COVID-19

OPTIONS FOR REDUCING PERSONNEL COSTS

Advokatfirman Morris AB
Göteborg: Vallgatan 30, SE-411 16 Göteborg
Stockholm: PO.Box 3442, SE-103 69 Stockholm
Reg.No. 556914-7654
Registered Office: Göteborg. www.morrislaw.se

morris law.

The fact that the new coronavirus affects both the general economic situation and individual businesses has hardly escaped anyone. Although it is still too early to assess how large and long-lasting the effects of COVID-19 will be, it can already be concluded that the outbreak has hit and will hit many industries hard.

The progress of the new coronavirus outbreak has understandably also given rise to many labour law issues among our clients, not least in terms of how companies can act to reduce their personnel costs.

The following is a brief summary of some of the options available.

1. Options

1.1 Terminations and/or individual agreements

In the event of a sharp decline in turnover, one or several positions in a business may be affected by shortage of work, which under Swedish law constitutes objective grounds for termination due to redundancy (related to the affected positions). In the event of any terminations due to redundancy, the employer needs to comply with specific obligations. Among other things, the so-called "last in-first out" principle needs to be applied and any redeployment possibilities to other positions must be investigated before any terminations may be carried out.

The time aspect for when terminations can be made effective depends, among other things, on how long the negotiations with the relevant labour unions last and the length of the notice periods for the affected employees. During the period of notice, full salary shall normally be paid, even if the employee has been exempted from work.

An alternative to termination is to enter into one or more individual agreements on termination of employment with the employees concerned. It is important that such agreements contain the necessary safeguards in order for the employer to ensure that disputes are avoided.

1.2 Leave of absence

Another option for reducing personnel costs is to enter into agreements with each individual employee regarding leave of absence for a certain period, in exchange for the employee receiving a lower salary (for example 50% of the ordinary salary). This option therefore assumes that the employee accepts such leave of absence.

Leave of absence means that the employee is not available to the employer during the leave. The consequence of such an agreement will therefore be that the employer cannot require the employee to start working during the agreed leave of absence. However, such a solution may be attractive to an employer who does not want to lose important personnel, while at the same time giving employees a reasonable offer compared to other available options.

If an agreement on leave of absence is concluded, it is important that the agreement clearly stipulates, among other things, the duration of the leave, the extent of the leave and that no compensation is paid for the time during which the employee is on leave of absence.

1.3 Changed employment rate

Another possibility is to enter into agreements with each individual employee to reduce the employment rate, for example to 40 or 60%. In practice, this means that employees work less and, correspondingly, receive lower salary. This option also assumes that the employee accepts such reduced employment rate.

If an agreement on a reduced employment rate is concluded, it is important that the agreement clearly stipulates, among other things, how long the reduction shall last (alternatively if it is indefinite), how much the employment rate has been reduced, and that no compensation is paid for the reduced hours.

1.4 Intermittent or temporary employment

Another solution could be to enter into agreements with each individual employee to temporarily transfer to a so called intermittent or temporary employment. These forms of employment mean that the company only pays salary for the employees when the company can offer work that the employees perform. The company has no obligation to offer any work or a specific employment rate. At the same time, the employee must, in each individual case, have the right to refuse work. This solution provides a substantial flexibility for both parties during the period.

1.5 Temporary short-time work

About temporary short-time work

On March 16, the Swedish Government presented a proposal for new rules on so called temporary short-time work. The rules allow an employer to reduce its costs for an employee by more than 50% (up to a salary cap of SEK 44,000 per month and employee), while the employee retains more than 90% of the salary.

In short, the rules are as follows.

- An employer can agree in writing with the labour union counterpart (if the employer is bound to a collective bargaining agreement) or with at least 70% of the employees in the operating unit (if the employer is not bound to a collective bargaining agreement) for a temporary reduction of 20, 40 or 60% of the regular working hours.
- The Swedish Government, through decision from the Swedish Agency for Economic and Regional Growth (*Sw.* Tillväxtverket) (the "**Agency**"), reimburses about three quarters of the cost for the employees' reduced working hours. The employer's costs can thus be reduced by up to 53%, while the individual employee can retain over 90% of the salary.
- The new regulations will come into force on April 7, 2020 but will be implemented as of March 16, 2020 and throughout the remaining year. The application will be made through the website tillvaxtverket.se and will be available on 7 April. Consequently, no support will be able to be sought or obtained until April 7. How and when the support will be paid, in practice, remains unclear.

Prerequisite for the support

In order to receive the support, certain criteria according to the Act (2013: 948) on support for short-time work must be met, by both the employer and the employee. Among other things, the following must be fulfilled.

- The need for short-time work must have arisen because of temporary and serious financial difficulties beyond the employer's control. A guiding principle for when the difficulties are "serious" is that the need for shortening working hours should cover one third of employees when the working time reduction is 20% (or 1/6 with 40% etc.). Nor should the difficulties have been foreseeable for the employer.
- Other measures to reduce the cost of labour shall have been exhausted. Such measures may include the implementation of changes in shift planning and termination of employees who are not permanently employed and who are not deemed to be business-critical, e.g. consultants or temporary employees.
- The working hours reduction must be either 20, 40 or 60%. No other degree of work reduction will be accepted.
- Support is granted only to employees who have been employed during part of or the entire month that falls three months before the Agency's decision on support, with the same or higher employment rate as during the support month.
- Support is not provided for employees belonging to the employer's family.
- Support is not provided to employers who at the time of application are in technical liquidation as defined in the Swedish Companies Act, are subject to corporate restructuring or are insolvent.
- As a general rule, support is provided for a maximum of six months. After admitting a second application, the support may be extended for another three months.
- If the employer is bound by a collective bargaining agreement, an agreement is required both between the central parties, i.e. between the employers' organisation and the labour unions, and the local parties, i.e. between the employer and the local labour union club.
- If the employer is not bound by a collective bargaining agreement, a written agreement with at least 70% of the employees at the individual operating unit is required. The working hours and salary reductions that have been agreed shall be the same for all participating employees in the operating unit.

