

THE SWEDISH LABOUR LAW SYSTEM

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I INTRODUCTION

The New Welfare Foundation has invited delegates from the European Small Business Association (ESBA) to assess the Swedish business climate for entrepreneurs. This paper is written in order to provide the delegates with a general knowledge of the Swedish labour market and Swedish labour law.

II THE SWEDISH LABOUR MARKET

A *Historical Background*

In 1906, the cornerstones to the Swedish labour law system were laid when the Swedish Trade Union Federation (LO) made an agreement with the Swedish Organisation for Employers (SAF). Ever since, the Swedish labour market and Swedish labour law has been characterised by collectivism and a high level of organisation.

Around 1930, the Swedish labour court was established and a collective agreements act was enacted. Furthermore, another act was adopted to ensure civil servants the same rights to negotiations that workers were ensured through collective agreements. During the 1970's, there was a burst of new legislation in

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the field of labour law, the 1976 Act on Co-Decision in the Work Life and the Employment Security Act being the ones of highest impact. Another important change was that the jurisdiction of the labour court was extended to all labour related disputes. Previously, the jurisdiction only extended to disputes regarding collective agreements and the freedom to organise oneself.

A typical characteristic of the evolution of Swedish labour law is that the legislation has developed as a result of self-regulation. The parties of the labour market have themselves developed the basic features of the rules of negotiation and procedure. Whenever the legislator has intervened, the legislative measure has generally reflected already established patterns of behaviour and existing collective agreements.

B *Present Day*

Given the strong influence the parties to the labour market, particularly the trade unions, have had on the evolution of Swedish labour law, it is not surprising that there is a strong focus on the collective. The organisation is the representative for the individual and the individual herself has a comparatively weak position while both the employer side as well as the employee side are represented by strong organisations.

Thus, the Swedish labour market is still characterised by strong organisations and a high level of collectivism. Salaries and other terms of employment, for example, are to a large extent regulated by legally binding collective agreements. Approximately 80 percent of Swedish employees are members of a trade union (although numbers appear to be falling at the moment). Even employers tend to be organised. The level of industrial action is comparatively low and conflicts between trade unions are virtually non-existent.

Notwithstanding the amount of legislation, the Swedish labour law system to a large extent depends on collective agreements between trade unions and employer-organisations or individual employers. For example, wages and other remuneration are regulated solely by collective and individual agreements. The only area of labour law for which there is a correlating public law remedy is the area concerned with working environment and employee safety. The high degree of collectivism is expressed also in Swedish labour law, where collective rights are emphasised, sometimes even at the expense of individual rights.

III THE SWEDISH LEGAL SYSTEM – A VERY BRIEF OVERVIEW

Unlike the United Kingdom, for example, Sweden is a civil law country. This means that the legal system is founded on legislation. The role of Swedish judges is to interpret the laws and apply them to the individual case. In case of an ambiguity or a lacuna in the law, guidance is to be sought from preparatory works, other laws in similar fields and general principles, basically in that order. Of course, guidance is often sought in judgments, particularly from higher courts. However, decisions from higher courts are not binding upon judges of lower courts. Thus, there is no doctrine of precedent. The Swedish judiciary comprises of two separate but parallel general court systems, the general courts and the general administrative courts. In both systems, there are lay judges as well as

professional judges. Furthermore, there exist some special courts with jurisdiction over particular types of disputes. Professional judges are appointed, not elected.

IV SWEDISH LABOUR LAW

In the field of labour law, there are some 30 to 40 acts and about 10 regulations. Mainly, the legislation concerns 6 different areas;

- A) employee influence and representation,
- B) employment security,
- C) working hours, vacation and rights to leave,
- D) working environment and employee safety,
- E) anti discrimination and equal opportunities, and,
- F) procedural rules.

A *Employee Influence and Representation*

Basically, there are two Swedish acts regulating employee influence and representation, 1, the 1976 Act on Co-Decision in the Work Life, and, 2, the 1987 Act on Board Representation for Employees in the Private Sector.

1 *The Act on Co-Decision in the Work Life*

The Act on Co-Decision constitutes a central part of Swedish Labour Law. Firstly, the Act protects the positive right to freedom of association, i.e. the right to join or form a trade union or an organisation of employers. The Act does not, however, protect the negative right to freedom of association, i.e. the right not to join a trade union or an organisation of employers.

Secondly, the Act contains an obligation for trade unions and employers to refrain from industrial action when bound by collective agreements. This obligation, however, does not prevent industrial action in order to help another trade union or employer organisation to force their counterpart to enter into a collective agreement.

Thirdly, the Act contains rules on the right to employee influence. The statutory right to employee influence is reserved to trade unions, not the employees themselves. The right to influence is comparatively far-reaching and basically consists of rights to information and negotiation, where trade unions with collective agreements have more extensive rights to both information and negotiation than trade unions without collective agreements.

According to the Swedish Agency for Economic and Regional Growth (NUTEK), the administrative costs incurred by Swedish companies for complying with The Co-Decision Act amount to approximately SEK 766,000,000 per year.

2 *The Law on Board Representation for Employees in the Private Sector.*

The law aims at giving employees insight in and influence on the company's business by way of representation on the board. Basically, the law applies to all

types of economic entities that have a board. However, companies with less than 25 employees fall outside the scope of the law.

The decision to have employee board members in a company is to be made by a local trade union bound by a collective agreement and the employee board members are appointed by local trade unions bound by collective agreements in relation to the company. The employee board members ought to, but must not, be selected amongst the company's employees.

