

# Sweden

## Introduction

The employment relationship is highly regulated in Sweden, particularly as it relates to the termination of employment. In addition to a number of laws protecting employment, many aspects of labor relations are also regulated by collective bargaining agreements and individual employment contracts. With respect to employment discrimination and sexual harassment laws, a number of regulations have been implemented during the last two decades, which extend numerous protections to employees.

The primary legislation governing employment relations in Sweden are the following:

- The Labor Disputes Act (1974:371);
- The Co-Determination in the Workplace Act (1976:580);
- The Employment Protection Act (1982:80);
- The Equal Opportunities Act (1991:433);
- The Parental Leave Act (1995:584);
- The Act on Measures Against Ethnic Discrimination in Working Life (1999:130);
- The Act against Discrimination of Disabled in Working Life (1999:132);
- The Act against Discrimination in Working Life on the Basis of Sexual Orientation (1999:133);
- The Act against Discrimination of Part-time Employees and Employees on Fixed-term Employment (2002:293); and
- The Act on Prohibition against Discrimination (2003:307).

## Terminations

### Restrictions On Employers

The term and conditions of employment, with respect to employees who are not considered to occupy a managerial position, are governed by the Swedish Employment

Protection Act (1982:80). The Act favors employees. Contracts of employment may only deviate from the Employment Protection Act in certain aspects. According to this Act, the employer needs *just cause* to terminate an employment.

Just cause may be attributable to either the employee personally, such as mismanagement, or to the employer, such as redundancy. Summary dismissals may only be undertaken as a result of the employee's gross negligence.

If an employer considers terminating an employment based on circumstances relating to the employee personally, the case must be examined carefully. In practice, three elements are relevant in determining whether the employer has a just cause, including: (i) a failure to carry out duties; (ii) awareness by the employee of this failure; and (iii) the failure results in damages to the employer. If these elements exist, it is likely that just cause exists for termination or, in extreme cases, summary dismissal.

The case law on termination due to personal circumstances is extensive. The Swedish Labor Court, which is the final arbiter in labor law disputes, has tried several hundred cases in the last two decades. Employers, therefore, should seek guidance in case law before terminating an employment due to circumstances related to the employee personally.

Before an employer may terminate an employment, the employer must make efforts to provide the employee with another position within the company if the employee can reasonably be offered a vacant position and has the qualifications required.

As for terminations due to reasons attributable to the employer, such as in a redundancy situation, other elements must be considered. For example, an employer must follow a certain order of priority with respect to the employees when giving notice of termination due to redundancy. This usually entails that the employee who has been with the company the shortest time has to leave first.

### **Notice Provisions/Consequences Of A Failure To Provide The Required Notice Period**

Under the Employment Protection Act, employers are required to provide employees with a minimum notice period ranging from one to six months. The notice period depends on the age of the employee, if employed prior to January 1, 1997, or the length of service, if employed as of January 1, 1997.

Collective bargaining agreements often provide for extended notice periods based on seniority in age and term of employment.

Furthermore, in case of termination due to the employee personally, the employer must inform the employee of the pending termination 14 days before the formal notice of termination. In case of summary dismissal such information must be given to the employee one week in advance. The information must also be given to the employee's union, if the employee is a union member.

The formal notice of termination as well as summary dismissal must be given in writing, usually on a certain form, and delivered to the employee personally, or in special cases, in a registered letter.

If an employer fails to provide the required notice period, the employer may become liable to pay damages to the employee.

### **Consultation Requirements**

In a redundancy situation when the employer is bound by a collective bargaining agreement, or if any of the employees are union members, the employer shall, according to the Swedish Co-Determination at Work Act, consult with the union(s) concerned *before* any final decision is made by the employer. The obligation to consult comprises both the question of whether there is a redundancy situation and the question of which employees should be given notice of termination in accordance with the above-mentioned priority rules.

As for termination due to personal reasons of an employee who is a union member, the union may request consultation after being informed about the pending termination. In such a case the employer has to wait before giving the employee the formal notice of termination until the consultations are completed.

