



Changes in Swedish health insurance system and labour law due to the influence of flexicurity and Order of selection for redundancy.

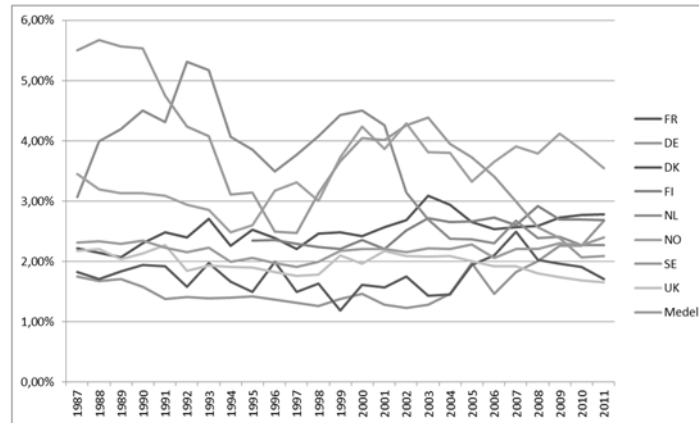
DR ANNAMARIA WESTREGÅRD



Lisbonstrategy and Europe 2020

- 2000-2009 the employment rates in Sweden was 72-74 % (EU 27 - 65 %, Germany - 71 %)
- In 2005 sickness absence and early retirement pensions was 11.2 % of the population between 16-64

The development of sickness absence



Changes 2007

- Large changes in the Swedish health insurance system
- Impact on the Swedish labour law - indirect impact on job security
- Labour law in Sweden has been stagnating for 40 years. The symbolic value of job security is too great
- Impact on the labour market partners – renegotiate the Redundancy Programme Agreement

Health insurance

- Before; Focus was on whether or not a person could carry out *his* work for *his* employer – if not; sickness benefit – no limit in time but normally after 1-2 years early retirement – static system – no requirements were made to change to an occupation that the employee could manage
- Now; Focus is on if a person can carry out *any work at all* - not entitled to sickness benefit – if still not possible to work with the present employer – then with another employer

Early retirement only to those who never will be able to return to any type of occupation at all. A total limit of 914 days with sickness benefit.

2005: 540 000 in early retirement and 2012; 380 00.

Labour Law

- Before; Generally Sweden has a strong employment protection – for sick employees it is extra strong. Termination with notice depending on illness – very unusual – an employer had no costs as the health insurance was so generous.
- Now; No change in the labour legislation, but changes in the health insurance had an indirect impact on employment protection. If sickness benefit is withdrawn (after 180 days); 1) the employee can resign and be transferred to unemployment insurance 2) the employee can return to the workplace despite his illness

Labour Law

- If the employee returns to his employer:
- New situation; sick employee used to have sickness benefits from the state (sick pay from employer is the first 14 days) Now; the employees are at the workplace
- Before: Termination with notice is possible but the employer must try to transfer, work adaption etc. employer is also responsible for rehabilitation. This could be a long process
- Established practice from Labour Court - Evident when an employee cannot perform work to any degree, e.g.; a busdriver who loses his driving licence. Termination with notice depending on illness much more common nowadays

Labour Law

- Employer has no obligation to carry out measures (rehabilitation, education and training etc.) that are aimed at the sick employee starting work with another employer.
- Corresponds well with the rest of the Swedish labour legislation - employer's responsibility does not extend beyond the current job,
But corresponds **less** favourably
- with the basic idea of the *employability* of staff

Collective agreements and flexicurity the Swedish model

Redundancy programme agreements to support employees who lose their job due to lack of working; career planning, advise to apply for jobs, financial security for transitional period

- Before; Generally the agreements are *not* in force in case of termination with notice *due to sickness*, no help to the employee to find *another employer* during the employment - corresponds well with Swedish labour legislation
- Now; Labour market partners *re-negotiate* the agreements with focus on employees with reduced work capacity. Result; a) projects to strengthen assistance to sick employee, b) some redundancy programmes have been extended to include *preventive support* and c) some do include employee given notice due to sickness

Collective agreements and flexicurity

- The labour market parties *can* make agreements and not follow the principle that employers are only interested in employees at their own workplace during the period of employment.
- Here they consider the *employability* of their staff outside their own company by including people with reduced work capacity. Those employees become an issue for the labour market parties, and not only for society.

