LABOUR LAW IN NORWAY

HENNING JAKHELLN KRISTINE FREMSTAD MOEN MAARTEN BRANDSNES FARET



Labour Law in Norway

Henning Jakhelln Kristine Fremstad Moen Maarten Brandsnes Faret

This book was originally published as a monograph in the International Encyclopaedia of Laws/Labour Law and Industrial Relations.

General Editor: Roger Blanpain Associate General Editor: Michele Colucci



Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by: Turpin Distribution Services Ltd. Stratton Business Park Pegasus Drive, Biggleswade Bedfordshire SG18 8TQ United Kingdom Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-4733-2

This title is available on www.kluwerlawonline.com

© 2013, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Author	3
List of Abbreviations	27
Register of Acts, Regulations, International Conventions and Bilateral Agreements, EU Directives and Regulations	31
Preface	35
General Introduction	37
Chapter 1. General Background	37
§1. GENERAL DESCRIPTION OF NORWAY	37
§2. Geography	37
§3. CULTURAL COMPOSITION – LANGUAGE	38
§4. International Relations	39
§5. POLITICAL SYSTEM I. Parliament (Stortinget) II. Political Parties	40 40 41
§6. ADMINISTRATION I. The Central Administration II. The Counties III. Local Administration IV. Administrative Procedure	42 42 43 43 44
§7. OMBUDSMEN I. The Ombudsman for Civil Administration, Ombudsman for the Armed Forces and Parliamentary Ombudsman for the	45
Civilian National Service II. Other Ombudsmen	45 46
II. Other Ombudshen	40

A. The Equality and Anti-discrimination OmbudsmanB. The Consumer OmbudsmanC. The Children's Ombudsman	46 47 47
D. The Patients OmbudsmanE. Student Ombudsmen	47 47
§8. Boards, Councils and Committees	47
§9. THE COURT SYSTEM	49
I. Survey	49
II. The Supreme Court (<i>Høyesterett</i>) III. The Courts of Appeal	49 49
IV. The Courts of First Instance	49
V. The Couciliation Council	50
VI. Arbitration	50
VII. Right to Appeal	50
VIII. Independence of the Courts	51
IX. Special Courts, Administrative Bodies, etc.	51
X. The Labour Court and Other Courts Dealing with Labour	
Law Cases	51
§10. Some Vital Statistics	52
I. Composition of the Population	52
II. The Total Workforce	52
III. Some Main Branches	53
IV. Immigration	53
V. Asylum Seekers and Refugees	54
VI. Full-time and Part-time Work – Men and Women	54
VII. Unemployed	55
VIII. Public Administration	55
§11. THE RELATIONSHIP BETWEEN THE PRIVATE AND THE PUBLIC	
SECTORS	56
§12. Underlying Social and Cultural Values of Society and their Effect on Freedom of Association, Discrimination, Guaranteed Income, etc.	57
Chapter 2. Definitions and Notions	60
§1. DEFINITION OF LABOUR LAW – WHAT IT COMPRISES I. The Difficulties in Defining Labour Law – a Functional Approach	60 60
II. The Relation between Labour Law and Other Branches of Law	61
A. The Relation to Private Law	61
1. Contract Law	61
2. The Law of Associations	61
3. The Law of Companies	62
4. Other Private Law Aspects	62

В.	The Relation to Public Law	62
	1. Labour Exchange, including Labour Life, Immigration	-
	and Work Permits, etc.	62
	 Security at Work, Working Environment, etc. Social Security, etc. 	63 63
	3. Social Security, etc. The Relation to International Law	63
	The Relation to International Law The Relation to Constitutional Law	64
	The Relation to the Law on Court Proceedings	64
	The Relation to Penal Legislation	64
	Summing up	65
\$2. THE REL	ATION BETWEEN LABOUR LAW AND THE LAW ON SOCIAL	
	Y AND WELFARE	66
I. Defi	nition of the Law on Social Security and Welfare	
and	what the Law on Social Security and Welfare Comprises	66
	Law on Social Security and Welfare as the Background	
	Labour Law Agreements and Arrangements	66
	The Law on Social Security and Welfare and the Prevention	
	of Misfortune	67
	The Law on Social Security and Welfare and Efforts to Achieve Full Employment	67
	The Law on Social Security and Welfare and the Strengthening	07
	of Trends in a Desired Direction	68
	Interaction between Labour Law and the Law on Social	
	Security and Welfare	69
	The Basic Amount of the Law on Social Security and Welfare	70
F.	Summing up	70
§3. Defini	TION OF LABOUR LAW AND OF CONCEPTS WHICH ARE MOST	
FREQUI	ENTLY USED: EMPLOYEE, EMPLOYER, ENTERPRISE, ETC.	71
	e Employment Relation - Some Introductory Remarks	71
	sis of the Employment Relationship	72
	The Employment Contract	72
В.	Members of Parliament, Members of County Councils,	70
C	Mayors, etc.	72
	Work Carried out by Prisoners in Prisons Work Carried out Based on Membership of an Association	72 72
E.		12
L.	Board, Shareholders, etc.	73
F.		, .
	on Work Activities	74
G.	Work Carried out by Family Members	74
H.		74
I.	Nuns, Monks, Priests and Salvation Army Officers	75
J.	Pupils, Persons on Compulsory Military Service,	
	Prisoners, Patients at Health Institutions, etc.	76
K.	Enterprises that Have no Employees	76

