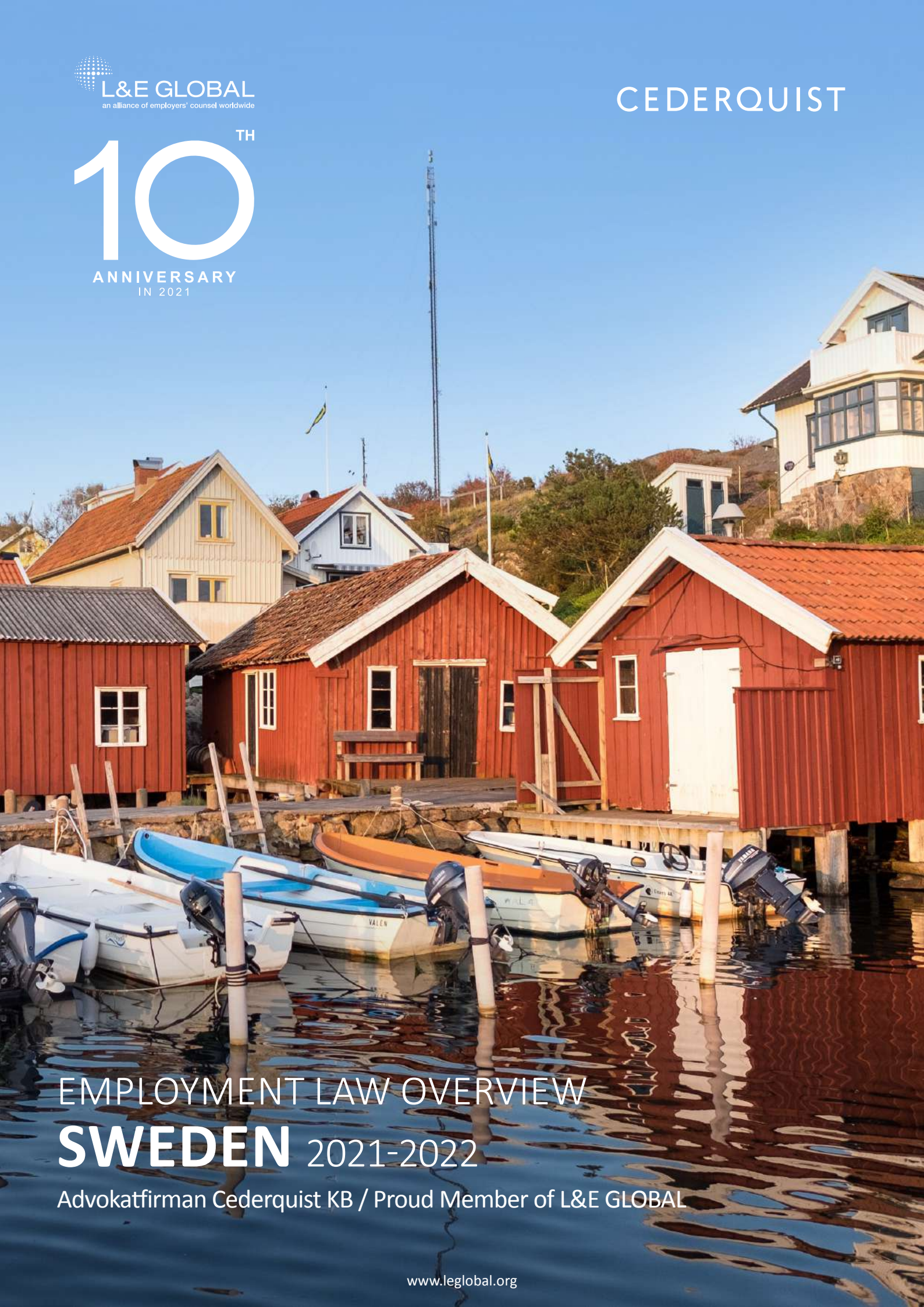
L&E GLOBAL
an alliance of employers' counsel worldwide

CEDERQUIST

10TH ANNIVERSARY IN 2021



EMPLOYMENT LAW OVERVIEW

SWEDEN 2021-2022

Advokatfirman Cederquist KB / Proud Member of L&E GLOBAL

www.leglobal.org

TABLE OF CONTENTS.

L&E GLOBAL
an alliance of employers' counsel worldwide

CEDERQUIST

I. GENERAL OVERVIEW

1. INTRODUCTION

The labour market in Sweden is to a great extent self-regulated by employers' organisations and trade unions. The Swedish labour law model is based on civil rules that govern most aspects of the employer-employee relationship. Mandatory laws and regulations in collective bargaining agreements provide a comprehensive framework for the terms and conditions of employment. Disputes are finally settled by the Swedish Labour Court, which is the final instance in employment related disputes. However, the majority of disputes are solved by the parties on the labour market through consultations and negotiations.

2. KEY POINTS

- An employment agreement does not have to take any specific form to be valid.
- An employment may only be terminated on objective grounds, such as redundancy or personal reasons.
- An employer has certain consultation and information obligations towards trade unions even if the employer is not bound by any collective bargaining agreement.
- Generally, citizens of countries outside the EU must have a work permit to work in Sweden.

3. LEGAL FRAMEWORK

Swedish employment law is regulated by statutes and case law, as well as by collective bargaining agreements concluded with trade unions. Collective bargaining agreements are of great importance and they often contain regulations deviating from statutory provisions to better suit the type of business where they apply. Regulations regarding employment protection are found in the Employment Protection Act. Employees whose duties and conditions of employment are such that they may be deemed to occupy a managerial or comparable position are excluded from the Employment Protection Act.

