

NORWAY:

A General Overview of Labour
Relations and Employment Law,
incl. Recent Developments

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Factual background – Norway

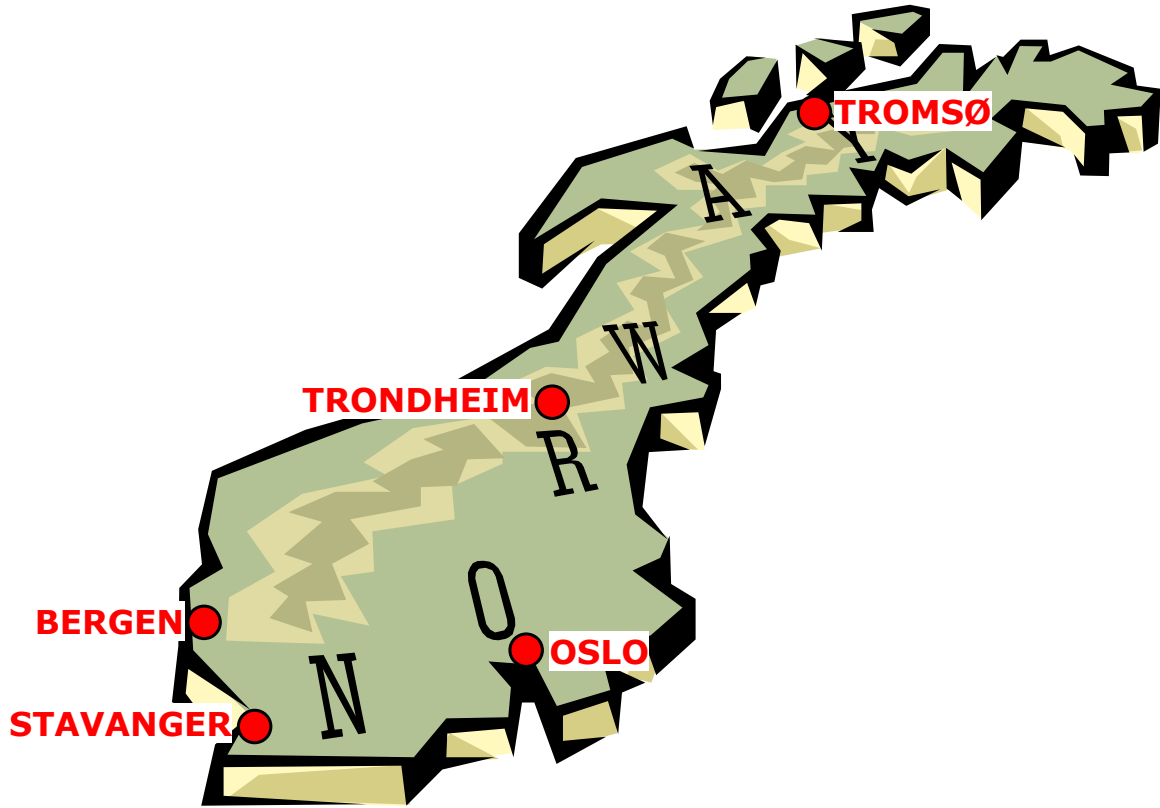
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Geography and population

- Total area: 323.800 km²
- 1700 km from north to south
- Total inhabitants: 4,6 million. Strong US immigration
- Workforce: 3,2 million (age 16-74)
- Women participate equally as men (73 % overall – 70 % women)
- Many areas sparsely populated. Oslo metropolitan area approx. 1 million

Employment and education

- Employment rate: 96 % of current workforce - Approx 105.000 registered unemployed
- 23% of population with higher education. University cities: Oslo, Bergen, Trondheim, Tromsø
- Acceptable working knowledge of English common. Skilled labour often competitively priced – unskilled labour is not.

Sick leave & retirement

- Sick leave: 7% of the total workforce
- Retirement pensioners: 13% of population
- Retirement age: 67 (in books. Factual average abt 60)
- Disablement pensioners: 6% of population

European Union?

- Declined membership twice (1972 and 1995)
- Member of European Economic Area (EEA) (with Iceland and Liechtenstein):
 - Adopted 4 free movements
 - Adopted EU legislation and practice
 - Paying (close to) EU membership fees
 - Advance consultations, but very limited influence

National history (summary)

- Monarchy since year 872
- First civil law book 1274
- United under Danish king 1397 – 1814
- Current Constitution 17 May 1814. Models: US 1776 and France 1789
- United under Swedish king 1814 – 1905
- Independent monarchy 1905

Collective labour law

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Scope of Nordic collective labour law varies

- Norway: rules regarding collective agreements as such, and the parties thereto.
- Excludes codetermination/employees' influence (S), employment protection (DK) and public protection of health and employment agencies (SF)

Unions: Good or bad?