	П.	A Certain Collective Freedom to Renounce Mandatory	
		Legislation by Collective Agreement	104
	Ш.	Penalties	104
		The Collective Element	105
		Human Factors – Employees Are Human Beings	103
	VI.	Involvement of Public Authorities	106
0.0	T	Comp. I and Comp. Comp. Comp.	10
32.		OUR LAW – SOME CHALLENGES	100
		Often Politically Controversial Reforms	106
		A Dynamic Part of the Law	107
	ш.	Labour Law Reforms – Expectations and Concerns in	102
	13.7	Practical Labour Life	107
	IV.	Implementing Reform into Practical Labour Life	108
§3.	LAB	OUR LAW – PERSPECTIVES	108
	I.	The Superior Position of Employers and the Subordinate Position	
		of Employees - Perspectives in the Knowledge-based Society	108
		A. Points of Departure	108
		B. The Basic Tension and Dilemma – the Principle of Equality	
		between Persons	108
		C. Easing the Subordinate Nature of the Employment Relationship	
		 Employee Co-determination and Corporate Democratization 	109
		D. The Subordinate Nature of the Employment Relationship	
		and the Knowledge-based Hi-tech Labour Life	109
	Π.	Building on and Developing further the Principle of	
		Collaboration vs. Confrontation	110
		A. General Remarks	110
		B. The Principle of Collaboration on the Collective Level	110
		C. The Principle of Collaboration at the Individual	
		Enterprise Level	11(
		D. The Principle of Collaboration and the Principle of	
		Confrontation and Open Labour Conflict	11(
		E. The Principle of Collaboration and Relation to Public	
		Authorities	111
		 The Principle of Collaboration, Mandatory Legislation, 	
		Internal Control, the Labour Inspectorate, etc.	111
		The Principle of Collaboration and Three-party	
		Arrangements	111
	Ш.	Use of 'Quasi-collective' Agreements for Groups Other than	
	10010	Employees	112
	IV.	Interaction between Regulation by Collective Agreement	-
	-	and Regulation by Law	114
		Competing Trade Unions – New Constellations	114
		The Relationship between Trade Unions and Their Members	115
- 7	V/ I I	The Collective Labour Law Perspective	1117

Ch	aţ	oter 4.	Historical Background	119
Ch	aj	oter 5.	Role of Government Institutions in the Shaping and Administration of Labour and Industrial	
			Relations Policy	122
§ 1		INTROD	UCTION	122
§2).	WORKP	LACE, ETC.	123
§3	3.		CONSIDERATIONS AND WELFARE CONSIDERATIONS – CTIONS AND DIFFERENCES	123
§4	1.	SUPERV	VISION AND COLLABORATION	123
§5	5.		AGREEMENTS GIVEN BY THE PUBLIC SUPERVISORY AUTHORITIES DING THEIR ADMINISTRATIVE POWERS	124
§6	S.	DISPOS I. Wo II. Ho III. Ac (of IV. Th Te 11 V. Th Er	RE CONSIDERATIONS – THE COLLECTIVE FREEDOM OF ITION orking Hours oliday With Pay Act (of 29 April 1988 No. 21) et Relating to 1 and 17 May as Official National Holidays of 26 April 1947) he Former Act Concerning Employment Conditions for achers in Upper Secondary Schools (Repealed by Act of June 1993, No. 30) he Former Act of 27 June 1947 as Regards Placing and agagement of Seamen (Repealed by Act of 12 December 1988, pp. 77)	125 126 127 127 127
8	7.	I. Th II. Cu III. Th IV. Th Tr of V. Co VI. Ro	ctive Agreements ne Traditional Position arrent Legislation ne Economic Effects of a Collective Wage Payment Settlement ne Need for Collaboration between Public Authorities, rade Unions and Employers' Associations – the Organization ordination and the Right to Negotiate relations between the Public Authorities and the Free-standing organizations ompulsory Arbitration	128 128 128 129 130 131 131
§	8.	I. D A	INDIVIDUAL CONTRACT OF EMPLOYMENT ifferent Forms of Encroachment by Public Authorities . Apprentices . Seamen	132 132 132 134