The Co-Determination Act contains the general provisions governing the relationship between employers and trade unions in such areas as right to association, information, negotiations, industrial actions and labour market stability obligations. Other essential statutes are, for example, the Discrimination Act, the Annual Leave Act, the Personal Data Act, the Parental Leave Act, the Working Hours Act, the Work Environment Act and the Sick Pay Act.

4. NEW DEVELOPMENTS

On 7 April 2020, legislative changes as regards the Act on Short-time Work Allowance entered into force with retroactive effect as of 16 March 2020. Following the legislative changes, employers may apply for and receive, state funded financial support when employing short time working arrangements, as alternatives to dismissals during temporary and unexpected financial hardship. A short time working arrangement needs to be agreed between employer and employee, or employee organisation, and may entail a temporary reduction in working hours by 20, 40 or 60 percent and a temporary reduction in salary by 12, 16 or 20 percent, respectively.

When applying such arrangements, the employer may qualify for financial support amounting to 43 percent of the part of the employees' salaries that correspond to the reduced working hours, i.e. the basis when calculating the financial support is 60 percent of the employees' salaries if working hours

are reduced by 60 percent. Due to the Covid-19 pandemic, specific regulations were enacted, temporarily, during 2020 to allow employees to retain more than 90 percent of their salary even though working hours were reduced by 20, 40 or 60 percent, and to allow employers to receive financial support amounting to 98.6 percent of the salary that corresponded to the reduced hours of work.

II. HIRING PRACTICES

1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

Generally, citizens of countries outside the EU must have a work permit to work in Sweden. In order for a person to get such a permit the employer must have prepared an offer of employment and advertised the job in Sweden and the EU for 10 days (this applies to new recruitments). It is also required that the terms of employment are equal to or better than those provided under a Swedish collective bargaining agreement or customary for the occupation or sector. The employee must also earn enough from the employment to be able to support himself or herself, the gross salary should be at least 13,000 Swedish kronor per month and the relevant trade union must have been given the opportunity to express an opinion on the terms of employment.

EU and EEA citizens do not need a visa and they have the right to work in Sweden without work and residence permits. People who have a residence permit in an EU country, but are not EU citizens, can apply to obtain the status of long-term resident in that country. They thereby enjoy certain rights that are similar to those of EU citizens. Furthermore, the Posting of Workers Act applies to posted workers in Sweden.

2. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

A foreign employer is not required to have a permanent establishment in Sweden to hire employees. However, if the employees are going to perform work in Sweden, the Foreign Employer is normally obligated to pay taxes in Sweden, as well as to register as an employer in Sweden. The employer will also need to pay social security contributions on the locally hired employee's salary. It is possible to enter into an agreement with the locally hired employee wherein the employee will report and pay the social security contributions and in such cases, the employee, instead of the foreign employer, should register with the Swedish Tax Agency. However, if the employee is working as a dependent representative in Sweden, the foreign employer will typically be seen as having a permanent establishment in Sweden. In order to facilitate the payment of taxes, the foreign employer will, in practice, need to register a branch office or a company in Sweden.

3. LIMITATIONS ON BACKGROUND CHECKS

Employers have limited possibilities of obtaining information from registers containing information regarding applicants, such as medical or criminal records, and are limited by the EU General Data Protection Regulation (GDPR) as regards the processing of such personal data. An applicant can, on the other hand, voluntarily present medical or criminal information about himself or herself, if the employer should request it in connection with the recruitment. There is no obligation for the applicant to comply with such a request, but the non-compliance may result in the applicant not being offered the position in question. Applicants to positions such as teachers and day-care teachers, however, may be obliged to provide an excerpt from their criminal records before an employment agreement is entered into.

As regards credit checks, these are allowed and may be conducted by the employer, if the credit check is of relevance to the applied position, i.e. the position will involve economy related tasks such as accounting or handling payments as a

cashier. Otherwise, consent should be provided by the applicant prior to a credit check.

4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

Employers have a freedom to decide which questions need to be asked in order to determine if an applicant is suitable for a position. However, an employer may not ask questions that could constitute discrimination, such as if the applicant is expecting a child or if the applicant is a member of a trade union.

Furthermore, the employer may decide on tests and examinations that should be conducted as part of an application. Apart from the prohibition of discrimination and that an applicant may never be required to take a genetic test as a condition of employment, there are no other legal limitations to requiring an applicant to, e.g., undergo a medical examination or a drug or alcohol test.

An employer can refuse to hire an applicant who does not consent to a test. However, an employer must act in accordance with good labour market practice.

III. EMPLOYMENT CONTRACTS

1. MINIMUM REQUIREMENTS

An employment agreement does not have to take any specific form. However, Sweden has implemented the directive on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. As such, an employer must provide certain information in writing to the employee concerning the principal terms of the employment. This information must be provided to the employee within one month of the commencement of the employment.

The information shall include the following:

- name and address of the employer and the employee;
- commencement date;
- place of work;
- duties and title;
- whether employment is fixed or for an indefinite term;
- the length of the probationary period;
- periods of notice;
- payment and other employment benefits;
- length of paid annual leave;
- length of normal work day or work week; and
- applicable collective bargaining agreements.

2. FIXED-TERM/OPEN-ENDED CONTRACTS

The general rule is that an employment agreement is for an indefinite period, unless otherwise agreed. The Employment Protection Act allows a general fixed-term employment when the employer is in need of fixed-term employees. A fixed-term employment agreement may also be concluded for a temporary substitute employment and for a seasonal employment. If, during the past five years, an employee has been employed in a fixed-term employment for in aggregate more than two years the employment is transformed into an indefinite-term employment.

3. TRIAL PERIOD

The Employment Protection Act permits probationary employment for a period of no more than six months. If the employment is not terminated before the expiry of the probationary period, the employment will automatically become employment for an indefinite term.

