

Religion in the workplace in the Nordic countries

Introduction

Religious diversity in the workplace is common in the Nordic countries* and working life mirrors the diversity of the population.

In the Nordic countries, there are few rules that specifically regulate religion in the workplace. Most norms and practices spring out of the fundamental right to freedom of religion, the prohibition against discrimination on the grounds of religion and a general obligation of the employer to take into account individual circumstances in the organization and arrangement of work. Employers and employees have been encouraged to find pragmatic solutions to the different needs that arise from religious diversity without resorting to rigid rules. However, due to increased immigration and globalization in recent years, issues related to religion in the workplace have become more common.

Fundamental principles

Freedom of religion is protected under the constitutions of all four Nordic countries. Law prohibits direct and indirect discrimination and harassment in the workplace on the grounds of religion or belief. As a general rule, differential treatment on the grounds of religion is only permitted if it is necessary to achieve a legitimate aim and does not involve a disproportionate intervention. All employers and employee organizations

are required to make active, targeted and systematic efforts to promote equality and prevent discrimination based on religion or belief.

Religious holidays

Most public holidays in the Nordic countries are founded on or linked to Christianity, but employees' rights in connection with public holidays apply irrespective of religion or belief.

In general, holiday legislation in the Nordic countries gives the employer the right to decide when an employee may take his or her holidays. The employer is not obliged to take account of the employee's religious beliefs when determining holidays or to grant holidays to enable the employee to practice his or her religion if this would inconvenience the employer. However, the employer must not discriminate on the grounds of religion and may not grant holidays to enable some employees to practice their religion and not others, unless there are objective and justifiable grounds.

In Norway, employees who do not belong to the Norwegian Church have the right to take up to two days' leave each year in order to observe holidays of their religion. Employees can be required to work an equivalent number of hours on other days to compensate for these days of leave. Additional leave in excess of these two days that cannot be taken within the scope

of statutory holidays is only permitted with the employer's consent. In deciding whether to grant leave, the employer must not discriminate on religious or other illegitimate grounds.

Right to pray during working hours

In all of the Nordic countries, freedom of religion means that all persons have the right to have and practice a religion, but this does not necessarily mean that employees are entitled to practice their religion during working hours. Further, the right of employees to practice a religion must take place within the scope of applicable employment regulations.

In Sweden and Norway, employers are not required to facilitate religious practice in the workplace by providing prayer rooms, and employees are not entitled to time off to pray. Any facilitation of religious practice in the workplace is at the discretion of the employer. However, the employer may not facilitate the practice of religion for some employees and not others.

In Denmark, there is no right to pray during working hours unless this is agreed with the employer. Where agreement exists, the employee's working hours are extended to compensate for breaks for religious prayers. However, the employer is not entitled to decide how the employees spend their entitled breaks, whether these

*Nordic countries in this document refers to Sweden, Denmark, Norway and Finland.

are determined by statute, collective bargaining agreement, local agreement or company policy.

The Danish courts have held that if the employer has agreed to allow prayers during working hours, the employer can also decide where the employees can pray. The decision must not be discriminatory. Although it is not a requirement, some Danish companies with large workforces have installed designated prayer rooms for employees whose religion requires daily prayers.

In Finland, the National Discrimination Tribunal has held that the employer can prohibit prayers in a common recreation room shared with other employees on the grounds that this would contravene the constitutional right not to participate in religious practice against a person's will.

Religious clothing and symbols

None of the Nordic countries prohibit religious clothing and symbols in the workplace in general, but prohibitions may be imposed on objective and non-discriminatory grounds.

If the employer has a policy regarding headwear or religious symbols, the policy should be clear and not go beyond what is necessary. The policy should be enforced consistently in order to ensure equal treatment of all employees.

In Finland, for example, an employer had banned the use of headscarves at the workplace. The district court ruled in favour of the employee because the employer did not have a firm-wide ban on religious symbols and could not provide an adequate reason for the ban.

In Denmark, a Supreme Court judgement from 2005 held that an employer may legally enforce company policies that forbid employees to use headwear, including religious headwear, at work if the prohibition is grounded in the company's objective and reasoned with a wish to appear neutral with regard to religious beliefs, political or philosophical orientation etc. Two recent rulings from the European Court of Justice have confirmed the legal position in Denmark.

There have also been several cases regarding religious headwear in Sweden and Norway. The current position is that an employer cannot refuse an employee to wear religious headwear unless the refusal is justified in the particular circumstances, such as in order to protect the health or safety of the employee or others. The employer can also require employees to use headwear that meets uniform requirements.

Ramadan and fasting

None of the Nordic countries have specific rules on observing fasting during Ramadan and the legal position will depend on the

nature of the employee's work. In general, an employer cannot deny an employee to fast if this does not affect the employee's ability to perform his or her work, and an employee cannot insist on fasting if this would affect his or her performance.

