Equal Opportunities for Persons with Disabilities in Employment

European Working Group on Labour Law
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1. Legal framework on equal opportunities for persons with disabilities in employment

1.1 What is the general legal framework on non-discrimination in employment for persons with disabilities in your country?

Swedish labour law is characterised by the Swedish labour law model, The Swedish model means that the social partners are largely autonomous in relation to the legislator.[1] Labour law consists of a largely semi-dispositive regulatory framework where the parties have considerable scope to deviate from the legislation by signing collective bargaining agreements. After Sweden's accession to the EU, the labour market parties' freedom of contract has been restricted to some extent since the legislation must comply with the requirements of EU law.[2] However, labour law dates back to before EU membership and is characterised by the great influence of the unions.[3] The unions remain strong and the collective agreement coverage in the labour market in Sweden is high, with 88 % of Swedish employees working in workplaces with collective agreements,[4] and 68 % of Swedish employees are members of a union.[5]

In regards to individual employment, the employment contract is between the employer, and the individual employee, and they are free to by themselves dictate the terms of the employment relationship, unless the terms are already regulated by a collective bargaining agreement.[6] But collective agreements have a major influence on private employment contracts. Even employers who do not have a collective agreement often follow the wage levels of the collective agreements if they are in the same industry. The collective bargaining agreement only lays a minimum foundation of the benefits with employment, and the employer and the employee can negotiate better terms then the collective bargaining agreement.[7] Sweden for instance does not have a minimum wage law, wages are negotiated

[1] Källström, Kent & Malmborg, Jonas, *"Anställningsförhållandet"*. 6th edition, Iustus förlag 2022 p. 190.
[2] Källström, Kent & Malmborg, Jonas, *"Anställningsförhållandet"*. 6th edition, Iustus förlag 2022 p. 66.
[3] Källström, Kent & Malmborg, Jonas, *"Anställningsförhållandet"*. 6th edition, Iustus förlag 2022 p. 71.
[4] Medlingsinstitutet. *Nästan alla stora företag har kollektivavtal.* 21-08-2024.
lig anslutning 2023 https://www.mi.se/nyheter/2024/nästan-alla-stora-företag-har-kollektivavtal
[5] LO, *Fack* https://www.lo.se/start/lo_fakta/facklig_anslutning_2023. Last visited on 2025-02-05.
[6] Källström, Kent & Malmborg, Jonas, *"Anställningsförhållandet"*. 6th edition, Iustus förlag 2022 p. 113.
[7] Källström, Kent & Malmborg, Jonas, *"Anställningsförhållandet"*. 6th edition, Iustus förlag 2022 p. 113.

by the employer and the employee. However, collective agreements have a major impact on wage developments across the entire labor market.

The Swedish Employment Protection Act (1982:80) serves as the main protection for the employment of employees in Sweden, and is applicable once an employment contract has been signed. The Discrimination Act (2008:567) which serves as the basis for discriminatory claims, goes beyond the scope of the Employment Protection Act, and offers protection from discrimination during the hiring process. This means that the Discrimination Act constitutes a restriction on employers freedom to hire whomever they want. A decision not to hire someone based on discriminatory grounds, is a violation of the Discrimination Act.[8] Public sector employers do not have the same freedom to hire as private employers. In addition to the prohibitions on discrimination, public sector employers must base hiring decisions on impartiality and hire based on the criteria of merit and skill.[9]

The rule of freedom of contract in employment situations is infringed upon by the safety measures that the lawmaker has put in place to protect employees from discrimination. For instance, employers and employees are allowed to agree that every kind of conflict around the employment relationship can be handled by an arbitration court. The exemption is that an arbitration court is not allowed to handle discrimination cases.[10]

1.2 What are the legal sources on non-discrimination on the ground of disability and for the promotion of (re)integration of a person with disabilities in general and especially at work in your country? (e.g., constitution, legislation, case law).

