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Employment Reorganisation Roadmap

Sweden

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Contents

1. Employee representation

1.1. What are the main forms of employee representation involved in restructurings?

Trade union representatives are the main form of employee representation involved in restructurings. If the employer is party to a collective bargaining agreement, it must conduct a process with the contracting trade union(s) prior to taking a decision regarding material changes in the employer's business activities. This process must also be conducted before the employer decides upon more significant changes to the working conditions or employment terms and the conditions of employees who belong to the relevant trade union(s). If the employer is not bound by a collective bargaining agreement, the consultation process, on the employer's own initiative, need only take place prior to any decisions by the employer regarding terminations due to redundancy and transfers of undertaking; such a process must take place with all relevant trade unions (ie unions with affected employees as members).

There is no system of works councils in Sweden. Collective rights are vested with trade unions.

1.2. Is there a system of employee participation rights?

If the employer or any subsidiary of the employer is party to a collective bargaining agreement, the rules regarding employee participation rights are as follows.

Employees in limited liability companies with 25 or more employees are entitled to two board member representatives (and two deputies); in companies with more than 1,000 employees which operate in several industries or business sectors, they are entitled to three board member representatives (and three deputies).

Employee representatives on the board are chosen by the recognised local trade union(s). This is done either through local agreement between the unions in the company, provided they represent a majority of the employees, or if agreement cannot be reached, a more formalised approach is adopted. This provides that if one union has more than 80% of the employees in the company or the group, then it is entitled to both the employee seats on the board; otherwise each of the two unions with the largest membership in the company has a seat.

2. Process on business sales

2.1. Are employees automatically transferred to a buyer by operation of law on a business sale?

Employees are automatically transferred on the sale of a business or undertaking (or part of a business or undertaking) to a buyer where there is a transfer of a stable economic entity that retains its identity after the transfer. Whether this test is met is determined by reference to various factors, in particular whether customers, assets and employees have transferred, and the degree of similarity of activities before and after the transfer.

2.2. If so, in broad terms, what is the legal test for identifying which employees transfer?

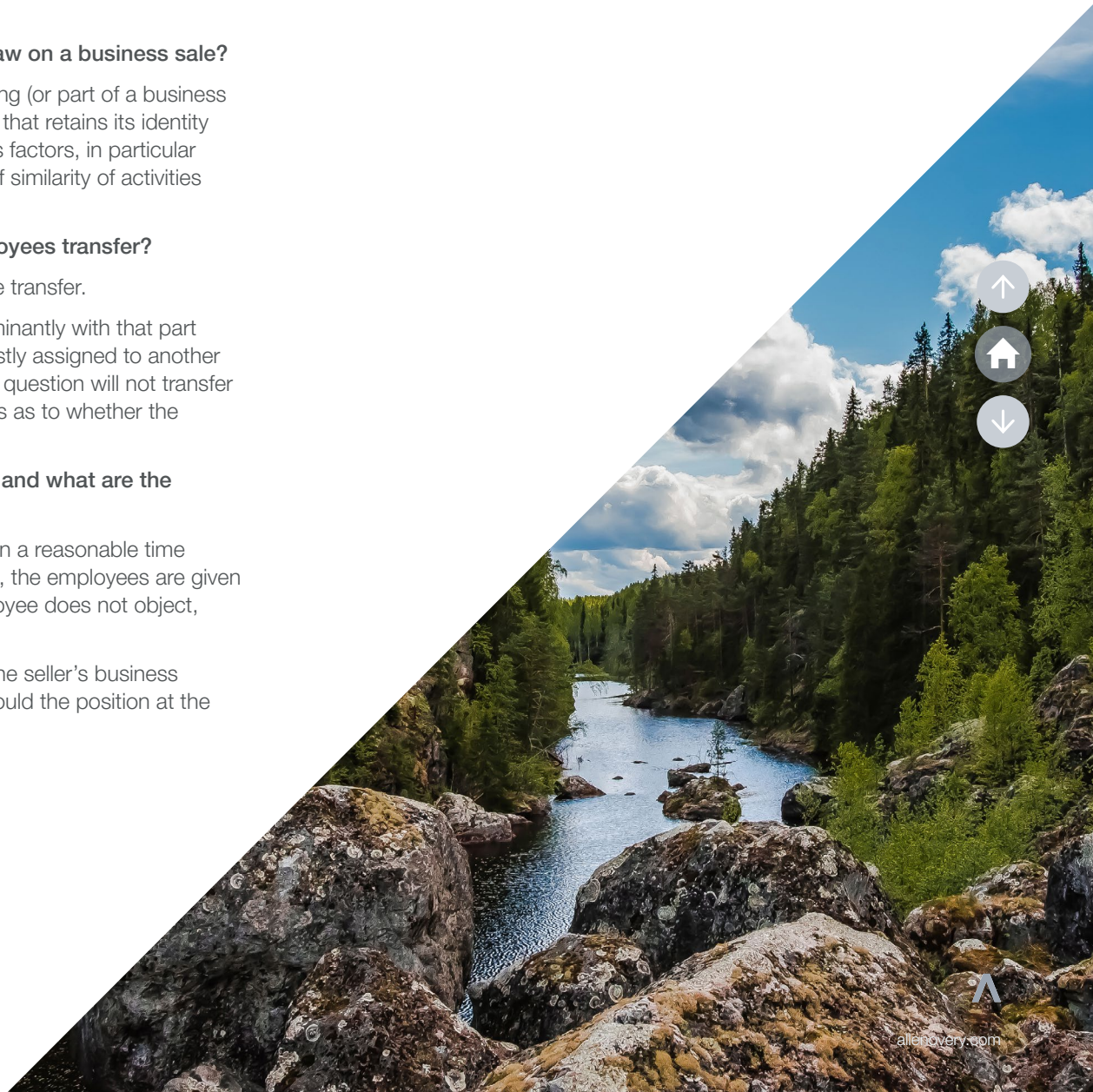
There is no specific legal test for identifying which employees are subject to the transfer.