4. NOTICE PERIOD

An employer must provide a prior notice of termination before dismissing an employee. Further, the employer must observe certain formal rules set out in the Employment Protection Act when serving a notice of termination to an employee. Notices shall always be made in writing and must state the procedure to be followed by the employee in the event the employee wishes to claim that the notice of termination is invalid or to claim damages as a consequence of the termination. The notice shall also state whether or not the employee enjoys rights of priority for re-employment. Statutory notice periods vary between one and six months, depending on the length of the employment term.

- 1 month if the length of the employment term is less than 2 years
- 2 months if the length of the employment term is at least 2 years but less than 4 years
- 3 months if the length of the employment term is at least 4 years but less than 6 years
- 4 months if the length of the employment term is at least 6 years but less than 8 years

- 5 months if the length of the employment term is at least 8 years but less than 10 years
- 6 months if the length of the employment term is at least 10 years

The length of the notice period may be extended by virtue of collective bargaining agreements or individual contracts. During the notice period the employee is obliged to perform work for the employer and is entitled to salary and all other employment benefits. It is possible for an employer to release the employee from the duty to perform work during the notice period.

The provisions in the Employment Protection Act regarding termination of employment are mandatory; however, the employer and the employee may agree to terminate the employment. Accordingly, it is possible to reach a separation agreement stipulating payment in lieu of notice and other terms and conditions that shall apply in connection with the separation.

IV. WORKING CONDITIONS

1. MINIMUM WORKING CONDITIONS

There are mandatory rules concerning minimum working conditions in Swedish law that must be observed by the employer. For example, there are regulations regarding working hours, work environment and non-discrimination. However, the terms and conditions are mainly regulated in the individual employment agreement and/or, if applicable, in the collective bargaining agreement.

2. SALARY

There are no provisions regarding minimum salary in Swedish law. However, provisions regarding such matters are often found in the collective bargaining agreements.

3. MAXIMUM WORKING WEEK

According to the Working Hours Act, regular working hours may not exceed 40 hours per week. Where the nature of work or working conditions generally so demand, working hours may amount to an average of 40 hours per week for a period of no more than four weeks. Where an employee is demanded to be at the employer's disposal at the workplace in order to carry out work if necessary, on-call hours may not be more than 48 hours over a four-week period or 50 hours over a calendar month. Deviations from certain regulations in the Working Hours Act can be made by collective bargaining agreement, but not in individual employment agreements.

4. OVERTIME

Overtime comprises working hours in excess of regular working hours and on-call hours. Where additional working hours are required, overtime hours may not exceed 48 hours over a period of four weeks or 50 hours over a calendar month, subject to a maximum of 200 hours per calendar year.

Statutory law does not contain regulations regarding overtime pay. Overtime pay is normally provided for in collective bargaining agreements. In general, employees may choose to receive overtime pay in terms of money or compensatory leave. If no collective bargaining agreement exists, the employee is not entitled to overtime pay unless agreed upon. If a collective bargaining agreement exists and provides a right to overtime pay, it may contain provisions making it possible for the employee to waive the right to overtime pay and instead get compensation in the form of compensatory leave. However, such waiver usually only applies to employees who have flexible working hours or if special reasons are at hand.

5. HEALTH AND SAFETY IN THE WORKPLACE

Sweden has extensive legislation providing guiding principles regarding the work environment. The Work Environment Authority's task is to supervise employers' compliance with the Work Environment Act and its regulations. The Work Environment Act contains regulations concerning the obligations of employers and others responsible for safety, to prevent ill health and accidents at work. There are also regulations as regards the cooperation

between employer and employee, for example rules about the activities of safety representatives at the workplace.

A. EMPLOYER'S OBLIGATION TO PROVIDE A HEALTHY AND SAFE WORKPLACE

The work environment encompasses all factors and relationships at work: technical, physical, organisational, social and work content. The employer is responsible for the work environment and must take all necessary measures to prevent ill health and accidents, instruct and inform employees on how to avoid risks, have an organisation for rehabilitation and adaptation activities and have recourse to the occupational health care that is needed. Employers should investigate, implement and monitor activities so that ill health and accidents at work are prevented and a satisfactory work environment is achieved, by carrying out risk assessments, investigating ill health, accidents, serious incidents, implementing measures, controlling measures and allocating work environment assignments.

B. COMPLAINT PROCEDURES

The employer is responsible for the work environment and shall work together with the employees in the work environment management. Each employee, who deems that certain work constitutes an immediate threat to life or health, is obliged to report this to the employer or safety representative as soon as possible. However, the appointed safety representative has the main responsibility to convey work environment issues and demands from the employees to the employer.

The safety representative may issue a formal report to the employer, should the safety representative deem that work environment issues have not been dealt with by the employer in due time. If such a report remains unanswered by the employer, the safety representative may file a report with the Swedish Work Environment Authority for further investigation.

The Work Environment Authority ensures that laws and regulations are followed by inspecting and communicating injunctions and prohibitions. Employers acting in breach of the regulations can receive sanction fees, and the managers responsible for the work environment can be held personally liable for violating the regulations concerning the work environment.

C. PROTECTION FROM RETALIATION

A safety representative is protected from having his or her terms and conditions of employment changed for the worst due to the assignment as safety representative. Furthermore, an employee or a safety representative is not liable for damages caused due to the employee or safety representative stopping work, which the employee or safety representative deemed as an immediate threat to life or health.

Additionally, an employee or applicant shall not be subject to any retaliation due to the employee or applicant reporting, participating in an investigation of or rejecting employer conduct, which is in violation of the Discrimination Act.

V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

The anti-discrimination legislation consists of the Discrimination Act, which prohibits both direct and indirect discrimination as well as harassment in working life based on gender, gender identity or expression, ethnic origin, religion or belief, disability, sexual orientation and age.

