: labour market tax of 8%.
- Taxable income:
 - local tax at an average rate of 25%;
 - health tax of 8%.
- Personal income (including any positive capital income):
 - state tax of 3.64%;
 - state tax of 15% on any amount exceeding DKK389,900.

The combined total of local tax, health tax and state tax cannot exceed 51.5%. Therefore, once the labour market tax has been taken into account, the marginal tax rate will be 55.4%. However, in addition to this marginal tax rate, employees who are members of the Danish National Evangelical Lutheran Church must pay church tax at an average rate of 0.7% on any taxable income.

If certain requirements are met, foreign tax residents working in Denmark can, instead of being subject to local tax, health tax and state tax, be taxed at a flat rate of 26% for up to five years on the sum of any cash salary and the tax value of various benefits-in-kind, less any tax-exempted employee pension contributions, social security contributions and labour market taxes.

Social security contributions

Employees are only liable to make minor Labour Market Supplementary Pension contributions (LMSP-contributions) (see *Question 27*). The amount of LMSP contributions payable by the employee depends on the employee's number of working hours. For a full-time employee, the monthly contributions payable are about DKK90.

Employers are liable to make various minor social security contributions, including the employer's part of LMSP-contributions (see *Question 27*). In general, for a full-time employee, these various contributions total about DKK8,000 per year.

EMPLOYER AND PARENT COMPANY LIABILITY

22. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
- A parent company can be liable for the acts of a subsidiary company's employees?

Employer liability

An employer can be liable for the acts of its employees if the employee:

- Was under the employer's authority and the act was committed during the course of the employee's work.
- Had an express or implied right, or power of attorney, to act for the employer.

Employers can also incur criminal liability as a result of their employees' acts.



Parent company liability

A parent company cannot generally be held liable for the acts of a subsidiary company's employees.

HEALTH AND SAFETY OBLIGATIONS

23. What are an employer's obligations regarding the health and safety of its employees?

The Working Environment Act governs health and safety at work. It provides that an employer must ensure that safe conditions are maintained in the workplace. It is supplemented by various government orders and guidelines.

An employer must insure its employees against industrial injuries (*Workers' Compensation Act (Consolidated Act No. 848 of 7 September 2009)*). However, employees are only covered by this insurance if their injury can be defined as an industrial injury under the Workers' Compensation Act.

EMPLOYEE REPRESENTATION AND CONSULTATION

24. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management representation

If a company has employed at least 35 people on average during the past three years, the employees are entitled to elect board members if the company is a:

- Public limited company.
- Private limited company.
- Foundation carrying out business activities.

The number of employee board members to be elected depends on how many other board members there are.

Consultation

Companies with 35 or more employees must inform and consult elected employee representatives on material matters at an appropriate and early point in time (*Act on Information and Consultation*). The term "material matters" relates to employment relationships, but no further definition is provided and as yet there is no case law on the subject.

Employers must consult employee representatives:

- When proposing collective redundancies or a business transfer (*see Question 19 and below, Major transactions*).
- In relation to health and safety matters (*see Question 19*).

Companies set up in accordance with Directive 2001/86/EC supplementing the statute for a European company (European Company Statute Directive) must create a special negotiation body for informing and consulting employee representatives (*Act on Employee Participation in European Companies*).

All CBAs usually contain rules relating to informing and consulting shop stewards. These parties act as a link between management, the staff group that they represent and the trade union.

It is common for companies employing 35 people or more within the same workplace to enter into collaborative agreements that require works councils to be established. If a CBA applies, such companies are often required to establish a works council at the employees' request.

A number of large businesses operating across borders must set up cross-border information and consultation procedures (*European Works Councils Act*).

Major transactions

Employee consent is not required for major transactions. However, if an undertaking (in whole or part) is being transferred in an asset sale, both the buyer and seller must inform the representatives of any affected employees or, if there are no such representatives, the affected employees themselves, about the following (*Act on Transfer of Undertakings*):

- The reasons for the transfer.
- The date or suggested date of the transfer.
- The legal, economic and social consequences of the transfer for the employees.
- Any measures to be taken in relation to the employees.

In addition, an employer is under a duty to consult the employee representatives or, if there are no such representatives, the affected employees themselves, if it proposes to take any measures in relation to the employees. This covers any measures except those that the employer is entitled to take due to its managerial powers. The aim of the consultation is to reach an agreement between the parties on the measures. However, an agreement is not required for the changes to take place. The required information must be given at such a time to allow consultation to take place before the transfer.

If the Act on Information and Consultation (*see above, Consultation*) applies, the employer must inform and consult employee representatives before any final decision on the transfer is made. This duty can also arise under a CBA or a collaborative agreement regarding a works council.

Information and consultation is not usually required on share sales.

25. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

If an employer fails to comply with its statutory consultation duties, it can be fined and/or ordered to pay compensation to the employees. Where an employer fails to comply with its duties to consult under a CBA, a penalty can be payable to the relevant trade union. The relevant measure or transaction cannot generally be set aside.

Employee action

Employees cannot generally take any action to prevent proposals going ahead.



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CONSEQUENCES OF A BUSINESS TRANSFER

26. Is there any statutory protection of employees on a business transfer?

There is no specific statutory protection for employees in relation to share sales, as they generally have no effect on employment relationships.

In relation to asset sales, the principles below apply (*Act on Transfer of Undertakings*).

Automatic transfer of employees

Employees are automatically transferred with the business. The buyer enters into all the seller's rights, duties and liabilities under the employment relationship.

Protection against dismissal

The dismissal of an employee based solely on the transfer of an undertaking (in whole or part) is not considered reasonably justified. However, dismissals can be reasonably justified if they are due to economic, technical or organisational reasons that necessitate changes in the workforce. If a dismissal is not reasonably justified under the Act on Transfers of Undertakings, the Act does not in itself entitle an employee to compensation for unfair dismissal. Therefore, an employee can generally only have a compensation claim for unfair dismissal if covered by the Salaried Employees Act or a CBA (see *Question 18, Protection against dismissal*).

Harmonisation of employment terms

Harmonisation of employment terms is possible. However, if there is any material change in the terms and conditions of employment, this change is subject to a notice period equivalent to that of the individual employee's notice of dismissal (see *Question 6 and Question 17, Notice periods*). Additionally, any changes to employees' individual rights under a CBA can only take effect when the CBA expires.

PENSIONS

State pensions

27. Do employers and/or employees make pension contributions to the government in your jurisdiction?

Contributions paid to the government

There is a general state pension scheme, which is supplemented by the LMSP scheme. The general state pension scheme is tax financed. Employers and employees must pay LMSP contributions to the LMSP scheme (see *Question 21, Social security contributions*). The amount of LMSP contributions depends on the employee's number of working hours. For a full-time employee, the monthly contributions payable are about:

- DKK180 by the employer.
- DKK90 by the employee.

Taxation of contributions

The employer's part of the LMSP-contribution is tax-exempt and the employee's part is tax-deductible.

Monthly amount of the government pension

From the age of 67 (or between age 65 and 67 for employees born before 1 July 1960), employees receive:

- A monthly amount from the general state pension scheme. The amount depends on various factors (for example, the number of years lived in Denmark).
- A monthly LMSP-pension. The amount depends on the LMSP-contributions made during the years of employment.

Supplementary pensions

28. Is it common (or compulsory) for employers to provide access, or contribute, to supplementary pension schemes for their employees? Do these schemes provide pensions, the value of which:

- Is linked to the employee's salary?
- Is linked to employer and/or employee contributions and investment return on those contributions?

Employers commonly provide access to, and contribute to, supplementary pension schemes for their employees with a pension institution. This is not mandatory under statute, but is often mandatory under a CBA.

Linked to the employee's salary

These pension schemes can be defined benefits schemes that provide pensions where their value is linked to the employee's salary. However, these pension schemes are very uncommon for employees employed in the private sector.

Linked to employer and/or employee contributions

These pension schemes are usually defined contribution schemes with a pension account in the name of the individual employee where the employer and employee contributions normally amount to a certain percentage of the employee's salary. Therefore, these pension schemes usually provide pensions where their value is dependent on the agreed size of the employer and employee contributions and on the investment return on those contributions.

29. Is there a regulatory body that oversees the operation of supplementary pension schemes?

Regulatory body

Supplementary pension schemes must generally be placed with, and operated by, pension institutions (for example, pension funds, life insurance companies and banks). The Financial Supervisory Authority (FSA) oversees the operation of the supplementary pension schemes run by pension institutions.



Regulatory framework

The FSA's supervisory powers are principally based on the provisions of the Financial Business Act (*Consolidated Act No. 342 of 8 April 2011*). It provides rules on, among other things:

- Licensing.
- Governance structure.
- Solvency.
- General rules on conduct and good practice.
- General obligations towards members.

The Minister of Economic and Business Affairs, and the FSA, have laid down more detailed rules in executive orders and guidelines, under the Financial Business Act.

The Insurance Agreement Act (*Consolidated Act No. 999 of 5 October 2006*) also governs pension schemes in life insurance companies and pension funds. It regulates the relationship between the pension institution and the individual member of the pension scheme.

The FSA can order a pension institution to both:

- Comply with the rules in the relevant field.
- Take certain actions (if specific conditions are fulfilled).

The FSA can withdraw a licence to carry out pension business if either:

- The pension institution does not comply with an order.
- An order to correct its behaviour proves inadequate in protecting the scheme members.

In some cases, the FSA can also issue penalties.

