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# COVID-19 and Labour Law: Denmark

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Update: 22 June 2020

### Abstract

In Denmark, the Corona-virus pandemic led to a lock-down of society, where schools and shops were closed and many employees were sent home to work. As of 15 April 2020, a gradual re-opening of society begun and is still on-going. The Government has adopted several measures aiming to mitigate the economic consequences for businesses, especially in respect of redundancies, both via statutory legislation and tripartite agreements. Many measures have been extended during the re-opening of society.

**Keywords:** Covid-19; Labour law; Tripartite agreements; State funded compensations; Digital work; Online re-training; Re-allocation of workers; Unemployment benefits.

## 1. General Framework.

### 1.1. Lock-down of society on 10 March 2020

Albeit not explicitly defined as a national health emergency, the Danish government has adopted numerous restrictive measures in order to flatten the curve of the coronavirus pandemic.

The society was locked down on 10 March 2020. The lock-down included closing of schools, public childcare services, universities, cultural institutions, restaurants, cafes, shopping malls, hairdressers, and the borders. Supermarkets and pharmacies remained open. Public gatherings of more than 10 people were prohibited. All schools and educations continued on-line, no classes were cancelled. All non-essential public employees were sent home to work. Private employers were strongly encouraged to send their employees home to work, or to let them take time off in lieu or take outstanding holidays. All health recommendations were to a very large degree adhered to by society. The measures taken resulted in the spread of Covid-19 virus being very slow. The development in the numbers of critically ill or dead persons due to Covid-19 were similarly low.

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## 1.2. Gradual re-opening of society on 15 April 2020

On the basis of health data, the Government decided to lift certain restrictions as of 15 April 2020. The re-opening of society has been divided into four phases, but some restrictions have been lifted earlier than planned due to good health figures. The Government continues to base its decisions on a principle of caution. The number of infected persons as well as critically ill or dead persons due to Covid-19 virus have remained very low during the re-opening.

The first phase of the partial opening of society applied to all childcare services, schools (up to age 11), and persons in vulnerable circumstances. Private employees were able to report physically to work on 14 April 2020. Phase one was extended to allow liberal professions such as hairdressers, dentists and psychologists to open on 20 April 2020.

The second phase entailed that the retail industry, including shopping malls, was allowed to open on 11 May 2020. Cafes and restaurants were allowed to serve customers as of 18 May 2020 with certain restrictions on opening hours, distance requirements, etc. Furthermore, this phase included e.g. the opening of schools (from age 11), education and exams that require physical attendance, professional athletics without audience, loan of books from libraries.

Phase two were later extended to include a wider opening of society as of 27 May 2020, including cultural activities such as museums, zoos and cinemas, high schools, outdoor community activities, etc. The physical presence in the public sector was allowed in three out of five regions, due to the enlarged infection pressure in the capital area.

As part of phase three, indoor community activities and training facilities such as gyms and swimming pools were allowed to open on 8 June 2020. Phase four is expected to include e.g. nightlife services such as discotheques and bars. All re-openings have been contingent upon due care and diligent observance of health guidelines.

The prohibition of public gatherings of more than 10 people is lifted gradually, from 8 June 2020 to 50 persons. The restriction does not limit the civil and political rights in the Danish Constitution, i.e. gatherings with a political view are not restricted. The general restriction is lifted to 100 people on 8 July 2020 and for some events to 200 people on 8 August 2020.

The Danish borders since 15 June 2020 open to tourists from Norway, Germany and Iceland, while they remain closed to tourists from other countries, including Sweden. Tourists to Denmark must document booking of at least six nights in Denmark in areas outside the larger cities such as Copenhagen and Aarhus. The recommendations for travel to other countries from Denmark have been relaxed. As of 27 June, Danish travelers are not met with a requirement of quarantine after travelling to any country, if the country fulfills certain criteria, inter alia that the number of persons per week with COVID-19 should be less than 20 per 100.000 citizens. As at June 19, only Sweden and Portugal does not meet these criteria.

