Appendix A: Legal sources

Industrial Agreement 2020-2023, between CO-industry and Danish Industry

General Part

As long as this Agreement is in force, none of the undersigned organisations or their members shall be entitled, individually or several of them jointly, to attempt by any means whatsoever, openly or secretly, to counteract the provisions of the Agreement or enforce any change therein.

The parties agree that where any future legislation might interfere with the decisions of the parties and any rights arising therefrom, the parties shall make a positive contribution towards restoring the original agreement to the extent it is technically and legally possible.

The organisations agree that respecting the observance of the Collective Agreement - the peace obligation - is a fundamental condition for the preservation of the collective agreement system.

Chapter II. Local agreements

Clause 8 Conclusion and termination of local agreements, etc.

Subclause (1): Local agreements may be entered into between the local parties at the enterprise in respect of employees covered by this Agreement.

Subclause (2): Local agreements, customs or regulations as well as agreements concerning pay, premiums, allowances, piecework and bonus systems may be terminated by either party giving to the other party two months' notice to expire at the end of a month unless a longer period of notice has been/will be agreed.

Chapter V. Pay conditions

The use of payment by time or incentive pay systems should be applied locally in a way which will promote to the greatest possible extent the productivity, competitiveness, and consequently also the employment opportunities, of the individual enterprise.

Clause 22 General time-rate provisions

(1) The minimum hourly pay rates for time-rate work shall be as follows:

As of 1 March 2020

- For adult employees DKK 122.15
- For employees under the age of 18 DKK 70.35

As of 1 March 2021

- For adult employees DKK 124.65
- For employees under the age of 18 DKK 71.80

As of 1 March 2022

- For adult employees DKK 127.15
- For employees under the age of 18 DK 73.20

(2) The pay of each employee shall be agreed in each individual case between the enterprise and the employee without interference from the organisations or their members.

The parties to the Agreement find it natural to include, for example, wage increases resulting from any increases in the Optional Pay Account in connection with local pay negotiations.

Negotiations concerning pay adjustments cannot take place more than once in every year covered by this Agreement, that is to say in the period from 1 March to 1 March.

(3) In cases where there is found to be a general disparity as regards pay, either organisation shall have a right to present a complaint to the other under the rules for handling industrial disagreements.

(4) In principle, the enterprise shall base the pay-rate variation on a systematic evaluation where due account is taken of, for example, the individual employee's competence, experience, training and effort in production. In addition, account shall be taken of the demands of the work on the employee, including any special nuisances connected with the performance of the work. The systematic evaluation may be made by means of a qualification pay system.

Clause 23 Supplementary pay systems

(1) Individual or collective agreements may be made concerning pay systems supplementing pay fixed according to clause 22.

Supplementary pay systems may include pay by results, bonuses, production premiums, performance-related pay, function pay, job bonuses, inconvenience allowances or a system based on team qualifications.

(2) Payment under supplementary pay systems cannot be changed more than once in any one year covered by this Agreement.

(3) Agreements on supplementary pay systems should be in writing.

(4) Unless otherwise agreed, collective agreements on supplementary pay systems may be terminated in accordance with clause 8. Unless otherwise agreed, individual agreements may be terminated at the notice of termination applying to the individual employee concerned.

(5) On discontinuation of the supplementary pay system the employee shall receive a pay fixed according to clause 22 and any other continuing supplementary allowances.

Statutory Act on Employees' Rights in the event of Transfers of Undertakings

Consolidated Act No. 710 of 20 August 2002

Section 1

(1) This act shall apply to any transfer of an undertaking, business, or part of an undertaking or business, that is situated within the territorial scope of the European Community.

(2) This act shall apply to public and private undertakings engaged in economic activities, regardless of whether they are operating for gain. An administrative reorganization or reorganization by law of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a transfer within the meaning of the act.

(3) This act applies to a transfer of an undertaking, business or part thereof, where the transferor is the subject of bankruptcy proceedings.

(4) This act does not apply to seagoing vessels.

Section 2

(1) If an undertaking, business or part thereof is transferred, the rights and obligations of the transferor existing on the date of transfer according to 1) collective agreements, 2) pay and working conditions approved by or enacted by public authority, and 3) individual agreement on pay and working conditions, are immediately transferred to the transferee.

(2) The provision in subsection (1) applies only to apprenticeships and internships under the vocational education schemes, if the transferee is approved as a vocational employer, or as a place for internships.

(3) Subsection (1) does not apply to the employees' right to old-age, disability or survivors' benefits.

Section 3

(1) The transfer of an undertaking, business or part thereof shall not in itself constitute grounds for dismissal by the transferor or the transferee, unless the dismissal takes place for economic, technical, or organizational reasons entailing changes in the workforce.

(2) If the employment is terminated by an employee because the transfer involves a substantial change in working conditions to the detriment of the employee, the employer shall be regarded as having been responsible for termination of the contract of employment.

Statutory Act on Equal Pay between men and women

Consolidation Act No. 156 of 22 February 2019

Section 1

(1) No discrimination on grounds of gender as regards pay may take place in violation of this Act. This applies to both direct and indirect discrimination.

