



Labour & Employment

in 43 jurisdictions worldwide

Contributing editors: Mark Dichter, Kenneth Turnbull,
Matthew Howse and Mark E Zelek

2011



Published by
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Labour & Employment 2011

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Labour & Employment 2011

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
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2011

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ISSN 1744-0939

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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Legislation and agencies

1 What are the main statutes and regulations relating to employment?

In Denmark, there is no general employment act covering all employees on the labour market. The employer–employee relationship is therefore governed by a mixture of statutes, collective agreements and individual employment contracts between the parties.

Danish employment regulation can be divided into two main categories: collective agreements and legislation on salaried employees (white-collar employees).

A large part of the Danish workforce is covered by a collective agreement. The collective agreements, which are concluded by trade unions and employer organisations, lay down terms of employment and pay, typically governing hours of work, minimum pay, notice periods, etc. As a result, employment conditions are to a wide extent regulated by collective agreement.

The Danish Salaried Employees Act covers a large number of employees in the private and the public sector, but only employees who are salaried employees within the meaning of the Act (white-collar employees). The Act provides salaried employees with certain minimum rights, including notice periods, termination pay, compensation for unfair dismissal, sickness absence and compensation for any post-termination covenants.

In addition to the collective agreements and the Danish Salaried Employees Act, certain labour market conditions are regulated by specific acts as well, which set out a number of minimum requirements. Examples of such acts are the Danish Holiday Act, the Danish Statement of Employment Particulars Act and the Danish Act on Equal Treatment of Men and Women.

Also, a number of public servants are protected by the Danish Public Servants Act.

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

There are a number of acts prohibiting discrimination in the labour market on grounds of gender, race, colour, religion or belief, political opinions, sexual orientation, age, disability or national, social or ethnic origin.

In the event of breach, the employee may be awarded a substantial compensation payment.

3 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

Under the Danish Data Protection Act, employers are subject to certain restrictions in connection with retrieving and disclosing employee data:

Data processing must take place in accordance with good data processing practice. Personal data must be collected only for specified, explicit and legitimate purposes and any subsequent processing must

not be incompatible with those purposes. The data must always be complete and correct. Also, a requirement of proportionality applies to both the amount of data processed and the registration period.

The Danish Data Protection Act distinguishes between sensitive and non-sensitive data, where sensitive data (eg, employee health data) requires greater protection.

Through the requirements for notification and authorisation, the Danish Data Protection Agency can control some of the more sensitive data processing that is performed in the public and private sectors.

4 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

In Denmark, there is no specific government agency responsible for enforcing employment legislation in general. The Danish Ministry of Employment can introduce bills, issue executive orders, etc, concerning employment, and is also responsible for framing and wording the legislation.

However, there are a number of government agencies that enforce specific areas of employment law. Examples of such agencies are the Danish Working Environment Authority, which may fine employers for non-compliance with working environment rules and regulations, and the National Board of Industrial Injuries, which processes employees' compensation claims.

If the parties to an employment-related dispute are unable to solve the dispute amicably, they can bring the dispute to the courts or special employment tribunals that can decide certain employment-related claims for employees covered by a collective agreement.

Worker representation

5 Is there any legislation mandating or allowing the establishment of a works council or workers' committee in the workplace?

The Danish Information and Consultation of Employees Act requires undertakings with 35 employees or more to lay down a procedure ensuring that the employees receive adequate information about the undertaking in relation to their employment.

Changes may be debated and the employer must consult with the employee representative (or representatives), but the employer is not required to accommodate the employees' wishes. As a general rule, deciding how to run the undertaking is the employer's prerogative.

Employee representatives can be – and often are – the union representatives, but all such employee representatives enjoy the same dismissal protection as union representatives.

In addition to the Danish Information and Consultation of Employees Act, most collective agreements contain provisions concerning union representatives and cooperation agreements to establish works councils. The purpose is to provide a forum for formalised discussion of issues of general interest to the employees.

If the employees enjoy the same or better rights under a collective agreement, the above-mentioned Act does not apply.

Background information on applicants

- 6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

By virtue of the Danish Data Protection Act, employers are in some situations restricted in their use of personal data, and personal data include data about employees and applicants. Employers are therefore only to a certain extent allowed to carry out background checks on applicants, whether by themselves or through a third party.