Furthermore, employers may neither discriminate against part-time nor fixed-term employees, nor treat an applicant or an employee unfairly on grounds related to parental leave under Swedish law. Trade union representatives are also protected from discrimination based on their union activities.

2. EXTENT OF PROTECTION

Discrimination according to the Discrimination Act is defined as:

1. Direct discrimination: when someone is disadvantaged by being treated less favourably than someone else is treated, has been treated or would have been treated in a comparable situation, if the disadvantage is associated with any of the protected grounds.
2. Indirect discrimination: when someone is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that may put people of any of the protected grounds at a particular disadvantage, unless the provision, criterion or procedure has a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.
3. Inadequate accessibility: when a person with disability is disadvantaged through a failure to take measures for accessibility.
4. Harassment: conduct that violates a person's dignity and that is associated with one of the following grounds of discrimination: sex; gender identity or expression; ethnicity; religion or other belief; disability; sexual orientation; or age.
5. Sexual harassment: conduct of a sexual nature that violates someone's dignity.
6. Instructions to discriminate: orders or instructions to discriminate against someone in a manner referred to in points 1–4.

The Discrimination Act also prohibits reprisals.

3. PROTECTIONS AGAINST HARASSMENT

The employer is required to work with active measures and to take preventive actions against discrimination, reprisals and other hindrance of equal rights and opportunities in their business. Employers with 25 or more employees must have a policy and a contingency plan detailing their work with such active measures.

If an employer becomes aware that an employee considers that he or she has been subjected to harassment or sexual harassment in connection with work by someone performing work at the employer's establishment, the employer is obliged to investigate the circumstances surrounding the alleged harassment and where appropriate take the measures that can reasonably be demanded to prevent harassment in the future. This obligation also applies with respect to a person carrying out a traineeship or performing work as temporary or borrowed labour.

4. EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

According to the Discrimination Act an employer that provides inadequate accessibility, meaning that a person with disability is disadvantaged through a failure to take measures for accessibility to enable the person to come into a situation comparable with that of persons without this disability where such measures are reasonable, can be liable to pay damages. The prohibition of discrimination in the form of inadequate accessibility does not apply to a person enquiring about work. In addition, the Working Environment Act obliges the employer to adjust the company operations to the employee's individual possibilities and needs.

5. REMEDIES

The employer can be incurred liability to compensate the employee for discrimination according to the Discrimination Act. Furthermore, if someone is discriminated against by a provision in an individual contract or in a collective bargaining agreement in a manner that is prohibited under the Discrimination Act, the provision shall be modified or declared invalid if the discriminated person requests this.

The Equality Ombudsman's task is to supervise compliance with the Discrimination Act. An employer may be obliged to investigate and take measures against harassment at the order of the Equality Ombudsman. If such order is not complied with the Equality Ombudsman can issue an order to fulfil the obligation subject to a financial penalty.

6. OTHER REQUIREMENTS

Affirmative action is not considered discrimination, i.e., it is not discriminatory to make a decision of hiring, promotion or education based on one of the protected grounds, if such a decision is appropriate and necessary to achieve a legitimate aim in the business. Affirmative action may also be taken to, e.g., promote equality between women and men on matters other than salary or other terms of employment. There are, however, no quotas set forth in statute.

VI. PAY EQUITY LAWS

1. EXTENT OF PROTECTION

The pay equity legislation consists of provisions in the abovementioned Discrimination Act, which set forth that employers are required to work with active measures to prevent discrimination and to promote equal rights and opportunities regardless of employees' gender, gender identity or expression, ethnic origin, religion or belief, disability, sexual orientation and age. The employer's active procedures shall include measures to promote pay equity, and to prevent non-objective differences in pay and benefits between women and men.

2. REMEDIES

The employer can incur liability under the Discrimination Act, to compensate the employee for discrimination due to non-objective differences in pay and benefits based upon gender. Furthermore, if someone is discriminated against by a provision in an individual contract or in a collective bargaining agreement in a manner that is prohibited under the Discrimination Act, the provision shall be modified or declared invalid upon the request of the discriminated person.

In addition, the Equality Ombudsman supervises compliance with the Discrimination Act and may order an employer, inter alia, to provide information or to take measures deemed necessary for supervision and compliance with the pay equity legislation in the Discrimination Act. If such order is not complied with, the Equality Ombudsman can issue an order to fulfil the obligation subject to a financial penalty.

3. ENFORCEMENT/ LITIGATION

Not applicable in Sweden – very few cases.

4. OTHER REQUIREMENTS

In order to identify measures necessary to promote pay equity, an employer's active policies shall include an annual review of provisions and practices applied in respect of pay and benefits. The annual review shall include an analysis of pay differences, inter alia, between women and men performing work that may be deemed comparable. An employer with ten or more employees shall document the employer's review and analysis in writing and such documentation shall include measures deemed necessary by the employer, to correct non-objective differences and to promote pay equity.

Furthermore, the employer shall cooperate with employees, as well as with trade unions to which the employer is bound to by a collective bargaining agreement, regarding active measures to promote pay equity. The employer shall also provide relevant trade unions with information that is necessary for cooperation on active measures, but there are no requirements to keep the work with active measures on pay equity publicly available.

VII. SOCIAL MEDIA AND DATA PRIVACY

1. RESTRICTIONS IN THE WORKPLACE

An employer has the right to direct and allocate work and thus is able to restrict employees' use of Internet and social media during work hours. However, practically, this depends on the type of work that is being performed.

A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW THE EMPLOYEE'S ELECTRONIC COMMUNICATIONS?

Furthermore, an employer with a legitimate aim to supervise communications of the employee, may be allowed to do so as far as the employee has been informed of it beforehand and the supervision is not excessive in regard to the employee's right to privacy.

