09 March 2016

In this article, Jane Fielding and Connie Cliff of Gowling WLG's employment, labour & equalities lawyers and Martin Vildhede in the employment team of the Swedish law firm Setterwalls compare key areas of Swedish and UK employment law and consider some of the issues most likely to affect managers and HR professionals operating internationally.

Background

As reported in the Financial Times on 1 March 2016, Sweden has overtaken the US and is well ahead of Germany in terms of strength of its economic recovery. Figures published on 29 February by Statistics Sweden reveal Sweden's economy grew by 4.1%, a rate significantly higher than the 3% forecasted.

Sweden recovers quicker than the US and Europe
Real GDP, rebased (Q1 2008 = 100)

Source: Thomson Reuters Datastream
Trade and investments between UK and Sweden have historically always been significant. The UK government's Guide to doing business in Sweden updated in July 2015 reveals Sweden was the UK’s 14th largest export market with total exports of around £5.6 billion and the UK’s biggest export market in the Nordic region. UK was Sweden's 3rd largest export market with exports amounting to approximately £6.13 billion. Moreover, over 1,000 British companies are operating in Sweden and vice versa, including well-known companies such as BP, IKEA, Burberry, H&M, AstraZeneca, BAE Systems and Royal Bank of Scotland.

The UK presents exciting opportunities for Swedish investors, and companies looking to employ (or already employing) workers locally need to understand and comply with the country’s complex employment law framework. Similarly, UK investors and companies with employees in Sweden (or who are looking to employ workers in Sweden) need to understand Sweden’s unique legal framework with regard to employment law and collective bargaining agreements.

The aim of this article is to provide information on some of the key areas of Swedish and UK employment law and consider some of the issues most likely to affect managers and HR professionals operating internationally.

1. Applicable law and the Swedish negotiation obligations

Sweden

Swedish employment relationships are principally governed by contract law, within a statutory framework comprising both domestic and EU law. New entrants to the Swedish labour market should be aware of key statutes such as:

- the Employment Protection Act (1982:80) (the "EPA") which regulates contractual relations between employers and employees
- the Employment Co-Determination in the Workplace Act (1976:580) (the "CDWA") - which constitutes the fundamental statutory framework with regard to collective employment law, including collective bargaining agreements.
- New entrants to the Swedish labour market should also be aware that collective bargaining agreements play a central role under the Swedish employment law system, as somewhat of a substitute for legislation, providing regulations on everything from wages to ownership of intellectual property rights. Certain statutory provisions under
Swedish law may only be deviated from in collective bargaining agreements (so-called semi-mandatory law).

- A Swedish employer may become bound by a collective bargaining agreement either by (1) becoming a member of an employer's organisation; (2) entering into an agreement directly with one or several labour unions; or (3) in connection with a business transfer. The majority of Swedish companies are bound by one or several collective bargaining agreements.

- A Swedish employer that is not bound by any collective bargaining agreement may, to a large extent, determine the employment and working conditions for its employees. The extent of this freedom is fairly unique for Sweden and is only limited by mandatory statues and the labour union's right to take industrial action. If an employer is not bound by any collective bargaining agreement, the labour unions, as a main rule, have unrestricted rights to take industrial actions against the employer (a typical industrial action is a strike). On the other hand, if a Swedish employer is bound by collective bargaining agreement(s), the labour union may not, as a main rule, initiate or participate in industrial action against the employer.

- A Swedish employer is obliged to - prior to making certain significant decisions - on its own initiative both initiate and complete negotiations on the issue to be decided with (1) the labour union(s) in relation to which the employer is bound by collective bargaining agreement(s), and/or (2) the labour union(s) that the employees concerned by the issue are members of (regardless if the employer is bound by a collective bargaining agreement or not with such labour unions).

- Issues that a Swedish employer needs to negotiate, prior to making a decision, include, for instance, terminations/summary dismissals, re-organisations, appointment of managers (CEO etc.), and sale of assets/shares.