B *Employment Security*

There is legislation aimed at protecting organised employees from wrongful dismissal. Furthermore, there is legislation protecting employees in case of their employer's insolvency. However, the most important piece of legislation regarding employment security is the 1982 Employment Security Act. The Act is applicable to all employment relationships, save CEO:s, the employer's family members and employees working in their employers household.

The Employment Security Act contains the general rules on employee protection against wrongful dismissal. The Act is founded on four basic principles; 1, a mandatory definition of "employee" that defines the ambit of the rules, 2, a presumption for employment contracts to be valid without limitation in time, 3, a requirement of valid reasons for the employer's termination of an employment contract and, 4, priority rules for redundancy lay-offs (the general principle being last in – first out). The Act also contains several procedural rules in relation to the termination of employment contracts.

Wrongful dismissal cases may be brought by individual employees, with or without the help of a trade union. If a wrongful dismissal is connected to the employee being organised, the trade union may have an action for damages. The most noteworthy feature of the Employment Security Act, however, is the fact that an employer may negotiate an exception to the priority rules for redundancy lay-offs with the trade union. Such an exception applies to all employees. Thus, the trade unions are given the power to forfeit what would otherwise be individual rights under the priority rules for redundancy lay-offs, not only with regard to the members of the trade union, but also in relation to un-organised employees.

According to NUTEK, the administrative costs incurred by Swedish companies for complying with The Employment Security Act amount to approximately SEK 129,000,000 per year.

C *Working Hours, Vacation, Sick-leave, Parental-leave etc*

There are several Acts and regulations regulating working hours and different types of rights to leave. In short, the material rules are that regular working-hours may not exceed 40 hours a week, a right to 5 weeks paid vacation per year, a right to unpaid parental leave (which could extend to more than 1,5 years) and that employees have the right to paid sick-leave (where the employer is obliged to pay 80 percent of the salary for nine of the first ten days the employee would have worked if not ill).

In general most rules contain binding minimum-standards and individual employment contracts and collective agreements often contain conditions that are

more favourable to the employees. Nevertheless, some of the rules may be set aside pursuant to a collective agreement, even when to the detriment of individual employees.

According to NUTEK, the administrative costs incurred by Swedish companies for complying with the legislation in this area amount to approximately SEK 1,270,000,000 per year, actual sick-pay not included. The major part of the administrative cost is connected to time-reports and such, necessary for the calculation and payment of salaries.

D *Working Environment and Employee Safety*

Working environment and employee safety are regulated in the 1997 Working Environment Act and the accompanying 1997 Working Environment Regulation. In addition, there are some 125 rules on the subject matter, issued by different government authorities.

Public authorities are responsible for both monitoring the compliance with and, if necessary, enforcing the rules on working environment and employee safety.

According to NUTEK, the administrative costs incurred by Swedish companies for complying with the legislation in this area amount to approximately SEK 2,166,000,000 per year.

E *Anti Discrimination and Equal Opportunities*

The Sweden has an equal opportunities act and four anti discrimination acts prohibiting discrimination on grounds of ethnicity and religion, sexual preferences and disabilities as well as discrimination of part time employees. In relation to all the protected interests, except part time employees, there are Ombudsmen founded and funded by the State. The Ombudsmen possess some investigative powers but may not rule on discrimination disputes.

The right not to be discriminated is clearly individual in nature and discrimination cases may be brought before a court with or without the help of the relevant Ombudsman.

According to NUTEK, the administrative costs incurred by Swedish companies for complying with the legislation anti discrimination and equal opportunities amount to approximately SEK 508,000,000 per year. Almost all the administrative costs incurred are related to the Equal Opportunities Act, according to which, employers are obliged to draw up plans to promote equal opportunities within the company as well as make salary-surveys.

F *Procedural Rules*

The Swedish Labour Court is a special court set up to hear and rule on labour-related disputes. A labour dispute is any dispute that affects the relationship between employers and employees. The Labour court also has jurisdiction over all disputes regarding the interpretation of a collective agreement. Like general courts, the Labour Court is financed from public funds and the government appoints members of the court. Furthermore, the individual parties to a dispute have no influence over the composition of the court. In addition, the court also

follows largely the same judicial process as the general courts and the Code of Judicial Procedure applies to the labour court.

When hearing a case the labour court generally consists of seven members. In more straightforward cases, however, the court may consist of only three members. In the usual seven-member court there are three neutral members plus two members representing the interests of the employer and two representing employee interests.

Among the three neutral members - those not considered to represent either employer or employee interests - are the chairman and vice chairman. These three members, often known as "official" members, are individuals with long experience in the judiciary. The third member of the group has specialist expertise in labour market issues and often holds a prominent position in a government department or the like.

G *Collective Rights vs. Individual Rights*

As mentioned previously, the high degree of collectivism on the Swedish labour market is expressed also in Swedish labour law, where collective rights are emphasised, sometimes even at the expense of individual rights. A striking feature of the Swedish labour law system is that the right to industrial action belongs to the organisations, not the individuals. Furthermore, there is no statutory minimum wage and the legal right to employee influence and representation can only be exercised by trade unions, particularly those with collective agreements.

Also in cases where there exists a legal protection of individual rights, those rights may sometimes be set aside (to the detriment of individual employees) following an agreement between a trade union and the employer, e.g. the priority rules for redundancy lay-offs.

When it comes to anti discrimination and equal opportunities, those are inherently individual rights and they cannot be forfeited by the trade unions. However, as with all other labour disputes, cases concerning discrimination in the work life are to be brought before the Labour court. As elaborated above, the majority of judges in the Labour court represent the employer organisations and the trade unions. Thus, there is clearly a collective element also to the assessment of inherently individual rights, such as the right not to be discriminated against.