If the employer does not fulfill its obligation to consult, the employer may become liable to pay damages to the union.

### **Termination Indemnities**

In cases of wrongful termination, the indemnities for which the employer may become liable are considerable.

If an employee contests that there is just cause for termination of the employment, he or she normally has a right to stay employed and work until the question of the

termination has been settled in court, which could take as much as one to two years with the possibility to appeal. The employer normally must pay the employee salary and benefits during this period. If the employee is successful, he or she will have the right to remain employed and may also be entitled to general damages. If the employer refuses to comply with a court order to retain the employee, the employee may also be entitled to damages for economical loss.

In normal cases, general damages are set to approximately SEK 100,000 (currently approximately USD 17,000). Damages for economical loss are calculated as a loss of salary during a certain period. This period is established in relation to the total length of employment and is 16 months' salary for an employee with less than five years of employment, 24 months' salary for an employee with five to 10 years of employment, and 32 months' salary for employees with at least 10 years of employment. The employee can choose to either claim entitlement to remain employed or solely claim damages to cover the economic loss. If the employee's claims to remain employed, he or she ordinarily has a right to stay employed throughout the court procedure which may take one to two years.

## **Laws On Separation Agreements, Waivers, And Releases**

In Sweden, there are no specific provisions regarding separation agreements. However, such agreements are recognized instruments when dismissing employees. Such agreements often regulate the terms and conditions relating to the termination of the employment relationship and the benefits to which the employee is entitled. A separation agreement may be entered into only when the separation is pending, and no waiver of statutory rights may be included in a contract of employment.

## **Litigation Considerations**

The Labor Disputes Act covers the judicial procedures in disputes concerning collective bargaining agreements and other disputes concerning relations between employers and employees. The Labor Court settles disputes in connection with the Co-Determination in the Workplace Act, collective bargaining agreements and other disputes where the plaintiff is an employers' organization, a union or an employer that is a party to a collective bargaining agreement.

Disputes concerning non-union employees or employers that are not bound by any collective bargaining agreement are usually settled with the District Court as the court

of first instance. Appeals are referred to the Labor Court as the second and final instance. This also applies to individual employers or employees who, despite being subject to a collective bargaining agreement, wish to pursue their case independently.

Contrary to the ordinary rule that the losing party pays the legal fees of both parties, each party in a labor dispute may be responsible for his or her own legal fees if the losing party had reasonable grounds to have the case tried in a court.

## **Employment Discrimination**

### **Laws On Employment Discrimination**

Since the 1990s, Sweden has implemented several acts against discrimination that encompass a larger number of employees, and during the last decade the legislation on discrimination has become more stringent and the field of application of the legislation has been extended. The legislation includes the Act on Measures against Ethnic Discrimination in Working Life, the Act against Discrimination of Disabled in Working Life, and the Act against Discrimination in Working Life on the Basis of Sexual Orientation. A couple of years later, the Act against Discrimination of Part-time Employees and Employees on Fixed-term Employment and the Act on Prohibition against Discrimination were implemented. Furthermore, in 2006 a new provision on discrimination in the Parental Leave Act was adopted. The new acts, in conjunction with the Swedish Equal Opportunities Act, place a large burden on employers to protect employees against and eliminate discrimination in the workplace.

The Equal Opportunities Act prohibits direct and indirect discrimination on the grounds of sex and places a general obligation on an employer to promote greater equality between sexes. Discrimination is prohibited with respect to recruitment, termination, employment conditions, promotion, training and supervision.

Indirect discrimination means when an employer disfavors a job applicant or an employee by applying a provision, a criterion or a method of procedure that appears to be neutral but which in practice is particularly disadvantageous to persons of one sex. However, it is not considered indirect discrimination if the provision, criterion or method of procedure is appropriate and necessary and can be justified with objective grounds that are not connected to the sex of the persons.

