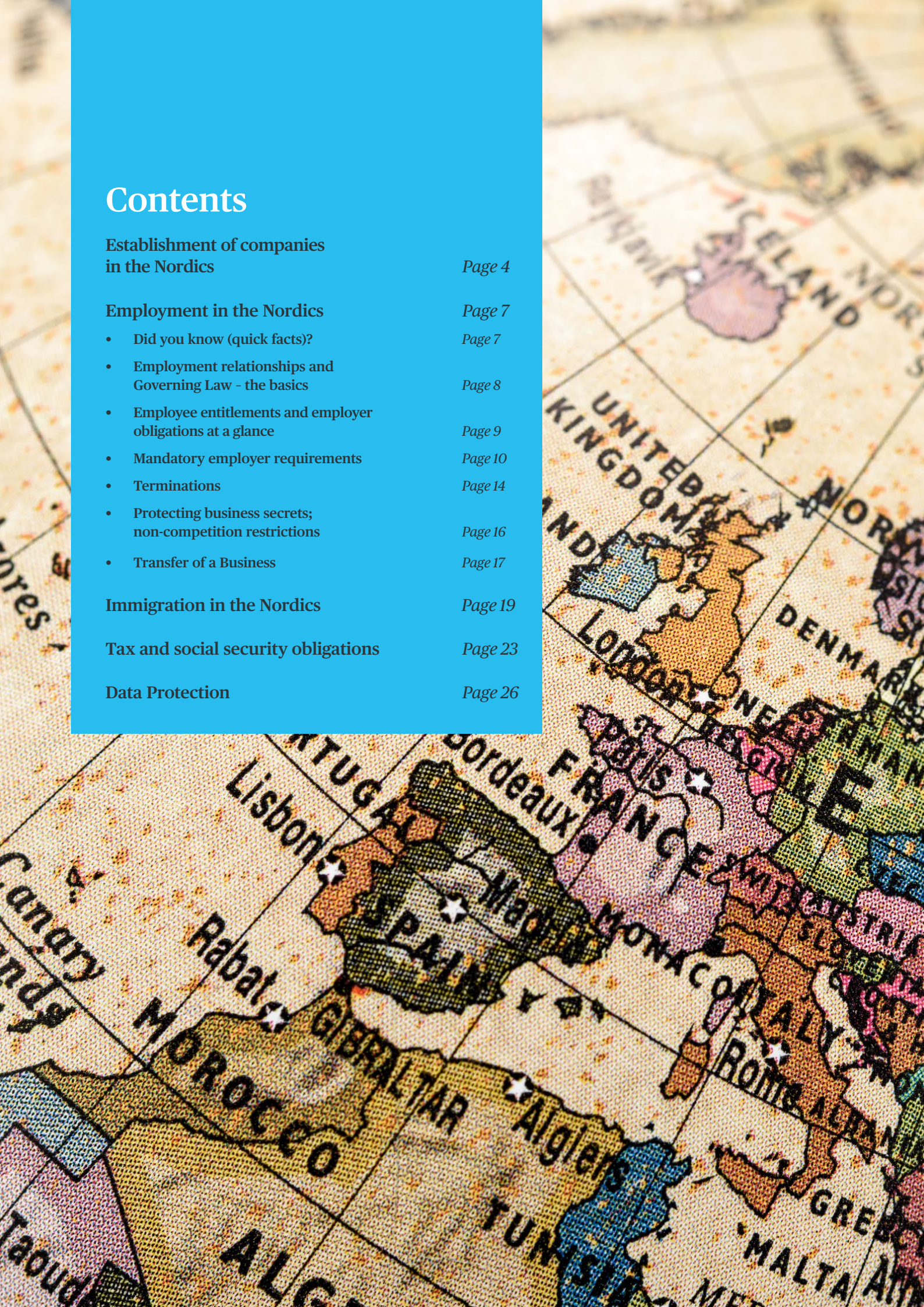


Bird & Bird &
Establishing
your business
& managing
your workforce
in the Nordics



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Introduction

The Nordic countries offer a very attractive business environment with a well-educated and skilled workforce. The Nordic region is known for its ingenuity and know-how, but also for its relatively unique welfare systems. This, together with a low degree of corruption and a high degree of trust amongst the citizens for the state and business environment that work in tandem with it, provides a unique sphere that many non-Nordic corporations have already discovered.

Despite the many similarities between Finland, Sweden and Denmark, both in terms of history and cultural values, there are notable differences when it comes to the approach taken to establish a business friendly environment.

HR professionals and other individuals with a pan-Nordic responsibility need to be aware of these differences, as methods and practices that have proved to work perfectly in one country, might not work in another.

The purpose of this brochure is to provide a quick overview of basic elements relevant for establishing and building your business in the Nordic region, including assisting in the process of deciding in which country to start. The brochure further gives insight to the finer differentiating elements between these countries.

This guide is intended to provide an overview only. It does not constitute formal legal advice.

Establishment of companies in the Nordics

When establishing an activity in one or more of the three countries, it is often relevant for foreign businesses to assess whether to do this through a branch or a subsidiary – or, if possible, to just start the activity as a foreign company.

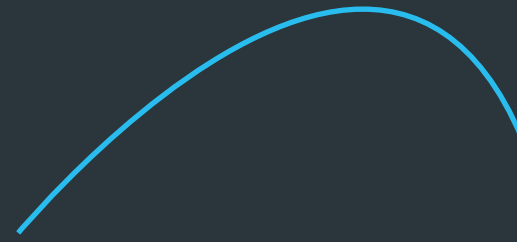
It is, for several reasons, often recommendable to establish a subsidiary. Firstly, when operating in a country as a foreign company, the risk of establishing a permanent establishment (a “P/E”) with adverse impact on the parent company’s tax position is relatively high, unless the level and nature of the activity fulfils narrow requirements.

Secondly, registering a branch is often cumbersome and requires that the annual accounts of the parent company are filed in accordance with the relevant rules of the country of the branch.

Thirdly, branches are not separate entities to the parent company. As a consequence, the foreign company is fully liable for the branch’s activities, whereas liability for a subsidiary’s activities is limited to the subsidiary’s assets.

It is relatively easy to incorporate a company in each of the three jurisdictions.