The relevant legal sources, presented here hierarchically,[11] include the following:

[8] Källström, Kent & Malmborg, Jonas, *"Anställningsförhållandet"*, 6th edition, Iustus förlag 2022 p. 94.
[9] Instrument of Government (1974:152) chapter 12 section 5 and the Public Employment Act (1994:260) section 4.
[10] Lagen om rättegång i arbetstvister (1974:371) The Labour Disputes (Judicial Procedure) Act. chapter 1, section 3.
[11] Bernitz, Ulf, *Finna rätt*, 16 u., Norstedts, 2023, pp. 30-32.

The Swedish Constitution is the most foundational source of law and comprises four acts. The most relevant act here, the Instrument of Government (1974:152),[12] concerns how the nation is governed and rights of citizens. Its Chapter 1, Section 2 states that public institutions must promote the participation and equality of all individuals, including persons with disabilities. Chapter 2, Section 12 guarantees protection against discrimination by public institutions, but this section does not mention disability. Chapter 2 Section 19 states that no legislation may be promulgated that is not in line with the European Convention on Human Right. While broad in nature, these provisions set the foundation for Sweden's legislative and policy framework on disability rights.

After the constitution is of course national legislation. Many important laws on discrimination against and (re)integration of persons with disabilities are accounted for further in sections 1.1 and 2.1. As stated in 1.1, statutes concerning labour law are often elective or semi-dispositive in the sense that they are not mandatory and can be supplanted by collective agreements, in accordance with the Swedish labour law model as described above. However, many of the legal protections against discrimination cannot be derogated from in collective agreements nowadays. Collective agreements serve a key function in allowing the labour parties to craft contracts that suit the specific needs and conditions of their line of work, while maintaining a baseline of legal protections set by the legislature. As such, collective agreements are an important legal source within Swedish labour law.

The next hierarchical source of law is somewhat unusual from an international standpoint. Legislative preparatory works, especially legislative bills, hold a position as a valued source of law in Sweden. This is in part due to the fact that the Swedish legislature tends to word the actual legislative text relatively tersely, and further clarification of its intent and on how to interpret the text can often be found in the legislative bills.[13]

After preparatory works come case law from the Labour Court and Supreme Court. Case law is especially important for older or generically worded statutes where modern interpretations

[12] Regeringsformen (1974:152).
[13] Bernitz, Ulf, *Finna rätt*, 16 u., Norstedts, 2023, p. 31.

are needed.[14] Swedish case law on disability tends to prioritize financial feasibility over proactive inclusion, a key distinction from EU law and the CRPD.

It should be noted that neither the constitution, legislation or preparatory works mention the possibility of multiple discrimination or discuss intersectionality. While the Equality Ombudsman has recognized that people reporting discrimination do sometimes consider themselves discriminated against on multiple grounds simultaneously,[15] the Equality Ombudsman has only brought separate claims of discrimination against the same person to court and in advisory opinions, not claims of multiple or intersectional discrimination. The Labour Court likewise has reviewed these claims as separate, not as intersectional.

2. Definitions of the persons with disabilities

2.1 In your national law, do you have one or more definitions of disabled people?

Disability is defined in the Discrimination Act, stating:
"Disability: permanent physical, mental or intellectual limitation of a person's functional capacity that as a consequence of injury or illness existed at birth, has arisen since then or can be expected to arise."[16]

All prohibitions against discrimination in the Act outlaw discrimination on the grounds of disability as well as sex, transgender identity or expression, ethnicity, religion or other belief, sexual orientation or age. The Act prohibits direct and indirect discrimination, inadequate accessibility, harassment, sexual harassment, and instructions to discriminate. The definitions for direct and indirect discrimination, harassment and instructions to discriminate originate from EU-regulations,[17] and largely mirror their definitions in the Employment Equality

[14] Bernitz, Ulf, *Finna rätt*, 16 u., Norstedts, 2023, p. 31.
[15] Equality Ombudsman (DO), *Berättelser om utsatthet: En analys av diskriminering som har samband med flera diskrimineringsgrunder*, Rapport 2023:1, pp. 26-27.
[16] Discrimination Act (2008:567) chapter 1 section 5 item 4, as translated by The Equality Ombudsman in a non-official translation. Author's note: in Swedish, the law requires a disability to be "varaktig" which does not translate to "permanent" but rather "lasting or long-term".
[17] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 27.

