

## **Regulating employment conditions at workplace level**

*A questionnaire for the ELCJ Meeting 21-23 September 2016, Oslo*

By Jonas Malmberg, Sweden,  
in cooperation with Jorma Saloheimo, Finland

### *Introduction*

The traditional sources of employment conditions can be roughly divided into two categories. First, there are conditions which are determined outside the workplace. The prime examples are statutory provisions as well as collective agreements concluded by trade unions and employers' organisations at national, branch or regional level. Second, employment conditions could be agreed upon between the employer and the employee in the form of an individual employment contract, which in theory is supposed to have been negotiated.

Between these two categories we will find different kinds of employment conditions established at work place level and which provide a more or less uniform regulation of the employment conditions for the personnel as a whole or a group of personnel. For instance, at company-level you might find uniform regulation of certain benefits, such as a local pension scheme applicable to all employees of the firm. Also local working time arrangements are often designed to apply to all employees or a personnel group. There might also be different kinds of codes of conduct, through which the employer declare which behaviours are accepted at the work place.

We could use “**group norm**” as a loose non legal term for employment conditions established at work place level and which provides a more or less uniform regulation of the employment conditions at the work place. Such group norms may be decided by the employer unilaterally. They may also be subject to information, consultations or negotiations with workers' representatives and/or individual employees.

The topic covers two aspects of such group norms. One aspect concerns the methods and instruments, which are used to create terms of employment at the workplace level. On the other hand, we can discuss how already existing terms of employment can be changed locally.

*Summary*

What we would like you to do is

- to identify and describe examples of different kinds of group norms which are used in practice in your country,
- to describe under which kind of legal concepts the group norms (identified under 1) are qualified and to what extent they give rise to rights and obligations which could be applied in court, and
- to discuss the means for employers to change the group norms (identified under 1) in a way which is less favourable to the employees.

## QUESTIONNAIRE

**Question 1: Please give examples of group norms, which are common in your countries. What issues do they cover? How are they established (by the employer unilaterally or after consultation with workers' representatives etc.)?**

This question concerns the practice at the labour market and you need not (at this stage) legally qualify the practice.

**Answer:**



*Determining terms of employment*

The legal qualification basis of these group norms may vary, and so may their legal effects.

**Question 2. Please describe under which kind of legal concepts the group norms you identified in question 1 could be qualified in your labour law system and to what extent (under which conditions) such group norms give rise to rights or obligations for the employees, which could be applied in court.**

**Answer:**

As a template, the following categories can be presented:

**I. Unilaterally introduced benefits.** For example an employer has unilaterally introduced a bonus programme or a pension scheme and applied it for a number of years.

- Under which circumstances could such an arrangement create an entitlement for the employees to be granted the benefit, which he or she could claim in court? Could the mere application by the employer of such an arrangement create an entitlement for the employees? Does it matter if or how the workers' representatives and/or the individual employees has been informed or consulted about the benefits?
- If such an arrangement creates an entitlement for the employees, how is it explained legally? For instance, has the benefit converted into a condition of the individual employment contracts, or can we speak of a tacit clause in the contract?
- To what extent does the application of such a programme or practice involve questions of equal treatment of employees?
- Examples in case law?

**Answer:**

**II. A company-level code of conduct.** An employer has unilaterally introduced a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol.

- Must the employees observe such codes under a threat of termination of the employment contract? Could an employee be subject to any other kind of sanction (for instance reduction of pay) if he or she does not follow the code of conduct?
- What are the limits of the contents of such codes?
- Examples in case law?

**Answer:**

**III. Local agreements.** You might find agreements on employment conditions concluded between the employer and a trade union, works council, a shop steward, a group of employees etc. (Here we discuss independent agreements which are not concluded under an authorization given in a federal or other higher level collective agreement.) These kinds of agreements might not necessarily fulfil the formal or other requirements of a collective agreement, but are concluded under the general freedom of contract.

- Do such agreements appear in your labour market system?
- On the employee side, who can represent the personnel in such bargaining? The shop steward or some other representative elected by the personnel? A works council or perhaps the personnel as such?
- In case of breach of such a contract, who has locus standi before a court? Each employee individually or their representative?

**Answer:**

**IV.** According to the Directive 2002/14/EC the employer shall inform and consult the employee representatives on decisions likely to lead to substantial changes in inter alia the work organisation. The Consultation shall take place with ‘a view to reaching an agreement’.

1. According to the directive ‘employees' representatives’ mean the employees' representatives provided for by national laws and/or practices. Which are, in this context, considered the employees' representatives in your country?

**Answer:**

2. If the employer and the employees' representatives reach an agreement on inter alia the work organisation, what are its legal effects?

**Answer:**

3. In cases discussed above, does an individual employee have a right to opt out from the local arrangement?

**Answer:**

*Changing the terms of employment*

**Question 3. Discuss the means of changing the different kinds of group norms identified.**

**If the projected changes of existing standards mean an improvement for the employees, there is usually no problem.** Thus this section should focus on the means for employers to change the different kinds of the group norms identified in the previous sections in a way which is less favourable to the employees.

In the following we will give examples on questions which could be discussed.

1. May the employer unilaterally decide to change the group norm?
2. Shall the employer before such a decision inform or consult the employee representatives?
3. Should the change be subject to a period of notice?
4. Could or should the group norm be changed through an agreement with the trade union or other employee representatives?
5. If the group norm is based on agreement with some employee representatives, could the employer terminate the agreement unilaterally? May the employer terminate the agreement only under certain conditions (force majeure, changing circumstances etc.)? Is there a need for a period of notice?
6. If, for instance, the group is qualified as a tacit clause in the individual employment contracts of employees, may the employer change the group norm without the consent of each of the employees? Would such a change be qualified as termination of the employment contract (a dismissal) or would the situation be considered a change of a single term of the contract?

<b>Answer:</b>