The first phase of the re-opening was decided solely by the Government, keeping a tight grip on information, based on recommendations from health authorities. The next phases have been made subject to negotiations with the Parliament and has largely been a question

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of political priorities and key issues. In turn, health authorities are drawing up health and safety guidelines for the re-opening in collaboration with sector partners. The closing of and partial re-opening of the Danish borders also rests mainly on political decision-making.

By use of emergency legislative procedures, the Parliament has adopted several acts, as well as tripartite agreements, providing different measures aiming to mitigate the consequences of the covid-19 crisis, especially redundancies. In connection with re-opening of society, new measures have arisen, whereas other measures are slowly phased out.

## 2. Emergency measures.

### 2.1. Effects of interruption of business operations on employment.

In order to avoid large-scale redundancies, a Tripartite Agreement of 14 March 2020 was concluded between the Government, the Danish Confederation of Trade Unions (FH) and the Danish Employers' Confederation (DA)<sup>1</sup>. It provides a *state financed temporary salary compensation scheme* to employers with risk of large-scale redundancies. For employees at risk of redundancy, the state pays the employer 75 per cent of the monthly salary, maximum 30,000 DKK (approx. 4,000 EUR), for every full-time employee. For employees paid per hour, the state compensation is 90 per cent, but maximum 30,000 DKK. Employees must take 5 days of outstanding holidays and/or time off in lieu during the initial salary compensation period. In return, the employee cannot be terminated.

The salary compensation scheme has been extended and will as a main rule cease on 29 August 2020.<sup>2</sup> It is a requirement that employees take three weeks of vacation during the summer period, where companies will not receive any compensation from the state.

In order to avoid redundancies in the service-, tourism-, hotel- and restaurant-industry, a number of new *30-day-online-retraining-course* has been established<sup>3</sup>. The course is full-time and is available to employed skilled and unskilled workers as an alternative to not working or being dismissed. The upgrading courses are established in collaboration between the largest union United Federation of Workers (3F), the Employers' Organization for the Restaurant, Hotel and Tourism Industry (Horesta), and the Ministry of Employment. Employers pay the course fee and salaries to the employees. Salaries are reimbursed with up to 100% from state and union funds. Subsequently, other industries have adopted similar models of online courses upgrading the skills of employees during the Covid-19 crisis.

There has been a strong focus on the *taking of holidays during the lock-down*. For private employees, taking of 5 holiday days is part of the salary compensation scheme mentioned above. For public employees, a Tripartite Agreement was concluded on 27 March 2020,

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<sup>1</sup> [https://bm.dk/media/12873/trepartsaftale\\_corona.pdf](https://bm.dk/media/12873/trepartsaftale_corona.pdf). Act L141 of 24 March 2020: [https://www.ft.dk/ripdf/samling/20191/lovforslag/l141/20191\\_l141\\_som\\_vedtaget.pdf](https://www.ft.dk/ripdf/samling/20191/lovforslag/l141/20191_l141_som_vedtaget.pdf).

<sup>2</sup> <https://bm.dk/media/13907/aftale-om-gradvis-udfasning-af-den-midlertidige-loenkompenationsordning.pdf>.

<sup>3</sup> <https://bm.dk/nyheder-presse/pressemeddelelser/2020/03/ny-mulighed-for-opkvalificering-frem-for-afskedigelse-af-medarbejdere-i-service-og-restaurationsbranchen-under-corona-krisen/>.

which entails that all public employees that fully or partially do not perform work during the period 28 March – 13 April 2020 must take remaining holidays (*restferie*) or time off in lieu for up to five days<sup>4</sup>.

In order to avoid redundancies and as an income support, the Government has introduced *more flexibility with supplementing unemployment benefits*<sup>5</sup>. According to existing collective agreements, employers can - in periods with lack of work – choose to distribute available work between all employees rather than dismissing employees. Part-time employees are entitled to receive supplementing unemployment benefits in the interim period. Companies may now put a distribution of work scheme into effect immediately upon giving notice to the Jobcenter.