Denmark	
Company forms	In most cases, subsidiaries of foreign companies are run in the form of an “ApS” (private limited liability company), but it is also possible to establish a an “A/S” (public limited liability company).
Minimum capital	ApS: DKK 40,000 A/S: DKK 400,000
Management	ApS: Flexible A/S: Min 3 board of directors and minimum 1 managing director.
Procedure for establishment	Can be done online – from day to day.
Language requirements for company documents	Danish.
Language requirements for shareholders’ meeting	Possible to stipulate in the articles of association.
Digital communication and shareholders’ meeting	Can be established.
Corporate taxation	Corporate tax rate: 22 % (2020).
Taxation on dividends	Tax free for dividends paid to a parent company owning at least 10% of the share capital.
Taxation on gain on share sale	Gain tax free for parent company (unless sale and purchase of shares is the parent company’s field of business).



Finland	Sweden
In most cases, subsidiaries of foreign companies are run in the form of an “Oy” (abbr. for “Osakeyhtiö”, Finnish private limited liability company). Other possible company forms are General partnerships or Limited partnerships. As these forms are relatively insignificant in practice, in the following only the “Oy” is described in more detail.	As with Finland, subsidiaries of foreign companies are most commonly run in the form of private limited liability company (“AB”) (Sw. Aktiebolag). Establishing a branch is the other common option and we have focused only on these two options below. Other possible company forms include: sole trader, trading partnerships, limited partnerships and economic association.
No minimum capital required.	Private limited liability company (“AB”) (Sw. Aktiebolag): SEK 25,000. Branch: No capital contribution required (assets and liabilities are a part of the total assets of the foreign-based company).
At least 1 ordinary board member and 1 deputy member; managing director not obligatory, companies are in practice often run by the board only.	AB: Board of Directors required. The board must comprise of three ordinary members or of one or two ordinary members with at least one deputy member. Branch: Board of Directors not required.
Easy and fast procedure, if standard forms are used.	Information regarding the procedure for establishing a company can be found here: www.verksamt.se
Finnish or Swedish.	There are generally no language requirements.
No language requirements.	As above.
Possible to establish.	Shareholder and Board meetings may be held by telephone or by written resolutions (per capsulam – which require all shareholders or board members signatures or presence). Branch: Meetings are not required.
Corporate tax rate: 20 % (2020).	Corporate tax rate: 21.4 % (2020).
Income from dividends paid to a parent company by a subsidiary is tax free.	Tax free if paid to parent company (unless the shares are held as a “current asset” for tax purposes).
Tax free, if participation exemption applies. If not, subject to normal corporate income tax (20 %).	Tax free if paid to parent company unless the shares are held as a current asset for tax purposes.



Employment in the Nordics

Did you know (quick facts)?

Denmark

- Denmark does not have a 'general employment act' covering all aspects of the employment relationship e.g. minimum salary.
- Employees neither covered by a collective bargaining agreement ("CBA") or the Danish Salaried Employees' Act ("DSEA") cannot raise a claim for unjustified termination. In addition, for employees covered by either a CBA or the DSEA may only lodge such a claim if they have been employed for more than 9 months / 1 year respectively at the time of the termination.
- An employer, with at least 35 employees, must prepare annual gender-based wage statistics for groups with at least 10 people of each sex.
- An employer must carry out a Work Environment Assessment (WEA) and document this in a WEA-report ("APV-rapport") every third year or when there are changes in the work process that impact on the work environment. It must be prepared in cooperation with employees.
- An employer must take measures to prevent harassment and victimisation in the workplace.
- As of Autumn 2021, an employer with minimum 50 employees must establish a whistleblower scheme, which enable individual employees to report confidentially.

Alert: Unionised workforces are common across the Nordic region. As a result, the majority of employment relationships across Denmark, Finland and Sweden are governed by Collective Bargaining Agreements (CBA). A CBA is an agreement regulating the terms and conditions of employment for the employees it covers, having been 'collectively' agreed by one or more employers or registered employers' associations and one or more registered trade unions. Any mandatory rules provided for by legislation will take precedence over the provisions of a CBA. However, many items of employment legislation contain "optional" rules, for example working time and annual leave, explicitly providing that CBAs can provide for different arrangements.

CBAs are legally binding on the signatory employers, employers' associations and trade unions (and their members). Employers bound by a CBA must also apply its terms to employees who fall within the agreement's scope even if they are not members of a signatory trade union. Parties can, with the consent of the signatories, choose to sign up to (and be bound by) an existing CBA.

Finland

- Managing Directors of limited liability companies and co-operatives do not have employee status and are thus not covered by most of the employment legislation.
- Breaching the obligation not to discriminate against employees can lead employers to face fine or imprisonment of up to 6 months.
- An employer must keep records, for example, on working hours and annual holidays for each employee (*unconditional fine or imprisonment of up to 6 months for non-compliance*).
- Employers with 20 or more employees have statutory "co-operation" obligations in relation to their employees; co-operation involves information, consultation or negotiation, depending on the circumstances, on a range of specified issues. NB: Significant material amendments to current legislation are suggested that will most probably enter into force in the coming year 2021.
- In Finland, certain CBAs may be declared as generally applicable, please see more detailed description below.
- CBAs that are nation-wide and deemed representative in the field concerned are declared "generally applicable" by a Government-appointed commission. Generally applicable CBAs are binding on all employers that fall within its scope, irrespective of whether they are members of a signatory employers' association. A majority of sector-level CBAs have been declared as generally applicable (e.g. the CBA for the commercial sector and CBAs in the technology industry). The generally applicable nature of some CBAs is a key factor that should be taken into account when operating in Finland.

Sweden

- While not regulated under mandatory law CBAs contain binding rules regarding minimum wage.
- Employees can work a maximum of 200 hours overtime per calendar year.
- The employer has an obligation to provide support and to take reasonable measures to adapt the workplace in order to assist disabled persons.

Employment Relationships and Governing Law – the basics

Denmark

In Denmark, there are three main types of employment relationship; salaried employees; non-salaried employees; and employees covered by CBAs.

Both salaried and non-salaried employees can be covered by a collective bargaining agreement; however, it is more common for non-salaried employees.

Salaried Employees

Relationship covered by the Danish Salaried Employees Act (“Funktionærloven”). This Act lays out minimum notice periods, protection against unjust termination, right to salary during sickness (without any time-limit).

Non-salaried Employees

Much wider freedom of contract enjoyed between employee and employer. No mandatory regulation on minimum notice periods, protection against unjust termination.

Employees covered by a CBA

Limitation in agreeing individual employment terms. A company can either be obliged to become a member of an employers’ association by a CBA, or by entering into an accession agreement with a union.