Directive 2000/78/EC (EED).[18] The definition of disability in Swedish law is not only a classification but a key factor in determining when discrimination has occurred, particularly in cases of inadequate accessibility.

Inadequate accessibility in the Discrimination Act is defined as:[19]
"that a person with disability is disadvantaged through a failure to take measures for accessibility to enable the person to come into a situation comparable with that of persons without this disability where such measures are reasonable on the basis of accessibility requirements in laws and other statutes, and with consideration to
- the financial and practical conditions,
- the duration and nature of the relationship or contact between the operator and the individual, and
- other circumstances of relevance."

This provision was added to the Act to harmonize with article 5 EED which requires reasonable accommodations.[20] The right to reasonable accommodations is a positive right, requiring employers to make reasonable accommodations unless such measures would impose a disproportionate burden on the employer, and this burden is not remedied by national disability policies. The Discrimination Act's prohibitions against inadequate accessibility is a negative right, a right not to be discriminated against through inadequate accessibility.

Positive rights are often preferable to negative rights for the purpose of equality. The right to reasonable accommodations in article 5 EED is proactive. It places the onus on employers to ensure an inclusive workplace, before any discrimination against a specific person has taken place. Employers must seek to assess needs and take proactive measures to create accessibility, to create inclusivity from the outset. In contrast, the prohibition against inadequate accessibility in the Swedish Act is reactive. It requires a person to show they have been disadvantaged through the action or inaction of an employer, placing the initial onus on

[18] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
[19] Discrimination Act (2008:567) chapter 1 section 4 item 3.
[20] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 50.

the employee to show harm. The focus is on mitigating harm rather than preventing it, which does not place the same burden on proactivity on employers as a positive right can.

2.2 In which fields of law are these definitions applied? Do you have a specific definition in labour law?

The Discrimination Act is applied in the following fields:

- Working life
- Education
- Labour market policy activities and employment services not under public contract
- Starting or running a business and professional recognition
- Membership of certain organisations
- Goods, services and housing etc.
- Health and medical care and social services etc.
- Social insurance system, unemployment insurance and financial aid for studies
- National military service and civilian service
- Public employment

For the purposes of this report's focus on equal treatment of persons with disability in employment, only the fields related to labour and employment are analyzed further.

Working life

The Act prohibits employers from discriminating against current and prospective employees, trainees and temporary labourers.[21] However, there is an exception for the prohibition against discrimination through inadequate accessibility for prospective employees. While discrimination through inadequate accessibility for prospective employees is still prohibited, no remedies are available. This exception is motivated by the tenuous connection a person seeking employment has to that place of employment. The government argues that it would be unreasonable to place employers in a position where they could be forced to pay discrimination compensation to a person merely inquiring about work.[22] The question arises

[21] Discrimination Act (2008:567) chapter 2 section 1.
[22] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 75.

if this prohibition without remedy is an oversight or if prospective employees were intentionally left without recourse.

A further exception is available for
"differential treatment based on a characteristic associated with one of the grounds of discrimination if, when a decision is made on employment, promotion or education or training for promotion, by reason of the nature of the work or the context in which the work is carried out, the characteristic constitutes a genuine and determining occupational requirement that has a legitimate purpose and the requirement is appropriate and necessary to achieve that purpose,".[23]

This exception is purposefully made to mirror article 4.1 EED.[24] The Act transplants some key phrases from the directive, like the requisite *"genuine and determining occupational requirement"* and need for legitimacy. The proportionality requisite in EED has been translated into *"appropriate and necessary to achieve that purpose"* in the Act. The government has emphasized that this exception should be used sparingly and only when motivated by strong reasons. It is meant to be used to meet specific needs, not for general affirmative action or to populate the work place with more employees from a particular group mentioned in the Act.[25]

Labour market policy activities and employment services not under public contract

The Act prohibits discrimination through market policy against employees and people seeking employment, as well as discrimination through private employment services such as temp agencies. There are no exceptions concerning disability.[26]