2. EMPLOYEE'S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

As far as confidential information is concerned the Act on Trade Secrets is of relevance. A trade secret is defined as information concerning the business or industrial relations of a person conducting business or industrial activities which that person wants to keep secret and the divulgation of which would be likely to cause a damage from the point of view of competition. An employee who wilfully or through negligence attacks a trade secret of an employer, of which he or she has been informed in the course of the employment, shall compensate the employer for the damage caused by the attack. However, only under such circumstances that the employee understood, or ought to have understood, that he or she was not allowed to acquire, use or disclose it, shall the employee be liable for damages caused by the action.

Moreover, the employee may, by use of social media, act in breach of his or her employment contract, e.g. the duty of loyalty. Depending on the circumstances at hand, the employee may be dismissed for disloyal behaviour. Though, the employee may have certain rights to criticise the employer when grievance is at hand.

A. DATA PRIVACY

The General Data Protection Regulation provides protection for individuals against violation of their personal integrity by processing of personal data. Accordingly, there are restrictions on employers' use of data regarding employees, former employees and applicants. According to the Regulation, any form of processing of personal data must be lawful. Employers may often rely on the performance of the employment contract or a legitimate interest when processing personal data relating to the employee. The processing must be relevant and necessary for the purpose stipulated and personal data may not be stored for longer than necessary with reference to the specified purposes. Furthermore, the legitimate interest of the employer may not be outweighed by the employee's interest of personal integrity.

The Regulation also stipulates situations in which personal data may be processed in cases where the individual has not given his or her consent to

the processing. For example, personal data may be processed in order to satisfy a purpose that concerns a legal obligation of the employer.

Sensitive personal data – for example, information about employees' or applicants' race or ethnic origin, political opinions, religious or philosophical beliefs, membership of a trade union or personal data concerning health or sexual preference – may only be processed in special circumstances.

VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. GROUNDS FOR TERMINATION

Employers may dismiss employees either with or without notice. A dismissal with notice must be based on objective grounds. Objective grounds are not defined by statute or case law, but can be either for objective reasons or subjective personal reasons. Objective reasons are dismissals based on redundancy, re-organisation or the economic situation of the employer, while subjective personal reasons are all dismissals that relate to the employee personally, such as the employee's conduct or performance.

An overall assessment of all the factors involved must be made when determining whether objective grounds for dismissal are at hand. A dismissal with notice will never be considered as based on objective grounds if there were other alternatives available to the employer, such as relocating the employee elsewhere within the business. Thus, before notice of termination is given, the employer must investigate whether there are any vacant positions within the employer's business that the employee can be offered. Dismissals that are considered discriminating according to the Discrimination Act are prohibited. Furthermore, several other regulations protect employees from unfair dismissals. For instance, an employee may not be dismissed on grounds related to parental leave or leave of absence for educational purposes.

2. COLLECTIVE DISMISSALS

A. OBJECTIVE REASONS

The Co-Determination Act does not recognise the term "collective redundancies". In contrast to many other European countries where the obligation to consult collectively is triggered only if there are several redundancies, the provisions on obligations to consult according to the Co-Determination Act are applicable even if the redundancy concerns only one employee.

A notification to the Swedish Public Employment Service shall be made if at least five employees are affected by a decision on terminations due to a redundancy situation. This also applies if the total number of notices of termination is expected to be 20 or more during a 90-day period.

When the labour force has to be made redundant owing to objective reasons, the basic principle to be applied is that the employee with the longest aggregate period of employment with the company should be entitled to stay the longest. The employer must select those to be dismissed on a "last in, first out" basis. A condition for continued employment is that the employee has sufficient qualifications for one of the available positions that may be offered.

The procedure for dismissing employees is laid down in the Employment Protection Act and varies to some extent depending on whether the termination is due to objective reasons or subjective personal reasons. Prior to terminating an employment agreement owing to objective reasons, the employer may be obliged to conduct consultations under the Co-Determination Act if the employer is bound by a collective bargaining agreement or if the employee is a member of a trade union.

3. INDIVIDUAL DISMISSALS

A. SUBJECTIVE PERSONAL REASONS

Negligent performance, serious misconduct, theft, disloyalty or other aggravating circumstances

relating to the employee and his/her individual performance may constitute objective grounds for termination due to personal reasons. The employer has the burden of proof in this regard and it is often very difficult to present sufficient evidence to support the ground of termination of an employee for personal reasons. Further, the employer has an obligation to provide support to the employee to improve through, e.g., education or performance improvement plans. Dismissal without notice is lawful only where the employee has committed a fundamental breach of the employment agreement, such as gross misconduct by disloyalty in working for competitors, and should be implemented only in exceptional cases.

Prior to terminating an employment agreement for subjective personal reasons, the employer must notify the concerned employee in writing and, if the employee is a union member, the trade union, two weeks in advance. If an employer wants to summarily dismiss an employee without notice, the information must be given one week before the dismissal. The employee or the trade union may, within one week from receiving the information, request consultations with the employer concerning the dismissal. According to Swedish law, no prior approval from a government agency is required for dismissing employees.

B. IS SEVERANCE PAY REQUIRED?

There are no statutory provisions regarding severance pay. However, an employee may be entitled to severance pay in accordance with an employment agreement, a collective bargaining agreement or a separation agreement.

4. SEPARATION AGREEMENTS

A. IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?

The employer and the employee are free to enter into a final settlement. Hence, the employment may be terminated disregarding the strict rules of the Employment Protection Act. Normally, but not always, the employee is financially compensated in some way by the settlement. Consequently, an employee may waive his or her contractual rights. As a general rule, an employee cannot waive rights laid down in mandatory law, which are not yet accrued, but an employee is free to waive already accrued rights.

B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

The standard provisions of a Separation Agreement are termination day, entitlement to salary, potential severance payment, outplacement options, relief from the duty to perform work, etc. Furthermore, it is common practice to agree on a final settlement of claims between the parties and that the agreement shall be confidential.

