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NORWAY*

INTRODUCTION

Norway, or officially the Kingdom of Norway, is a country of 4,604,800 located in the western half of the Scandinavian Peninsula. It boasts a labor force of about 2.4 million with an unemployment rate of 4.6 percent, slightly more than one-half the European average of 8.6 percent and bested only by Ireland (at 4.3 percent).¹ Skilled labor is often competitively priced while unskilled labor is not, and it is common for workers to possess at least a working knowledge of English.

Norway was part of the Kalmar Union with Denmark and Sweden until 1814. After Norway sided with Denmark and Napoleon in the Napoleonic Wars, Denmark ceded Norway to Sweden. Norway attempted to claim independence but was forced to remain in a union with Sweden. In this union, Norway was allowed to maintain its own constitution and government institutions other than foreign services. Norway peacefully separated from Sweden on June 7, 1905.²

A. Basic Makeup of the Government (Executive, Legislative, and Judicial)

Norway is a constitutional hereditary monarchy. Norway's Constitution, drafted in 1814 when Norway ended a 434-year union with Denmark, was influenced by British political

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¹Total Unemployment Rate, Eurostat, <<http://epp.eurostat.cec.eu.int>>.

²Wikipedia Encyclopedia, <<http://en.wikipedia.org/wik/Norway>>.

traditions, the Constitution of the United States, and French revolutionary ideas. The Constitution can be amended by a two-thirds majority of the *Storting*, or Parliament, and it has been so amended many times.

1. *Executive Branch*

The official head of the Norwegian State is the King, although his functions are mainly ceremonial. While the 1814 Constitution granted important executive powers to the King, these powers are almost always exercised by the Council of Ministers in the King's name. However, the King does have influence as the symbol of national unity.

The Council of Ministers consists of the Prime Minister and the *Regjering*, or State Council, both of which are nominally chosen by the King with the approval of Parliament following Parliamentary elections. The Prime Minister is usually the leader of the majority party or the leader of the majority coalition in Parliament.

2. *Legislative Branch*

a. *National Government*

The 169 members of Parliament are elected from Norway's 19 counties according to a complicated system of proportional representation and serve four-year terms. The Parliament functions as a modified unicameral legislature. It decides most matters in unicameral plenary sessions, but divides into two houses when voting on bills. In those situations, one-fourth of the members are chosen to constitute the *Lagting*, or upper house, while the remaining members constitute the *Odelsting*, or lower house. Bills must be passed by both houses in succession. Unlike the parliaments in many other countries, the *Storting* cannot be dissolved during its four-year term. Instead, if a majority of the *Storting* votes against an action advocated by the *Regjering*, then the responsible minister or the entire *Regjering* resigns. Under the Constitution, the Monarch has veto power, but since the 91-year union with Sweden was dissolved in 1905, this power has never been exercised.

b. County and Municipal Governments

Below the federal level are the county, then municipal, governments. As mentioned above, Norway is divided into 19 *fylker*, or counties (singular—*fylke*); the capital city of Oslo counts as one of these. The other counties are divided into rural and urban municipalities or *kommuner* (singular—*kommune*). Each county is headed by a governor appointed by the King through the Council of Ministers, with one governor possessing authority over both Oslo and the adjacent county of Akershus. The governors exercise limited authority on behalf of the national government. The county councils are composed of delegates from the county's municipalities. The counties can levy taxes on the municipalities for purposes such as roads, secondary schools, and other joint projects.

The municipalities elect municipal councils every fourth year (two years after parliamentary elections, thus staggering parliamentary and municipal elections). Overall, the municipal elections tend to mirror the party proportions of Parliament. The municipal councils then elect a board of aldermen and a mayor. Many municipalities also employ professionals to manage governmental affairs such as finance, schools, social affairs, and housing.

3. Judicial Branch

Norway's legal system is a mixture of customary law, civil law, and common law traditions.³ The main judicial bodies in Norway are the following:

- the Supreme Court (*Hoyesterett*), which has 17 permanent judges and a president;
- the Interlocutory Appeals Committee of the Supreme Court;
- the Courts of Appeal (Jury Courts); and
- the District Courts.

All of these courts can hear both civil and criminal matters.

³For an overview of Norway's judicial system, see Courts of Norway, Nat'l Courts Admin., <http://www.domstol.no/DAtemplates/Section____3055.aspx>.

Below the District Courts are Conciliation Boards, which hear only certain types of civil cases (typically minor ones). In addition, there are separate courts with limited jurisdiction, such as the Labor Court in Oslo. The special High Court of the Realm hears impeachment cases.

a. Supreme Court

The Supreme Court is the nation's highest appellate court and is located in Oslo. Its decisions are final and cannot be appealed, with the exception of cases that can be brought before the European Court of Human Rights in Strasbourg, France. Unlike the U.S. Supreme Court, Norway's Supreme Court also renders advisory opinions to Parliament when asked, although advisory opinions have only been given in a few cases. Three of the Supreme Court Judges form the Interlocutory Appeals Committee, the body that decides which cases the Supreme Court will hear. Supreme Court Judges serve in succession on this committee.

b. Courts of Appeal

Norway has six courts of appeal (jury courts), dividing the country into six appellate districts, as follows:

- the *Borgarting* Court of Appeal in Oslo;
- the *Eidsivating* Court of Appeal in Hamar;
- the *Agder* Court of Appeal in Skien;
- the *Gulating* Court of Appeal in Bergen;
- the *Frostating* Court of Appeal in Trondheim; and
- the *Hålogaland* Court of Appeal in Tromsø.

Each court of appeal has several judges and is headed by a senior judge, who functions as president.

c. District Courts

Norway has 83 district courts, the courts of first instance for most matters, with each district court covering an area called a *domssokn*. In certain districts, the duties are divided between several courts.

d. Conciliation Boards

A conciliation board is allocated to each municipality. With the approval of the regional commissioner, a municipal council may divide a municipality into sub-regions, with a conciliation board in each sub-region. Each conciliation board consists of three laypersons and an equal number of deputies elected or appointed by the municipal council to four-year terms.

Conciliation boards mediate disputes and have broad authority to issue decisions. Between 100,000 and 120,000 civil cases, a majority, are decided each year by conciliation boards. In fact, before many civil cases may be taken to court, they must first be submitted to conciliation boards. Decisions of conciliation boards may be appealed to the district courts. Conciliation boards do not hear criminal cases.

e. Labor Court

Special courts hear matters not covered by the district courts. One of the most important of these is the *Arbeidsretten*, or Labor Court.⁴ The Labor Court was established in 1915 as a special, national court for the resolution of rights disputes arising in connection with collective agreements, collective bargaining, and industrial action.⁵

The Labor Court is comprised of a president and six members, all appointed by the government. Of these seven judges, three are from the judiciary and four are lay judges, chosen from nominations by the major employee and employer associations.⁶ Each member is appointed for a three-year period, which may be extended.⁷ The lay judges sit in an impartial capacity and not as representatives of the organization that nominated them. Each case is heard by the entire panel and decided by a majority vote

⁴Elin Nykaas, *Do We Need Labour Courts Questionnaire* (M. Pierre Sargos Gen. Rep. 2004), available at <http://www.ilo.org/public/English/dialogue/ifpdial/downloads/lc_05/Norway_1.pdf> [hereinafter Nykaas, *Do We Need Labour Courts*].

⁵See LDA §7(1), (2). See additional discussion in the Introduction at D.2. and at II.F.2., below.

⁶See Nykaas, *Do We Need Labour Courts*.

⁷Stein Evju, *Labour Courts & Autonomy* (2000), available at <<http://arbetsratt.arbetslivsinstitutet.se/Filer/PDF/SteinEvju/Labourcourtsandautonomy.pdf>> [hereinafter Evju, *Labour Courts & Autonomy*].

of the seven judges.⁸ The Labor Court's jurisdiction extends over the entire country.

f. Ombudsmen

The rights of citizens are also guarded by ombudsmen, who act as intermediaries in matters with public administrators. On January 1, 2006, a new Equality and Antidiscrimination Ombudsman was established to assist in enforcing Norway's antidiscrimination laws.⁹

g. International Courts

The influence of international courts of justice has grown, especially with regard to the international conventions on human rights. Among others, the European Court of Human Rights in Strasbourg plays an important role in the development of Norwegian law. In fact, where the European Court of Human Rights interprets international human rights conventions differently than the Norwegian Supreme Court, the Supreme Court must act in accordance with the guidelines and rulings made by the Court of Human Rights.

B. General Sources of Labor and Employment Law

Norway's labor and employment laws are predominantly domestically driven, although international directives, conventions, and agreements also contribute. Domestically, the federal government, rather than county or municipal governments, is the source of labor and employment law.

1. Domestic Law

a. Individual Employment

In drafting laws to cover the individual employment relationship, Parliament has generally taken the approach that employers

⁸See Nykaas, *Do We Need Labour Courts*.

⁹See VI.D., below.

are cunning and resourceful, and that employees are in need of protection.¹⁰

The dominant piece of legislation governing individual employment in the private sector (and those portions of the public sector that are not under the direct supervision of the federal government) is the Worker Protection and Working Environment Act (WEA),¹¹ which became effective on January 1, 2006. The previous WEA of February 4, 1977, had been amended in 1995, mostly for the purpose of implementing directives of the European Economic Area (EEA).¹² The 2005 amendments were initiated by the *Bondevik II Regjering* in an attempt to implement more flexible working time rules and encourage more employment including temporary employment. These revised rules were incorporated into the WEA that was adopted by the King in Council on June 16, 2005. However, after winning election in September 2005, and before the new WEA had become effective, the *Stoltenberg II Regjering* made additional amendments to the WEA and prevented certain of the new rule changes from entering into force. In the end, the changes made by the 2005 amendments were relatively minor.

b. Collective Labor Relations

The rules governing collective agreements and collective labor relations in Norway are found mainly in the Labor Disputes Act,¹³ the Public Service Labor Disputes Act,¹⁴ and the Basic Agreement between the Norwegian Labor Organization and the Norwegian Employers Association (NHO).¹⁵ Unlike the approach of Parliament in drafting individual employment laws, in

¹⁰Kaare Nerdrum, *Norway: A General Overview of Labour Relations and Employment Law, incl. Recent Developments* (May 18, 2004), available at <<http://www.bnabooks.com/ababna/intl/2004/stockholm.pdf>> [hereinafter Nerdrum, *A General Overview*].

¹¹Act No. 62 of June 16, 2005.

¹²Jan Tormod Dege & Erik Aas, *Norway*, in *EMPLOYMENT LAW IN EUROPE* 681 (Susan Mayne & Susan Malyon, eds., Butterworths 2001) [hereinafter Dege & Aas, *EMPLOYMENT LAW IN EUROPE*]. See also the Introduction at B.2., below.

¹³See additional discussion at II.A., below.

¹⁴Act No. 2 of July 18, 1958.

¹⁵See additional discussion at II.A., below.

the collective labor relations context, there is no assumption that employees are the weaker party and in need of protection.¹⁶

The Labor Disputes Act (LDA) was first enacted in 1915 in order to promote and strengthen collective agreements as a means of regulating wages and working conditions and to establish a system for the peaceful resolution of industrial disputes. The LDA applies to all labor relations other than those in the state civil service.

The Public Service Labor Disputes Act (PLDA), which has been in effect since 1958, applies exclusively to the national civil service sector (including state-run public utilities). However, the PLDA does not extend to employees of county or municipal governments or to employees of state-owned companies that are organized as separate legal entities; these employees are subject to the LDA.

The Basic Agreement between the Norwegian Confederation of Trade Unions or Norwegian Labor Organization (LO) and the Norwegian Employers Association (NAF) was first concluded in 1935. The Agreement establishes employees' right to organize as well as their right not to join a union. The Basic Agreement has been renegotiated several times and currently runs from January 1, 2006 to December 31, 2009.

2. *International Law*

Internationally, Norwegians narrowly voted against joining the European Union (EU) in two referenda held in 1972 and 1994. However, with the exception of the agricultural and fisheries industries, Norway enjoys free trade with the EU under the auspices of the Agreement on the EEA, in force since 1994.¹⁷ The EEA is composed of the EU Member States plus three of the four countries of the European Free Trade Association (EFTA): Norway, Iceland, and Lichtenstein (Switzerland did not join). The EEA Agreement extends to Norway the four freedoms of the EU's internal market (goods, persons, services, and capital). As a result of this relationship, Norway normally adopts most EU directives, although the effects of the directives are not necessar-

¹⁶Nerdrum, *A General Overview*.

¹⁷The European Economic Area (EEA): Overview, European Union, <http://ec.europa.eu/comm/external_relations/eea/index.htm>.

ily significant, because Norway is generally considered ahead of the EU on many issues.

Norway also pursues a policy of economic cooperation with the other Nordic countries—Denmark, Sweden, Finland, and Iceland—through the Nordic Council.¹⁸

Particularly significant are the conventions and agreements of the International Labor Organization (ILO)¹⁹ and the United Nations (UN) that Norway has adopted. Specifically, Norway has reporting obligations under the following conventions and agreements:²⁰

- ILO Convention No. 29 Concerning Forced Labor;
- ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organize;
- ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively;
- ILO Convention No. 100 Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value;
- ILO Convention No. 105 Concerning the Abolition of Forced Labor;
- ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation;
- ILO Convention No. 138 Concerning the Minimum Age for Admission to Employment;
- ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries;
- ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor;
- UN Convention on Civil and Political Rights;
- UN Convention on Economic, Social and Cultural Rights;
- UN Convention on the Elimination of Discrimination against Women;

¹⁸Nordic Council, <<http://www.norden.org/start/start.asp?lang=6>>.

¹⁹For a general discussion of ILO Conventions, see the chapter on the International Labor Association, in part 4 of the Volume I main volume and supplement.

²⁰Faculty of Law, *Yearbook on Human Rights in Norway: Introduction* (Nor. Ctr. for Human Rights, Univ. of Oslo, Feb. 2005).

- UN Convention on the Elimination of Racial Discrimination;²¹
- UN Convention on the Rights of the Child.

C. Major Administrative Bodies Responsible for Overseeing the Labor and Employment Law Regulatory System

1. Ministry of Labor and Social Inclusion

The Ministry of Labor and Social Inclusion (formerly the Ministry of Labor and Social Affairs) is the umbrella agency with regulatory responsibility over Norway's labor and employment laws and is composed of the following departments:²²

- Department of Labor Market Affairs;
- Working Environment and Safety Department;
- Department of Welfare Policy;
- Department of Pension Policy;
- Department of Integration and Diversity;
- Department of Sami and Minority Affairs;
- Department of Migration.

2. Subordinate Institutions

Several key institutions come within the auspices of the Ministry of Labor and Social Inclusion.²³ The most important of these are discussed below.

a. Norwegian Labor Inspection Authority

The Norwegian Labor Inspection Authority has administrative and supervisory responsibilities with respect to the following laws:

- WEA;
- Guaranteed Wages Act;²⁴

²¹ See additional discussion at VI.C., below.

²² A Presentation of the Ministry of Labor and Social Inclusion, <<http://www.dep.no/aid/english/ministry/about/bn.html>>.

²³ *Id.*

²⁴ Guaranteed Wages Act No. 61 of December 14, 1973.

- Vacation Act;²⁵
- National Holidays Act;²⁶
- Smoking Act (selected provisions).