Starting or running a business and professional recognition

The Act prohibits discriminatory practices that hinder a person from receiving necessary permits, registration, authorization etcetera if they are needed or important to start or run a business or to work in a certain profession. There are no exceptions concerning disability.[27]

[23] Discrimination Act (2008:567) chapter 2 section 2 item 1.
[24] Legislative bill for the Discrimination Act, Prop. 2007/08:95 *Ett starkare skydd mot diskriminering*, p. 158.
[25] Legislative bill for the Discrimination Act, Prop. 2007/08:95 *Ett starkare skydd mot diskriminering*, p. 160.
[26] Discrimination Act (2008:567) chapter 2 section 9.
[27] Discrimination Act (2008:567) chapter 2 section 10.

Membership of certain organisations

The Act prohibits discrimination in regard to membership in unions, employer's organisations and other professional organisations, as well as receiving benefits as a result of such membership.[28]

Social insurance system, unemployment insurance and financial aid for studies

The Act prohibits discrimination with regards to receiving public benefits like unemployment insurance. There are no exceptions concerning disability.[29]

Public employment

The Act also prohibits discrimination when a person assists the public by providing information, guidance, advice or other such help, or has other types of contacts with the public in their work, if their employment is wholly or partly subject to the Public employment Act (1994:260). There are no exceptions concerning disability.[30]

2.3 What is the position of your national law in relation to the concept of disabilities developed by the Court of justice?

The concept of disability as developed by the Court of Justice of the European Union (CJEU) built upon the EED and the United Nations' Convention on the Rights of Persons with Disabilities (UNCRPD), and has three key requirements:

1. Impairment: a physical, mental or psychological limitation.
2. Long-term: the impairment must be lasting.
3. Social barriers: something in society or at the workplace hinders the individual with a long-term impairment from participating on equal grounds.

The emphasis on barriers as a central component of disability is an expression of the social model of disability. The social model of disability views disability as a result of the interaction between an individual with an impairment and a socially created barrier. The

[28] Discrimination Act (2008:567) chapter 2 section 11.
[29] Discrimination Act (2008:567) chapter 2 section 14.
[30] Discrimination Act (2008:567) chapter 2 section 17.

solution to issues of disability lies in that interaction, requiring both the individual and the workplace (or public space or whatever societal space the issue arises in) to take action. This model can be contrasted by the medical model of disability, which views disability as an issue in the individual alone, to be solved by removing or mitigating the impairment in that individual.[31]

As seen in 2.1, the Swedish definition of disability is a medical definition. When read together with the definition of inadequate accessibility and its requisite of a disadvantage caused by *"a failure to take measures for accessibility to enable the person to come into a situation comparable with that of persons without this disability"* the combination nears the social model of disability as conceptualized by the CJEU. Together, both definitions contain the same requirements as the CJEU definition, namely an impairment that is long term, and issues created by social barriers.

In practice however, Sweden has been criticized for relying too heavily on the exceptions to the right to reasonable accommodations and the prohibition against inadequate accessibility. In the AD 2017 nr 51, the Swedish Labour Court established that both the EED and the UNCRPD grant national courts a margin of appreciation when assessing the proportionality of an accommodation, and then state that accommodation suggested and rejected by the potential employer Södertörn University in the case was too expensive to be reasonable.[32] The reasoning was criticized by the Committee on the Rights of Persons with Disabilities for not taking into account other possible accommodations than the one suggested by the employer and for not examining accommodations suggested by the potential employee.[33] The case illustrates how the Swedish focus on the financial burden for the employer when making proportionality assessments, coupled with framing the right to reasonable accommodations instead as a negative right of prohibition against inadequate accessibility, risks putting the national interpretations of disability rights in disharmony with the CJEU. To date, Sweden has not taken steps to address the critique by the Committee on the Rights of Persons with Disabilities.

