



Proposal on a New Act on Employer's obligation to inform Employees of the Conditions applicable to the Employment Relationship and Certain working Conditions

04 september 2022

On 16 August 2022, a draft bill for a new act on *Employer's Obligation to Inform Employees of the Conditions Applicable to the Employment Relationship and certain working conditions* (in Danish: "*Lov om ansættelsesbeviser og visse arbejdsvilkår*") was sent for consultation in the Ministry of Employment (in Danish: "*Beskæftigelsesministeriet*"). The deadline for submission of comments on the bill is 12 September 2022. The act is supposed to implement the European Union Directive of 2019 on transparent and predictable working conditions in the European Union and replace the existing law on Employer's Obligation to Inform Employees of the Conditions Applicable to the Employment Relationship (in Danish: "*lov om ansættelsesviser*").

The purpose of the Directive is to improve working conditions by promoting more transparent and predictable employment while ensuring labor market adaptability. However, the passing and implementation of the act has been delayed, as the

Directive should have been implemented by 1 August 2022. The new act implementing the Directive is expected to enter into force on 1 January 2023.

The act contains a number of changes to the existing regulation, particularly in relation to the employer's duty to inform the employee about the terms of the employment relationship as well as changes to certain material working conditions. The new act is merely an extension and not as such a revision (nyaffatelse) of the existing act.

Below we provide an overview of the proposed regulation's main features, its implications for employers and existing employment relationships, and those entered after 1 January 2023.

Employees covered by the Act

The existing act applies to employees with an average weekly working time exceeding 8 hours. This is proposed to be amended so that the act applies to employment relationships where the predetermined or actual working hours amount to more than an average of 3 hours per day during a 4-week period, thus extending the number of employees covered by the act.

In addition, the new act also applies to employment relationships in which the contract does not stipulate a guaranteed amount of paid working hours prior to the beginning of the employment relationship – the so-called zero-hours contracts. This entails that in any case, such employees have the right to receive information about terms of employment according to the new act.

The Employer's Obligation to provide Information

With the new act, the list of "*essential conditions*" that employer as a minimum, are required to provide is maintained but extended in order to enhance the purpose of the Directive, namely, to create a higher degree of predictability in employment relationships.

Consequently, the list now contains a provision stipulation that an employer's obligation to provide information includes the duration of and the conditions for any probationary period. Additionally, the new act limits the duration of a probation period that cannot be agreed to exceed six months. This does not entail any changes to "*Funktionærlovens*" rules on probation periods.

Moreover, the list of "*essential conditions*" in the new act is extended with a provision concerning employment relationships where the work pattern is entirely or predominantly unforeseeable, including zero-hours contracts. In such working relationships, the new act, stipulates that the employer among other things must notify the employee that the work schedule is variable, the number of guaranteed paid working

hours as well as information on payment for work carried out above the guaranteed hours.

The new act contains more stringent requirements on employers regarding providing this information, as the majority of the "essential conditions" must be provided no later than seven calendar days after the commencement of the employment relationship compared to the deadline of 1 month in the existing act.

According to the existing act, the act shall not apply to the extent the employer is under an obligation to inform the employee of the employment relationship as a result of a collective agreement. This is maintained with the new act.

Seconded Employees

In order to ensure that the employee is aware of his or her conditions during the secondment, the new act contains additional requirements on which information the employer must provide to the employee before departure, including an obligation for the employer to inform seconded employees on when considered relevant, any benefits that specifically relate to the secondment, and any arrangements for reimbursement of expenses for travel etc.

Other Material Rights

The new act also contains a number of additional changes to material rights in the employment relationship to ensure a higher degree of predictability for employees, including provisions regulating employees, access to take up secondary employment and detailed requirements for employer's notification obligation in employment relationships in which the work pattern is completely or predominantly unpredictable.

It is proposed to regulate employees' access to take up secondary employment. This entails that an employer may not prevent an employee from taking in additional employment or, in such case, treat the employee unfavourably if the employee can continue to work in accordance with the schedule provided by the employer, and given the additional employment does not affect and conflict with the existing employment relationship. However, this principle can be deviated from if justified on the grounds of, for instance, trade secrets or health and safety considerations.

Moreover, it is proposed to regulate the notification requirements in employment relationships in which the work pattern is completely or predominantly unpredictable. According to the new act, an employer can, in such employment relationships, only require the employee to work within predetermined reference hours and reference days and if the employee has been notified of the work task within the agreed notice period.

Compensation Level

The compensation level, in case of an employer's non-compliance with the obligation to provide information on "*essential conditions*", is intended to be maintained

in the new act and consequently, when in breach of the obligation, the compensation for the individual employee may not exceed 13 weeks' remuneration. In case of aggravating circumstances, the compensation may be increased up to 20 weeks of remuneration. Thus, the compensation level is not intended to change with the new act.

Impact on Employment Relationships commenced prior to the 1 January 2023

The implementation of the new act does not entail changes to existing employment relationships and contracts commenced before 1 January 2023, which means that employers are not required to draw up new employment contracts or appendices. However, employers shall provide the additional information within eight weeks at the latest on request of employees.

Need help navigating?

At Moalem Weitemeyer, we closely follow the developments of the proposal and implementation to ensure we can provide up-to-date legal advice. We have set up teams ready to help any of our clients affected by the new act and its implications for employment relationships concluded on 1 January 2023 or subsequently.

If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:



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