The Authority has about 500 employees and consists of a central office, known as the directorate, located in Trondheim, seven regional offices, and 16 local offices throughout the country. The directorate determines and oversees the Authority's overall strategy and programs. The regional offices have intermediate oversight responsibilities. The district offices guide and supervise individual enterprises in local communities.²⁷

i. Supervising WEA compliance

One of the key responsibilities of the Authority is monitoring compliance with the requirements of the WEA. This is carried out through the following means:²⁸

- Internal Control Audits—reviews of employers' internal control systems to determine whether regulations and procedures are being followed; may last several days;
- Verifications/Inspections—intermittent tests to verify that employers' internal control systems are functioning well and that enterprises are meeting legal requirements;
- Accident Investigations—all serious and life-threatening accidents are investigated by the Authority.²⁹

ii. Imposing sanctions for WEA violations

Should the Authority find violations of the WEA, it may impose the following sanctions:³⁰

²⁵Vacation Act No. 21 of Apr. 29, 1988. See V.C.1., below.

²⁶National Holidays Act No. 1 of April 26, 1947; see V.C.2., below.

²⁷See Norwegian Labor Inspection Authority: In English, <<http://www.arbeidstilsynet.no/om/engelsk.html>>.

²⁸See *id.*

²⁹See additional discussion at VII.A.3.a., below.

³⁰See Norwegian Labor Inspection Authority: In English, <<http://www.arbeidstilsynet.no/om/engelsk.html>>.

- Remediation Orders—direct the enterprise to correct the violations within a given time period; remediation orders are issued in writing and are subject to appeal;
- Fines—imposed when an enterprise fails to comply with remediation orders; the size of the fine depends on several factors, but the guiding objective is to make violating the WEA unprofitable;
- Shutdown of Operations—an enterprise may be immediately shut down if the life or health of its employees is in imminent danger; shutdowns may also be imposed when enterprises fail to comply with remediation orders;
- Referral to Police—the Authority may report enterprises to the police for serious violations of the WEA; serious violations can result in fines and/or imprisonment.

b. National Insurance Service/Administration

The main social insurance programs in Norway are the National Insurance System, the Family Allowance System, and the System for Cash Benefits for Families with Small Children. The National Insurance System (*Folketrygden*), known as the cornerstone of the Norwegian welfare state, provides a number of benefits to the Norwegian population through the National Insurance Service (*Trygdeetaten*).³¹ The National Insurance Service is administered by a central directorate—the National Insurance Administration (*Rikstrygdeverket*), which administers the Service through its county and municipal offices. The Administration also has the power to issue regulations and general recommendations concerning the application of social insurance law. The National Insurance Administration is the largest institution under the Ministry of Labor and Social Inclusion and is directly subject to the Minister of Labor and Social Inclusion.³²

³¹See additional discussion at VIII., below.

³²Additional information is available from the National Insurance Service website, at <<http://www.trygdeetaten.no/>>.

c. National Insurance Appeals Court

The National Insurance Appeals Court (*Trygderetten*) is an independent appeals body located in Oslo. It handles appeals of decisions concerning the National Insurance System, unemployment benefits, and other pension and insurance programs administered by the National Insurance Service or the Department of Labor Market Affairs (in cases concerning unemployment benefits).³³

d. Petroleum Safety Authority

The Petroleum Safety Authority (formerly the Norwegian Petroleum Directorate) is an independent regulatory body under the Ministry of Labor and Social Inclusion, with regulatory responsibility over safety, emergency preparedness, and the working environment in petroleum-related activities.³⁴

e. National Institute of Occupational Health

The National Institute of Occupational Health is a research institute dedicated to increasing knowledge about, and finding ways to improve, occupational health based on biomedical and natural sciences research. The Institute works in collaboration with government agencies and workers' and employers' organizations. Its professional staff includes scientists with experience in occupational medicine, industrial hygiene, chemistry, toxicology, physiology, and psychology.³⁵

3. Other Administrative Bodies

a. Tariff Board

The Tariff Board (*Tariffnemnda*) is an independent administrative body vested with authority to make decisions about

³³See National Insurance Court: English Summary, <http://www.trygderetten.no/english_summary.htm>.

³⁴See Petroleum Safety Authority Norway, <<http://www.ptil.no/English/Frontpage.htm>>.

³⁵See National Institute of Occupational Health, <http://www.stami.no/In_English/>. See additional discussion at VII.A.2., below.

extending collective agreements to non-signatory employers whose foreign workers are determined to be working on terms which, “based on a total assessment,” are “demonstrably inferior” to the terms of Norwegian workers.³⁶ The Tariff Board consists of five members—one chairperson, two other neutral members, one member from the Norwegian Confederation for Business and Industry (NHO), and one from the Norwegian Confederation of Trade Unions or Norwegian Labor Organization (LO). The three neutral members of the Board are appointed by the King through the Council of Ministers to three-year terms. The offices of the Tariff Board are located in the Ministry of Labor and Social Inclusion.³⁷

b. Directorate for Health and Social Affairs

The Directorate for Health and Social Affairs performs the following administrative functions:

- helping to implement and advance national policy in the health and social services sector;
- providing advice to central authorities, municipalities, health enterprises, volunteer organizations, and the general public;
- facilitating the development of quality and priorities in health and social services; and
- overseeing the patient ombudsmen and Directorate-related tasks delegated to the county governors.

The Directorate also is in charge of the state’s Authorization Office and the Norwegian Knowledge Center for Health Services.

The Directorate for Health and Social Affairs is responsible mainly to the Ministry of Health and Care Services; however, the Directorate also deals with the Ministry of Labor and Social Inclusion.³⁸

³⁶Act No. 58 of June 4, 1993, relating to General Application of Wage Agreements. See additional discussion at II.D.1.c., below.

³⁷Regulation on general application of wage agreements—Case No. 1/2003, §3, <http://odin.dep.no/aid/norsk/dep/org/tilknyttede_virksomheter/p10001255/046031-200004/dok-bn.html>.

³⁸See Directorate for Health and Social Affairs, <<http://www.shdir.no/>>.

c. National Board of Health

The National Board of Health (*Helsetilsynet*) is an independent supervisory authority, responsible for the general supervision of health and social services in the country. The Board directs the supervisory authorities at the county level, the offices of the county governors, which supervise social services, and the Board's county offices, which supervise health services and health care personnel.³⁹

d. Pension Insurance for Seamen Board

The Norwegian Pension Insurance for Seamen is a public, mandatory pension system with the primary purpose of paying pensions to sailors between 60 and 67 years of age who have acquired a sufficient number of pensionable months on Norwegian-registered ships. The seamen's pension insurance system is funded by pension contributions from employees and shipping companies and by state grants; pension payments are guaranteed by the state. The system is headed by the Pension Insurance for Seamen Board, which consists of five members appointed by the Ministry of Labor and Social Inclusion. Two members represent the seamen's associations and two represent the shipowners' associations. The fifth member heads the Board.⁴⁰

D. Structure of the Dispute Resolution System for Labor and Employment

1. Individual Employment Disputes

Individual employment disputes (e.g., conflicts concerning the content of individual employment agreements) generally are resolved in the district courts. However, disputes relating to working time,⁴¹ the right to leave of absence pursuant to Chapter 12 of the WEA,⁴² and preferential employment rights for part-time

³⁹See Norwegian Board of Health, <<http://www.helsetilsynet.no/>>.

⁴⁰See The Pension Insurance for Seamen, <<http://www.pts.no/english/default.asp>>.

⁴¹See V.B., below.

⁴²See V.C., below.

employees may be settled by a conciliation board.⁴³ Special procedures apply to disputes concerning employee dismissals.⁴⁴

As discussed above, Norway has 83 district courts. Pursuant to the 2005 WEA amendments, all district courts can deal with employment disputes. District court decisions are subject to review by the courts of appeal. Some cases are even heard by the Supreme Court. However, unlike the U.S. Supreme Court, Norway's Supreme Court rarely decides to hear employment law cases.

2. *Collective Labor Disputes*

Collective labor disputes are grouped into two categories in Norway. The first category involves the validity and interpretation of collective agreements as well as issues relating to liability for breach of a collective agreements or an illegal work stoppage. These disputes are brought before the Labor Court in Oslo.⁴⁵ Arbitration is not available. The Labor Court is composed of seven judges—three are neutral, two represent the employer's associations, and two represent the unions. The three neutral judges are appointed to three-year terms. The Labor Court receives about 35–50 cases per year, about one-third of which are withdrawn or settled prior to a decision.⁴⁶ The Labor Court's decisions are not subject to appeal.

The second category of collective labor disputes involves situations where a collective agreement is expiring and the parties cannot agree on new terms. In these cases, either party may terminate the agreement upon proper notice to the central Mediation Agency in Oslo (*Riksmeglingsmannen*).⁴⁷ The function of the Mediation Agency is to mediate between parties in connection with the conclusion or renewal of collective wage agreements. The Agency is composed of the primary mediator for the country (the National Mediator) and several other district mediators. Mediators can prohibit industrial action from occurring until they

⁴³WEA §17-2 (1). For additional discussion, see the Introduction at B.3.d., above.

⁴⁴See I.E.3., below.

⁴⁵See additional discussion in the Introduction at A.3.e., above and at II.F.2., below.

⁴⁶Nerdrum, *A General Overview*.

⁴⁷See additional discussion at II.F.1., below.

have tried to resolve the conflict. Mediators have a rather short period (10 days) to find a solution. Nevertheless, the mediator success rate is about 85–90%.⁴⁸

If no agreement is reached, then the parties may either refer the conflict to another central body in Oslo, the National Wage Board (*Rikslønnsnemnda*), or initiate industrial action. In some cases, Parliament may intervene and refer the dispute to the National Wage Board, in which case continued industrial action is illegal. The National Wage Board consists of seven members. As with the Labor Court, each party has two representatives and the other three members are neutral. In specific cases, the employer and the union each have only one representative. The decisions of the National Wage Board have the same effect as a signed collective agreement.

I. INDIVIDUAL EMPLOYMENT

A. Individual Contract of Employment

The foundation of Norwegian employment law is the Worker Protection and Working Environment Act (WEA) of June 17, 2005,⁴⁹ which in most material respects is an update of the Working Environment Act of 1977. The WEA identifies five central purposes, as follows:⁵⁰

- to secure a working environment that provides a basis for a healthy and meaningful working situation, affords full safety from harmful physical and mental influences, and has a standard of welfare at all times consistent with the level of technological and social development of society;
- to ensure sound conditions of employment and equality of treatment at work;

⁴⁸Nerdrum, *A General Overview*.

⁴⁹Act of June 17, 2005 No. 62. See additional discussion in the Introduction at B.1.a., above.

⁵⁰WEA §1-1.

- to facilitate adaptations of individual employees' working situations in relation to their capabilities and circumstances of life;
- to provide a basis whereby employers and employees can safeguard and develop their working environment in cooperation with employers' and employees' organizations and with the requisite guidance and supervision of the public authorities; and
- to foster inclusive working conditions.

B. Covered Parties

Under the WEA, an employer is defined as “anyone who has engaged an employee to perform work in his service.”⁵¹ An “employee” is defined, in turn, as “anyone who performs work in the service of another.”⁵² This broad definition encompasses a wide range of persons who would not otherwise be considered employees, such as inmates in correctional institutions and patients in health institutions that perform work for undertakings subject to the WEA.⁵³

The focus of the WEA is on permanent and stable employment. Accordingly, while the WEA covers all employees, part-time and temporary employees receive less extensive treatment than full-time, permanent employees.

C. Hiring

The WEA requires employers to inform their employees of vacant positions.⁵⁴

D. Substance of the Individual Employment Contract

The WEA controls most aspects of employment in Norway and recognizes the individual contract of employment as the fulcrum of the employment relationship.

⁵¹*Id.* §1-8.

⁵²*Id.*

⁵³*Id.* §1-6.

⁵⁴*Id.* §14-1.

1. *Written Contract*

All employment relationships are subject to a written contract of employment, which is to be drafted by the employer.⁵⁵ The WEA mandates that the following terms, at a minimum, must be included in the contract:⁵⁶

- the identities of the parties;
- the place of work; where there is no fixed or main place of work, information to the effect that the employee is employed at various locations and a statement of the registered place of business or, where appropriate, the home address of the employer;
- a description of the work or the employee's title, grade, or category of work;
- the date of commencement of the employment;
- if the employment is of a temporary nature, its expected duration;
- where appropriate, provisions relating to a trial period of employment;⁵⁷
- the employee's rights to holidays and holiday pay and the rules with respect to fixing dates for holidays;⁵⁸
- the periods of notice of termination applicable to the employee and the employer;⁵⁹
- the pay applicable or agreed on at the commencement of the employment relationship, any supplements and other remuneration not included in the pay, e.g., pension payments and meals/accommodation allowances, and payment intervals for salary payments;
- the normal daily or weekly hours of work;⁶⁰
- length of breaks;
- any agreements concerning a special working-hour arrangement;⁶¹

⁵⁵WEA §14-5.

⁵⁶*Id.* §14-6.

⁵⁷*Id.* §§15-3 para. 7, 15-6.

⁵⁸See V.C.1., below.

⁵⁹See I.E.2., below.

⁶⁰See V.B.1., below.

⁶¹WEA §10-2 paras. 2, 3, 4. See V.B.3., below.

- information concerning any collective wage agreements governing the employment relationship;⁶² if the collective agreements have been concluded by parties outside the establishment, then the contract must identify the parties to the agreements.

For employment relationships of one month or longer, the WEA provides that the written contract must be entered into as soon as possible, but no later than one month after the commencement of employment.⁶³ With respect to employment relationships that will span less than one month or contracts entered into with contract labor, the written contract must be entered into immediately.⁶⁴

2. *Duration*

Under the WEA, the default type of employment is a permanent appointment. However, the WEA does allow for temporary appointments with some restrictions.⁶⁵ It also permits trial periods of up to six months.⁶⁶ The Ministry of Labor and Social Inclusion may extend the six-month limit for certain groups of employees; employers also may agree to extensions of the six-month limit where an employee is absent from work (for reasons other than employer-caused absences) during the trial period.⁶⁷

E. Employee Dismissal

1. *Justification*

The WEA provides detailed regulations covering the dismissal and termination of employees. With the exception of certain notice obligations,⁶⁸ employees may terminate their employment

⁶²See I.E., below.

⁶³WEA §14-5.

⁶⁴*Id.*

⁶⁵*Id.* §14-9.

⁶⁶*Id.* §15-6.

⁶⁷*Id.*

⁶⁸See I.E.2., below.

at will. However, employers are restricted with respect to their ability to end employment relationships.⁶⁹ The WEA provides employers with the authority to summarily dismiss employees for gross breaches of duty or the contract of employment,⁷⁰ and a dismissal upon proper notice must be objectively justified on the basis of matters connected with the establishment, the employer, or the employee.⁷¹

The term “layoff” is used to refer to a dismissal due to curtailed operations or restructuring measures.⁷² An employee may not be laid off if the employer has other suitable work to offer.⁷³ In addition, the needs of the company must be weighed against the inconvenience of a layoff for the individual employee.⁷⁴ The consequence of this rule is that even if an employer has cause for laying off an employee, the dismissal will not automatically be legal. Rather, the employer has an obligation to confer with each employee who may be affected in order to find out the extent to which a dismissal would inflict particularly severe consequences, based, for example, on the employee’s social or financial situation or poor opportunities in the labor market. Finally, the selection of the particular employees who may be subject to layoff must be carried out in accordance with the non-statutory guidelines arising from case law and/or applicable collective bargaining agreements.

If an employee is employed for a trial period,⁷⁵ a dismissal must be based on either the employee’s lack of suitability for the work or lack of proficiency or reliability

The employer must always be prepared to justify an employee dismissal.⁷⁶ Unlike many European countries, Norwegian employment legislation does not specify or indicate by way of example what kind of employee conduct is sufficient to justify

⁶⁹WEA §15-7.

⁷⁰*Id.* §15-14.

⁷¹*Id.* §15-7.

