

## Wage Guarantee Act (1992:497)

Amendments: up to and including SFS 2010:1253

### Introductory provisions

#### Section 1

The State is liable under this Act for the payment of an employee's claim (State wage guarantee) against an employer who

1. has been declared bankrupt in Sweden or another Nordic country;
2. is a subject of corporate reconstruction under the Company Reconstruction Act (1996:764); or
3. in a country within the European Union (EU State) or within the European Economic Area (EEA State) other than Sweden is subject to insolvency proceedings referred to in Article 2(1) of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer. (SFS 2009:1442)

**Section 2** If the bankruptcy has occurred in another Nordic country, payment under the guarantee will only be made for a claim relating to employment which is predominantly connected with Sweden or Swedish conditions. (SFS 1997:204)

**Section 2 a** In cases referred to in Section 1, item 3, payment is only made under the guarantee if the employee is on behalf of the employer performing or performed her or his work primarily in Sweden.

Payment is not made under the guarantee if the employer has been put into bankruptcy in Sweden and the employee performs or has performed her or his work on behalf of the employer primarily in another EU or EEA State. (SFS 2005:681)

**Section 3** If the employer has been previously put into bankruptcy, claims which have been made or could have been made in those bankruptcy proceedings will not be paid.

**Section 3 a** The provisions of this Act on bankruptcy apply in relevant respects when an employer is a subject of such insolvency proceedings as referred to in Section 1, item 3. (SFS 2005:681)

**Section 4** Provisions referring to employees shall also apply to relatives of employees who have a pension claim against the bankruptcy debtor or the debtor in connection with the corporate reconstruction. (SFS 2005:273)

**Section 5** If a claim has been assigned, the assignee is only entitled to payment under the guarantee (guarantee amount) if the assignment concerned a measuring fee or a comparable charge, or trade union membership dues.

The assignee shall also be entitled to the guarantee amount if the assignment took place after the bankruptcy decision or the decision on corporate reconstruction was made and the assignee is an employees' organisation of which the assignor is a member, or a fund in the administration of which the organisation participates. (SFS 2005:273)

#### Section 6

A person entitled to maintenance is entitled to a guarantee amount for maintenance allowance secured by attachment of pay. The Swedish Social Insurance Agency is not entitled to guarantee amounts for maintenance support that have been paid under the Social Insurance Code. (SFS 2010:1253)

**Section 6a** The Government issues regulations prescribing the county administrative boards that are responsible for information under this Act. (SFS 2012:83)

### **Scope of the guarantee**

**Section 7** In the case of bankruptcy payment is made under the guarantee for such a claim for pay or other remuneration and for pension that has a priority right under Section 12 or 13 of the Rights of Priority Act (H1970:979).

In the case of a corporate reconstruction payment is made under the guarantee for claims for pay or other remuneration and for pension that would have a priority right under Section H12H or H13H of the Rights of Priority Act provided the employer would instead have been put into bankruptcy. (SFS 2005:273)

**Section 7 a** Payment under the guarantee is also made for claim for pay during the period of notice of termination for a period after one month from the bankruptcy decision. The same applies in the case of a decision for a corporate reconstruction, to the extent that the employee during the period of notice of termination has neither performed nor ought to have performed work on behalf of the employer.

Claims for pay during the period of notice of termination is subject to the guarantee for at most during the period of notice of termination that is calculated under Section H11 of the Employment Protection Act H(H1982:80H). Pay during the period of notice of termination for periods during which the employee does not perform work for another nor conduct her or his own business are subject to the guarantee only if the employee can show that he or she has reported as a job applicant with the public employment office. For periods of notice of termination the guarantee only applies to pay or remuneration that exceeds income which the employee during the period that the pay or remuneration relates to has had from their own business or had got or ought to have been able to get from other employment. When determining the extent to which a claim for pay or remuneration during the period of notice of termination is subject to the guarantee, activity support that is paid to a person participating in a labour market policy programme shall be equated with income from other employment, to the extent that the support relates to the same period as the pay or remuneration and the employee was entitled to the support following the termination.