C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

With regard to a Separation Agreement, the age of the employee does not make a difference.

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

In case of wrongful termination of employment, the termination could be challenged by the employee and declared invalid by the court. The employer may be obliged to pay salary and benefits during the court proceeding, punitive damages (normally not exceeding SEK 100,000), compensation for economic losses (the maximum compensation that follows from the Employment Protection Act is 32 monthly salaries), and the costs for the litigation.

6. WHISTLEBLOWER LAWS

An employee who reports criminal activity or other gross misconduct, of which the employee has a valid reason to suspect in the employer's business, shall be protected from reprisals from the employer. Protection from reprisals

according to the Whistleblowing Act, however, generally requires that the employee try to report information on suspected conduct internally before disclosing it externally. Should the employer not act on the information reported by the employee, the employee may disclose it to the public or to the authorities. Furthermore, the protection offered by the Whistleblowing Act may not be set aside through an agreement, such as a confidentiality clause in the employment agreement.

IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

An employee is bound by a duty of loyalty towards the employer during the course of the employment. A restrictive covenant may clarify and extend the obligation of an employee's loyalty, both during the employment and after it expires. As such, restrictive covenants may concern undertakings as regards confidentiality, non-compete or non-solicitation of customers and/or employees.

Post-termination restrictive covenants are valid under certain conditions. In principle, covenants regarding confidentiality are generally used for all kinds of employees. However, when it comes to non-compete covenants, such covenants should normally only be used for employees whose position in the company makes such restrictions necessary. The main rule is that post-employment restrictive covenants are valid only if they are reasonable. A general assessment of whether or not a post-employment restrictive covenant is reasonable must be made in each individual case.

2. TYPES OF RESTRICTIVE COVENANTS

The most common post-termination restrictions are confidentiality, non-competition, and non-solicitation of customers and employees.

A. NON-COMPETE CLAUSES

The period of a non-compete covenant should not exceed 9 months, but can be for up to a maximum of 18 months if the employer has a strong interest in protecting against post-employment competition. The main rule is that non-compete clauses are valid only if they are reasonable. When determining whether a non-compete clause is reasonable, many different factors have to be taken into account, for example, if employees receive some kind of compensation for the restriction. According to collective bargaining agreements and market practice, employers are obliged to pay approx. 60 per cent of the monthly income from the employer during the non-compete period.

B. NON-SOLICITATION OF CUSTOMERS

There is no defined time limitation for clauses regarding non-solicitation of customers, such as for non-compete clauses, but in practice they adhere to the time limitations and conditions set forth in non-compete covenants. An assessment must also be made to determine if a clause regarding non-solicitation of customers is reasonable.

C. NON-SOLICITATION OF EMPLOYEES

The period for a non-solicitation of employees clause is often the same as for clauses regarding non-compete and non-solicitation of customers. However, a non-solicitation of employees clause is considered a less restrictive post-termination covenant, and may be reasonable without the otherwise required additional payments from the employer, for the inconvenience of the affected employee.

3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

Covenants are normally combined with a contractual penalty. The penalty shall be reasonable in relation to the employee's salary. Normally such penalty for each breach of the clause is set to between three and six months' salary. Furthermore, restrictive covenants may also be combined with a continuing penalty.

4. USE AND LIMITATIONS OF GARDEN LEAVE

The employer may under certain circumstances unilaterally release the employee from the duty to perform work during the notice period. When the parties agree on a mutual separation, it is common to agree also on a release from work, i.e. garden leave.

X. TRANSFER OF UNDERTAKINGS

1. EMPLOYEES' RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

In conjunction with the transfer of a business from one employer to another, the rights and obligations under employment agreements and employment relationships that existed at the time of the transfer to the new employer shall also be transferred. Notwithstanding the above, employment agreements and employment relationships shall not be transferred to a new employer if the employee opposes such a transfer. The employees will, in such a case, remain employed by the transferring company. If the transferring company has no business left, such employees will be made redundant. Furthermore, the transferor's collective bargaining agreement will continue to apply also for the transferee where the new employer is not already bound by another collective agreement, which may be applied to the employees included in the transfer.

Where an employee's employment agreement and the employment relationship have been transferred to a new employer the new employer shall be obligated, for a period of one year from the date of the transfer, to apply the employment terms and conditions of the collective agreement which the previous employer was bound to. The terms and conditions shall be applied in the same manner in which the previous employer was obligated to apply them. However, the foregoing shall not apply where the term of the collective bargaining agreement has expired or when a new collective agreement has begun to apply to the transferred employees.

Prior to the decision to transfer the business (or a part of it), the acquiring company, as well as the transferring company, must, as a rule, call for and conduct union consultations with the local union representatives under the applicable collective bargaining agreements. Even if the companies are not bound by collective bargaining agreements, they are obliged to consult with any trade unions of which any concerned employees may be members. Union consultations must be initiated and concluded before a decision regarding the transfer is made. If the consultation requirement is not observed, the breaching company may be obliged to pay damages to the unions concerned.

The rules relating to the transfer of a business are not applicable to share transfers. Lastly, Sweden has implemented the Transfers of Undertakings Directive 2001/23/EC.

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

The transferring company will remain liable (jointly with the acquiring company) towards the transferred employees for liabilities relating to the time prior to the transfer. However, the parties to a business transfer agreement are free to agree on a different distribution of liability between them.

XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

The "Swedish model" of industrial relations is characterised by a high degree of organisation even though trade union density is currently falling. The system is based on the principles that law and collective bargaining agreements together shall provide a comprehensive framework. There are approx. 110 different trade unions and employer's organisations on the Swedish labour market. The parties have agreed on more than 650 collective bargaining agreements. Almost one out of ten employers in Sweden are members of an employers' organisation and approx. 70 percent of the employees in Sweden are members of a trade union.

