COVID-19 – Employment law aspects of the current lock-down situation in Denmark

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The COVID-19 situation has changed dramatically in Denmark within the last couple of days. In the late evening 11 March 2020, the Danish government decided to take a number of serious measures in the attempt to minimise the further spread of the coronavirus by, inter alia, sending home all non-essential public-sector employees for the coming two weeks and having them work from at home to the widest extent possible.

Equally, the government has urged Danish private-sector employers – to the extent possible – to send home their employees as well as to work from at home for two weeks calculated from 12 March 2020. Also, all Danish schools and public childcare services (day care, kindergarten, etc.) will be closed for two weeks from 16 March 2020 (at the latest).

We have below outlined some of the employment law aspects which Danish employers should be aware of as a consequence of the situation at hand.

Please also refer to our previous news article on COVID-19, which i.a. governs employers' salary obligation in case of employees' quarantine.
How to adapt to the new recommendations

The Danish government has urged employers within the private sector to send home their employees for the next two weeks in order to try to mitigate the further spread of COVID-19 infections. This only applies to employees who are able to perform their duties from at home, as it has been stressed at the same time that the intention is not, of course, to have all production in Denmark cease, with disastrous consequences for both employers and employees and society as a whole. Quite the contrary, businesses are encouraged to seek solutions that will keep the wheels running in spite of the challenging conditions facing both employers and employees in the current situation.

All Danish employers are required by the working environment rules to provide a safe and healthy physical working environment. It means i.a. that the employer must assess how the employees can avoid unnecessary exposure to COVID-19 in the workplace from colleagues, customers or other business partners. One way to do this is to follow the recommendation to send home the employees or, if that is not an option, to take other measures.

Positions where it is possible to work from at home

Depending on the job carried out by the employee, it is possible for an employer to require employees to work from at home during the next weeks. It is within the employer's managerial discretion to decide if some or all the employees must work from at home, or whether it is preferred to keep a minimum-staffing at the office. Also, the employer can opt for a "hybrid" solution where employees mainly work from at home but can be requested to show up for meetings, etc., at the workplace if such meetings or other activities are business-critical. As a main rule, employees cannot generally refuse to show up at the office/participate in business-critical
activities, as this can be considered a breach of employment.

Employers and employees should seek agreement on what equipment, etc., is relevant for the employee to bring home from the workplace. Attention also needs to be brought to the fact that the Danish Working Environment Act continues to apply during the employee's work from home.

Employees are entitled to their usual salary when working from home, as they remain available to their employer.

We recommend that employers be clear in their communication that working from at home is an extraordinary and purely temporary precaution due to the COVID-19 situation and that the need and relevance may be reconsidered at any given time based on the development and the needs of the business as well.

Positions where it is not possible for the employee to work from at home

Several employees cannot work from at home due to the nature of their work, and a significant number of employees will thus be requested by their employer to continue to appear at work. When doing so, employers should consider necessary precautions such as, for example, considering whether employees can work in (more) shifts in order to prevent that too many employees are present at the work place at the same time, consider closing the canteens, ensure that staff meetings are held either by phone or, if physical meetings are necessary, with the necessary space between employees, etc.

Normally, a change of the employee's working time must be notified with at least a reasonable notice, and such changes applied to all or at least a certain group of employees are normally subject to prior consulting with a company's works council (if established). However, due to the nature of the current situation, it is our assessment that employers – in order to fulfil their obligations under the Danish
Working Environment Act and as responsible employers – will have a wide margin to effect such changes immediately/without notice. It is, of course, always recommendable that a dialogue is carried out with employee representatives/the employees, and that individual agreements are made with employees for whom such changes are particularly difficult, whether due to health issues, private circumstances, etc. Likewise, obligations following from applicable collective bargaining agreements must be analyzed, if relevant. Employees should in any event be encouraged to show flexibility towards both the employer and other colleagues so that fair and reasonable solutions can be found.

School and day care closure

All public schools/day care arrangements will be closed for the next two weeks, and for many employees it will be difficult to arrange for alternative childcare. If an employee is unable to fulfil their working obligation for lack of alternative childcare possibilities, an employee is not, as a main rule, entitled to their normal salary during such leave. Neither will the employee be permitted to stay away from work without permission to take care of their children. Instead, the employer and employee should agree that the employee takes holiday or time off in lieu, or that their working hours are changed temporarily. Based on the directions from the Government, employers should be cautious allowing employees to bring their children to the office and should rather support other solutions between colleagues and/or other networks.