In relation to central employment terms and conditions like minimum notices of termination, protection against unjust termination, working hours and salary levels, there is not a singular piece of legislation that covers all of these relationships; however there are a number of regulations which apply to all employees. These include the requirement for all employees working more than 8 hours per week in average to receive a contract prescribing the main terms of employment within the first month of employment (as governed by the Employment Contracts Act (‘ECA’)). A violation can entitle the employee to compensation of up to 20 weeks’ salary.

Finland

Central provisions governing the employment relationships in Finland are included in the Finnish Employment Contracts Act (‘FECA’). It applies to the majority of employment relationships, regardless of the nature of the work or the employee’s position. The Act’s provisions are, for the most part, mandatory in nature. If a working relationship contains the constituent elements of an employment relationship, as laid down in FECA, the employer and the employee may not validly agree to exclude the application of the Act.

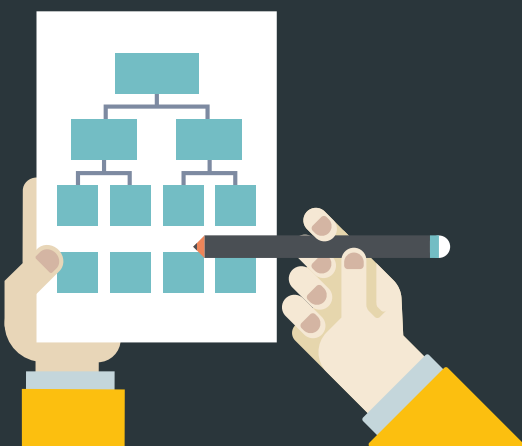
Of additional importance is the Finnish Working Hours Act (‘FWHA’), which sets out provisions on maximum working time, minimum rest periods, overtime and overtime compensation, as well as provisions on night and Sunday work. CBAs may, and often do, provide derogations from the Working Hours Act. Certain employee groups are excluded from the scope of the Working Hours Act, such as employees holding a leadership position in a company and employees working from home. The reformed Finnish Working Hours Act entered into force on 1 January 2020 with significant material amendments to the former legislation.

In addition to legislation and employment contracts, working life in Finland is governed by other provisions, such as the aforementioned CBAs, legal principles and by company practices and rules.

Sweden

The Swedish labour market is regulated by legislation and like both Denmark and Finland, a vast majority of the labour market is governed by CBAs entered into by the parties, generally employers’ associations and trade unions. An employer becomes bound by a CBA by joining an employer association or by signing an agreement directly with one or several unions. Whether bound by CBA or not, employers must adhere to rules on consultation with trade unions ahead of dismissal or transfer of an undertaking.

Nevertheless, freedom of contract applies in relation to employment agreements within the limits of mandatory law and any applicable collective bargaining agreement. Mandatory law provides basic terms of employment which are supplemented by CBAs and the individual employment agreements. There are no statutory minimum wages in Sweden. However, CBAs generally set out minimum wage requirements and also entitle employees to occupational pension requirements and top-up on state benefits.



Employee entitlements and Employer obligations at a glance

Most employee entitlements will be set out in a CBA, including minimum wage requirements, however some of the statutory standards are set out below:

	Denmark	Finland	Sweden
Holiday entitlement	Employees accrue 2.08 holidays each month, thus the employees are entitled to a total of 25 holidays per holiday year. Employees accrue the right to paid holiday during a 12-month period from 1 September - 31 August (the “accrual year”). The accrued holidays can be spend simultaneously during a 16 months period from 1 September to 31 December the following year (the “holiday year”).	Maximum 24 – 30 days per holiday year (1 April – 31 March).	Minimum 25 Days.
Notice entitlement	Salaried employees: between 1–6 months to end at the end of a calendar month, depending on seniority. Others: Depends on CBA or individual agreement.	Between 14 days and six months from the employer’s side and between 14 days and one month from the employee’s side unless otherwise agreed.	Varies between 1 and 6 months depending on the employee’s length of service. Longer notice periods may apply if the company is bound by a CBA.
Sick leave entitlement	Salaried employees: Entitled to full pay during sickness without limitation. Others: CBA dependant. If no CBA, entitled to sickness compensation if certain seniority requirements are fulfilled.	If the employment has lasted for at least one month: full salary from the day of falling ill + nine days. If the employment has lasted less than a month: 50 % of the employee’s normal salary from the day of falling ill + nine days.	1st day of sickness-related absence: 20 % deduction of average sick-pay (however, temporarily compensated to the employee by the Swedish Social Insurance Agency due to the covid-19 pandemic) (2020). Day 2–14 of absence: Full sick pay (80 % of salary). Day 15 of absence: the Swedish Social Insurance Agency pays compensation to the employee.
Maternity / paternity leave entitlement	Mother: Entitled to 4 weeks before the birth and 14 weeks + 32 weeks after (time off). Father: 2 weeks + 32 weeks after birth (time off). Please note, that a new EU directive regarding 8 weeks of earmarked paternity leave will be implemented during 2022 at the latest.	Mother: Entitled to take maternity leave for an uninterrupted period of 105 working days (approximately four months). Leave may begin 30–50 working days (approximately 5–8 weeks) before the expected due date. Father: Entitled to take paternity leave which may be taken after the childbirth and may last up to 54 working days (approximately nine weeks). Either mother or father: Entitled to take parental leave for 158 working days (approximately six months) and child-care leave until the child reaches the age of three.	Statutory parental allowance is paid by the Social Insurance Agency for a period of 480 days in total for both parents (which must be used before the child’s 12 th birthday). Currently (2020), 390/480 days can be used by one parent. The remaining 90 days must be used by the other parent (where applicable). This applies to all employees.

