

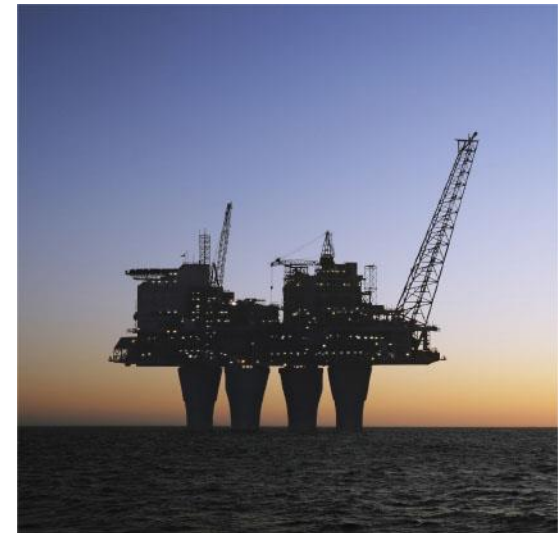


Norwegian employment law

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TOPICS

- Purpose of today's session is to elaborate on some aspects of Norwegian employment law with case studies and examples
- Introduction: Characteristics of Norwegian employment law
- Recruiting employees
- Employment contracts – permanent/temporary
- Changing the terms and conditions of employment
- Termination of employment
 - Redundancies



CHARACTERISTICS

- Norwegian employment law is characterized by strong worker protection through legislation and collective agreements
 - Employment protection
 - Mandatory benefit schemes under law, including leave of absence, insurance, sickness benefits and unemployment benefits
 - Mandatory holiday pay
 - Mandatory occupational pension
- Worker codetermination and participation
- Detailed formal mandatory procedures

HISTORY

- What has developed Norwegian employment law?
 - Strong unions, high unionization rate and development of collective agreements since early 1900
 - Post ww2 welfare development (The Nordic model)
- Development of employment legislation through 70s and 80s
- Since 1994 – strong influence from EC legislation
 - Non-discrimination law
 - Transfer of undertakings protection
 - Collective dismissals
- Working Environment Act 2005
- News: Non compete restrictions, new legislation
- On the horizon:
 - Review of whistle-blower provisions



RECRUITMENT

- Recruitment is based on employer's choice and is not regulated by law
- Private sector
 - No requirement to announce positions to the public, but employees of the company should be informed of open positions
 - Employers should observe preferential rights for previously terminated employees, temporary employees and part time employees (WEA ch 14)
 - No regulation regarding the employer's choice of candidate
- Public sector
 - Requirement to announce position and to employ the best qualified candidate
- Employer's choice of candidate is limited by discrimination laws
 - Case law from the discrimination and equality ombud and board

CASES

- LDN 2014-52

- A government body recruited to a senior position.
- Plaintiff A was 58 years and was not called for an interview despite relevant competence and experience
- This gave *reason to believe* that he had been discriminated due to age
- The employer had the burden of proof and it was not sufficient that the employer assumed that elder employees did not have up to date education and experience.



