

Posting of Workers Act (1999:678)

With amendments: up to and including Swedish Code of Statutes 2017:320

Scope

Section 1

This Act applies when an employer established in a State other than Sweden posts workers to Sweden in the framework of the transnational provision of services by the employer.

In assessing whether an employer is established in a State other than Sweden, the circumstances characterising the employer's activities in the other State and, when necessary, the employer's activities in Sweden, shall be taken into account.

Furthermore, Section 8 contains provisions concerning employers that have their domicile or registered office in Sweden and post workers to another Member State within the European Economic Area (EEA) or Switzerland. *Act (2017:320)*.

Section 1a

The provisions of Section 5a on conditions that must be met before taking industrial action and Section 5b on the limitation of the legal effect of a collective agreement apply only if the employer is established in the EEA or Switzerland. *Act (2017:320)*.

Section 2

The Act does not apply to merchant navy employers as regards seagoing personnel.

Definitions

Section 3

Posting means any of the following transnational measures:

1. when an employer on its own account and under its own direction sends workers to Sweden in accordance with a contract that the employer has entered into with the recipient of the services that is active in Sweden;
2. when an employer sends workers to Sweden to an establishment or to an undertaking owned by the group; or
3. when an employer that hires out workers or is a placement agency sends workers to a user undertaking established in Sweden or operating in Sweden.

An employment relationship must exist between the employer and the worker during the period of posting.

Section 4

‘Posted worker’ means a worker who normally works in another country but carries out work in Sweden for a limited period in accordance with Section 3.

In assessing whether a worker carries out work in Sweden for a limited period, the circumstances characterising the work and the worker’s situation shall be taken into account. *Act (2017:320)*.

Terms and conditions of employment

Section 5

Whatever the law otherwise applicable to the employment relationship, an employer shall apply the following provisions to workers posted to Sweden:

- Sections 2, 2a, 5, 7, 16–16b, 17–17b, 24, 28–29a, 31 and 32 of the Annual Leave Act (1977:480);
- Section 2, Section 4, first paragraph and Sections 16–22 of the Parental Leave Act (1995:584);
- Sections 2–7 of the Prohibition of Discrimination of Employees Working Part Time and Employees with Fixed-term Employment Act (2002:293); and
- Chapter 1, Sections 4 and 5, Chapter 2, Sections 1–4 and 18, and Chapter 5, Sections 1 and 3 of the Discrimination Act (2008:567).

In connection with posting to Sweden, the following legal acts also apply:

- the Work Environment Act (1977:1160);
- the Working Hours Act (1982:673), with the exception of Section 12;
- the Working Hours for Certain Road Transport Act (2005:395), with the exception of Section 16;
- the Working Hours, etc. of Mobile Workers in Civil Aviation Act (2005:426), though with the limitation as regards Section 1, second paragraph, that Section 12 of the Working Hours Act does not apply; and
- the Driving and Rest Periods for International Railway Transport Act (2008:475), though with the limitation as regards Section 1, third paragraph, that Section 12 of the Working Hours Act does not apply.

In connection with the posting to Sweden of temporary agency workers, Sections 2, 9, 10, 13 and 15 of the Hiring Out of Workers Act (2012:854) also apply. When these provisions are applied, employers hiring out labour shall be regarded as temporary-work agencies and user undertakings shall be regarded as client undertakings.

Paragraphs one to three do not prevent the employer from applying terms or conditions that are more favourable to the worker. *Act (2012:857)*.

Section 5a

Industrial action against an employer aimed at bringing about a regulation by collective agreement of the terms and conditions applying to posted workers may only be taken if the terms and conditions demanded:

1. comply with the terms and conditions contained in a collective agreement concluded at central level that are generally applied throughout Sweden to corresponding workers in the sector in question;

2. relate only to a minimum rate of pay or other minimum terms and conditions within the areas referred to in Section 5 without prejudice to the application of terms and conditions that are more favourable to workers; and
3. are more favourable to the workers than those prescribed by Section 5.

With regard to posted temporary agency workers, industrial action may instead only be taken if the terms and conditions demanded:

1. comply with the terms and conditions contained in a collective agreement that applies throughout Sweden to corresponding workers in the temporary work sector and that respects the overall protection of workers referred to in the original wording of Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work;
2. relate only to pay or other terms and conditions within the areas referred to in Section 5 without prejudice to the application of terms and conditions that are more favourable to workers; and
3. are more favourable to workers than those prescribed by Section 5. *Act (2017:320).*

Section 5b

A collective agreement concluded as a result of industrial action in accordance with Section 5a, or notice of such action, does not entail any obligations on the part of the employer due to relationships regulated by collective agreements in relation to an employee organisation, its union representatives or the public authorities under any legislation other than this Act.