See also question 3.

- 7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Under the Danish Act on Use of Health Data in the Labour Market, employers are only entitled to request health data from an applicant to determine whether the applicant suffers from or has suffered from a disease if this will adversely affect the applicant's capacity to perform the job in question.

Some jobs require special knowledge of the employee's health, and employers are allowed to ask the necessary questions in those cases. Requiring a general medical examination is only allowed in very limited circumstances, eg, for health and safety reasons, in order to find out if the applicant can perform the job in question. In those cases, the employer is entitled to reject an applicant who refuses to undergo a medical examination.

- 8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Under the Danish Data Protection Act, information about drug and alcohol use constitutes sensitive data and may therefore only be collected for good reasons.

Asking employees to submit to a drug or alcohol test (or both) is an employer's prerogative. The tests must be requested for legal and reasonable grounds, eg, for health and safety reasons, and the testing must affect the employees as little as possible.

Employers are therefore generally not prohibited from requiring a drug or alcohol test (or both) as a condition of employment, but it depends on the job in question.

Hiring of employees

- 9 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

In general, affirmative action on specific grounds is not allowed because there are a number of Danish acts prohibiting discrimination in the labour market on grounds of gender, race, colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin.

However, in some cases affirmative action may be allowed for objective and legitimate reasons, eg, raising the employment rate of non-ethnic Danes. In the public sector, there are some situations where affirmative action may even be required. For example, an equally qualified disabled candidate must be given priority over other applicants for vacancies at public employers.

- 10 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

As a general rule, employers must provide their employees with a written statement of particulars outlining the terms of employment.

Under the Danish Statement of Employment Particulars Act, the statement of particulars (which will often be a contract) must at least include:

- the name and address of employer and employee;
- the work address;
- either a job description or job title, rank or job category;
- a commencement date;
- the expected duration of employment (if not indefinite);
- holiday entitlement;
- notice entitlement (employee's and employer's);
- the applicable or agreed pay; and
- the hours of work.

Also, any other 'material terms' must be mentioned.

- 11 To what extent are fixed-term employment contracts permissible?

Fixed-term employment contracts are permissible in Denmark and there are no rules for the duration of such contracts.

Employers are not allowed to treat temporary or fixed-term employees less favourably than their permanent employees, unless the differential treatment is based on objective grounds and is not exclusively based on the temporary status of the employment relationship.

- 12 What is the maximum probationary period permitted by law?

In Denmark, there is no general legislation regarding probationary periods. However, for salaried employees (white-collar employees), only a probationary period of up to three months may be agreed. This period cannot be extended. During the probationary period, both parties are entitled to terminate the employment contract by giving two weeks' notice.

For manual employees (blue-collar employees), there is no legislation on the maximum duration of probationary periods.

- 13 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

In Denmark, the following post-termination covenants may be valid and enforceable:

- non-competition clauses (to prevent the employee from taking employment with competing businesses or engaging in competitive conduct in general);
- non-solicitation of employees clauses (to prevent the employee from enticing away colleagues);
- non-solicitation of customers clauses (to prevent the employee from approaching customers);
- non-dealing clauses (to prevent the employee from having any dealings with former customers); and
- no-hire clauses (which are entered into by two or more employers to prevent each other from hiring each other's employees).

However, certain restrictions apply with regard to the scope and duration of such covenants.

Non-solicitation of employees and no-hire clauses must be agreed in writing with the individual employee whose job opportunities are restricted as a result of such a covenant. This means that an agreement must be entered into with all employees affected by a non-solicitation of employees clause or a no-hire clause entered into between two employers. Moreover, after the effective date of termination, the employee is entitled to compensation from the employer during the restricted period equivalent to at least 50 per cent of the employee's pay. If these requirements are not satisfied, the covenant is not enforceable.

Salaried employees (white-collar employees), however, are subject to specific rules, eg, that post-termination covenants must be

in writing and that they are entitled to compensation for not being allowed to set up in business, seek employment with a competitor or deal with customers. The parties are free to agree that the employee must pay a penalty in the event of breach.

Managing directors and CEOs are not covered by the Danish Salaried Employees Act. Accordingly, such covenants may only be set aside wholly or in part by the courts if they are unfair or unreasonable from a freedom of contract point of view.