If a part of a business is being transferred, only the employees working predominantly with that part of the business will transfer to the buyer. If the employees' work duties are mostly assigned to another part of the business which is not subject to the transfer, then the employees in question will not transfer either. The job description and the actual work tasks will be the decisive factors as to whether the employees belong to a specific part of the business or not.

2.3. Can employees object to the automatic transfer of their employment and what are the consequences of an objection?

The seller is required to notify its employees of the transfer of undertaking within a reasonable time (eg between five and ten days) before it takes place. At the point of notification, the employees are given the opportunity to object to being transferred to the new employer. If the employee does not object, then they are automatically transferred to the buyer.

If the employee objects to the automatic transfer, the employee will remain in the seller's business and normally risks having their employment terminated due to redundancy (should the position at the seller's business be made redundant after the transfer).



2.4. Do obligations to inform and consult employees or employee representatives arise on a business sale?

The seller and buyer are required to consult with the employees' trade union representatives regardless of whether they are bound by a collective bargaining agreement or not. The employer must initiate consultation at local level and, at the request of the local union, consultation may be referred to a central level.

The consultation process must be concluded before any decision to transfer the employees is taken. This means that the employer must complete the consultation before a binding offer to a third party may be given and before the transfer is made public. The employer is also obliged to consult with the trade unions prior to signing a preliminary agreement or even a letter of intent with a third party. It is not possible to circumvent this requirement by making the agreement or letter of intent conditional on the completion of consultation with the employees' organisations.

Once the employer has fulfilled its consultation obligation, it can decide how to proceed. The decision to proceed is not dependent on the trade union's approval.

2.5. What are the penalties for non-compliance with information and consultation obligations on a business sale?

Failure to inform/consult or to inform/consult properly does not invalidate a decision to proceed with the business transfer. However, the employer may be ordered by a court to pay damages to the trade union. Damages are usually at a level of SEK100,000-500,000 (approximately EUR8,940-44,690) per union.

3. Process on share sales

3.1. Do obligations to inform and consult employee representatives arise on a direct share sale (ie, on the sale of the company itself)?

There is no statutory obligation to inform/consult employee representatives on a direct share sale of the target company.

However, under certain circumstances, if the shareholder is an employer bound by a collective bargaining agreement, the shareholder may have to consult with its contracted trade unions prior to a sale of shares. The target company may also need to consult and/or negotiate with trade unions where the share transfer triggers an internal reorganisation, such as a new appointment to the management body.

If the employer is not bound by a collective bargaining agreement, the employer will only have to consult the trade union(s) where the share transfer would result in terminations due to redundancy or a transfer of a business or undertaking (or part of one).

3.2. Do obligations to inform and consult employee representatives arise on an indirect share sale (on the sale of a company's direct or indirect holding company)?

There is no statutory obligation to inform/consult employee representatives on an indirect share sale.
However, regard must be given to obligations arising under relevant collective bargaining agreements (see answer to **3.1**).

4. Process on outsourcings

4.1. Are employees transferred by operation of law in the following scenarios: (i) on an initial outsourcing of processes/services; (ii) on a change of supplier; or (iii) on an insourcing of processes/services?

Employees are automatically transferred in any of these scenarios where there is a transfer of an undertaking, ie a transfer of a stable economic entity that retains its identity after the transfer. Whether this test is met must be assessed on a case-by-case basis, taking the so-called “Spijkers criteria” into consideration. Merely taking over the exercise of an activity is insufficient to meet the test.