[31] For more on the social model, see Bruce, Anna, *The Unfolding of Equality in International Human Rights Conventions*, Scandinavian Studies in Law, 2022, Vol. 68, pp. 37-66.
[32] Swedish Labour Court, Judgement nr 51/17 Case nr A 146/16, pp. 9-12.
[33] Committee on the Rights of Persons with Disabilities, *Decision adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 45/2018*, 2020, pp. 14-16.

3. Equal treatment in the recruitment stage

3.1 Do particular national rules address barriers for persons with disabilities to be recruited?

If a candidate, during the recruitment process, is disadvantaged due to any of the legally established grounds for discrimination in the Swedish Discrimination Act – such as disability – discrimination has occurred. The Discrimination Act distinguishes between six different forms of discrimination: direct discrimination, indirect discrimination, inadequate accessibility, harassment, sexual harassment, and instructions to discriminate.[34] Thus, when the law states in Chapter 2 that discrimination according to a specific provision is prohibited, it refers to these six forms.

The scope of the prohibition against discrimination in working life is not determined by specific situations but by a specific group of persons. The prohibition covers all work-related situations that may arise between an employer and the persons protected by the provision, i.e.:

(i) Employees,
(ii) Job applicants or those making inquiries about employment,
(iii) Interns or those applying for an internship, and
(iii) Temporary or borrowed labor or those available to perform such work.

Thus, the prohibition against discrimination applies throughout the entire recruitment process, including the handling of application documents, selection for interviews, conducting interviews, reference checks, aptitude tests, and other measures an employer may take during a hiring procedure. The prohibition concerning job applicants and those making employment

[34] Discrimination Act (2008:567) chapter 1 section 4.

inquiries imposes a restriction on the principle of free employment rights.[35] Even the decision to terminate a recruitment process without hiring anyone can be challenged under the law.[36]

According to the preparatory works of the Discrimination Act, the formulation of job advertisements is not covered by the prohibition against discrimination, as it requires that an individual has been disadvantaged. However, a job advertisement may serve as evidence that an employer has excluded candidates for reasons related to a discriminatory ground.[37] Nevertheless, the CJEU has ruled that even a public statement by an employer indicating that they will not hire workers of a certain ethnic origin violates Directive 2000/43.[38]

The question of whether the job applicant, in terms of qualifications and suitability for the position, is in a *comparable situation* to the person who was hired often becomes relevant in the recruitment process.[39] The decisive factor is primarily whether the applicants' qualifications were equivalent. In cases of *direct discrimination*, it is required that a person is disadvantaged by being treated worse than someone else in a comparable situation. For it to be considered discrimination, the disadvantage must be linked to one of the seven grounds of discrimination. A comparable situation means that the person who claims to have been discriminated against should be compared to someone else in a similar situation. If there is no actual person for comparison, the assessment can be made based on how a hypothetical, assumed person would have been treated. If a person is treated worse due to a disability compared to someone without that disability, and they are in a comparable situation, it constitutes direct discrimination.

However, individuals with disabilities are often not in a comparable situation precisely because of their disability. For discrimination in the form of *inadequate accessibility* to be established, it is sufficient for the court to determine that the lack of accessibility results in a

[35] In the public sector, there is essentially no right of free employment. There is a constitutional provision stating that only "merit and competence" may be taken into account when filling a position within the state. This can be expressed as the employer being required to hire the person who is objectively best suited for the position without regard to irrelevant circumstances. Chapter 12, Section 5 of the Instrument of Government and Section 4 of the Public Employment Act.
[36] Lundin, Karin., Discrimination Act (2008:567) chapter 2 section 1 paragraph 1 point 2, Lexino (JUNO). Last visited on 2025-02-20.
[37] Legislative bill for the Discrimination Act, Prop. 2007/08:95 *Ett starkare skydd mot diskriminering*, pp. 140 and 499.
[38] Case C-54/07 Firma Feryn NV, EU:C:2008:397.
[39] Discrimination Act (2008:567) chapter 1 section 4 paragraph 1.

disadvantage for a person with a disability due to the failure to implement reasonable support and adaptation measures. However, this applies only if the person with the disability would have been in a comparable situation with individuals without disabilities had reasonable accessibility measures been taken. If an employer knows or should know that a job applicant has a disability that prevents them from performing the job, the employer must - in order to avoid the risk of paying discrimination compensation - consider what accessibility measures are necessary to eliminate or reduce the effects of the disability. One of the key purposes of the rule on inadequate accessibility is precisely to encourage employers to carefully consider whether it is possible, for instance, to adapt the workplace to enable the employment of a person with a particular disability.[40]

What reasonable adaptation measures may an employer be required to take?