A collective agreement as referred to in the first paragraph shall not be taken into account when applying the provisions on the order of selection of termination under Section 22 of the Employment Protection Act (1982:80) or the provisions on the preferential right to re-employment in Section 25 of the same Act. *Act (2017:320).*

Section 5c

If an employer and a Swedish employee organisation are bound by a collective agreement that regulates the terms and conditions for posted workers, posted workers who are not bound by the agreement are entitled to the collectively agreed terms and conditions referred to in Section 5a. This applies during the period of time a posting lasts, or has lasted, and for any work that falls under the collective agreement.

An agreement is invalid to the extent that it revokes or limits a posted worker's rights under the first paragraph. *Act (2017:320).*

Section 5d

If an employer and a Swedish employee organisation are bound by a collective agreement that regulates the terms and conditions for posted workers, the employer shall, if requested to do so by the organisation, provide:

1. documentation, in the form of employment contracts, wage specifications, timesheets and certificates of wage disbursements; and
2. translation of these documents into Swedish, or English if the employer prefers, when these documents are written in another language.

The documents and their translations shall be provided to the extent necessary to enable the organisation to assess whether the collective agreement has been followed with respect to the collectively agreed terms and conditions referred to in Section 5a.

The obligations set out in the first and second paragraphs shall be discharged within three weeks of receiving the request and apply as long as the worker to whom the documentation pertains is posted in Sweden, and for four months afterwards. *Act (2017:320)*.

Section 6

For work that is performed by a professionally trained or specialised worker, the employer shall only apply the provisions of the Annual Leave Act mentioned in Section 5 if the posting lasts for more than eight days and if the work:

1. is performed in conjunction with an initial assembly or installation that is included in a supply contract for a product; and
2. is necessary for the product to be taken into use.

However, this exception does not apply if the work relates to building activities where buildings are erected, put in order, maintained, rebuilt or demolished.

When calculating whether a posting lasts for more than eight days, regard shall be taken of whether any other worker was posted for the same work during the last year.

Section 7

As regards the right of association and the right of negotiation in connection with postings to Sweden, Sections 7 and 8 and Section 10 of the Employment (Co-Determination in the Workplace) Act (1976:580) apply.

When a collective agreement has been made with a Swedish employee organisation, Section 41 of the same Act also applies.

In the event of a violation of the provisions of the first or second paragraph, Sections 54 and 55, and Section 60, first and third paragraphs, of the Employment (Co-Determination in the Workplace) Act apply.

Posting to other States within the EEA or Switzerland

Section 8

When an employer that has its domicile or registered office in Sweden posts workers to another State within the EEA or Switzerland, the employer shall apply the national provisions by which that State has implemented Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

The first paragraph does not prevent the employer from applying terms or conditions that are more favourable to the worker. *Act (2001:65)*.

Information and cooperation between authorities

Section 9

The Swedish Work Environment Authority is the liaison office and shall:

1. provide information on the terms and conditions of employment that may become applicable upon a posting to Sweden; and
2. assist in providing information on points of contact at employee and employer organisations, and information on collectively agreed terms and conditions referred to in Section 5a or that may otherwise become applicable.

The Swedish Work Environment Authority shall also collaborate with the corresponding liaison offices in other States within the EEA and in Switzerland.

The Government may, by virtue of Chapter 8, Article 7 of the Instrument of Government, issue regulations concerning the required contents of the information provided under the first paragraph and their required formulation. *Act (2017:320)*.

Section 9a

An employee organisation shall submit to the Swedish Work Environment Authority the collectively agreed terms and conditions referred to in Section 5a.

The employee and employer organisations concerned shall each notify the Swedish Work Environment Authority of the identity of their point of contact. Information about collectively agreed terms and conditions referred to in the first paragraph shall be available through the point of contact. *Act (2017:320)*.

Section 9b

The Swedish Work Environment Authority, and any other authority designated by the Government, is the competent authority concerning assistance under Section 9c and shall cooperate with the competent authorities in other States within the EEA. *Act (2017:320)*.

Section 9c

A competent authority in Sweden shall provide assistance to a competent authority in another EEA State, if the authority so requests.

A competent authority in Sweden may request that a competent authority in another EEA State provide assistance when doing so may facilitate the processing of a matter.

A request for assistance may refer in particular to information and to the carrying out of checks, inspections and investigations with regard to the posting of workers. *Act (2017:320)*.