⁷²*Id.* For additional discussion of layoff situations, see IV.A., below.

⁷³WEA §15-7.

⁷⁴*Id.* para. 2.

⁷⁵See I.D.2., above.

⁷⁶WEA §5-4.

a dismissal. This is determined on a case-by-case basis.⁷⁷ Many employers have detailed provisions in their company rules or personnel handbooks which specify what kind of conduct may lead to a dismissal, with or without notice.

2. Notice Requirements

Notice requirements are imposed on both employers and employees, and employers must strictly abide by the notice procedures articulated in the WEA.⁷⁸ In addition, to the extent possible, employers must discuss the possibility of dismissal with the individual employee and the employee's elected representatives.⁷⁹

Following is a short breakdown of the notice guidelines detailed in the WEA with respect to employee dismissals:⁸⁰

- Default Rule: 1 month's notice, for both employers and employees;
- employees who have been employed with same employer for at least 5 consecutive years: 2 months' notice;
- employees who have been employed with same employer for at least 10 consecutive years: 3 months' notice;
- employees with 10 years' consecutive service with the same employer, and who are over age 50: 4 months' notice;
- employees with 10 years' consecutive service with the same employer, and who are over age 55: 5 months' notice;
- employees with 10 years' consecutive service with the same employer, and who are over age 60: 6 months' notice;
- layoff or suspension of operations: employee may give 14 days' notice;
- contract for trial period of employment: either party must give 14 days' notice.

⁷⁷*Id.* §15-7. *See, e.g., Final Porn Decision*, AFTENPOSTEN, Apr. 22, 2005, <<http://aftenposten.no/English/local/article1024244.ece>> (discussing a ruling by the Supreme Court of Norway that the firings of two workers caught looking at pornography on the job was not justified).

⁷⁸WEA §15-5.

⁷⁹*Id.* §15-1.

⁸⁰*Id.* §15-3.

The notice period is counted from the first day of the month after the notice is served.⁸¹

Bankruptcy or employer death does not shorten the minimum notice periods. On the other hand, if a shop steward is given notice individually, then the period of notice must be three months unless he or she is entitled to longer notice under the WEA or any applicable agreement.⁸²

It has become increasingly common for individual employment agreements to provide a three months' notice period for employees who have less than 5 or 10 years of service.

a. Formal Requirements

The WEA imposes additional requirements for notice as follows:⁸³

- notice must be in writing;
- notice must be delivered in person or forwarded by registered mail to the address given by the employee;
- notice must inform the employee of
 - his or her right to demand negotiations and to institute legal proceedings;
 - the employee's right to remain in his or her position during any procedures challenging the dismissal;⁸⁴
 - the time limits applicable to requesting negotiations, instituting legal proceedings, and remaining in his or her position;⁸⁵ and
 - the employer's name and the appropriate defendant in the event of legal proceedings;
- if dismissed owing to circumstances related to the enterprise, information concerning preferential rights.⁸⁶

⁸¹WEA §15-3, para. 4.

⁸²WEA §15-3, para 10.

⁸³WEA §15-4.

⁸⁴*See Id.* §§15-11, 17-3, 17-4. *See also* I.E.3., below.

⁸⁵*See* I.E.3., below.

⁸⁶*See* WEA §14-2. *See* IV.A.5., below.

The employee is entitled to demand that the grounds for dismissal be stated in writing. If the employee makes such a request, then the employer must comply.⁸⁷

b. Consequences of Not Complying with Formal Requirements

If the employee commences legal proceedings within four months of the notice date, then any deficiencies in the formal requirements will render the notice invalid.⁸⁸ The employee may then claim compensation and the court will fix the amount due to the employee based on the circumstances and facts of the case.⁸⁹

3. Unfair Dismissal

Objective justification and proper notice are central to determining the legality of a dismissal.⁹⁰ Employees who want to assert that their employment relationship was not legally terminated may demand negotiations with the employer.⁹¹ If the dispute is not settled through negotiation, or if no negotiations take place, then the employee may open legal proceedings against the employer.⁹²

An employee who wants to negotiate must give notice to the employer within two weeks of the notice of dismissal. However, if the employee instigates legal proceedings or notifies the employer that legal proceedings will be instigated without negotiations, then the employer may demand negotiations. An employer's demand must be made within two weeks of the instigation or notice that legal proceedings will be instigated. Legal proceedings will then be postponed until negotiations have been completed.

The employee may remain in his or her position as long as negotiations are in progress. If negotiations end without reaching an agreement and the employee still wants to remain in his or her position, then the employee must, within eight weeks from the end of negotiations, either instigate/re-instigate legal proceedings or inform the employer that this will be done. The employee will

⁸⁷WEA §15-4, para.3.

⁸⁸*Id.* §15-5.

⁸⁹*Id.* §15-12.

⁹⁰*Id.* §15-6.

⁹¹*Id.* §17-3.

⁹²*Id.* §17-4.

then be entitled to remain in his or her position unless the court, by petition, decides otherwise. If there have been no negotiations, then the eight-week period starts upon receipt of the notice of dismissal. Employees' right to remain in their position during a dispute is often used to negotiate a termination agreement that gives the employee a severance payment in an amount exceeding the salary for the statutory or agreed period of notice.

Employees who are summarily dismissed (which is allowed only in the event of a gross breach of duty or serious breach of the employment contract) do not have the right to remain in their position unless the court, by petition, decides otherwise. The employee's right to remain in his or her position also is unavailable for dismissals during a trial period and for contract workers and temporary employees.

If the court finds that a dismissal is in contravention of the WEA requirements, then the dismissal will be declared invalid.⁹³ In this event, the employee will be entitled to remain in his or her post, receive compensation, or both.⁹⁴ However, in special cases, the court, by petition, may decide that it is "clearly unreasonable" that employment should continue, notwithstanding an invalid dismissal.⁹⁵

Compensation is awarded in an amount that the court deems reasonable in view of the employee's financial loss, the relative circumstances of the employer and the employee, and any other relevant factors. The employee may also be awarded legal costs based on the rules set forth in the Civil Procedures Act.⁹⁶

4. *Special Protections*

Certain employees enjoy special protection against dismissal. Sick or injured employees may not be dismissed on grounds of sickness or injury during the first 12 months after their incapacity begins.⁹⁷ (Before the 2005 WEA amendments, this period was six months, but employees with more than five years of service and employees who became sick or injured in connection with the

⁹³*Id.* §15-2, para. 1.

⁹⁴*Id.* §15-12.

⁹⁵*Id.*

⁹⁶Civil Procedure Act No. 6 of Aug. 13, 1915, §§172, 174 para. 2.

⁹⁷WEA §15-8.

performance of work were protected from dismissal for the first 12 months.) Pregnant employees may not be dismissed on grounds of pregnancy, employees who are on maternity, paternity or adoption leave may not be dismissed on grounds of absence for reasons related to their leave,⁹⁸ and employees who are in the military or civil service may not be dismissed on grounds of absence for reasons related to their service.⁹⁹

Pursuant to the Basic Agreement between the Norwegian Confederation of Trade Unions or Norwegian Labor Organization (LO) and the Norwegian Employers' Association (NAF),¹⁰⁰ shop stewards are given specific protection against dismissal by requiring that due regard must be given to the special position that they have in the company.¹⁰¹ The Basic Agreement also emphasizes that, in the event of a shutdown, it is important that a shop steward be retained as long as possible.

The 2005 WEA amendments also introduced a whistle-blowing provision.¹⁰² Under this provision, employees have the right to notify public authorities of "censurable conditions" if doing so does not violate another law. Employers are prohibited from retaliating against an employee that makes such a report. However, this provision is not yet in force and it is unclear when it will go into force.¹⁰³

F. Privacy

European privacy laws are generally not written specifically for the employment context. However, many of the principles and rules can be applied to the workplace. The key area of privacy law that affects the employment relationship is the processing of sensitive personal data.

The EU Data Protection Directive¹⁰⁴ has impacted privacy legislation in Norway as well as other European countries. The

⁹⁸*Id.* §15-9.

⁹⁹*Id.* §15-10.

¹⁰⁰See the Introduction at B.1.b., above and II.A., below.

¹⁰¹Basic Agreement §6-11.

¹⁰²WEA §2-4.

¹⁰³*Id.* §20-1.

¹⁰⁴For additional discussion of the EU Data Protection Directive, see the chapter on the European Union, at I.C., in part 1 of the Volume I main volume and supplement, and the chapter on Employment and Corporate Law Issues Applicable in Restructuring of Companies in the EU, at I.D. of the Volume I supplement.

Directive's principles of legitimacy, finality, transparency, proportionality, confidentiality, and control have guided the enactment of privacy measures. Many European countries, including Norway, have also endorsed relevance as a key requirement for employer access and processing of employee data.

The regulation of personal data and information in Norway is governed by the Personal Data Act of 2000 (PDA).¹⁰⁵ Although Norway is not a member of the European Union, the PDA was designed to bring Norwegian law into compliance with the Data Protection Directive, as this obligation follows from the EEA Agreement.¹⁰⁶

The PDA covers all data that may be linked directly or indirectly to individuals, applies to both the public and private sectors, and covers both manual and computerized registers.¹⁰⁷ The PDA protects the right to privacy by setting out safeguards to ensure that personal data are processed in accordance with fundamental respect for the right to privacy, including the need to protect personal integrity and private life and to ensure adequate quality of personal data.¹⁰⁸ Surveillance also is subject to the PDA.

Enforcement of the PDA is overseen by the Data Inspectorate (*Datatilsynet*), a body originally set up in 1980.¹⁰⁹ The Inspectorate is placed under the administrative aegis of the Ministry of Government Administration and Reform, but is otherwise expected to function completely independently of government or private sector bodies.

The PDA restricts the flow of personal data to other countries in accordance with Articles 25 and 26 of the EU Data Protection Directive.¹¹⁰ It also mandates that data subjects be informed that their personal data is being collected and the name of the party collecting the data.¹¹¹ In a point of departure from the EU Data

¹⁰⁵Act No. 31 of Apr. 14, 2000, relating to the processing of personal data. For the English-language text of the PDA, see Personal Data Act, *available at* <http://www.datatilsynet.no.htest.osl.basefarm.net/upload/Dokumenter/regelverk/lov_forskrift/lov-20000414-031-eng.pdf>.

¹⁰⁶See the Introduction at B.2., above.

¹⁰⁷PDA §3.

¹⁰⁸*Id.* §1.

¹⁰⁹See About the Data Inspectorate: English, *Datatilsynet*, <<http://www.Datatilsynet.no/eng>>.

¹¹⁰PDA §§29, 30.

¹¹¹*Id.* §§19, 20.

Protection Directive, the PDA requires that the Data Inspectorate be notified in advance of data-processing operations.¹¹² In some instances, a license must be acquired from the Data Inspectorate in order to process data. This is generally the case, for example, with the planned processing of sensitive information such as information on racial origin, religion, or criminal record.¹¹³

With respect to the processing of sensitive personal data, the foundation of the PDA is a balancing of interests.¹¹⁴ Norway does allow employees to give consent to the processing of sensitive data; however, the consent must be specific, individual, and contemporaneous. The Data Inspectorate is given general authority to determine whether sensitive personal data may be processed in other circumstances if warranted by important public interests and where measures are taken to protect the interests of the individual.

A key and increasingly important difference between U.S. and Norwegian employment law concerns the monitoring of employee e-mails. In Norway, Section 145 of the General Civil Penal Code imposes a penalty for unlawful access to data or software that is stored or transferred by electronic or other technical means. While employers do have the ability to monitor work-related e-mail, this ability does not include private e-mail, even if the employer is the owner of the computer system. E-mail considered personal may not be opened or read without the employee's consent. Of course, determining whether an e-mail is personal or work-related is the critical question, and there is not always a bright line.

G. Employee Duty of Loyalty, Trade Secrets, Covenants Not to Compete

1. Trade Secrets

[Reserved]

¹¹²*Id.* §§31, 32.

¹¹³*Id.* §33.

¹¹⁴*See id.* §9.

2. *Covenants Not to Compete*

Covenants to restrict competition by employees are enforceable if they are reasonable. This determination is made by balancing the employer's need for protection, the specific restrictions placed on the employee, and whether the employee has received remuneration.¹¹⁵ While there is no legal obligation to compensate the employee after the employment contract ends, the failure to compensate for a contractual limit on competition may weigh against enforcement of the agreement. In the end, enforcement will depend on an overall and concrete assessment of the following factors, among others:

- the employee's possibilities for work in non-competing companies;
- the period of the non-competition clause;
- the geographic limitations connected with the clause;
- the employee's position and knowledge of the company's customers and business secrets.

Norwegian case law indicates that restrictions of up to 12 months have been accepted by the courts, even without the need for additional pay. However, restrictions of more than two years generally are not enforced.

II. COLLECTIVE BARGAINING

Approximately 52 percent of the workforce in Norway is unionized, ranging from more than 80 percent in the public sector to about 40 percent in the private sector. This is well below other Nordic countries (e.g., Iceland (85 percent), Sweden (78 percent), and Denmark (75 percent)), although above the rest of Europe.¹¹⁶ Industrial relations in Norway are generally harmonious and non-confrontational, with high levels of consultation between the groups involved.

¹¹⁵Norwegian Contract Act §38.

¹¹⁶Nerdrum, *Norway: a General Overview*.

In Nordic countries, basic trade union rights, such as the right to conclude agreements, are not usually guaranteed by statute but are crystallized through agreements between employees and employers.¹¹⁷ The Norwegian Constitution contains a brief Bill of Rights, but does not address collective bargaining rights.

A. Historical Background

The first attempt to organize labor in Norway occurred in 1848, when unemployed school teacher Marcus Thrane founded a group to protect small farmers and landless agricultural laborers against unemployment. For the next two decades, labor organization was largely confined to local associations of craftsmen.¹¹⁸

In 1872, rising prices resulted in the formation of the Oslo Typographical Union and the first major wave of strikes. Another wave of strikes occurred between 1887 and 1889, including a four-month stoppage by Oslo printers. During this period, the most prominent form of organization was a national association of local unions within a particular craft or industry.¹¹⁹ Labor welfare legislation began at the end of the 19th century.¹²⁰

The Norwegian Confederation of Trade Unions or Norwegian Labor Organization (LO) formed in 1899, one year following the formation of the Danish Central Organization and the Swedish Confederation of Trade Unions.¹²¹ Likely as a response to this organization by labor, the Norwegian Employers' Association (NAF) was founded in 1900.¹²²

In 1902, the LO and the NAF reached an agreement, the *Voldgiftsavtalen*, a milestone that resulted in the recognition of unions and the collective bargaining process.¹²³ Each organization agreed to rights arbitration (involving disputes concerning the interpretation or application of an existing collective bargaining agreement) at the request of either party and to interest arbitration

¹¹⁷NIKLAS BRUUN, THE NORDIC LABOUR RELATIONS MODEL: LABOUR LAW & TRADE UNIONS IN NORDIC COUNTRIES, TODAY & TOMORROW 35 (Dartmouth 1992) (abridged, revised version of DEN NORDISKA MODELLEN (1990)) [hereinafter BRUUN].

¹¹⁸WALTER GALENSON, LABOR IN NORWAY 7 (Harv. Univ. Press 1949) [hereinafter GALENSON].

¹¹⁹*Id.* at 8-9.

¹²⁰BRUUN at 22.

¹²¹*Id.* at 10.

¹²²GALENSON at 79.

¹²³BRUN at 12-13.

