Scope for temporary or permanent staff reductions in businesses in the face of the COVID-19 outbreak

Due to the COVID-19 outbreak, and particularly following the Danish Government’s press release on 11 March 2020, many employers will find it relevant to explore the scope for either temporary or permanent staff reductions in their businesses.

In this key facts sheet, DLA Piper Denmark will outline a number of the options open to the individual employer for reducing staff numbers at its workplace either temporarily or permanently.

Taking of holiday

STANDARD RULES ON NOTICE OF HOLIDAY
An employer may, at any time, give notice of holiday to be taken according to the applicable rules set out in the Danish Holiday Act. The required notice period for the main holiday is 3 months, whereas it is 1 month for the remaining holiday. The Holiday Act includes a special rule allowing departure from the general notice periods in the event of “special circumstances”.

Whether the Government’s announcement on 11 March 2020 implies the existence of such special circumstances will depend on the type of business in question and the impact of the COVID-19 outbreak on the specific business.

If the employer is in a situation where it will actually be possible to plan the work to allow it to be performed from home, DLA Piper Denmark’s opinion is that the employer cannot order its employees to take holiday without complying with the general rules on notice periods. On a practical level, the current holiday year is coming to a close (30 April) and so most employees will have only remaining holiday left.

Consequently, for many employers, it will be advisable to give notice that the remaining holiday must be taken, “to be on the safe side” in the event that the Government’s recommendations result in the workplace being shut down for longer than one month.

TAKING OF HOLIDAY AT SHORTENED NOTICE
If, however, the employer is in a situation where there is a shortage of work for the business or in a situation where it is not possible to plan the work to allow the employees to work from home, there may be such special circumstances as to allow the business to order its employees to take holiday at a day’s notice.
A requirement is for the employer to give notice of the holiday to be taken as soon as possible after the occurrence of such circumstances. Otherwise, the employer will risk forfeiting the right to give shortened notice due to inactivity.

**Special days of holiday**
If the employees of a business have any special days of holiday owing to them, an employer will have the option of ordering the employees to take these special days of holiday. The employer must, however, comply with its internal rules on the taking of special days of holiday, including any rules on notice periods. The internal rules may appear in either the individual employment contracts or a staff manual. If the business is subject to any collective agreement, the business must comply with the rules for the taking of special days of holiday stipulated in that agreement.

**Time off in lieu**
A further measure available to an employer wishing to reduce its staff numbers temporarily is to order the employees to take any time off lieu accumulated. It is, however, important for the employer to comply with the internal rules of the business on taking time off in lieu. The internal rules may appear in either the individual employment contracts or a staff manual. If the business is subject to any collective agreement, the business must comply with the rules for the taking of time off in lieu stipulated in that agreement.

**Short-time working**
An employer may implement short-time working either based on a collective agreement or, if no relevant collective agreement provides for short-time working, by concluding a temporary collective agreement with the employees on short-time working, providing for the business to reduce working hours for the employees and thereby reduce the staff level at its workplace for a period of time.

However, a number of conditions must be fulfilled in order for that to be possible.

An agreement on short-time working may be concluded with all types of employees, including salaried employees. Once a collective agreement on short-time working has been concluded for the business, the employees that are comprised by the short-time working are entitled to receive supplemental unemployment benefits while comprised by the short-time working and fulfilling the conditions for receiving supplemental unemployment benefits.

**Salary and wage compensation scheme**
The Government and the two sides of industry concluded a tripartite agreement on 14 March 2020 on temporary salary and wage compensation for employees on the private labour market. The agreement applies to employees in all private businesses that are exceptionally hard hit financially due to the COVID-19 outbreak and thus face having to give notice of dismissal to at least 30 per cent or more than 50 employees. In that case, the business may obtain salary or wage compensation from the Danish State amounting to 75 per cent of the salary or wage of the employees in question, up to a maximum of DKK 23,000 per month per employee if the business refrains from giving notice of any dismissal. For hourly-paid employees, the state compensation amounts to 90 per cent, up to a maximum of DKK 26,000 per month.

The employees under threat of dismissal may not work during the period, but must instead be laid off with full salary/wage. A condition for salary/wage compensation is that, during the period of the business receiving salary/wage compensation, no employee is dismissed due to financial difficulties.

The individual employee for whom the business seeks salary/wage compensation must take holiday and/or time off in lieu for a total of 5 days in connection with the compensation period. If the employee has no holiday/time off in lieu corresponding to 5 days owing to him/her, 5 days off must be taken without any salary/wage or holidays from the new holiday year beginning on 1 May 2020 must be taken. The businesses will not receive any salary/wage compensation for these days.

The temporary salary and wage compensation scheme will apply from 9 March until 9 June 2020.

The scheme has yet to be passed by the Danish Parliament.

**Dismissal**
A further and permanent measure for reducing staff numbers in a business open to an employer is to dismiss employees with good cause due to the situation of the business, including shortage of work. However, the employer must be able to show that there is actually a shortage of work requiring reduction in staff numbers in order for the dismissal to be deemed to be with good cause. This will depend on a specific assessment in each case.

If, due to shortage of work, an employer has no choice but to dismiss a number of employees within a short period of time, the business may also be obliged to comply with the rules on negotiation etc. set out in the Danish Act on collective dismissals.
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