However, payment under the guarantee is not made to such employee as referred to in Section 12, sixth paragraph of the Rights of Priority Act (H1970:979H). (SFS 2005:273)

**Section 7 b** Payment under the guarantee is not made in the event of bankruptcy or corporate reconstruction for such part of the claim for pay or pension that under Chapter H5, Section 2 Hof the Bankruptcy Act (H1987:672H) may not be claimed in the bankruptcy. (SFS 2005:273)

**Section 8** If bankruptcy proceedings have been commenced against the debtor on account of a claim which is subject to the guarantee, payment will also be made for the cost of the proceedings and, if

the bankruptcy has been dismissed under Chapter 10, Section 1 of the Bankruptcy Act (1987:672), for the costs which the petitioner has been required to pay under Chapter 14, Section 3 of that Act.

**Section 9** With respect to a claim which has priority under Section 12 of the Rights of Priority Act (1970:979) and for claims under Section 7a of this Act the guarantee applies in the event of bankruptcy or corporate reconstruction to every employee for an amount corresponding to at most four times the price base amount under Chapter 2, Sections 6 and 7 of the Social Insurance Code applicable when a decision on bankruptcy or corporate reconstruction is made.

For claims on pay or other remuneration the guarantee applies for an aggregate employment period of at most eight months.

Claims for compensation for special costs will be paid before other claims. (SFS 2010:1253)

**Section 9a** Repealed (SFS 1997:204).

**Section 9b** Compensation will not be made for a claim for pay if there are grounds for believing that one of the preconditions upon which the employment was entered into, or the terms of employment upon which the claim is founded, was that it would be paid in whole or in part under the wage guarantee. (SFS 1994:636)

#### **The employee's obligation to provide information**

**Section 10** If an employee receives income from other employment during the period of notice he shall, if the income relates to the same period as his claim against the bankruptcy estate, notify the bankruptcy administrator of the income. In circumstances prescribed for under section 21, the notification shall instead be given to the supervising authority.

Such information shall also be provided if the employee receives activity support in connection with participation in labour market training programme. (SFS 2005:681)

#### **Bankruptcy with proof of debt**

**Section 11** If proof of debt occurs in the bankruptcy, the bankruptcy administration shall, without delay, notify the county administrative board of any claims that are covered by the guarantee and that, in the opinion of the bankruptcy administrator, are indisputable.

Notice of other claims covered by the guarantee shall be given without delay once the claims have become subject to distribution. (SFS 2010:83)

**Section 12** If the bankruptcy administrator, having given notification under Section 11, first paragraph, receives information as referred to in Section 10 or otherwise learns of any circumstance affecting the issue of the extent to which the employee's claim for pay during the period of notice of termination is subject to a right of priority, he shall notify the County Administrative Board as soon as possible.

**Section 13** Notification under Section 11 is not necessary if funds have been paid in advance to the employee under Chapter 11, Section 14 of the Bankruptcy Act (1987:672), not later than the due date for a claim in respect of pay during the period of notice of termination and, in the case of any other claim, without delay upon it becoming subject to distribution.

**Section 14** A bankruptcy administrator who, having given notice under Section 11, intends to make an advance payment to an employee under Section 13, shall notify the County Administrative Board before payment is made.

**Section 15** The bankruptcy administrator, acting on the employee's behalf, shall lodge proof of debt as regard claims which, in his opinion, are indisputable.

Proof of debt may be lodged by the bankruptcy administrator submitting to the Court two copies of such notification as he has given to the County Administrative Board under Section 11 and by stating that it relates to a proof of debt.

The bankruptcy administrator shall immediately notify the employee of the proof of debt.

