

NEW RULES ON SEVERANCE PAY

Introduction

On 22 January 2015, the Danish Parliament passed a bill to amend the Salaried Employees Act Section 2a regarding severance pay conditioned on seniority. The amendments will enter into force on 1 February 2015 and will result in all salaried employees who have been employed for a continuous period of time of no less than 12 years being entitled to severance pay on termination of employment.

Background

The amendments are introduced after prolonged uncertainty in the area regarding severance pay conditioned on seniority. Until now, the Salaried Employees Act Section 2a provided that salaried employees were entitled to severance pay provided that they had been continuously employed for either 12, 15 or 18 years. The right to severance pay would lapse, however, if the employee had the option of either receiving a state pension upon retirement or receiving a retirement pension from the employer.

Uncertainty about this provision arose when the European Court of Justice overruled the Danish legal practice of the Ole Andersen case from 2010. According to the European Court of Justice, the removal of a salaried employee's entitlement to a retirement pension constituted age discrimination. The European Court of Justice's reversal of Danish legal practice led to several lawsuits and the legal situation remained uncertain.

The most significant Changes

New rules applicable from 1 February 2015

The bill implies a change to the Salaried Employees Act Section 2a which in future ensures all salaried employees a severance pay upon termination of continuous employment of no less than 12 years. The new wording of Section 2a means that after 1 February 2015, the salaried employee has the right to severance pay equal to one month's salary after 12 years of service. If the terminated salaried employee has been employed for 17 years or more, the compensation is fixed at three months' salary. Contrary to previous practice, the right to severance pay will in future not depend on the employee's option to either state pension or retirement pension.

The preliminary work shows that it is the salaried employee's seniority on the date of termination which determines whether the salaried employee meets the seniority requirement in Section 2a and is entitled to receive severance pay.

Our Assessment

The amendment will also apply to current employment relationships if the salaried employee meets the seniority requirement of at least 12 years of continuous employment.

The new changes will simplify the rules, which will benefit both employers and salaried employees, given that any employee who has been in continuous employment for no less than 12 years will be entitled to compensation regardless of pension.

To the extent that companies have mentioned Section 2a, in full or in part, in any employment agreements and employee policy manuals, the employer should provide a proper update hereof.

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