



# **GLOBAL EXPANSION GUIDEBOOK EMPLOYMENT**

*Denmark*



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## INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Employment*.

### GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

### EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2024 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

To learn more about DLA Piper's global Employment practice, visit [www.dlapiper.com](http://www.dlapiper.com) or contact:

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## DENMARK



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### LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the EU and required to implement relevant EU Directives. The official currency is the Danish kroner (DKK). The official language is Danish.

### CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign companies that are contemplating carrying out business in Denmark may be set up as limited liability companies (A/S and ApS), branch offices or representation offices. In addition, foreign companies may hire individual employees without having a permanent establishment in Denmark. Special payroll and tax schemes may be set up in this regard.

Danish employers are obliged to withhold provisional income tax (so-called A tax) and labor market contributions from the salary paid.

### PRE-HIRE CHECKS

#### Required

Employers are responsible for ensuring that all employees have a valid residence and work permit when employing 3rd-country citizens. The responsibility applies to both paid and voluntary work.

#### Permissible

An employer may ask a potential employee to produce a copy of their criminal record if this is considered necessary and proportionate in relation to the job. Information on a potential employee's health may be requested only if this is of significant importance to the ability to perform the job in question. With regard to educational background and activities, data from the application may, as a rule, be verified by the employer. It is common in Denmark to issue job references. Applicants may be asked to provide contact data of former employers. Credit checks are allowed in relation to employees in special fiduciary positions and if there is a legitimate purpose for the check.

## IMMIGRATION

Citizens from the Nordic countries, the European Union (EU), the European Economic Area (EEA) and Switzerland are entitled to live and work in Denmark. However, if the employee is an EU/EEA or Swiss citizen and intends to reside in Denmark for more than 3 months, the employee must apply for a registration certificate at the International Citizen Service or the State Administration upon arrival in Denmark.

If the employee is a citizen of a country outside the EU/EEA or Switzerland, the employee must apply for a residence and work permit before entering Denmark.

## HIRING OPTIONS

### Employee

Indefinite, fixed-term, full-time, part-time or freelance (with employee status). Part-time and fixed-term employees may not be discriminated against on the basis of such status. White-collar workers are typically covered by the Danish Salaried Employees Act.

### Independent contractor

May be engaged directly by the company or via a personal services company. Danish courts examine the reality of the engagement in assessing whether an independent contractor has been misclassified and is actually an employee and therefore covered by the Danish employment law protection.

### Agency worker

Permissible. Must receive minimum pay and benefits corresponding to what they would have received had they been directly employed by the end user.

## EMPLOYMENT CONTRACTS & POLICIES

### Employment contracts

Employees with a predetermined or actual working time of more than 3 hours per week on average basis in a reference period of 4 following weeks are entitled to receive a written statement of employment terms (ie, statement of employment terms, employment contract or the like) containing all material terms and conditions of the employment, where some of the information must be issued within 7 days and some of the information must be provided to the employee no later than 1 month after the commencement of the employment.

However, it is recommended that an employment contract is issued to all employees.

### Probationary periods

Permissible and fairly common; however, no longer than 3 months for salaried employees.

### Policies

Many businesses have an employee manual or similar document containing internal guidelines and rules on health, safety and other relevant areas. Such policies are generally not mandatory. However, it is mandatory to have a non-smoking policy and a policy on e-cigarettes.

## Third-party approval

Not required for employment contracts or policies.

## LANGUAGE REQUIREMENTS

In general, there are no statutory language requirements, and employment contracts may be provided in any relevant language provided that the individual employee understands the language of the contract. However, special rules do apply with regard to stock options. In this case, legislation requires the central terms of a stock option scheme to be provided to employees in Danish.

## WORKING TIME, TIME OFF WORK & MINIMUM WAGE

### Employees entitled to minimum employment rights

Most employment legislation sets out mandatory rules with regard to employment terms which may not be derogated from to the detriment of the employee. Most of these mandatory rules apply to all employees regardless of, for example, length of service.

