



HORTEN

MERRY CHRISTMAS AND A HAPPY NEW YEAR

GREETINGS FROM THE EMPLOYMENT TEAM

DEAR READER OF EMPLOYMENT LAW NEWS

Christmas is approaching, and we therefore wish you all a Merry Christmas and a Happy New Year.

In the second half of 2015, Horten's Employment Team has continued the positive tendency from the first half of 2015 with many new cases, we have successfully participated in a large number of tender procedures, and we have assisted our clients in obtaining positive results in employment cases. We know that this is important to maintain a large team thereby ensuring that we can provide first-class advice all the time within short time limits.

Luckily, we also had time to keep you updated on employment news this autumn, and we wrote two guidelines on the practical handling of industrial injuries and disabled employees. Below, we will give you an overview of the most interesting legislative measures in the second half of 2015.

We have also established our own LinkedIn group: Horten Ansættelsesrettens A-Z.

[Join the LinkedIn group on employment law >](#)

Finally, we will make an assessment of what will happen within employment law during the first half of 2016.

We are looking forward to our continued cooperation.

Merry Christmas and a Happy New Year
Horten's Employment Team

LEGISLATION

The Act on Employment Clauses has been adopted. The most important elements of the act are:

- The act will apply to all employees, and the rules on non-competition and non-solicitation clauses will therefore not be limited to salaried employees.
- The act will amend the rules on conclusion of non-competition and non-solicitation clauses and combined employment clauses. These amendments will result in the abolishment of sections 18 and 18a of the Salaried Employees Act and section 38 of the Contracts Act.
- Non-competition clauses may only be concluded with employees in "very special positions of trust". The amendments will strengthen the rules as the only requirement today is that the employee holds a "special position of trust".
- In case of termination or dismissal, an employee covered by a non-solicitation clause must be provided with a list of the customers covered by the non-solicitation clause, and the clause may only concern customers with whom the employee has had business relations in the previous 12 months.
- An employee cannot be bound by a non-competition or non-solicitation clause for more than 12 months from the effective date of termination.
- If an employee is covered by both a non-competition and a non-solicitation clause (a combined employment clause), these may apply for six months from the effective date of termination.
- Differentiated compensation is introduced depending on the term of the employment clause and whether the employee has obtained other appropriate work.
- The employee will be entitled to minimum compensation for the first two months payable as a lump sum. Today, minimum compensation applies to the first three months, but only in relation to non-competition clauses. The act contains a prohibition against conclusion of no-hire clauses; however, the present rules applicable to temp agencies and transfers of businesses will still apply - without payment of compensation.
- As soon as the Act on Employment Clauses comes into force, the Act on No-Hire Clauses will be abolished.
- Existing non-competition and non-solicitation clauses will not be affected by the new rules.

We will host a morning meeting concerning the new act on Monday 11 January 2016 at 08.30.

For more information about the meeting, please visit our website >

CASE LAW

A large number of interesting rulings were made in the second half of 2015. Some of these rulings are described below.

Acceptable to agree on a reduced holiday notice in employment contracts

The Supreme Court ruled that it is possible already when concluding an employment contract to agree to depart from the notice rules of the Holiday Act. The Supreme Court agreed with the Maritime and Commercial High Court, which had previously given weight to the fact that the provision on which the case was based was clearly worded and that it was undisputed that the employment contract had been signed by both parties.

[For more information on the ruling >](#)

Is it a criminal offence to read an employee's text messages?

The Court of Aarhus ruled that it was a criminal offence when two executive officers at Aarhus Havn had read the text messages of three crane drivers. The court found that it was contrary to the Criminal Code's prohibition against reading of private letters, and that this also applies irrespective of whether the employer pays for the telephone. The result would probably have been different if the employees had not been allowed to use the phone for private purposes. The ruling has been appealed against.

[For more information on the ruling >](#)

Fundamental ruling on forfeiture of the right to loss of earnings

In this legal action, the Supreme Court ruling shows that, even if the National Board of Industrial Injuries subsequently changes the loss of capacity for work significantly because of new information, this does not imply that the previous assessment will be considered subject to errors to such an extent that the assessment must be set aside.

An assessment from the Board may therefore be made on a reasonable basis even though it is changed significantly later on. The important aspect is whether the information available at the time of the fixing of the loss of capacity for work constituted a reasonable basis.

Not discrimination even if there is a presumption based on statistical data

With reference to the ruling of the European Court of Justice in case C-127/92, the Supreme Court repeated in its ruling of 14 December 2015 that statistical data concerning, for instance, dismissed employees' age and the age allocation of the aggregate employee group may be included in the assessment of whether discrimination may be presumed to have taken place. However, in the specific case, the employer employed a significant number of persons, who were older than the dismissed employees, and this over-representation of older employees among the dismissed employees was not sufficient to constitute actual circumstances giving rise to presume that discrimination had taken place.

[For more information on the ruling >](#)

TENDENCIES

We do not expect any significant measures in the first half of 2016.

The holiday act committee set up to make the Danish Holiday Act consistent with the Working Time Directive's requirement for four weeks' holiday to all salaried employees must conclude its work on 1 October 2016. A bill is therefore expected in the parliamentary year 2016/2017 at the earliest.

[For more information on the holiday act committee >](#)

An amendment of the Part-Time Act is expected to ensure that the EU Working Time Directive is implemented correctly. A bill will be introduced in December 2015/January 2016, and the new act is expected to come into force from 1 March 2016. The amendment implies that sections 1 (2), 2-5, 8 (2) and 9 of the LO/DA agreement on part-time employees will apply to all part-time employees, who are not covered under a collective agreement by minimum the rights provided under the Working Time Directive. The provisions of the LO/DA agreement will then also cover part-time employees in the public sector, when these are not covered by a collective agreement ensuring the minimum rights of the Working Time Directive.

[For more information on the LO/DA agreement >](#)

Further, a bill to amend the Act on the Posting of Workers etc. is expected to be introduced in January 2016 for the purpose of implementing the EU Enforcement Directive. The purpose of the EU Enforcement Directive is to prevent social dumping and improve the enforcement of the Directive on Posting. One of the most important measures will be the introduction of liability within the building and construction sector. We will follow the bill closely.

We expect that the Act on Employment Clauses will necessitate legal advice in connection with employment of new employees, but as the rules only apply to new clauses concluded after 1 January 2016, previous clauses and practice are maintained.

As regards new case law, more rulings will be made by the Supreme Court in relation to dismissals contrary to the Non-Discrimination Act, and we are also awaiting a ruling on the Transfer of Undertakings Act in connection with the taking over of bus routes.

Finally, there will be increased focus on personal data concerning employee matters, the closer we get to the adoption of the new personal data protection regulation. As soon as the regulation is adopted, the employers have two years to ensure that the procedures comply with the rules.

In the first half of 2016, we will still follow the development on the labour market closely and publish newsletters as soon as new legislation is adopted or new rulings are made by the Danish courts.