Introduction

The most important achievement of the labour movement was that workers no longer had to go meekly cap-in-hand to the boss[1]

The past decades' great increase in the number of immigrants seeking work was largely due to Norway's signature of the European Economic Area Agreement in 1994. The aim of the EEA was to establish a common market without inner borders, guaranteeing free movement of goods, capital, services and people – the 'four freedoms'. For migrant workers, free movement of people and services are the most important. A rough estimate suggests that half a billion people today enjoy formal rights to work and live, more or less unrestricted, in Norway. According to the Directorate for Integration and Diversity (IMDI), the majority of economic migrants today come from our Nordic neighbours, the Baltic states and Poland. In 2010, no less than 39 800 EEA citizens were registered job-holders, job-seekers, self-employed entrepreneurs and service-providers in Norway.

A political imperative in all this is to avoid so-called 'social dumping' – the exploitation of citizens of third-party countries for economic reward. The first action plan was presented in the Revised National Budget in 2006. Here the principal goal was

[1] Quote, Einar Gerhardsen, Norwegian Prime Minister 1945-51, 1955-63, 1963-65

to stem the spread of social dumping as a general and persistent problem in the Norwegian labour market. In the Government Budget for 2009, an Action Plan 2 was presented to combat the phenomenon. The competent authorities found that foreign workers were still being exploited, receiving lower wages and enduring poorer safety and working environment standards, than was acceptable among Norwegian colleagues. In the plan, the government of the day set out eight specific measures. One of them was to bolster the resources available to the Norwegian Labour Inspection Authority (NLIA). Several years later, an Action Plan 3 was presented by the government in a Revised National Budget for 2013. This time the aim was to set out a number of key changes in the rules governing the general application of collective agreements, including documentation requirements and duration of decisions.

This was the result of a decent and serious approach to employment embodying robust salary and working conditions. The Action Plan 3 contained a number of measures to mitigate social dumping, which the government had identified as a serious threat to long-standing local working standards.

What are the consequences when employees are subject to social dumping? The government has stated:

"*In the Government's view, social dumping as it relates to foreign workers, involves both when they suffer from breaches of the health, environmental and safety regulations, including rules about working hours and living standards, but also when they take home wages and other benefits that are unacceptably low, compared with what Norwegian workers normally earn, or which diverge from the generalised union tariffs where these exist. Social dumping is also a danger to other employees and*

businesses in Norway, since it can result in unfair competition, with unfair pressure on established rights, and reduced recruitment to particularly vulnerable occupations and industries, and because serious companies can lose contracts and customers to their less-scrupulous rivals."

As the term 'social dumping' lacks any legal definition, the government's definition will be a key yardstick. The government is clear that when free flow of labour brings about social dumping, the resultant social upheaval is a serious issue.

Jushjelpa i Midt-Norge – a student-run legal aid clinic based in Trondheim – has noticed an increase in cases involving foreign workers. Often, we see workers who never get paid the wages and holiday pay they are entitled to. We also have cases where the employee works longer hours than permitted under the Working Environment Act and receives no overtime pay. There are also cases where the worker has been unfairly or summarily dismissed. We also find clients who are hired in temporary positions in companies where there is a clear need for a permanent workforce. All these instances represent breaches of the WEA.

Even for Jushjelpa in Mid-Norway, it remains difficult to uncover cases of social dumping. One factor recurs often, and that is that these people are often employed in sectors where their services are easily replaced. The result is a 'specially vulnerable group'. Many such workers dare not ask for assistance, for fear of sanctions from the employer. There is also the problem that workers do not know their rights, or alternatively that employers do not know their obligations.

Jushjelpa in Mid-Norway believes that knowing your rights is an important first step to prevent abuse. By spreading information to vulnerable groups, rights will be better understood. This information brochure therefore contains a discussion of employee rights. In the first part we will examine the anti-discrimination rules that apply to any employment relationship. Then we will examine the general applicability of union accords as a measure to combat social dumping. And finally we will examine the legal rights that an employee enjoys under the WEA.

Discrimination

General discrimination?

Discrimination means people are treated differently depending on ethnicity, national origin, ancestry, skin colour, language, religion or faith. Such discrimination is unlawful in Norway. We also have a law banning discrimination due to sexual preference, gender identity and gender expression. The various categories can usefully be described as 'discrimination grounds'.

Discrimination of an individual can be something that happens directly, or indirectly. Direct discrimination means an act or omission whose purpose or impact is that the individual gets worse treatment than others in the same position. In such cases the very act (or omission) is discriminatory. For example, companies are not normally allowed to ask job-seekers about religious or political affiliations. Yet if the position is within a

religious or political organisation, then such questions become relevant. So, interviewing an applicant about religious affiliation is not discriminatory for a church position.