Tax on pensions

30. Are any tax reliefs available on contributions to supplementary pension schemes (by the employer and employees)?

Tax relief on employer contributions

If the supplementary pension scheme complies with the necessary conditions for tax approval, the employer's contributions are tax exempt. The supplementary pension schemes can be structured in such way that the employer's contributions are tax exempt without limitation on the amount of the contributions.

However, all pension contributions are subject to labour market tax (see *Question 21, Income tax*). The pension institution administering the pension scheme withholds the amount in labour market tax.

Tax relief on employee contributions

If the supplementary pension scheme meets the conditions for tax approval in order for the employer's contributions to be tax exempt, the employees' contributions will be tax deductible (and without any limitation on the amount of the contributions if the pension scheme is structured in the right way). However, as with the employer's contributions, the employees' contributions are also subject to labour market tax.

31. Is there any legal protection of employees' pension rights on a business transfer?

Automatic transfer of pension rights

In the case of a business transfer under the Act on Transfer of Undertakings, supplementary pension rights generally qualify as acquired rights that transfer automatically.

All supplementary pension rights must be placed in an independent pension institution. The automatic transfer of the employee's supplementary pension rights means that the buyer enters into an obligation to pay employer contributions to the pension institution that must provide the employee with the supplementary pension rights under the supplementary pension agreement.

Supplementary pension schemes are usually defined contribution schemes with a pension account in the name of the individual employee to which the employer (as well as the employee) pays contributions based on a certain percentage of the employee's salary (see also *Question 28, Linked to employer and/or employee contributions*). For these plans, the buyer only enters into the obligation to pay the agreed employer contributions (and, on the employee's behalf, employee contributions) to the pension institution. This means that the existing pension scheme continues on the basis of partly the pension savings which are deposited in the employee's pension account at the time of the transfer, and partly the contributions which will be made during the employment with the buyer.

If, however, the buyer for some reason cannot become party to the supplementary pension agreement with the respective pension institution, the buyer must provide for the establishment of a new supplementary pension scheme with a pension institution. In this situation, the pension savings deposited in the employee's pension account at the time of the transfer will either be transferred to the new pension scheme with the new pension institution, or remain as a separate pension scheme with the previous pension institution (in both situations, to the benefit of the individual employee).

Other protection for pension rights

Except for the general protection provided for pension scheme benefits where the sponsoring employer becomes insolvent (see *Question 33*), there is no other protection available for pension rights on a business transfer.

32. Can the following participate in a pension scheme established by a parent company in your jurisdiction:

- Employees who are working abroad?
- Employees of a foreign subsidiary company?

Employees working abroad

Unless the pension scheme states otherwise, employees working abroad can participate in a pension scheme established by a Danish parent company. If, while working abroad, the employee is still tax liable in Denmark (see *Question 21*) and if, either on its own behalf or on behalf of the employee and under an agreement with the pension



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institution, the immediate employer pays the pension contributions, the tax reliefs referred to in *Question 30* are still available. If the Danish parent company pays the contributions and they are not made on the employer's behalf, tax relief is not available.

The tax treatment of the pension contributions in the jurisdiction where the work is performed depends on the tax legislation in the relevant jurisdiction.

Employees of a foreign subsidiary company

The same rules apply to employees of a foreign subsidiary company as those regarding employees working abroad (see *above, Employees working abroad*).

33. Is there any protection provided for pension scheme benefits where the sponsoring employer becomes insolvent? If so, who provides the protection, and how does this operate?

Supplementary pension schemes must generally be placed in, and operated by, pension institutions. This means that the pension institution is liable to provide the already acquired pension scheme benefits to the individual employee and, therefore, the pension scheme benefits will generally not be affected by the employer's insolvency.

The pension institution's ability to provide an employee's pension scheme benefits is generally not subject to any third-party guarantee but is protected by the FSA's supervisory activities of pension institutions and the strict regulatory framework, including on solvency, which applies to pension institutions (see *Question 29*). However, pension savings deposited in a bank are protected by the Deposit Guarantee Fund, which provides payment in case of the bank's insolvency.

BONUSES

34. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded?

It is relatively common to reward employees through contractual and discretionary bonuses.

There are no general statutory restrictions or guidelines on what bonuses can be awarded. However, the executive management of a company incorporated in Denmark (the shares of which are listed on a regulated EEA market) can only participate in a bonus plan if the company's general meeting has approved a guideline for incentive schemes that includes an authorisation of the use of a bonus plan. The bonus plan must comply with the framework and conditions stated in the guideline.

Further, employees in the financial sector who are regarded as risk takers under a set of rules governing remuneration practices in the financial sector can only be awarded a bonus if the bonus scheme complies with a number of rules on variable remuneration. These rules mean, among other things, that various performance criteria must be applied in the assessment of the amount of any variable remuneration, that a certain part of any amount of variable remuneration must be paid out in various financial instruments, and that a certain part of any amount of variable remuneration must be paid out under a deferral scheme.