- Generally harmonious and non-confrontational relationship
- Professional long-term entity with often concurring goals
- Often legitimate representative of entire workforce
- Rights under collective agreements generally vested with individuals, rather than union itself (contrast S, where unions are connected even to payments of statefunded unemployment benefits)
- Strong political/legislative influence, particularly with Labour Party (“Scandinavian Model”)
- Collective agreements must always be assessed

Degree of union membership

- **52%** of workforce, varying from over 80 % in public sector to 40 % in private (of which 53% in industry/manufacturing and 32% in services). This is well below other Nordic countries (I 85%, S/SF 78 % and DK 75 %), equal with Belgium and above rest of Europe
- Declining tendency, particularly among part-time, temps and small businesses (was 70 % in 1984)
- Abt 70 % of workforce subject to coll. agreements
- Freedom to organize (or chose not to be organized) recognized – “union shop-”clauses rare

The union bouquet

- Four major trade unions: LO (Confederation of 25 single unions) dominating with 800.000 members.
- Four major employers' association, NHO dominating with 16.000 member companies who employ a total of 450.000 persons.

Collective agreements

Similar to Sweden:

- Any written agreement between a trade union (incl *ad hoc*) and an employer or employers' association regarding working conditions
- Includes basic agreements, national industry collective agreements as well as local "*house*" agreements

Topics often regulated in collective agreements

- Salary and working hours – may differ from legislation
- Information, co-operation and co-determination
- Redundancy procedures
- Clarification and development of statutory regulations
- Any other topic agreed upon (In Vestfold, 24 June is paid day off)

Mandatory effects of collective agreements

Similar to Sweden:

- Individual agreements may not derogate – for better or worse – regardless of whether such agreement is with union member or not
- Coll. agreement can only be invoked by (superior) parties; not members or non-members
- Relative peace obligation during coll. agreement duration (1+1 yrs)

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Dispute resolution – 2 tracks:

- Disputes of rights: Judicial review (Labour Court)
- Disputes of interests: Party negotiation, State Mediator, Industrial Action and possibly reference to National Wages Board –require legislation

Disputes of rights: the Labour Court

- Established 1916; only active special court in N
- Disputes concerning the validity, interpretation and existence of a claim based on a collective agreement, including damages from individuals for illegal industrial action (not punitive damages, as in DK)
- 3 judicial judges + 4 lay judges
- Receive 35 – 50 cases/year, of which 1/3 are withdrawn or settled
- Decisions not subject to appeal
- Arbitration not used. Employers no interpretation privilege (contrast DK)

Disputes of interests:

- Claim to establish new or renew existing collective agreement
- No “*protection*” of assumed weaker part – an issue of negotiation, industrial action power and victory/surrender
- No minimum membership requirement in private sector–NHO/HSN require 10%

Disputes of interests: (cont'd)

- State mediator may **prohibit** strike/lock-out until mediation is completed, may **suggest** that his proposal is presented to members and that the vote is merged for 2 or more collective agreements
- Mediator success rate 85 – 90 %
- If no settlement – strike/lock-out available and legal. Picketing legal if not “*disturbing the peace*”. Strikebreakers “*not done*” in Norway since 1935

Disputes of interests: (cont'd)

- Strike continues until one gives in – a strike in union secretariat lasted over 9 months!
- Parliament may refer disputes of interest to the National Wages Board, in which case continued strike is illegal
- National Wages Board's decision, reached after formal procedure similar to lawsuit, has effect as collective agreement
- The use of National Wages Board criticized on human rights' grounds

General application of collective Agreements?

- Collective agreements only effective for parties and members thereto
- Since 1994, a state board may resolve that a collective agreement shall have general effectiveness (in part or full) in case of social dumping
- Unlike SF, such resolution has not been passed yet (but EU expansion 1 May 2004 makes it tempting ...)

Individual labour law

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Scope of individual employment law

- Contractual relationship between employer and employee, incl dispute resolution
- Safety and health regulations including enforcement
- Working hours and vacation
- Maternity leave, unemployment benefits and certain other social security issues

Background

- Legislature presupposes employer as cunning and resourceful, and employee as the opposite in need of protection
- Extensive compulsory legislation, drafted with aim at traditional industry, but given general application (incl. *inter alia* managing director or creative positions – contrast S)
- EU-directives not a substantial driver (N ahead of EU on several issues), but implemented when necessary (transfer of undertaking, mass redundancies etc)

Workers Protection Act 1977

- The dominant piece of employment legislation, developed over abt. 100 years
- Minor adjustments 1-3 times/year + case law
- Overhaul Law Committee recommended February 2004 unanimously to continue today's structure and principles (but proposes numerous changes, often with dissents)
- Increased worktime flexibility and continued protection
- Still no minimum salary provision in WPA
- Often "compromise" between S and DK

Employment protection (intro)