of a Public Nature	154
§2. Jurisdiction of Norwegian Courts	154
§3. Choice of Law	161
I. The Employment's Closest Ties	161
II. No Single Criterion Decisive	161
III. Objective and Subjective Factors	162
IV. Agreements on Choice of Law	162 164
V. Considerations behind the Connecting Factors A. Place of Contract	164
B. Citizenship	164
C. Domicile	164
D. Significance of the Work Place	166
VI. Precedents	168
VII. Summary of Precedents	171
VIII. Evaluation of Precedents	172
IX. Misgivings about Preferring Norwegian Law to Foreign Law	172
X. Rules that Apply according to the Rules on Choice of Law XI. Procedural Issues regarding Actions before Norwegian	173
Courts on Unfair Notice or Wrongful Dismissal where	
Foreign Law is Applicable	174
Selected Bibliography	177
Part I. The Individual Employment Relation	181
Chapter 1. Definitions and Notions	181
§1. SIGNIFICANCE FOR NORWEGIAN INDIVIDUAL LABOUR LAW	181
§2. THE DIFFERENT CATEGORIES OF EMPLOYEE (BLUE-COLLAR,	
WHITE-COLLAR, COMMERCIAL TRAVELLERS, SEAMEN, STUDENT	101
Workers, etc.)	181
§3. EMPLOYMENT CONTRACTS FOR AN INDEFINITE PERIOD	183
§4. TEMPORARY EMPLOYMENT CONTRACTS	183
I. General Principles of Temporary Employment	183
II. Requirement for Written Agreements	185
III. The Nature of the Work, etc.	185
IV. No Qualified Applicants	191
V. Officiating in Other Positions	192
VI. On-call Agreements	192
VII. Trainee Work VIII. Work as a Substitute	193 194
viii. vyoik as a substitute	174

IX. Labour Market Creation Programmes	194
X. Fixed-term Appointment of the Chief Executive of the Company	195
XI. Fixed-term Employment as a Result of an Agreement	
with a Foreign State or International Organization	195
XII. Athletes, Trainers, Referees, etc.	195
XIII. Collective Agreements concerning Temporary Employment	196
XIV. Termination of Temporary Employment Contracts XV. Termination of a Temporary Employment Contract	196
which Lasts beyond Four Years	198
§5. Legal Proceedings	198
I. Legal Proceedings when the Employee has Resigned	198
II. Legal Proceedings when the Employee has not Resigned III. Legal Proceedings when the Employee Resigns after a	199
Dispute has Arisen	199
§6. Probationary Period	199
§7. WRITTEN CONTRACT IS COMPULSORY	203
§8. ABILITY TO CONCLUDE A LABOUR CONTRACT (MINORS, OTHERS)	204
§9. THE INTERIM PERIOD BETWEEN THE CONCLUSION OF THE CONTRACT AND THE COMMENCEMENT OF WORK	206
Chapter 2. Rights and Duties of the Parties During	
	200
the Employment Period	208
§1. DUTIES OF THE EMPLOYEE	208
I. Obligation to Work	208
II. Duty of Loyalty	208
A. Employees' Freedom of Speech – Whistle-blowing	210
 The Balance between Freedom of Speech and the 	
Duty of Loyalty	210
2. More Specifically concerning 'Whistle-blowing'	210
Whistle-blowing and Appropriate Procedure	211
B. Gifts and Similar from Business Associates	212
C. Competing Activities	213
D. Work during Spare Time	213
E. The Duty of Loyalty during the Period of Notice	214
F. The Situation after Termination of the Employment Contract	215
§2. Duties of the Employer	215
I. Obligation to Receive the Work Effort	215
II Training and Development of Competence	216

