
October 2011

Work environment – crime and punishment

The committee on more effective sanctions in the occupational health and safety field have presented their report. Stefan Olsson reports on findings which deal with sanctions related to violations of health and safety rules.

Work environment sanctions committee

The committee on more effective sanctions in the occupational health and safety field have recently presented their findings (SOU 2011:57). The committee was briefed to consider and propose changes to work environment and working hours legislation.

This article focuses exclusively on the review of sanctions related to violations of occupational health and safety rules.

Rules in the penal code on penalties for work-environment crime fell outside the scope of the committee's work

Supervision and measures

The Swedish Work Environment Authority is the public authority responsible for occupational health and safety issues and exercises its supervisory role in respect of this legislation.

In its supervisory role, the Swedish Work Environment Authority has at its disposal a number of sanctions: namely inspection orders, injunctions both with and without an accompanying conditional fine, prohibition, with or without an accompanying conditional fine, penalty fees and a police report.

Statistics show that the demands imposed by the Swedish Work Environment in its inspections are complied with to a great extent. It is also evident that injunctions and prohibitions are effective ways of getting deficiencies in the work environment remedied and are used, as a main rule, to attain rectification. Nearly all injunctions are subject to a conditional fine. Penalty fees are only used to a limited extent.

The committee's report reveals that in respect of violations of those ordinances which, in practice, amount to a prohibition and when it is a matter of an ongoing violation, the Swedish Work Environment Authority will not issue an injunction or prohibition but instead will report the matter to the police. One of the reasons for this is that double punishment is not permitted.

The fact that the Swedish Work Environment Authority reports the matter to the police instead of issuing an injunction or a prohibition is seen as a problem because an injunction or prohibition is often the most effective way of getting a deficiency in the work environment rectified.

October 2011
Work
environment –
crime and
punishment

Sanctions

Sanctions that can be imposed on a party which fails to comply with an injunction or which violates a prohibition depend on whether the Swedish Work Environment Authority has made the injunction subject to a conditional fine in an individual case. If the injunction has been made subject to a conditional fine, then any consequential sanctions may not include a further fine or custodial sentence, even if this was possible under applicable rules.

The possibility of subjecting an injunction and prohibition to a conditional fine is not, however, applied uniformly and the system is not predictable.

Furthermore, injunctions or prohibitions in respect of the state are not currently subject to conditional fines. Discriminatory treatment of the state as an employer is not justifiable in the opinion of the committee.

Penalties

In respect of criminal charges, the committee found that almost half of the cases in which preliminary investigations into criminal proceedings had been initiated, evidential difficulties meant that charges were not brought. Where charges are brought, a low fine is the normal penalty. The committee questions the deterrent effect of provisions being subject to penalties under criminal law and are of the opinion that in the work environment field, alternative sanctions - which work well - may instead be employed.

The committee is of the opinion that penalties under criminal law are an ineffective sanction insofar as they apply to violations of the Work Environment Act and that the increased use of penalty fees would make the sanction system more effective. Sanctions under criminal law should be reserved for cases where the alternative measures are not expected to be effective or where punishment would appear to be a natural action.

It should be noted that the provisions of the Penal Code on work environment crimes are not covered by the committee's proposal.

Penalty fees

In respect of penalty fees, the Work Environment Authority has thus far only handed down penalty fees in three cases.

Use of penalty fees instead of criminal penalties would mean that the Work Environment Authority retains control of the matter. In this way, society's resources are better employed than if the matter is handled by the Work Environment Authority, the public prosecutor and the police, which is the case where criminal penalties are involved.

Penalty fees must be paid even if the violation was unintentional or negligent. The penalty fees are then imposed upon the natural or legal person which operated the business in which the violation took place. The committee is of the opinion that the sanction should be imposed in more cases than today.

A person upon whom a penalty fee is imposed has the opportunity to object to the imposition and have the matter heard in a court of law.

October 2011
**Work environment –
crime and
punishment**

The committee also proposes that injunctions and prohibitions should always be subject a fine, even for state companies.

Amounts

To enable more stringent remedies, the committee is proposing that the penalty fee is raised to a maximum of SEK 1 million from today's SEK 100 000.

It is proposed that the procedure for imposing penalty fees, which the Work Environment Authority regularly applies in cases where penalty fees are imposed, is made mandatory. This means that the question of whether a penalty fee is to be paid must always be heard by the Work Environment Authority.

Summary

The committee's proposal can be summarised as follows:

- penalties under the penal code are to be removed for the majority of those violations which are criminalised and replaced with administrative penalty fees;
- the imposition of penalty fees, where appropriate, will be mandatory;
- Injunctions and prohibitions will always be subject to a conditional fine;
- state-owned companies are to be covered by the same rules as private companies;
- the Work Environment Authority is to be given control of work environment matters from start to finish; and
- the maximum penalty fee is to be raised from SEK 100 000 to SEK 1 million.

The proposal will contribute to better compliance with work environment provisions and will bring with it a simplified regulatory system and reduced costs for society.

The changes becomes effective on 1 July 2013.

Stefan Olsson,
Managing Partner, Malmö



Stefan Olsson,
Managing Partner Malmö