

Memo

Redundancies under Swedish law

This is a brief memorandum which provides a general description of the requirements under Swedish employment law in connection with redundancies. Before taking any action in relation to these matters, we recommend that you obtain individual legal advice. If you have any questions, please do not hesitate to contact us.

1 Short introductory summary

Declining sales and excessive costs as well as restructuring in order to promote efficiency are regarded as objective grounds for dismissal (subject to notice). In general, it is the employer which, at its discretion, decides to reduce or reorganise its activities. However, pursuant to the Swedish Employment Protection Act (1982:80) and the Co-Determination in the Workplace Act (1976:580), the guidelines and regulations described below must be observed.

- (a) If an employee is a member of a trade union, or if the company is bound by a collective bargaining agreement, the employer is obliged to call for consultations with any trade union concerned *before* a decision to implement the redundancy is taken.
- (b) If there is a vacant position within the *company* to which the affected office belongs, any employee concerned must be offered such vacant position, provided he/she possesses the necessary qualifications for this position.
- (c) When deciding which employees have to be made redundant, a seniority principle, often referred to as the “last in - first out” principle shall be applied, which means that employees with the longest aggregate period of employment are entitled to continued employment. However, this is subject to a prerequisite that the remaining employees have the necessary qualifications for the remaining positions.

It should be noted that the requirement of “necessary qualifications” means that the employee must have the formal education and skills required. The employer may have to accept an adaptation period of three to six months and it is not possible to freely choose the employee most suitable for the position.

- (d) Employees who are made redundant have priority for re-employment during their notice period and for a period of nine months following the expiry thereof.

2 **Obligation to consult with trade unions**

According to the Co-Determination in the Workplace Act, the employer must, on its own initiative, conduct consultations with any trade union to which the company is bound by a collective bargaining agreement.

If the company is not bound by any collective bargaining agreement, consultations must take place with each union of which the employees concerned are members. In this case, the employer needs to ascertain whether or not the employees concerned are members of a union. Vinge can provide such a request form, if required.

Two things should be emphasised in this context:

- (a) The consultations must be conducted and concluded *before* the employer takes any decision to implement the redundancy. In the absence thereof, the employer may be liable to pay damages to the trade unions concerned.

With regards to the decision to implement the redundancy, it may be noted that Swedish corporate law or internal corporate governance regulations may require that the decision is taken by the board of directors of the employer entity.

- (b) The consultations do not have to lead to an agreement, i.e. the employer is free to take any kind of decision (subject to mandatory law) after the consultations are concluded. Hence, the unions do not have the right of veto in this respect.

3 **Order of priority**

In order to comply with the mandatory last in - first out principle, the employer must prepare a priority list. All employees within the operational unit concerned must be listed in chronological order based on their respective employment date. If the employer is bound by a collective bargaining agreement, a priority list has to be prepared for each collective bargaining agreement sector. Furthermore, a union to which the company is bound by a collective bargaining agreement may request that the employees of all units within the same municipality are to be listed in the same priority list.

According to the Employment Protection Act, there is a possibility for employers that have no more than ten employees to exempt up to two employees that are deemed to be important for the business from the priority list.

4 **Obligation to notify state authorities**

If five employees or more are to be made redundant, the employer is obliged to notify the local Swedish Public Employment Office. The termination of employment may not become effective earlier than two months after such notification. If more than 25 employees are concerned, this time period is extended.

5 Notice of termination

After completion of trade union consultations and when it has been decided which employees are to be made redundant, written notice of termination shall be given personally to the employee or, if he/she is not available, the notice must be sent by registered letter to the employee's last known address. The notice must include certain prescribed information such as the name of the employee and the day on which the employment shall be terminated, the reason for termination, and the manner in which the employee is to proceed if he/she wants to challenge the termination in court. Vinge can provide the correct wording of such a dismissal letter, if required.

6 Notice periods

The statutory notice periods on behalf of the employer vary between one and six months. Under some collective bargaining agreements, an additional six months will be added with respect to employees over 55 years of age and with a ten year employment period. If the individual employment agreement provides a longer notice period than the statutory period then such longer period must be observed. At present, there are two parallel systems for calculating the notice periods.

For employees who are employed on or after 1 January 1997, the following notice periods apply:

- 1 month if the duration of employment is less than 2 years;
- 2 months if the duration of employment is at least 2 but less than 4 years;
- 3 months if the duration of employment is at least 4 but less than 6 years;
- 4 months if the duration of employment is at least 6 but less than 8 years;
- 5 months if the duration of employment is at least 8 but less than 10 years;
- 6 months if the duration of employment is at least 10 years.

For employees who were employed before 1 January 1997 another set of rules applies which are based on the age of the employee. In practice, the following notice periods will apply: 4 months at the age of 35 years, 5 months at the age of 40 years and 6 months at the age of 45 years.

7 Remuneration during the notice period / severance pay

The employees in question are entitled to receive salary and all other employment benefits during the notice period even when the employer releases them from attending work and performing their duties ("garden leave"). However, the employees are not entitled to receive any other mandatory payments in connection with the dismissal, i.e. extra severance payments are not legally required.

Under certain circumstances, it is possible to make deductions from salary during the notice period where an employee obtains salary from another employer during this time.

8 Priority for re-employment

Employees who are made redundant have a right of priority for re-employment in the event there is a need to recruit employees in the future. This right arises when notice of termination is given and subsists for a period of nine months after the expiry of the notice period.

The right of priority for re-employment is conditional upon the employee having been employed for more than 12 months during the last three years and that he/she has notified the employer that he/she claims such priority. The employee must also have the necessary qualifications for the new employment.

9 Employees in managerial positions

Employees whose duties and terms and conditions of employment are such that they may be deemed to occupy an executive managerial or comparable position are excluded from the Employment Protection Act and the rules described above.

The employment of such employees, which normally only includes the managing director of the company, is terminated in accordance with the terms of the individual employment contract. However, with regard to the terms of such termination, certain minimum rules laid down by the Swedish labour court should be taken into account as well as general Swedish business practice.

10 Remedies in case of unlawful termination

The remedy available to an employee who believes that the termination of his/her employment was not based on objectively justifiable reasons is to request that the termination shall be declared invalid and/or to demand damages.

The damages available under the Employment Protection Act are divided into two different categories. First, the employee may demand punitive damages for the breach that the employer has committed by the unlawful termination (approximately SEK 75,000). Second, the employee may demand damages for economic loss. The damages for economic loss are capped and are maximized to an amount equal to 16 monthly salaries if the employee has been employed for less than five years, 24 monthly salaries if he/she has been employed for five years or more but less than ten years and 32 monthly salaries if the employee has been employed for more than 10 years.

If the employee requests that the termination shall be declared invalid, and this issue cannot be resolved through negotiations, the issue may be taken to court proceedings. Such proceedings may take up to a year or more. The employee normally remains employed during the entire proceedings and is entitled to all his/her employment benefits during the notice period.

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If a termination is challenged solely on the basis that the termination has violated the “last in - first out” principle mentioned above, the employee cannot claim that the termination shall be declared invalid and will not remain employed during any court proceedings. The employee will however still be able to claim damages for loss of income.

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