These collective agreements is ahead of labour legislation in regards of realising the idea of flexicurity concerning sick employee – stimulate both *external flexicurity* , *income security* and *employability*

Concluding remarks

- Changes in the social insurance system - *flexibility*
- Indirectly impact on labour law - stagnating these past 40 years - *security*
- Impact on labour market partners – re-negotiate their agreements also include sick employees – *flexibility* and *security*

But still;

- The labour market parties believes strongly in the government to take overall responsibility for sick employees
- The goal of getting more people to work and in higher age groups - affects the Swedish labour market, the social insurance system, the labour market parties and also labour law.

Order of selection for redundancy.

The 1982 Employment protection Act, LAS

- 1) Order of selection for increased working hours – in competition between two part-timers employers priority must be based on length of service with the company (25 a and 26 § § LAS)
- 2) Order of selection for transfer – always before dismissal – adequate skills – no rules – employer choose between employees, AD 2009:50
- 3) Order of selection for layoff – no rules for the selection – layoff pay from employer is the same pay as normal – layoff not much used. Since 1995 no money from the State coffers. - no "kurzarbeitergeld"
- 4) Order of selection for re-employment after redundancy – same based on previously length of service in the company, se next page

Order of selection for redundancy

- Employer decides if there is going to be a downsizing of personnel. Part of the employers right to direct work
- Employer do not have to proof anything e. g. accountancy
- Employer decides how many employees – and in which sector of the company the downsizing will be done

Order of selection for redundancy

- Before termination with notice – try transfer 7 § LAS – adequate skills for remaning jobs.
- If some one has to leave the company ; Who?
- Rules about Order of selection for redundancy, 22 § LAS
- Redundancy situation – choice has to be made between employees

Order of selection for redundancy 22 § LAS

- Separate order for each group – (selection category) normally 3 - manual worker, white-collar workers, university graduate - normally represented by one union each. "The union" for each category with collective agreement
- The individual employees position in order of selection (in the relevant category) is decided on basis of seniority
- Length of service with the employer; "last in first out"

Order of selection for redundancy

- Negotiation with the (3) unions with collective agreements
- 11 § The 1976 Co-Determination Act, employer decides
- Termination with notice – Notice-period Pay (only "cost") under the notice period
 - 1 month length of service up to 2 years
 - 2 months length of service 2 years - 4 years
 - 3 months length of service 4 years – 6 years
 - 4 months length of service 6 years – 8 years
 - 5 months length of service 8 years – 10 years
 - 6 months length of service more than 10 years

Order of selection for redundancy exception no 1

- Before the selection of redundancy is drawn up, employers with not more than 10 employees may exempt 2 employees they consider to be of key importance to the survival of their business
- Employers choice is not susceptible to judicial examination
- The rule protect the interests of retaining necessary skills in small businesses

Order of selection for redundancy exception no 2

- The rules of selection is a Semi-Discretionary Law
- If the employer use to have a collective agreement – then he is allowed to negotiate with that union – they together can decide about a different order of selection for redundancy – *a collective agreed redundancy list*
- Objective criteria - not contrary to good labour market practice
- The list also includes non union members – in the "Swedish model" the union can negotiate for the "outsiders" too. They can also decide about their employment

Order of selection for redundancy Swedish unions

- The unions likes the rule "last in first out"
- In Sweden this is the ultimate justice
- It is an illusion of justice - adequate skills nowadays is much more important than it use to be in the 70's when the rule was invented
- The symbolic value of the rule "last in first out" is too large, it is political impossible to change it

Order of selection for redundancy Swedish employers

- The employers dislike the rule "last in first out" very much
- They want to choose themselves who is going to leave
- They believe it is very easy abroad for the employer to do as she wants, (as it is in Denmark)
- The social partners has started to re-negotiate their agreements and it will maybe include order of selection for redundancy (employers wish that they can choose among the employees and maybe the union can accept this if employers put in money for education)

Order of selection for redundancy

- Easy to apply the regulation
- Predictable – for the employer and employees; who will leave, what will the costs be etc. Rational economically
- It is cheap in the sense that employer only pay the Notice-period Pay (but a collective agreed redundancy list could be much more expensive)



LUND UNIVERSITY
School of Economics and Management