4.2. Do obligations to inform and consult employees or employee representatives apply in any of these scenarios?

Provided that the scenarios constitute a transfer of an undertaking, consultation must be conducted (see answer to **2.4**).

Employers bound by collective bargaining agreements are legally obliged to consult, on their own initiative, with the contracted trade union(s) prior to taking a decision regarding outsourcing (even though it may not constitute a transfer of undertaking), provided the work in question is not short and of a temporary nature. If the central trade union or, if none exists, the contracted trade union, assesses that the planned measure could be in breach of legislation or a collective bargaining agreement related to the work in question, the trade union may use its veto right and prohibit the employer from proceeding with the planned outsourcing.

As regards a change of suppliers and an insourcing, employers bound by collective bargaining agreements must consult with the contracted trade union(s) prior to taking the decision to change suppliers or to insource, where this measure will entail significant changes in the organisation or in working and employment conditions.

5. Process on collective dismissals

5.1. Is a "collective dismissal" (or "mass layoff") defined by law?

There is no definition of a collective dismissal. A collective dismissal is commonly regarded as arising where there are dismissals that are not due to the characteristics or behaviour of the individual worker (ie redundancy). There are no minimum dismissal thresholds for a collective dismissal.

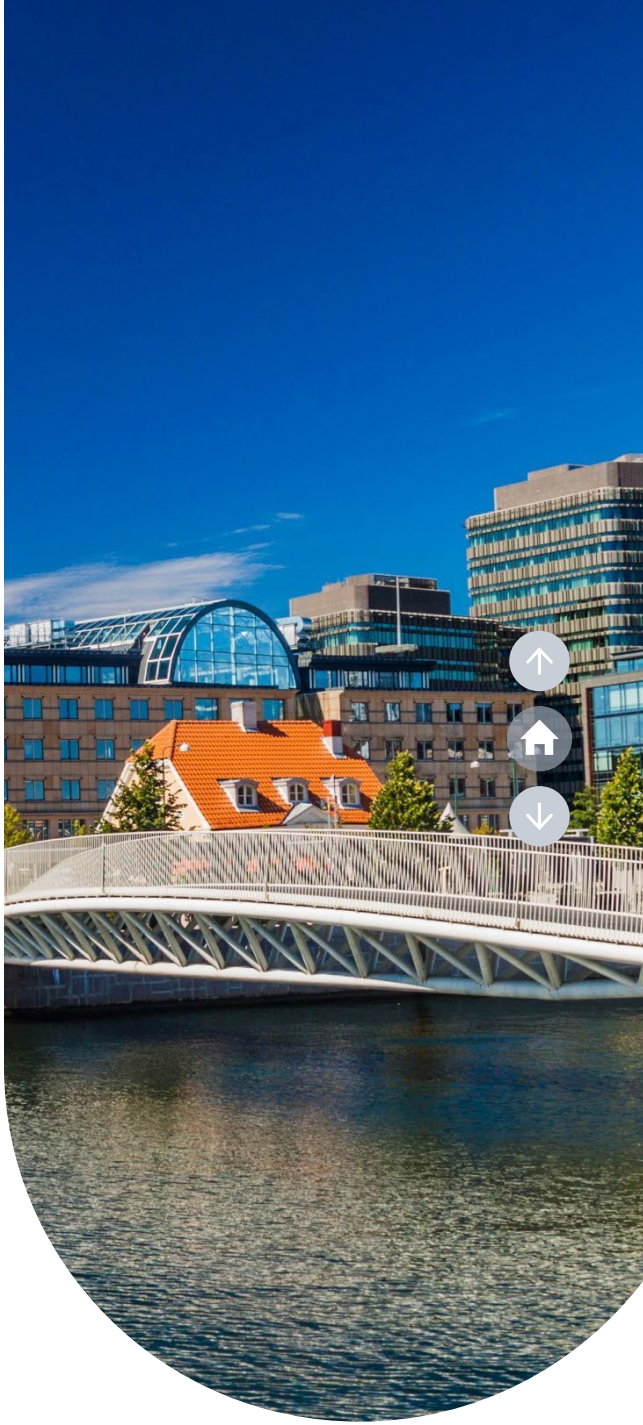
Please note, however, that the number of dismissals is relevant for the purpose of an employer's reporting obligations. An employer proposing the dismissals of five or more employees must give prior notification to the Public Employment Service within certain prescribed timescales (see answer to **5.3**).

