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The International Comparative Legal Guide to:

Employment & Labour Law 2019

9th Edition

A practical cross-border insight into employment and labour law

Published by Global Legal Group, with contributions from:

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Published by
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London SE1 3PL, UK
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Stephens & George
April 2019

ISBN 978-1-912509-64-5
ISSN 2045-9653

Strategic Partners

Country Question and Answer Chapters:

Continued Overleaf →

global legal group

Country Question and Answer Chapters:

Chapter 13

Denmark


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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The main sources of employment law are legislation, collective bargaining agreements and individual contract and case law. Regulation of such law is influenced by the implementation of European Union Directives to the national law.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Generally, Danish employment law distinguishes between three main groups of employees:

i) white-collar employees;

ii) blue-collar workers; and

iii) managing directors responsible for the day-to-day management of a company or people who are self-employed.

The terms and conditions of white-collar employees, as well as their protection in each employment relationship, are typically regulated by the Danish Salaried Employees Act and are also reflected in the individual terms of employment contracts.

Certain groups of typically non-academic white-collar employees (primarily office and administrative staff, as well as sales assistants) are – depending on the industry and in addition to the aforementioned regulation – typically comprised by collective bargaining agreements.

On the other hand, blue-collar workers are to a large extent covered by collective bargaining agreements. The Danish labour market is characterised by a long tradition of employer and trade union negotiations regarding collective bargaining agreements for blue-collar workers. The agreements between the labour market organisations ensure protection in employment.

An increasing number of statutory laws apply to all kinds of workers due to the influence of the European Union. EU regulation can be implemented through law (mandatory) and, typically, through collective bargaining agreements. Workers who are not subjected to the Salaried Employees Act or a collective bargaining agreement are not protected in employment against unfair dismissal.

An important distinction in Danish employment law is made between employees and managing directors (and the self-employed). According to the Danish Companies Act, managing directors are responsible for the day-to-day management of a company and are not subjected to instruction under the principles of the managerial right.

As a general rule, a managing director will fall outside the scope of the Danish regulation adopted for the protection and safeguarding of employees; this is also the case for the self-employed.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

The individual employment agreement can be contracted in writing, orally or tacitly. It is not a legal requirement for an employment relationship to be established in a written contract in order to be valid. The employer must, however, within one month after commencement of employment, provide the employee with a written statement of all of the material terms of employment and at least:

i) the name and address of the employer and the employee;

ii) the place of work;

iii) the job title;

iv) the employment commencement date;

v) if a fixed term employment, the expected duration of employment;

vi) holiday entitlements;

vii) periods of notice;

viii) the agreed salary;

ix) working hours; and

x) any collective bargaining agreements applicable.

If the terms of employment are materially amended, written information reflecting the amendments must be issued within one month of the change coming into effect.

1.4 Are any terms implied into contracts of employment?

There are not many implied terms as typically all material terms are to be agreed in writing, however, some terms of unwritten law apply to all employment relationships, the most important implied term being the duty of loyalty.

The duty of loyalty means that the employee may not undertake any activities deemed to be in competition with the employer. In addition, the employee is prohibited from performing any acts which could potentially be detrimental to the employer.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

The Salaried Employees Act contains mandatory rules on length of notice periods, compensation in case of unfair dismissal, severance pay, sick pay and maternity leave entitlements.

Additionally, restrictive covenants are regulated in the Danish Act on Restrictive Covenants.

All employees are also protected by the Danish Holiday Act which grants 2.08 days of paid holiday per month of employment and the entitlement to take 25 holidays per holiday year.

Furthermore, working time regulation sets a maximum average working week of 48 hours based on a consecutive four-month period.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

The Danish model provides that employment conditions are to a large extent agreed in collective bargaining agreements; such agreements are decided at industry level. Danish legislators traditionally refrain from adopting legislation regulating individual terms of employment. Outside of collective bargaining agreements, the regulation in these agreements will typically have a spillover effect on individual terms of employment.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

In Denmark, we do not have general regulations on the recognition of trade unions. Outside of the area of collective bargaining agreements, trade union representatives are generally recognised as lay representatives and only through industrial action may the employer be forced to recognise collective bargaining.

2.2 What rights do trade unions have?

Trade unions do not have any particular rights protected by legislation. They derive their rights from the labour market's main agreements and collective bargaining agreements.