As an income support measure, the Parliament has decided to *extend the use of unemployment benefits*, with the effect that unemployment benefits received during the covid-19 crisis do not count as ‘used’, and the total period of three months is extended accordingly<sup>6</sup>. Unemployment insurance benefits are conditional upon membership of an Unemployment Insurance Fund (voluntary membership).

The Government has decided to *increase financial support to employment initiatives for redundant persons*. The redundancy fund (*varslingspuljen*) assist employees, who are made redundant as part of collective redundancies, with targeted efforts. The fund is increased with 10 million DKK (approx. 1,340,000 EUR)<sup>7</sup>.

Finally, a number of measures has specifically been targeted at *sick leave benefits*. The employer paid benefits during sick leaves relating to Covid-19 virus has been transferred to be paid by the Municipality, and the overall period of right to sick leave benefits is extended with 3 months<sup>8</sup>.

## 2.2. Health and Safety.

The National Health Service (*Sundhedsstyrelsen*) have issued guidelines, which includes *social distancing, hand hygiene and cleaning standards*. These apply to all workplaces. Specific guidelines have also been drafted for employers and managers<sup>9</sup>.

During the lock-down many public and private employees worked from home, and, thus, the *use of remote work* was prevalent throughout the community. The Danish society is very digital, and e.g. all schools and universities continued teaching and education online.

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<sup>4</sup> <https://www.medst.dk/media/4515/aftale-om-visse-ansattelsesmaessige-forhold-om-afvikling-af-frihed-i-forbindelse-med-covid-19.pdf>.

<sup>5</sup> Employment Ministry information, 13 March 2020: <https://star.dk/til-virksomheder/arbejdsfordeling-som-alternativ-til-afskedigelse/>.

<sup>6</sup> [https://www.ft.dk/ripdf/samling/20191/lovforslag/1142/20191\\_1142\\_som\\_vedtaget.pdf](https://www.ft.dk/ripdf/samling/20191/lovforslag/1142/20191_1142_som_vedtaget.pdf).

<sup>7</sup> Governmental Fact Sheet, 12 March 2020: <https://bm.dk/media/12861/faktaark-om-varslingspuljen.pdf>.

<sup>8</sup> Act no. 135 of 17 March 2020:

[https://www.ft.dk/ripdf/samling/20191/lovforslag/1135/20191\\_1135\\_som\\_vedtaget.pdf](https://www.ft.dk/ripdf/samling/20191/lovforslag/1135/20191_1135_som_vedtaget.pdf). Act no. 275 of 26 March 2020: <https://www.retsinformation.dk/Forms/R0710.aspx?id=213710>.

<sup>9</sup> <https://www.sst.dk/-/media/Udgivelser/2020/Corona/Informationsmateriale/SST-Covid-19-Gode-raad-arbejdsgivere.ashx?la=da&hash=91E7B4C9BDBBCDCD37BE527A9E82272F5D82D626>.

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### 2.3. Childcare.

In connection with the closing of schools and public childcare services, *emergency daycare services* were established<sup>10</sup>. This service was available to children between the age of 0 and 9 years, whose parents were not sent home to work, i.e. public employees in essential functions, or private employees not working from home. The emergency daycare service was available also to special needs children.

Schooling for children aged 6 and up continued online from their private homes. All homes have private digital devices or were on loan from the schools. Teachers communicated online and organized online learning activities in all topics for all children.

Childcare services were first in line, when society was re-opened.

### 2.4. Particularly vulnerable persons.

In connection with re-opening of society, some were *particularly vulnerable employees*, as they are at risk of serious complications if contracting covid-19. The solution was to offer protection through sick leave benefits. The Parliament has adopted an Act that allows for particularly vulnerable employees and their close relatives to stay home from work during re-opening of society, while receiving pay or sick leave benefits.<sup>11</sup> The scheme currently ceases on 1 September 2020. The Danish Health Authority has also issued guidelines on ensuring safe work for such particularly vulnerable employees<sup>12</sup>.