The Act on Measures against Ethnic Discrimination at Work forbids employers from discriminating against job applicants or employees on the basis of race, skin color, religion, nationality or ethnic origin. The new Act also covers both direct and indirect discrimination and is applicable even if the employer has no discriminatory intent.

The Act against Discrimination of Disabled in Working Life protects disabled job applicants and employees against both direct and indirect discrimination. A disabled person may for example not be treated less favorably than a non-disabled person has or would have been treated in a similar situation. The act is applicable even if an employer has no discriminatory intent.

The Act against Discrimination in Working Life on the Basis of Sexual Orientation forbids employers from discriminating, directly or indirectly, against job applicants and employees on the basis of their sexual orientation. Sexual orientation means homosexual, bisexual or heterosexual orientation. For a finding of discrimination, it is not necessary for an employer to have a discriminatory intent.

The Act against Discrimination of Part-time Employees and Employees on Fixed-term Employment prevents an employer from disfavoring part-time employees or employees on fixed term employment contracts by giving them less favorable employment conditions than the employer gives or would have given employees that works full-time or have an employment for an indefinite period. The prohibition covers both direct and indirect discrimination. However, it does not apply if less favorable employment conditions are justified by objective grounds.

The Act on Prohibition Against Discrimination prohibits direct and indirect discrimination, harassment and instructions to discriminate with respect to ethnic origin, religion, sexual orientation or disability, in among other things (i) labor market policy activities, (ii) in connection with financial support, permits, registration or similar arrangements that are needed or may be of importance in enabling an individual to start or run a business, (iii) in connection with qualification, certification, authorization, registration, approval or similar arrangements that are needed or may be of importance in enabling an individual to engage in a certain occupation, and (iv) in connection with membership of or participation in union, employers' organization or occupational organization.

According to the Parental Leave Act, it is not permissible for an employer to disfavor job applicants or employees for reasons that are attributable to parental leave in respect of salary, benefits, promotion or training/education. For example, this means that

an employee on parental leave ordinarily may not be treated less favourably than other employees with respect to salary increases by reason of the parental leave. However, the prohibition does not apply if the disfavouring is a necessary consequence of the parental leave.

Currently, the majority of the acts on discrimination are being reviewed, and a proposal which is suggested to enter into force in January, 2009, has been prepared. In short, the new proposal entails the following. Most of the acts relating to discrimination will be replaced by a new Discrimination Act that will cover almost all grounds of discrimination, except discrimination of part-time employees and employees on fixed-term employments. Furthermore, the Act, if adopted, will also cover discrimination related to age and discrimination on grounds of gender exceeding identity or expression (e.g., transsexuals, transvestites, etc.). Moreover, the scope of the Act will be extended to cover individuals making inquiries about jobs (i.e., not yet job applicants) and staff employed via agencies.

## **Employee Remedies/Potential Employer Liability For Employment Discrimination**

Violation of the Equal Opportunities Act by an employer may result in a liability to pay damages. The Ombudsman for Equal Opportunity, together with his Commission, initiates, directs and supervises efforts to promote equality. The Ombudsman may also bring charges against an employer on behalf of the job applicant or employee.

Under the Act on Measures against Ethnic Discrimination in Working Life, the Act against Discrimination of Disabled in Working Life and the Act against Discrimination in Working Life on the Basis of Sexual Orientation, employers that discriminate against a job applicant or employee are liable to pay general damages. An employee may also claim damages for the economical loss. The government has appointed an Ombudsman against Ethnic Discrimination ("*Sw. Ombudsman mot etnisk diskriminering*"), a Disability Ombudsman and an Ombudsman against Discrimination on the Basis of Sexual Orientation, who are entrusted with the task of supervising and enforcing the respective acts. The three Ombudsmen may bring charges against an employer on behalf of the job applicant or employee. All acts require employers to investigate harassment on discriminatory grounds by other employees and undertake measures necessary to make sure that such harassment ceases. If an employer fails to undertake such active measures, the employer may be liable to pay damages to the employee.