5.2. Do obligations to inform and consult employee representatives arise on a collective dismissal?

An employer must conduct consultation with any trade union(s) to which it is bound by a collective bargaining agreement, but not with the individual employee, prior to any decision being taken on the proposed redundancies and regardless of the number of employees affected. If the employer is not bound by any collective bargaining agreement, it is obliged to conduct consultation with the trade union(s) of which the employees are members; in this case, the employer needs to find out whether or not the employees concerned are union members. The consultation period normally takes between two and four weeks to conclude, but there is no minimum consultation period.

An employer's decision to proceed is not dependent on the trade union's approval.

A copy of the notification to the Swedish Public Employment Service (see answer to **5.3**) must also be sent to trade union representatives, provided that the notification has not been sent in and signed electronically.



5.3. Do obligations to inform and consult the competent authorities arise on a collective dismissal?

Employers in Sweden are only legally obliged to consult with the contracted trade union(s) or with the trade unions that have members who are affected by the dismissals.

If five or more employees are to be dismissed due to redundancy, the employer must notify the Public Employment Service before giving notice of termination. The notification period is calculated based on when the employee with the shortest notice period leaves the workplace. Notification must take place:

– at least two months prior to dismissals affecting up to 25 employees

– at least four months prior to dismissals affecting at least 26 but no more than 100 employees, and

– at least six months prior to dismissals affecting at least 101 employees.

Notification must include detailed information about the reasons for the planned dismissals, the number of employees affected, categories of employees and proposed timescale for the redundancies. A copy of the notification must also be sent to trade union representatives, provided that the notification has not been sent in and signed electronically.

5.4. When are these obligations triggered?

The obligation for an employer to consult any trade union(s) to which it is bound by a collective bargaining agreement or, if not bound by a collective bargaining agreement, in which its employees are members, arises prior to it taking any decision on the proposed redundancies.

If five or more employees are to be dismissed due to redundancy, the employer must notify the Public Employment Service before giving notice of termination in accordance with the required notification periods (see answer to **5.3**).

5.5. What are the penalties for non-compliance with information and consultation obligations on a collective dismissal?

An employer could be liable for an award of damages of up to SEK250,000 (approximately EUR22,340) to each relevant trade union which it has not informed/consulted. Failure to inform the appropriate public bodies could also give rise to a fine of between SEK100-500 (approximately EUR9-45) per affected employee and per week in which there has been a failure to notify.

5.6. Do obligations to inform and consult employee representatives and/or competent authorities arise in the context of multiple dismissals, which do not qualify as a collective dismissal, as defined by law?

There is no statutory definition of collective dismissals. A collective dismissal is commonly regarded as arising where there are dismissals that are not due to the characteristics or behaviour of the individual worker (ie redundancy). There are no minimum dismissal thresholds for a collective dismissal.

An employer must conduct consultation with any trade union(s) to which it is bound by a collective bargaining agreement, but not the individual employee, prior to any decision being taken on the proposed redundancies. If the employer is not bound by any collective bargaining agreement, it is obliged to conduct consultation with the trade union(s) of which the employees are members; in this case, the employer needs to find out whether or not the employees concerned are union members. The consultation period normally takes between two and four weeks to conclude, but there is no minimum consultation period.

5.7. Does an employer have options/alternatives when it has been unable to reach agreement with employee representatives during the negotiation period?

Employers are only legally obliged to consult with the trade union(s), ie not to negotiate. The trade unions have no right of veto in this respect. During the consultation process, the employer is legally obliged to present the relevant circumstances and reasons for proposing the measure in question. The parties are not obliged to agree on how to proceed; instead it is sufficient that the trade union(s) has/have had an oppurtunity to influence the employer's decision-making.

Once the consultation process is concluded, the employer is entitled to proceed with the proposed measure.

6. Process on individual dismissals

6.1. Are employees entitled to a minimum period of notice on dismissal on redundancy or economic grounds?

The statutory minimum notice entitlement depends on length of service:

– up to two years' service – one month

– two up to four years' service – two months

– four up to six years' service – three months

– six up to eight years' service – four months

– eight up to ten years' service – five months, or

– ten or more years' service – six months.

Notice may be enhanced by employment contract or collective agreement.

