

# KROMANN

# REUMERT

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EMPLOYMENT AND  
LABOUR LAW

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SUSTAINABLE SOLUTIONS

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KROMANN  
REUMERT

# Sustainable *solutions*

## Sustainable Solutions

It is important to us that our clients see us as a committed and attentive business partner which provides workable and value-adding business solutions in close and constructive dialogue with our clients. It is also important to us that our advice is not limited to the legal and financial aspects of an employment issue, but also takes into consideration practical issues and the specific circumstances of each case.

Our services include providing advice and assistance by telephone, e-mail and at meetings. We can prepare documents and provide written opinions on complex legal issues, participate in consultations with employees or trade unions, and undertake litigation and arbitration proceedings.

Many of our lawyers teach or lecture at universities and other higher education institutions, as well as at conferences and courses. Members of our team also write articles and books on selected employment and labour law issues.

This leaflet briefly describes our core areas of expertise.

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## Professional legal advice to employers

Most employers who deal regularly with employment and labour law-related issues will need professional legal advice from time to time.

Employment and labour law in Denmark encompasses a wide range of complex rules, including statute law, collective agreements, and non-statutory principles governing employers' managerial rights.

Our client base comprises a large number of Danish and foreign employers and we therefore have extensive experience in advising on employment and labour law issues from an employer's perspective.

We primarily advise employers. However, we also advise executive officers and managers.

Our advice covers a wide range of issues, from day-to-day employment law-related duties, such as the recruitment or dismissal of employees, to more complex employment law issues in connection with business transfers, restructuring, outsourcing, severance agreements, share-based incentive schemes, litigation and arbitration. Kromann Reumert's employment and labour law group has seen considerable growth in recent years and now employs 17 lawyers.



## Individual employment law

Individual employment law is the legal discipline focusing on the relationship between the employer and the individual employee.

Individual employment law is of relevance to all employers and employees, irrespective of the nature of the workplace. It is an area of law that is important to day-to-day personnel management and to the many special situations that may arise in the relationship between an employer and an employee.

Kromann Reumert's employment and labour law group has considerable expertise in individual employment law matters relating to executive officers, managers, salaried employees and hourly-paid employees.

We advise on all legal issues relating to individual employment law, including employment contracts, employers' managerial rights, employee policies, drafting warnings, letters of dismissal (with or without notice) and severance agreements.

## Employment contracts

Employment contracts set out the rules governing the relationship between an employer and employee. It is therefore important to draft them carefully.

In principle, an employer and its employees are free to agree on the terms of employment. In practice, however, contractual freedom is significantly restricted by statute and, where applicable, collective arrangements. Under the Danish Act on Statements of Employment Particulars, every employee must be notified in writing of all material employment terms. Case law in relation to the Act changes and develops continuously. However, the most recent cases suggest that an employer must meet stringent requirements in drafting employment contracts and any other documentation containing material terms of employment.

We assist employers in drafting employment contracts – standard or individual – for all employee groups.

We also assist employers (and executive officers) in reviewing and, where necessary, amending existing employment contracts to comply with current legislation. Given our broad range of experience with employment contracts and the employment and labour market generally, we are well-qualified to provide advice and assistance to employers, executive officers and managers. We can support them in their endeavours to find a balance between the optimal terms of employment, from an employer perspective, and market terms that will attract the right candidates.

## Incentive schemes

Danish and foreign employers are increasingly using incentive schemes as part of remuneration packages for their employees. Incentive schemes can provide many advantages. However, there are also a number of legal challenges to overcome and potential problems to consider in their establishment and administration.

Kromann Reumert's employment and labour law group is experienced in advising on incentive schemes. We assist employers in drafting and implementing employee incentive schemes where remuneration is based wholly or partly on shares, warrants, stock options, convertible bonds, stock appreciation rights, bonuses, commissions, a percentage of profits or similar arrangements. We cover not only employment law, but also advise on tax and company law issues in relation to the various types of incentive schemes.