Accessibility measures primarily refer to those related to the physical environment, support or personal assistance, as well as information and communication.[41] The assessment of what measures can reasonably be required in an individual case should be based on the requirements that apply in a given situation according to other legislation or regulations. A party that has fulfilled such requirements should generally be able to assume that no additional requirements arise under Swedish anti-discrimination law.

In the context of working life, the Work Environment Act is particularly relevant in setting requirements related to the prohibition of discrimination due to inadequate accessibility. The specific measures an employer must consider are therefore typically aligned with those required under the Work Environment Act.[42] According to chapter 3, section 3, paragraph 2 of the Work Environment Act, the employer must, by adjusting working conditions or implementing other suitable measures, take into account the employee's particular conditions for performing the work.

A prerequisite for the employer's obligation to take accessibility measures is that the employer knows or should have known that the job applicant or employee has a disability.

[40] Discrimination Act (2008:567), Chapter 1 Section 4 item 3.
[41] Legislative Bill for the Discrimination Act, Prop. 2007/08:95 Ett starkare skydd mot diskriminering, p. 499 ff.
[42] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 65.

The employee should therefore inform the employer about the nature of the disability and state their view on the need for accessibility measures. However, the employer is not entitled to remain passive and merely wait for information from the employee. An employer who is aware that an employee has a disability should take the initiative to engage in dialogue with the employee and explore whether measures can be taken to eliminate or reduce the limitations caused by the disability.[43]

3.2 Is there case law on a situation where an employer did not engage a person on basis of disability?

There are several cases where courts have examined whether an employer has violated discrimination laws by not engaging a person due to their disability. Below are key cases that highlight how the Swedish Labour Court has assessed the issue of reasonable accommodations and accessibility measures in recruitment processes.

AD 2017 nr 51

In AD 2017 nr 51, the question was examined whether a university had violated the prohibition against lack of accessibility by denying a deaf man employment as a lecturer. The university justified its decision to reject the applicant by stating that the required accessibility measures, primarily sign language interpreting services, were too costly and burdensome to be considered reasonable. For the applicant to perform the job, the university would have needed to provide sign language interpreting services during lectures and meetings with colleagues and management. The Discrimination/Equality Ombudsman (DO) argued that the annual cost of these measures could be estimated at SEK 520,000, while the state estimated the costs at just under SEK 700,000. The Swedish Labour Court acknowledged that greater demands for accessibility measures can be placed on a public authority with a large personnel budget. The fact that the position was a full-time permanent appointment also supported the argument for reasonable accommodations. However, based on the DO's calculations, the university's annual cost for the interpreting services would essentially equal the applicant's pre-tax salary, excluding employer contributions. Additionally, the measures would not benefit other employees with disabilities.The Labour Court therefore concluded that the

[43] Legislative bill for the Discrimination Act, Prop. 2007/08:95 *Ett starkare skydd mot diskriminering,* p. 153.

measures were not reasonable and that the university had not discriminated against the applicant by terminating the recruitment process.

The UN, through the CRPD Committee, has criticized the outcome of the ruling.[44] The committee holds that the Swedish Labour Court should have classified the case as discrimination due to lack of accessibility and that Sweden thereby violated the Convention on the Rights of Persons with Disabilities (CRPD). According to the committee, the employer should have conducted a more thorough investigation to meet the requirement for accessibility measures. The criticism is based on the concern that the ruling weakens the rights of individuals with disabilities to reasonable accommodations in the workplace. The Equality Ombudsman (DO) was also criticized for failing to investigate alternative measures beyond the provision of an interpreter.

