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ADVOKATBYRÅ

The new rules of the Employment Protection Act – what are the effects for the employer?

For many years the work to develop a new and reformed regulation of the Employment Protection Act (swe: lagen om anställningsskydd (LAS)) has been ongoing. A large proportion of the labour markets partners have therefore entered into an agreement of principle, so-called *prinicipöverenskommelsen*. Based on this agreement of principle, the Ministry of Labour then presented proposals for amendments to the Employment Protection Act with the aim to reform the Swedish labour law. The Swedish Parliament has now voted for the proposed reform. The changes of the law will enter into force on 30 June 2022, but it will not be applicable until 1 October 2022.

The purpose of the amendments is, among other things, for employees to have increased job security. Furthermore, the purpose of the amendments is for labour law to be more flexible, which is also for the employer's benefit. The summary below entails the most important details and changes regarding the new rules soon entering into force.

The definition of unfair dismissal will be changed

The first difference that employers must be aware of is that the expression "unfair dismissal" (**swe**: *saklig grund*) in the event of dismissal based upon shortage of work or when due to personal reasons are now replaced by the concept of "wrongful dismissal" (**swe**: *sakliga skäl*). It will now be explicitly stated that objective reasons for termination of the employment are shortage of work or personal reasons. It will be a linguistic clarification. There will be no major difference in the assessment when the reason for termination of the employment is due to shortage of work. Regarding the assessment of termination of the employment due to personal reasons, the assessment is a bit different because the employee's personal interest in retaining the employment must no longer be considered. Previously, the employer had to consider whether the employee has an extensive maintenance obligation or may have difficulty finding a new job, etc. This obligation has now been removed. Nor is the employer obligated to make any estimation of how the employee may behave in the future, the individual event is enough reason to terminate the employment due to personal reasons. The changes also means that an employer has fulfilled its relocation obligation through only one offer of relocation to the employee unless there are special reasons. In summary, it will be easier to terminate the employment due to personal reasons, while termination of the employment due to shortage of work will generally be the same.

Extended exemption from the rules of priority

Another change that entails a significant difference for companies with more than ten employees is that all employers, regardless of the number of employees, now will be able to make exemptions for three employees in the event of termination due to shortage of work. According to the rules that applies today, only employers with up to ten employees can make use of the exemptions from the priority rules. Which employees that should be exempted is entirely up to the employer and it is a completely discretionary assessment. The employer's assessment and choice of exemption is something that will not be able to be assessed legally. The employer choice and decision will apply, except for whether the exemptions would be anti-union or discriminatory. The employer does not have to justify the exemptions, but it will certainly be discussions in the union negotiations. There is a so-called deferred period when using the exemptions. If an exemption has been made, no further exemptions can be made if there would be a new termination process within three months of the first termination.

The employment no longer exists if there is a dispute about invalidity

If there is a dispute between employer and an employee regarding the validity of a termination of an employment, according to the law as it is today, the employment lasts until the dispute is resolved. The new rules are however different in because if there will a dispute about the validity of the termination of the employment from now on, the employment must end at the end of the notice period, even if the termination is disputed. However, if a court rules that the termination was wrong and thus declares the termination invalid, the employer needs to pay the employee the salary that the employee would have been entitled to for during time of the dispute and, generally, the employment shall return. As the employment will not last during a dispute according to the new rules, it has thus been decided to increase the general damages for incorrect and invalid termination.

General fixed term is replaced by special fixed term

The general fixed-term employment (**swe**: *allmän visstidsanställning*) will be replaced by the new special fixed-term employment (**swe**: *särskild visstidsanställning*). However, it is not only the term of the employment that will change, the rules on qualification are also changing. For an employee who has had a special fixed-term employment for a total of twelve months (more precisely, 360 days) during a five-year period will the employment automatically be converted into a permanent employment. According to the current rules, a permanent employment converts after an employee has had a general fixed-term employment with the employer for a total of more than two years. The new rules thus mean a significant reducing of the qualification time. When calculating employment time in special fixed-term employment, the time between employments shall also be considered as time of employment for employees who during a calendar month have had three or more employments in special fixed-term employment.

Reducing of the employment rate shall be done according to the priority rules

When reorganizing an operating unit where employees with equal assignments and responsibilities are offered a re-regulated employment rate (**swe**: *hyvling*) the employer must, according to the new rules, observe the rules of priority. For the rules to be relevant and applicable, the re-regulation must affect at least two employees within the same operating unit and with the same assignments, etc. However, it is sufficient that only one employee's employment rate actually is reduced or changed, but it is required that at least two employees with equal assignments are affected. Furthermore, employees who are offered and accepts a re-regulated employment rate shall be entitled to an adjustment period. During this adjustment period, which is a maximum of three months, the employee retains the previous employment rate and employment benefits that he or she had before the re-regulation. These rules only apply in situations that are caused by organizational reasons, i.e. not due to personal circumstances.

Other information

Some other news is that most of the new rules are semi-dispositive, which is a big difference from the current rules. The meaning of that the rules are semi-dispositive is that the rules only could be excluded via main organizational level, i.e. through collective agreements, not in individual cases.

If your company wishes to obtain legal guidance regarding the new rules or questions about how your company is affected by the new rules, you are welcome to contact us at Zellberg Advokatbyrå. You will find contact information on our website, www.zellberg.se.