Indirect discrimination occurs when a seemingly neutral rule, criterion, practice, act or omission leads to someone being put in a worse position than others. Here it is not the act (or omission) as such that is discriminatory, but the consequences if they discriminate against a particular group. An example would be an employer who does not allow wearing a headdress at work, which would discriminate against people whose faith demands a headdress. It is nevertheless possible for such a ban to be legal, if it is justified, for instance for reasons of safety, and is not an onerous burden to the wearer.

Discriminated at work?

At work there are many situations when discrimination may be an issue, and anti-discrimination measures are enforced. Examples are recruitment, wage level, redundancy and job performance. The ban on discrimination applies throughout the employment period – from hiring until departure from the post.

When is unequal treatment not considered discrimination?

Not all unequal treatment at work is considered discrimination. If the aim of the inequality is well-founded, and if it is not overly onerous to the worker, or a prerequisite for performance of the work, then it is not discrimination in a legal sense. So the inequality must be justified by the circumstances of the job, and necessary for execution. The term 'overly onerous' means that the effects on the worker must not be too harsh.

Typical examples where unequal treatment does not count as discrimination would be when a specific religious faith, or political or cultural viewpoint, are crucial for the position. In some positions, there are age-limits based on health and safety standards, or distinctions are afforded to union members, for instance under the wages and working hours regulations of a collective accord.

Another illustrative example is the discussion about whether police officers may wear a religious headscarf, the hijab. The debate sparked considerable political interest. On the one hand was the claim of indirect discrimination, on the other the question of whether a ban was justified, based on the nature of a police officer's duties, and whether the ban was overly burdensome.

The Norwegian Police Federation (PF) came out against wearing the hijab at work, stating: "*Our justification is one of principle. The Police hold a special position among public agencies, since the use of physical force is permitted. This special circumstance means there is a particular need for the Police to appear impartial, also in a religious context. Moreover, the Police must have the best possible contact with the public - including a range of minority groups. Therefore, the PF*

believes the wearing of religious garments and symbols can frustrate such contact."

The Equality and Anti-discrimination Ombudsman (LDO) found the hijab ban to be a violation of the Anti-discrimination Act, section 4, and the Equality Act, section 3. The Ombudsman agreed that the Ministry failed to prove that the decision not to revise the uniform code to allow the hijab was a necessity under the fourth paragraphs of the respective acts. LDO thus found that the paragraphs did not allow the ban, arguing furthermore that *"although the design of the uniform very much supports and endorses the idea that the Police are neutral and impartial, the Board cannot see that this is severely compromised by permitting a religious headdress".* The Ombudsman thus found that the test of necessity was not met.

In this case the Ministry of Justice chose to uphold the uniform code for the Police Service. The Ministry argued that the Police must appear impartial and neutral in encounters with the public, and concluded that the hijab head-scarf is incompatible with the Norwegian Police uniform.

What is particularly intriguing about this debate is the interplay of political points of view versus the judicial aspect. The issue has not been decided in the courts, but clearly it should be. Should the hijab ban be cited as a case of unlawful, indirect discrimination?

Have you joined an employee union?

An employee union is an organisation open to employees that works to protect and advance the interests and rights of workers. Examples are the Norwegian Confederation of Trade Unions (LO), Parat, the Confederation of Vocational Unions (YS) and the Confederation of Unions for Professionals, Norway (Unio). These organisations work for the interests of workers, which may often be at odds with those of the company. Companies therefore also have organisations to advocate their interests, for example the Confederation of Norwegian Enterprise (NHO). Jushjelpa recommends all employees to join a collective organisation in order to bring a better balance of power between shop floor and management.

What options are available if you find yourself being discriminated?

If you feel you or someone else is being discriminated at the workplace, you should contact your union representative or safety delegate where you work, or talk to your employer. If you are being discriminated, you may qualify for restitution or compensation.

Equality and Anti-discrimination Ombudsman

Jushjelpa can also assist by contacting the Equality and Anti-discrimination Ombudsman if you feel discriminated. The

Ombudsman can assess whether the situation is unlawful. A complaint is easy to make and costs nothing.

If you wish to complain, the complaint may be submitted in writing, either by email to post@LDO.no, or by letter to Equality and Anti-discrimination Ombudsman, P.O. Box 8048 Dep., 0031 Oslo.