Other groups may also be characterized particularly vulnerable (for financial reasons) in connection with lock-down of society.

For self-employed and freelancers, a temporary *compensation scheme for lost revenue* has been adopted by the Parliament<sup>13</sup>. Companies, that expect to incur a loss in revenue of at least 30 per cent, may apply for compensation amounting to 75 per cent of the expected loss in revenue, but maximum 23.000 DKK (3,080 EUR) per month (per person, if there are several owners).

In addition, the payment of *premiums for sick leave benefit insurance* for self-employed persons is delayed for three months<sup>14</sup>. Self-employed persons can take out voluntary additional sick leave insurance, which allows them to receive reimbursement of sick leave benefits from day 1 or 3, rather than from day 15.

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<sup>10</sup> Ministerial Order, no. 217 of 17 March 2020: <https://www.retsinformation.dk/eli/lta/2020/217>.

<sup>11</sup> Act no. 190 of 20 May 2020:

[https://www.ft.dk/ripdf/samling/20191/lovforslag/1190/20191\\_1190\\_som\\_vedtaget.pdf](https://www.ft.dk/ripdf/samling/20191/lovforslag/1190/20191_1190_som_vedtaget.pdf).

<sup>12</sup> [https://www.sst.dk/-/media/Udgivelser/2020/Corona/Notat-frontpersonale-s%C3%A5rbare/SST-notat-frontpersonale-i-saerlig-risikogruppe\\_15\\_03\\_20.ashx?la=da&hash=F93C1CF738367EFDABC2E8A3F685698971C31070](https://www.sst.dk/-/media/Udgivelser/2020/Corona/Notat-frontpersonale-s%C3%A5rbare/SST-notat-frontpersonale-i-saerlig-risikogruppe_15_03_20.ashx?la=da&hash=F93C1CF738367EFDABC2E8A3F685698971C31070)

<sup>13</sup> Agreement, 19 March 2020:

[file:///C:/Users/AU231538/Downloads/Aftale%20om%20COVID\\_19\\_initiativer.pdf](file:///C:/Users/AU231538/Downloads/Aftale%20om%20COVID_19_initiativer.pdf).

<sup>14</sup> Amendment of Executive Order on Sick Leave Benefit Insurance for Self-employed: <https://www.retsinformation.dk/Forms/R0710.aspx?id=213587>.

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Trainees, who attend *work placements within vocational educations*, are at risk of not getting workplaces and not finish their education due to the financial situation of many companies. A Tripartite Agreement between the Government, the Danish Confederation of Trade Unions (FH) and the Danish Employers' Confederation (DA) allocates a sum of 5,4 billion DKK (approx. 724,000,000 EUR) to various measures in this regard, e.g. salary compensation to companies that employ trainees.<sup>15</sup> The scheme is funded by means in AUB, which is an employer's reimbursement system.

Self-employed, that are not registered in the Central Business Register, may also apply for a compensation of 75 per cent of lost income, but maximum 23.000 DKK. It is yet unclear, whether zero-hour employment contracts are covered by this scheme.

There have been no specialised compensation schemes for persons in other forms of non-standard employment, part-time workers, fixed-term workers and temporary agency workers are covered by the salary compensation schemes at the same level as workers employed on standard terms. The normal legislation protecting against unequal treatment in these situations is not changed during covid-19 crisis. Likewise, there have been no special measures to enforce or increase the protection of persons in risk of being discriminated in grounds of gender, race or colour, age, disability, religion, sexual orientation, political views, or national, social or ethnic origin, as the measures in place are upheld to the same degree as in normal times. Covid-19 measures do not relax the protections against discrimination, and did not give employers more margin to discriminate in situations of dismissals. Whether these protective measures have been sufficient in reality, remains to be seen.

These different schemes have been drafted and amended on an on-going basis since the lock-down of society. When media, interest groups, etc. have raised awareness about gaps or unintended effects, schemes have been amended in more instances. Furthermore, re-opening of society revealed a necessity for protecting particularly vulnerable workers from exposing themselves to risk of infection.