The committee questioned the university's decision not to inform the applicant before terminating the recruitment process, thereby denying him the opportunity to engage in a dialogue with the employer to identify possible accommodations. This lack of dialogue also impacted the legal proceedings, as the authorities focused primarily on the cost of sign language interpretation without exploring other potential measures. The committee identified shortcomings in this assessment, particularly the failure to consider alternative funding options for the lecturer position. As a result of this narrow evaluation, alternative accommodations were not explored, and the Labour Court's ruling - strongly influenced by the DO's arguments - was ultimately centered on a single issue: the cost of interpretation services.

Furthermore, the committee pointed out that the Labour Court failed to consider the broader positive effects of hiring a deaf lecturer, such as the potential impact on attitudes, diversity within the university, and the positive message it would have sent to other individuals with hearing impairments. The committee's main criticism of the Swedish state concerns the lack of dialogue and the insufficient investigation of potential measures. Without taking a position on which specific accommodations should have been implemented - since this falls within the state's margin of appreciation - the committee concluded that the authorities had not taken

[44] Committee on the Rights of Persons with Disabilities, Decision adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 45/2018, 2020.

adequate steps to ensure the provision of reasonable accommodations. Consequently, the Swedish Labour Court's ruling led to a violation of Article 27 of the CRPD (the right to work) and Article 5 of the CRPD (the prohibition of discrimination based on disability).

Finally, the committee recommended that Sweden compensate the lecturer for the flawed ruling and take measures to prevent similar situations in the future. The committee also emphasized that officials within the Swedish Labour Court should receive training on UN conventions.

AD 2020 nr 3

In AD 2020 nr 3, a person who is deaf applied for an eight-month temporary position as a receptionist at a county council. The applicant was neither invited for an interview nor offered the position. It was undisputed that this was due to the applicant's disability, i.e., the fact that he could not use voice telephony because he is deaf. The Swedish Labour Court found that at the time of recruitment, handling voice telephony was one of the most essential duties of the advertised receptionist position at the county council. The court concluded that the applicant was not in a comparable situation to a person who could work with voice telephony. Given the workload and the needs of the reception, the Labour Court considered that it would not have been reasonable to reorganize the operations by adjusting the schedule or otherwise completely exempting the applicant from the task of answering voice calls. Such a reorganization would have had significant consequences for the operations, including reduced service quality or an increased workload for other employees. Providing double staffing or hiring an assistant was also deemed not a reasonable accommodation, as the county council would have had to hire two people to perform the duties of one.[45] Furthermore, technical aids such as relay services could not replace the direct answering of voice calls. Thus, there were no reasonable accessibility measures that the county council could have implemented to place the applicant in a comparable situation. Consequently, the applicant had not been subjected to discrimination in the form of lack of accessibility by being denied the position.

[45] AD 2010 nr 13 and AD 2017 nr 51.

AD 2024 nr 66

In AD 2024 nr 66, a trade union sued Region Stockholm, alleging direct discrimination after the region canceled a scheduled job interview upon learning that the applicant was wheelchair-bound. The union argued that her disability did not affect her ability to perform the essential tasks of the neonatal intensive care unit (NICU) and that she was in a comparable situation to other applicants. Alternatively, if she was not deemed comparable, the case should be classified as discrimination due to inadequate accessibility. Region Stockholm defended its decision, citing the physically and mentally demanding nature of the job, which required speed, adaptability, and strict hygiene compliance. The region referred to past experience with a wheelchair-bound nurse, where an internal assessment concluded that necessary workplace adjustments could not be made without compromising patient safety.

The Swedish Labour Court agreed with the region's assessment, emphasizing that the NICU placed exceptionally high demands on staff, as it involved the acute and intensive care of extremely small and fragile infants. The court noted that unpredictable emergencies frequently occurred, where delays or errors could be life-threatening. Additionally, the workplace was significantly more demanding than the healthcare settings in which the applicant, C.T., had previously worked. Thus, the court found that she lacked the objective qualifications for the position without workplace adaptations and had therefore not been subjected to direct discrimination. Moreover, the region's previous practical experience indicated that adapting the NICU to include a wheelchair-bound nurse in the core staffing was not feasible. The court referenced a previous case where a nurse who became wheelchair-bound during employment was ultimately unable to continue in core staffing despite workplace assessments. Consequently, the court ruled that Region Stockholm had not failed in its duty to eliminate or reduce the impact of the applicant's disability, and thus, no discrimination had occurred.