If you prefer to make a complaint orally, then this can be done at the Ombudsman's offices in Mariboes gate 13 in Oslo. They will help you write the complaint. You can also phone them for an appointment. If you need an interpreter, they will be able to find one.

General application of collective agreements to counter social dumping.

The Act relating to General Application of Collective Agreements (*Lov om allmenngjøring av tariffavtaler*) of 4 June 1993 requires citizens of third-party countries to receive the same wages and working conditions as Norwegians covered by a collective agreement. The aim of the act is to ensure equal conditions for migrant workers and Norwegian nationals in a bid to counteract social dumping. It includes powers for unions to examine employment contracts to ensure compliance with generalised accords.

The general applicability of collective agreements is a key tool for organising working conditions in trades and industries where migrant workers are particularly likely to be exploited. One problem is that many contractors fail to adhere to the

regulations, and there are insufficient resources to ensure effective compliance.

The general applicability rule governs salary and working conditions for employees working for employers in Norway. It applies to tradesmen and unskilled workers alike. Some of the regulations make a distinction between various classes of skilled worker. It is worth noting that the rules do not cover trainees or apprentices or people on back-to-work schemes.

The following sectors have collective agreements covered by general applicability rules, which are embodied in each case by special regulations:

- Building sites (for construction workers)
- Shipping and ship-building industry
- Agriculture and horticulture
- Cleaning services

The companies engaging in such work are responsible for compliance with the sector regulations. The responsibility rests with the employer and persons who manage the operation on the employer's behalf.

Union examination of employment contracts to counter social dumping

Regulations have been issued under the General Application of Collective Agreements Act, empowering shop stewards and other union representatives to examine the salary and working arrangements of contractor personnel.

This right of insight is enshrined in special rules for civil procedure. Other rules govern how personal data should be processed and protected, out of regard for privacy concerns and so as not to interfere with healthy competition.

At the shop steward's request, the company must show that the conditions within subcontractors comply with the sector-wide collective agreement. The request must be submitted in writing to the appropriate employer. Details of salaries and working conditions may be documented by producing a copy of the employment contract, salary slips or time sheets. The information furnished should be anonymised.

The information may only be used to examine whether working conditions comply with the generalised tariff, and must be deleted when no longer needed, and if they show that working conditions are in compliance.

General rights of workers

Jushjelpa in Mid-Norway seeks to reach migrant workers with information about legal rights. We believe that by spreading information to vulnerable groups, a better appreciation of the legal situation will be obtained. Migrants can then better recognise the signs of illegal exploitation. Understanding your rights is a key step in the battle against social dumping, as it allows you to recognise abuse.

Hiring and working hours

Prior to hiring, a potential employee is usually invited to attend for interview. Although an employer may hire freely from the recruitment pool, there are still rules about discrimination and unfair treatment. Employers are not permitted to ask about sexual preference. If asked, you can refuse to answer, and this refusal cannot be used as an argument to reject your application.

Not all unequal treatment is unlawful, if justified by solid grounds. An employer can ask about and make judgements based on your political views, if this is important for the job you are seeking. Such requirements should be stated in the advertisement. For example, if you are seeking employment within a political party, then clearly you may be asked to disclose your political views. But if the advertisement failed to explain that, and you refuse to disclose your political views, this refusal cannot then be used to reject your application. Unequal treatment may also be justified, for instance due to qualifications and gender quotas. Another point is that discrimination protections apply for the entire duration of the employment, which is to say from the day of hiring to the day of departure.

General requirements

The employee has a right to a written employment contract, regardless of the duration and percentage position of the post, see WEA 14-5. This employment contract must contain certain

information, including a description of the work, the date of commencement, redundancy notice periods, anticipated duration if a temporary position, and duration and timing of daily and weekly working hours. The contract must also indicate the wages payable and give details of holiday pay.

As a rule an employee must be given permanent employment. Yet temporary employment is permissible depending on the nature of the work, and if the work is different from what is normally performed in the business. Typically this is the case for seasonal employment and project work. Temporary positions like supply teachers and supply nurses are also permissible, if you are filling in for someone who is off sick, on leave or on holiday. Temporary hire cannot be used as the standard arrangement, but must have some sort of time limit. If you have been on continuous temporary duty for more than four years, then you have a right to permanent employment. However, this rule does not apply within organised sports, for people on back-to-work schemes, or those in placement to get work practice.