In addition, we assist employers in introducing employee benefits and flexible remuneration packages. We review existing incentive schemes and can provide advice where termination of employment creates uncertainty about the legal position of a former employee in respect of an existing scheme. We also provide assistance in the event of a subsequent dispute about an incentive scheme. The group has already brought before the courts a number of high-profile and noteworthy legal cases with regard to, for example, stock options and similar schemes.

## Holidays and other absence

Holidays and other types of absence are clearly issues of importance to both employers and employees.

Danish legislation on holidays and other absence from work contains a number of complex rules, often presenting considerable challenges for employers. There is also a comprehensive body of legal and administrative practice surrounding these issues.

The employment and labour law group has many years of experience in dealing with all aspects of holiday and other types of absence. We advise on issues relating to, for example, the Danish Holiday Act and company policies on holiday, additional non-statutory days off, maternity, paternity and parental leave, and other types of absence from work.

## Employee handbooks and policies

It is becoming increasingly popular for employers to introduce general workplace guidelines in the form of employee handbooks and/or policies. Such handbooks/policies may cover issues such as employee rights and duties in the event of sickness, pregnancy or maternity leave, entitlement to non-statutory days off, use of the internet and e-mail, smoking, alcohol, ethics, and the prevention of insider trading.

The existence of such guidelines will normally provide significant administrative advantages and strengthen the employer's options for taking action against employees who breach the guidelines.

Kromann Reumert's employment and labour law group assists employers in the drafting and implementation of employee handbooks and/or policies. We advise on the extent of the employer's managerial rights, consultation with employee representatives, notice to the employees where required, and many other matters.

## Legal position of employees in the event of structural changes or financial difficulties

Business transfers, mergers, restructurings or an employer's actual or threatening insolvency are all events with enormous influence on the relationship between an employer and employee. Consequently, they give rise to a series of employment and labour law problems.

Considerable experience and specialist professional skills are required to advise on such processes and ensure that employee issues are handled in accordance with applicable legislation, collective agreements, or other rules, and in a manner that is most appropriate for those involved.

Kromann Reumert's employment and labour law group has

been involved in such processes on countless occasions. In the event of business transfers and mergers, we assist in harmonising the terms and conditions of employee groups on both sides, changing collective terms and other issues.

We also advise on employment law issues in connection with business restructurings and on the legal position of employees in connection with an employer's insolvency or other financial difficulty.

## Dismissals with or without notice

A dismissal, with or without notice, can be a sensitive and difficult issue for employers and employees. It is not uncommon for these situations to escalate into a dispute between the parties, which may prove expensive and time-consuming for those involved.

Kromann Reumert's employment and labour law group has extensive experience in helping clients handle employee dismissals. We can assist with a range of tasks, such as drafting employee warnings and letters of dismissal, deciding the correct length of notice periods, giving notice for holiday, deciding on garden leave or release from the duty to work, and many other questions arising in relation to dismissals. We can also advise on the fairness of dismissals according to general or special employee protection rules, and on the consequences of an unfair dismissal or dismissal in breach of the protection



rules. The employment and labour law group also assists in the drafting and negotiation of severance agreements. In special circumstances involving the dismissal of a large number of employees, the group advises on the rules regarding collective redundancy consultation and notification of employees.

Where there has been a material breach of an employment contract, we can provide advice regarding the summary dismissal – dismissal without notice – of an employee.

### Restrictions on competition

For employment relationships, covenants that restrict competition may be necessary to maintain the employer's market position and to protect the employer against potential competition from current or former employees.

Generally, where the parties have not agreed restrictions on competition, the employer will only be protected by the provisions contained in the Danish Marketing Practices Act. In our experience, the Act provides employers with inadequate protection against unlawful competition from former employees and their new employers.

Kromann Reumert's employment and labour law group advises on competition restrictions that can be applied to employees both during their employment (the employee's duty of loyalty) and after its termination.

