New Landmark Decisions: Part-Time Employees Entitled to Overtime Pay at an Earlier Stage

Many companies may face claims for back pay, and existing collective agreements may be incompatible with EU law.

Two new, precedent-setting labour arbitration awards significantly change the rules for part-time employees. The decisions establish that employers have engaged in unlawful discrimination where part-time employees, unlike full-time employees within the same company or collective bargaining area, have not received overtime pay for hours worked beyond their agreed working hours and up to the full-time threshold.

In practice, many part-time employees occasionally work more hours than agreed, yet still fewer than the normal full-time working time, typically 37 hours per week. The question in the cases was whether these additional hours should trigger ordinary hourly pay or overtime compensation.

The rulings also emphasise that part-time employees who have been subject to such unequal treatment may be entitled to retroactive payment.

Current Collective Agreements in Breach of EU Law

The decisions conclude that established practices under several major private-sector collective agreements (including those in the industrial sector) as well as in the public sector are incompatible with the EU Part-Time Work Directive. Until now, Danish practice under collective agreements has been that part-time employees only became entitled to overtime pay once they exceeded the full-time threshold. This approach can no longer be maintained, according to three Supreme Court justices who decided the two landmark labour arbitration cases, one concerning the private labour market and one the public sector.

The rulings confirm that part-time employees must receive the same overtime compensation as their full-time colleagues where the company or collective bargaining area already provides overtime pay for hours worked beyond agreed working time. Employers may depart from this principle only if objective grounds lawfully justify the differential treatment. In the cases at hand, the judges rejected considerations relating to financial impact and occupational health and safety as such objective grounds.

Potential Claims for Back Pay

The decisions overturn a long-standing Danish practice and immediately raise the issue of retroactive compensation. The labour arbitration tribunals therefore also determined that part-time employees who have been subjected to discrimination since 2001 onwards may have claims for back payment of unpaid overtime. This gives affected employees the opportunity to pursue retroactive claims.

Whether, and to what extent, employees may successfully claim back pay will depend, among other things, on the applicable statutory limitation periods in the individual case and any specific time limits contained in relevant collective agreements.

What Should Employers Do Now?

The new decisions provide strong grounds for an immediate review of collective bargaining arrangements, employment contracts, HR policies and existing practices concerning overtime pay for part-time employees. The current arrangements may conflict with EU law and require adjustment, both prospectively and in relation to potential historical claims.

At NJORD, we note that the decisions stem from an agreement reached during the collective bargaining negotiations for OK2025. The parties agreed to establish a labour arbitration tribunal to assess whether the collective agreements were contrary to the Part-Time Work Directive. NJORD expects that the landmark outcome will give rise to cases involving claims for retroactive payment.

NJORD stands ready to assist with legal reviews and the management of collective agreements and employment contracts, assessments of potential back-pay exposure, and the drafting or revision of policies and practices relating to part-time employees and overtime compensation.

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