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|  |  | Mette Klingsten  Supreme Court Attorney  mk@mklaw.dk  [www.mklaw.dk](http://www.mklaw.dk)  Tel +45 3144 0100  File no.: 191200  {{Today\_Date}} |
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Memo on termination of {{P\_Name}}

1. Background
   1. {{P\_Name}} is employed by {{C\_Name}} (the “Company”) as {{P\_Title}} and has been employed since {{Start\_Date}}.
   2. We understand that there have been performance concerns with {{P\_Name}} in his role, however these have not been addressed in any way. Unfortunately, {{P\_Name}} suffered a brain hemorrhage and has been on sick leave since {{Sick\_Date}}.
   3. During a sickness interview on 21 May 2025 Frederik Halleas reported that he was feeling extremely fatigued. As a result of the hemorrhage a rehabilitation program was established with an occupational therapist, who Frederik met once a week. As part of this program, Frederik was provided with a training schedule that he was expected to follow. A significant element of the program involved stimulating the brain through daily exercises lasting 1.5 hours. We understand that as result of each session Frederik Hallas suffered extreme exhaustion resulting in him needing to sleep. Frederik Hallas has previously explained that he was *“practically live in bed.”*
   4. In week 22, Frederik Hallas was scheduled for further examinations as a growth had been found in his lung, which the doctors refer to as a “twin,” and it was examined more closely on Monday 26 May 2026.
   5. On Tuesday 27 May 2025 he went for preoperative assessment to determine whether he could undergo full anesthesia which was prerequisite for an upcoming brain scan.
   6. We understand that this has happened and that Frederik Hallas has now undergone brain surgery to alleviate the issues caused by brain hemorrhage, the operation took place in September 2025. We understand that Frederik Hallas is likely to recover from the surgery and the symptoms that he is currently suffering from.
   7. We understand that Frederik Hallas takes medication for his condition, including treatment to prevent further epileptic seizures. His wife has taken leave from work to care for him, as he is not allowed to be home alone.
   8. In cases like this, it is quite common for the employee’s doctor to recommend a gradual return to work, typically over a period of 8 to 12 weeks. This phased approach allows the employee to rebuild his capacity and gradually adjust to the demands of the job, often starting with reduced hours or limited tasks and increasing overtime as the employee’s condition improves.
   9. However, it is important to note that the employer is not obligated to accept such part-time arrangements. The employer may, within their rights, require the employee to remain on full sick leave until they are fit to return to work on a full-time basis.
   10. In addition, we assume that Frederik Hallas will be unable to drive and thus will not be able to undertake travel to customers which is a crucial part of his role in the sales function. However, we have asked Frederik Hallas to confirm this.
   11. Furthermore, even if {{P\_Name}} does return there are the ongoing performance concerns which will need to be addressed.
   12. The Company would like to know the legal and commercial implications in connection with the termination of employment. In preparing this memo we have had sight of the contract of employment and latest payslip.
2. Legal considerations

*Unjust termination*

* 1. In Denmark an employer should been able to demonstrate a just reason for termination of an employee. If an employer is unable to establish a just reason and an employee has more than one year’s service (as is the case here) then they can bring a claim for unjust termination.
  2. Long term sickness is a potential fair reason for termination, however before a termination can take place an employer must be able to demonstrate that they can no longer support the level of absence. Furthermore, an employer should have explored opportunities to help an employee back to work and looked at potential adjustments to the work/work hours. In addition, the employee should be warned that the continued absence could lead to the dismissal.
  3. If an employee has been unable to work due to sickness for 120 days within a period of 12 (twelve) months, the rules contained in section 5(2) of the Salaried Employees Act mean that an employee can be dismissed with a reduced notice period of one month provided the contract contains reference to this. {{P\_Name}}’s contract does contain such a provision, however it was decided that this rule would not be used and the opportunity to do so has now passed due to the rules in the Salaried Employees Act. Furthermore the 120-day rule cannot be used if the absence is related to a disability and given the potential risk (albeit relatively low risk) that this could be a disability we consider it is reasonable that this rule is not used.
  4. The risk that Frederik Hallas could make a successful claim for unjust termination pursuant to section 2b of the Danish Salaried Employees Act (Funktionærloven) is relatively low (although not impossible) since he has been off sick for {{No\_Sick\_Months}} months.
  5. Compensation pursuant to section 2b is determined on the employee’s length of service and the other circumstances of the case in this case it would be – if relevant – a maximum of 3 months’ salary, more likely 2 months’ salary which is calculated on all salary components i.e. pension and other salary parts.