### Working hours

The maximum average working hours according to the Working Time Directive Act are 48 hours per week, which are calculated as an average over any period of 4 months. A general working week for a Danish employee is 5 days, working typically an average of 37.5 hours per week exclusive of a daily lunch break.

The Working Environment Act contains provisions stating that working hours are to be organized to allow a period of rest of at least 11 consecutive hours within every 24-hour period. Furthermore, it provides that employees are to have a weekly 24-hour period off, which must be immediately connected to a daily rest period. The weekly 24-hour period off must, if possible, take place on Sunday.

The Working Time Directive has been implemented into Danish law through the Danish Act on Working Time. On November 8, 2023, the Danish Ministry of Employment submitted a bill on amendments to the Danish Act on Working Time. The bill shall implement the legal position set by the Court of Justice of the European Union in accordance with the Court's case law, in particular C-55/18 of May 14, 2019 on Deutsche Bank concerning registration of working time. From July 1, 2024, employers must introduce an objective, reliable and available working time recording system that makes it possible to measure the daily working hours of each employee provided that the bill is adopted.

### Overtime

Overtime is not regulated by law except as provided by the Working Time Directive. However, overtime and the payment thereof are very often regulated in collective agreements.



## Wages

In Denmark, there is no statutory regulation on national or sectoral minimum salary or wages. However, collective agreements often contain several provisions regarding salary or wages.

## Vacation

A new Holiday Act came into force on September 1, 2020 with transitional provisions as from 2019.

The new Holiday Act has introduced concurrent holiday, meaning that every employee may take paid holiday as soon as the holiday has been accrued.

The employee accrues 2.08 days of holiday for each month of employment – accordingly, 25 days of paid holiday per year. The holiday year runs from September 1 to August 31 of the following year. The period in which the accrued holiday may be taken is equal to the holiday year plus 4 months (ie, from September 1 to December 31 the following year) – in total, 16 months.

## Sick leave & pay

All employees are entitled to absence during sickness. Most collective agreements and the Danish Salaried Employees Act contain provisions ensuring that employees are entitled to full salary during sickness. If an employee is not entitled to receive pay during sickness from the employer, the employer may be obliged to pay compensation equivalent to the authorities' sickness benefits for the first 30 days. After the 30-day period, the authorities continue to pay the sickness benefit.

After a consecutive period of absence of 30 days due to sickness, the employer may be reimbursed for a certain amount of sickness benefits by the authorities if the employer pays salary during an employee's sickness period and the sickness lasts for more than 30 days.

## Maternity/parental leave & pay

As a part of the implementation of the Directive (EU) 2019/1158 on work-life balance for parents and careers as well as the repealing of Council Directive 2010/18/EU, the Danish Parliament has adopted a bill on the amendments of the Danish Act on Parental Leave. The new Danish Act on Parental Leave is applicable for children born on or after August 2, 2022. The Directive is intended to promote equality between men and women in the labor market by granting fathers earmarked parental leave.

A pregnant employee is entitled to absence from work from the beginning of a 4-week period preceding the expected date of birth. After childbirth, the mother is entitled to 24 weeks of leave. The 24 weeks of leave are divided into 2 types of leave: the 10-week leave and the 14-week leave. The mother can transfer 8 weeks from the 10-week leave and 5 weeks from the 14-week leave to the other parent. The remaining 9 weeks of leave is earmarked to the mother and will lapse if the mother chooses not to use this period of leave before the child is 1 year old.

Female employees covered by the Danish Salaried Employees Act are entitled to 50 percent of their salary (including the value of benefits) from the employer for a period from 4 weeks before the expected date of birth until 14 weeks after the actual date of birth. This is the only legal obligation for the employer to pay salary during maternity leave.

It is common in Denmark under collective agreements, and under some individual agreements, that employees are entitled to full pay from the employer for a certain period during maternity leave.

After the child is born, the father/co-mother is entitled to 24 weeks of leave. The 24 weeks of leave is divided into 2 types of leave: the 2-week leave and the 22-week leave. The father/co-mother is unable to transfer the first 2 weeks of leave, but may transfer a total of 13 weeks of leave to the other parent. The remaining 9 weeks is earmarked to the father/co-mother and will lapse if the mother chooses not to use this period of leave before the child is 1 year old. The employer is not required to pay salary, but it is common for collective agreements, and some individual agreements, to provide for full salary for some or all of the paternity leave. The employee may be entitled to a state benefit.