The employer is, through the membership in an employers' organisation, bound by the collective bargaining agreements applicable for that organisation. The employer is obliged to apply the terms and conditions of the collective bargaining agreement also to employees that are not members of a trade union.

2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

The high level of unionisation on the labour market is the foundation to the co-determination between employees and trade unions on the one hand, and employers and employers' organisations on the other hand. The individual employee and employer are granted the right to join and become members of associations and engage in activities through these without hindrance from the other side. The Co-Determination Act contains the general provisions governing the relationship between the employers and the unions in such areas as association, information, negotiations, industrial actions and labour stability obligations.

According to the Co-Determination Act, an employer has certain consultation and information obligations towards the trade unions. For example, prior to any decision to reorganise the business and prior to any decision to terminate employment contracts, the employer must call for and conduct consultations with the trade unions under the applicable collective bargaining agreements (both at a local and a national level, if applicable). Even if the employer is not bound by any collective bargaining agreement, the employer is obliged to consult the planned reorganisation and potential redundancies with any trade union of which a concerned employee is a member.

The act also, to the benefit of the trade unions, contains certain interpretation regulations. Generally, these rules give the trade union the right to interpret the collective bargaining agreement until the matter has been finally decided by court, and, hence, are important in the case of disputes.

Once a collective bargaining agreement has been entered into and is in effect an obligation to refrain from industrial action comes into effect and prohibits strikes or lockouts. Breaking the peace obligation will incur liability for damages on the breaching party.

3. TYPES OF REPRESENTATION

Normally, the local trade unions elect one or more representatives to represent the employees at a workplace, under the provisions of the Trade Union Representatives Act. However, this right only applies if the employer is bound by any collective bargaining agreement. Employees who are trade union representatives may not be prevented from carrying out union work during working hours, may not be discriminated against due to their union activities and are entitled to a reasonable leave of absence to carry out their union activities.

A. NUMBER OF REPRESENTATIVES

There are no limitations on the number of representatives in a workplace. The number of representatives vary and is largely determined by the trade unions represented at the workplace, based on the number of employees. The number of representatives also vary depending on the workplace itself; blue-collar workplaces, such as a factory, may have more representatives compared to white-collar workplaces, such as an office.

B. APPOINTMENT OF REPRESENTATIVES

The local trade unions appoint representatives at the workplace.

4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

The local trade union representatives shall manage questions relating to labour at the specific workplace, normally issues of salary, work environment, reorganisations, etc. are covered. In order to conduct union work, the union representatives are entitled to time off. Further, a union representative enjoys an extended protection in a redundancy situation.

5. EMPLOYEES' REPRESENTATION IN MANAGEMENT

The Board Representation Act entitles employees of private companies bound by collective bargaining agreements employing at least 25 workers to appoint two ordinary and two deputy employee representatives to the board of directors. Employees of companies that have at least 1,000 employees and are engaged in different industries are entitled to appoint three ordinary and three deputy employee representatives to the board of directors. However, the number of employee representatives on the board may not be higher than the number of other board representatives. If possible, the employee representatives should be elected from the employees in the company (or the company group).

6. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

Sweden has implemented the Works Council Directive and the Directive establishing a general framework for informing and consulting employees in the European Community.

In a workplace where at least five employees are regularly employed, one or more safety representatives should be appointed in accordance with the Working Environment Act. If the employer is bound by a collective bargaining agreement, the union appoints the safety representatives. Otherwise, they are appointed by the employees.

XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

There is no overall legislation regarding employee benefits, but there are some statutory provisions that give the right to payment in certain specific areas. For example, the Annual Leave Act entitles employees to vacation pay, the Sick Pay Act prescribes the right to sick pay during periods of sickness and the Employment Protection Act entitles employees to salary and other employment benefits during the notice period. Furthermore, employers are obliged to pay social security tax on the employee's salary and other employment benefits that, inter alia, include statutory pension contributions.

The employer's social security contributions, paid in addition to the salary, amount to 31.42 percent (2020) of the employee's gross salary. These contributions are mandatory and include specific charges, such as, old-age pension, survivor's pension, fees for health insurance and work injury. The fees constitute parts of the Swedish social security system.

2. HEALTHCARE AND INSURANCES

Except for insurances included in the mandatory employer social security contribution, there is no obligation under the law for the employer to provide the employees with different insurances. However, employers that are bound by collective bargaining agreements are obliged to take out certain insurances, such as, group life insurance (TGL) or work injury insurance (TFA), in addition to the insurances included in the employer social security contributions.

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

Vacation entitlement is regulated by the Annual Leave Act, which distinguishes between unpaid and paid vacation, and between a "vacation year" (1 April to 31 March) and a "qualifying year" (the 12-month period prior to the vacation year). An employee earns his or her entitlement to paid vacation during the qualifying year and is entitled to use his or her paid vacation during the vacation year.

The basic vacation entitlement is 25 paid days per year. Collective bargaining agreements or employment agreements normally contain rules entitling employees to a longer period of annual leave, in particular for white-collar employees not entitled to overtime pay.

Employees are entitled to take a continuous four-week vacation during the period June to August, unless there are circumstances justifying other arrangements. Employees who have been given a notice of termination of less than six months cannot be required to take their vacation entitlement during the notice period, unless they agree to do so. Furthermore, it is possible for employees to carry over their entitlement to paid, but not unpaid, vacation days to the next vacation year, but only if the employee has earned more than 20 days of paid vacation, and only for those days that exceed 20 days. Deviations from certain regulations in the Annual Leave Act can be made by collective bargaining agreement.