## 2.5. Whistleblower scheme

The Parliament has adopted a whistleblower scheme specifically to avoid fraud with the state financed emergency measures in connection with Covid-19 pandemic.<sup>16</sup> The scheme allows for anonymity of the informant due to the extraordinary situation and large sums involved, which is not otherwise possible according to Danish law. The Act also prohibits any detrimental treatment of employees, who have made use of the whistleblower scheme, and provides legal basis for economic compensation in case of unlawful actions of the employer.

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<sup>15</sup> <https://bm.dk/media/13865/trepartsaftale-om-ekstraordinaer-hjaelp-til-elever-og-laerlinge-samt-virksomheder-aub.pdf>.

<sup>16</sup> Act no. 198 of 4 June 2020:

[https://www.ft.dk/ripdf/samling/20191/lovforslag/l198/20191\\_l198\\_som\\_vedtaget.pdf](https://www.ft.dk/ripdf/samling/20191/lovforslag/l198/20191_l198_som_vedtaget.pdf).

## 2.6. Re-allocation of public employees

A Tripartite Agreement between the Municipalities and the negotiation group for public employees (*Forhandlingsfællesskabet*) allows for *re-allocation of public employees*<sup>17</sup>. Public employees, who are sent home, can be re-trained and re-allocated to assist with caring for children, the elderly, the disabled, those with special needs, and in health-care.

## 3. The role played by Social Partners

Following the lock-down, the Government has adopted several help packages to Danish companies, employees, self-employed and others. The Social Partners have played a substantial role in the design of the measures taken.

Tripartite Agreements have been struck at both the private labour market (salary compensation scheme, trainee's work placement agreement) and the public labour market (taking of holidays during lock-down, re-allocation of public employees to care functions). Furthermore, the model of offering online retraining courses to workers at home is a result of an industry level collaboration, and it is now being adopted in other industries.

Some tripartite agreements have been followed up by legislative Acts.

In general, labour market matters in Denmark are under normal circumstances built on a very collaborative spirit between the Government and Social Partners. Social Partners are typically involved in labour market legislation. In connection with the Covid-19 pandemic, the adoption of emergency measures has largely continued in this collaborative spirit. In connection with the Covid-19 pandemic, the adoption of emergency measures has largely continued in this collaborative spirit. Both in the form of large-scale tripartite agreements and in small-scale sector development and implementation of health guidelines in connection with the re-opening of society. So far, there does not seem to be a tendency for the Government to "seize" more decision-making power in labour market issues than what is necessary in connection with this extraordinary situation. The government even in times of extreme crisis chose collaboration and consultation with the social partners as the avenue for finding innovative solutions, that took into consideration the aspects of both workers and employers. Both in the form of large-scale tripartite agreements and in small-scale sector development and implementation of health guidelines in connection with the re-opening of society.

The collaborative method still is the preferred manner of legislating for the labour market, and during the Covid-19 crisis the government chose to continue and enforce this legislative method built on collaboration with the social partners. It could be suggested, that because of the very visible role in shaping and negotiating the help packages and tripartite agreements, the general contributions of the social partners to achieve good viable solutions for both companies and workers in society, may be even more visible. And the visible and constructive

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<sup>17</sup> [https://www.kl.dk/media/23794/faelleserklaering-coronavirus\\_stor-gensidig-fleksibilitet-hurtighed-og-vilje-til-at-finde-smidige-loesninger-centralt-og-lokalt.pdf](https://www.kl.dk/media/23794/faelleserklaering-coronavirus_stor-gensidig-fleksibilitet-hurtighed-og-vilje-til-at-finde-smidige-loesninger-centralt-og-lokalt.pdf)

contributions of the social partners during the COVID-19 period, fully engaging in actively mitigating the consequences for companies and workers alongside the government, may underline the essential role of social partners in society particularly in times of extreme crisis with unknown economic consequences for both businesses and workers.

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