After the 10th week following childbirth, the parents each have a right to parental leave of 32 weeks, which may be extended by up to 14 weeks. The parents may choose whether to take the parental leave at the same time or consecutively until the child reaches the age of 9. In the absence of an agreement with the employer regarding salary during parental leave, employees are entitled to state benefits for a total of 32 weeks.

The same rights (with certain modifications) apply to adoptive parents and same-sex parents. Note, however, that adoptive parents can only take leave if the state decides that 1 or both parents must stay at home to take care of the child.

## Other leave/time off work

The Danish Parliament has introduced a right to care leave of 5 days per year per employee. Further, employees may also be entitled to unpaid leave as a result of a relative's illness or accident.

Great Prayer Day has been abolished as a public holiday and from January 1, 2024, the 4th Friday after Easter (the former Great Prayer Day) is Great Prayer Day as a public holiday will be entitled to a salary supplement of 0.45 percent of the annual salary. The salary supplement can be paid continuously with the salary or with the salary for May and August. Hourly paid employees who work on the former Great Prayer Day will receive their usual hourly rate for the working hours.

## DISCRIMINATION & HARASSMENT

Danish legislation prohibits both direct and indirect discrimination, and victimization and harassment, on various grounds, including age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity /paternity, race, nationality, religion or belief, and sex or sexual orientation.

Employers may take positive action in the form of differential treatment if an employee with a disability is employed. In that case, the employer is obliged to take adequate measures to address the person's disadvantage in order for the person to overcome that disadvantage and function on an equal basis with other employees.

## WHISTLEBLOWING

On June 24, 2021, Denmark passed the Whistleblower Protection Act in accordance with the requirements set out in the EU Whistleblowing Directive (2019/1937) of 23 October 2019. The new Danish Act stipulates that all employers, both private and public, with at least 50 employees must set up an internal whistleblower system through which employees can raise concerns. The rules entered into force for public authorities and for private



companies with more than 249 employees on December 17, 2021 and for private companies with 50 to 249 employees on December 17, 2023.

The Act protects whistleblowers against reprisals, including dismissal and other detrimental treatment when the whistleblower raises a concern that they have become aware of in connection with work-related activities and the information falls within the scope of the Act. The whistleblower is entitled to compensation if they have been subjected to reprisals, and dismissal may also be cancelled.

## **BENEFITS & PENSIONS**

All employees must pay tax and labor market contributions, which are deducted from the employee's gross salary. These deductions fund state benefits.

There is a mandatory Danish Labor Market Supplementary Pension (ATP) to which an employer pays DKK 189.35 per month for full-time employees and employees pay DKK 94.65 per month. There is no requirement to contribute to additional pension schemes unless this requirement is specified in a collective agreement, individual employment contract or imposed by the employer's internal guidelines.

## **DATA PRIVACY**

Employers must comply with the General Data Protection Regulation (GDPR) as of May 25, 2018 as well as the Danish Data Protection Act.

Employees have the right to detailed information about the processing of their data. All information provided must be concise, transparent, easily accessible and in plain language. Employers must provide information on the legal basis for processing and, if the data is sensitive, which of the conditions for processing special categories of personal data on which the employer relies. The notice must also advise the employees of their rights under the GDPR.

## **RULES IN TRANSACTIONS/BUSINESS TRANSFERS**

Under the Danish Act on Employees' Rights, in the event of Transfers of Undertakings, employees' contracts of employment transfer automatically in the event of a business transfer or service provision change.

There are certain requirements for employers to inform and consult with their employees prior to a transfer.

Dismissals due to the transfer of an undertaking, or part thereof, will not be considered reasonably justified unless the dismissal is due to economic, technical or organizational reasons entailing changes in the workforce.