*Our assistance primarily covers the inclusion and enforcement of:*

- non-competition covenants (prohibiting commencing employment with, or setting up, a competing business);
- covenants on non-solicitation of customers and other business partners (prohibiting establishing business relationships with the customers and/or business partners of a former employer); and
- covenants on non-solicitation of employees (preventing or restricting employees from taking up employment with another employer).

In addition, we advise on the competition restrictions implied by the provisions of the Marketing Practices Act on good marketing practices and protection of trade secrets. In the event of non-compliance with any of the applicable rules or the provisions of the Marketing Practices Act, we assist in obtaining injunctions and in pursuing claims for an agreed penalty or compensatory payment.

We assist employers in assessing the validity and scope of specific covenants in connection with the employment of individuals bound by such covenants.

## Employment law disputes

Termination of employment with or without notice, whether by the employer or by the employee, will frequently give rise to a legal dispute. The dispute may concern issues including the fairness of the dismissal, claims relating to bonus or other incentive schemes and the employee's entitlement to holiday pay.

Like any other legal dispute, an employment law dispute can be a drawn-out and costly affair for the parties involved.

We have extensive expertise and a high level of experience in handling disputes between employers and employees. We provide specialist advice with the aim of avoiding or limiting the extent of such disputes.

Where a dispute does arise, we will advise on how to handle it and, if required, participate in negotiations with the employees and their trade unions (or other representatives) with a view to reaching a settlement.

In situations where it is not possible to negotiate a satisfactory settlement of the dispute, it may be necessary to go through legal proceedings. We are regularly instructed to handle a significant number of employment law-related litigation and arbitration proceedings, including complex actions testing, or creating new, points of law.

## Secondment of employees

In line with the expanding globalisation of industry, more and more companies are considering employee secondments. Typically, but not always, a secondment from one enterprise to another takes place within the same international group. A true secondment is one in which the employee remains employed by the seconding enterprise.

Each individual secondment gives rise to extremely complex legal questions, including issues regarding tax, social security, governing law, as well as the interrelationship between the secondment agreement and the employment contract with the seconding employer.

As part of our international expertise, Kromann Reumert's employment and labour law group provides advice to Danish employers considering outward secondments to another country, and foreign employers considering inward secondments to Denmark and/or the establishment of a branch in Denmark.

Our assistance varies from providing general guidance on Danish employment law matters to providing detailed advice on specific or particularly complex problems. Where required, our work will be carried out in cooperation with Kromann Reumert's company law and tax law groups.

## Employees in other countries

From time to time, Danish companies need advice on foreign employment law. These situations can arise, for example, where employees take up positions in foreign subsidiaries or engage in long-term secondments.

We have developed a network of excellent contacts with employment law experts in countries all over the world and can assist our clients in obtaining fast and effective advice from specialist lawyers on all aspects of foreign employment law.

In addition, our German Desk offers advice on German employment law. For issues involving both Danish and German employment law, we work together with our German Desk to provide comprehensive and coordinated advice.

Finally, we cooperate closely with the global company Fragomen, which offers practical advice and assistance in relation to residence and work permits all over the world.

## Foreign labour

As a response to the globalisation of industry and the growing pressure on the Danish labour market, many companies are choosing to recruit foreign employees and workers.

We advise on the employment of foreign labour and the immigration and employment law issues which may arise in that context. For example, we advise employers whether it is necessary to obtain a residence and work permit for a specific employee, and provide practical assistance with the application procedure.

Due to the high number of these cases on which we advise, we have well-established contacts within the Danish Immigration Service. Our clients therefore benefit from a swifter and smoother flow of information from the Danish Immigration Service and, often, a faster administrative procedure overall.

Finally, we advise on employee options for obtaining a more advantageous taxation treatment, drawing on the expertise of our colleagues in the firm's tax law group.



## Health, safety and working environment law

Danish working environment law provides that all employers have an obligation to maintain a safe and secure working environment.