In general, there is no maximum period for such covenants, but an agreement that unreasonably restricts an employee may be set aside by the courts. One year will typically be acceptable – sometimes even more.

Finally, the Danish Marketing Practices Act offers some protection for employers. Under the Act, employees are not allowed to use or disclose trade secrets obtained or received in the course of their employment. Breach is a criminal offence and the employer may apply for an interim injunction against the disclosure and use of such information.

14 What are the primary factors that distinguish an independent contractor from an employee?

As mentioned in question 1, in Denmark there is no general employment act covering all employees on the labour market. Therefore, there is no general rule distinguishing an independent contractor from an employee. However, there are a number of criteria that will normally be used to test whether the person in question is an employee or an independent contractor. The following factors will typically indicate if a person is in an employment relationship and therefore to be considered an employee:

- the person has an obligation to execute agreed work;
- the employer is entitled to control and direct the person's work;
- the work is performed in the employer's name;
- there are fixed hours of work;
- holiday entitlement is accrued; and
- there are agreed notice periods.

Further, an employee will normally not be liable for any acts or omissions committed or not committed in the course of the employment.

On the other hand, an independent contractor:

- does not have an obligation to work;
- organises his or her own work and working hours;
- the work is performed on his or her own premises;
- payment is only for the 'goods or services supplied'; and
- the work is performed in his or her own name and at his or her own risk.

Foreign workers

15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

Danish law contains no limitations on the number of short-term visas that a foreign worker may be granted, but a separate application must be submitted for each stay requiring a short-term visa.

Following the introduction of the Corporate Scheme for visas, it has become easier to transfer employees from one corporate entity outside of Denmark to another corporate entity in Denmark. Employees with a valid visa issued under the Scheme are allowed to alternate between the Danish entity and related entities abroad without having to apply for a visa each time. To obtain a corporate visa, the employee and the employer must meet certain conditions. In addition, employers can apply for advance approval so that they will not have to prove that the conditions are met each time they apply for a corporate visa for an employee.

16 Are spouses of authorised workers entitled to work?

Foreign nationals with close relatives in Denmark can apply for a residence permit on the basis of family reunification. Provided that certain conditions are met, family reunification can be granted to spouses and partners.

If the spouse or partner is granted a residence permit, it will be a temporary one. The spouse or partner can apply for an extension of the residence permit, and after a certain period of time, the spouse or partner can apply for a permanent residence permit.

A person who is granted a residence permit on the basis of family reunification will usually be entitled to work in Denmark.

Special rules apply to Nordic, EU, EEA and Swiss nationals residing in Denmark. Additional special rules apply if the person residing in Denmark (the spouse or partner) is a student.

17 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

The Danish legal framework for employment of foreign nationals is quite extensive and based in part on national law, EU law and international conventions. Specific provisions governing employment of foreign nationals can be found in national law, eg, the Danish Integration Act, the Danish Aliens Act and a number of executive orders.

Some foreign nationals are required to hold a residence and work permit. The specific requirements in connection with living and working in Denmark depend, first and foremost, on the person's nationality and qualifications (see question 18).

It is the employee's own responsibility to obtain a work permit if such a permit is required. Employees working illegally in Denmark risk deportation and either a fine or imprisonment. The employer risks a fine or imprisonment.

18 Is a labour market test required as a precursor to a short or long-term visa?

In most cases, foreign nationals need to have a residence and work permit (long-term visa) before they can begin working. In certain cases, however, foreign nationals can perform work-related activities while in Denmark on a visa (short-term visa) without holding a residence and work permit.

Foreign nationals staying less than three months are allowed to perform certain types of work-related activity even without a residence and work permit. Such activities include teaching or attending a course, or participating in meetings, negotiations, briefings and training.

Regarding foreign nationals who wish to live and work in Denmark, some are required to hold a residence and work permit (long-term visa). The specific requirements in this connection depend first and foremost on the person's nationality and qualifications. Regarding nationality, Nordic nationals are as a general rule free to live and work in Denmark. Special rules apply to EU, EEA and Swiss nationals.