The remuneration is based on ordinary salary, which is defined as "the regular salary that the employee would have recieved during the support month if he or she had not participated in short-time work" up to a maximum level of SEK 44,000 per month.

The below table shows the cost allocation in case the support is granted:

Level	Work Reduction	Salary Reduction	Employer	State	Employer's reduced costs
1	20	4%	1%	15%	-19%
2	40	6%	4%	30%	-36%
3	60	7,5%	7,5%	45%	-53%

In summary, the possibility to receive the support for temporary short-time work is likely to be an attractive solution for many employers and employees. However, there are several uncertainties that need to be considered. Apart from the fact that we do not have any formal legislation in place yet, it is not entirely clear how the assessments of the right to support will be made. For example, it is difficult to determine in advance whether one is deemed to have "exhausted other measures".

For companies that want to apply for support for short-time work, it is important to take these risk factors into account before any agreements are made with employees/labour unions or the application is submitted to the Agency, especially since the support is likely to be provided by 7 April 2020 at the earliest.

How to seek the support?

So far there are few details on how the support will be administered in practice. Therefore, one can expect that the Agency will shortly provide further information on how to proceed. Therefore, keep an eye on the Agency's website.

What we already know is the following.

The support is sought at the Agency, via tillvaxtverket.se. At the earliest, the support can be applied for on April 7, 2020, although it is possible to receive support in respect of salary relating to the period from March 16, 2020.

The support can be provided to you as an employer after approval by the Agency. If you have received an approval, you can apply for preliminary support for an initial period of no more than six months. If the financial difficulties remain, the time period may be extended by three additional months. The first month of support must fall within 45 days of approval of the support. Otherwise, support cannot be provided.

An application for an extension of the support must have been received by the Agency within four calendar months from the start of the support period of six calendar months.

It is the employer who must show that it is entitled to support. It is therefore necessary to state, in the application, among other things, a clear basis for having been in temporary serious financial difficulties.

The support that is paid out is preliminary. When provisional support has been provided, reconciliation shall be made at the end of the third calendar month from the start of a support period and thereafter every three months from the first reconciliation date. The reconciliation involves a comparison and assessment of whether the average working hours and salary reductions applied are in accordance with the specified levels in the law and the agreements that have been concluded.

If the actual working time differs from the basis on which the support is based, the employer may be required to repay the support.

A notification of reconciliation must have been received by Agency within two weeks of the reconciliation date. In the notification, the employer must indicate whether it is obliged to repay an amount after a compilation. If it is entitled to further support, this must be requested in the notification of reconciliation. Unless a notice of reconciliation is filed in due time, the employer will be required to repay all preliminary support.

2. Bonus

Options 1.2, 1.3 and 1.4 above can also be combined with some form of bonus or other incentive, which is paid on the day the employee returns to “normal” employment. This would probably increase the chances of getting back/retaining employees when the demand for work increases again.

3. Union negotiations and the Employment Protection Act

Before deciding on one or more of the options above, it is important not to forget the employer's negotiating obligation towards the relevant labour unions according to the Co-determination Act (*Sw.* MBL), regardless of whether the company has a collective bargaining agreement or not. If you are not sure whether there is a negotiation obligation for your company in your individual situation, please contact Morris Law's labour law team.

Our preliminary assessment is that none of the above options constitutes circumvention of the rules on salary in connection with layoffs in accordance with § 21 of the Employment Protection Act (*Sw.* LAS), but depending on which option is chosen, this may also need to be further investigated.

4. Our labour law team

If you would like further information on any of the options above or would like to discuss a specific issue, please contact someone on Morris Law's labour law team (please see the next page).

The development of the coronavirus outbreak is uncertain and we receive new information on a daily basis.

The content of this document reflects the situation at the time it was published March 23, 2020 and is subject to change.

MORRIS LAW'S LABOUR LAW TEAM

Dan Bullarbo
Senior Counsel, Advokat
T: +46 706 20 23 00
E: dan.bullarbo@morrislaw.se

Christoffer Erlandsson
Senior Associate, Advokat
T: +46 738 26 47 71
E: christoffer.erlandsson@morrislaw.se

Carl-Fredrik Hedenström
Partner, Advokat
T: +46 768 22 75 06
E: calle.hedenstrom@morrislaw.se

Egzona Rexhepi
Associate
T: +46 732 50 84 53
E: egzona.rexhepi@morrislaw.se

Martin Vildhede
Partner, Advokat
T: +46 760 22 36 54
E: martin.vildhede@morrislaw.se

Lisa Werner
Legal assistant
T: +46 738 26 47 73
E: lisa.werner@morrislaw.se

Roger Wier
Partner, Advokat
T: +46 727 36 70 70
E: roger.wier@morrislaw.se

Hampus Wikerstål
Senior Associate, Advokat
T: +46 768 36 04 66
E: hampus.wikerstal@morrislaw.se