2.3 Are there any rules governing a trade union's right to take industrial action?

These rules are mainly developed in case law under the Industrial Tribunals and as such there are no specific written rules protecting trade unions' right to take industrial action.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

Employers are not required to establish local works councils. Such obligation is only imposed on employers subject to collective bargaining agreements which include rules for the establishment of works councils. Works councils typically discuss all aspects relevant to the employees in the workplace including financial development, introduction of new technology, and principles for supplementary training. Shop stewards are typically members *per se*. Otherwise, employee representatives are appointed through ballots.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

In cases of mass redundancy, and in a few other specific circumstances, the employer is prohibited from making a final decision prior to having consulted the local works council and the works council having been given the opportunity to discuss the proposed measures with the employees and make a statement to management. In no case, however, do co-determination rights block the local management's right to adopt a decision.

2.6 How do the rights of trade unions and works councils interact?

If a works council exists, the employer must in the first instance discuss relevant issues with the works councils at workplace level. Only if the employee representatives request expert assistance will trade union representatives typically appear at workplace level. Trade unions can be allowed inspection rights in some collective bargaining agreements.

2.7 Are employees entitled to representation at board level?

In companies of a certain size (in terms of number of employees) the employees may request representation at board level.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Most of the equal treatment regulation in Denmark is based on EU Directives prohibiting discrimination.

The Differential Treatment Act contains provisions prohibiting employers from direct or indirect differential treatment of employees or job applicants on the grounds of a person's age, disability, race, colour of skin, religious belief, political orientation, or national, social or ethnic origin.

According to the Equal Treatment Act, an employer is prohibited from discriminating on the grounds of a person's gender in relation to working conditions including termination of employment. The act provides for the possibility of annulment of dismissals conducted on the grounds of pregnancy, maternity leave or adoption, or payment for compensation for acts of discrimination in contravention with any kind of the protected criteria.

Any employee associated with someone with protected characteristics is also protected.

3.2 What types of discrimination are unlawful and in what circumstances?

Both direct and indirect discrimination is prohibited according to the Differential Treatment Act and the Equal Treatment Act.

Direct discrimination occurs when a person is, has been or would be treated less favourably in a comparable situation. Indirect discrimination occurs when a provision, criterion or practice, which may appear neutral, consequently puts people who share a protected characteristic at a particular disadvantage.

The Differential Treatment Act prohibits discrimination of employees due to a disability. The employer is obligated to make reasonable and proportionate adjustments and adapt the workplace to accommodate the needs of the employee's disability. Victimisation of employees who have taken action to enforce their rights is prohibited.

From the outset, the employer is responsible for workplace harassment.

3.3 Are there any defences to a discrimination claim?

In cases of discrimination there is typically a reverse burden of proof, meaning that the employer shall provide evidence that a decision on, e.g., dismissing a pregnant employee is not since she is pregnant. The reverse burden of proof can be satisfied, but it is rarely the case in disputes brought before the courts.

The rules on burden of proof will typically influence the level of compensation.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees may bring their claim before the ordinary courts, the Industrial Tribunals or the Equal Treatment Tribunal. If the Equal Treatment Tribunal decides in favour of the employee and the employer is not satisfied with the decision, the Equal Treatment Tribunal is legally obliged to pay legal costs to the employee for bringing the case before the courts.

Claims must always be settled before or during legal proceedings. There are no exact formal requirements to e.g. a settlement agreement, but it is always recommended to agree in writing and to ensure that the employee has received advice. If not drafted with diligence, a settlement agreement which is for a full and final settlement may be set aside by the courts.

3.5 What remedies are available to employees in successful discrimination claims?

Compensation is the main remedy in Denmark. In some cases, particularly before the Industrial Tribunals, it is possible for the employee to be reinstated in employment, but this sanction is rarely used.

The level of compensation ranges from DKK 10 – 25,000 (for instance for claims for unequal treatment in relation to wage negotiations) up to a standard level of six to 12 months of pay in cases of discrimination and depending on the seniority in employment.

Effective 1 January 2019, the level of compensation in the so-called #Metoo cases (sexual harassment) has been raised by ⅓ of the previous level of compensation which was an average of DKK 25,000.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

Owing to EU regulation, atypical workers are protected against discrimination due to the fact that they are either:

i) part-time workers;

ii) working fixed-term; or

iii) employed through a temporary agency.