(involving disputes over the terms of a new or renewed collective agreement) at the request of both parties.¹²⁴ The *Voldgiftsavtalen* expired in 1905.¹²⁵

In 1915, the Norwegian legislature passed the Labor Disputes Act (LDA), recognizing the right to collective bargaining, regulating the collective agreement as a legal instrument, and establishing the Labor Court.¹²⁶ The LDA, which has survived with slight alterations to the present, applies to the labor market other than the state civil service sector. The LDA is based on the principle of freedom of collective bargaining. Therefore, it contains no specific limitations on the scope of bargaining issues and does not actually impose a duty to engage in or conduct collective bargaining.

In 1935, twenty years after the passage of the LDA, the LO and the NAF concluded what is known as the Basic Agreement.¹²⁷ The Basic Agreement, which has been renegotiated several times and remains in force, establishes employees' right to organize as well as their right not to join a union. The Basic Agreement also establishes certain criteria that shop stewards must meet and requires them to make efforts to maintain employees' peaceful cooperation in the workplace.¹²⁸ The Basic Agreement is significant because its terms are incorporated into, and therefore form a part of, various sector or industry collective bargaining agreements.¹²⁹

In 1958, the Norwegian legislature closed the gap left by the LDA by passing the Public Service Labor Disputes Act (PLDA), which applies exclusively to the state civil service sector.¹³⁰ While the PLDA's basic system corresponds to that established by the LDA, it differs in one important respect by establishing the obligation and right of both the state and the relevant trade unions to bargain collectively if either side so requests. The PLDA also

¹²⁴GALENSON at 97.

¹²⁵BRUUN at 13.

¹²⁶See additional discussion in the Introduction at B.1.b., above.

¹²⁷*Id.*

¹²⁸BRUUN at 48.

¹²⁹Stein Evju, *The Role of Collective Bargaining Questionnaire* (Harald Schliemann, Gen. Rep. 2002), available at <www.ilo.org/public/English/dialogue/ifpdial/downloads/lc_03/nor_2.pdf> [hereinafter Evju, *The Role of Collective Bargaining*].

¹³⁰See additional discussion in the Introduction at B.1.b., above.

identifies minimum requirements that trade unions must meet before having the right to bargain collectively and conclude collective agreements with the state. However, the PLDA stops short of creating a legal obligation on either party to conclude a collective agreement.

B. Union Recognition

Norwegian law does not guarantee a worker's right to join a union. However, the Basic Agreement does set forth the principle of freedom of association. Treating an employee differently because he or she joins a union—or chooses not to join a union—violates this Agreement. The Basic Agreement is also violated if an employee organization tries to negotiate a closed shop, i.e., an agreement that only members of a certain union will be employed.¹³¹

Representation elections do not take place in Norway; rather, employees express their preference by joining the union of their choice. In reality, employees have few choices of unions to join because Norwegian unions limit themselves to representing specific types of workers.

While there is no statutory “representativeness” requirement, employers' associations are reluctant to conclude a collective agreement with a trade union unless it has a certain presence in the particular industry or enterprise. In addition, existing collective agreement relationships may contain representation requirements.

C. Collective Bargaining

1. Duty to Bargain

As discussed above, Norwegian law does not actually impose a duty to bargain in good faith or to bargain at all. However, a legal duty to bargain may arise from collective agreements already concluded. For example, Section 2-3 of the Basic Agreement establishes a duty to negotiate.

¹³¹BRUUN at 28.

2. *Level of Bargaining*

a. *Bargaining Structure*

In major parts of the Norwegian market, framework collective bargaining agreements, or *overenskomste*, supplement the statutory framework within both the public and private sectors. Because Nordic trade unions are highly centralized, collective agreements are usually concluded on the national level.¹³² Bargaining in the private sector occurs on the inter-sectoral level, between the major trade unions and employers' federations, on broad issues such as general wage-setting standards. Bargaining occurs on an industry level with respect to more specific terms and conditions of employment including general pay provisions.¹³³

Typically, one or more levels of subsidiary bargaining occur at the enterprise or establishment level, as permitted by the framework agreements. For white-collar employees, pay is predominantly determined on this level, with the union involved only in an advisory capacity. While local bargaining can play an important role in industrial relations, the extent to which framework agreements permit parties to bargain at the establishment level varies significantly. In any event, local agreements, or *saeravtaler*, may not derogate from the terms of a framework collective agreement.

b. *Employer Associations*

Employers in Norway negotiate through associations or individually. The extent to which employers have associated together to bargain on wages and working conditions is a unique feature of Norwegian labor relations. By centralizing bargaining authority, Norwegian employers have delegated many decisions to specialists. This practice evolved, in part, because employers were small and at a disadvantage in negotiations.¹³⁴

Today, employers in Norway are represented by four major employers' associations. The largest of these is the Norwegian

¹³²*Id.* at 3.

¹³³*Id.*

¹³⁴GALENSON at 78–80.

Employers Association (NHO) with 16,000 member companies, which together employ about 450,000 people.¹³⁵

c. Trade Unions

On the employees' side, the typical party to a collective agreement is a "trade union," which is defined by the LDA as any combination of workers acting in concert to attend to their interests vis-à-vis their employer.¹³⁶ Therefore, a trade union may be anything from two workers acting in concert to a large trade union confederation.¹³⁷ Currently, employees in Norway are represented by four major trade unions, with the Norwegian Confederation of Trade Unions or Norwegian Labor Organization (LO) (actually a confederation of 25 unions) dominating with about 800,000 members.¹³⁸

Generally, the confederations are empowered to conclude collective agreements on their own behalf and for their affiliated national unions.¹³⁹ However, there are certain exceptions in which a confederation-affiliated national union negotiates directly with an employers' association.¹⁴⁰ Additionally, local subordinate agreements may be concluded between the local branch of the national union and the individual employer.¹⁴¹

d. Accession Agreements

A trade union and an unaffiliated employer may conclude an accession agreement, or *hengavtale*, identical to one already existing between similar organizations. This is the predominant way that collective agreements are concluded with employers that are not affiliated with an employers' organization, and the number of these agreements is significant.¹⁴²

¹³⁵*Id.*

¹³⁶LDA §1-3.

¹³⁷Evju, *The Role of Collective Bargaining*.

¹³⁸*Id.*

¹³⁹*Id.*

¹⁴⁰*Id.*

¹⁴¹*Id.*

¹⁴²*Id.*

3. *Scope of Bargaining*

The LDA defines a collective agreement as an agreement “respecting conditions of employment and wages or other matters relating to employment.”¹⁴³ The legislation is based on the principle of freedom of collective bargaining and contains no specific limitations on the scope of bargaining issues.¹⁴⁴ Norwegian legislation does not identify any bargaining subjects beyond wages and, as a practical matter, the wage schedule is the focal point of the Norwegian collective bargaining system.¹⁴⁵ The area of bargaining over matters other than wages is identified by the Basic Agreement. These matters include hours of work, overtime, idle/waiting time, travel time, and vacations.¹⁴⁶ Other subjects that do not lend themselves to standardization are settled at the local level.¹⁴⁷

D. Collective Bargaining Agreements

1. *Effect*

a. *Effect on Non-Signatories*

As a general rule, a collective bargaining agreement binds the parties concluding the agreement as well as those members affiliated with the parties such as subordinate organizations, individual employers, and employees. However, in the private sector, the predominant practice is that a national collective agreement does not apply automatically to all affiliated employers. Instead, it applies only when the agreement is made binding on individual enterprises pursuant to a decision made at the outset by the national bargaining parties.

A collective bargaining agreement is not binding on non-affiliated entities, such as other employers’ associations or trade

¹⁴³LDA §1(8).

¹⁴⁴Evju, *The Role of Collective Bargaining*.

¹⁴⁵GALENSON at 210.

¹⁴⁶*Id.* at 197.

¹⁴⁷*Id.*

unions, or non-unionized employees working with an employer bound by the agreement.¹⁴⁸

b. Effect on Individual Employment Contracts

Collective agreements are considered contracts between the signatory organizations, and all individual rights are derived through them.¹⁴⁹ The LDA and the PLDA each expressly provide that the employment contract between an employer and an employee, both of whom are bound by collective agreements, may not contain any clause that derogates from the collective agreement's provisions.¹⁵⁰

With respect to non-unionized employees, an employer that is bound by a collective bargaining agreement is obliged to comply with the terms and conditions of the agreement when entering into employment contracts. If the employer fails to comply with this obligation, then the individual employment contract will not be declared invalid, but the union may bring a claim for compensation before the Labor Court on grounds that the employer breached the collective agreement. An issue in such a claim will be whether the employment contract is consistent with the collective agreement. If it is not, that part of the employment contract is void.

Approximately 50 percent of Norwegian employees have the terms of their individual employment contracts linked to a collective agreement negotiated by the trade unions.

c. Extension

Norway has implemented the European Union Posted Workers Directive,¹⁵¹ which regulates wage conditions for workers temporarily posted from one EU Member State to another.¹⁵² To carry out the provisions of this Directive, Norway has established a five-member Tariff Board with representation from employers,

¹⁴⁸Evju, *The Role of Collective Bargaining*.

¹⁴⁹GALENSON at 107.

¹⁵⁰LDA §3-3; PLDA §13.

¹⁵¹Directive 96/71/EC, 1997 O.J. (L 18) 1. See the chapter on the European Union, at IX.B., in part 1 of the Volume I main volume.

¹⁵²See Reg. No. 1566 of Dec. 16, 2005.

the trade unions, and three independent representatives.¹⁵³ The Tariff Board may determine that a collective bargaining agreement applies, in whole or in part, to employees working in certain industry sectors within a limited geographical area or nationwide, or may require payment of wages other than those specified in an applicable collective agreement.

The Tariff Board has decided that certain wage agreements will apply to employees in regions that have been most affected by the use of “cheap labor” from the new EU countries. However, there is an ongoing discussion in Norwegian jurisprudence as to what extent the Tariff Board’s decisions are in compliance with EU law, particularly with respect to the fundamental right regarding free movement of workers.¹⁵⁴

Until June 2005, the Tariff Board had only acted with regard to certain onshore petroleum installations. However, in June and November 2005, the Tariff Board adopted two regulations on the general application of wage agreements¹⁵⁵ which were made applicable to construction sites in the Oslo Fjord Region and for the county of Hordaland, respectively. The regulations establish minimum requirements with respect to wages and employment for covered building-sector employees. On March 21, 2006, one of the major trade unions in the Norwegian Confederation of Trade Unions (LO), *Fellesforbundet*, decided that it would put forward a request to the Tariff Board for nationwide application of the two regulations. However, as of June 2006, no request had yet been made.

2. Duration

Collective agreements in Norway must contain provisions regarding their expiration date; if none is provided, then the agreement is deemed to expire three years after the signature date.¹⁵⁶ If notice to terminate a collective agreement is not given by the date identified for notice in the agreement, or where the period for notice is not specified in the agreement, not less than three months

¹⁵³See additional discussion in the Introduction at C.3.a., above.

¹⁵⁴See the chapter on the European Union, at IX.A., in part I of the Volume I main volume and supplement.

¹⁵⁵See Tariffnemnda, <<http://odin.dep.no/krd/norsk/dep/p10001255/bn.html>>.

¹⁵⁶LDA §3.

before the agreement expires, then the agreement is deemed to be renewed for one year.¹⁵⁷

The terms of a collective agreement may not be altered without the mutual consent of the parties as long as the agreement is valid. If a member or branch of the union or employers' association resigns from the confederation or association, the party remains bound by the terms of the collective agreements in force at the date of resignation.¹⁵⁸

E. Strikes and Other Industrial Actions

The limitations on, authorization for, and procedures applicable to strikes and lockouts are contained in the LDA. The LDA reflects the Norwegian approach to labor disputes of first relying on the processes of negotiation and mediation under collective bargaining agreements or before state mediators and the Labor Court, prior to a strike or lockout. This approach is based on the premise that during the continuance of a collective agreement, labor peace will be maintained.¹⁵⁹ In accordance with this philosophy, Norwegian law prohibits work stoppages, lockouts, or other industrial action based on disputes concerning the validity or interpretation of a collective agreement or claims arising from a collective agreement.¹⁶⁰ In addition, industrial action may not be employed to settle a dispute between a trade union and an employer or employers' association regarding terms of employment or wages or other matters not covered by a collective agreement unless certain procedures are followed.¹⁶¹

I. Notice Requirements

To legally begin an industrial action where the parties have an existing collective bargaining agreement, the agreement must be terminated and the requisite notice period must have expired.¹⁶²

¹⁵⁷*Id.*

¹⁵⁸*Id.* §3(4).

¹⁵⁹See Henning Jakhelln, *The Rights of Seafarers: Seamen Collective Labour Law, Strikes, Boycotting—Flags of Convenience* (June 28, 2001), available at <<http://folk.uio.no/hejakhel/documents/Seamencollectivelabourlaw,strikes,boicottingflags.pdf>> [hereinafter Jakhelln, *The Rights of Seafarers*].

¹⁶⁰LDA §6(1).

¹⁶¹*Id.* §6(3).

¹⁶²See Jakhelln, *The Rights of Seafarers*.

As a condition of terminating a collective agreement, the party that intends to take action must send a notice to the National Mediator.¹⁶³ This notice must include a description of the subject of the dispute, the businesses that will be affected by the proposed labor action, the number of employees at those businesses that will be affected, the date when the notice will expire, and a statement as to the status of negotiations. A union must submit this notice through its board.¹⁶⁴ Section 28 provides that if the party giving notice is a member of the Norwegian Confederation of Trade Unions, the Norwegian Employers' Association or "other organization mentioned in Section 11" (employers' associations with more than 100 employer members and trade unions with at least 10,000 members), a copy of the notice must be sent at the same time to the opposing party.¹⁶⁵ An industrial action may not begin before expiration of the notice and until four working days after notice is received by the National Mediator.¹⁶⁶

In a strike situation, the union must give the employer 28 days' notice of the intent to terminate a collective bargaining agreement. Further, a union may take action to terminate a collective bargaining agreement only on behalf of a category or categories of employees, at least 50 percent of whom are members of the union. If there are not sufficient union members to meet this requirement, then the union may petition the Labor Court for permission to strike, based on a showing that the employer has sought to prevent employees from joining the union in order to keep the number of union members below 50 percent. In either case, the union must also be able to show that the disputed terms include wages and working conditions that do not differ substantially from those applicable to similar employees at similar employers under current wage agreements.

2. *Picketing*

During a strike or a lockout, employees may picket legally. However, picketing will be limited if found to disturb the peace.

¹⁶³See the Introduction at D.2., above.

¹⁶⁴LDA §28(1).

¹⁶⁵*Id.* §28(2).

¹⁶⁶*Id.*

3. *Replacement Workers*

The use of replacement workers in place of strikers is generally not an accepted practice.

4. *Duration*

A strike or lockout continues until one side capitulates; there is no time limit on how long an industrial action may last under Norwegian law. The end of an action is based on the decision of one of the parties to concede the disputed issue or a decision by the parties jointly to reach a resolution.

Any strikes that occur in Norway are generally not lengthy, though recent strikes have lasted as long as several months.

5. *Prohibited Actions*

With limited exceptions, strikes and lockouts are not permitted during the term of a collective agreement.¹⁶⁷

The prohibition on strikes does not apply to sympathy strikes. However, in order for a strike to be a legal sympathy strike, it must be clear that the disputed issue concerns wages and conditions outside the striking employees' own labor agreement with their employer.

If the issue that leads to a strike is a political one, the prohibition usually observed for strikes during the term of a labor agreement does not apply. However, notice rules must be followed by the union, and the strike must be of a very short duration. For a political strike, 36 hours' notice is considered sufficient. With respect to duration, a 12-hour political strike on oil installations in the North Sea was considered too long.¹⁶⁸ Also, if it can be shown that a political strike has an alternative motive related to the employees' wages or working conditions, then the strike will be unlawful unless the union follows the procedures required for terminating an existing collective bargaining agreement.¹⁶⁹

¹⁶⁷LDA §29.