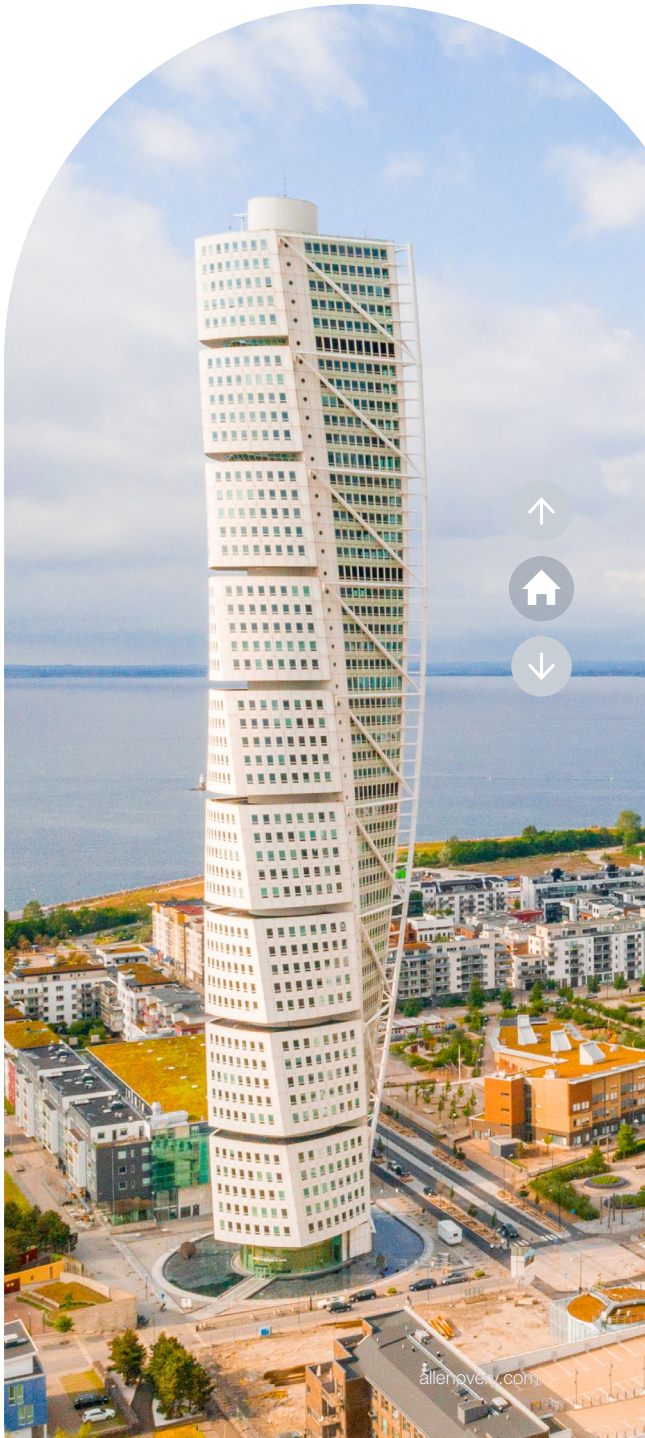
6.2. Does any special procedure apply when proposing to implement an individual dismissal on redundancy or economic grounds?

Dismissal must be justifiable by reason of redundancy, but will not be justifiable where it is reasonable for the employer to provide other work for the employee. Employees must be selected in a particular order of priority, according to statutory criteria based on seniority and age, or different criteria stipulated in any applicable collective agreement. Trade union representatives and disabled employees may be entitled to priority for continued employment in certain circumstances.

Any relevant trade union representing an employee must be notified in advance of a dismissal, and the employee and trade union have a right to consult with the employer. The employer is legally obliged to initiate consultation and cannot give notice of termination until the consultation process has been concluded.

Before employees are given notice of termination, the employees concerned must be offered any vacant positions with the employer, provided they have sufficient qualifications for at least one of the positions.

Notice of termination should be made in writing and contain specific information required by law. The notice must be given to the employee in person.



6.3. Does special dismissal protection apply where dismissals are to be implemented following or in connection with a business transfer?

In the event of a transfer of an undertaking, a business or part of a business, the transfer itself cannot constitute an objective reason for terminating an employee's employment. This prohibition does not, however, preclude termination due to redundancy.

This means that buyers are not prohibited from terminating employment due to redundancy when acquiring a business following which some positions become redundant. The same applies to sellers where redundancies are needed, eg due to employees objecting to the transfer and remaining in the seller's business where the relevant positions are redundant.

The seller may not implement redundancies before a business transfer, ie in anticipation of the buyer's requirements.

6.4. Are employees entitled to a minimum severance payment on dismissal for redundancy or economic grounds?

There is no minimum statutory severance entitlement. However, collective agreements or individual employment contracts may provide for severance payments. If the employer has an established severance payment policy, this must normally be adhered to.

6.5. What are the penalties for non-compliance with individual dismissal procedure?

If the procedure is not followed, a court may find the dismissal unfair and may award the employee financial damages for loss of income and general damages for harm suffered. The maximum award of financial damages for loss of income is based on the employee's length of service at the time of termination and is as follows:

– up to five years' service – 16 months' salary

– five up to ten years' service – 24 months' salary, or

– ten or more years' service – 32 months' salary.

