

---

September 2013

## New legislation regarding foreigners without residence permit in Sweden

---

As from 1 August 2013 a new set of rules applies in Sweden regarding foreigners without proper residence permit. The rules contain provisions with regard to so-called third-country nationals, i.e. individuals from countries other than EEC and Switzerland. The new rules have their origin in the EU directive 2009/52/EC regarding minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The EU directive mainly aims to strengthen the measures against illegal immigration in the EU.

The new legislation includes revised criminal provisions in the Swedish Aliens Act (Sw. Utlänningslag (2005:716)). An employer that employs an individual without a residence permit in Sweden may be sentenced to fines or to imprisonment; due to intent but also due to negligence. However, if the employer has performed control measures before hiring the employee, by requiring the proper documents from the candidate, the employer would generally not be regarded to be in breach of the provisions. New provisions on specific control measures for the employer to observe have also been introduced in the Aliens Act and in the Aliens Ordinance (Sw. *Utlänningsförordning* (2006:97)).

Moreover, a provision on the payment of a special fee for an employer that employs an individual without a residence permit is introduced in the Aliens Act. The special fee is payable irrespective of whether the employer is responsible under the criminal provision in the act or not. The special fee, for each illegally employed foreigner, amounts to 50 percent of the price base amount (for 2013, the special fee would accordingly amount to SEK 22 250). The special fee should not be payable if the employer has performed proper control measures, i.e. demanded for the proper documents, kept a copy of the relevant documents in the employee file and, furthermore, notified the Tax Agency (Sw. *Skatteverket*) of the employment.

The duty to notify the Tax Agency is also a new provision which follows from the implementation of the directive. An employer that employs a foreigner (excluding EEC and Switzerland) should, within the month following the month during which the employment commenced, notify the Tax Agency about the employment.

---

---

**September 2013**  
**New legislation**  
**regarding**  
**foreigners without**  
**residence permit**  
**in Sweden**

The new rules are also of importance in contracting situations, by stating that a contractor that hires sub-contractors to carry out work may be ordered to pay a special fee, in accordance with the same principles as described above, if the sub-contractor has foreigners employed without proper residence permits. The contracting party could also, jointly with the employer of the illegal foreigners, be responsible to pay salary to the illegal foreigners.

An employer failing to comply with the provisions could also be subject to other sanctions. The employer could be restricted from participating in public procurements and, moreover, be excluded from receiving public benefits, aid or subsidies for a period of up until five years. The employer could also be obliged to repay such benefits, aids and subsidies already received.

Finally, the new set of legislation includes a new act on the right to salary for work provided by an employee without residence permit in Sweden (*Sw. Lag (2013:644) om rätt till lön och annan ersättning för arbete utfört av en utlänning som inte har rätt att vistas i Sverige*). The right applies for a foreigner who is employed by an employer that has not taken the prescribed control measures. Should a dispute arise between an illegal foreigner and an employer with regard to salary, the salary to the employee should be presumed to amount to at least the minimum level which applies in relevant collective bargaining agreements in the particular business. The employment should furthermore be presumed to have lasted for three months, equivalent to full time, if nothing else can be proved.



Paula Hogéus,  
Partner / Advokat



Johan Wijk,  
Associate