The *pro rata temporis* principle applies for all part-time workers. This means that part-time workers must be given employment conditions like a comparable full-time employee on a *pro rata* basis. Fixed-term employees may not be treated less favourably than permanent staff. A fixed-term contract may from the outset only be prolonged at least one time, but if based on objective grounds, the fixed-term contract may be successively prolonged.

Temporary agency workers are entitled to protection with regards to working time, overtime, breaks, resting periods, night shifts, holiday, bank holidays and pay, at least at the same level as those employed directly by the workplace making use of the temporary agency worker. The workplace shall inform the temporary agency worker of positions available at the workplace. Exceptions do apply if collective bargaining agreements apply.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

A pregnant woman is entitled to be absent from work due to pregnancy in the four-week period prior to the expected date of delivery.

After delivery, at least two weeks of leave are to be taken as compulsory maternity leave. After the initial two weeks there is an entitlement to 12 consecutive weeks of leave.

After the initial 14 weeks of absence after birth, the mother is entitled to 32 weeks of parental leave, a period which can be extended to 46 weeks.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

In Denmark, the right to payment from the employer during maternity leave is mainly regulated through collective bargaining and individual employment agreements and workplace policies. Female employees comprised by the Salaried Employees Act are, however, as a minimum entitled to 50% of their ordinary salary in the period of four weeks prior to, and 14 weeks after delivery.

Parents who are not entitled to maternity leave with pay will usually be entitled to benefits from their local municipality.

If Danish employers pay a salary during maternity leave, they are entitled to reimbursement of the daily cash benefit from the local municipality that the employee would have received. In addition, it is possible for employers to receive a supplementary reimbursement from the Danish Maternity Leave Fund.

4.3 What rights does a woman have upon her return to work from maternity leave?

As an employee, a woman is entitled to return to the same or a similar position with working conditions not less favourable than prior to the leave. Furthermore, parents may, upon return from leave, request changed working hours or working patterns. The employer is obligated to consider (but not obliged to accept) such request and reply in writing.

4.4 Do fathers have the right to take paternity leave?

A father is entitled to be absent from work for two consecutive weeks within the first 14 weeks after delivery.

Additionally, and following a decision from the European Parliament and the European Council on 24 January 2019 regarding new regulation of paternity and parental leave, Denmark is expected to implement earmarked parental leave for fathers in the near future.

4.5 Are there any other parental leave rights that employers have to observe?

After the 14th week following childbirth or the reception of the child, either parent shall be entitled to parental leave for 32 weeks.

The father, however, is entitled to begin the parental leave within the first 14 weeks after childbirth.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

If taking care of a dependant, employees are entitled to be absent from work, but are not entitled to work flexibly. This entitlement applies in cases of:

i) compelling family-related reasons in cases of illness or accidents;

ii) employment by the municipality according to the Act on Social Service to take care of a dependant; or

iii) when receiving a carer's allowance according to the Act on Social Service to take care of a dependant whose desire it is to die in the dependant's own home.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

The rule of law does not stipulate an automatic transfer, however, from a practitioner's point of view the employees who are mainly engaged with the activities subjected to transfer (more than 50% of working time) will usually automatically transfer to the new employer.

All employees "transfer" at a share sale, as the employer does not change its identity. Hence, a share sale is not a business transfer and therefore does not include business transfer protection of employees.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

All rights and entitlements accrued *vis-á-vis* transferring employees and not yet settled at the transfer date, transfer to the new employer. The main rule is that collective agreements transfer along with the activity. However, due to special regulation in Danish law, the transferee may renounce a collective bargaining agreement applicable to the work with the transferor.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

There are very few and limited information requirements during a business transfer and the information obligation can be fulfilled in a very short time. The sanction for non-compliance is a fine. No case law exists in this respect.

5.4 Can employees be dismissed in connection with a business sale?

If a dismissal during a transfer of business is due to financial, technical or organisational reasons, a dismissal may take place in connection with a business transfer. An employment relationship may not be terminated solely due to the business transfer.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Employers may take measures to change terms and conditions of employment during a business sale, as long as such changes are implemented using the ordinary rules of employment. If a change is material and to the detriment of the employee, the employee should be notified of the change coming into force and at the same time be made aware that if the employee does not accept the change at the expiry of the notice period, the employee may consider him/herself made redundant and resign.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Unless a no-notice period applies – which is typically due to short seniority or special regulation in an individual employment contract – employees are entitled to be provided with a notice of termination.