(2) All employers must pay men and women equally, including providing equal pay conditions, for the same work or work given the same value. Especially when a professional classification system is used to determine pay, this system must be based on the same criteria for male and female employees and be structured so that discrimination on grounds of gender is ruled out.

(3) The assessment of the value of the work shall take place on the basis of a general assessment of relevant qualifications and other relevant factors.

(4) The provisions laid down in this Act shall not be applicable to the extent in which a similar obligation to offer equal pay is laid down in a collective agreement.

(5) The provisions laid down in section 5a shall not be applicable to the extent in which a similar obligation is laid down in a collective agreement.

Section 1a

(1) Direct discrimination shall be taken to occur when a person on grounds of gender is treated differently than another person is, has or would be treated in a corresponding situation. Any kind of lesser treatment of a woman in connection with pregnancy and during women's 14 weeks of leave after birth is considered direct discrimination.

(2) Indirect discrimination shall be taken to occur when an apparently neutral provision, criteria or practice places people of one gender at a disadvantage compared to members of the other gender, unless that provision, criteria or practice is appropriate and necessary and can be justified by objective factors and the means to achieve them are expedient and necessary.

(3) The concept of pay shall be taken to cover the normal basic or minimum pay and all other payments paid out to the employee by the employer because of the employment relationship, be it payment in cash or in kind.

(4) Harassment is taken to occur upon the exhibition of unwanted behaviour in relation to a person's gender for the purpose or to the effect of violating this person's dignity and create a threatening, hostile, demeaning, humiliating or unpleasant environment.

(5) Sexual harassment is taken to occur when any form of unwanted verbal, non-verbal or physical behaviour with a sexual undercurrent is exhibited for the purpose or the effect of violating a person's dignity, in particular by creating a threatening, hostile, demeaning, humiliating or unpleasant environment.

(6) Harassment and sexual harassment as well as inferior treatment based on a person's refusal or acceptance of such behaviour shall be considered discrimination on grounds of gender.

(7) An instruction to discriminate on grounds of gender shall be considered discrimination

Section 2

(1) An employee whose pay is lower than that of others in contravention of section 1 of this Act is entitled to the difference.

(2) An employee whose rights have been violated as a result of gender-based wage differentiation may be awarded compensation. When determining the size of the compensation, the length of employment and the individual circumstances of the case will be taken into consideration.

Section 3

(1) An employer shall not be allowed to dismiss or treat an employee, including an employee representative, in an unfavourable manner as the reaction to a complaint or because the employee or the employee representative has put forward a claim for equal pay, or because he or she has passed on information regarding pay. An employer may not dismiss an employee or an employee representative because he or she has put forward a claim under section 5a (1).

(2) It is incumbent upon the employer to prove that a dismissal has not been made in violation of the rules laid down in (1). If the dismissal happens more than one year after the employee has made a demand for equal pay, (1) only applies if the employee can demonstrate actual circumstances that give reason to assume that the dismissal has happened in violation of (1).

(3) A dismissal that has occurred in violation of the rules laid down in (1) shall be made invalid upon claim therefore, unless in special cases in which it is, after an evaluation of the interests of the parties, considered obviously unfair to demand that the employment relationship remains or is restored. Instead, a dismissed employee may claim compensation. The size of the compensation shall be determined in consideration of the length of the employment relationship as well as the matters of the case in general.

Section 4

(1) Section 3 shall apply correspondingly to sectors covered by collective agreements under which the employees are entitled to equal pay, including equal pay conditions, but which do not have rules on compensation in connection with a dismissal which is not reasonably justified by circumstances of the employee or the enterprise. The claim shall be reviewed under the special procedures for settlement of industrial disputes.

Section 6

(1) An employee who finds that the employer does not comply with the duty to offer equal pay, including equal pay conditions under the Act may bring legal action to establish the claim.

(2) Where a person who finds that he or she has been discriminated against under section 1 establishes facts which give cause for presuming that direct or indirect discrimination has taken place, it is incumbent on the other party to prove that the principle of equal treatment has not been violated.

Statutory Act on Equal Treatment of Men and Women with regards to Employment

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Consolidation Act No. 734 of 28 June 2006

Section 1

In the understanding of this act equal treatment of men and women refers to non-discrimination on grounds of gender. This applies to both direct and indirect discrimination, particularly with reference to pregnancy or marital or family status.

(2) Direct discrimination shall be taken to occur when a person on grounds of gender is treated differently than another person is, has or would be treated in a corresponding situation. Any kind of lesser treatment of a woman in connection with pregnancy and during women's 14 weeks of leave after birth is considered direct discrimination.

(3) Indirect discrimination shall be taken to occur when an apparently neutral provision, criteria or practice places people of one gender at a disadvantage compared to members of the other gender, unless that provision, criteria or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

(4) Harassment as defined in subsection (5) and sexual harassment as defined in subsection (6) is considered discrimination on grounds of gender and is prohibited. A person's rejection of or submission to such conduct may not be used as grounds for a decision, which affects that person.