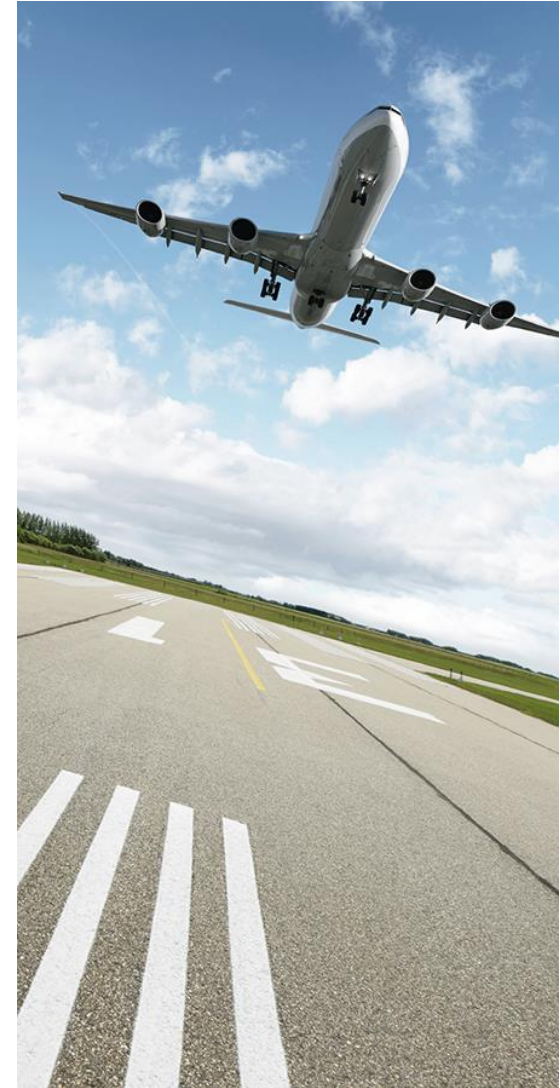
- LDN 2006-10

- Job announcement encouraging «mature woman 30-50 years» to apply was discriminatory
- Sex discrimination and age discrimination



GATE GOURMET CASE

- Airline caterer won tender for new contract
- The company entered into an agreement with the union to recruit its members who worked for the previous airline catering company
- The agreement was found discriminatory as it favoured members of one union as opposed to members of other unions and non-union members
- Employees were awarded damages for up to two years salary as a result of union membership discrimination



EMPLOYMENT CONTRACTS

- General principle in Norwegian employment law: permanent employment
- Temporary employment and employment through agencies is restricted
 - Temporary work
 - Substitutes
 - Trainees
- New legislation gives employers a general right to use temporary employment for up to 12 months.



NEW LEGISLATION

- What are the limits on temporary employment under new legislation?
 - Limited to a period of 12 months
 - Can be used for both temporary and permanent work
 - Up to 15% of the employees
 - Quarantine period of 12 months
 - Applies to same type of work
 - Means that an employer who has used a 12 months temporary contract can not enter into new 12 months temporary contract for the same type of work during the quarantine period
- Temporary employees are entitled to permanent employment after 3 year

AGENCY WORKERS AND SERVICE PROVIDERS

- Agency work is subject to the same restrictions as temporary employment.
 - fair to assume that agency work is used to a large extent and not only for substitutes and temporary work
- Agency workers are entitled to equal treatment with the employers regular employees regarding salary and terms of employment
 - Includes salary, working time, bonuses (?)



PRACTICAL ISSUES

- Agency workers are entitled to permanent employment after 4 years.
- Often becomes an issue if a person has been assigned to a company for close to four years.
- Examples of agency workers who has been taken out for a period of time and then hired in again (new 4 year period starts)



RECENT CASES

- Statoil post office case (2013) shows that it is necessary to differentiate between agency workers and employees working for a service provider
 - Agency workers are under the control and management of the hiring company (typically employees from Manpower etc)
 - Service providers are under the control and management of the service provider (typically an external IT service provider)
- Statoil had outsourced its internal post office to a service provider. The employees were previous Statoil employees who were made redundant.
 - The employees argued that they were under the control and management of Statoil in their daily work and therefore should be considered as agency workers.
 - Argued that they had been employed for more than 4 years and therefore entitled to permanent employment with Statoil
 - Supreme court found that they were indeed under the control and management of the service provider

CHANGING THE TERMS AN CONDITIONS

- Changes in the terms and conditions, the position, the working place etc are practical and important issues.