#### **Bankruptcy without proof of debt and corporate reconstruction**

**Section 16** In the case of bankruptcy where there is no proof of debt and in the case of corporate reconstruction, the bankruptcy administrator or reconstructor shall, as soon as possible, consider and decide on the issue of whether a claim against the estate in bankruptcy shall be paid under the guarantee. (SFS 2005:273)

#### **Section 17**

If the bankruptcy administrator or reconstructor determines that the claim should be paid under the guarantee, he or she shall, on the same day that the decision is made, notify the county administrative board of the substance of the decision. (SFS 2012:83)

**Section 18** If the bankruptcy administrator or reconstructor, having found that a claim is to be paid under the guarantee, receives information as referred to in Section 10 or otherwise learns of any circumstance affecting the question of the extent to which the employee's claim for pay during the period of notice of termination is subject to payment under the guarantee, the bankruptcy administrator or reconstructor shall as soon as possible reconsider his decision concerning guarantee amounts which have not yet been paid.

If the reconsideration results in payment under the guarantee comprising an amount different from the amount previously paid, the bankruptcy administrator or reconstructor shall, on the same day, give notice of the substance of the decision to the County Administrative Board. (SFS 2005:273)

**Section 19** A copy of a decision under Section 16 or 18 shall, on the same day that the decision was made be sent to the employee and the authority that is supervising the administration in bankruptcies. (SFS 2006:711)

**Section 20** The bankruptcy administrator and reconstructor may rectify a decision which contains an obvious error due to a typographical error, miscalculation or other similar oversight. (SFS 2005:273)

**Section 20 a** In the case of corporate reconstruction, the reconstructor shall, at the request of the authority referred to in Section 19, provide such information about claims against the debtor that may be of importance for payment under the guarantee. (SFS 2006:711)

#### **Pay guarantee in the case of cross-border situations**

**Section 21** An employee wishing to assert that the guarantee shall provide compensation for a claim which he or she has against an employer who has been put into bankruptcy in another Nordic country or who in another EU or EEA State than Sweden is a subject of such insolvency proceedings as referred to in Section 1, item 3, shall apply for payment of the guarantee amount to the authority referred to in Section 19.

The action of the State shall be brought by the authority referred to in Section 19. (SFS 2006:711)

**Section 21 a** An employee wishing to assert that the guarantee shall provide compensation for a claim which he or she has against an employer who in another EU or EEA State than Sweden is a subject of such insolvency proceedings as referred to in Section 1, item 3, the supervisory authority shall request information about the employee's outstanding claims against the competent guarantee institution in that State.

If an employer who has been put into bankruptcy in Sweden has employees in another EU or EEA State, the supervisory authority shall provide the relevant information about the claims upon an enquiry from the competent guarantee institution in that State.

The Government or the authority decided by the Government should issue more detailed regulations on the exchange of information between the supervisory authority and competent guarantee institutions in other states. (SFS 2005:681)

### **Payment of guarantee amounts**

#### **Section 22**

The guarantee amount will be paid by the county administrative board. (SFS 2012:83)

**Section 23** No guarantee amount may be paid before the employee's claim has become due for payment.

If a cross-claim is brought against the employee, a guarantee amount corresponding to such a proportion of the cross-claim as can be set-off under the Employer's Rights of Set-off Act (1970:215), may only be paid once it is established that there is no cross-claim.

**Section 24** Before a guarantee amount is paid, the County Administrative Board shall make deductions for taxes and also deductions for amounts to be retained under a decision on seize of pay. Deductions shall also be made for advances paid in accordance with to Chapter 11, Section 14 of the Bankruptcy Act (1987:672) and which relate to claims within the scope of the guarantee. (SFS 1995:310)

**Section 25** Before payment is made of a guarantee amount for a claim in respect of pay during the period of notice of termination, the employee shall give the County Administrative Board an affirmation on his honour and faith of the correctness of particulars furnished concerning his conditions of employment and remuneration during the period of notice.

If the employee, during the period of notice of termination, neither carries out any work for the bankruptcy debtor, the corporate reconstruction debtor or any other person, nor is engaged in business on his own account, the guarantee amount for the claim for pay may be paid only if the

employee can show that, for the period to which the claim relates, he was registered with the employment office as an applicant for employment. (SFS 2005:273)

**Section 26** If the County Administrative Board believes that particulars furnished by the employee in an affirmation as referred to in Section 25 may affect the issue of the extent to which the employee's claim for pay during the period of notice of termination is subject to a right of payment under the guarantee, it shall promptly send a copy of the affirmation to the bankruptcy administrator or reconstructor.