In addition, salaried employees leaving their positions must not be deprived of remuneration to which they would have been entitled if they had still been employed at a later specified time, including contractual and discretionary bonuses (*Salaried Employees Act*). If salaried employees have only been employed during a part of the period to which the remuneration relates they are only entitled to a proportionate share of the remuneration. This applies regardless of whether:

- The employee or the employer gives the notice of termination.
- The dismissal is based on a breach of duty that the employee has committed.

INTELLECTUAL PROPERTY (IP)

35. If employees create IP rights in the course of their employment, who owns the rights?

Employees generally own any IP rights created in the course of their employment, unless an individual employment contract states otherwise. However, copyrights in computer programs are automatically transferred to the employer (*Copyright Act (Consolidated Act No. 202 of 27 February 2010)*).

In addition, if a patentable invention is made during the employee's service and falls within the scope of the company's business, the employer is entitled to claim the rights to that invention for one or more countries (*Act on Employee Inventions (Consolidated Act No. 131 of 18 March 1986)*). The employee must inform the employer of the invention as soon as possible. If, within four months of being notified, the employer informs the employee that it wishes to acquire the rights in the invention, the employee can claim reasonable compensation. If the employer fails to notify the employee before the four-month period expires, the employer is generally no longer entitled to acquire the rights in the invention.

RESTRAINT OF TRADE

36. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of activities

Employees' activities during employment are restricted by their general duty of loyalty, which, among other things, means that they are not allowed to engage in any competitive activities.

Post-employment restrictive covenants

Employees' activities after their employment is terminated can generally be restricted by non-compete clauses and non-solicitation clauses covering customers and other business connections. However, for salaried employees, such clauses must (*Salaried Employees Act*):

- Be agreed in writing.
- Set out the compensation that is payable to the salaried employee during the period in which the restrictions are valid. This must amount to at least 50% of the employee's salary at the date of termination.



The compensation can be fully or partly reduced if the employee obtains other appropriate employment. A non-compete clause cannot be enforced if the employee is dismissed and the dismissal is not reasonably justified by the employee's conduct.

The Act on Employers' use of Non-Solicitation and No-Hire Restrictions (*Act No. 460 of 17 June 2008*) generally makes it very difficult for employers to use the following two types of restrictions:

- No-hire agreements entered into by the employer and other employers to hamper or reduce an employee's job opportunities.
- Non-solicitation agreements between employer and employee to prevent the employee from poaching (ex-)colleagues.

Any such restrictions are generally enforceable only if various conditions have been complied with, for example:

- A written agreement that specifies the exact nature of the restrictions imposed on the employee must be agreed on not only with the employee in question, but also with all of the other employees who the restriction may affect.

- The agreement must set out the compensation that is payable to the salaried employee during the period in which the restrictions are valid. This must amount to at least 50% of the employee's salary at the date of termination.

The compensation can be fully or partly reduced if the employee obtains other appropriate employment or, under the Salaried Employees Act, obtains compensation for a non-compete clause and/or a non-solicitation clause covering customers and other business connections (*see above*).

Limited exceptions apply in connection with (negotiations for) a transfer of undertaking.

PROPOSALS FOR REFORM

37. Are there any proposals to reform employment law or pensions law in your jurisdiction?

There are no proposals to reform employment or pension law.

CONTRIBUTOR DETAILS



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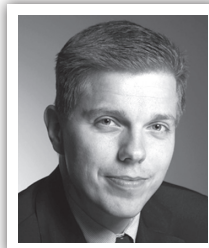
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Qualified. Denmark, 1981

Areas of practice. Labour and employment; employee benefits; pensions.

Recent transactions

- Assisting financial institutions in legal proceedings on employees' rights to share-based remuneration, on termination of employment.
- Advising numerous companies on employees' entitlement to bonus on termination of employment.
- Advising on employer pension obligations under defined benefit plans on termination of employment and business transfers.
- Advising numerous companies on dismissing employees.
- Advising multinational companies on preparing and implementing bonus incentive schemes, including for employees in the financial sector regarded as "risk takers" to comply with the new rules on variable remuneration in the financial sector.

Qualified. Denmark, 1997

Areas of practice. Labour and employment; employee benefits; tax; social security.

Recent transactions

- Advising numerous multinational financial institutions on new bonus incentive schemes for employees regarded as "risk takers" to comply with the new rules on variable remuneration in the financial sector.
- Advising multinational companies in the life sciences and financial sectors on preparing and implementing bonus incentive schemes.
- Advising companies in the life sciences, IT and financial sectors on preparing and implementing new employment contracts, including implementing material changes of terms and conditions of employment.
- Advising numerous companies in the life sciences, IT and financial sectors on dismissals of employees and entitlement to bonus on termination of employment.



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