

European (& the GCC) Employment Law Update

Jurisdiction: Norway
Date: May 2019

Impact date	Development	Impact
11 October 2018	New decision by the Supreme Court regarding employees' right to choose to remain with the former employer in the event of a transfer of an undertaking.	The Supreme Court ruled that the loss of early retirement pension as a consequence of a transfer of an undertaking could induce the right to stay with the former employer, provided that it is likely that the employee would be entitled to early retirement pension within a limited period (one year and two months in this case) had the transfer of undertaking not taken place.
25 October 2018	Interpretation of the right to remain in position during legal proceedings.	The Appeals Selection Committee of the Supreme Court stated that the right to remain in position during legal proceedings must include both the right to receive salary and to perform work for the employer.
12 December 2018	New decision from the Supreme Court concerning claim for employment in group companies other than the formal employer.	<p>As a step in a substantial restructuring process, the employment of pilots and cabin crew was transferred from the parent company to separate pilot and cabin crew companies in the group. The employees claimed that the parent company should be regarded as their employer.</p> <p>The Supreme Court found that the parent company could not be regarded as the employer alongside the subsidiaries based on "special grounds". In addition, the supply of employees from the subsidiaries to their parent company had to be considered as contracting of crew services, rather than mere hiring of labour. The Supreme Court emphasised that the respective subsidiary was responsible for managing the work and the result and that the assignment was clearly defined in advance.</p> <p>The decision is based on specific facts, but the Supreme Court clarifies that joint employer's responsibility is a narrow exemption rule, and that it takes a lot before an undertaking other than the formal employer can be regarded as</p>

		sharing the employer's responsibility. The Supreme Court stated that it is difficult to imagine co-existence of a contracting relationship and a joint employer's responsibility for the contractor and the principal.
1 January 2019	Rules regarding permanent employment established by law.	<p>Rules with regard to permanent and temporary employment, which implement former non-statutory law, entered into force on 1 January 2019.</p> <p>Permanent employment is defined as employment that is continuous and unlimited in time. The rules regarding termination of employment apply and the employee is guaranteed predictability for their work. The number of working hours per week must be specified in the employment contract, which means that agreements in the form of "permanent employment without guaranteed pay" ("zero-hour contracts") may no longer be used.</p>
1 January 2019	New rules extending the right to claim permanent employment.	An employee who has been continuously employed in a temporary position, may claim permanent employment after three years. According to the former rules, permanent employment could be claimed after four years at the earliest if the work had been of a temporary nature. Under the new rules, an employee who has been continuously employed based on a combination of temporary employment (e.g. work of a temporary nature and as a replacement for absent employees), may claim permanent employment after three years.
1 January 2019	New rules regarding preferential right to employment.	New rules were implemented 1 January 2019, specifying that the preferential right to employment for part-time employees also applies to parts of the available position.
1 January 2019	New rules regarding hiring agreements on time limited hiring-in of personnel from staffing agencies.	The rules restrict the access for companies bound by a collective agreement to enter into agreement with union representatives/trade unions on time limited hiring-in of personnel from staffing agencies. The amendments entail that only unions with nomination rights (minimum 10,000 members) may enter into such agreements.

		The new provisions will apply from 1 July 2019 for businesses that have already entered into such agreements with unions which do not have nomination rights.
28 February 2019	New decision from the Supreme Court clarifying the signification of the seniority principle.	<p>The question for the Supreme Court was to what extent an employer is allowed to use criteria other than the employee's seniority in connection with workforce reductions in operations bound by a collective agreement.</p> <p>The Supreme Court clarifies that although the principle of seniority must form the basis for the selection, in determining which employees to make redundant, the selection shall ultimately depend on an overall assessment based on other criteria such as the employees' competencies and professional skills.</p>
5 April 2019	Proposed amendments in rules regarding the employees' right to notification of censurable conditions ("whistleblowing").	The Government has proposed amendments in the rules regarding the employees' right to notify censurable conditions at the undertaking. The proposition clarifies central terms regarding notification and the employer's obligation to prepare procedures for internal notification. It also introduces new duties with regard to the employer's handling of the notification.