Working hours should be specified in the employment contract and should not exceed 9 hours per 24 hours, or 40 hours per 7 days. Employees are required to perform work during the working hours and times of day set out in the contract. You can be required to work more than 9 hours if your employer has a special need for a limited time. If ordered to work overtime, you can claim minimum 40% bonus. It is also possible to agree to take compensatory time (comp-time) in lieu of normal hours. To apply this must be agreed in writing in advance. If you choose to take comp-time, you are still entitled to the 40% bonus, which cannot be signed away. Here is an example: If you work 10 hours overtime and your basic wage is

kr 100, then you will attract kr 400 in overtime bonus. If you take comp-time, you will not attract basic wage for the 10 hours spent at home (kr 1000), but will still receive the overtime bonus (kr 400).

Probation period

Prior to permanent employment, the potential employee may be hired for a specified probationary period. If this happens to you, the details must be stated in writing in your employment contract. The purpose of the probation period is for the employer to have a number of months in which to assess whether you fit the position. The maximum permissible probation is 6 months. A worker who cannot adjust to the work, lacks technical qualifications or is unreliable may be let go for those reasons. But a worker must be given a real chance to try out the job. During the probation period the company is required to support you with suitable training. The company must also bear in mind any lack of work experience. During probation the notice period is just 14 days unless agreed otherwise in writing.

Hired from personnel agency

Personnel hire from an agency, such as *Adecco*, *Bemanningshuset,* or *Manpower*, is permissible to the same extent as temporary employment. However, agency hire cannot be used as the standard procedure, and is only permitted when

the criteria for temporary employment are met. The hired worker does not have formal employment with the host organisation, but is employed by the agency.

Agency personnel should receive the same wages and conditions as colleagues directly employed by the host company. Briefly, this means that the agency worker enjoys the same terms as colleagues in the host organisation. This equality doctrine was instigated on 1 January 2013. One of the consequences is that the host organisation is required to disclose its terms, so that the agency worker can assess whether the conditions are equal.

Starting 1 July 2013, the host organisation will also be jointly liable for payment of salary, holiday pay and any other benefits that ensue from the equal treatment rule. The point of this joint liability is so that agency workers have greater security that they will get paid, receive holiday pay, and enjoy the other benefits to which they are entitled. It is important to remember that only conditions stipulated in the equal treatment rules can be asserted in respect of the host organisation.

It is also important to remember that any claims against the host organisation must be presented no later than 3 months after the claim fell due. The host will then have 3 weeks in which to pay the claim. The host can later demand reimbursement from the personnel agency.

Wages and benefits

As a rule you can claim wages in line with the contract you have made orally or in writing with your employer. Although there is no law saying that workers must receive a minimum wage, collective agreements in particular sectors often stipulate a minimum rate. If your employment is regulated by a collective tariff, then the working conditions set out in the tariff will apply to you. The general discrimination protections and fair-treatment rules apply equally within the tariff. If your employer wants to pay you less than other workers in the company with similar qualification, then he must produce a legitimate justification. An example is seniority, which may justify a wage differential.

The basic rule is that wages are only paid for the hours that you are available to the company. Time spent commuting to work, or travelling on the job, is not normally counted as hours worked. Sometimes your employment contact or local tariff may specify otherwise.

Normally wages are paid after the event and you are entitled to a salary statement showing how your pay is calculated. The company may deduct certain items from your pay packet, but subject to strict rules. If you are unlucky and cause damage while at work, the company cannot require you to reimburse the loss unless you acted deliberately or negligently. You must also acknowledge your liability in writing, or it must be established by a court judgement. It is also a consequence of the Compensation Act (*Skadeerstatningsloven*) that the company is initially liable for damage caused deliberately or negligently during work, regardless of who was responsible.

Termination of employment

Employment can end in several ways, but for the employer to terminate the contract the options are to serve notice, or to give summary dismissal.

Both the company and the worker have a mutual right to terminate an employment contract by serving notice. The notice period will be stated in the contact. Unless stated to the contrary, one month is the standard notice period. Usually the notice runs from the first day of the month after receiving the notice. Sometimes the notice runs from the day after the letter was received, provided this is longer than the statutory minimum. To be valid this method must be clearly stated in the employment contract.

Workers are not required to state their grounds for leaving. On the other hand, the company must have fair grounds for serving notice. These may be factors rooted in the nature of the activity, or to do with the employer or employee. Operating cut-backs, recurring late arrival, or failure to adjust to the work will all represent fair grounds. The grounds must be assessed on an individual basis in each case.

Notice must be served in writing and either handed to you personally or in a registered letter. Although the company is not bound to state any reasons for laying you off, you do have a right to know the reasons if you ask. Before the company takes the step of laying you off, whenever possible you should be given an opportunity to discuss the matter.