The notice period would either follow from:

i) the Salaried Employees Act;

ii) a collective bargaining agreement; or

iii) the individual employment contract.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Garden leave (often referred to as release) or suspension (duty to remain available at request) is at the employer's discretion.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

Employees subject to the Salaried Employees Act are protected against unfair dismissal after 12 consecutive months of employment. The seniority requirement under collective bargaining agreements is typically nine months, but may vary. An employee is treated as dismissed if the employer gives notice of termination or invokes misconduct by the employee as a reason for considering the employment relationship as terminated. No third-party consent is required.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

Outside the area of equal treatment and discrimination, including the protection of those requesting part-time work, there are some categories of employees who enjoy special protection against dismissal. These are:

i) shop stewards;

ii) safety stewards; and

iii) other employee representatives elected according to special legislation, e.g. employee representatives on a board, members of European Works Councils, etc.

In terms of redundancies, the employees who are afforded particular protection are the last among equals to be made redundant. During the ordinary course of employment, compelling reasons are required to dismiss these categories of employees.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

In cases of gross misconduct (e.g. theft or acts of disloyalty), the employer may summarily dismiss the employee. Otherwise, the fairness of a termination with notice depends on the materiality of the misconduct of the employee. In many cases, a prior written warning is required to ensure a fair termination procedure.

The entitlement to dismiss for business-related reasons is very broad and, e.g., in cases of lack of work or restructurings, it is essentially a management assessment of how many employees and whom to dismiss.

Employees protected by the Salaried Employees Act are entitled to a severance pay of one or three months' salary, respectively, if having been employed for at least 12 or 17 years. Employees protected by collective bargaining agreements are to a wide extent entitled to a severance pay in case of three, six or eight years of employment, however, the seniority requirement and level of severance pay may vary.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Generally, in order to ensure that a termination is to be deemed fair when the reasons relate to the employee, a warning is often required, in particular if the reason for termination is lack of performance or cooperation. The employee must be given the opportunity to adapt to the workplace requirements, including improving performance or cooperation *vis-á-vis* colleagues and management before dismissal is enacted.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

As a general rule, employees protected by the Salaried Employees Act may claim compensation of an amount equal to the length of the notice period in the case of unfair dismissal. Typically, ½ and ⅔ of the maximum amounts is awarded. Furthermore, before the Industrial Tribunals, reinstatement into the employment is possible.

Employees may bring their claim before the ordinary courts, or if protected by collective bargaining agreements, *ad hoc* Industrial Tribunals.

6.8 Can employers settle claims before or after they are initiated?

Claims can be settled at each stage of a termination procedure, including during court proceedings.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

If the employer contemplates making redundant within a 30-day period:

i) at least 10 employees in enterprises employing more than 20 and less than 100 employees;

ii) at least 10% of the employees in an enterprise employing at least 100 and less than 300 employees; or

iii) at least 30 employees in enterprises employing at least 300 employees,

the employer must inform and consult with the employees (or their representatives) with a view to reaching an agreement decreasing or avoiding the number of contemplated redundancies. The duty to inform and consult does not impose any restrictions on the managerial right. Furthermore, local public employment councils must be kept informed of the processes and details of the employees in question. The employer is subject to specific information disclosure requirements in relation to the employees or their representatives.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Employees can enforce their rights by means of trade union representation. Trade unions assist employees in raising claims during mass redundancy procedures. Failure to comply may result

in the employer being subject to a fine (no case law exists) and/or compensation payable to the employees, whose entitlements have been neglected. The compensation amounts to 30 days' salary. The salary the employee receives during his/her notice period will be deducted from such compensation.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

The regulation of restrictive covenants does not only comprise white-collar workers, but all kinds of employees save for managing directors with a few exceptions.

During a business sale, and when hiring temporary workers through a temporary employment agency, no-hire clauses are recognised, however, on a more general basis, no-hire clauses have been prohibited since 1 January 2016. Existing no-hire clauses (entered into prior to 1 January) are enforceable until 1 January 2021 whereupon they will become invalid.

7.2 When are restrictive covenants enforceable and for what period?

Non-competition and non-solicitation of customer covenants can typically be enforced after the cessation of employment, but may also apply during the ordinary course of employment, where violation of such clause typically also will constitute a material breach of the employment relationship.

The length of the covenant depends on what has been agreed, but for non-competition or non-solicitation of customer clauses, the maximum duration which can be agreed by the parties is 12 months after the effective date of termination. For combined covenants, the maximum duration is six months after the effective date of termination.