On top of this general obligation, there are a multitude of requirements set out in various guidelines, executive orders and other complex documents which many employers find difficult to navigate.

We advise on the obligations imposed on employers by health, safety and working environment legislation. These include health and safety in the workplace, workplace evaluations, orders and prohibitions issued by the Danish Working Environment Authority and the implementation of employee policies on the working environment.

The group also provides assistance and advice on industrial injury claims.

## Collective labour law

The Danish labour market is largely governed by collective agreements, exposing many employers to collective labour law.

Collective labour law comes into play if an employer is bound by a collective agreement (for example, due to membership of an employers' organisation, entering into a collective agreement, or failure to waive a collective agreement in connection with a business transfer) or if an employer faces a request from a trade union for recognition of a collective agreement.

Labour law disputes, particularly those that develop into full-blown labour conflicts, may have a devastating effect on an employer's business. It is therefore vitally important that they are dealt with swiftly and effectively.

Kromann Reumert's employment and labour law group has extensive experience in collective labour law. We advise employers on claims relating to collective agreements, entering into collective and local agreements, and disputes relating to the interpretation of or non-compliance with collective agreements. We participate in collective bargaining, joint and mediation meetings, industrial arbitration and proceedings at the Labour Court, issues concerning shop stewards and safety representatives

and other matters related to collective labour law. The handling of collective agreements in conjunction with business transfers and restructurings poses specific and unique challenges, and our team of professionals has the expertise and experience to help.

We participate in collective bargaining, joint and mediation meetings, industrial arbitration and proceedings at the Labour Court, issues concerning shop stewards and safety representatives and other matters related to collective labour law. The handling of collective agreements in conjunction with business transfers and restructurings poses specific and unique challenges, and our team of professionals has the expertise and experience to help.

## Legal investigations

If irregularities are suspected in an enterprise or public institution, investigations into management or employee activities can involve delving into highly sensitive matters and applying complex rules. Therefore, an independent legal investigation carried out by an experienced third party may be appropriate.

Kromann Reumert's Employment and Labour Law Group is skilled in conducting legal investigations for both private enterprises and public authorities, ensuring a fast and efficient process in accordance with due process.

Where specialist knowledge within a particular legal field is required, we are able to hand-pick experts from across Kromann Reumert's 27 practice areas. Our lawyers work together as a team to investigate and assess complicated factual and legal issues covering a range of legal fields.

## Public labour and employment law

Like private employers, public authorities are subject to the employment laws governing the Danish labour market, including purely national as well as EU-based legislation.

Public employers must also organise their personnel administration so as to ensure that administrative laws are complied with. General administrative rules as well as legal doctrines or principles requiring objectivity, proportionality, and an individual assessment of each particular case must be followed.

Any relevant public collective agreements must also be observed, unless the special rules governing civil servants apply. Finally, the special forms of employment established in the grey area between employment law and social security law involve special delimitation challenges for the public employer.

Our Employment and Labour Law Group includes legal experts with years of experience in advising public employers on all areas of public personnel administration. They can offer in-depth knowledge about the rules to be observed if problems arise and legal assistance is required.

## Pension

For many businesses, pensions form an important part of the remuneration package offered to employees. However, pension agreements can give rise to difficult questions for employers, both for pension plans governed by collective agreements and those established by an individual enterprise. A poorly implemented pension plan that does not fit within the rules can have serious negative consequences for both employee and employer alike, particularly if problems are only identified when an employee becomes sick or is injured.

Kromann Reumert's Employment and Labour Law Group is experienced in pension matters and can offer advice and assistance on the choice of pension plan, or at a later point in time when pension issues arise. Our advice is designed to help clients select the best solution possible, regardless of whether problems concern particular employees, contracting parties to collective agreements, pension institutes, or brokers.

## KROMANN REUMERT'S ORGANISATION



### KROMANN REUMERT SETS THE STANDARD

Kromann Reumert is Denmark's premier law firm with offices in Copenhagen, Aarhus, London and Brussels.

