

## European Employment Law Update

Jurisdiction: Denmark  
Date: November 2017

Impact date	Development	Impact
<p>17 October 2017</p>	<p>Under the <b>Danish Transfer of Undertakings Act</b> (the Act), the transferee will immediately assume the rights and obligations of the transferor in relation to the employees on the date of the takeover.</p> <p>The Danish courts have previously found that an employee - who has been dismissed and released from the duty to work before the date of takeover - is generally not considered as an obligation, which will be assumed by the transferee.</p> <p>However, the Danish Supreme Court found that an employee who had been wrongfully dismissed and released from the duty to work shortly before the date of takeover could bring a claim against the transferee if the wrongful dismissal was due to the transfer.</p> <p>The decision implies that a transferee may be liable for a wrongful dismissal carried out by the transferor shortly before the transfer, even if the employee has been released from the duty to work before the transfer is completed.</p>	<p><b>Facts</b></p> <p>An employer became subject to insolvency proceedings in November. A month later, the insolvent estate entered into an agreement with the transferee. This agreement concerned the transfer of the part of the company in which the employee worked. Three days before the transfer, the employee was told that he would not be a part of the transfer and he was therefore dismissed. The transferee had participated in the selection of the employees to be made redundant.</p> <p>However, as the employee was an employee representative, and the Danish Courts require compelling reasons for the dismissal of an employee representative, the court found that the dismissal was unfair. According to the Act, the transferee will assume the rights and obligations of the transferor in relation to the employees on the date of the takeover. Thus, the question before the court was, whether the transferee was liable for the insolvent estate's wrongful dismissal of the employee.</p> <p><b>Ruling of the Danish Supreme Court</b></p> <p>The Danish Supreme Court initially stated that the Act was an implementation of an EU directive, and should be construed in accordance with the relevant EU case law.</p> <p>With reference to <i>Case C-101/87, Bork International</i> and <i>Case C-319/94 Dethier Équipement</i>, the Danish Supreme Court found that employees, who are dismissed contrary to the rules under the Act, should be deemed as</p>

	<p>.</p>	<p>employees at the time of the transfer. The court concluded that this is generally the case if the employee has been dismissed shortly before the date of takeover.</p> <p>The EU directive did not include transfers from insolvent estates.</p> <p>The Danish government has, however, specifically included insolvent estates in the Act. Accordingly, the Danish Supreme Court found that the EU case law was relevant in this case.</p> <p>In relation to the specific case, the Danish Supreme Court found that the dismissal and release of the employee, three days before the transfer, happened in such timely conjunction with the transfer that the reasons for the dismissal was related to the transfer.</p> <p>The Danish Supreme Court consequently held that the transferee was liable for the wrongful dismissal of the employee.</p>
<p>31 October 2017</p>	<p>A majority of the parties in the Danish Parliament have entered into a political agreement concerning a new <b>Danish Holiday Act</b>.</p> <p>The Agreement states that the proposals introduced in the Danish Holiday Act Committee's report will be adopted.</p> <p>The main proposal introduced in the Danish Holiday Act Committee's report is the change from staggered holidays to concurrent holiday. Thus, the proposal entitles all new employees to paid vacation in their first year of employment.</p>	<p><b>Facts</b></p> <p>The Danish Holiday Act Committee was commissioned in August 2015 to ensure that the Danish rules were compliant with EU legislation.</p> <p>The committee consisted of both sides of the industry, who agreed on the proposal introduced in the report. The proposal was subsequently agreed upon by a majority of the Danish political parties.</p> <p>The proposal has gone out for consultation, where other parties with an interest in the Act may make comments, the deadline for such comments being 15 November 2017.</p> <p>If the proposal is adopted, the new Act will enter into force on 1 September 2020 and apply to the private and the public sector.</p>

		<p><b>The proposed Act</b></p> <p>According to the proposal, employees will be entitled to the same amount of paid holiday as under the current <b>Danish Holiday Act</b>. Thus, employees will continue to earn five weeks of paid holiday per year.</p> <p>The proposed change to concurrent holiday means that the employees must take their holiday as it is earned over a 12-month period from 1 September to 31 August (the holiday year).</p> <p>The proposal also extends the period in which the employees may take their earned holiday with four months. This means that the holiday can be taken from 1 September to 31 December the subsequent year. Thus, the employees are given a 16-month period to take their holiday (the holiday period).</p> <p>Furthermore, the proposal contains a transitional period to ease the transition from staggered holidays to concurrent holidays. The transitional year will be 1 September 2019 until 31 August 2020. Holiday earned in that period will be set aside, meaning that it cannot be taken or paid out. The employees will then receive the funds when they leave the employment market.</p>
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