Non-competition clauses become null and void if the employment relationship is terminated unfairly or due to reasons attributable to the employer, including gross violation of contract on behalf of the employer.

As a peculiarity other personal non-competition restrictions agreed outside of employment relationships, e.g. in a shareholder agreement, will under the same circumstances become null and void.

7.3 Do employees have to be provided with financial compensation in return for covenants?

The employer must pay the employee compensation in the period after cessation of employment, during which the covenant still applies.

For covenants with a duration of up to six months, the monthly compensation payable amounts to 40% of the employee's monthly salary level immediately prior to resignation.

For covenants with a duration of up to 12 months, the monthly compensation payable amounts to 60% of the employee's monthly salary level immediately prior to resignation.

For combined covenants with a duration of up to six months, the monthly compensation payable amounts to 60% of the employee's monthly salary level immediately prior to resignation.

7.4 How are restrictive covenants enforced?

Covenants are enforced through injunctions, liquidated damages (if agreed to) and payment of damages for any financial loss suffered.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

General

The General Data Protection Regulation ("GDPR") regulates the processing of personal data, including an employer's processing of employee personal data. Employees have the same rights as other "data subjects" according to the GDPR, including the right to access personal data processed by the employer, the right to deletion, the right to restriction of processing, the right to data portability, etc.

The employees also have the same right as other data subjects to be informed about the employer's processing of personal data according to article 13-14 of the GDPR.

The Danish Data Protection Act supplements the GDPR and – in certain areas – provides an even further protection of personal data compared to the GDPR, including processing of Social Security Numbers (CPR numbers in Denmark), which requires consent as the main rule, unless processing is required by law.

It is a general principle in both the GDPR and the Danish Data Protection Act that the employer – as the controller of the employees' personal data – must have a legal basis for processing of the employees' personal data and that the employer must process such data in accordance with the general data processing principles according to article 5 of the GDPR.

As the main rule, it will be lawful for the employer to process the employees' personal data as the processing of personal data is necessary for the employer to fulfill the employer's obligations according to the employment contract and the employer's duties according to applicable legislation.

According to the GDPR and the Danish Data Protection Act, an employer can therefore also process special categories of personal data ("sensitive" personal data) without consent from the employees when processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of e.g. employment law and social protection law or according to an applicable collective bargaining agreement.

In some areas the nature of the employment relationship has an impact on how the employer must adhere to the data protection rules. For example, the employer must take special care when collecting consents from the employees (where relevant). It must be clear for the employees that it is voluntary to provide the employer with their consent and that it has no negative impact on the employment relationship if the employees do not provide the employer with their consent. The employees must be able to withdraw the consent, *cf.* article 7 of the GDPR.

The Danish Data Protection Agency has published guidelines on the processing of personal data in employment relationships in November 2018 (in Danish only). The guidelines contain the tightening of the Data Protection Agency's practice in certain areas. For instance, it is stated in the guidelines that an employer must

collect consent from the employees if the employer wishes to publish pictures of the employees, e.g. on the employer's website, on social media or in marketing material. According to the guidelines, this requirement applies both for profile pictures and "situational pictures". As the main rule, internal publishing of the employees' personal data, including pictures, on the employer's intranet does not require consent.

Transfer of personal data

The same principles for processing of personal data, including the general requirement that the employer must have a legal basis for the processing of personal data, apply for transfers of personal data.

Oftentimes, it is necessary for the employer to transfer the employees' personal data to public authorities, including social authorities and tax authorities, and to certain private companies, e.g. insurance and pension companies, for the employer to fulfill its duties according to the employment contracts and applicable legislation.

As the main rule, the employer can make such necessary, and in some cases by law required, transfers without consent from the employees.

In some cases, transfer of the employees' personal data may require consent, e.g. transfer/publishing of the employees' personal data (e.g. pictures and contact information) on the employer's website, in marketing material, etc.

Additional requirements apply for transfer of employee data to third countries according to chapter 5 (article 44-50) of the GDPR.

Generally, transfer of employee personal data requires a sufficient level of protection and is, as the main rule, only allowed if the third country is able to meet certain requirements ("safe third countries"), according to article 45 of the GDPR.