Chapter 3. Working Time, Annual Vacations, Holidays	218
§1. Briefly Regarding the International Basis for the Regulation of Working Hours	218
 §2. QUESTIONS CONCERNING WORKING HOURS – A POLITICALLY CHALLENGED AREA OF LAW I. The Concepts of Work and Off-duty Time II. General Clauses concerning all Working Hour Arrangements A. Regard to Reasonableness B. Entitlement to Exemption from Night Work C. Entitlement to Flexible Working Hours D. Entitlement to Reduced Working Hours on the Basis of Health, Social or Welfare Grounds 	219 219 219 219 220 220
§3. ORDINARY WORKING HOURS	220 222
I. Calculating Average Normal Working Hours II. Subject to Written Agreement between the Employer and the Employee	222
III. Subject to Written Agreement between the Employer and the Employees' Representatives	222
§4. OVERTIME WORK I. Compensation II. Obligation to Perform Overtime Work	223 224 224
§5. Daily and Weekly Off-duty Time	226
§6. NIGHT WORK AND WORK ON SUNDAYS AND PUBLIC HOLIDAYS	226
§7. SPECIAL REGULATIONS CONCERNING NIGHT WORK	227
§8. EMPLOYMENT RELATIONSHIPS THAT ARE EXEMPTED FROM THE WORKING HOURS PROVISIONS I. Employees Holding Managerial or Particularly Independent Posts II. Trade Unions with more than 10,000 Members III. Divergent Employment Contracts between the Employer and the Individual Employee	227 227 228 228
§9. Entitlement to Reduced Working Hours	23
§10. WORK PERFORMED BY CHILDREN AND YOUNG PERSONS I. Survey II. Type of Work III. Working Hours IV. Breaks and Time-off	230 230 230 230 230

crea :		475	~		
10	bla	of	Cor	ston	fc

§11. HOLIDAYS I. Annual Holidays II. Holiday Pay	234 234 234
Chapter 4. Remuneration and Benefits	236
§1. WAGES AND WAGE SYSTEMS I. Wages II. Wage Systems	236 236 236
§2. MINIMUM WAGE	238
§3. EQUAL WAGES FOR WORK OF EQUAL VALUE FOR BOTH WOMEN AND MEN WITHIN THE SAME ENTERPRISE	238
§4. PARTICULARS OF TIME-WAGE SYSTEMS	239
§5. PARTICULARS OF DIFFERENTIATED WAGES, SYSTEMATIC JOB EVALUATION AND PIECE-WORK I. Differentiated Wages and Systematic Job Evaluation II. Piece-work Systems III. Work Studies IV. Calculating and Negotiating Piece-work Rates V. Revision of Piece-work Rate Agreements VI. Surveying VII. Piece-work Deprivation	240 240 241 241 243 243 243
§6. SPECIAL REMUNERATION	244
§7. Compensation for Public Holidays and the National Holidays of 1 and 17 May and for Work on these Days	245
§8. SICK PAY, ETC. §9. DUE DATE AND MODE OF PAYMENT I. Payment II. Wage Deductions III. Statement of Wage Calculation, etc. IV. Errors in Calculating Wages V. Repayment of Excess Wages VI. Back Payment of Omitted Wages VII. Securing Wage Claims VIII. Priority over the Employer's Bankrupt Estate, etc. IX. Government Guarantee for Wage Claims X. Limitation Period for Wage Claims, etc.	245 245 246 246 246 247 248 248 249 250
Chapter 5. Incapacity to Work	251
§1. ABSENCE OF AN EMPLOYEE DUE TO ILLNESS	251