**UK**

In the UK, employment relationships are governed by contract law but within a statutory framework comprising both domestic and EU law. New entrants to the UK labour market should be aware of key statutes such as the Employment Rights Act (1996), Trade Union and Labour Relations (Consolidation) Act 1992 and the Equality Act 2010, as well as the key rights afforded to workers pursuant to European law.

In contrast to Sweden and many other EU member states only around 25% of the workforce is covered by collective bargaining with the majority in the public sector (54% in
the public sector but only 14% in the private sector).

2. The employment contract - basics

Sweden

In Sweden, an employer shall within one month from the time the employee has started to work, provide written information on all terms and conditions that are of material relevance to the employment contract or employment relationship, including terms such as working hours, pay, job title and place of work.

Typically, to protect the employer's interests, a more detailed form of contract is put in place which will normally set out a range of additional provisions governing matters such as confidentiality, non-compete/non-solicitation (if applicable), Intellectual Property rights and the provision of additional benefits to employees.

If a collective bargaining agreement applies to the employment relationship, the collective bargaining agreement works as a supplement to the employment contract. In other words, if the employment contract does not cover a specific area, such as the notice period or length of vacation for the employee, the provisions set forth by the collective bargaining agreement applies.

The collective bargaining agreement also takes precedence over the employment contract, meaning that if any provisions in the employment contract are in breach of the collective bargaining agreement, the collective bargaining agreement will apply regardless.

UK

In the UK, a written statement of the key terms of employment must be provided within two months of commencement of employment. This must cover terms such as working hours, pay, annual leave, place of work, job title and length of notice of termination. These are known as the 'Particulars of Employment'.

However, to ensure that both parties are clear about the expectations of the employment arrangement, a more detailed form of contract is usually put in place and will typically set out a range of additional provisions governing matters such as Intellectual Property rights, the protection of confidential information and the provision of additional benefits to employees.
It is possible, though not mandatory, to incorporate into individual contracts terms from other sources such as collective agreements, works rules and disciplinary codes. Once incorporated, such terms are as much part of the individual contract of employment as other terms.

3. The employment contract - content

Sweden

The parties to a contract of employment are to a large extent free to negotiate commercially appropriate terms, although the EPA provides that the following key matters, as a minimum, must be covered in writing:

- the names and addresses of the employer and employee, the commencement of the employment and the workplace;
- a short job description or job title;
- whether the employment is for a fixed or indefinite term or whether it is probationary; and
  - if an indefinite employment: the period of notice,
  - if a temporary employment: the employment's end date or the conditions for the employment's termination and which form of temporary employment it is, and
  - if a probationary employment: the applicable probationary period;
- the scale and rate of pay and other employment benefits;
- annual leave and the normal working hours/week; and
- the collective bargaining agreement applicable, where relevant.

It should be noted that a contract of employment may not be in breach of any applicable collective bargaining agreement. Collective bargaining agreements almost exclusively contain regulations on, for instance, minimum wage (including travel time and overtime compensation), holiday and other minimum benefits.

UK

As is the case in Sweden, the parties to an employment contract are generally free to negotiate suitable terms. Provided an employee has been provided with written Particulars of Employment (referred to at paragraph 2, above) there are no specific rules governing
content, save that some minimum statutory requirements can override contractual provisions in relation to matters such as pay, working hours and notice periods.

Also both employers and employees should be aware that there are certain terms implied into all employment contracts. For example, employees must exercise reasonable care and skill, carry out reasonable orders and not divulge confidential information or work for competitors. Employers, in turn, must preserve a relationship of trust and confidence with their employees.

4. Termination of the employment contract

Sweden

Termination provisions are generally included in employment contracts. Employment contracts may provide for notice periods which are longer, but not shorter than those prescribed by mandatory law/any applicable collective bargaining agreement.

As a main rule, the employee is entitled to the same wage and other employment benefits during the notice period. The employer may release the employee from his/her duties during the notice period.