If an employee is discriminated against by his or her employer in breach of the prohibition in the Act against Discrimination of Part-time Employees and Employees on Fixed-term Employment, the employer may be liable to pay general damages to the employee for the violation and damages for the employee's economical loss.

These three Ombudsmen also supervise compliance with the Act on Prohibition against Discrimination. Anyone who discriminates against a person in a manner that is prohibited under the Act on Prohibition against Discrimination shall pay damages for the violation that the discrimination implies. A company is generally liable for discriminating acts committed by its employees.

## **Practical Advice To Employers On Avoiding Employment Discrimination Problems**

Employers in Sweden must pay careful attention to the various discrimination acts. The inclusion of "indirect" discrimination in these statutes places a burden on employers to ensure that their policies and procedures do not discriminate in purpose or effect.

Furthermore, an employer should be aware that allegations of discrimination often have a high news value and such issues are often covered by media.

## **Sexual Harassment**

### **Laws On Sexual Harassment**

Sexual harassment is generally defined as any kind of unwanted sexual behaviour by words or action in the workplace, in a working situation outside the actual workplace or in connection with an application for work, which leads a person to feel degraded, stressed or discouraged. In many cases, it is clear that certain behaviour qualifies as sexual harassment. In other cases, the harassment is not that obvious (e.g., undesirable comments about looks, outward appearance or private life, or pornographic pictures in the workplace), and the individual committing the harassment may not realize the seriousness of the conduct.

In 1992, the first legislation on sexual harassment was adopted in the Equal Opportunities Act. Under the Act, an employer must ensure that no employee is sexually harassed. The Act further contains a provision against harassment, resulting

from the employee's rejection of a sexual invitation by the employer or the employer's representative. The harassment, as such, is not penalized under this Act, but a perpetrator of the harassment may be charged criminally under the Swedish Penal Code.

## **Employee Remedies For Sexual Harassment**

An employee who considers that he or she has been subject to sexual harassment should lodge a complaint with the employer or with the local union representative. After having received the complaint, the employer has an obligation to start an investigation. If the employee considers that the complaint has not been dealt with properly, he or she may forward the complaint to the Equal Opportunities Ombudsman, who may start an investigation and act as a representative for the harassed employee.

Employees who have been sexually harassed by their employers may be entitled to damages. The employees may also be entitled to damages if the employer has not taken the appropriate measures to prevent sexual harassment in the workplace. Generally, damages to employees in Sweden are considered to be moderate, but have lately increased. However, it is unusual that damages exceeding SEK 100,000 (currently approximately US\$17,000) are awarded.

## **Potential Employer Liability For Sexual Harassment**

According to the Equal Opportunities Act, all employers are obliged to ensure that no employee is sexually harassed in the workplace. An employer who becomes aware that an employee considers herself or himself to have been exposed to sexual harassment by another employee shall investigate the circumstances surrounding the alleged harassment and, if it has occurred, implement the measures that may reasonably be required to prevent continuance of the sexual harassment. If the employer does not fulfill its obligations, it may be liable to pay damages to the employee for the violation caused by the omission.

## **Practical Advice To Employers On Avoiding Sexual Harassment Problems**

Every employer should prepare a policy relative to making a complaint of sexual harassment. If an employer receives a complaint by an employee indicating that someone is sexually harassed in the workplace, an investigation must be initiated. The normal procedure is informal. The first step is to notify the suspected perpetrator that a complaint has been reported and that such claimed behavior cannot be tolerated.

If an informal investigation is insufficient, a formal investigation must be initiated, which means that those involved have to be identified. A careful investigation of facts and evidence must take place. If the harassment is verified, different kinds of sanctions may be taken against the perpetrator of the harassment. The type of sanctions depends on the seriousness of the acts committed and includes transfer, termination or summary dismissal.

Furthermore, it is important to keep in mind that allegations of sexual harassment often are covered by media and there is a risk of bad publicity.