(5) Harassment is taken to occur upon the exhibition of unwanted behaviour in relation to a person's gender for the purpose or to the effect of violating this person's dignity and create a threatening, hostile, demeaning, humiliating or unpleasant environment.

(6) Sexual harassment is taken to occur when any form of unwanted verbal, non-verbal or physical behaviour with a sexual undercurrent is exhibited for the purpose or the effect of violating a person's dignity, in particular by creating a threatening, hostile, demeaning, humiliating or unpleasant environment.

(7) An instruction to discriminate on grounds of gender shall be considered discrimination.

(8) The Act does not hinder provisions protecting women in particular in relation to pregnancy and childbirth, cf. chapter 3.

(9) The Act does not apply to the extent that a similar duty of equal treatment is provided in a collective agreement.

Section 2

Any employer must treat men and women equally with regards to access to employment, relocations and promotions.

Section 4

Any employer, who employs men and women, must treat them equally with regards to working conditions. This includes dismissals.

Section 14

Persons, whose rights have been violated by breach of sections 2-5 can be awarded a compensation.

Section 15

An employee, including an employee representative, who is dismissed or is subject to other unfavorable treatment as a reaction to a claim for equal treatment according to sections 2-4, can be awarded a compensation from the employer.

Section 16a

Where a person, who finds that he or she has been discriminated against, cf. sections 2-5, 9 and section 15(1), establishes facts, from which it may be presumed that direct or indirect discrimination has taken place, it shall be for the respondent to prove that the principle of equal treatment has not been violated.

Law of the Danes of King Christian V

Law of the Danes by King Christian V, 15 April 1683

Third book, 19th Chapter, section 2 (3-19-2)

If a Master gives his Servant, or another, Authority to on his Behalf perform something, then the Master should himself answer for offenses in that regard by the one, that has received the Authority, and of him again seek Redress.

Statutory Act on Occupational Health and Safety

Consolidated Act No. 2062 of 16 November 2021

Section 1

This Act strives to create a

1) safe and healthy physical and psychological working environment, that at any time corresponds to the technical and social development of society, and

2) basis in order for the companies to solve questions of health- and safety by themselves with guidance from the labour market organisations and guidance and control by the Danish Working Environment Authority.

Statutory Act on a Labour Court and Industrial Arbitration

Statutory Act no. 106 of 26 February 2008.

Part 1, The Labour Court

Section 1

(1) The jurisdiction of the Labour Court covers the consideration and settlement of the cases referred to in section 9.

(2) The Court has its seat in Copenhagen, but may be opened elsewhere in the country if deemed appropriate.

Section 9

(1) The Labour Court hears cases dealing with

1. breach and interpretation of a basic agreement adopted by the Confederation of Danish Employers and the Danish Confederation of Trade Unions and of the corresponding industry-wide/sectoral and basic agreements between the central organisations,
2. breach of collective agreements regarding salary or labour matters,
   the lawfulness of collective industrial actions for which a notice has been issued and of notices issued in this connection where the central organisation of a party or a party that is not a member of an organisation has submitted an objection to the organisation or individual enterprise in question against

3. the lawfulness of such industrial action or notice by registered letter within five days of receiving the notice whose formal or material lawfulness is the subject of the objection,
4. whether a collective agreement has been concluded,
5. the lawfulness of using collective industrial actions in support of a demand for a collective agreement in areas where no collective agreement has been concluded
6. disputes regarding the competence of the official conciliators,
7. disputes as to whether an agreement on industrial arbitration has been concluded, and regarding the interpretation of agreements on industrial arbitration, and
8. refusal comprised by section 32.

(4) In addition to the cases mentioned in subsection 1, cases involving disagreements between employers and employees may be brought before the Labour Court if the Court gives its approval, and the relevant employers' and labour organisations, or an individual enterprise and a labour organisation have concluded an agreement to that effect.

Part 2, Industrial arbitration

Section 21

The following cases can be submitted to industrial arbitration:

1. cases dealing with the interpretation and understanding of collective agreements, apart from basic agreements and industry-wide/sectoral agreements, cf. section 9(1) (no. i),
2. cases comprised by section 9(1) (nos. 1-4), when the parties have agreed by a collective agreement, according to practice or in an individual case, that the case is to be settled by industrial arbitration, cf. section 9(3) (no. 2), and
3. cases, including cases dealing with legislative issues, that the parties have agreed by a collective agreement, according to practice or in an individual case to have settled by industrial arbitration.
4. (…)

Section 24

(1) The industrial tribunal can try a case submitted pursuant to section 21, even though decisions on legislative issues are of importance for the outcome of the case.

(2) In cases brought before the Court pursuant to Section 21 (no. 2) the industrial arbitration tribunal may impose sanctions for breach of a collective agreement pursuant to the rules of section 12.

(3) To the extent it is prescribed by Community law provisions on reference by national courts of preliminary questions to the European Court of Justice, such reference may or must, respectively, be made by an industrial arbitration tribunal.