Mandatory requirements and violation costs

Denmark	
Recruitment <i>An employer must:</i>	Provide employees working more than 8 hours per week in average with written statement of employment conditions within 1 month from commencement. - If you are providing an employment contract you must gain the employee's acknowledgement. (Failure to do so may give rise to a fine between DKK 1,000–10,000, and under grave circumstances up to DKK 25,000). Please note that a new EU directive will be implemented at the latest in July 2022 according to which the requirement for a written statement must be issued when the employee works more than 3 hours per week in average and at the latest 7 days from commencement.
Government Reporting Requirements <i>An employer must:</i>	- Report taxes for the employees to the Danish tax authorities. - Ensure any foreign workforce have the relevant residence and work permits (Fine between EUR 1,300–EUR 2,700 per month if employing illegal foreign employees). - File a 'Work Accident Declaration', if an accident occurs, to the National Board of Industrial Injuries. Furthermore, the accident must be reported to the Labor Markets Commercial Insurance or the employer's insurance company at within 1 year of the accident. - Report to pension and other insurance companies for insurance coverage (annually or monthly) .
Postings and signs <i>An employer must make available:</i>	- Their written policy on the use of electronic cigarettes. - Their written smoking policy containing: - Information on whether and where smoking is permitted in the workplace. - Information about the consequences of a violation of the workplace smoking policy If there are designated smoking cabins, an employer must post warnings outside the cabins informing employees that the air just outside the cabins might be hazardous. (Violations of the above can result in a fine of DKK 5,000 for a first time offence, DKK 10,000 for a second time offence and DKK 20,000 for a third time offence) Where applicable, an employer must post warning signs regarding hazardous and dangerous machinery.



Finland	Sweden
Provide employees with written statement of employment conditions by the end of the first pay period at the latest. (Failure to provide this information may result in a claim brought by the employee.) • A pay slip every time their salary is due • A written shift plan, if applicable (at least one week before the shift plans start) (An unlimited fine may be imposed for non-compliance)	Provide employees with written statement of employment conditions within one month following the commencement of the employment. (Damages up to SEK15,000 for non-compliance).
• Notify the Employment and Economic Development Office when employing any non-EU/EEA/Swiss citizen. (Liability to an unlimited fine and a risk of imprisonment for non-compliance.) Verify that a foreign employee has the required residence permit (A fine between EUR 1,040 and 31,330 may be imposed on an employer who employs a person who is residing illegally in Finland.) • Notify and pay employer's contributions (tax withholding and employer's health insurance contribution) to the Finnish Tax Administration monthly/quarterly/yearly, depending on the employer's tax period. As of 1 January 2019 employer's reporting obligations are simplified and clarified as the employer must submit any information (negligence fees may be imposed for non compliance) on wages and other payments made to the Incomes Register from which e.g. the Finnish Tax Administration, the Unemployment Insurance Fund and other insurance providers shall find relevant information needed. • Immediately notify the police and Occupational Safety and Health Authority of any work-related accident that has caused death or a severe injury. (An unlimited fine may be imposed for non-compliance.)	• Notify the Swedish Tax Agency when employing any non-EU/EEA/Swiss citizens. If hiring an asylum seeker for employment, the employer must notify the Migration Board (<i>liability to unlimited fines and risk of imprisonment in case of non-compliance</i>). • Pay social security contributions and deduct income tax on the salaries. These payments must be reported to the Swedish Tax Agency on a monthly basis (<i>tax penalty of up to 20% of the deprived amount and risk of imprisonment if non-compliant</i>). • Submit income statements for all employees to the Swedish Tax Agency every year, no later than 31 January (<i>penalties, risk of imprisonment if non-compliant</i>). • Notify the Social Insurance Agency when a long-term illness or work injury occurs (<i>liability to an unlimited fine if non-compliant</i>). • Notify the Social Insurance Agency and the Work Environment Agency when a severe work injury occurs (<i>liability to an unlimited fine if non-compliant</i>).
• Employment legislation; • Any applicable CBA; • The names and contact details of the employee representatives, occupational safety delegates and authorities; • The agreement on occupational health care services; • An evaluation of the health and safety at the workplace; • Privacy statement/notice in accordance with GDPR (and the name and contact details of the Data Protection Officer, where applicable); • Details of the insurance provider through which the employees' statutory pension and accident insurances are arranged.	• Signs that warn about risk or danger in the workplace • Signs that dictate certain behaviour (for example if using any dangerous equipment) • Emergency signs informing employees about emergency exits, first aid and emergency equipment, fire-extinguishers and other fire-fighting equipment.

Mandatory requirements and violation costs (Cont...)

	Denmark	Finland
Mandatory Training	Work environment representatives must participate in the so-called AMO-courses which are general courses regarding work environment. The course takes 22 hours in total. (A minimum fine of DKK 10,000 depending on the severity of the matter and the size of the company).	• An obligation to provide training instead of terminating an employment on financial and production-related grounds may exist (where deemed feasible and reasonable). • Training/coaching obligations towards the employees whose employments have been terminated on financial and production-related grounds, when certain conditions are fulfilled. (A lump sum compensation of an amount corresponding to the value of the training/coaching may be imposed for non-compliance.)
Mandatory Policies	• Written smoking policy • Written policy on the use of electronic cigarettes. (Violations of the above can result in a fine of DKK 5,000 for a first time offence, DKK10,000 for a second time offence and DKK 20,000 for a third time offence). • Work Environment rules covering working hours, safety etc. (A minimum fine of DKK 10,000 depending on the severity of the matter and the size of the company). As of autumn 2021 an employer with minimum 50 employees must establish a whistle blower scheme which enable individual employees to report in confidentiality any violations covered by the scope of the directive (2019/1937) while being protected against retaliations.	• Occupational healthcare plan. • Occupational health and safety policy. • Analysis and assessment of the risks at work. • Personnel and training plan for employers with at least 20 employees. (The Cooperation Ombudsman may demand a court to order an employer to fulfil its obligation here and impose a conditional fine). • Gender equality plan and plan for the promotion of equality for employers with at least 30 employees (the National Non-Discrimination and Equality Board may order an employer to fulfil its obligation here and impose a conditional fine).
Employee Representatives	For a company of 35 or more employees, an employer must establish a health and safety organisation on two levels: • A group must be created containing a supervisor and a health and safety representative to take care of day-to-day tasks regarding health and safety. A number of groups can be created each containing a supervisor and a health and safety representative. • A committee must be created to be responsible for overall tasks related to health and safety. If more than two day-to-day groups have been established, the health and safety representatives must elect two members for the committee, and the supervisors in the groups must also elect two members. Through these representatives the employer must keep the employees informed on relevant information regarding the company, e.g. the company's financial situation, employment situation etc. An employer must consult with employee representatives when proposing collective redundancies. (A minimum fine of DKK 10,000 depending on the severity of the matter and the size of the company).	• Employees in every workplace with at least 10 employees must elect from among themselves an occupational health and safety representative and two deputy representatives to represent them in matters regarding the health and safety of the workplace. • Personnel groups are represented either by a shop steward elected in accordance with the applicable CBA or a representative elected in accordance with the Employment Contracts Act. • Employees of any personnel group may elect from among themselves a so-called "cooperation representative" to represent them in cooperation procedures if a shop steward or elected representative has not been chosen.