Temporary downscaling of the workforce and/or terminations

Hopefully, the current COVID19 situation will be of a temporary nature only, but its financial consequences for employers may be severe in a short as well as a long-term perspective.

Employers may soon be forced to take more radical steps to protect the company’s stability, such as downscaling of the workforce by way of reduced working hours.
and/or salaries, or temporarily suspending the employment and payment obligation. Any such measures will require agreement between the employer and employee in order to become effective. Other possibilities, e.g. in terms of distribution of work, may follow from collective bargaining agreements.

If employers are forced to carry out redundancies, the ordinary termination rules will apply, including the rules on collective dismissals if large-scale redundancies are carried out. Notice periods and employee's termination rights etc. are not suspended as a consequence of the current situation. Special rules will apply if employers are forced into a bankruptcy situation.

**Holidays**

During periods with less activity/ reduced need for labour, employers may also agree with employees to take holiday or notify the employees of taking paid holiday. Remaining holidays ("restferie") will normally need to be notified with at least 1 months' notice, but given the situation at hand, this may be derogated from, depending on the concrete circumstances for the individual employer and thus be imposed by no or very short notice from the employer. Similarly, employees' already scheduled holiday can most likely be changed by an employer due to the extraordinary situation. Already commenced holiday by an employee cannot be changed without the employee's consent. Employees can also be requested to use non-statutory holidays and paid time off in lieu.

**Immediate government initiatives to support employers**

Yesterday, Thursday 12 March 2020, the Government announced a number of new measures suitable to provide financial support to the affected businesses. Of relevance to employers and their employees are notably the following:
• The so-called 30 days "employer period", where employers are obliged to pay salary or sickness benefits during the first 30 days of an employees' sick leave without receiving reimbursement, will be suspended in relation to employees who are infected and on sick leave due to COVID19 or if employees are quarantined due to COVID19 in accordance with guidelines from the Danish health authorities and are not able to perform their work from home. This will entail that employers will be entitled to reimbursement of the salary/sickness benefits paid to such employees from day 1 of the absence. The suspension does not apply to employees who are on sick leave due to other reasons than COVID19.

• The scheme on distribution of work, which allows employers to decrease employees' number of working hours (and salary) temporarily as an alternative to terminations, will become more flexible in terms of when it can become effective. Application of the scheme continues to be conditional upon the scheme being established under a collective bargaining agreement/a collective agreement on the affected company. The possibility for an employee to receive supplementary unemployment benefits during such temporary solution continues to be conditional upon a number of requirements, including membership of an unemployment fund.

Update on Immigration Services

The Danish Immigration Service and the Danish Agency for International Recruitment and Integration (SIRI) are closed for enquiries in person until 27 March 2020. It will therefore not be possible to show up in person to provide biometric data or apply for permits until then.

However, the Immigration Service and the Agency may still be contacted by phone and applications may be filed online. It will also be possible to show up at designated police stations to provide biometric data, but it is recommended to contact the police station first.

Both the Immigration Service and the Agency will pay special regard to applicants
who are unable to file their applications or provide their biometric data on time. Both agencies are challenged, because their IT systems have difficulties accommodating so many employees working from at home at the same time. Consequently, waiting time must be expected when contacting the agencies by phone or in writing as well as delayed processing of applications.

The Immigration Service has announced that Chinese citizens may have their visa extended by up to 30 days.

From midnight Friday 13 March 2020, the USA will suspend all flights from Europe, and India has stopped issuing visas to visitors. Furthermore, travelling to and from a number of other countries is either impossible or inadvisable. We recommend that the website of the Danish Ministry of Foreign Affairs be consulted and that the travel advice is followed in respect of the affected countries.

As a service to foreign employers and employees, the Danish Health Authority has published an English guide on the Coronavirus, which will be continuously updated. Read the guide.

Our assistance

Our employment law specialists are ready to provide advice on all labour and employment law matters related to the pending challenges caused by COVID-19.

COVID-19 task force

Specifically targeting our clients and Danish businesses at large, we just set up a special COVID-19 task force which will be regularly issuing information within various legal areas about problems that Danish businesses will or may be faced with as a result of the COVID-19 situation.

Our reason for doing so is that as a legal knowledge firm we wish to support Danish
businesses by sharing with them our expertise on the legal issues arising from COVID-19 and its consequences. Our newsletters and online news articles on the subject offer quick and easily accessible information, legal insights and updates.

For more on our recently established COVID-19 task force and previous relevant news articles