General damages for harm suffered may also be awarded and will usually range from SEK90,000-190,000 (approximately EUR8,040-16,980).

6.6. Is there any special legal protection or does any special treatment apply for particular groups of workers?

Trade union representatives at the workplace are exempt from the seniority criteria (see answer to **6.2**) and must be given priority for continued work provided that this is of specific importance for the contracted trade union's activities at the workplace. In other words, such trade union representatives must be given priority for continued work even if they have shorter aggregate lengths of employment than other employees at the workplace. The same also applies for health and safety representatives at the workplace who have been elected by the contracted trade union(s). These requirements must, however, be interpreted narrowly.

Employment terminations in breach of these restrictions must be declared null and void if a claim is made by the representative in question.

7. Process when implementing alternatives to redundancy

7.1. Can changes to employment terms be made with or without express employee consent?

As a starting principle, changes to the terms and conditions of the employment contract must be agreed between the employer and the employee. This means that the employer is prohibited from unilaterally changing terms and conditions, although benefits provided unilaterally can normally be revoked. Employers are also prohibited from terminating a part of the employment agreement. Since it is not possible to terminate a part of an employment agreement, the employer and the employee must instead enter into an agreement in which the provisions in question are removed or changed – ie the employer cannot unilaterally implement such changes (see answer to **7.2**).

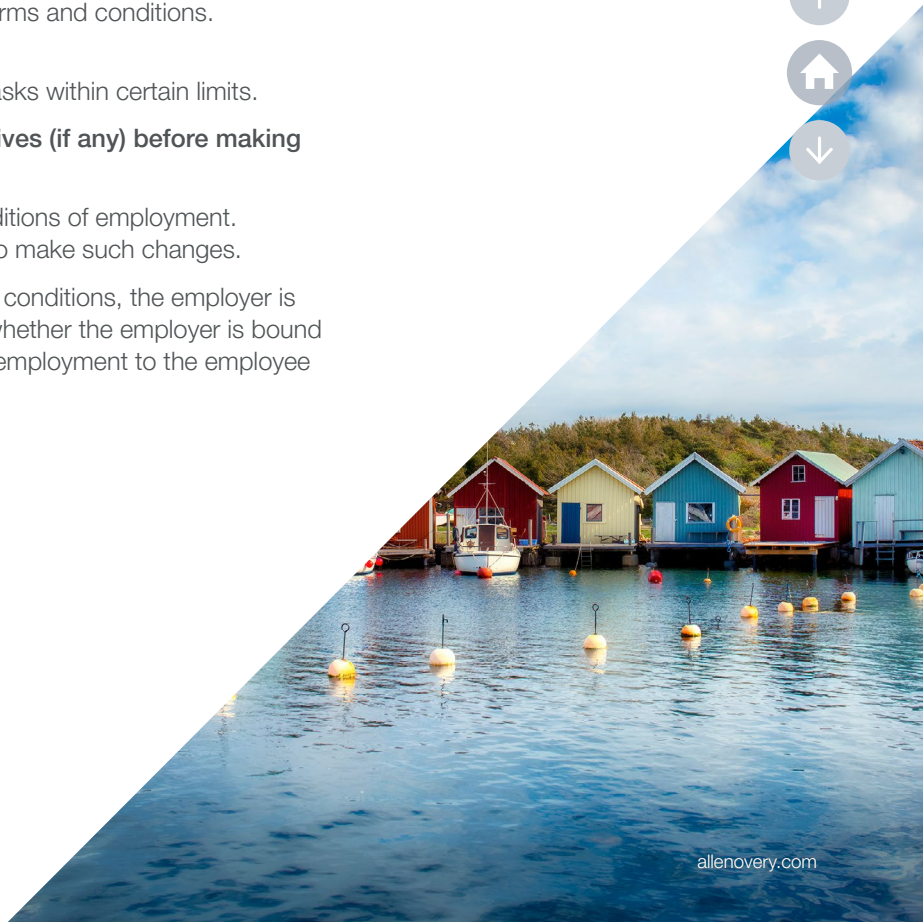
The law can, however, be interpreted to permit changes that result from offers of redeployment to vacant positions in the company. In order to have objective reasons to terminate employment, employers must – if reasonable – offer the affected employee redeployment to a vacant position. In such cases the employer is entitled to unilaterally offer new employment with changed terms and conditions. If the employee does not accept the offer, objective reasons for the termination of employment exist.

The employer does, however, have an extensive right to manage and distribute work and may amend work tasks within certain limits.

7.2. Must an employer consult individually or collectively with affected employees or their representatives (if any) before making changes to employment terms?

If there is no redundancy situation, the employer and the employee must agree to changes to terms and conditions of employment. The employer is therefore not legally obliged to consult with the trade unions, as it cannot unilaterally decide to make such changes.