Sweden

A number of individuals must be trained to administer first aid in the workplace.

(An injunction can be awarded as well as a conditional fine).

Work Environment Policy. If the employer has more than 10 employees this policy must be in writing (*injunction and/or conditional fine for non-compliance*).

If the company is bound by a CBA and has employed a minimum of 25 employees in Sweden during the last fiscal year, the employees have the right to have 2 representatives on the Board of Directors (and 2 deputy members). If the company is active in different industries, and has employed a minimum of 1,000 employees, the employees have the right to have 3 representatives on the Board of Directors (and 3 deputy members). However, the number of employee board members must never exceed the number of other board members (*liability for damages if a claim is initiated*).





Terminations

In cases of dismissal, e.g. where there is cause for immediate termination, employers and employees must observe the notice periods set out in mandatory law, applicable CBA or individual agreement.

Denmark

An employer must notify the Regional Labour Council when proposing a collective redundancy provided that the number of redundancies within a period of 30 days is:

1. At least 10 in establishments normally employing more than 20 and fewer than 100 employees.
2. At least 10 per cent if the number of workers in establishments normally employing at least 100 and less than 300 employees.
3. At least 30 in establishments normally employing 300 employees or more.

There are a number of non-discrimination Acts protecting employees against termination in situations that relate to protected characteristics, including maternity/paternity leave, pregnancy, disability and age. A violation of any of these Acts can result in the employee being awarded compensation between 6 and 12 months' salary.

In all termination situations (both redundancy situations, including the mass redundancies described above) and in relation to single terminations, the employer should seek to establish a justified reason to terminate. In Denmark, the decision to reduce the size of the workforce is in general considered a justified reason, and the employer is in general free to choose whom to terminate and whom to keep, and will generally be required to terminate in accordance with diversity, social or other termination restrictions.

However, employees neither covered by a collective bargaining agreement ("CBA"), nor the Danish Salaried Employees' Act ("DSEA"), cannot raise a claim for unjustified termination. Employees covered by either a CBA or the DSEA may only lodge such a claim if they have been employed for more than 9 months/1 year respectively. An employee may always raise a claim pursuant to the non-discrimination Acts.

Finland

When terminating an employee's employment, if requested by the employee, an employer must provide:

- A notice on termination of an employment to the employee in person. If this is not possible, the notice may be delivered by letter or electronically. At the employee's request, the employer is obliged to notify the employee in writing of the date and grounds for the termination (this applies typically in situations where employment was terminated orally); and
- A certificate of employment after the termination (Failure to provide this could result in a conditional fine with no maximum limit.)

Employers with 20 or more employees have a strict information and co-operation obligation to be followed if measures that may lead to redundancies, lay-offs or reductions in working hours of employees on financial or production-related grounds are considered. Additional obligations arise when the employer considers measures concerning ten or more employees. Once the negotiations have ended (the employer has fulfilled its negotiation obligation after 14 days/6 weeks has elapsed since the commencement of the negotiations, unless otherwise agreed), the employer must, within a reasonable time, inform the personnel representatives/employees concerned of the measures that may possibly be taken. (A fine of EUR 34,519 at maximum per each employee who has been made redundant etc. may be imposed for non-compliance.) NB: Significant material amendments to current legislation are suggested that will most probably enter into force in the coming year 2021.

Employers that have fewer than 20 employees do not have a cooperation obligation (unless otherwise provided by applicable CBA) when dismissals on financial or production-related grounds are considered. Instead, such employers are required to explain, at the earliest possible stage the grounds and possible alternatives for the dismissal to the applicable employees.

In Finland, all employees (including managerial employees) are protected against unjustified termination of employment. Valid grounds must always exist when an employer terminates an employment relationship. In addition, certain employee groups, such as pregnant employees, employees on family leave and personnel representatives enjoy a special protection against termination of employment.

It should be noted that employers in Finland have no statutory obligation to make severance payments to dismissed employees. However, employers may choose to make such payments voluntarily (for example, in connection with agreements on termination of employment).

Sweden

In Sweden, in order for an employer to unilaterally dismiss an employee, "just cause" for the dismissal is required. What constitutes just cause is set out in statute and assessed on a case-by-case basis. Just cause can either pertain to the individual employee (i.e. personal reasons), or to business/financial reasons within the employing entity (i.e. a "redundancy situation"). Just cause for personal reasons is generally difficult to establish; it is only in serious cases (related to actions such as crime, violence or disloyalty) that just cause for personal reasons can easily be claimed. Unilaterally dismissing an employee due to personal reasons may thus entail great risks for the employer. In case of a dispute, the process can take 1-2 years during which the employee is entitled to his or her regular salary and benefits. If the ruling is in favour of the employee, the employer must also pay damages awarded to the employee.

If an employer is considering terminating at least 5 employees (in the same country) due to redundancy, the employer is obliged to notify the Swedish Public Employment Service (Sw. Arbetsförmedlingen) in writing. The same applies where it can be anticipated that at least 20 employees will be made redundant during a 90 day period (failure to notify can result in a fine of SEK 100-500 per week per employee affected by the redundancy).

Furthermore, the employer may have to initiate and conclude trade union consultations with the relevant trade union(s) before making a decision to terminate an employment.

With the exception of certain managerial roles, employees are protected against unfair dismissal. If the dismissal is found to be unfair, an employer may be liable to re-instate the employee and/or pay damages to the employee (re-instatement does not apply to redundancies).

Protecting business secrets; Non-competition restrictions

Denmark

During employment an employee may not engage in competing activity. When employment ends an employer can enforce a non-competition and/or non-solicitation of customer clause on the employee for 6–12 months following termination. Enforcement of a non-competition clause requires, however, that the employee is ‘specially trusted’.

For employees there are formal requirements for restrictive covenants to be valid and enforceable – as a general rule a compensation of a minimum of 40 % or 60 % of the salary (for respectively 6 or 12 months after the employment ends).

No-hire-clauses are invalid (unless as a part of a business transfer).

Finland

During employment, an employee may not work for another party or engage in any activity that would, taking into account the nature of the work and the individual employee’s position, cause manifest harm to the employer as a “competing activity contrary to fair employment practices” or embark on any action to prepare for such unacceptable competing activities.

Additionally, the parties may sign a non-competition agreement, providing that the employee will not work for a competitor or otherwise engage in competing activities for a certain period of time after the employment ends. Such agreement may be concluded only if there is a “particularly weighty” reason related to the employer’s operations; reasons may relate, for example, to the nature of the employer’s operations and the employee’s status and duties.