Normally, a long-term visa must be warranted by occupational or labour market considerations. In some cases, the Danish Immigration Service's decision on whether to grant a long-term visa will be based on whether there is currently a shortage of qualified labour in Denmark, particularly if the job to be carried out by the foreign national is ordinary skilled work. In areas of the Danish labour market currently experiencing a shortage of qualified workers, a special 'positive list' provides for a fast-track procedure in terms of obtaining a long-term visa for workers whose professions are on the positive list. For research scientists, it is particularly easy to obtain a long-term visa provided that the foreign national is able to prove why the job should be carried out by him or her.

Terms of employment

- 19** Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

In the European Union, the number of working hours is limited by Directive 93/104/EC, as amended by Directive 2000/34/EC, also known as the Working Time Directive. In Denmark, the Directive is implemented in Danish law by the Danish Act on Implementation of Parts of the Working Time Directive and the Danish Working Environment Act.

Under the Danish Act on Implementation of Parts of the Working Time Directive, employees working more than six hours a day are entitled to a break. Similarly, the average working hours during a seven-day period may not exceed 48 hours, including overtime, calculated over a period of four months. More protective rules apply for those working evenings and nights, and employees working in the transport sector are protected by special rules.

It is possible to opt out of the Danish Act on Implementation of Parts of the Working Time Directive by collective agreement, but only if the collective agreement complies with the Working Time Directive.

Under the Danish Working Environment Act, employees are, as a starting point, entitled to 11 consecutive hours of time off during each 24-hour period. Similarly, all employees must have one 24-hour period of time off for every seven-day period. Special rules apply for shift workers, agricultural workers, managers, etc. In special circumstances, employers and employees may agree to opt out of the Danish Working Environment Act.

- 20** What categories of workers are entitled to overtime pay and how is it calculated?

Employees are not entitled to overtime pay under Danish law as such. This is a question that is regulated in the individual employment contract or collective agreement. Collective agreements may vary quite a lot on this question and it is therefore difficult to say anything specific about how overtime pay is calculated. Manual employees (blue-collar employees) are usually entitled to overtime pay under the applicable collective agreement. For salaried employees (white-collar employees), the situation is less simple – among other things, because many salaried employees are not covered by a collective agreement.

- 21** Is there any legislation establishing the right to annual vacation and holidays?

Under the Danish Holiday Act, employees are entitled to 25 days of holiday every year and to taking 15 of the 25 days consecutively between 1 May and 30 September.

Employees are not required by law to actually use their holiday entitlement because employees are not entitled to paid holiday as a starting point. It should be noted, however, that employers are required to pay their employees 2.08 days' extra pay every month and set this amount aside for their holiday the following year.

- 22** Is there any legislation establishing the right to sick leave or sick pay?

The rules vary depending on whether the employee is a salaried employee (white-collar employee) or a manual employee (blue-collar employee).

Salaried employees are entitled to full pay during sickness absence. If the employee is absent for more than 21 days, the employer is entitled to an amount corresponding to the sickness benefits from the local authority.

Other employees are entitled to sickness benefits during sickness absence. During the first 21 days of absence, the employer will pay

the sickness benefits to the employee. After that, the local authority will pay the sickness benefits to the employee.

- 23** In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

The answer to this question varies, and collective agreements and individual contracts may grant employees special rights.

Employees are always entitled to leave of absence if a family member is suddenly severely injured or falls seriously ill and requires the employee's presence. Employees are not entitled to receive pay during such leave by law, but they may be under a collective agreement or their individual employment contract.

The Danish Act on Entitlement to Leave and Benefits in the Event of Childbirth governs women's and men's entitlement to pregnancy, maternity, paternity, parental and adoption leave. The Act is quite complicated, but in outline the Act entitles women to start their pregnancy leave four weeks before the expected date of birth and to have 14 weeks' maternity leave after the birth. Men are entitled to 14 days' paternity leave after the birth. On top of this, parents are entitled to 40 weeks' parental leave, which can be taken by one parent alone or be split between the parents. Whether the parents are entitled to paid leave varies and must be determined on a case-by-case basis, but they will usually be entitled to benefits for most of the period.

Salaried employees covered by the Danish Salaried Employees Act are entitled to at least 50 per cent pay while on pregnancy and maternity leave (until 14 weeks after the birth).

- 24** What employee benefits are prescribed by law?

Employee benefits are regulated not by law, but by the individual employment contract or collective agreement or by verbal agreement.

- 25** Are there any special rules relating to part-time or fixed-term employees?