A Swedish employer is always, prior to taking the decision to terminate one or several employees, required to negotiate with all concerned labour unions - i.e. all labour unions that the employer has a collective bargaining agreement with and/or the labour unions that the employees considered to be terminated are members of.

The information below refers to indefinite-term employments covered by the EPA. For other employments, other termination provisions apply.

Termination by employee

Employees are generally free to terminate their employment at any time by giving one month's notice to the employer (unless a longer notice period has been agreed or is provided by mandatory law/applicable collective bargaining agreement).

In certain limited circumstances, an employee can terminate his/her employment contract without notice. Such circumstances could for instance be a failure by the employer to pay wages.
Termination by employer

According to the EPA, terminations by the employer shall be made in writing with a minimum notice period of 1-6 months, depending on the seniority of the employee (1 month for 0-2 years of employment, 2 months for 2-4 years of employment and so on up to 6 months for 10 years employment or longer). Longer notice periods may apply under the individual employment agreement and/or applicable collective bargaining agreement.

An employer may not terminate an employment without "objective grounds". Objective grounds are either: (1) personal reasons; or (2) redundancy.

- Personal reasons include reasons related to the employee as a person, for instance, negligence, illness, alcohol/drug abuse, criminal acts. It is generally very difficult to terminate an employment due to personal reasons under Swedish law. An assessment whether personal reasons constitute objective grounds needs to be made in each individual case.
- Redundancy, or "shortage of work", includes business and business-related reasons for terminations (i.e. any non-personal reasons). As long as the reasons are exclusively business-related, redundancy exists which constitutes objective grounds per se.

Objective grounds (due to either personal reasons or redundancy) do not apply if it is reasonable to require that the employer provide other work for the employee (i.e. if there is any vacant position that the employee is qualified for).

In addition, terminations by an employer due to redundancy are combined with a "last-in-first-out" principle. The principle provides that an employee with longer length of service about to be terminated due to redundancy shall, if possible, be transferred to a position held by an employee with shorter length of service, who shall be terminated instead of the employee with longer service. However, this presupposes that the employee with longer length of service has sufficient qualifications for the position held by the employee with shorter length of service.

Summary dismissals (i.e. terminations without notice) are only acceptable when an employee has grossly neglected his/her duties (e.g. if the employee is guilty of bribery, theft, violence etc.).

UK

Termination provisions are generally included in employment contracts. In their absence,
legislation (including the Employment Rights Act 1996 (ERA)) and case law set out applicable law. As in Sweden, employers should be aware that employment contracts may provide for notice periods which are longer, **but not shorter** than those prescribed by law. Minimum notice periods are as follows:

**Termination by employee**

Where an employee has been engaged in at least one month's continuous employment, he/she must provide a minimum of one week's notice to his/her employer. Employees may also have the right to terminate without notice if an employer has committed a 'repudiatory breach' of an express or implied term of the employment contract. A repudiatory breach is a breach of a fundamentally important term of the employment contract. In this situation, an employee may have **grounds to bring a claim for 'constructive dismissal'**, explained at paragraph 5, below.

**Termination by employer**

For employees with one month to two years' service the statutory minimum notice period is one week. For employees with more than two years' service, one week's notice must be provided for each completed year of service, up to a maximum notice period of 12 weeks.

Contracts may include a payment in lieu of notice (PILON) clause which allows employers to pay employees instead of requiring them to work their notice. Service of such notice (or payment in lieu) will satisfy an employee's contractual rights, but further statutory rights against the employer may arise on termination. Much longer periods of contractual notice, binding on both parties, are common.

Similar to the position under Swedish law, dismissal without notice is permissible when an employee has committed gross misconduct (such as bribery, theft, violence etc.).

Note that an analysis of the law on termination of fixed-term contracts is beyond the scope of this alert, but please contact our Employment, Labour & Equalities team should you require more information on this topic.