If there is a redundancy situation and the employer plans to offer a new employment with changed terms and conditions, the employer is legally obliged to consult with either the contracted trade union(s) or the affected trade union, depending on whether the employer is bound by a collective bargaining agreement or not. The employer must initiate consultation prior to offering the new employment to the employee (see answer to **6.2**).



7.3. Do additional restrictions apply if changes are proposed in connection with or following a business transfer?

The same rules apply if changes are proposed in connection with or following a business transfer. However, the business transfer itself cannot consitute an objective reason for the termination of employment (see answer to **6.3**). Only contractual terms (not discretionary terms) transfer on a business transfer.

7.4. What are the penalties for non-compliance with these procedures?

If an employer makes an employee a redeployment offer in the form of new employment with changed terms and conditions and subsequently terminates the employment due to the employee refusing that offer, the employer could be liable for an award of damages of up to SEK135,000 (approximately EUR12,060) (since 1 October 2022) to each employee, provided that the employer has no objective reasons for terminating their employment.

7.5. Do national laws promote or permit any alternatives to redundancy (eg layoff or short-time working)?

Employers can receive compensation from the state in conjunction with temporary short-term working. Compensation from the state is available for monthly salaries of up to SEK44,000. The employees' monthly salaries are based on what they earned during the comparison month – ie on what they earned three months prior to the employer's first day of short-term work. If the employer applies for state support in 2024, and has not applied for state support during the previous year, September 2023 will constitute the comparison month.

During 2024, employees' working hours could be reduced by 20%, 40% or 60%. The pay reduction for these employees has to be 12%, 16% or 20% respectively depending on the reduction in their working hours.

Employers not bound by a collective bargaining agreement must sign individual agreements with their employees on short-term work. At least 70% of the employees in each operational unit must sign agreements to participate in short-term work and they must provide for the same reduction in working hours. No consultation process with trade unions will be required.

If the employer is bound by a collective bargaining agreement, there must be:

– a collective bargaining agreement concerning short-term work entered into or approved by a central employees' organisation, and

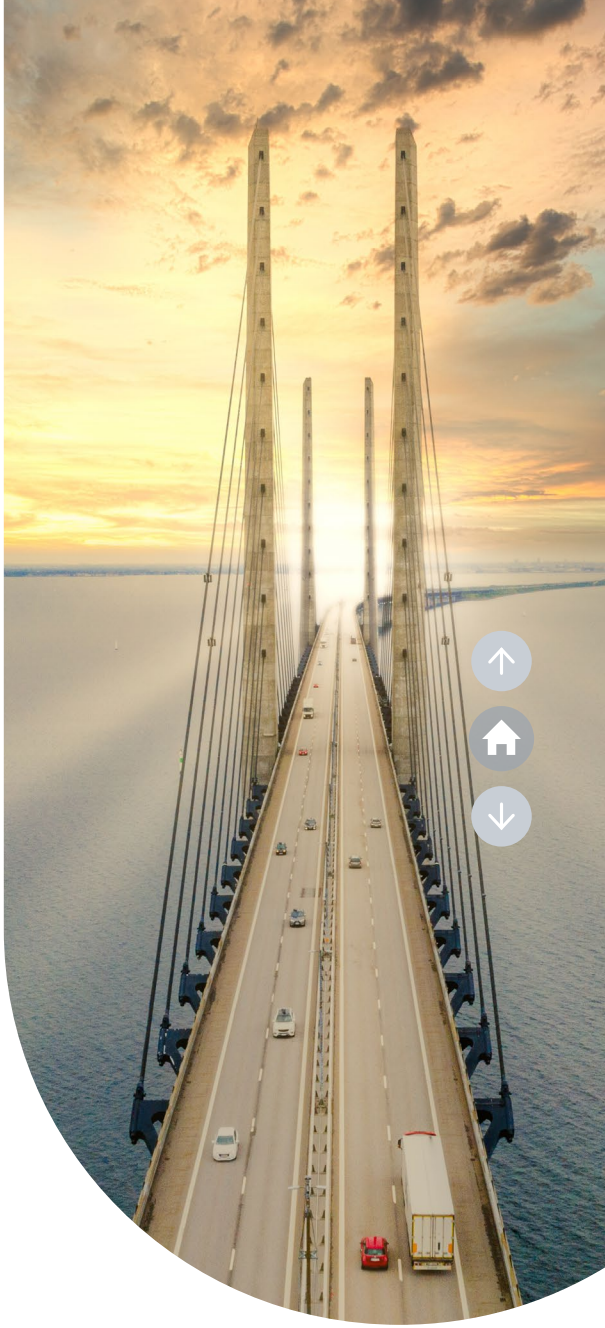
– a local collective bargaining agreement with more detailed preconditions concerning the short-term work.