¹⁶⁸Jakhelln, *The Rights of Seafarers* (June 28, 2001).

¹⁶⁹See II.E.1., above.

6. *Actions in Support of Union Organization*

If an employer is resisting an attempt by employees to join a union, Norwegian law allows unions to organize both strikes by the employees and consumer boycotts as long as such boycotts comply with Section 2 of the Boycott Act No. 1 of December 5, 1947.

7. *Consequences of an Illegal Strike or Lockout*

Should a strike or lockout violate the provisions of the LDA, the other party—the labor union in case of a lockout or the employer in case of a strike—may apply to the Labor Court for a right to take its own responsive labor action, i.e., a strike by the union or a lockout by the employer. If the Labor Court finds that the original strike or lockout violated the law, then the violating party has four days in which to cease its activity or the other party will be given the right to take counter-action. The original actor's strike or lockout continues to be illegal even in the face of an approved counter-strike or lockout.¹⁷⁰

In a strike situation, both the union, if it is to blame for an illegal labor activity, and any individual members who may be involved, are liable to compensate the employer. Notably, a union is only liable for illegal activity where it is actually to blame for the breach or the illegal work stoppage. Any non-union members who participate in an illegal work stoppage also will be liable to the employer.¹⁷¹

F. Third Party Resolution of Disputes

1. *Interest Disputes*

a. Mediation

The LDA provides that the government must appoint a permanent mediator for the country, as well as one or more mediators for each district, each of whom serve for a period of three

¹⁷⁰LDA §6(2).

¹⁷¹*Id.* §4 para. 2.

years.¹⁷² The district mediators monitor employment conditions within their jurisdictions; if something occurs that is likely to disturb industrial peace, then the district mediators must notify the National Mediator.¹⁷³

If the National Mediator believes that the parties' failure to negotiate regarding the terms of employment may lead to a work stoppage, he or she may require the parties to provide information regarding the current conditions of employment and parties' claims. Based on this information, the National Mediator may institute mediation proceedings, even if the employees have not given notice that they intend to stop work.¹⁷⁴

As discussed above,¹⁷⁵ a party that intends to initiate an industrial action concerning the terms of a new or renewed collective bargaining agreement must notify the National Mediator. Even if all conditions are met for a lawful industrial action, the National Mediator may prohibit a strike or lockout if he or she concludes that the lockout or strike will prejudice the public interest based either on the nature of the employer's business or the extent of the dispute.¹⁷⁶ To prohibit an industrial action, the mediator must notify both the union and the employer within two days of receiving the notice to terminate¹⁷⁷ and must institute mediation proceedings immediately.

When conducting a mediation, the mediator collects all necessary information, even if one or both parties fail to appear. The mediator then submits a proposal to the parties on which a vote is taken. If the parties reach a compromise, then a conforming collective agreement is drawn up and signed by the parties.¹⁷⁸ A mediation proposal is typically a powerful incentive for resolution because the mediator is usually an influential person. However, even if representatives agree to a proposal in mediation, it may still require ratification by members of the union or associa-

¹⁷²*Id.* §27. See additional discussion in the Introduction, at D.2., above.

¹⁷³LDA §27a.

¹⁷⁴*Id.*

¹⁷⁵See II.E.1., above.

¹⁷⁶LDA §29(2).

¹⁷⁷*Id.* §29(2) para. 4.

¹⁷⁸*Id.* §35.

tion. Usually, mediators will not make proposals that they know both sides will reject.¹⁷⁹

The National Mediator may not prohibit an industrial action indefinitely. Ten days after action is prohibited, either party may demand termination of the mediation proceedings, provided that the party duly cooperated with the mediation.¹⁸⁰ Within four days of this demand, proceedings must be terminated.¹⁸¹ The parties may later make a joint application to reopen mediation proceedings.¹⁸²

b. Arbitration

If mediation is unsuccessful, then the parties may bring the dispute before the National Wages Arbitration Board.¹⁸³ The Board has nine members for disputes in the private or municipal section; five members appointed by the Government for a three year period and four members from the parties in the dispute, two from each side. For the state sector, there are seven permanent members: five nominated by the Government and one from each side. Also, of the five permanent members appointed by the Government, there is a chair and two other neutral members appointed from the ranks of leading lawyers, economists, etc.—these persons are entitled to vote. The other two permanent members represent the employers and employees respectively.¹⁸⁴ Both parties must agree to this arbitration; the government may not order it.¹⁸⁵ A decision by the Arbitration Board has the same effect as a collective agreement.¹⁸⁶

¹⁷⁹GALENSON at 102.

¹⁸⁰LDA §36.

¹⁸¹*Id.*

¹⁸²*Id.* §38.

¹⁸³See additional discussion in the Introduction at D.2., above.

¹⁸⁴National Wages Board Act, Act No. 7, December 19, 1952.

¹⁸⁵*Id.*

¹⁸⁶See Jakhelln, *The Rights of Seafarers*.

2. *Rights Disputes*

a. *Basic Agreement*

The Basic Agreement provides that disputes involving the interpretation of collective agreements are first addressed by management and the appropriate shop steward. If the dispute is not resolved at this meeting, then management and local union officials may attempt to settle the issue in the presence of representatives from each of the central organizations.¹⁸⁷

b. *Labor Court*

If negotiations are unsuccessful, then the parties may seek resolution of the dispute in the Labor Court.¹⁸⁸ Notably, the Labor Court's jurisdiction extends only to disputes related to collective action, such as the interpretation and validity of collective bargaining agreements, breach of collective agreements, obligations with respect to industrial actions, and claims for damages arising from those disputes. The Labor Court does not consider interest disputes,¹⁸⁹ which must be settled by the parties themselves, either with collective bargaining or mediation. The Labor Court also lacks jurisdiction in individual disputes with two exceptions: damage claims against individual employees or employers for breaching a collective agreement or an obligation with respect to industrial actions, and claims for indemnification. However, the Labor Court may render a decision on individual claims that are contingent on the collective issue under consideration.¹⁹⁰

In disputes related to collective bargaining agreements, only the superior party to the agreement (typically a central organization) may act as plaintiff or defendant. These parties act on behalf of themselves, as well as their members. However, as noted above, individual members may be subject to a Labor Court suit in certain circumstances.¹⁹¹

¹⁸⁷GALENSON at 194.

¹⁸⁸See additional discussion in the Introduction at A.3.e. and D.2., above.

¹⁸⁹See II.F.1., above.

¹⁹⁰LDA section 29(1).

¹⁹¹Nykaas, *Do We Need Labour Courts.*

Normally, a case will not be admitted to the Labor Court unless the dispute has been subject to prior negotiation between the parties.¹⁹² Beyond this requirement, no specific pre-trial procedures apply. The Labor Court may not order the parties to go to conciliation or mediation at any point; however, it may request the parties to explore a settlement and assist in attaining this goal.¹⁹³

The Labor Court's decisions typically are final and may not be appealed. However, the Court's decision to dismiss a case based on a lack of jurisdiction may be appealed to the Supreme Court. Similarly, a Labor Court decision may be appealed to the Supreme Court on grounds that the matter was outside the Court's jurisdiction.¹⁹⁴

c. District Courts as Local Labor Courts

While the Labor Court generally has original jurisdiction over rights disputes arising from collective bargaining or collective agreements, the district courts¹⁹⁵ may have jurisdiction as local labor courts in disputes concerning independent collective bargaining agreements of a local or regional character.¹⁹⁶ The district courts are, in these cases, comprised of one member of the judiciary and two lay judges nominated by the parties whose case is under consideration (one by the employer and one by the employee). The parties may agree that a case will be heard by the district court as a local labor court or, in a case already pending before the Labor Court, may apply for a transfer to the district court. In any event, a decision by the district court, other than purely procedural decisions, may be appealed to the Labor Court.¹⁹⁷

In practice, very few labor cases are brought before the district courts. Nearly all cases are submitted to the Labor Court in the first and only instance.¹⁹⁸

¹⁹²*Id.*

¹⁹³Evju, *Labour Courts & Autonomy*.

¹⁹⁴Nykaas, *Do We Need Labour Courts*.

¹⁹⁵See the Introduction at A.3.c., above.

¹⁹⁶LDA §7(3).

¹⁹⁷Nykaas, *Do We Need Labour Courts*.

¹⁹⁸*Id.*

d. Mediation

While no legislation requires alternative dispute resolution in cases before the Labor Court, it is attempted in some instances. Specifically, the President of the Labor Court may decide to propose mediation; participation is voluntary, although the parties almost never refuse when the proposal is made.¹⁹⁹

Mediation is possible at any stage of proceedings and any point of conflict may be referred to mediation. Mediation in these cases is conducted informally, without set procedures, in order to provide a flexible process. The number of cases utilizing mediation varies annually, although the Labor Court is promoting the process in an attempt to make legal proceedings more efficient.²⁰⁰

e. Arbitration

According to the LDA, parties may agree to private arbitration for disputes concerning the validity or interpretation of a collective agreement or for claims based on a collective agreement.²⁰¹ Submission of disputes to arbitration is governed by the Norwegian Arbitration Act, which provides that a decision by the arbitration panel is final and binding.²⁰² However, an arbitration decision may be appealed to the Labor Court, based on certain grounds of grave error in law or procedure.

As a practical matter, arbitration is uncommon in Norwegian labor law. The Special Adviser to the Labor Court speculates that this is because of the cost associated with arbitration, which easily exceed the costs incurred in court litigation.²⁰³

¹⁹⁹Jon Gisle, *The Use of Mediation/Conciliation by Labour Courts* (2005), available at <http://www.ilo.org/public/English/dialogue/ifpdial/downloads/judges05/Norway_2.pdf>.

²⁰⁰*Id.*

²⁰¹LDA §7(2) para 4.

²⁰²Arbitration Act No. 25 of May 14, 2004.

²⁰³Evju, *Labour Courts & Autonomy*.

G. Union Security

1. *Freedom of Association*

In Norway, the principle of freedom of association is contained within the Basic Agreement between LO and NAF.²⁰⁴ These parties have acknowledged that treating an employee differently because he or she joins a union or chooses not to join a union will violate the Agreement.

A union's insistence that only union members will be employed also will violate the Basic Agreement.²⁰⁵ As a result, there are very few closed shops in Norway.

2. *Union Dues*

Under collective bargaining agreements and their own by-laws, each national union is required to put aside an annual amount per member into a strike fund. Beyond this amount, each union determines its own dues requirements.²⁰⁶ The current Basic Agreement between the NHO and the LO contains a series of regulations pertaining to the deduction of union dues from wages and salaries.²⁰⁷

3. *Meetings During Working Time*

Unions are not entitled to hold meetings during paid working time. However, under the Basic Agreement, the workplace committee of union representatives may, with the consent of management, assemble during working hours. These meetings will not result in a loss of pay if the committee, with management consent, considers the meeting necessary to reach a decision in an urgent matter.²⁰⁸

²⁰⁴BRUUN at 28.

²⁰⁵*Id.*

²⁰⁶GALENSON at 7.

²⁰⁷BRUUN at 30.

²⁰⁸*Id.*

4. *Shop Steward Time Off*

The Basic Agreement provides that a union shop steward is entitled to the time off necessary to perform his or her duties as steward; the precise nature of the time off may be determined in local agreements.²⁰⁹ The shop steward is also entitled to regular pay when working for the union, provided that this time is spent on activities identified in the Basic Agreement (such as local negotiations or meetings with management).²¹⁰

5. *Free Movement Within the Workplace*

Pursuant to the Basic Agreement, certain union representatives have the unlimited right to move freely at the workplace, even though others may require consent from supervisors.²¹¹

III. REPRESENTATION BY ENTITIES OTHER THAN UNIONS

A. Works Councils

Works councils have not had the same widespread use in Norway as in other European countries.²¹² However, the Basic Agreement between the Norwegian Confederation of Business and Industry (NHO) and the Norwegian Confederation of Trade Unions or Norwegian Labor Organization (LO)²¹³ recognizes the need for involving employees in the overall operation and direction of the companies that employ them. Specifically, the Basic Agreement provides for “information, cooperation and co-determination,” which means that conditions within a company must be arranged to allow individual employees an opportunity to influence an employer’s efforts with respect to efficiency, costs, or other issues.²¹⁴ In addition, Part A of the Basic Agreement pro-

²⁰⁹*Id.* at 59.

²¹⁰*Id.* at 63.

²¹¹*Id.* at 59.

²¹²For a discussion of works councils within the EU, see the chapter on the European Union, at III., in part 1 of the Volume I main volume and supplement. The EU works councils directives apply in Norway through the EEA Agreement; see the Introduction at B.2., above.

²¹³See the Introduction at B.1.b., above.

²¹⁴Basic Agreement 2006–2009 Chapter IX, available at <http://www.lo.no/lo-basesn/Content/111369/Hovedavt_lo-nho_web.pdf>.

vides that shop stewards are entitled to exercise co-determination by regularly consulting with employers on matters such as the ordinary operations of the enterprise as well as any planned reorganization of operations, mergers, or closures.²¹⁵

Part B, the “Cooperation Agreement” portion of the Basic Agreement, provides for special co-determination committees, or works councils, with equal representation from management and employees in firms having more than 100 employees.²¹⁶ Works councils also must be established in companies with fewer than 100 employees if requested by one of the parties and if the parties’ central organizations agree.²¹⁷ In the absence of another agreement to the contrary, works councils meet monthly and primarily address the employer’s efficiency and the employees’ well being.²¹⁸ Works councils may not deal with wages, working time, disputes pertaining to collective agreements, or employment contracts.²¹⁹

B. Working Environment Committees

The Worker Protection and Working Environment Act (WEA) requires that all employers in Norway that have more than 50 employees must have Working Environment Committees.²²⁰ Smaller employers with 20–50 employees are also required to have Working Environment Committees if the employees, the employees’ representative, or the employer require that a Committee be established.²²¹ In addition, the Labor Inspection Authority²²² may decide that employers with fewer than 50 employees must establish a Working Environment Committee.²²³

Working Environment Committees are primarily dedicated to health and safety issues in the workplace. The Committees are intended to provide information and consult with the employer,

²¹⁵*Id.* §§9-3 to 9-6.

²¹⁶*Id.* §12-1.

²¹⁷*Id.* §12-1 para. 2.

²¹⁸*Id.* §§12-7 to 12-8.

²¹⁹BRUUN at 77.

²²⁰WEA §7-1(1). See additional discussion at VII.A.1., below.

²²¹WEA §7-1(1).

²²²See the Introduction at C.2.a., above.

²²³WEA §7-1(1).

though they are allowed some participation in decisionmaking. Working Environment Committees do not have the power to enter into agreements with the employer on behalf of the workforce.

C. Joint Works Council and Working Environment Committee

Many companies, in particular smaller and medium-sized companies, choose to establish a joint Works Council and Working Environment Committee.

IV. REDUNDANCY AND TRANSFERS OF UNDERTAKINGS

A. Redundancy

The Worker Protection and Working Environment Act (WEA) provides that a “redundancy” occurs when an employee is dismissed for a reason unrelated to the individual employee.²²⁴ A “collective redundancy” occurs when a notice of dismissal is given to at least 10 employees within a period of 30 days, for reasons unrelated to the individual employees.²²⁵

1. Selection for Dismissal

A collective redundancy must be objectively warranted by circumstances connected with the enterprise or the employer. A reduction or closing of a business is normally a warranted reason for a collective redundancy. In order to have a warranted reason for a collective redundancy, an employer need not show that employee dismissals are necessary for the business's survival. However, the extent of a collective redundancy may be examined in light of the employer's financial situation to determine if it is fully warranted. The employer must document the need for the redundancy and must determine if there is any other suitable work available for employees who are considered redundant.²²⁶ Further, when deciding whether a dismissal is objectively justified, the

²²⁴*Id.* §15-7(1) and (2).