The non-competition obligation may generally restrict the employee’s aforementioned rights for a maximum of six months (or one year if the employee receives a reasonable compensation for the restrictions imposed). NB: Significant material amendments to the current legislation are suggested that will most probably enter into force in the beginning of 2021. It is anticipated that the employer’s obligation to pay compensation to an employee for a post-employment non-competition restriction shall be extended to cover all non-competition agreements regardless of their length. The undertaking may be enforced by a contractual penalty, amounting to the pay received by the employee for the six months preceding the end of the employee’s employment at maximum. To be noted that such restrictions do not apply to employees holding leadership positions in a company.

Sweden

Non-compete clauses can only be used to protect trade secrets and only in relation to employees who are able to make use of such. Such clauses must be limited to 18 months post-employment and offer employees compensation of 60% of their salary during the restricted period. Post-employment non-dealing and non-solicitation restrictions do as a general rule not require compensation in order to be enforceable, however, case law indicates that they may not always be enforceable.



Transfer of a business

Denmark

If an enterprise or part of an enterprise situated in the EU is transferred to another business, the Danish Act on Transfer of Business (“Virksomhedsoverdragelsesloven”) (‘DATB’) will apply.

The DATB provides protection for employees in relation to a transfer of business. The Act prescribes that the employees’ terms of employment, including salary, will remain in force following a transfer.

There are also terms regarding the new employer’s renunciation of the current CBA.

Finland

In the case of a transfer of business or a part thereof, the rights, obligations and benefits of the employees remain the same. Neither the transferor nor the transferee is entitled to terminate an employment solely because of the transfer of the business. If the transferor was bound by a CBA, the transferee assumes all the rights and obligations under this agreement, until the CBA expires.

Sweden

Sweden has implemented the Acquired Rights Directive (EU Directive 2001/23/EC) as is. This entails, inter alia, that in case of a transfer of business or part of business, employees automatically transfer to the new employer on the same terms and conditions. The transferor’s rights, powers, duties and liabilities (including pre-transfer acts or omissions of the transferor) relating to the transferring employees also pass to the transferee.

Differences

The key differences between Finland, Sweden and Denmark:

- In Denmark and Sweden non-competition undertakings have capped duration and the employee must be compensated for the restrictions.
- In Denmark, only specially trusted employees may be obliged (i.e. unilateral) by a non-competition clause and for both non-competition and non-solicitation clauses, the employees must be compensated for the obligation.
- In Finland all employees (including managerial employees), are protected against unjustified termination.
- In Sweden all employees (who are covered by the Swedish Employment Protection Act) are protected against unjustified termination notwithstanding the duration of the employment.
- In Denmark only salaried employees and employees covered by a CBA/DSEA are protected against unjustified termination, but only after the employees have been employed for respectively 9 months/1 year at the time of termination.
- In Finland, the employer is under no statutory obligation to make any severance payment to an employee. The same applies for Sweden, unless the company is bound by a CBA (which usually contain provisions regarding severance pay).
- In Denmark, salaried employees employed for 12 or 17 years are by law entitled to a severance payment of respectively 1 or 3 months additional pay.
- In Finland, overtime pay is regulated by law. In addition, most CBAs also contain provisions on overtime pay. In Denmark, overtime regulation is only evident from CBAs and not by law.
- In Finland, bonuses are not regulated by law. However, most CBAs provide holiday bonuses in addition to statutory holiday pay. In Denmark, the size and right to bonus is not regulated by law and neither by CBAs (only freedom of contract).
- It is not possible in Finland to disclaim CBA in the event of the transfer of a business. This is possible in Denmark.



Immigration

Across all three Nordic jurisdictions and the European Union (EU), citizens are, in accordance with the principle of free movement, not required to obtain residence and work permits in order to work in one of the other countries. The same is the case for citizens from the European Economic Area (EEA) (Iceland, Liechtenstein and Norway) and for Swiss citizens.

All citizens from outside the EU and EEA are, in contrast, required to obtain a residence and work permit in order to work within one of the three Nordic jurisdictions. There are several different schemes which apply for residence and work permits, depending on the type of job the applicant will perform. Below are some of the most common schemes across the Nordic jurisdictions:

Denmark

Scheme	Requirements
Positive List	Consists of a number of professions currently experiencing a shortage of qualified professionals.
Pay Limit Scheme	Requires a gross annual pay of no less than DKK 436,000 (2020-level), i.e. approx. EUR 58,100.
Fast Track Scheme	Enables certified companies to hire highly qualified foreign nationals on short notice.
Researchers	There must be particular reasons that the research should be carried out by the person in question.
Trainees	Requires that professional or labour market considerations warrant it.
Employees on movable oil rigs, drill ships etc	To work on an oil rig, drill ship or other comparable movable work station temporarily situated on Danish territory.
Start-up Scheme (self-employment)	An entrepreneur with an innovative business idea, which can contribute to growth and new employment in Denmark. Must be approved by the Danish Business Authority.

Finland

Scheme	Requirements
General scheme	The permit is usually granted for the professional field the job belongs to and the work cannot be started before a valid permit.
Specialists	Work tasks must require special expertise (e.g. IT specialists or top/middle management of a company); applicant must usually have a higher education degree; a salary must be higher than average (about EUR 3.000 per month). Applicants have a right to work for three months before the residence permit is granted, provided that they have a valid visa.
Researchers	The applicable scheme varies depending on the length of the stay and on whether the researcher has an invitation from, or a contract with, a Finnish institution.
Self-employed persons	The profitability of the business and the sufficiency of income to cover living expenses are evaluated in the application process.
Trainees	This scheme applies when the internship is a part of an agreement between states or of a non-governmental organisation's exchange programme.

Sweden

Unlike Denmark and Finland, there are no different types of schemes to apply for. However, certain occupations as well as citizens of certain countries are subject to special rules in relation to e.g. particular rights, enclosure of specific documents with the application and usage of different forms.

The occupations referred to above are: performer, au pair, berry picker, seasonal worker, visiting researcher, athlete or trainer, and trainees and for applicants of an EU Blue Card or an ICT permit.

Immigration fees

Denmark	Between EUR 200–450.
Finland	Between EUR 490–640.
Sweden	Between SEK 1500-2000 (SEK 750 for family members under 18 years old). Japanese citizens are exempt from fees.