- Supreme court of Norway in the “Nøkk” ruling

«According to the Managerial prerogative, the employer is entitled to organise, manage, control and distribute the work within the framework of the employment relationship that is entered into. The employment agreement should be interpreted inter alia with consideration of the job title, the circumstances related to the recruitment process, trade practices, practice in the employment relationship at hand and also what seems fair in light of the development of the society”

- The managerial prerogative is limited by legislation and agreements, and it is dynamic (may change with the changes of society)

RT 2008 – 856 THEATERCAFEEN

- Issue: Theatercafeen decided to split tips between waiters and other restaurant staff.
- Question for the Supreme court:
 - *Was the waiter's legally entitled according to their employment agreements to keep the tips for themselves?*
- Assessment
 - The right to tips was not part of the written employment agreements
 - *The fact that the waiter's for a long time (70 years) had kept the tips for themselves gave them an expectation, but not an expectation that constituted an agreed right.*
 - Type of benefit and development in society where more and more restaurants has mowed towards shared tips.

RT 2009 -1465 LATE SHIFT

- Change of schedule from late shift to revolving shift
- Employment agreements stated that the nurses should work late shift
- Supreme court assessment:
 - Not all provisions in an employment agreement limits the managerial prerogative
 - If the employer has not explicitly waived the managerial prerogative, the employer can change provisions in the agreement as long as they don't define, Characterise or are considered essential to the employment relationship

RT 2011-841 SUPERVISORY TEACHER

- Issue:
 - Transfer from one school to another within the Municipality of Oslo as a result of co-operation conflict
- Employment agreement clearly stated a right to transfer
- Employee argued that changes were comprehensive and outside the managerial prerogative
- Supreme court assessment:
 - Even though she might have experienced the changes as comprehensive, she has to accept them.
 - Argued that the changes in «Fire boat Nøkk» was much more comprehensive

OTHER CASE-LAW

- LB-2006-171727 : Employee was terminated when she refused to accept new work schedules. Court did not accept her argument that she had an **agreed right** to come late on Mondays. She had to accept the new work schedule
- LB-2011-184685: Headmaster at school was entitled to distribute classes to teachers even though one teacher had taught the same class for 15 years

ISSUES FOR DISCUSSION

- Change of working time
- Order employee to work overtime
- Change of place of work
- Change of office
- Change of department
- New position – removal of responsibilities

ENDING THE EMPLOYMENT RELATIONSHIP

- Employers may dismiss employees only if the dismissal is **objectively justified** **on the basis of circumstances relating to the organisation, the employer or the employee.**
- Possible grounds for dismissal relating to the employee include breach of contract, breach of duty and other circumstances related to the employee's actions or behaviour
- With regard to circumstances relating to the organisation or employer that can objectively justify dismissals - essentially redundancies
 - legislation specifies that dismissal due to curtailed operations or restructuring measures is not objectively justified if the employer has other suitable work in its organisation to offer to the employee.

SELECTION PROCESS

- Fair and objective criteria
- No general principle of seniority in Norwegian law, but seniority is one of the factors that should be taken into account. Selection is usually a mix of Seniority, competence, and special social reasons.
- Private companies covered by collective agreement and public sector is obliged to observe seniority.
 - Not a strict seniority principle
- Selection criteria is the no 1 reason for disputes in redundancy processes



CASE LAW – SELECTION CIRCLE

- Rt-1992-776
 - Bank made selection of employees in each department.
Accepted by Supreme court due to vast geographical area and difficult economic situation
- Braathens-verdict
 - The main agreement (Hovedavtalen) does not prevent a company from considering seniority within a department
 - A limited selection was necessary for economic reasons
- Norwegian Postal Service
 - Due to the size of the undertaking, it was necessary to apply the seniority principle within departments
 - Another solution would have indicated complex processes for management and the unions.



SELECTION CIRCLE – IMPORTANT ISSUES

- Due process
 - Necessary to conduct thorough consultations with employee representatives
- Key factors
 - The Company's financial situation
 - Geography
 - Size and complexity
 - Special functions
- Challenges in applying the seniority principle in the entire undertaking
 - Time and resources
 - Insecurity among other employees
 - Importance of maintaining production
 - Importance of maintaining crucial competence



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