Employer operations must be viable from a long-term perspective for support to be available. The employer must therefore show that the operations are profitable and that they may be profitable again after support has been granted by the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*). Please note that employers who have made dividends or other similar transactions: (i) two months before the financial support period; (ii) during the financial support period; or (iii) six months after the financial support period, are not considered to suffer from serious financial difficulties and will therefore have their applications rejected.

The support period was initially limited to six calendar months and could be extended by an additional period of three calendar months. The application for an extension should be made within four calendar months from the start of the support period. In this case, the employer must once again demonstrate that the serious financial difficulties that formed the basis for the approval are expected to persist. The employer must also be able to show that these difficulties are temporary and are expected to cease when the extension period has elapsed.

The employer can usually apply for new approval no earlier than 24 calendar months after a support period has ended.

During those months, the employer is in a waiting period (*karens*). However, the waiting period rules are waived during the period from 1 April 2022 to 31 December 2023. This means that if the employer received support from the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*) between March 2020 and September 2021, the employer can apply for new approval from the Swedish Tax Agency. Support can be provided for a maximum of 24 months during a total period of 36 months.



8. Process on insolvency

8.1. Do obligations to inform and consult employee representatives arise on the sale of an insolvent business (whether share sale or business sale)?

The same obligations apply as in the case of the sale of a solvent business (see **section 2 – Process on business sales** for further information). The consultation process may be conducted by a trustee.

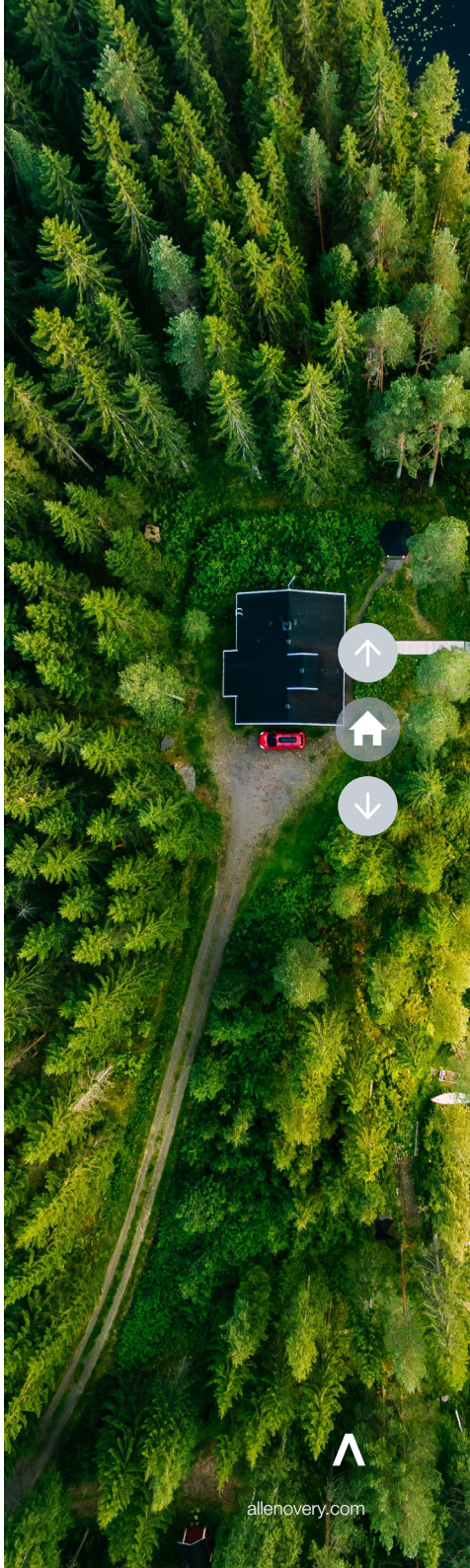
8.2. Does the buyer of an insolvent business inherit employees and/or employee liabilities by operation of law?

Where the seller is subject to bankruptcy, the Swedish transfer of undertakings regulations do not apply. This means that the buyer of a business (or part of a business) subject to bankruptcy will inherit neither employees nor employee liabilities.

If the aim of the insolvency proceedings is to rescue the company (ie reconstruction), Swedish transfer of undertakings regulations do apply. This means that the employees and employee liabilities transfer to the buyer of an ongoing business.

8.3. Do obligations to inform and consult employee representatives arise where collective dismissals are to be implemented in an insolvent business?

The same obligations apply as in the case of collective dismissals in a solvent business (see **section 5 – Process on collective dismissals** for further information). The consultation process may be conducted by a trustee.



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