

Swedish Code of Statutes (SFS) no 2018:1472

Act on contractor liability for wage claims (2018:1472)

Ministry: Ministry of Employment, Division for Labour Law and Work Environment

Issued: 28 June 2018

In force: 1 January 2019 (transitional provisions)

Scope of application

Section 1

This Act contains provisions on the liability of a contractor for wages to a worker employed by a subcontractor.

Section 2

Liability under this Act applies in construction and civil engineering activities in Sweden where a building or facility is constructed, put in order, maintained, rebuilt or demolished.

Definitions

Section 3

In this Act the following terms have the meaning set out in this Section:

1. main contractor: the contractor that, under an agreement with the original commissioner of the contract, is responsible for ensuring that the work covered by the agreement is carried out, unless the contractor is instead to be regarded as a principal;
2. principal: the contractor that has hired the employer for which the worker whose wage claim the liability concerns is or has been employed as a subcontractor to carry out the work covered by the agreement between the main contractor and the original commissioner; and
3. the contract: the work covered by the agreement between the main contractor and the original commissioner.

Possibilities to set down rules in agreements

Section 4

An agreement is invalid insofar as it restricts the worker's rights under this Act, unless otherwise stipulated in Section 5.

Section 5

The provisions of this Act do not apply to a principal or a main contractor if the principal is bound by a collective agreement that:

1. has been concluded or approved by a central employee organisation;
2. regulates liability for the worker's wage claims in the contract chain;

3. provides protection that, for the worker in the individual case, is equivalent to protection under the law; and

4. is compatible with Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the application of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), in its original wording.

Nor do the provisions in this Act apply to a main contractor that is bound by such a collective agreement.

Section 6

The provisions in Sections 15–17 on objections, recourse and the main contractor's obligation to notify the principal do not apply if otherwise stipulated in an agreement, by practice established between the parties or trade practice, or any other practice that must be considered binding on the parties.

The principal's liability

Section 7

A principal that has been notified that a party that is or has been hired to carry out a contract has not paid wages to a worker is liable for wage claims under the conditions stated in Sections 10, 11, 13 and 14.

The main contractor's liability

Section 8

The main contractor is liable for payment of wage claims under the conditions stated in Sections 9–14 if:

1. the principal does not pay within fourteen working days of the date on which the principal received notification of a wage claim in accordance with Section 11; or
2. the principal cannot be reached for the purpose of notification, despite the worker, or an employee organisation of which the worker is a member, having requested information from the main contractor about the principal in accordance with Section 18.

Section 9

For a main contractor to be liable under Section 8, point 1, the worker or an employee organisation of which the worker is a member must notify the main contractor of the wage claim, in accordance with Sections 11 and 12, within six months of the principal having been notified.

When payment liability arises

Section 10

Payment liability arises seven working days after the party to which liability applies has been notified, in accordance with Sections 11 and 12, of wage claims from a worker or an employee organisation of which the worker is a member.

Form and contents of a notification

Section 11

A notification of a wage claim must be made in writing and contain the following information:

1. the worker's name;
2. the amount of the unpaid wage claim;
3. the respective due date of the wage;
4. the work and the period of time the wage claim applies to;
5. when the demand for payment was presented to the employer or why this has not happened;
6. how the payment can be made; and
7. the employer and, if the information is available, their name and contact details.

Section 12

A notification to the main contractor must also include the following:

1. that the principal has been notified of the wage claim, or why this has not happened; and
2. the principal's name and contact details, if this information is available.

Wage claims covered by this liability

Section 13

Liability covers wage claims that are due for payment and relate to the worker's work on behalf of the employer as part of the contract.

Liability does not apply to wage claims for which the worker has received remuneration in another way.

Section 14

A principal's liability does not cover wage claims that were due for payment more than three months before the principal received notification in accordance with Section 11.

A main contractor's liability does not cover wage claims that were due for payment more than three months before the principal was notified in cases under Section 8, point 1 or before the main contractor was notified in cases under Section 8, point 2.

Objections

Section 15

A principal or a main contractor may present the same objections to a worker's payment demands under this Act as the employer.

Recourse

Section 16

The employer must remunerate a main contractor or a principal that has paid a wage claim under this Act. The corresponding obligation also applies to a principal in relation to a main contractor.

The liability of the employer or the principal under the first point also covers taxes and fees to the public treasury.

The main contractor's obligation to notify the principal

Section 17

A main contractor that has been notified of a wage claim after the principal has not paid under Section 8, point 1 must present or send a message to the principal about this in an appropriate manner, and within seven working days of the main contractor having received the notification.

A main contractor that does not do this has no right of recourse vis-à-vis the principal.

The worker's right to information

Section 18

An employer, a principal and a main contractor are obliged, at the request either of a worker who has not received their wages in accordance with a wage claim that is due for payment or of an employee organisation of which the worker is a member, to present or send the following information about other actors covered by the obligation to provide information:

1. name;
2. contact details; and
3. corporate identity number, personal identity number, coordination number or equivalent registration number, if such a number exists.

The party responsible for providing information must present or send the information in an appropriate manner to the party that has requested it no later than five working days after having received a written request for information.

Damages

Section 19

An employer, a principal and a main contractor that breach Section 18 must pay damages to the worker for the loss incurred and for the violation entailed by the legal infringement.

Where reasonable, damages may be reduced, in whole or in part.

Judicial proceedings

Section 20

Cases between a worker, on one side, and an employer, a principal or a main contractor, on the other side, concerning the application of this Act are dealt with in accordance with the Labour Disputes (Judicial Procedure) Act (1974:371).

In such cases, the principal and the main contractor are considered employers. The worker is considered to be an employee of the principal or the main contractor. This also applies when the

regulations on negotiations concerning disputes in the Act on Codetermination at Work (1976:580) are applied.

A case referred to in the first paragraph may be heard by a Swedish court even when it concerns the demands of a posted worker. Action by a posted worker may be brought at the district court in the district where the worker is or has been posted.

Section 21

In cases referred to in Section 20, first paragraph, the provisions of Section 64, first paragraph and Sections 65 and 66 of the Act on Codetermination at Work (1976:580) apply with regard to the time period within which a negotiation must be requested or an action brought. If a negotiation is not requested or an action is not brought within the prescribed time, the right to negotiation or to bring an action is forfeited.

Transitional provisions

2018:1472

1. This Act enters into force on 1 January 2019.
2. The provisions in this Act do not apply to claims resulting from an agreement that the original commissioner of the contract entered into before entry into force.