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Employee's preferential right to re-employment under Swedish law

An employee who is given notice of termination due to redundancy is entitled to preferential right to re-employment under the Swedish Employment Protection Act should the employer re-hire. The preferential right applies in the business in which the employee was working. One prerequisite for re-employment is that the employee has been employed with the employer for an aggregate of at least one year over a period of three years. Other prerequisites are that the employee has notified the employer about this interest and that he holds "sufficient qualifications" for the particular position.

In addition to the right to re-employment situation, Swedish law provides a preferential right for employees working part-time to an increased number of working hours; if the employer's need for labour can be satisfied through such increase. Also with regard to part-time employees, there is a prerequisite of "sufficient qualification" for the new work tasks at hand. The provision implies that if an employer has a demand for more labour and a part-time employee has notified the employer of the interest of increasing working hours, the employer shall first consider the part-time employee's request prior to hiring a new candidate. It should however be stressed that the preferential right only applies if the employer's needs can be satisfied through the part-time employee working additional hours. The recent court case **AD 2012:41** from the Swedish Labour Court illustrates this prerequisite.

In this case, two employees working 75 percent of full time notified the employer of their interest of an increased number of working hours, in connection with a colleague of theirs leaving an equivalent position with the company. Nevertheless, the employer chose to hire another employee on the vacant position; a position also corresponding to 75 percent of full time. The employees claimed that the employer's decision was a violation of the applicable collective bargaining agreement (which contained a regulation corresponding to the statutory) and claimed general damages as well as economical damages for the loss of income.

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The court pronounced that an employer has no explicit obligation to reorganize its business in order to provide part-time employees with increased number of working hours. Nevertheless, the court pronounced that, on the other hand, an overall assessment should be made in a situation when the employer has a demand for more labour and that the employees' entitled interest to increased working hours should be taken into account. This means that an employer carefully must consider the staff structure in a situation with employees having notified on the interest to increased working hours. The employer may argue for keeping the staff structure as the employer desires by presenting an organizational reason for the decision to hiring a new candidate, e.g. scheduling purposes; despite the rules on preferential right to an increased number of working hours for present employees. In the present case, the employees' claim was rejected since the employer could show that the employer's need for labour not could be satisfied by offering the employees with preferential right an increased number of hours. A careful assessment of each and every situation must thus be made.



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