
September 2014

New administrative fees in the work environment area

Since 1 July 2014, a partly new system of sanctions applies to the work environment area. Several regulations in the Work Environment Authority's provisions that were previously penalized, are now instead subject to administrative fees. At the same time, the maximum amount of the fee has been raised from SEK 100 000 to SEK 1 000 000. In addition - in order to avoid the situation where a party could be subject to both fines and administrative fee, alternatively punishment - a conflict resolution rule has been incorporated into the Work Environment Act. A party may neither be subject to administrative fees nor sentenced to punishment if the act is comprised by an order or prohibition imposed by the Work Environment Authority.

Administrative fees instead of criminal penalties

The Work Environment Act is a framework law which is supplemented by provisions issued by the Work Environment Authority under its delegated legislative powers. The system of sanctions is constructed in such a manner that certain violations may lead to punishment, normally with fines as a consequence, or to administrative fees. All provisions can be enforced with orders or prohibitions. Violation of an order or prohibition can in turn, under some conditions, be subject to punishment.

The administrative fee is an administrative sanction that affects an employer, i.e. normally a legal person, which has violated a provision subject to such fee. The employer is liable to pay the fee when a violation has occurred even if the violation was neither intentional nor the result of negligence. In other words, the employer has strict liability for the violation. Fines are a criminal penalty imposed upon the natural person or persons who intentionally or negligently has violated a penalized provision. Violation of a penalized provision constitutes a criminal act. Therefore, such work environment related matter is handled by prosecutor and ordinary court.

A governmental committee found that the system with penal sanctions in the work environment area was largely both ineffective and resource-consuming. Therefore, with the purpose of simplifying and making the system of sanctions more efficient for a better work environment, administrative fees have to a great extent replaced penal sanctions. Penal sanctions remain, however, for some offences such as for violation of an order or prohibition not subject to default fines, violation of certain provisions protecting minors and violation of the duty to report accidents and serious incidents to the Work Environment Authority.¹

¹The duty to report an accident or serious incident to the Work Environment Authority, is now regulated in Chapter 3, Section 3 in the Work Environment Act instead of in Section 2 of the Work Environment Ordinance.

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Handling of administrative fees

A work environment case subject to administrative fees is handled primarily by the Work Environment Authority. If an inspector, during an inspection, finds deficiencies in the work environment that may violate provisions subject to a fee, this is reported to the Work Environment Authority. The case is then handled internally by the authority.

If the Work Environment Authority decides that the employer shall pay an administrative fee, a so-called fee order is sent to the employer who must approve the order within a certain period.

If the employer approves the fee order, the fee shall be paid to the county administrative board. If the employer does not approve the fee order, the Work Environment Authority may apply to the administrative court in order to have the fee levied. Leave to appeal is required on appeal to the administrative court of appeal.

An administrative fee may only be levied if the application has been served upon the employer within five years from the time that the violation occurred.

Scale of the administrative fee

In the provisions issued by the Work Environment Authority, the size of the administrative fee varies between SEK 5 000 and SEK 1 000 000. The Work Environment Authority has assessed the risk levels for those provisions that have been made subject to administrative fees. The provisions regulating the most serious risks have been made subject to higher administrative fees.

Differentiated or fixed fees

In the provisions issued by the Work Environment Authority it is stated how the administrative fees are calculated for a variety of violations. The Work Environment Authority uses two different models for calculating the administrative fee. One model is based on a differentiated fee and the other model is based on a fixed fee. Which model to use depends on the type of violation.

The differentiated fee is used when the violation represents a so-called systemic breach, i.e. a violation which relates to inadequate or non-existent routines in the work environment management, which leads to non-compliance with the provisions. As a result of the nature of the shortcoming, the same provision can be violated several times during a single inspection. In the event of a systemic violation, only one administrative fee is imposed regardless of the number of violations. One example of a systemic violation is when one or more truck drivers lack permission from the employer to drive trucks at the workplace. The administrative fee for such violation varies between SEK 15 000 and SEK 150 000.² The majority of administrative fees are differentiated fees.

The size of a differentiated administrative fee is based on the number of persons employed by the employee on the date when the violation was established. Persons employed refer to both employees and hired manpower; regardless of whether they work full-time or part-

²Section 19 in AFS 2006:5 with amendments in AFS 2014:20

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time. All persons employed under the same corporate registration number are included, and not merely the persons employed at the inspected workplace. The calculation is based on the number of persons employed, partly because it is deemed to constitute a clear measure of the employer's ability to pay, and partly because the information is relatively easy to control. Employers with 500 persons employed or more always pay the maximum fee.

The fixed fee falls out per violation and is independent of the number of persons employed at the workplace. An example of a fixed fee is when one or more employee is engaged in the removal of material containing asbestos, and lacks a valid training certificate for such work. The administrative fee for such violation is SEK 50 000 per person.³

On the Work Environment Authority's website www.av.se, there is a list with information on which provisions that are subject to administrative fees and also information on the scale of the fixed fees and the range for the differentiated fees. Some 40 provisions subject to administrative fees came into effect on 1 July 2014. An additional four provisions subject to administrative fees will come into effect 1 January 2015 respectively 1 January 2016.⁴

Reduction of administrative fee

The administrative fee may be reduced in whole or in part, if the violation is minor, excusable or if it otherwise, depending on the circumstances, would be unreasonable to levy the administrative fee. A violation may be considered minor if it, in an overall assessment, appears to be insignificant with regard to the interest which the provision is intended to protect. An example of when a violation could be excusable is if it's due to circumstances beyond the employer's control. Full or partial reduction could also be the case if it would be unreasonable to levy a fee with regard to the circumstances in the individual case, such as if the fee is not in reasonable proportion to the violation.



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³Section 36 in AFS 2006:1 with amendments in AFS 2014:27

⁴Section 17 in AFS 2012:1, Sections 60 a and 92 a in AFS 1993:3 with amendments in AFS 2014:26 (2015) and Section 47 in AFS 2013:3 (2016)