- Employee can terminate at will
- Employer needs just/reasonable/valid cause ("*saklig grunn*") connected to the employee or the undertaking. Special protection for illness, pregnancy and military service
- Employer carries the burden of proof
- Courts will try that factual foundation is correct, that procedure has been followed and may also review the employer's "*prerogative*"
- The right to work "*in natura*" particularly protected
- Summary dismissal with immediate effect warranted if gross breach of contract

Employment protection (cont'd)

- Discussion meeting with employee and advisor prior to decision if “*practically possible*”. Warning not compulsory – depends on circumstances
- Formal requirements to content of termination notice
- Notice period counted from first day of month **after** notice was served. 3 months common-1-6 months unless otherwise agreed
- Additional documentation and consultation requirements in case of mass redundancies (10 or more)

Employment protection (cont'd)

- Right to challenge termination in individual negotiations with court resort
- Right to remain in position (and receive salary) during the dispute unless otherwise ordered by court
- Unsubstantiated termination: void + damages (economic + non-economic)
- Court can nevertheless terminate if "*clearly unreasonable*" to continue

Employment protection (cont'd)

Re. downscaling

- Termination not warranted if other suitable work available
- Only warranted after balancing needs of employer with inconveniences of each employee in question
- 12 month preferential claim to new employment unless not suited

Employment protection (cont'd)

Re. management

- Starting point: WPA applies (but what amounts to just/reasonable/valid cause varies with role expectations)
- WPA allows Managing Director to waive employment protection against severance pay (quite common) or agree on fixed term or arbitration (uncommon)
- Usually, order for MD to leave post during dispute is granted
- Often, settlement is reached

Trial period and temporary employment

- 6 months trial period if agreed in writing
- Not “*at will*” as in S; must be based on lack of suitability, proficiency or reliability. Test: “*what has employer done to enable employee to succeed?*”
- Temporary employment (or hire of employees) only if “*warranted by the nature of the work*”.

Working hours

- Restrictions on weekly working hours, on overtime, night- and weekend. Overtime warrants min 40 %
- Employee may require reduced working hours for health, social or other reasons
- “*Leading positions*” and “*special positions of responsibility*” excluded (currently) from overtime restrictions

Vacation

Quite similar to S:

- Vacation Act gives 4 weeks + 1 day in calendar year if worked since 9.30
- 1 additional week if over 60
- 3 consecutive weeks 6.1 – 9.30 (in fact, most take 3 weeks 7.15 – 8.10)
- Vacation pay 10,2 % (12,5%) of received salary previous year
- 5th week (with pay) introduced last year in some collective agreements

Maternity/paternity leave

- Total leave with pay 1 year, of which mother must take first 6 weeks after birth. Further, father (only) has 2 weeks in connection with birth.
- Each parent may take one additional year off for each child, without pay, in connection with 1st year
- Adoption: Similar, but total 1 year
- Nursing mothers: 2x 30 min daily
- Sick children: 10 days/year/parent (15 if more than 2 children, 20 if cronically sick)

Codermination and joint consultations

- 3 legal foundations: WPA, collective agreements and limited companies Act:
- WPA: **Safety delegate** compulsory unless agreed otherwise and less than 10 employees. Ensures that enterprise is arranged/maintained/work carried out in accordance with safety/health/welfare provisions. May halt work if immediate risk to life or health

Codermination and joint consultations (cont'd)

- WPA: **Working environment committee** compulsory if more than 50 employees, if more than 20 and employees require, or if Labour Inspection require. Aim at establishing a fully satisfactory working environment, inter alia internal control systems and plans for building construction, machine purchase, rationalization, work processes and safety measures

Codermination and joint consultations (cont'd)

- **Collective agreements** often provide far-reaching obligations to inform and discuss with shop stewards as early as possible concerning ordinary operations, legal or operational reorganisations, accounts and financial matters etc. Often, companies choose to inform and discuss by mirroring the board agenda a day before

Codermination and joint consultations (cont'd)

Board representation similar to DK:

- Under **limited companies Act**, employees can choose to elect
 - 1 board member and 1 observer if more than 30 employees
 - Up to 1/3 of the board members but minimum 2 if more than 50 employees
 - 1 additional board member or 2 additional observers if more than 200 employees
- If group of companies, consolidation of group may be resolved upon application
- ~~Work Councils not a factor~~

Stock options, pensions & benefits often tax driven

- Stock options remain heavily taxed: 55,3% + up to 26,6% payroll tax of benefit at time of exercise
- Pensions: Less tax-incentives due to developed social sec. Premium tax deductible for employer if part of collective scheme up to annual income NOK 680' AND annual premium less than NOK 40'
- Benefits in kind generally income-taxed on market value, although template valuation may be favourable (phone, PC, subscriptions)

Competition clauses – restrictive covenants

- Require agreement
- Acknowledged if reasonable, balancing the employer's need for protection, the limitations thereby put upon the employee and if remuneration is paid
- Up to 6-9 months often accepted without additional pay
- Duration over 2 years not enforced

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