As at 1 April 2010, we have more than 600 dedicated employees of whom over 320 are lawyers, working together as a team to service our clients. Our practice currently covers 27 different business areas. However, to ensure that we fully meet our clients' needs we continuously review and develop the areas we cover. Our objective is to be Denmark's premier legal adviser within each business area. Good is not good enough – it is our vision to set the standard in the legal profession.

### "ONE-STOP SHOP" SERVICES

At Kromann Reumert each of the business areas is undertaken in separate practice groups. Each practice group area is headed by a partner, who works closely together with the other partners and lawyers in the practice group to develop our skills and deepen our knowledge in that particular area. Having so many specialist skills gathered in one firm enables us to constantly renew our services and stay up to date with emerging trends in Denmark and internationally.

### INTERDISCIPLINARY EXPERT TEAMS

There will be occasions though where our clients will need access to experts across more than one practice group. When this need arises, our practice groups work together

to provide seamless service across the differing areas. We place particular importance in the ability of our lawyers (from whatever practice group) to understand the commercial aspects of each individual case, to the benefit of our clients. It is our mission to provide focused, value-added solutions and advice.

### EQUAL DIVISION

It is a fundamental principle among Kromann Reumert's partners that the firm's profits are divided equally. This principle ensures that there is never any internal competition between partners or the different groups and that we are always in a position to allocate the best available resources – in terms of professional skills and time – to each case.

### THE CLIENT IN FOCUS

Kromann Reumert provides legal advice which is practical, relevant and individually tailored to meet the specific needs of each client. We believe that the best advice is achieved by working in close cooperation with our clients and developing a thorough knowledge of their business. This enables us to provide clients with solutions that are workable and which add value to their business in the short and long term. We strive to take a proactive approach, especially if we believe that there are impending changes to legislation or to administrative or legal practices that may be relevant to the client. In our experience, flexibility and availability are key elements of a lasting working relationship, and our work focuses on providing the client with operational solutions. <



## HELENE AMSINCK

PARTNER

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## CONTACT

### Profile

Helene Amsinck was born in 1964 and became a partner in 1998. Handling all types of employment and labour law issues and disputes, domestically as well as internationally, Helene has extensive experience in employment law issues relating to transactions, restructurings, collective redundancies, and harmonisation. Helene has particular expertise in collective labour law and the law relating to executive officers and managers. Helene is regularly involved in a variety of legal actions, including some of the most high-profile and noteworthy employment law litigation.

Helene Amsinck obtained her law degree from the Aarhus University in 1989. She has taught labour law at the Aarhus University and lectures extensively on employment and labour law issues in various forums. Helene is also an editor of and contributor to Thomson HR and has written numerous articles on employment law issues.

### Admission and right of audience

Admitted in 1992

Eignungsprüfung als Rechtsanwalt, Germany, in 1996

Right of audience before the Danish Supreme Court in 2007

### Activities

Member of International Bar Association (IBA)

Member of the European Employment Lawyers' Association (EELA)

Member of the Danish Employment Lawyers' Association (Ansættelsesadvokater)

Member of the Danish Labour Law Association (Dansk Forening for Arbejdsret)

### Language

English, German, the Scandinavian languages



## MARIANNE GRANHØJ, PARTNER

CONTACT



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### Profile

Marianne Granhøj was born in 1972 and joined Kromann Reumert in 2009. Marianne holds a law degree from Aarhus University (cand.jur. 1996).

As labour and employment law specialist, Marianne gained a wealth of experience in her previous role as a partner with a Danish employment law firm. She is an experienced advocate in all types of labour and employment law disputes before a range of different courts.

Having advised clients both in and outside the financial sector, and also within pharmaceuticals, life science and IT, Marianne's particular expertise includes bonus and incentive schemes at both national and international level. Marianne also has considerable experience in the establishment of businesses in Denmark, mergers and acquisitions, organisational adjustments, pensions, immigration, and collective agreements.