²²⁵*Id.* §15-2.

²²⁶*Id.* §15-7(2).

needs of the undertaking must be weighed against the harm that would be caused for the individual employee.²²⁷

In a situation of collective redundancies, it is not always the employee whose position will be eliminated who will have to be dismissed. When making the selection for dismissals, the employer is basically required to take into consideration all the employees in the company, or, if the company is organized in divisions that are significantly different from each other, the employer must take into consideration all the employees within the division. Thus, the employer must make an overall assessment, taking into account all the employees who are in continuing positions that the employee in the redundant position is qualified to perform.

Under guidelines established through case law, in selecting the employees for dismissal, the employer must take into consideration a number of circumstances, including the following:

- formal and factual qualifications;
- ability;
- age;
- seniority;
- social conditions;
- the likelihood that the individual will be able to get a new job; and
- health conditions.

The employer is given a certain degree of operational freedom to balance the various factors against one another. The national bargaining agreement (wage agreement) between the Confederation of Norwegian Business and Industry (NHO) and the Norwegian Confederation of Trade Unions or Norwegian Labor Organization (LO) even provides that an employer may deviate from the principle of seniority if based on a plausible assessment. However, if the employees' representatives do not agree that the decision is based on a plausible assessment, then the issue becomes subject to negotiations between the organizations. If a Norwegian employer is a subsidiary of a foreign parent, then the Norwegian employer's board of directors is responsible for performing its

²²⁷*Id.*

own analysis of the need for, and size of, the redundancy; it may not simply rely on the orders of a foreign parent.

2. *Consultation with Employee Representatives*

At the earliest opportunity, an employer contemplating a collective redundancy must enter into consultations with the employees' elected representatives with a view to reaching an agreement to avoid employee dismissals or to reduce the number of employees who will be dismissed. For purposes of these consultations, the employer must provide the elected representatives with written notification of the following:²²⁸

- the grounds for the redundancies;
- the number of employees who may be made redundant;
- the categories of employees who may be made redundant;
- the number of employees normally employed;
- the categories of employees normally employed;
- the period during which the redundancies may be effected;
- the selection criteria for those who may be made redundant; and
- the criteria for calculating extraordinary severance pay, if applicable.

3. *Notice*

The WEA imposes mutual periods of notice as a condition for terminating individual employment contracts.²²⁹ These notice requirements apply in the event of a collective redundancy. The common notice period in Norwegian employment contracts is three months, with a range from one month to six months. Where the contract is silent, the employer must comply with the minimum notice periods set forth in the WEA. These minimum notice periods, which are based on the length of employment and the age of the employee, are as follows:²³⁰

²²⁸WEA §15-2(3).

²²⁹WEA §15-3(1). See I.E.2., above.

²³⁰WEA §15-3(1) to (3).

- for employees with less than 5 years' tenure with the same employer, 1 month's notice;
- for employees with tenure of 5 years or more with the same employer, 2 months' notice;
- for employees with tenure of at least 10 consecutive years with the same employer, 3 months' notice;
- for employees with tenure of at least 10 consecutive years with the same employer, who are 50–55 years of age, 4 months' notice;
- for employees with tenure of at least 10 consecutive years with the same employer, who are 55–60 years of age, 5 months' notice; and
- for employees with tenure of at least 10 consecutive years with the same employer, who are aged 60 or older, 6 months notice.

The notice period is counted from the first day of the month after the notice is served.

A notice of redundancy must be in writing and either delivered or mailed to the employee. The notice must inform the employee of the employee's right to negotiate or initiate court proceedings concerning the redundancy. The notice must also tell employees that they may remain in their position while negotiations or court proceedings are in progress²³¹

A notice of a collective redundancy must also be sent to the district employment office. The district employment offices come within the auspices of the Department of Welfare Policy in the Ministry of Labor and Social Inclusion. The district employment office does not have the authority to rule on the validity of the collective redundancy.

4. *Severance Pay*

Under Norwegian law, there is no general requirement for severance pay in the case of a collective redundancy. By way of exception, under both individual employment contracts and collective bargaining agreements, employees aged 50–55 are usually provided some form of lump sum severance payment. This

²³¹ See *Id.* §15-4.

is usually fairly limited. For example, the collective agreements with the two largest unions in Norway require that a worker who is older than age 50 and has worked for the same employer for 10 consecutive years or a total of 20 years is eligible for two months' pay.

As a practical matter, in the event of a collective redundancy, negotiations between the employer and the employees' representatives often produce an agreement on severance pay for employees who are to be dismissed.

5. *Reemployment*

Any employee who has been employed by the employer for at least 12 months during the two years preceding a collective redundancy has a preferential right to reemployment in any position that becomes available for which the employee is qualified.²³² This preferential right lasts for 12 months after the notice period for the redundancy has expired.

6. *Employee Challenges*

An employee who is subject to dismissal in the context of a collective redundancy may challenge the redundancy in court. To do so, the employee must file his or her claim within eight weeks after conclusion of any negotiations concerning the redundancy or, if no negotiations take place, from the date that the employee receives notice of the redundancy.²³³ However, if the employee's claims are limited to damages rather than seeking continued employment, the eight-week period for filing a claim is extended to six months.²³⁴

If employees challenge the redundancy within the required time, then, as a general rule, they are entitled to remain in their position with the employer beyond the notice period, pending a judicial resolution or an amicable solution.²³⁵

²³²*Id.* §14-2.

²³³*Id.* §17-4(1) and (2), cf. §17-3(2).

²³⁴*Id.* §17-4(1).

²³⁵*Id.* §15-11.

B. Transfers of Undertakings

Norway has adopted the European Union Transfers of Undertakings Directive²³⁶ by incorporating its provisions into Chapter 16 of the WEA. These provisions apply where a business is sold as a going concern or where the assets sold are significant, or at least sufficient to establish that an undertaking—or part of an undertaking—retains its identity after the transfer.²³⁷

Prior to a transfer of undertaking, the existing employer (seller) and the future employer (purchaser) must discuss the transfer with employees' elected representatives as early as possible.²³⁸ These discussions must cover the following points:²³⁹

- the reason for the transfer;
- the legal, economic, and social implications of the transfer for the employees;
- measures planned in relation to the employees; and
- the agreed or proposed date for the transfer.

In the event of a covered transfer, the WEA provides that the terms of employment for the seller's employees are transferred to the new owner.²⁴⁰ These terms include *inter alia* holiday pay, salary, and notice periods. Thus, following the transfer, the buyer assumes the rights and obligations of the seller's individual employment contracts.²⁴¹ However, claims concerning the pre-existing contractual relationship and events related to the sale or pre-sale activities may still be brought by the transferred employees against the seller.

Transfer of ownership does not, in itself, constitute grounds for dismissal of an employee.²⁴² Further, if an employee terminates his or her employment contract or relationship because the transfer entails significant changes in working conditions to the

²³⁶Council Directive 2001/23/EC, 2002 O.J. (L 82) 16. See the chapter on the European Union, at IV.B., in part 1 of the Volume I main volume and supplement.

²³⁷WEA §16-1(1).

²³⁸*Id.* §16-5.

²³⁹*Id.*

²⁴⁰*Id.* §16-2.

²⁴¹*Id.* §16-2(1).

²⁴²*Id.* §16-4(1).

employee's detriment, then the termination is "deemed the result of circumstances related to the employer,"²⁴³ and may result in a suit against the purchaser.

As for collective bargaining agreements, the purchaser is bound by any collective wage agreement that was binding on the seller. However, within three weeks following the date of transfer, the purchaser may give written notice to the trade union that it does not wish to be bound by the agreement. If the employer issues this notice, the transferred employees will nevertheless be entitled to retain the individual working conditions that followed from the collective agreement until the collective agreement expires, or until a new collective agreement is concluded that is binding on the new employer and the transferred employees.²⁴⁴

In cases where "the establishment preserves its autonomy," the employees' elected (union) representatives retain their legal status and function.²⁴⁵ However, if, as a result of the transfer, "the basis for the employees' representation ceases to exist," then the elected representatives do not retain their legal status and function but "continue to be protected in accordance with the agreements protecting the elected representatives in this area."²⁴⁶ In cases where "the establishment does not preserve its autonomy," the transferred employees who were represented prior to the transfer continue to be suitably represented until a new election can be held.²⁴⁷

As regards pension benefits, the purchaser must, as a starting point, maintain the seller's existing pension plan.²⁴⁸ However, the purchaser may elect to cover the transferred employees under its own pension plan, regardless of whether this pension plan provides less generous benefits than the seller's plan.²⁴⁹ It does not follow from the statutory provision at what point such change can be made, but in practice this is made with effect from the date of transfer of the employment.

²⁴³*Id.* §16-4 (2).

²⁴⁴*Id.* §16-2 (2).

²⁴⁵*Id.* §16-7(1).

²⁴⁶*Id.* §16-7 (3).

²⁴⁷*Id.* §16-7 (2).

²⁴⁸See also VIII.D., below.

²⁴⁹WEA §16-2(3).

Along with all other obligations to the transferred employees, the purchaser assumes any obligation to make severance payments in the event of a collective redundancy. The seller and the purchaser may provide, by agreement, that the seller will compensate the purchaser for these payments if a collective redundancy is carried out in close proximity to the transfer, but this will not release the purchaser from its obligations vis-à-vis the employees.

V. WAGES, HOURS, AND LEAVE

A. Wages

1. *Minimum Wage*

Norway does not have a statutory minimum wage. Rather, minimum wages are left largely to collective bargaining. There is currently a debate in Norway as to whether statutory minimum wages should be legislated in order to prevent an influx of workers from new EU Member States in Eastern Europe willing to work for low wages.

In Norway, approximately 50 percent of employees are employed under collective agreements that contain minimum wage requirements. These collectively agreed minimum wages are subject to adjustment on an annual basis. Normally, collective bargaining in the metalworking industry sets the pattern for these adjustments. The primary reason for minimum wage adjustments is the expected inflation rate. Unions may also negotiate for an increase in the minimum wage based on employee productivity.

If an employer fails to comply with the minimum wage requirements of a collective bargaining agreement, there is no state-imposed penalty. However, the Labor Court can order the employer to comply with the minimum wage requirements and to compensate employees who were not properly paid.

2. *Overtime Pay*

Norwegian law requires that employees must be paid a premium of at least an additional 40 percent of their hourly wage

for each hour of overtime.²⁵⁰ Most collective bargaining agreements require more than this minimum, with the most frequent rate being an additional 50 percent. Also, collective bargaining agreements frequently require a full 100 percent premium if an employee is required to work overtime hours after 9 p.m.

3. *Payroll Taxes*

Under the National Insurance Act, employers in Norway are required to pay payroll taxes based on a percentage of the wages paid in the course of a year. Since 1975, the amount of the payroll tax has been based on geographic location; payroll tax rates are adjusted to encourage employment in underdeveloped regions of the country.

B. Hours

1. *Standard Working Hours*

Under the Worker Protection and Working Environment Act (WEA), working hours are limited to 40 hours per week and 9 hours per day.²⁵¹ For employees in the oil extraction industry, the maximum working hours are 12 hours per day and 36 hours per week, on average, over a one-year period.²⁵² However, the standard workweek in Norway is 37.5 hours, with normal working hours of 7.5 per day.

As defined by the WEA, standard working hours include any time between 6 a.m. and 9 p.m.²⁵³ The normal daily working hours are between 6 a.m. and 5 p.m. The duration and schedule of an employee's daily and weekly working hours must be included in their employment contracts.²⁵⁴

²⁵⁰*Id.* §10-6(11). Whether work is considered overtime depends on the nature of the job and the industry sector. See V.B.3., below.

²⁵¹WEA §10-4(1).

²⁵²Health, Environment, & Safety in Petroleum Activity, Reg. No. 1016 of Aug. 31, 2001, §47.

²⁵³WEA §10-11.

²⁵⁴*Id.* §14-6(1)(j). See I.A.1., above.

2. *Work on Sundays, Public Holidays, and During Night Hours*

Under the WEA, work on Sundays, public holidays, and during night hours is only allowed if there is a specific need. For this purpose, Sundays and public holidays begin at 6 p.m. the day before and run to 1 p.m. on the specific day.²⁵⁵ Night hours include the time between 9 p.m. and 6 a.m.

The limitations on working during times designated as Sundays, public holidays, or night hours have exceptions based on the nature of the work.²⁵⁶ These exceptions include work within the health sector, work in hotels, theaters, or sales outlets, and work that, for technical reasons, cannot be interrupted. Further, an employer and a trade union may enter into a written agreement concerning work on Sundays, public holidays, and during night hours where there is an exceptional and time-limited need for it.²⁵⁷

3. *Overtime*

While Norwegian law requires overtime pay for overtime hours,²⁵⁸ the law goes further by stating that overtime work must not be a regular practice and, in fact, may not be required except in the following instances:²⁵⁹

- unforeseen circumstances;
- a shortage of employees that causes a disruption in the work;
- a shortage of employees with special competence;
- seasonal fluctuations;
- a need to prevent damage; or
- other cases where there is an exceptional and time-limited need for it.

²⁵⁵WEA §10-10.

²⁵⁶*Id.* §10-11(2).

²⁵⁷*Id.* §10-11(4).

²⁵⁸See V.A.2., above.

²⁵⁹WEA §10-6(1) para. 1.

The law further limits overtime to 10 hours per 7-day period, 25 hours per consecutive 4-week period, and 200 hours per consecutive 52-week period.²⁶⁰

For a period not to exceed 12 weeks, an employer and a union may agree in writing on overtime work not to exceed 15 hours per 7-day period, with total overtime not to exceed 40 hours during a consecutive 4-week period, or 300 hours over a consecutive 52-week period.²⁶¹ Also, the total overtime work must not result in an employee working more than 13 total hours in any 24-hour period or more than 48 total hours in a 7-day period. The limit of 48 hours per 7 days may be calculated according to a fixed average over a period of 8 weeks.²⁶² An employer and a union may agree in a collective bargaining agreement to extend the overtime limits beyond those allowed for the 12-week period.²⁶³

Employees have the right to an exemption from overtime based on health or other valid personal reasons.²⁶⁴

4. Exemptions

Certain types of jobs are exempt from the general working time restrictions of the WEA.²⁶⁵ Specifically, the requirements do not apply to employees in executive positions or employees in particularly independent positions. In addition, trade unions may, under certain conditions, enter into a collective wage agreement that departs from the general working time restrictions. Finally, if the work is of such a special nature that it would be difficult to adapt it to the working time provisions of the WEA, then the Ministry of Labor and Social Inclusion may provide exemptions by regulation.

²⁶⁰*Id.* para. 4.

²⁶¹*Id.* para 5.

²⁶²*Id.* para. 8.

²⁶³*Id.* para. 9.

²⁶⁴*Id.* para. 10.

²⁶⁵*Id.* §10-12.

C. Leave

1. *Vacation*

Under the Vacation Act, all employees in Norway are entitled to an annual, paid vacation of 21 working days (or 25 days if Saturdays are included).²⁶⁶ Employees who are 60 years of age or older are entitled to an additional week of vacation. Many collective bargaining agreements also provide for additional vacation days.