Section 9d

The Government may, by virtue of Chapter 8, Article 7 of the Instrument of Government, issue more detailed regulations concerning the manner in which a competent authority in Sweden is to provide or request assistance. *Act (2017:320)*.

Notification obligation and contact person

Section 10

An employer shall notify a posting to Sweden to the Swedish Work Environment Authority no later than when a posted worker begins work in Sweden.

If the activities change in a manner that is relevant to the notified information, the employer shall notify the Swedish Work Environment Authority of the amended information no later than three days after the change occurred.

The first and second paragraphs do not apply if the activities in Sweden are intended to continue for at most five days. If such activities in fact continue for a longer period than five days, the employer shall fulfil the notification obligation prescribed in the first paragraph on the sixth day on which the activities are conducted. *Act (2013:351)*.

Section 11

The employer shall appoint a contact person in Sweden and notify the Swedish Work Environment Authority of their identity. This notification shall be made at the latest when a posted worker begins work in Sweden.

The contact person shall be authorised to receive service of documents on the employer's behalf. Such authorisation shall be deemed to be in effect by virtue of the notification of the contact person.

The contact person shall also be able to provide documents to agencies and employee organisations that show that the requirements of this Act have been fulfilled. However, this does not apply in relation to an employee organisation if the employer is required to provide the documents to the organisation pursuant to Section 5d.

The first paragraph does not apply if the activities in Sweden are intended to continue for at most five days. If such activities in fact continue for a longer period than five days, the employer shall fulfil the notification obligation prescribed in the first paragraph on the sixth day on which the activities are conducted. *Act (2017:320)*.

Section 12

The Government may issue regulations concerning exemptions from Sections 10 and 11, and concerning the information that notification under Section 10 must contain.

The Government or the authority designated by the Government issues regulations concerning the required contents of notification under Section 11 and the required formulation of notifications under Sections 10 and 11. *Act (2013:351)*.

Supervision

Section 13

The Swedish Work Environment Authority exercises supervision of compliance with the provisions of Sections 10 and 11 and regulations issued in connection with these provisions. *Act (2013:351)*.

Financial penalties

Section 14

A financial penalty shall be imposed if an employer has infringed the provisions on the notification obligation in Section 10, first paragraph, Section 10, third paragraph, second sentence, Section 11, first paragraph, Section 11, fourth paragraph, second sentence, or regulations issued in connection with these provisions.

A financial penalty shall be imposed even if the infringement was not committed intentionally or negligently.

The penalty may be reduced or waived if the infringement is negligible or excusable, or if, in view of the circumstances, it would be unreasonable to impose the financial penalty.

The penalty shall accrue to the State. *Act (2013:351)*.

Section 15

The Government may issue further regulations on financial penalties to be imposed under Section 14.

It shall be evident from such regulations how the penalty will be calculated for different types of infringements. It shall be possible to determine the penalty amount directly with the aid of the specified basis of calculation. A penalty shall be at least SEK 1 000 and at most SEK 100 000. *Act (2013:351)*.

Section 16

The Swedish Work Environment Authority examines by means of a penalty order whether a financial penalty shall be imposed.

A penalty order means that the person deemed to have committed an infringement of the provisions referred to in Section 14 is ordered to accept the financial penalty immediately or within a certain time.

If a penalty order has been accepted, it has the force of a final and non-appealable court decision imposing a penalty. However, an acceptance made after the time specified in the order has expired shall be null and void. *Act (2013:351)*.

Section 17

If a penalty order under Section 16 has not been accepted within the specified time, the Swedish Work Environment Authority may apply to the administrative court within whose jurisdiction the penalty order was issued for a financial penalty to be imposed.

Leave to appeal is required for an appeal to the administrative court of appeal. *Act (2013:351)*.

Section 18

A financial penalty may only be imposed if the person subject to the claim is served with the application within five years of the time the infringement occurred.

The county administrative board shall be notified immediately of a decision imposing a penalty. The penalty shall be paid to the county administrative board no later than two months after the decision became final and non-appealable. Information to this effect must be included in the decision.

If the penalty is not paid within the period of time stated in the second paragraph, a late payment penalty will be imposed under the Late Payment Penalties Act (1997:484). The unpaid penalty and the late payment penalty shall be turned over for collection. The Act on the Collection of Debts to the State (1993:891) contains provisions on collection.

A penalty that has been ordered is annulled if enforcement has not been carried out within five years of the date on which the decision became final and non-appealable. *Act (2013:351)*.

Rectification order

Section 19

The Swedish Work Environment Authority may decide to order an employer to make rectification if the employer:

1. does not submit notification of a change in the activities in accordance with Section 10, second paragraph;
2. does not fulfil the requirements in Section 11, third paragraph; or
3. submits an incorrect or incomplete notification.