Part-time employment is governed by collective agreements and legislation. The Danish Part-Time Employment Act, which implements Directive 97/81/EC on part-time work, carries on the Danish tradition of respecting the collective bargaining system in that it allows the social partners to implement the provisions of the Directive through collective agreements. The Danish Part-Time Employment Act only applies as a supplement where no collective agreement applies.

Part-time employees working at least eight hours a week on average will also be protected by the Danish Salaried Employees Act provided that they qualify as a salaried employee.

Under the Danish Part-Time Employment Act, employers are prohibited from discriminating directly or indirectly against part-time employees because of their employment status as part-time employees. Also, the employee is entitled to compensation if he or she is dismissed for refusing to work part-time or for requesting to work part-time.

Similarly, fixed-term employment is regulated by collective agreements as well as by legislation. See also question 11.

Liability for acts of employees

- 26** In which circumstances may an employer be held liable for the acts or conduct of its employees?

As a general rule, employers may be held liable for their employees' acts or conduct if the acts or conduct are carried out as a result of or relating to the employees' duties.

Taxation of employees

27 What employment-related taxes are prescribed by law?

Employees are liable to pay tax in Denmark on income earned from a Danish employer.

All employees in employment must pay 8 per cent of their pay in social security contributions. The amount is deducted by the employer.

Employers are also required to pay two-thirds of €36.27 per month (2009-2011 indexes) for the ATP (the Danish labour market supplementary pension scheme) and deduct the remaining one-third from the employee.

Employee-created IP

28 Is there any legislation addressing the parties' rights with respect to employee inventions?

For patentable inventions, the rights of employees are governed by the Danish Employee Inventions Act. Most of its provisions are not mandatory and the employer and employee can thus opt out of them by agreement.

For non-patentable inventions, the general rule is that such inventions belong to the employer because they are seen as a result of the work performed by the employee in the course of his or her employment.

Business transfers

29 Is there any legislation to protect employees in the event of a business transfer?

Under the Danish Act on Employees' Rights on Transfer of Undertakings, employers must inform and to some extent consult their employees if they are planning a business transfer covered by the Act.

With effect from the transfer date, the transferee will become a party to the transferor's employment contracts and will thus assume all rights and obligations under the contracts. If the transferee is a party to one or more collective agreements, the collective agreement(s) may also transfer. Therefore, if the transferee does not wish to become a party to the transferor's collective agreement(s), the transferee must notify the relevant trade unions within certain time limits.

A business transfer is not in itself a valid reason for dismissing employees, but the affected employees can be dismissed if necessary for economic, technical or organisational reasons entailing changes in the workforce.

Termination of employment

30 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

In Denmark, no general fairness or 'cause' requirement applies to individual dismissals. However, if the employee is a salaried employee (white-collar employee) and therefore protected by the Danish Salaried Employees Act, the dismissal must be reasonably justified by the conduct of the employee or the circumstances of the employer. Similar provisions are found in most collective agreements.

'Cause' is not a defined concept. 'Circumstances of the employer' often means for economic reasons. If, for example, the employer is able to prove a need for cutbacks, the dismissals will usually be considered reasonably justified. But when carrying out the dismissals, the employer must ensure that the selection criteria are not arbitrary and not based on age, gender, religious beliefs or any of the other protected characteristics. Similarly, 'conduct of the employee' means that dismissals based on sickness absence, underperformance, etc, will usually be considered reasonably justified. In most cases, however, it

Update and trends

The Danish Holiday Act has been amended with effect from 1 May 2011. The amendment generally means that employers can only require departing employees to take untaken holiday during the notice period if the employee is actually not working. The employee will be considered to be working if he or she has begun a new job during the notice period and is thereby prevented from taking the holiday.

The Danish Executive Order on Holiday has also been amended. The Executive Order regulates the rules about accrual of holiday entitlement and the taking of holiday. The most important feature for employers is that it is now specified that departing employees who are entitled to paid holiday are also entitled to receive their holiday pay directly from the employer if they take their holiday immediately after the effective date of termination.

will be a requirement that one or more written warnings have been given before the dismissal to allow the employee to remedy the situation and thus avoid dismissal.

Salaried employees (white-collar employees) are entitled to compensation for unfair dismissal if they have been continuously employed by the same employer for at least one year before the date of notice. For other employees (blue-collar employees), collective agreements will usually – directly or indirectly – impose a fairness test with respect to dismissals, but only for employees who have been continuously employed for a specified period of time.