**5. Unfair dismissal**

**Sweden**
If an employer unilaterally terminates an employment contract and the employee believes that he/she has been unfairly terminated, the employee may claim (1) that the termination shall be made void (i.e. claim the right to reinstatement), and/or (2) financial and/or statutory damages. If an employee can show that the employer has breached his obligations, in addition to financial damages for any loss, statutory damages are also awarded for the breach as such - i.e. the employee is not required to show any damage to receive statutory damages.

If an employee has claimed that his/her termination shall be made void and a dispute arises about the validity of the termination, the employment shall, as main rule, not cease until the dispute is finally settled. In other words, the employee typically has the right to, if he/she so wishes, continue to work for the employer until the dispute is finally settled. It should be noted with regard to summary dismissals (i.e. terminations without notice) from the employer, the employee, as a main rule, is not entitled to continue to work for the employer until the dispute is finally settled.

Disputes are as a main rule litigated in the civil courts and/or the Swedish labour court (the Supreme Court in labour disputes).

UK

In certain circumstances, termination of the employment contract may give rise to claims for unfair or constructive dismissal.

Unfair dismissal

The ERA provides that employees with two years' service or more must not be unfairly dismissed. To avoid a claim for unfair dismissal, employers must ensure that dismissal is made for one of five potentially fair reasons, being conduct, capability, redundancy, illegality or 'some other substantial reason' and that they act reasonably in all circumstances in dismissing the employee.

There are also various reasons for dismissal including: pregnancy, maternity leave, union membership, protected disclosures and jury service for which the two years' rule does not apply and which are automatically unfair (i.e. an employer will have no grounds on which to argue that the dismissal was reasonable).
**Constructive dismissal**

A UK employee can claim they have been dismissed even if the employer has not taken steps to dismiss them. If the employee can show he or she was entitled to resign due to the conduct of the employer, (e.g. discrimination in the workplace or some other major breach of contract by the employer, including a breach of duty of trust and confidence which is very wide ranging), he or she can resign and claim that he or she has been dismissed and is entitled to compensation for unfair dismissal, even if the employer had no intention of terminating the employment.

**6. Collective dismissal**

**Sweden**

A collective redundancy situation arises where an employer reduces its workforce by five or more workers. This can occur for instance if an employer, as a result of operating difficulties or otherwise, wishes to lay off divisions/positions (regardless of whether they are profitable or not) terminating five or more employees.

Under these circumstances - in addition to the employer's regular negotiation obligations as described above - the employer must give 2-6 months' notice of the redundancy in writing to the Swedish Employment Agency (Sw. Arbetsförmedlingen). The notice must contain certain information set out under Swedish law. The notice period depends on the number of employees affected in total.

**UK**

A collective redundancy situation may arise where an employer proposes to make 20 or more employees redundant within a period of 90 days or less. Under these circumstances, employers must consult (individually) with affected employees and seek to place them in alternative positions within the business where possible. The employer must also comply with a strict obligation to inform and consult a recognised trade union or (in the absence of a union) with elected employee representatives prior to serving notice on any affected employee. Failure to do this may lead to the employment tribunal ordering the employer to pay a penalty of up to 90 days' pay per affected employee.

No entitlement to a redundancy payment arises until an employee has completed two years' service, although shorter serving employees will still count towards the threshold for
collective consultation. It is relatively common for employers to invite volunteers for redundancy and to supplement the statutory minimum redundancy payment. Note that there are different definitions of redundancy depending on whether it is a collective or individual redundancy situation.

7. Maternity & paternity

Sweden

An employee has the right to maternity/paternity/parental leave from the first day of employment. According to the Swedish Parental Leave Act (1995:584), the right to maternity/paternity/parental leave applies to an employee that works and is a parent.

Parents are entitled to 480 parental benefit days per child. Parents with joint custody are entitled to half of the days each, but a parent may "transfer" days to the other parent. However, 90 of the days are reserved for each parent and cannot be transferred to the other parent.

Parental benefit days can be used as whole days or as part of days and may be used until the child is eight years old or (at the latest) until the child finishes the first year of school.

In addition to the above, the father/other parent is entitled to ten days' paid leave in connection with the child's birth.