B. MATERNITY AND PATERNITY LEAVE

The employee may be on parental leave until the child is 18 months. Thereafter, the employee is entitled to leave for as long as he or she receives compensation from the state. In addition to the

parental leave, the mother can start drawing parental allowance 60 days prior to the expected birth of the child. The father of the child may also be on paternity leave for 10 working days in connection with the child's birth.

Compensation is paid by the state for a total of 480 days per child. The compensation may be paid until the child reaches the age of twelve years, but only 96 days may remain when the child reaches the age of four years. This entitlement of parental days is divided equally between the parents, but they have the right to transfer their entitlements to each other, with the exception of 90 days. These 90 days will be forfeited if they are not transferred to the other parent, hence, one parent may use a maximum of 390 days. For 390 days the allowance is capped at 80 percent of the employee's salary, though, the allowance can be SEK 1,006 per day as a maximum (2020). For the remaining 90 days, the compensation is SEK 180 per day. If a collective bargaining agreement applies, the employee may be entitled to certain compensation from the employer in addition to the compensation from the state.

C. SICKNESS LEAVE

The employee is entitled to mandatory sick pay payable by the employer, provided that the employment is expected to continue for more than 1 month or if the employee has been working for more than 14 consecutive days. Sick pay is paid by the employer during days 1-14 at 80 percent of salary, but the employer is entitled to make a deduction (Sw. karensavdrag) of approx. 20 percent of the employee's employment benefits during a week. If the employee suffers sickness again within 5 days, the previous sick leave period will continue.

As from day 15, the employee may be entitled to compensation payable by the state. The entitlement to such compensation is based on strict rules and is decided by the Swedish Social Insurance Agency. There is no obligation for the employer to provide any supplementary sick pay, unless a collective bargaining agreement is in place. If an employee can be assumed to be on full or partial leave due to sickness during a period of at least 60 days, the employee is entitled to a rehabilitation plan drafted in cooperation with the employer and including adaptive and rehabilitative measures which may facilitate the employee's return to work.

D. DISABILITY LEAVE

Disability leave is not recognised as being any different from sickness leave. However, a partial or full disability may entitle the disabled person to activity compensation or sickness compensation paid by the state.

E. ANY OTHER REQUIRED OR TYPICALLY PROVIDED LEAVE(S)

Employees who have been employed during the preceding six months, or for a total of at least 12 months during the preceding two years, have the right to educational leave. Employees are also entitled to full leave from his or her work for, at most, six months in order to start a business. However, the business of the employee may not compete with the employer's business, and the leave does not have to be granted by the employer if the leave would result in significant inconvenience for the operations of the employer. Additionally, there are several circumstances which entitle an employee to leave in special situations, such as to take care of a closely related person or to take Swedish-language education as an immigrant.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

The Swedish pension system is based on an income-related pension, premium pension and guarantee pension. The pension system is administrated by the state and financed by employers and employees jointly. The employer's contribution is paid through the employer's social security contributions.

In addition to the state pension, the employees usually are entitled to supplementary pension provided by the employer, which, under a CBA, the employers are obliged to pay, and for those not bound by a CBA, such additional pension benefits are completely optional. The predominant pension scheme for white-collar employees in the private sector is the ITP pension plan, which is a supplementary pension plan. The plan includes

old-age pension, supplementary old-age pension, disability pension and family pension. The employees belong to ITP-1 (a defined contribution plan) or ITP-2 (a defined benefit plan) depending on the employee's age. For blue-collar employees the SAF-LO pension plan applies, which is a defined contribution plan.

5. ANY OTHER REQUIRED OR TYPICALLY PROVIDED BENEFITS

There are no other required benefits, but it is common for employers to offer their employees a fitness benefit.

Robert Stromberg
Partner, **Cederquist**
robert.stromberg@cederquist.se
+46 522 065 67

CEDERQUIST
SWEDEN

Founded in 1953, Cederquist is a top-ranked business law firm with more than 100 lawyers. Our Employment and Benefits practice is considered one of the best in Sweden. Drawing on our broad experience and in-depth knowledge of Swedish labour law, we are able to manage risks in all of our clients' labour law-related situations. We provide advice and support in connection with organisational changes and manage the client's most sensitive and complex matters. We consistently deliver cutting edge services to meet and exceed our client's high expectations, which includes not only providing services at the highest quality, but also giving efficient, flexible and cost-effective advice.

Our Employment and Benefits team handles all matters relating to the legal areas of labour, pension, and benefits, including drafting and negotiating executive employment agreements, assisting in termination and exit-related actions, handling collective redundancy situations, business transfers, outsourcing matters, reorganisations, employment protection, protection of trade secrets, work environment issues, pensions, incentive and bonus programmes, policies and collective agreements. Furthermore, we are regularly engaged by our clients to provide seminars and in-house training on labour law-related issues.

Dispute management is a major and integral part of our work and we have extensive experience in high-stakes labour-related dispute resolution. Also, our lawyers are frequently appointed both as members and arbitrators. We continuously manage litigation proceedings at the European Court of Justice, the Swedish Labour Court, as well as before general courts and arbitration tribunals.

Swedish and international companies, labour organisations and authorities are among our diverse client base and our Employment and Benefits practice stands out as a result of the unmatched combination of our expertise and our detailed and practical knowledge of various industries, such as banking and finance, media and telecommunications, private equity and financial services.

This memorandum has been provided by:

Advokatfirman Cederquist KB
Hovslagargatan 3
P.O. Box 1670
SE-111 96 Stockholm Sweden
P +46 8 522 065 00
www.cederquist.se

CONTACT US

For more information about L&E Global, or an initial consultation, please contact one of our member firms or our corporate office. We look forward to speaking with you.

L&E Global
Avenue Louise 221
B-1050, Brussels
Belgium
+32 2 64 32 633
www.leglobal.org

L&E GLOBAL
an alliance of employers' counsel worldwide

10TH
ANNIVERSARY
IN 2021