## **EMPLOYEE REPRESENTATION**

Denmark is characterized by a high level of unionization, and there is a broad acceptance that the parties of the Danish labor market regulate and govern the labor market without any, or only minimal, government intervention.

Therefore, it is left to the organizations to conclude collective agreements that regulate working conditions in individual workplaces. Collective agreements regulate areas such as salary, overtime payment, working hours, pension, termination of employment, supplementary training or education and other terms of employment.

All employers with more than 35 employees are legally obliged to establish an employee forum (i.e., a works council). The forum may be used to inform employees of matters of material importance to the employees. However, several collective agreements contain provisions enabling employees – or management – to request the establishment of a works council. In this case, the terms of the collective agreement apply, provided it meets the minimum statutory requirements. The works council must consist of an equal number of employee and management representatives.

Employees may also elect members to the board of directors, provided that 35 employees or more are employed, and that a majority of them request representation in the board of directors.

## TERMINATION

### Grounds

In general, terminations are permissible on fair grounds. No legislation regulates discipline procedures. In many cases, dismissal with or without notice will be deemed unfair if the dismissal is due to circumstances connected to the employee (eg, due to performance issues) and the employer has not presented the employee with a prior written warning.

### Employees subject to termination laws

Employees not covered by the Danish Salaried Employees Act (or covered by the Danish Salaried Employees Act, but have been employed for less than 12 months) or not covered by a collective agreement have no legal protection against unfair dismissal. The majority of collective bargaining agreements include provisions protecting employees against unfair dismissal.

### Prohibited or restricted terminations

The legal regime governing employment relationships in Denmark is generally more liberal and favorable towards the employer than in many other EU countries. However, certain employees, such as safety and employee representatives, shop stewards, pregnant employees or employees on maternity, paternity or parental leave, are subject to special protection in relation to termination of employment. An employer must comply with specific regulations which aim to protect such employees in the event that the employer intends to terminate the employment of such an employee.

In 2019, the EU passed the Whistleblower Protection Directive, which had a deadline of December 17, 2021 for Member States to incorporate into their national laws. The Directive provides for minimum standards that must be adopted, including protections for covered individuals who report a breach of EU law in any prescribed area. An individual who meets the conditions for protection under the Directive is safeguarded from any form of retaliation, as well as from threats of or attempt at retaliation (which is defined broadly). EU Member States are in various stages of implementation. See [DLA Piper EU Whistleblower Directive: Implementation Tracker](https://www.dlapiperintelligence.com/goingglobal/) for more information.

## Third-party approval for termination/termination documents

Generally not required.

## Mass layoff rules

Statutory rules apply to reductions in staff contemplated by employers employing more than 20 persons for reasons which are not related to the individual employees concerned and where the number of terminated employees within 30 days exceed the following limits:

- A minimum of 10 percent of the workforce in companies which normally employ 100 to 299 persons
- A minimum of 10 workers in companies which normally employ 21 to 99 persons and
- A minimum of 30 workers in companies which normally employ a minimum of 300 persons.

## Notice

The length of the notice depends on an individual employment agreement or collective bargaining agreement.

However, salaried employees are entitled to receive 1 month's notice in the first 6 months of employment, and then between 3 and 6 months' notice, based on the length of service.

An employer may dismiss an employee without notice (ie, summary dismissal) where the employee is guilty of behavior which amounts to serious misconduct.

## Statutory right to pay in lieu of notice or garden leave

There is no statutory right for an employer to pay in lieu of notice, but an employer has the right to put the employee on garden leave for the duration of the notice period.

If the employee is on garden leave, the employer may, with certain limitations, reduce the salary paid during the notice period if the employee finds new employment.

## Severance

A salaried employee who has been continuously employed for 12 or 17 years is entitled to severance pay corresponding to 1 or 3 months' salary, respectively, in the event of the employer's termination of the employment.

## POST-TERMINATION RESTRAINTS

### Non-competes

Under the Danish Act on Restrictive Covenants that entered into force on January 1, 2016, an employee may be subject to a non-competition clause only if they hold a special position of trust, and the clause must indicate the specific circumstances as to why such a clause is necessary.