*Disability discrimination*

* 1. There will be a breach of the Danish Anti-Discrimination Act if an employer dismisses an employee on the grounds of their disability. To succeed with a disability discrimination, claim Frederik Hallas must been able to establish that he is suffering from a disability. Pursuant to Danish and EU case law disability is defined as a “*limitation due to physical, mental or psychical injuries, which in combination with other barriers prevents the affected person from fully and efficiently participating in working life on an equal footing as compared with other employees” and this limitation of performance is of a long-term nature”.* In the context of this definition an employee does not need to be covered by a medically diagnosed disease. However, there must be an assessment on the case and in particular information from the doctors and health care professionals on whether a condition can be classed as a disability. An illness will on its own not be covered by the term of disability.
  2. As {{P\_Name}} has only recently had a brain hemorrhage it is difficult to determine whether his illness will be long term. Generally, a condition that will last or is likely to last for longer than 12 months will be classed as a disability. It is helpful if {{P\_Name}} has confirmed that that he expects to make a full recovery at a certain point in time. However, {{P\_Name}} has had a brain operation and there are significant limitations to {{P\_Name}} undertaking work, we consider that this is evidence that Frederik Hallas’s will to rely on that his condition will have a long-term impact. We consider that at this stage that whilst it would be difficult for {{P\_Name}} to assert that he is disabled, particularly if he has indicated that he expects to make a full recovery, such a claim is not impossible particularly considering the brain surgery.
  3. If {{P\_Name}} was to successfully raise a compensation claim according to the Anti-Discrimination Act, the Company would most likely have to pay a compensation of between 9 months’ salary taking his length of service into consideration. In addition, there is the risk of adverse publicity (employer branding).
  4. {{P\_Name}} however cannot receive both a compensation pursuant to section 2b of the Danish Salaried Employees Act and a compensation pursuant to Danish Anti-Discrimination Act, as one excludes the other. If {{P\_Name}} raises the issue of disability, then further consideration could be given to increasing the severance amounts.

1. Advice on next steps
   1. The Company would like to consider terminating {{P\_Name}}’s employment now. This would avoid the need of having to accommodate any adjustments to the role such as part time working which would be difficult due to the nature of the sales role. The termination would also mean that the Company can find a full-time replacement and hire such a person as it is difficult to recruit a good candidate on an interim basis. In addition, the Company would avoid the need to also manage his performance on the return to work.
   2. If the Company was to terminate the employment by the end of October, the 3 months’ notice period would run from 1 November 2025 and expire at the end of January 2026. During this time the Company can obtain a reimbursement from the municipality (after a 30-day period) for his sickness as {{P\_Name}} is entitled to full pay for any periods of absence. There may also be funding from the insurance with PFA. This is essence means that part of the notice period will be funded, thus reducing the overall cost for the Company.
   3. Based on the complexity of the matter we suggest that the below process is observed.
2. Process
   1. We suggest the following timeline is used and enclose the “At Risk” letter in both Danish and English versions.

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| **{{At\_Risk\_date}}:** | Send the “At Risk” letter to {{P\_Name}} by e-mail (PDF) and ask him to confirm receipt. The manager can call and advise him that letter is coming. |
| **{{Clarification\_Period\_Date}}** | Period for comments/clarifications and possible medical certificate. |
| **{{Deadline\_Expires\_Date}}** | Deadline expires. |
| **{{Internal\_Review\_Date** | Internal review of responses and documentation. Obtain any necessary clarification from HR/line manager. |
| **{{Preliminary\_Decision\_Date}}** | Preliminary decision: |
|  | If medical documentation is provided confirming full return to work within 6–8 weeks (including approval to drive), consider postponing the final decision briefly and set a review date (e.g. 28 October) for follow-up. |
|  | If no documentation is provided, or if it does not support a full return to work, prepare for termination. Choose one of two options: |
|  | * + Termination without any additional offer. |
|  | * + Termination combined with a separation agreement with severance pay, with the possibility of a short and focused negotiation. |
| **{{Chosen\_Communication\_Date}}** | Issue the chosen communication: either a termination letter alone or a termination letter with separation agreement (with a reasonable consideration period, e.g. until 24 October). |
| **{{Negotiation\_Date}}** | Possible negotiation of terms in the separation agreement. |
| **{{Acceptence\_Date}}** | Final acceptance/signature of the separation agreement or confirmation of termination without agreement. |

Copenhagen, {{Signed\_Date }}

Mette Klingsten