Other requirements

Denmark

Regardless of the specific circumstances, the applicant must have a written job contract or job offer which specifies salary and employment conditions (which must correspond to Danish statutory standards).

The work application process normally consists of the following steps:

1. Before submitting the application, a Case Order ID must be created. This is ordered online.
2. Payment of a case processing fee (done in relation to ordering the Case Order ID)
3. Submit the application online
4. Have biometric features taken

The application process takes approximately 30–40 days from the time the biometric features have been provided.

Finland

Applications for a residence and work permits are filed with the Finnish Immigration Service.

The application can be submitted online or in paper format at a Finnish embassy or consulate; or if the person is already in Finland, this can be submitted at a service point of the Finnish Immigration Service. If the application is submitted online, the person needs to visit an embassy, consulate or Immigration Service for verification of the identity and presenting the original copies. The person will also be fingerprinted for a biometric residence permit card.

Processing time is usually at least four months.

Sweden

As a general rule, the permit must be applied for and granted before entering Sweden. The terms of employment for non-EU/EEA nationals must be on par with those of the Swedish collective bargaining agreements, or with the terms and conditions customary to the line of business in question.

Work/residence permits and business visas may be applied for at the Swedish Migration Agency's website, or at a Swedish embassy or consulate-general.

The work application process normally consists of the following steps:

1. The employer advertises the relevant position at the Swedish Public Employment Agency's (Sw. Arbetsförmedlingen) website.
2. The employer initiates the application process by creating an offer of employment and sending it to an applicable trade union for a statement regarding the terms and conditions of the employment.
3. The applicant may proceed with the application once the trade union has returned with the above statement.
4. When the application has been filed, the Swedish Migration Agency will start to process the application.
5. As a general rule the applicant must receive the work permit card before entering Sweden.

The processing time varies, but is currently 1–3 months for new permits and 5–7 months (2020) for renewal permits.

NOTE: Bird & Bird Sweden are part of the Swedish Migration Agency fast-track certification scheme, where work permit applications are processed faster, namely 10 working days for new permits and 20 working days for renewal permits.

Business visas

For short business visits to Denmark, Finland or Sweden, non-EU/EEA nationals may apply for a business visa.

Denmark

A business visa can be issued in connection with a business visit if there is a commercial relationship between the applicant's own company/organisation and the company/organisation in Denmark which the applicant wishes to visit.

Finland

The application process depends on the nationality of the person in question. A business visa may be applied for at a Finnish embassy or at a consulate operating under the Ministry for Foreign Affairs of Finland.

Sweden

The application must be submitted at a Swedish embassy or consulate-general and be granted prior to entering Sweden.

When a permit is not required

For all three jurisdictions the EU Residence Act applies. According to this Act a third-country citizen does not need to apply for a separate residence permit if the person is employed with a company established within the EU and is seconded from this company to Denmark, Sweden or Finland.

The employee must however have a permit that allows him/her to reside and work in the company's country (in EU), and these permits must be valid when the work in Denmark, Sweden or Finland is both initiated and finished.

In addition, some categories of person can be excluded from the requirement to apply for a residence and work permit in the three Nordic jurisdictions respectively depending on the position and situation.





Individual employee tax, social security and insurance

Denmark

There are two types of tax obligations in Denmark for individuals:

Full tax obligation – full tax liability is imposed on all worldwide income received by individuals resident or present in Denmark for 6 months or more

Limited tax obligation – limited tax liability is imposed on income derived from Denmark for individuals who are not resident in Denmark

In order to pay tax in Denmark, an employee needs:

1. to obtain a CPR number (civil registration number) or a personal tax number depending on how long the employee is staying;
2. a tax card;
3. a bank account - a so-called “NemKonto”; and
4. a “NemID”, which is a single login for Danish Internet banks and government websites.

In addition, a number of actions must be taken in relation to a termination of an employment, e.g. reporting and payment of holiday pay.

There are no requirements in Denmark for an employer to establish a legal entity (subsidiary) in Denmark, but if the employer has employees in Denmark, the employer is required to register with the Danish tax Authorities (“SKAT”).

If an employee stays in Denmark for more than 183 days within a 12-month period, he or she is liable to pay tax as a person subject to limited tax liability. The employee should apply for a “tax card” (“SKAT”).

The foreign company must be aware of whether, because of the employee’s employment, it gains permanent establishment in Denmark and thus is required to pay corporation tax on the profit attributed to Denmark.

Unlike the level of tax, the social contribution costs are some of the lowest in Europe. The social security costs for an employer include industrial injury insurance, social pension payments, and national health services, amounting to between DKK 6,000-12,000 per year.

The employee must make a labour market contribution of 8%, which is deducted from his or her gross salary. It is considered a part of the normal tax payment, so social security payment in the country of origin is still required.

Income taxation when working in Denmark is usually high compared to other European countries. However, individuals working on a temporary basis in Denmark have options to reduce the taxation significantly, among other ways by being covered by the so-called expat-taxation scheme.

Expat Taxation Scheme:

The Expat Taxation Scheme entails that researchers and highly-paid employees, who are recruited abroad, and who are able to meet a number of conditions, may choose to pay tax at a rate of 26%, plus labour market contributions of 8%, for a period of 60 months without deductions, instead of paying tax under the regular income taxation scheme.

It is possible to use the scheme for 5 years (60 months) at a tax rate of 26 per cent.

We recommend that you seek legal guidance to ensure whether the conditions are fulfilled, and to what extent the employee can be covered by the Expat Taxation Scheme.

When a company establishes an activity in Denmark or seconded employees to perform work in Denmark it is important to comply with all the rules and regulations. A company must especially be aware of the rules on tax and registration in the RUT register.

RUT-register

The Register of Foreign Service Providers (RUT) is the Danish government’s official register to report a foreign service. Foreign service providers (employees and self-employed) working in Denmark must register with the RUT. A foreign business must also register services provided in Denmark with the RUT, regardless of whether the work involves employees, and registration must be made no later than when work starts.

This registration is required in order to enable Danish authorities to ensure that Danish legislation relating to aspects such as working environment and tax information is observed by foreign companies. If a company violates the rules severely, for example by repeatedly avoiding the obligation to register, the company may have a fine of upwards of DKK 20,000 imposed upon them. Registration is made electronically.

Finland

Finnish resident employers are obliged to withhold income taxes from the employees' pay, to withhold social security contributions and the obligatory insurance premiums (pension, unemployment, accident insurance). Periodical and annual tax returns must be submitted to the Finnish Tax Administration via Incomes register on all wages and employee benefits paid. Finnish resident employers must also register as an employer with the Finnish Tax Administration.