UK

All women are entitled to 52 weeks of maternity leave, during which period the employment contract continues. Although the contract of employment continues, contractual obligations in relation to normal remuneration cease to apply. Note that a woman must take the two weeks' maternity leave immediately after the birth of the baby.

Provided a woman has worked for her employer for a continuous period of 26 weeks, she will be entitled to 'Statutory Maternity Pay' (SMP) for 39 weeks.

Fathers are also eligible for paternity leave of two weeks, which can be taken in a continuous period at any point within 56 days of the child's birth. In many cases, employees will also be entitled to receive statutory paternity pay for a period of two weeks. Mothers who meet qualifying conditions can elect to end their maternity leave and
pay period early and convert any remaining balance to 'shared parental leave and pay'. This enables the mother to share the converted leave period with the father/her partner either concurrently or consecutively up to the child’s first birthday.

Similar rules apply in the case of adoptive parents.

For more information on the complex criteria and rates of maternity and paternity pay, or for details on adoption leave, please contact our employment lawyers, who will be happy to assist.

Parents with one year’s employment are also entitled to take up to 18 weeks of unpaid parental leave per child. This can be taken any time up to the child’s 18th birthday, though no more than four weeks parental leave is permitted in any given year.

8. Sickness

Sweden

In Sweden an employee who is off-sick is entitled to leave and the company is obliged to pay 80% of the employee's wage during the first 14 days of the leave. However, the first day is a qualifying day, during which the employer is not obliged to pay any wage.

The employer is only obliged to pay sick pay from the seventh calendar day following the day of notification of sickness from the employee if the employee provides a doctor's or dentist's note.

From day 15 and onward, an employee may receive compensation from the Swedish Social Insurance Agency. From this point the employer will generally not be obliged to pay any compensation, unless otherwise agreed.

UK

UK employers are required to provide employees with written terms and conditions relating to sickness and ill-health. Employees who are off-sick for four or more consecutive days are eligible to receive Statutory Sick Pay (SSP). SSP for a maximum of 28 weeks.

Before paying SSP, an employer has the right to require proof of incapacity. Note that the rate of sick-pay offered by many UK employers exceeds SSP and is commonly paid from
the commencement of any period of illness though this is not mandatory.

9. Discrimination and harassment

Sweden

Protection against discrimination is provided in the Swedish Discrimination Act (2008:567). Employees are protected against discrimination on the grounds of sex (including pregnancy), transgender identity or expression, ethnicity, religion/belief, disability, sexual orientation and age.

The prohibition against discrimination applies during the recruitment process and during the entire employment relationship.

Employers with 25 employees or more are required to prepare an equality plan with certain necessary information every three years.

UK

The law on discrimination is very well established in the UK and is now consolidated in the Equality Act 2010. Employees are protected against discrimination on the grounds of sex, marital status/civil partnership, race, religion/belief, disability, sexual orientation, pregnancy, gender reassignment and age.

Employers are bound by these discrimination laws not just during the employment relationship, but also during the recruitment process and even after the employment relationship ends. Diversity training for staff and implementing a diversity/equal opportunities policy to avoid discrimination in the workplace are essential for all companies employing staff in the UK who wish to be able to defend discrimination claims successfully.

10. Overseas nationals

Sweden and the UK

Employees from the European Economic Area (the EEA), are exempt from the requirement to obtain permission to work in the UK/Sweden.

Conclusion
Although UK and Sweden are both part of the EU there are still significant differences between the respective laws of the UK and Sweden, particularly with regard to obligations towards labour unions and under Swedish collective bargaining agreements. It is therefore crucial for employers operating internationally to familiarise themselves with applicable law and custom.

Hiring locally offers countless benefits and costs-savings, but a failure to understand and implement relevant labour law could easily prevent investors from realising these potential gains.

Both Gowling WLG's UK-based lawyers and Setterwalls law firm's Sweden-based lawyers would be very happy to discuss your employment law concerns in more detail.

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