Also when you wish to leave, the notice should preferably be given in writing. A verbal notice will also be valid, but the burden of proof is on you to show that you gave notice. So it is better to give notice in writing.

If the company fails to meet the strict formalities of a termination, you can claim compensation. If you believe the employer has not been fair in making you redundant, you can request negotiations. The request must be given to the company within 2 weeks after termination. If this fails to resolve the dispute, the fairness of the termination can be decided by the courts. Going to court requires a rapid decision, as the deadlines for court action are tight.

For a worker who is grossly delinquent and disloyal, the company may resort to summary dismissal. The dismissal must be in writing. In some cases, there are no grace days. Examples of gross delinquency are refusal to perform the work, abuse of the employer or harassment of other workers, a breach of trust demanded by the position, or commission of a criminal offence. The situation has to be very serious before the company can resort to summary dismissal, and the company must show that sufficient grounds exist. If the grounds turn out to be unfair, compensation may be in order.

An employee can also resign with immediate effect, for example if the situation at the workplace is intolerable. The reasons may be a poor physical or psychological working environment, recurrent breaches of clauses in the Working Environment Act, and so forth. As for summary dismissal, immediate resignation should preferably be tendered in writing.

Testimonial from work

When you leave employment, as an employee you have a right to receive a testimonial letter detailing what you did. The testimonial should state your name, date of birth, the nature of the work and how long you were employed. At your request it should also contain more details of you as an employee, if stipulated in the collective agreement, or if customary in the firm in question.

In conclusion

If you experience or suspect that you are receiving sub-standard treatment as a migrant worker, in regard to health and safety, working hours or living standard, or poor wages or benefits compared to your Norwegian colleagues, or if you believe the general applicability rules are being by-passed in your case, then there are a number of places you can turn to. See the address list below.

It helps a great deal to talk to a legal aid clinic or public agency to get qualified advice, if you are subject to conditions that do not meet the standards of the Working Environment Act. We all have a common responsibility to ensure that social dumping is recognised and reported. It is in no-one's interest that unscrupulous employers can continue unsanctioned. Jushjelpa in Mid-Norway will continue to work energetically to combat social dumping. We hope you find this brochure informative

and of interest. Should you have any queries regarding the subject matter, please do not hesitate to email our legal team at jushjelpa@jushjelpa.no.

Useful addresses:

Arbeidstilsynet – The Norwegian Labour Inspection Authority
Tel: 815 48 222
Email: svartjenesten@arbeidstilsynet.no,
post@arbeidstilsynet.no
Website: www.arbeidstilsynet.no

Petroleumstilsynet – Petroleum Safety Authority
Visitors: Professor Olav Hanssens vei 10. See map
Postal address: P.O.Box 599, 4003 Stavanger
Tel: 51 87 60 50 (service desk)

Utlendingsdirektoratet (UDI) – The Norwegian Directorate of Immigration
Hausmannsgate 21, 0181 Oslo
Postal address: P.O.Box 8108 Dep., 0032 Oslo
Tel: 23 35 15 00
Email: udi@udi.no
Website: www.udi.no

Jushjelpa i Midt-Norge – Legal Aid in Mid-Norway
Bispegata 9 c, 7012 Trondheim
Tel: 73 51 52 50
Email: jushjelpa@jushjelpa.no
Website: www.jushjelpa.no

Jusshjelpa i Nord-Norge – Legal Aid in North-Norway
Breivika senter, 9037 Tromsø
Tel: 77 64 45 59
Fax: 77 64 65 65
Email: postmottak@jusshjelpa.no

Website: www.jusshjelpa.no

Juridisk rådgivning for kvinner (JURK) - Legal Aid for Women
Arbins gate 7, 0253 Oslo
Tel: 22 84 29 50
Fax: 22 84 29 51
Email: post-mottak@jurk.no
Website: www.jurk.no

Juss-Buss - (A student-run free legal aid clinic)
Arbins gate 7, 0253 Oslo
Tel: 22 84 29 00
Fax: 22 84 29 00
Email: leder@jussbuss.no
Website: www.foreninger.uio.no

Jussformidlingen i Bergen - (A student-run free legal aid clinic)
Sydneshaugen 10, 5007 Bergen
Tel: 55 58 96 00
Fax: 55 58 96 06
Email: telefonvakt@jussformidlingen.no
Website: www.jussformidlingen.no

Likestillings- og diskrimineringsombudet (LDO) - The Equality and Anti-Discrimination Ombudsman
Toll-free number: 800 41 556
Tel: 23 15 73 00
Email: post@LDO.no
Website: www.LDO.no