In such cases, the guarantee amount of the claim for pay during the period of notice of termination may not be paid until the bankruptcy administrator or reconstructor has reconsidered his previous decision concerning the wage guarantee or has notified the County Administrative Board that the particulars in the affirmation do not justify a new assessment. (SFS 2005:273)

**Section 27** If, once the bankruptcy administrator has issued a decision in a wage guarantee question, it is ordered that proof of debt be lodged in the bankruptcy, no guarantee amount may be paid under the decision. If any payment has already been made, it shall be deducted from the amount to which the employee subsequently proves to be entitled.

#### **Section 28**

The State shall be subrogated to the employee's right against the bankruptcy debtor or the corporate reconstruction debtor with respect to guarantee amounts which have been paid. However, the State shall not be subrogated to the employee's right under Section 12 or 13 of the Rights of Priority Act (1970:979).

Rights of distribution in bankruptcy with respect to the employee's claim as covered by the guarantee shall accrue to the State up to this amount.(SFS 2008:995)

#### **Reconsideration of decisions**

**Section 29** If an employee is dissatisfied with the decision of the bankruptcy administrator or reconstructor under Section 16 or 18, he or she may commence an action against the State within three weeks of receiving notice of the decision.

The action of the State shall be brought by the authority referred to in Section 19. (SFS 2006:711)

**Section 30** If the authority referred to in Section H29, second paragraphH considers that the decision of the bankruptcy administrator or reconstructor was incorrect, the authority may commence an action against the employee within three weeks of the authority receiving notice of the decision. (SFS 2005:273)

**Section 31** The provisions of Sections 29 and 30 concerning employees shall also apply to a person to whom a claim has been assigned under Section 5 or 6.

**Section 32** Proceedings under Section 29 or 30 shall be instituted at the district court that is dealing with the bankruptcy or the corporate reconstruction matter.

An employee who is dissatisfied with a decision by the supervisory authority under Section 21 may, within the period stated in Section 29, commence an action against the State at the district court before which the employee, in general civil proceedings, would appear as defendant. (SFS 2005:273)

**Section 33** In proceedings under Sections 29 and 30, it may be decided that each party is to pay his own legal costs, even if the employee has lost the case.

#### **Repayment of guarantee amount**

**Section 34** If any person, by furnishing erroneous information or in any other way, has caused the unauthorised payment of a guarantee amount or if payment was made at an excessive level, the excess shall be repaid.

Such repayment shall also be made in the event that a person has, in any other circumstances, received a guarantee amount to which he is not entitled or if payment of the amount was made at an excessive level, provided he should reasonably have been aware of this.

**Section 35** If payment has been made under the guarantee and the bankruptcy or the corporate reconstruction decision is subsequently revoked by a decision that enters into final legal force, the person who received the payment shall return the same. (SFS 2005:273)

**Section 36** The obligation to make repayment under Sections 34 and 35 may be partly or wholly waived if there is special cause for so doing.

#### **Transitional provisions**

SFS 1992:497

1. This Act enters into force on 1 July 1992, when the national Wage Guarantee

(Bankruptcy) Act (1970:741) shall cease to apply.

2. Older provisions still apply concerning claims against an employer who has been put into bankruptcy prior to the entry into force.

SFS 1994:636

1. This Act enters into force on 1 July 1994.

2. The older provision in Section 25 concerning payment of a guarantee amount shall still apply concerning claims against an employer who has been put into bankruptcy prior to the entry into force.

2003:544

1. This Act enters into force on 1 January 2004.

2. Former provisions shall apply regarding matters of bankruptcy that have been decided on the grounds of an application made before entry into force.

2005:273

1. This Act enters into force on 1 June 2005.
2. The new provisions on pay guarantee in the case of corporate reconstruction shall be applied if the decision for corporate reconstruction was made on the basis of an application for corporate reconstruction that was received by the district court on 1 June 2005 or later.

2005:681

This Act enters into force on 7 October 2005 and shall apply to matters concerning insolvency proceedings that were commenced thereafter.