The compensation is either 40 percent or 60 percent of the monthly salary at the time of termination of the employment, and the first 2 months are considered minimum compensation. The compensation – save for the minimum compensation – may be reduced to 16 percent or 24 percent if the employee gets another suitable job.

For agreements entered into prior to January 1, 2016, a salaried employee may only be subject to a non-competition clause if they hold a trusted position (eg, if they have access to certain, otherwise restricted, information).

## Customer non-solicits

After January 1, 2016, an employee may only be subject to a non-solicitation clause regarding customers and business connections with whom the employee has had business relations over the last 12 months immediately prior to termination of the employment. The compensation regime which applies for non-competes also applies to customer non-solicits.

## Employee non-solicits

Since January 1, 2016, new rules have reduced employers' ability to use non-poaching and non-solicitation of employees' clauses and it is no longer legal to enter into these clauses except in connection with a business transfer. Pre-existing clauses were only valid until January 1, 2021.

## WAIVERS

In general, waivers of rights and settlement agreements are enforceable, provided that the terms and conditions are fair and balanced; however, the employee is not bound by agreed terms and conditions deviating from mandatory employment law legislation, in which case a waiver by the employee is not enforceable.

## REMEDIES

A whistleblower must not be subject to retaliatory measures, including threats or attempts at retaliatory measures, because the whistleblower has made an internal or external report or made a publication in accordance with the relevant rules of the Whistleblower Protection Act.

If a whistleblower has been subject to retaliatory measures because the whistleblower has made a report or been prevented/attempted to prevent a reporting, the whistleblower is entitled to compensation.

Non-compliance with the Act may also lead to criminal sanctions.

## Discrimination

If the employer is held liable for discrimination or harassment, the employee is entitled to compensation from the employer or potential employer. The compensation is not equivalent to the employee's loss; its characteristic is more of a penalty.

In some cases, the employee is entitled to re-instatement. However, it is very rare that the courts award re-instatement. The most common remedy in discrimination and harassment cases is financial compensation.

If discrimination is related to recruitment, the compensation ranges from DKK10,000 to DKK25,000. In the event of termination of employment on discriminatory grounds, the compensation ranges from 3 to 12 months' salary depending on the severity of the discrimination and the employee's seniority.

## **Unfair dismissal**

A salaried employee who is unfairly dismissed, and who has been employed for at least 1 year at the time of dismissal, may be entitled to severance pay. The maximum amount payable is 50 percent of the salary in the statutory notice period. However, if the employee is over the age of 30, the potential severance pay is increased to an amount equal to 3 months' salary. If the employee has been employed for at least 10 years, the severance pay may be increased to a maximum of 4 months' salary. The amount payable is further increased to 6 months' salary if the employee has been employed for at least 15 years. The level of the severance can be settled between the parties or set by the Danish courts.

## **Failure to inform & consult**

### *Mass layoffs*

Non-compliance with the provisions of the Danish Act on Collective Redundancies may lead to a fine on the employer and compensation of between 30 days' and 8 weeks' salary to the employees made redundant, if they do not receive pay during a notice period of equivalent duration.

Different compensation, penalties, penal sanctions and consequences may be provided for by collective agreement.

### *Transfer of undertakings*

Failure to comply with any of the information and consultation requirements may result in the offending employer being subject to a fine or penalty under an applicable collective agreement.

However, if the employer can prove that special circumstances applied, which means that it was not reasonably practical to comply with these requirements and that the employer took such steps to comply as were possible in the circumstances, the employer may avoid a fine or penalty. Sanctions for non-compliance with the requirements of a collective agreement may include a penalty in the order of DKK100,000 to DKK500,000 or higher.

## **CRIMINAL SANCTIONS**

Non-compliance with employment law may lead to criminal sanctions. Examples include employing a person without a valid work permit, failing to report and pay holiday pay, reading private emails, disclosure of trade secrets, breach of anti-discrimination provisions and failure to inform and consult in relation to collective redundancies, or business transfers.

Apart from fines relating to a breach of the rules on work permits and to the lack of reporting and paying of holiday pay, criminal sanctions related to employment legislation are rarely seen.

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