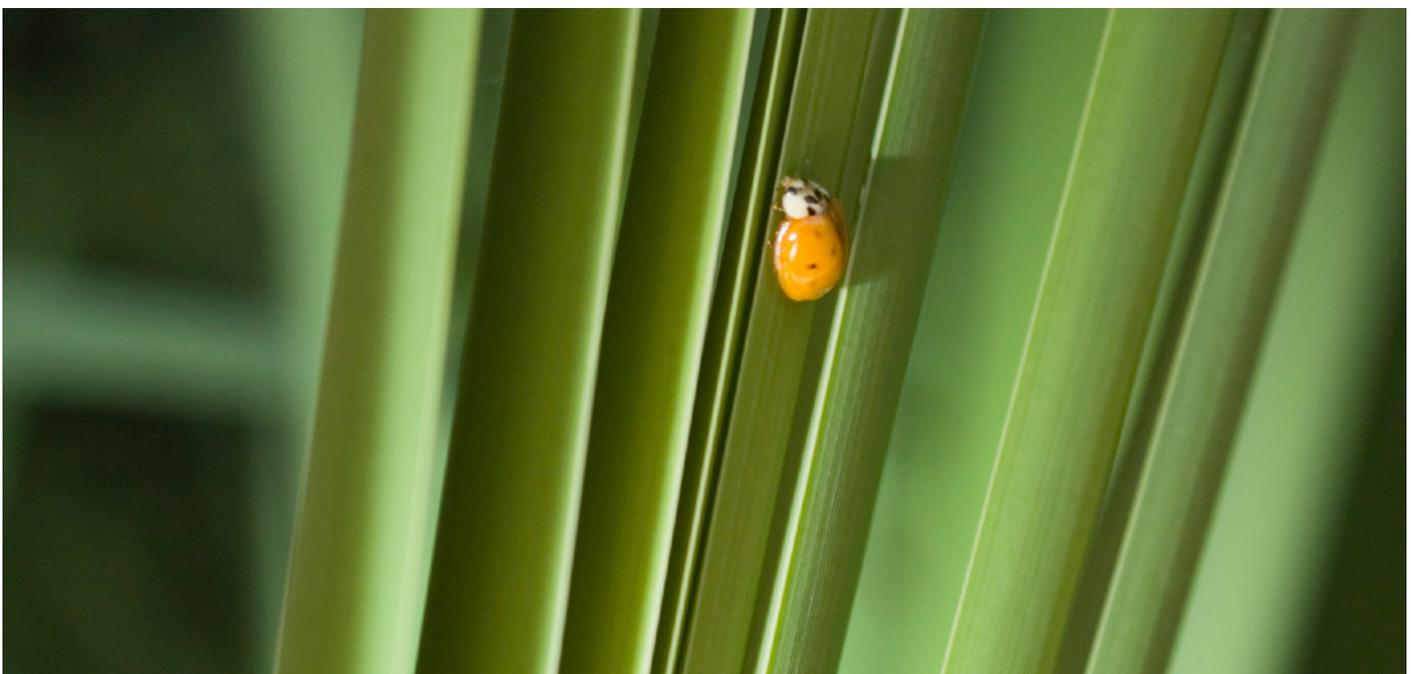
Furthermore, an employer cannot discriminate on the grounds that a person observes Ramadan. This was established in Denmark in a case concerning a Muslim kindergarten teacher who was not offered employment with a private institution partly because she would not be able to eat with the children during Ramadan. This was deemed to constitute indirect discrimination.

Religious objection

In all of the Nordic countries, an employee cannot in general refuse to perform tasks that belong to the work for which he or she has been employed on the grounds of religion or belief. For example, a Muslim employee in a kindergarten or health institution cannot refuse to help a child or patient eat on the grounds that the food contains pork. Similarly, an employee at a health institution cannot refuse to treat a patient of the other sex or with a specific sexual orientation on the grounds of religion, belief or otherwise.

In April 2017, the Swedish Labour Court ruled against a midwife whose job applications to three different hospitals were turned down because she had stated

**Nordic countries in this document refers to Sweden, Denmark, Norway and Finland.*



during the job interviews that she would not perform abortions due to her religious beliefs. Prior to applying for the jobs, she had appeared in media expressing her opposition to abortion.

The midwife argued that she had been discriminated against on the grounds of her religion in violation of the European Convention on Human Rights and the Swedish Discrimination Act.

The Court found that there was no such violation. There was no direct discrimination as the decisions not to employ her were based on her professional limitations and intention to refuse to perform certain work tasks, and not on her religious beliefs. There was no indirect discrimination either. The requirement to perform abortions appeared neutral, but in fact had an unfair effect on individuals with certain religious beliefs. However, this requirement was justified by a legitimate purpose; providing healthcare for women seeking an abortion.

In a case from 2008, the Danish court held that an employer could issue a written warning to an employee for not participating in a birthday reception for a colleague that was also attended by clients. The employee left the reception on the grounds that it was forbidden by her religion. However, the court found that the employer had sufficiently shown that the employee's attendance at the birthday reception was an integrated part of her job, primarily because of the attendance of clients. The written warning was therefore not an expression of religious discrimination.

Final comment

Despite the absence of written rules that specifically regulate religion in the workplace, the legal position in the four Nordic countries is remarkably similar.

**EY | Assurance | Tax |
Transactions | Advisory**

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2018 EYGM Limited.
All Rights Reserved.

Your contact person at EY:

Denmark:

Julie Gerdes
+45 25 293 403
julie.gerdes@dk.ey.com

Finland:

Maiju Kurvi
+358 40 148 4224
maiju.kurvi@fi.ey.com

Norway:

Kjeld Arne Thomassen
+47 907 23 766
kjeld.arne.thomassen@no.ey.com

Sweden:

Paula Hogéus
+46 72 503 8085
paula.hogeus@se.ey.com