Regarding foreign employers, the obligations depend on whether the foreign employer has a permanent establishment (PE) in Finland or not. Permanent establishments have the same employer liabilities as Finnish resident employers. If a PE does not exist, the branch only has to submit annual reports on the wages paid to the employees who are tax residents in Finland. Finnish tax-resident employees must seek for the tax card and prepay the income tax to the Finnish Tax Administration. Regardless of the PE status of the branch, the branch always has to procure the obligatory insurances to the employees working in Finland (pension, unemployment and accident insurance) and pay the insurance premiums to the insurance institutions. If the foreign employer does not have a PE status in Finland, it is not obliged to register as an employer with the Finnish Tax Administration.

Foreign employees who stay in Finland less than six months are generally considered to have a limited tax liability in Finland, meaning that those employees are only liable in Finland for income related to Finnish activity. Employees with limited tax liability can apply for a tax at source card from Finnish Tax Administration. Optionally, they can be taxed as an employee with unlimited tax liability subject to the progressive tax rate, but only for the Finnish source income.

Foreign employees who stay in Finland for more than 6 months are considered as generally tax liable in Finland. This means that they are taxed on all income received during their stay in Finland. However, many tax treaties may restrict Finland's right to tax, and provide an article for elimination of double taxation in these situations.

According to the Tax Treaty between Nordic Countries, a posted employee staying in Finland less than 183 days during a twelve month period will (starting/ending during the year in question) not be taxable in Finland if the salary is paid by or on behalf of the employer who is not resident in Finland, and if the salary paid does not encumber the foreign employer's PE. However, this provision in the Tax Treaty between Nordic Countries does not apply to the leased employees. They are considered liable to tax for the income earned in Finland from the very first day of their stay. In some tax treaties, the 183 days' rule may apply to the leased employees as well.

If a foreign employee moves to Finland permanently changing their state of residence, they will be considered generally tax liable in Finland from the very first day of their stay and will be taxed on all income received during their residence in Finland. However, the applicable tax treaty may restrict Finland's right to tax in this situation.

Employer liabilities

Finnish resident employers are liable for withholding taxes from the wages paid; for paying different social security charges; and the obligatory insurance premiums (pension, unemployment, accident insurance).

Finnish resident employers must submit periodical and annual tax returns on the wages paid.

PEs have the same employer liabilities as Finnish resident employers.

If a PE does not exist, the branch only has to submit annual reports on the wages paid to the employees, who are tax residents in Finland.

Regardless of the PE status of the branch, the branch always has to procure the obligatory insurances to the employees working in Finland (pension, unemployment and accident insurance).

Sweden

An employer will (as a general rule) be obliged to pay social security contributions on all salary and benefits paid out to its employee(s), and as a general rule where the employer is a foreign entity, the employer must register as an employer with the Swedish Tax Agency (Sw. skatteverket). This is done by way of submitting an application (including more detailed description of the intended activity in Sweden) to be registered as an employer with the Swedish Tax Agency. The company should also consider registering the company for VAT.

As a general rule, an employee is covered by the social insurance of the country in which they are employed. The employing entity paying compensation for the work in question is obliged to pay social security contributions in the country in which the work is performed. There are certain exceptions to this general rule, which may, among other, differ by virtue of the Regulation (EC) No 883/2004 on the coordination of social security systems as well as other conventions Sweden has signed with other countries.

An employee who works in Sweden but resides in another country, and will stay in Sweden for less than 180 days, may apply for a special income tax for non-residents, which reduces the tax from approximately 30% to 25%.

A seconded employee who works in Sweden for more than 183 days during a 12 month period will be taxed for all income they earn in Sweden.

An employer in Sweden needs to register as an employer with the Swedish Tax Agency.

An employer is obliged to make social security contributions on top of salary payments. The contributions amount to approximately 31.42% (2020). For certain age categories a reduced percentage rate may apply. Occupational pension contributions also give rise to reduced contributions, currently approximately 24.26% (2020). An employer must also make preliminary income tax deductions from an employee's salary.



Data Protection

When establishing a business in the Nordics it is necessary to consider the relevant rules on processing of personal data.

GDPR is directly applicable in each EU member state and sets out harmonised core principles and rules on data protection across all EU Member States. Each Nordic jurisdiction has legislation that “supplement” the EU General Data Protection Regulation (“GDPR”) which came into force 25 May 2018.

All businesses must therefore be able to comply with the rules set out in the GDPR in addition to those set out in national laws. For each Nordic country, the following set of laws has been passed as a supplement to the GDPR.

Denmark: The Danish Data Protection Act (“DDPA”) (“Databeskyttelsesloven”)

Finland: Finnish Data Protection Act (‘FDPA’)

Sweden: Swedish Data Protection Act (‘SDPA’)

The changes which have been ushered in by the GDPR from 25 May 2018 are substantial and ambitious. The GDPR is one of the most wide ranging pieces of legislation passed by the EU in recent years, and concepts to be introduced such as the ‘right to be forgotten’, data portability, data breach notification, both controllers and processors can be held responsible, the requirement to keep a record of processing activities, and accountability (to name only a few) will take some getting used to, and will require some effort from companies to become compliant. Even its legal medium – a regulation not a directive – makes the GDPR an unusual piece of legislation for data protection lawyers to analyse.

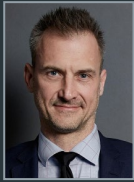
As national data protection authorities will have extensive investigative and corrective powers, including those to impose significant sanctions (a fine up to EUR 20 million, or 4 % of the group’s and data processors total worldwide annual turnover of the preceding financial year, whichever is highest) on data controllers, this demonstrates the importance of compliance with the new, stricter data protection rules.

Bird & Bird has extensive experience and knowledge of the data protection rules and has assisted many companies in their compliance projects. For your reference, we have compiled a guide to the General Data Protection Regulation which can be found here: <https://www.twobirds.com/-/media/pdfs/gdpr-pdfs/bird-bird-guide-to-the-general-data-protection-regulation.pdf?la=en>

Furthermore, please see our Nordic newsletter on the GDPR in detail which can be found here: <https://www.twobirds.com/en/news/articles/2017/global/the-gdpr-what-do-you-need-to-do-to-comply>



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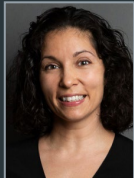


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