Other forms of legal basis to transfer personal data to third countries include Binding Corporate Rules for group internal data transfers, according to article 47 of the GDPR, transfer based on the "Privacy Shield" agreement for transfers to companies covered by Privacy Shield in the US, transfer based on the standard data protection clauses adopted by the EU Commission ("Model Clauses") or if the registered employees have given consent prior to the transfer.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

According to the GDPR, registered employees have the right to access information stored or held by their employer at any time, *cf.* article 15 of the GDPR.

Employees also have a right to data portability, i.e. a right to receive the personal data concerning him or her, which he or she has provided to the employer, in a structured, commonly-used and machine-readable format and, if certain criteria are met, the right to require such data transferred to another controller without hindrance from the employer, *cf.* article 20 of the GDPR.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

As the main rule, processing of criminal records require consent from the employees, *cf.* article 10 of the GDPR and 8(3) of the Danish Data Protection Act. However, if the criminal record is obtained by the employee and freely provided by the employee to the employer, this will be a sufficient "consent" for the employer to process the criminal record, according to the guidelines from the Danish Data Protection Agency.

When processing criminal records, it is recommended that, particularly in relation to criminal record checks, such check is only made use of when it is of importance to the specific position that the candidate is applying for (the criminal record checks must be proportionate and not used to a further extent than necessary).

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

It is standard for employers to have access to monitor emails, telephone calls or use of an employee's computer systems when such monitoring is for operational reasons and to ensure correct use of the equipment.

If (limited) private use of email, etc. is permitted, the employer must not use its access to read or monitor the employees' private emails, telephone calls, etc. (except in cases of suspicion of fraud or similar criminal activities).

After termination of an employee, it can be lawful for the employer to keep the former employee's email account active for a limited period, but this can never exceed 12 months. The employer can only keep an email account active to ensure that significant information is not lost and only to receive emails – not to send emails from the former employee's account. The former employee must be informed that the email account is kept active and for how long.

It is recommended that the employer inform all employees on the employer's use of control measures and processing of personal data related to use of email, internet, telephone and mobile etc., in the employer's HR Policy and/or Privacy Policy.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

Inside the workplace, the employer can, through HR policies or by blocking access to websites, control the use of social media. From the outset, it is the employer's prerogative to decide on such use and access in the workplace.

It is recommended that the employer inform all employees on the employer's use of control measures and processing of personal data related to use of social media in the employer's HR Policy and/or Privacy Policy.

Outside the workplace – meaning outside of working hours – the employer is not allowed to control the use of social media. On the other hand, the employee has a duty to act in a loyal manner in all aspects and any statements on social media which could be considered misconduct may be sanctioned by the employer through disciplinary procedures.

If access to social media outside the workplace is on company equipment, e.g. a smartphone, the employer is also entitled to control the use of such company property.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

The ordinary courts have jurisdiction over all disputes, however, if the employment is covered by a collective bargaining agreement

and the employee is a member of the trade union being a party to the specific collective bargaining agreement, the Labour Court and the Industrial Tribunals have sole jurisdiction over the matter.

The city courts are composed of one judge, whereas the High Court consists of three judges. Typically, at least five judges hear cases in the Supreme Court. The Industrial Tribunals will typically be chaired by a Justice of the Supreme Court and two or three expert assessors form the trade unions and employers' organisations which are also part of the tribunal.

Arbitration is seldom used in employment contracts and if so will only be used in agreements with top executives.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

Outside the area of applicability of collective bargaining agreements, no specific procedure applies. Conciliation is only necessary if prescribed for by rules in a collective bargaining agreement. The major part of such agreements do have specific procedural conciliation requirements in order for a case to be brought before the Labour Court or the Industrial Tribunals.

In cases brought before the Labour Court or the Industrial Tribunals, all expenses are covered by the trade unions, whereas before the ordinary courts a court fee, which is calculated on basis of the financial value of the claim raised, is payable by the claimant.

9.3 How long do employment-related complaints typically take to be decided?

Currently, case consideration before the ordinary courts is very long, and it takes between 12 and 18 months from submitting the claim before the actual court hearing is conducted. Case processing time before the Industrial Tribunals is somewhat more expedient, but varies from three to 12 months and in some cases even more.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

If the case is pending before the ordinary courts, a decision may be appealed from the city court to the High Court. A third instance appeal to the Supreme Court may be granted if the case is of a principal character. An appeal may take up to a year. If the case is brought before the Industrial Tribunals it is not possible to appeal the decision made. This is one of the reasons why it is the Justices of the Supreme Court chairing the Labour Court and the Industrial Tribunals.

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