Vacation pay is a percentage of the employer's payments to the employee during the previous calendar year.²⁶⁷ Therefore, in order to receive full pay for vacation days, an employee must have been employed during the entire year. If this is not the case, the employee may still take vacation, but the vacation pay will necessarily be reduced. Vacation pay is due on the last workday before vacation begins.²⁶⁸

2. *Public Holidays*

Norwegian law establishes 12 public holidays for which employees are excused from work but are not paid unless so specified in an applicable collective bargaining agreement.²⁶⁹ However, May 1 and 17 are designated as special holidays or festivals on which employees are entitled to paid time off if they have worked for at least 30 days for the same employer. Any employee who is required to work on those two days is entitled to premium pay, which pursuant to applicable collective agreements, will be, in many cases, around 100 percent of the ordinary wage.

3. *Parental Leave*

Pregnant employees are entitled to a maximum of 12 weeks of unpaid leave during their pregnancy and six weeks of additional leave after they give birth.²⁷⁰ The father, if he lives with the

²⁶⁶Vacation Act No. 21 of Apr. 29, 1988, §5.

²⁶⁷*Id.* §10(2) and (3).

²⁶⁸*Id.* §11.

²⁶⁹Public Holiday No. 12 of Feb. 24th, 1995 and Act regarding 1st and 17th of May as public holidays No. 1, April 26th, 1947.

²⁷⁰WEA §12-2.

mother, is entitled to two weeks of unpaid leave to provide care to his family.²⁷¹ Adoptive parents and foster parents also are entitled to two weeks of unpaid leave when taking over responsibility for care of a child.²⁷² Some employers pay full salary to fathers and adoptive or foster parents during the two-week leave period.

Parents (including adoptive and foster parents) also are entitled to childcare leave for a total of 24 months.²⁷³ For the first 12 months of this period, the parents are entitled to payments from the National Insurance System (NIS)²⁷⁴ of up to six times the NIS base amount (approximately NOK 380,000). Many employers give employees the right to full salary during the first 12 months of the period of childcare leave and therefore cover the employees' salary, if any, above the ceiling of six times the base amount.

4. *Health Leave*

Employees may take time off for health, social, or other material reasons related to their personal welfare.²⁷⁵ Married employees may take leave for up to 10 days per year for the care of a sick child who is 12 years old or younger. In these cases, employees receive "care pay" from the employer or the NIS²⁷⁶ for salary up to six times the NIS base amount. Single parents are allowed up to 20 days for this purpose. Parents with more than one child are allowed up to 15 days if married and 30 days if single. Parents with children who are chronically ill, disabled, or hospitalized are given more extensive paid leave rights.

5. *Educational Leave*

Employees who have worked for at least three years and have worked for the same employer for the preceding two years are entitled to unpaid educational leave taken on a full- or part-time basis for up to three years.²⁷⁷ Educational leave may be denied if

²⁷¹*Id.* §12-3(1).

²⁷²*Id.* §12-3 (2).

²⁷³*Id.* §12-5.

²⁷⁴See VIII.C., below.

²⁷⁵WEA §10-2(4).

²⁷⁶See VIII.C., below.

²⁷⁷WEA §12-11.

it would create an obstacle to the employer's operational planning and personnel assignments.

6. *Military Service Leave*

Employees are entitled to unpaid leave of absence in connection with compulsory or voluntary military service or similar national service or in connection with up to 24 months of voluntary service in forces organized by the Norwegian authorities for participation in international peace operations.²⁷⁸

VI. ANTIDISCRIMINATION

A. Working Environment Act

Effective March 26, 2004, Norway implemented the EU General Framework Directive on equal treatment in employment and occupation²⁷⁹ by enacting a new section of the Worker Protection and Working Environment Act (WEA). The 2004 provisions prohibited work-related discrimination on grounds of race, color, national or ethnic origin, sex, religion, political or personal beliefs, sexual orientation, disability, membership in a workers' organization, or age. The 2004 enactment also extended protection against discrimination beyond job applicants (the only group covered by previous legislation) to the ongoing employment relationship, including promotion, pay, and termination.

On January 1, 2006, new WEA amendments came into force.²⁸⁰ In the area of employment discrimination, these amendments were meant to include more proactive measures to ensure equality of treatment in the workplace, facilitate modifications of working situations, accommodate employees' capabilities and life circumstances, and foster inclusive working conditions.²⁸¹

As amended, the WEA prohibits workplace discrimination on the basis of political views, membership in a trade union,

²⁷⁸*Id.* §12-2.

²⁷⁹Council Directive 2000/78/EC, 2000 O.J. (L 303) 16. See the chapter on the European Union, at VI.B.2., in part 1 of the Volume I main volume and supplement.

²⁸⁰See the Introduction at B.1.a., above.

²⁸¹WEA §1-1.

sexual orientation, disability, or age. The WEA also prohibits harassment if it is based on any of these protected categories. Further, the amendments make clear that the WEA protections apply not only to full-time employees, but also to part-time and temporary employees.

The WEA leaves protection against gender discrimination to the Norwegian Gender Equality Act.²⁸² It also leaves protection against discrimination on the basis of ethnic origin, national origin, descent, color, language, religion, and ethical or cultural orientation to the Norwegian Antidiscrimination Act.²⁸³

With respect to disability, the WEA provides that employers must, “as far as possible, accommodate employees, the only exception being for measures that involve “excessive burden for the employer.”²⁸⁴ The WEA protects special treatment that is intended to promote equality, but requires that any special treatment cease when its purpose has been achieved.²⁸⁵

If a job applicant is denied a position, the applicant has the right, under the WEA, to demand a written statement from the employer as to the education, experience, and other qualifications of the person selected for the position.²⁸⁶ If information provided by the employer or submitted by the applicant gives reason to believe that unlawful discrimination has occurred, then the employer has the burden to prove the absence of any discrimination or retaliation.²⁸⁷

Employees who have been discriminated against are entitled to compensation for financial loss in accordance with the non-statutory law of torts.²⁸⁸ Employee victims of discrimination also are entitled to compensation for non-financial loss.²⁸⁹ This compensation is based on a theory of strict liability and does not presuppose any fault on the part of the employer. While there is not yet any case law on this issue, it follows from the wording of WEA

²⁸² Act No. 45 of June 9, 1978.

²⁸³ Act No. 33 of June 3, 2005.

²⁸⁴ WEA §13-5.

²⁸⁵ *Id.* §13-6.

²⁸⁶ *Id.* §13-7.

²⁸⁷ *Id.* §13-8.

²⁸⁸ *Id.* §13-9 (2).

²⁸⁹ *Id.* §13-9 (1).

Section 13-9(1) that compensation must be fixed in an amount that the court deems reasonable in view of the circumstances.

B. Gender Equality Act

Gender equality is a long-established provision of Norwegian law under the Gender Equality Act of 1978 (GEA). The protections of the GEA are not limited to equal opportunity, but also seek to actively promote the status of women in the workplace. The importance of this point is driven home by the fact that gender equality is addressed in an independent statute, rather than being included within the general antidiscrimination provisions of the WEA.

Included within the requirements imposed on employers by the GEA is the duty to make “active, targeted and systematic efforts to promote gender equality within their enterprise.”²⁹⁰ For those employers that are required to prepare annual accounts and reports pursuant to the accounting legislation and are considered as “major enterprises,”²⁹¹ part of the report must include an account of gender equality within the company. The statement should include a description of any planned or implemented measures to promote gender equality.²⁹²

Sexual harassment is considered a form of discrimination under the GEA.²⁹³ In addition, the GEA prohibits discrimination against women on the basis of pregnancy or childbirth or leave taken for those purposes.²⁹⁴ The GEA specifically states that employers’ actions to promote gender equality, including special rules to protect women in connection with pregnancy, childbirth and breast feeding, do not constitute unlawful discrimination.²⁹⁵

The GEA also incorporates the equal pay for equal work theory into Norwegian law. The GEA goes beyond simply comparing wages for the same job to compare wages of jobs with equal value.²⁹⁶ The value of a position is determined by an assess-

²⁹⁰GEA §1a para. 1.

²⁹¹GEA §1 para. 3 and Accounting Act No. 56, July 17, 1998, §§1-5 and 1-6.

²⁹²*Id.* §3-3a para. 10.

²⁹³GEA §8a.

²⁹⁴*Id.* §3.

²⁹⁵*Id.* §3a.

²⁹⁶*Id.* §5.

ment of the importance that the employer places on the work and other factors such as the level of responsibility and working conditions.

Like the WEA, the GEA allows an applicant to obtain a written statement regarding the education, experience, and other qualifications of the person selected for a position over the applicant.²⁹⁷

C. Norwegian Antidiscrimination Act

In the Norwegian Antidiscrimination Act, which became effective on January 1, 2006, Norway adopted the International Convention on the Elimination of All Forms of Racial Discrimination of December 21, 1965. The Antidiscrimination Act contains the same types of protections that are provided under the WEA and GEA.

Penalties under the Antidiscrimination Act are left to be set by the appropriate court, but the Act does include a form of willful conspiracy claim against any person who acts willfully and jointly with at least two other persons to commit a serious violation.²⁹⁸ Whether a violation of the Act is serious depends on the level of fault of the person accused, whether the action was racially motivated or consisted of harassment, whether it was an offense against the person's mental integrity, was likely to create fear, or was committed against a person under the age of 18.

D. Equality and Antidiscrimination Ombudsman

On January 1, 2006, a new Equality and Antidiscrimination Ombudsman was established pursuant to the Act Regarding Equality and Antidiscrimination Ombudsmen and Committee.²⁹⁹ This ombudsman is charged with enforcing the antidiscrimination provisions of the WEA and the GEA, as well as the Norwegian Antidiscrimination Act.

²⁹⁷*Id.* 4 para. 3.

²⁹⁸Antidiscrimination Act §15.

²⁹⁹Act No. 40 of June 10, 2005.

VII. OCCUPATIONAL SAFETY AND HEALTH AND WORKERS' COMPENSATION

A. Occupational Safety and Health

The original legislation in Norway in the area of occupational safety and health, to which all subsequent safety and health acts and regulations refer, is the Working Environment Act of February 4, 1977.³⁰⁰ The 1977 Act stated the overall rules in the area of safety and health in the workplace, laid out the basic requirements for the working environment, and established the role of the Inspection Authority³⁰¹ to enforce the law. In the amended WEA of June 17, 2005, the employer's obligations were further emphasized to ensure a safe working environment for all employees and compulsory training in occupational health and safety issues was introduced for employers.³⁰² The occupational safety and health provisions of the WEA apply to all businesses that have employees except for those in the merchant marine and fishing fleet, which are regulated by their own specific safety and health law.³⁰³

1. Working Environment Committees

Under the 2005 WEA, all employers with 50 or more employees must have Working Environment Committees at each worksite.³⁰⁴ Working Environment Committees must also be formed in enterprises with 20–50 employees if demanded by the employees, the employees' representative, or the employer.³⁰⁵ In addition, the Labor Inspection Authority may decide that enterprises with fewer than 50 employees must establish a Working Environment Committee where working conditions indicate.³⁰⁶

A Working Environment Committee must be composed of an equal number of representatives of employees and the

³⁰⁰Act No. 4 relating to worker protection & the working environment.

³⁰¹See the Introduction, at C.I., above.

³⁰²WEA §3-5.

³⁰³*Id.* §1-2(2)a.

³⁰⁴*Id.* §7-1(1). See also III.B., above.

³⁰⁵WEA §7-1(1).

³⁰⁶*Id.*

employer;³⁰⁷ in unionized workplaces, union members normally will dominate these committees. The employer must notify the Labor Inspection Authority when a Working Environment Committee is established.³⁰⁸

2. *Occupational Health Services*

Employers are required to provide occupational health services for their employees if necessitated by risk factors within the company. Whether these risk factors exist is determined by the employer as part of its systematic implementation of health, environment, and safety measures.³⁰⁹

In order to improve occupational health services, Norway created a Secretariat of Occupational Health and Services in 1998 at the National Institute of Occupational Health.³¹⁰ That same year, a “good occupational health service” project was launched in Norway. Under this project, the Secretariat of Occupational Health and Services collects and offers information to anyone who works within an employers’ occupational health service. Many examples of good practices in this area also are available on the Secretariat’s website.³¹¹

3. *Enforcement*

a. Labor Inspection Authority

The Labor Inspection Authority issues regulations to detail the safety and health standards that are set out in a more general way in the WEA.³¹² A systematic regulation concerning employers’ obligations with respect to occupational safety and health went into effect on January 1, 1997.³¹³ This regulation places primary emphasis on actual workplace compliance with the health

³⁰⁷*Id.* §7-1(4).

³⁰⁸*Id.* §7-1(3).

³⁰⁹*Id.* §3-3(1).

³¹⁰See the Introduction at C.2.a., above.

³¹¹See Secretariat of Occupational Health and Services, <<http://www.stami.no/BHT-sekretariatet>> (in Norwegian only).

³¹²See also the Introduction at C.2.a., above.

³¹³Systematic Health, Environmental, & Safety Activities in Enterprises, Reg. No. 1127 of Dec. 6, 1996 (Internal Control Regs.).

and safety laws rather than on documentation of policies and procedures. An employer that does not comply with the obligations set out in the 1997 regulation or with other regulations or orders issued by the Labor Inspection Authority may be penalized.

The Labor Inspection Authority also issues guidelines that provide examples of ways that employers may meet the requirements of the regulations. Because of their nature, compliance with these guidelines is not subject to the same strict compliance standards that apply to regulations.

All serious and life threatening accidents are investigated by the Labor Inspection Authority.

b. Other Enforcement Bodies

Other government bodies oversee the enforcement of specific working environment standards. These include the working environment standards for seafarers, which are enforced by the Norwegian Maritime Directorate; the working environment standards on oil installations, which are enforced by the Norwegian Petroleum Directorate; and the working environment standards for civil aviation employees, which are enforced by the Civil Aviation Authority. Regulations pertaining to electric safety and the prevention of fire and explosions are monitored and enforced by the Directorate for Fire and Electrical Safety.

B. Workers' Compensation

Norway instituted a compulsory workers' compensation insurance system in 1991 based on the Law on Insurance against Industrial Accidents of 1989³¹⁴ and the National Insurance Law of 1966. The compulsory system applies to all employees in all industries, including shipping, fishing, and offshore oil platforms. The system covers all injuries that occur in the workplace or when the employee is traveling on behalf of his or her employer outside the normal commute to work.

Employers are required to obtain workers' compensation insurance from private insurance companies. The private insurance companies calculate employer premiums based on informa-

³¹⁴Law No. 65 of June 16, 1989.

tion with respect to average claims for injuries in the industry and in the particular activity of the employee multiplied by the number of employees to be insured. If an employer fails to pay the premium, then payments to employees are covered by the Occupational Injury Insurance Association,³¹⁵ and the Association will have recourse against the employer.

VIII. PENSIONS AND BENEFITS

A. Introduction

1. *Historical Background*

Norway adopted its first public old-age pension in the 1940s. In 1967, the National Insurance System (NIS), or *Folketrygden*, was implemented. The NIS replaced a public pension system that consisted of only a minimum pension benefit for employees at age 70 and limited benefits for disabled individuals.

2. *Public and Private Employee Benefit Systems*

a. *Summary of Benefits*

In Norway, retirement security is provided through a combination of a comprehensive public social security system, i.e., the NIS, and supplementary private pension coverage provided by employers. Frequently, employers also provide special pension benefits to employees who were born before 1940 to compensate for the lack of public social security coverage.

For average wage earners, the public social security system has a replacement ratio of about 50 percent, before tax, and it is common for private supplemental pensions to bring retirement pensions for many workers up to approximately 70 percent of their before-tax salaries. Historically, Norway's private pensions have been primarily defined benefit plans because employer contributions to defined contribution plans did not become tax-deductible until January 1, 2001. However, as a result of a 2001 change

³¹⁵See the Introduction at C.3.e., above.

in the law, defined contribution plans are becoming increasingly popular.