31 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Employees are usually entitled to notice of termination unless dismissed for gross misconduct. Employers are normally entitled to pay out the employee's pay during the notice period as a lump sum and it is up to the employer to decide whether to require the employee to work the notice period. If the employee is entitled to holiday pay, this amount must be paid into the holiday administration scheme (*FerieKonto*) at the end of the notice period.

32 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Employers are entitled to dismiss employees with immediate effect for gross misconduct such as unexplained absence, theft, engaging in competitive actions, disloyalty, inappropriate behaviour, insubordination, etc.

If dismissing a salaried employee (white-collar employee) for gross misconduct, the employer will be entitled to damages for any loss incurred. However, such damages are not very common as the burden of proof is on the employer. In the event of unexplained absence or desertion, the employer is as a minimum entitled to damages equalling half a month's pay in the absence of special circumstances.

33 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

There is no such general legislation in Denmark. However, salaried employees (white-collar employees) are entitled to redundancy pay if they have been continuously employed with the same employer for at least 12 years. In such case, the severance pay – which is payable in addition to the salary during the notice period – will amount to one month's pay. After 15 years of service, the amount is two months' pay and after 18 years of service, three months' pay.

For other employees (blue-collar employees), a number of collective agreements contain somewhat similar provisions.

34 Are there any procedural requirements for dismissing an employee?

Such procedural requirements apply only to public employers or if provided in a collective agreement. See also question 36 on collective redundancies.

No prior approval from a government agency is required by law.

35 In what circumstances are employees protected from dismissal?

Some categories of employees enjoy special dismissal protection. These employee categories include union representatives (under most collective agreements), health and safety representatives (under the Danish Working Environment Act) and employee directors (under the Danish Companies Act).

In addition, dismissal protection is given under various anti-discrimination acts. These acts include the Danish Act on Equal Treatment of Men and Women, the Danish Equal Pay Act, the Danish Act on Leave for National Service, the Danish Anti-Discrimination Act, the Danish Freedom of Association Act, the Danish Part-Time Employment Act and the Danish Act on Employees' Rights on Transfer of Undertakings. Further, some collective agreements may provide for dismissal protection in cases of sickness.

See also question 30.

36 Are there special rules for mass terminations or collective dismissals?

The Danish Collective Dismissals Act applies if an undertaking plans to dismiss a certain number of employees, depending on the size of the undertaking. Under the Act or similar collective agreements, or both, employers must consult with employee representatives before actually deciding to carry out collective dismissals.

The employees must be given all relevant information and the employer must notify the relevant regional employment council.

37 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Employers are entitled to set a mandatory retirement age of 70 years or more by individual contract or collective agreement. Nevertheless, a retirement age below 70 years is still valid in collective agreements

concluded before 28 December 2004 if the retirement age is reasonably justified by a legitimate aim and this is an appropriate and necessary means of achieving that aim.

Dispute resolution**38** May the parties agree to private arbitration of employment disputes?

Employers and employees are generally free to agree to submit to private arbitration in the event of a dispute, subject to the requirements of the Danish Arbitration Act. One such requirement is that the agreement between the parties must be clear and unambiguous, that the parties must have equal representation on the arbitration tribunal and that the arbitrator must be independent.

However, there have been examples in case law where the courts have allowed salaried employees to bring disputes before the ordinary courts about whether the employer could set aside certain parts of the Danish Salaried Employees Act, even though the parties had agreed to submit any disputes to private arbitration.

39 May an employee agree to waive statutory and contractual rights to potential employment claims?

As a general rule, statutory rights cannot be waived.

Even if the employer offers the employee higher pay in return, employees cannot waive their statutory rights during the employment relationship.

On termination, however, an employee will sometimes be allowed to waive certain rights in return for compensation. For example, the employer and the employee may enter into a severance agreement specifying that the agreement is a full and final discharge of any and all claims arising out of the employee's employment and dismissal. However, if the severance agreement is unfair, it may be set aside or changed by the courts.

40 What are the limitation periods for bringing employment claims?

The Danish Limitations Act sets out the limitation periods for employment claims. As a general rule, employment claims cannot be pursued after five years, although in special circumstances the five-year limitation period may be suspended.

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