### Admission and right of audience

Admitted in 1999

Right of audience before the Danish Supreme Court in 2008

### Activities

Member of International Bar Association (IBA)

Co-editor of the IBA Employment and Industrial Relations Committee Newsletter

Member of the European Employment Lawyers' Association (EELA)

Member of the Danish Employment Lawyers' Association (Ansættelsesadvokater)

Member of the Danish Labour Law Association (Dansk Forening for Arbejdsret)

### Languages

English, the Scandinavian languages



## JENS LUND MOSBEK, PARTNER

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### Profile

Jens Lund Mosbek was born in 1969 and holds a law degree from Aarhus University (cand.jur. 1994). He previously held a position with Kromann Reumert from 1996 to 2002 and has returned as a partner in 2009. From 1994 to 1996, Jens worked as a head clerk in the personnel office of the Danish Ministry of Justice and gained a thorough knowledge of employment in the public sector. Between 1996 and 2002, Jens worked with Kromann Reumert as an assistant lawyer and subsequently, a qualified lawyer. Since 2002, Jens has specialised in employment and labour law. He left Kromann Reumert to work with a specialist law firm, taking on a partnership role.

Over the years, Jens has advised both public and private employers on all aspects of labour and employment law, including the special administrative law rules applicable to public employers. Jens has represented both public and private employers in multiple court and arbitration proceedings involving traditional labour and employment law issues, and administrative law issues. He also has considerable experience in advising on pension and share-based salary-schemes.

### Admission and right of audience

Admitted in 1998

Right of audience before the Danish Supreme Court in 2003

### Activities

Member of the Steering Committee of the International Pension and Benefits Lawyers' Association (IPEBLA)

Member of the European Employment Lawyers' Association (EELA)

Member of the Danish Employment Lawyers' Association (Ansættelsesadvokater)

Member of the Danish Labour Law Association (Dansk Forening for Arbejdsret)

### Languages

English, the Scandinavian languages



## TINA BRØGGER SØRENSEN, PARTNER

CONTACT



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### Profile

Tina advises in all aspects of labour and employment law. She has considerable experience in advising clients on business transfers and redundancies in connection with restructurings, rationalisations, and business closures. She also advises on the terms of employment for managers and other executives, as well as discrimination matters. Tina recently appeared before Denmark's Eastern High Court in a case concerning a fundamental question of Danish law. At issue was whether the Danish legislation, and the consequences of terminating an employee on parental leave without pay claims against the employer, was in breach of EU law.

Aside from Tina's special legal expertise, she is also known for being a strong negotiator. She has a high level of social intelligence and is extremely trustworthy. Tina displays substantial commercial understanding in recognising the importance of considerations that extend beyond legal matters by taking into account the implications on company politics in selected course of actions. Clients appreciate the fact that Tina has a great understanding of their need for a quick turnaround and follow up on cases.

### Admission and right of audience

Law degree from Aarhus University (cand.jur.) 1994

Admitted 1998 and right of audience before the Danish High Court 2005

Partner since 1 January 2011

### Activities

Member of the International Bar Association (IBA), the European Employment Lawyers Association (EELA), the Association of Labour and Employment Lawyers (Foreningen for Ansættelsesretsadvokater) and the Danish Association for Labour Law (Dansk Forening for Arbejdsret)

Lectures at HR seminars for clients, etc., and regularly gives external lectures

Nominated as 'Teacher of the Year 2010' by Confex

### Languages

English, the Scandinavian languages

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*Kromann Reumert's vision is "We set the standard". Good is not enough - we want to be the best. We provide value-adding solutions and advice with full involvement and commitment. We get there by focusing on quality, business know-how, spirited teamwork, and credibility. We are Denmark's leading law firm, employing approximately 600 staff members, 320 of whom are lawyers. Our offices are located in Copenhagen, Aarhus, London, and Brussels.*

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