

# Duty of Care owed by Swedish companies to their overseas employees: a legal perspective



## Introduction

It is increasingly common for companies to expand to new markets across the globe – even in the most remote areas. As international activity increases, so too does the number of business travellers and expats. These employees and their family members often find themselves in surroundings they are unfamiliar with. Accordingly, they may be faced with greater risks and threats to their health, safety and wellbeing.

Although the percentage of the workforce of Swedish companies working overseas on temporary assignments is relatively low in comparison with other similar countries, the rapidly increasing rate of globalisation naturally has a significant impact on Swedish trade and industry. Employees are sent on short- or long-term

assignments abroad every day – sometimes to rather remote areas with poor health and safety conditions. Where an employee is to be sent to an area which is unfamiliar to the employee, the employer must consider not only ethical implications, but also the legal aspects of such an assignment.

The regulations in this summary are relevant for the situation whereby a Swedish employer assigns an employee in Sweden to work in another country for a fixed period. The summary provides a general overview of the Swedish legal framework outlining the employer's duties towards its employees in the field of safety, health and security in these situations.

## Swedish legal framework

### *Applicable laws and regulations*

The notion of a “duty of care” is not, in contrast with common law jurisdictions, associated with a particular legal definition in Sweden. However, the Working Environment Act 1977 (the “WEA”) lays down most of the obligations that could be considered as being encompassed by the concept of a duty of care. The WEA aims to promote a satisfactory working environment, with respect to both physical and mental conditions. In addition to the WEA, the Swedish Work Environment Authority (the authority supervising compliance with the WEA) has issued numerous supplementary regulations relating to general obligations as well as to rather specific work activities or workplaces. In this context, particular attention should be paid to the 2001 Regulation on Systematic Work in the Work Environment.

### *Jurisdiction*

The WEA is limited to Swedish territory and territorial waters with a few exceptions. The WEA applies to Swedish registered ships and – to some extent – Swedish aircraft. Moreover, the WEA is partially applicable to Swedish military personnel performing service abroad, and the Act should also – as far as possible – be complied with by Swedish governmental offices abroad (e.g. embassies, consulates, etc.).

The above limitation of the geographical scope of the WEA does not mean that the Act is irrelevant for an employer who is about to send an employee abroad. Certain provisions of the WEA may well be extremely important for an employer to comply with prior to the commencement of such an assignment.

In this regard, emphasis is placed on the employer’s instructive obligations under the WEA, i.e. a duty to ensure that the employee has access to relevant information and training and holds an adequate level of risk-awareness for the work to be performed. Accordingly, *before* sending the employee abroad, the employer should take all reasonable steps to ensure that the employee is:

- suitable to conduct the work in question (in terms of education, training, experience, etc.);
- informed about the risks and dangers involved (in respect of the planned work activities as well as the situation in the country where the work will be performed); and
- informed about how to avoid such risks and dangers and how to act in case of an emergency.

It is recommended that the employer documents the measures that are taken and the procedures that apply where an employee is to be sent abroad.

In the event an area where the work will be performed is associated with substantial risks of illness or accidents, the employer must not give access to such an area to anyone who has not been provided with the satisfactory instructions.

The above responsibilities should not be perceived as a duty to conduct a complete investigation of the employee’s skills, and it does not impose an obligation to ensure that the employee has in fact assimilated all information and instructions that have been properly provided. Further, the employee is responsible for avoiding unnecessary risks overseas.

## Regulation of health and safety in Sweden

### *Responsibilities*

As stated above, the main piece of legislation in the area of work health and safety is the WEA, along with supplementary regulations issued by the Swedish Work Environment Authority.

The WEA first and foremost aims to prevent work-related illness and accidents, although it is also intended to achieve a safe and sound working environment in general. The provisions of the Act include general obligations to secure a safe working environment and to prevent – as far as possible – exposure to risks and hazardous events. The WEA provides that the employer has to take proper precautionary measures in order to fulfil its safety obligations towards the employees. Moreover, the employer is obliged to safeguard compliance with the WEA’s general obligations when planning, managing and monitoring the business.

The work environment issues should be approached and dealt with in a systematic and orderly way. This means that such issues must be taken into account in the daily business decision-making and continuously assessed. In addition, action plans, risk analysis, routine documents and follow-up procedures shall be put in place whenever necessary for the achievement of a safe and sound work environment.