A conditional financial penalty may be attached to a decision to issue an order under the first paragraph. The Swedish Work Environment Authority may decide that such an order shall apply with immediate effect. *Act (2013:351)*.

Section 20

A decision of the Swedish Work Environment Authority to issue an order to which a conditional financial penalty is attached may be appealed to a general administrative court.

Leave to appeal is required for an appeal to the administrative court of appeal. *Act (2013:351)*.

Authorised representative in collective agreement negotiations

Section 21

If requested to do so by a Swedish employee organisation, an employer shall appoint a representative who is authorised to negotiate and conclude collective agreements on behalf of the employer.

The request from the employee organisation shall contain:

1. notice that the organisation wishes to conclude a collective agreement; and

2. contact details for a representative who is authorised to negotiate and conclude collective agreements on behalf of the organisation.

The employer shall, within ten days of the request, appoint the representative and notify the organisation of who has been appointed and their contact details. *Act (2017:320)*.

Protection against reprisals

Section 22

An employer may not subject a worker to reprisals due to the worker having initiated legal or administrative procedures concerning the terms and conditions of employment:

1. pursuant to Section 5; or
2. under a collective agreement, if the procedure may be considered to include collectively agreed terms and conditions referred to in Section 5a. *Act (2017:320)*.

Section 23

If a person who considers that they have been subjected to reprisals that are in contravention of Section 22 demonstrates circumstances from which it may be presumed that such is the case, it is up to the employer to demonstrate that such reprisals have not occurred. *Act (2017:320)*.

Damages

Section 24

An employer shall pay damages to:

1. the employee organisation that concluded the agreement in the event of a violation of the collective agreement concluded as a result of industrial action under Section 5a, or notice of such action;
2. the employee organisation that requested documentation or translation in the event of a violation of Section 5d;
3. the employee organisation that requested a competent negotiator in the event of a violation of Section 21; and
4. the posted worker in the event of a violation of the prohibition on reprisals in Section 22.

The damages are to include compensation for the loss that has arisen and for the infringement that has occurred.

Damages may be reduced or waived if it is reasonable to do so. *Act (2017:320)*.

Rules of judicial procedure

Section 25

Cases under Section 5, first or third paragraph, and Sections 5c, 5d, 7, 21, 22 and 24 are to be dealt with in accordance with the Labour Disputes (Judicial Procedure) Act (1974:371).

Action by a worker may be brought at the district court in the district where the worker is or has been posted. *Act (2017:320)*.

Section 26

In cases under Section 5, first paragraph, the following applies:

- Section 33 of the Annual Leave Act (1977:480) concerning time limits;
- Section 23, second paragraph of the Parental Leave Act (1995:584) concerning judicial proceedings;
- Section 9 of the Prohibition of Discrimination of Employees Working Part-Time and Employees with Fixed-Term Employment Act (2002:293) concerning time limits, etc.; and
- Chapter 6, Sections 2–5, 8, 10 and 11 of the Discrimination Act (2008:567) concerning burden of proof, the right to bring actions, time limits, etc.

In cases under Section 5, third paragraph, Section 16, third and fourth paragraphs of the Hiring Out of Workers Act (2012:854) apply. *Act (2017:320)*.

Section 27

In cases under Sections 5c, 5d, 21, 22 and 24, Section 64, first paragraph and Sections 65 and 66 of the Employment (Co-determination in the Workplace) Act (1976:580) apply with regard to the time limit within which a negotiation must be requested or an action brought. If a negotiation is not requested or an action brought within the prescribed time, the right to negotiation or to bring an action is forfeited.

In cases under Section 5c, if the matter concerns annual holiday leave in the collective agreement, Section 33 of the Annual Leave Act (1977:480) concerning time limits also applies. *Act (2017:320)*.

Transitional provisions

2008:477

This Act enters into force on 14 December 2008. Older provisions continue to apply to circumstances relating to the period prior to entry into force.

2017:320

1. This Act enters into force on 1 June 2017.
2. Provisions in Sections 5b and 5d, and Section 24, first paragraph, points 1 and 2 do not apply with respect to collective agreements concluded prior to entry into force.
3. Provisions in Section 5c apply with respect to collective agreements concluded prior to entry into force, but only to rights that concern the time after entry into force.
4. Provisions in Sections 9b and 9c apply in relation to a State within the EEA, which is not a Member State of the European Union, from the time the State joins the cooperation referred to in the original wording of Articles 6–7 of Directive 2014/67/EU of the European Parliament and of the Council.