

January 2016

Collective Redundancies and Reorganisations

Sweden

Summary

An employer in Sweden is free to manage its business as best it can. Therefore considerations of size, technology and efficiency with regard to the proper running of the business can constitute just cause for redundancy.

Redundancy includes not only cutbacks, but also a company closure (or part-closure). This means that where an employer decides to reduce the number of staff, a Swedish court cannot normally make a judgment over whether or not there are legitimate business reasons for the termination.

When do the provisions apply?

Since 1976 Swedish legislation has gone beyond the Collective Redundancies Directive, which sets out the minimum rules governing collective redundancies within the European Union. This means that an employer intending to decrease the number of staff by at least five employees must serve a notice on the Swedish Labor Office (Sw. Arbetsförmedlingen) between two and six months prior to the intended staff reduction. The period of notice required varies depending on the number of employees affected. The notice to the Swedish Labor Office runs parallel with the employees' notice periods. Should an additional redundancy situation arise within 90 days it must be merged with the initial redundancy and notified to the authorities.

What are the requirements and who are “appropriate representatives”?

If a Swedish company is bound by a Collective Bargaining Agreement (CBA) the trade union may form a local works council within the company. Under these circumstances, the employer can run the consultation process direct with the local works council. If no local works council is formed, the employer must consult directly with the relevant trade union(s) bound by the CBA.

If there is no CBA, if any employees are members of a trade union, the employer must consult with each and every union affected by the redundancy. The employer must ask all employees affected if they are members of a trade union, and consult with the unions before implementing any redundancies. The employer is not allowed to serve notice to dismiss any employees by reason of redundancy before the consultation process has come to an end.

If no trade union(s) are represented, the employer is not under any obligation to carry out a consultation process but mandatory employment law will still apply.



What sanctions apply if the process is not followed?

If the employer intentionally fails (or is grossly negligent in its failure) to properly notify the Swedish Labour Office, it may be liable to pay a fee to the government. The fee is charged for each week in which the Swedish Labour Office was not notified and is calculated as an amount between SEK 100 to SEK 500 for every employee who is affected by the redundancy.

In addition, if the employer does not consult with the union(s), the employer is liable to pay punitive damages direct to them. The level of damages is discretionary and set by the Labour Court. The sum can range from SEK 50,000 up to SEK 150,000.

How do I choose which employees to dismiss?

If it is reasonable for an employer to redeploy a potentially redundant employee to another position within the business, the employer will not have just cause to dismiss the employee. Even if the employer decides to reduce the number of staff in one department, it may be able to redeploy staff to other departments.

Employers are required to conduct a thorough review to try to identify alternative positions so that, where possible, they can transfer potentially redundant employees to different areas and avoid terminations. This review is mandatory in a redundancy situation and must include the whole legal entity.

When the review is completed, the termination process can be initiated, and the employer can determine who will be selected for redundancy based on the “priority list”.

A priority list will be determined by the employer for each operating unit. It should be prepared according to the last in/first out principle. An employee with a longer period of employment has priority over an employee with a shorter period of employment. If two employees have the same length of service, the older employee will take priority.

Should the employer have 10 employees or less, it can take two employees off the priority list, if they are of particular importance to the business.

That aside, the general rule is that the employer must comply with the priority rules. There are, however, a number of criteria, which may reduce the importance of length of service. The most important criteria are “sufficient qualifications” for the position. An employee with a longer period of employment, whose position has been identified as being redundant, may claim another employee’s position if that employee has a shorter period of employment (as long as the longer-serving employee can show that he/she has sufficient qualifications for the position). This effectively requires the employer to dismiss a different member of staff, even where that employee’s role remains.



Managing Directors are not protected by the employment protection legislation in Sweden. Excluding a Managing Director from the priority list is subject to close scrutiny.

An employee terminated by reason of redundancy has priority for re-employment, should the employer subsequently need to increase its workforce. Priority runs throughout the notice period and lasts for 9 months after termination of the employment. The sufficient qualification rules apply during this period.

Unfair dismissal and what it will cost

If the proper termination process is not followed, or the employer has not carried out an appropriate review or followed the last in/first out principle and consequently dismissed the wrong employee, the employer will be liable to pay both economic and punitive damages.

Economic damages are expensive, and can amount to between 1 – 32 months' salary depending on the employee's length of service. Punitive damages are discretionary and decided by the Labour Court if the parties are unable to settle. The amount usually ranges between SEK 25,000 and SEK 150,000.

The employer must pay the employee's salary during the notice period, and must provide all applicable benefits. If the parties have agreed upon a longer period of notice, the employer must as a general rule comply with the employment contract.

Depending on the employee's length of service, the notice period starts from one month and can last up to six months. The employee is entitled to full salary and other benefits during this time.

During the notice period, employees are still bound by their duty of loyalty and under an obligation to work full time in accordance with the terms of their employment contract.

Can I ask employees to sign a waiver agreement?

The employer is always free to discuss an alternative solution with the employee, such as a separation agreement.

Can disgruntled employees bring claims?

Yes. For example, if an employer does not comply with the mandatory rules requiring it to redeploy potentially redundant employees, an employee could bring a claim.

This material is for general information only and is not intended to provide legal advice.

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