§2.	PAYMENT DURING ILLNESS	251
§3.	SELF-CERTIFIED SICK LEAVE FORM OR DOCTOR'S CONFIRMATION	251
§4.	CHILD'S OR CHILDMINDER'S SICKNESS	252
§5.	CHRONICALLY ILL OR HANDICAPPED CHILD	253
§6.	CARE OF CLOSE RELATIVES	253
§7.	Pregnancy, Childbirth and Adoption I. Pregnancy II. Childbirth A. Maternity Allowance B. Breastfeeding – Time-off for Nursing Mothers III. Adoption	254 254 254 255 256 257
§8.	MILITARY SERVICE OR OTHER NATIONAL SERVICE	257
§9.	LAYING-OFF (ABSENCE WITHOUT PAYMENT) I. The Right to Lay off Employees II. Executing the Right to Lay off III. The Employment Relationship during the Lay-off Period IV. Laying-off and Termination of Contract V. Laying-off and Termination of Contract – Employer VI. Laying-off and Termination of Contract – the Employee's Right to Continue in his or her Position during a Termination of Contract Procedure VII. Laying-off and the Duty to Pay Salary	259 259 260 260 261 261 261
§10.	OTHER FORMS OF LEGITIMATE ABSENCE I. Educational Leave II. Public Office III. Labour Representatives IV. Welfare Reasons V. Religious Holidays	263 263 264 264 264 265
§11.	ACCIDENTS AT WORK – INDUSTRIAL INJURIES OR DISEASES	265
	I. The Welfare System according to the Social Security Act in relation to Industrial Injuries: an Introduction H. Individual Pichta Poletad to Industrial Injuries and Other	265
	II. Individual Rights Related to Industrial Injuries and Other Work-related Diseases	265
	 A. Terms of Entitlement for being Covered for Industrial Injury according to the SSA 1. The Different Benefits 2. Subsistence 3. Extra Expenditure 	266 267 267 268

	Special Advantages B. Compensation for Permanent Injury III. Industrial Injury Insurance IV. Damages	268 268 268 270
Chaj	pter 6. Job Security	271
§1.	TERMINATION OF EMPLOYMENT	271
§2.	PROTECTION AGAINST DISMISSAL I. The Employer's Termination of Employment for Reasons related to the Employer II. Closing down the Activities of an Enterprise III. The Employer's Termination of the Employment for Reasons related to the Employee IV. Termination of the Employment because of the Age of the Employee	272 273 275 276 277
§3.	PROCEDURAL METHOD FOR DISPUTES OVER WRONGFUL DISMISSAL	279
§4.	Appeals Deadline	280
§5.	RIGHT TO REMAIN IN POST DURING DISMISSAL CASE PROCEEDINGS	280
§6.	EFFECTS OF UNFAIR DISMISSALS	281
§7.	AGREED BENEFITS ON TERMINATION OF EMPLOYMENT I. Severance Pay II. Golden Parachutes III. Insurance Arrangements	284 284 284 285
§8.	SUMMARY DISMISSAL/RESIGNATION	285
§9.	TERMINATION DUE TO ACCIDENTS, FIRE AND SIMILAR	286
§10.	LAY-OFFS (TEMPORARY REDUNDANCY)	287
§11.	BASIC PRINCIPLES	287
§12.	TRANSFER OF ENTERPRISES FROM A BANKRUPT ESTATE	288
§13.	DEATH, ILLNESS, ETC., OF AN EMPLOYEE	290
§14.	THE EMPLOYEE'S OWN TERMINATION OF THE EMPLOYMENT CONTRACT	290

Cha	apter 7. Transfer of Enterprises	294
§1	. BACKGROUND	294
§2	. Survey	295
§3	. The Object of the Transfer – an Entire Enterprise or a Part of an Enterprise	296
§4	. THE REQUIREMENT OF CONTINUITY	298
§5	. THE DIFFERENT TRANSFER SITUATIONS	303
§6	RIGHTS AND OBLIGATIONS PURSUANT TO THE EMPLOYMENT CONTRACT, AFTER THE TRANSFER	304
§7	. Protection Against Dismissal Due to Transfer of an Enterprise	305
§8	3. RIGHT OF RESERVATION, ETC.	306
§9). Representation	307
§10). Information to Employees	307
Chapter 8. Pensions		
§1	. RETIREMENT PENSION FROM THE NORWEGIAN SOCIAL SECURITY SYSTEM	308
§2	2. OCCUPATIONAL PENSIONS I. General Background II. Mandatory Occupational Pension – the Occupational Pensions Act III. Defined Contribution Schemes IV. Defined Benefit Schemes	308 308 309 310 311
§:	3. Early Retirement Pension	311
Ch	apter 9. Discrimination	313
§	EQUAL OPPORTUNITIES AND ANTI-DISCRIMINATION Legal Basis The Paguirement of Equal Treatment and Protection against	313 313
	II. The Requirement of Equal Treatment and Protection against Discrimination in an International PerspectiveIII. The Ombudsman for Equal Status, the Complaints	313
	Commission for Equal Status and the Courts	315