The implementation of work environment actions must be implemented in co-operation with the employees, usually represented by safety delegates appointed by the employees or by the local trade union (with which the employer is bound by a collective bargaining agreement). The work should be documented to the extent necessary given the business conducted.

In the context of overseas assignments, the above leads to the conclusion that a caring employer should, in addition to the obligations explained under “*Jurisdiction*”, consider a number of measures before sending an employee abroad. For instance, the following may be considered appropriate in this regard:

- perform, and continuously keep up-to-date, adequate risk analysis of the assignment;
- provide the employee with necessary medical support;
- make sure that sufficient insurance coverage is put in place; and
- give due consideration to accompanying family members.

If an employee is about to be sent to an unstable region or an accident-prone area, the employer’s precautionary measures should be increased and the following measures may be considered:

- assess the health status of the employee before travel and the risks of likely illnesses or injuries during the travel and stay abroad;
- provide immunisation programmes for the countries to be visited in accordance with international guidelines; and
- provide information and training on what to do in the event of (i) sickness or injury or (ii) an emergency or disaster during the trip.

A caring employer should also consider whether providing information to and monitoring of the employee on return from the trip is adequate.

### *Liability and sanctions*

There is not much Swedish case law governing the employer's obligations – in a work environment law context – towards employees who are sent on overseas assignments. Nevertheless, it can be safely assumed that the failure to comply with certain obligations described above (especially the duties to conduct proper risk assessments and provide adequate instructions to the employee) may result in various sanctions being imposed upon the employer and/or managerial representatives of the employer.

Some failures may be punishable as criminal offences. Under the 1962 Penal Code, there is a specific offence applicable where certain general criminal acts have been committed intentionally or by way of negligent non-fulfilment of the WEA. Such offences include causing another's death, causing bodily injury or illness and creating danger to another. Primarily, the person to charge for such offences is sought from among the company's representative(s). However, the work environment responsibilities may be delegated to someone who has the actual control over the work, provided that the delegation is made in a clear and unambiguous way and provided that such delegation is made to a person possessing the appropriate skills and experience for the responsibilities in question. Regardless of whether any individual is found guilty for any work environment-related offences, the employer (the legal entity) can be ordered to pay statutory penalty fees for such breaches. Generally, the penalty fees are ordered by a court as a result of prosecution. However, in case of minor breaches the prosecutor may, subject to certain limitations, order the penalty fees without the involvement of a court. Penalty fees can be imposed irrespective of whether any intent or negligence can be attributed to the employer.

In addition to the above, an employee suffering from the employer's non-observance of its work health and safety responsibilities may commence a civil claim in a Swedish court. Such a claim may often be based on the employment agreement/relationship, but could also be founded upon liability in tort.

It should be noted that the employer has obligations towards the employee both during and after an overseas assignment. During the assignment the employer should monitor developments and, when necessary, re-assess the risk analysis that was made before and in connection with the assignment. Upon return to Sweden, the employer is – for instance – obliged to ensure that the employee has access to occupational health care in case the employee was exposed to traumatic (or otherwise difficult) experiences.

## **Regulation of Health and Safety within the EU/EEA-area**

An assignment to another state within the EU/EEA-area would normally fall within the scope of the EU Posted Workers Directive (96/71/EC). In such cases an employer which is domiciled or has its registered office in Sweden must comply with work health and safety standards that are at least as favorable to the employee as the regulations in the country where the employee is carrying out his or her work.

## **The Law of (the) Overseas Country**

Consideration must be given to the regulatory requirements in relation to matters such as health and safety of the overseas country before sending personnel there. An assumption that regulation will be much as it is in the home country is not sufficient. Many overseas jurisdictions may operate to very different laws, and have a very different approach to enforcement, this is why advice should be taken in beforehand.

## **Things to remember**

For an employer who takes its duty of care seriously the most important thing to bear in mind is to be proactive. It is crucial to conduct proper risk assessments and to provide the employee with the necessary training and information in due time before the employee leaves for overseas assignments. On a general level it is important for the employer to institute proper corporate policies and procedures to address relevant risks and to ensure that proper training procedures, assistance facilities and emergency plans are made available and readily understandable to its employees. Finally, remember that every assignment is unique – the measures that could reasonably be expected from the employer vary from case to case.

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