In addition to retirement pensions, the NIS provides a variety of other benefits, including, for example, disability benefits, survivor benefits, rehabilitation benefits, occupational injury benefits, unemployment benefits, and generous medical benefits for all individuals residing or working in Norway.³¹⁶ Many private employers also provide long-term disability and survivor benefits through tax-qualified plans.

b. National Insurance System

All individuals who are either residents or working as employees in Norway (including installations on the Norwegian Continental Shelf) must be insured under the NIS.³¹⁷ Individuals who live in Svalbard and Jan Mayen and who are employed by a Norwegian employer or were insured under the National Insurance Act are also subject to the same compulsory insurance system.³¹⁸ In addition, certain Norwegian citizens working abroad are required to be insured under the NIS.³¹⁹

NIS benefits are funded, in part, by employer contributions to the NIS. An employer's required contribution level varies by regional zone, ranging from 0 percent up to about 14.1 percent of the total wages paid by the employer. An additional employer contribution is assessed on wages that exceed a certain basic amount. Also, reduced employer contribution rates apply to employees who are over the age of 62. The NIS is also funded by contributions from employees, self-employed persons, and the state. The level of contributions required of employees and self-employed persons is based on their pensionable income and is set annually by Parliament.³²⁰

The NIS provides benefits through the National Insurance Service (*Trygdeetaten*).

³¹⁶See *The Norwegian Social Insurance Scheme 2006*, available at <http://www.odin.no/filarkiv/276755/Trygdebrosjyre_engelsk_-_2006_final.doc>.

³¹⁷Nat'l Ins. Act No. 19 of Feb. 28, 1997, §§2-1, 2-2.

³¹⁸*Id.* §2-3.

³¹⁹*Id.* §2-5.

³²⁰The level of contributions for 2006 was announced in Reg. No. 1405 of Nov. 21, 2005.

B. Pensions

1. *Public Pension System*

The NIS provides three types of old-age pension benefits, as follows:

- a basic pension;
- a special supplement; and
- a supplementary pension.

The basic pension and the special supplement make up the minimum old-age pension.³²¹ The level of basic pension to which an individual is entitled is based on the person's insurance period, not on income or NIS contributions.³²² An individual who has an insurance period of at least 40 years is entitled to a full basic pension. Shorter insurance periods reduce the amount of the basic pension.

The supplementary pension is based on previous wages earned in the workforce and is intended to prevent a significant drop in an individual's standard of living following retirement.³²³ Also, the supplementary pension takes into account any sick leave benefits, unemployment benefits, and maternity benefits received by the individual.

Finally, pensioners receive a special supplement under the NIS if they do not receive, or receive only a very small, supplementary pension.³²⁴

2. *Private Pension Plans*

a. Types of Plan

Until recently, the decision of whether to offer a private pension plan and if so, how generous the plan would be, was a matter for individual employers to decide. This was largely changed by

³²¹Nat'l Ins. Act §3-4.

³²²*Id.* §§3-2, 3-5 to 3-7.

³²³*Id.* §§3-8 *et seq.*

³²⁴*Id.* §3-3.

the Mandatory Occupational Pensions Act (MOPA).³²⁵ However, even prior to MOPA, once an employer decides to establish a plan, its framework is regulated by law.³²⁶ Under these regulations, any employee who is at least 20 years old and who works at least 20 percent of full-time is entitled to participate in an employer-provided qualified plan.³²⁷

Employee participation in a qualified plan must begin upon employment, and benefits must vest within 12 months of employment.³²⁸ Qualified plans can only in some cases have a lower retirement age than 67 (as of 2002)³²⁹ typically and no early retirement options.³³⁰

Investment of pension assets is subject to certain restrictions, e.g., a limit on the percentage of assets invested in equities. Plans are permitted to utilize individual participant direction for individual accounts, a non-segregated investment approach, or employer-managed investment decisions made on behalf of the participants collectively.³³¹

Employer-provided qualified plans may take the form of a defined benefit plan or a defined contribution plan. These two types of plans are discussed below.

i. Defined benefit plan

In a defined benefit plan, benefits must be provided in the form of an annuity and paid out over a minimum 10-year period.³³² The benefit level may be guaranteed with a pension insurance policy. However, if the benefit level is not so guaranteed, then fixed payments must be determined each year, based on the participant's account balance and the years remaining in the payment period.³³³

³²⁵Mandatory Occupational Pensions Act No. 124 of December 21, 2005.

³²⁶See VIII.B.2.b., below.

³²⁷The Business Pension Act No. 16, March 24, 2000 §§3-3(1) and 3-5.

³²⁸*Id.* §4-6(2).

³²⁹*Id.* §4-1(1).

³³⁰*Id.* §3-10.

³³¹*Id.* Chapter 11.

³³²*Id.* §5-1(1).

³³³*Id.* §5-13(3).

ii. Defined contribution plan

In a defined contribution plan, contributions for all plan participants must be set as a single contribution rate or as a similar flat-rate contribution amount.³³⁴ However, based on their longer life expectancy, higher contribution rates may be used for female employees whose salary is between 6 and 12 times the NIS base amount if the plan requires the conversion of plan assets based on assumptions regarding mortality ratings.³³⁵ Maximum contribution rates are established by regulation and are dependent on an employee's salary range.³³⁶ Annual benefits also are capped.³³⁷ As of October 7, 2005, employees are allowed to contribute to an employer-provided defined contribution plan.³³⁸

iii. Implementing a new defined contribution plan

If a defined benefit plan is discontinued to establish a defined contribution plan, then the defined benefit plan participants have a right to deferred vested benefits according to the defined benefit plan's formula.³³⁹ Alternatively, an employer may either grant active defined benefit plan participants the right to continue participating in the defined benefit plan on a closed group basis, or limit the right to continue participating in the defined benefit plan to those participants who are less than 15 years away from normal retirement age.³⁴⁰ Additionally, employers may simultaneously offer both plans—a defined benefit plan and a defined contribution plan—and permit participants to individually select which plan to join.³⁴¹

b. Mandatory Occupational Pensions Act

On January 1, 2006, MOPA entered into force with the effect that every company having more than two employees in at least 75 percent of its positions became obligated to establish a pension

³³⁴Defined Contribution Pension Act No. 81 of Nov. 24, 2000, §5-3.

³³⁵*Id.* §5-3(2).

³³⁶*Id.* §5-4.

³³⁷*Id.* §7-3(4).

³³⁸*Id.* §5-6.

³³⁹The Business Pension Act §15-6.

³⁴⁰*Id.* §15-6 paras. 2, 3.

³⁴¹*Id.* §2-10.

plan in accordance with the new legislation.³⁴² Plans must be in place by December 31, 2006; however the plans must have financial effect for employees as of July 1, 2006.³⁴³

Employers have the choice of implementing either a defined contribution plan or a defined benefit plan.³⁴⁴ If the employer establishes a defined contribution plan, then the employer must make contributions equal to at least 2 percent of participants' gross pay.³⁴⁵ If the employer establishes a defined benefit plan, then the level of annual benefits provided under the plan must be at least actuarially equivalent to the minimum benefit that would have been paid under a defined contribution plan.³⁴⁶ Employers' minimum contribution of 2 percent of salary applies to salaries of up to 12 times the NIS base amount (approximately NOK 760,000 in 2006).³⁴⁷

c. Portability

Often companies fund private pension plans through insurance arrangements. Once employees terminate employment, their private pension generally is valued and a retirement bond is issued, guaranteeing a retirement annuity based on prior employer contributions. Former employees are then allowed to continue paying premiums to the insurance company at the same rate that the former employer paid.³⁴⁸ If an employee moves to a new employer, then the new employer may assume the previous pension contributions and treat those contributions as if they were contributions to the new employer's pension plan. Alternatively, the employee may retain the retirement bond from his or her former employer and receive the resulting stream of payments, which will begin at normal retirement age, i.e., 67.

³⁴²MOPA §1.

³⁴³*Id.* §9.

³⁴⁴*Id.* §2(1).

³⁴⁵*Id.* §4.

³⁴⁶*Id.* §5(1).

³⁴⁷*Id.* §5(1).

³⁴⁸The NIS Base amount from 1 May 2006 equals NOK 62,892.

C. Health, Disability, and Other Employee Benefits

1. National Insurance Service Benefits

In addition to employee pensions, the National Insurance Service (NIS) provides the following benefits:

- basic and attendance benefits in case of disability;
- rehabilitation benefits;
- occupational injury benefits;³⁴⁹
- survivor's pensions;
- childcare benefits;³⁵⁰
- benefits for single parents;
- benefits in case of sickness;
- maternity and adoption benefits;³⁵¹
- medical benefits in case of sickness and maternity;
- unemployment benefits;
- educational benefits;³⁵² and
- funeral grants.

Funding for some NIS benefits comes from employer contributions.³⁵³ However, certain benefits are completely government financed, including the following:³⁵⁴

- disability benefits and grants to improve daily functioning;
- transitional benefits for survivors and surviving family caregivers;
- childcare benefits and maintenance payments for children;
- transitional benefits for single, divorced, and separated supporters;
- maternity and adoption benefits;
- educational benefits; and
- funeral grants.

³⁴⁹See VII.B., above.

³⁵⁰See V.C.3., above.

³⁵¹See V.C.3., above.

³⁵²See V.C.5., above.

³⁵³See VIII.A.2.b., above.

³⁵⁴Nat'l Ins. Act. No. 19 of Feb. 28, 1997, chs. 4–18.

2. *Health Benefits*

All individuals insured under the NIS are provided with free treatment in hospitals. Individuals must pay part of the cost for treatment by a general practitioner or specialist outside of a hospital, treatment by a psychologist, prescription drugs, and any transportation expenses resulting from travel to receive medical care. However, there is an annual cost-sharing maximum. Once an individual has paid a certain amount for the year, then he or she is entitled to free treatment for the remainder of the calendar year.

Cash benefits are also paid to individuals who are not able to work because of illness if they had been employed for at least 14 days. Daily cash benefits are paid for up to 52 weeks. The amount of these benefits is equal to 100 percent of an employee's full-salary up to six times the NIS base amount (approximately NOK 380,000). Payments for the first 16 days of illness are made by the employer, and the NIS makes payments to the employee for the remainder of the covered period. While not legally required, employers often undertake to pay employees to make-up the difference between full-salary and the NIS benefits.

3. *Disability Benefits*

Under the NIS, disability benefits are provided through a basic benefit, an attendant benefit, and a disability pension, all of which are primarily funded by the state.³⁵⁵ A disabled person will receive the basic benefit if the disability involves significant expenses. The basic benefit rates vary based on certain factors. An attendant benefit is paid if the disabled individual requires nursing or other specialized care. If a disabled individual receives a reduced NIS pension due to having an insurance period less than 40 years, then the basic benefit and attendant benefit will also be reduced.

D. Merger and Acquisition Issues

Any private pension plan assets attributable to entities being purchased are usually transferred to a purchaser's pension plans

³⁵⁵*Id.* chs. 6, 12.

in connection with the transaction. Although the starting point under Norwegian employment law is that the purchaser has a legal obligation to assume the seller's pension plans, the purchaser can elect to cover the transferred employees under its own pension plan.³⁵⁶ To the extent that there are any deficits in the seller's pension plans and the purchaser intends to assume those plans, the plans should be fully funded prior to completing the transaction. If an underfunded defined benefit plan is discontinued in connection with a transfer, then participants would be entitled to deferred vested benefits according to the defined benefit plan's formula and any underfunding would need to be rectified. The agreement between the seller and the purchaser will be decisive with respect to the obligation to rectify the underfunding. A seller also may provide employee benefits that do not follow from statutory provisions but are part of the seller's general benefits plans. Any such plans should be reviewed prior to a purchase. For practical reasons, it may not be possible for a purchaser to assume these plans. However, to the extent that any general benefit plans are deemed to create individual employee rights, a purchaser may be required to assume liability for the benefits.

IX. IMMIGRATION

Norway's acceptance of foreign workers is governed by the Immigration Act of 1988.³⁵⁷ The Immigration Act requires any foreign national who intends to work in Norway to have a work permit, issued by the Directorate of Immigration, with the exceptions noted below. Normally, work permits allow the foreign national to remain working in Norway for one year, but may be renewed on a yearly basis for three years.³⁵⁸ If the foreign national will remain in the country for more than three months, then he or she must obtain a residence permit, also issued by the Directorate of Immigration.

³⁵⁶See VIII.D. above.

³⁵⁷Immigration Act No. 64 of June 24, 1988.

³⁵⁸*Id.* §11.

After three consecutive years of work in Norway under a residence or work permit, a foreign worker may obtain a settlement permit for permanent residence in the country. A settlement permit (a permanent residence permit) involves the right to live and work in Norway permanently. This permit is not time-restricted and, therefore, need not be renewed.

As exceptions to the requirements for work and residence permits, Norway recognizes the right of citizens of the Nordic countries (Denmark, Finland, Iceland, and Sweden) to compete for jobs in Norway on the same terms as a Norwegian citizen, and no resident permit or work permit is required.³⁵⁹

Norway also recognizes the right of citizens of EU Member States to compete for work on the same terms as Norwegian citizens. For some of the new Member States—Estonia, Latvia, Lithuania, Poland, Slovakia, the Czech Republic, and Hungary—transitional rules apply in this regard. For a few years, citizens from these countries must have a residence permit before they can start work, although a work permit is not required. In March 2006, the Norwegian Government announced that the transitional rules would be in force until May 1, 2009, with the possibility of eliminating the transitional arrangements early or extending the transitional period until May 1, 2011.

Norway places a quota on work permits for foreign nationals. However, far fewer foreign citizens have applied for work permits than the quotas allow. This may partly be the result of the high cost of living in Norway.

Norway also grants group work permits for transfers within a single company for the completion of special projects in Norway. These group work permits are reserved for companies that are seeking to send at least six employees to Norway. To obtain a group permit, the employer must show that the subject employees have special skills or qualifications that make them necessary to the success of the project. Applications for group work permits are considered by the Directorate of Immigration.

³⁵⁹This is based on the Convention entered into by Norway, Sweden, Denmark, Finland and Iceland of March 6, 1982, regarding a common Nordic labor market.

Norwegian law allows family members of a foreign employee legally working in Norway to obtain a work permit so that they, too, may be employed in Norway while living there. This permit for “family immigration” (*familieinnvandring*) is primarily granted to close family members. The permit is granted for one year at a time. After three years, the family member may apply for a settlement permit, which allows the holder to stay in Norway permanently, on the same grounds as the person who had the original work permit that formed the basis of the *familieinnvandring*.

For purposes of the *familieinnvandring*, close family members are the following:

- a spouse or registered partner;
- cohabitants who have lived together for at least two years; and
- children under 18 years of age.

Other family members who may be granted a permit to reside in Norway are the following:

- a cohabitant with whom the person living in Norway has or is expecting a child, even if they have not been living together for at least two years;
- a person intending to enter into marriage with a person residing in Norway within six months after entry into Norway;
- a single mother or father over 60 years of age without any close relatives in their country of origin;
- unmarried, supported children over 18 years of age with special care needs or without caregivers in their country of origin;
- full siblings under 18 years of age without a mother, father, or other caregiver in their country of origin or country of residence, and with no mother or father in another country; and
- other family members, when strong humanitarian considerations warrant.

As a general rule, for applicants to be granted family immigration status allowing them to work while living in Norway, they must be ensured minimum compensation equal to pay scale 1 of the national pay scale (*Statens lønnsregulativ*). As of May 1, 2005, this corresponds to an annual, pre-tax income of NOK 169,100 and is subject to annual adjustments.