3.3 Does your law have measures to make it easier /more attractive for employers to engage workers who already have a disability?

As stated above, employers are required to implement reasonable accommodations for employees with disabilities.[46] In addition to this obligation, there are measures in place to facilitate and incentivize the employment of individuals with disabilities, primarily through financial support. The Swedish Public Employment Service (*Arbetsförmedlingen*) offers assistive tools and financial support when employers hire a person with reduced work capacity due to a disability. These measures include the following:[47]

- Employers can receive financial assistance for assistive tools if they have an employee who requires adaptations due to a disability.
- Employers can receive financial support if an employee needs sign language interpretation, written interpretation, sign-supported interpretation, or deafblind interpretation in connection with training within the company.
- Employers can receive financial support if a colleague helps an employee with reduced work capacity due to a disability.
- Employers can receive a wage subsidy, which is a financial support granted based on an individual assessment when hiring a person with reduced work capacity. The subsidy compensates for the necessary adjustments made at or around the workplace.

In addition to the above, employers can also receive financial support from the Swedish Social Insurance Agency (*Försäkringskassan*) when hiring a person with a disability. This support is provided in the form of grants for assistive tools and workplace adaptations to facilitate the employee's ability to perform their job. The grant can be used to purchase or rent assistive tools, conduct expert assessments to identify suitable aids, repair existing assistive tools, update computer-based assistive technology, and train staff in their use. Regarding the amount of the grant, it covers half of the cost of the assistive tool, but the employer must always contribute at least SEK 10,000. The maximum grant amount is SEK

[46] See further Section 3.1 and 3.2.
[47] Arbetsförmedlingen (Public Employment Agency), "Stöd när en person har en funktionsnedsättning eller ohälsa", https://arbetsformedlingen.se/for-arbetsgivare/anstallningsstod/stod-nar-en-person-har-en-funktionsnedsattning. Last visited on 2025-02-25.

50,000, although in exceptional cases, such as for computer-based assistive technology, a higher amount may be approved.[48]

4. Equal treatment as regards employment conditions

4.1 Does legislation give specific rules for the disabled concerning employment conditions (e.g. access to training or promotion, number of working hours, conditions of productivity, etc).

Swedish legislation does not contain specific rules granting persons with disabilities special working conditions regarding, for example, education, promotion, working hours, or productivity requirements. However, the Discrimination Act and the Work Environment Act impose obligations on employers to implement reasonable accommodation measures to ensure equal opportunities in working life.[49] In other words, the employer is not allowed to consider the limitations in the ability to perform the job that the disability may entail if the employer, by implementing reasonable measures, can eliminate or reduce the effects of the disability so that the essential tasks of the job can be performed. It follows that if an employer knows or should know that a job applicant has a disability preventing them from performing the job, they must – to avoid the risk of discrimination compensation – *assess* which accessibility measures are necessary to eliminate or reduce the impact of the disability.[50]

What constitutes reasonable measures is determined through a comprehensive assessment in each individual case. The starting point for what is considered a reasonable measure is the accessibility requirements established in the laws and regulations applicable to the specific activity. For instance, accessibility regulations can be found in the Work Environment Act.[51]

[48] Försäkringskassan (Swedish Social Insurance Agency), "Arbetshjälpmedel" https://www.forsakringskassan.se/privatperson/funktionsnedsattning/arbetshjalpmedel. Last visited on 2025-03-05.
[49] Discrimination Act (2008:567), Chapter 1 Section 4 item 3, and Work Environment Act (1977:1160), Chapter 3 Section 3 paragraph 2.
[50] Legislative bill for the Discrimination Act, Prop. 2007/08:95 Ett starkare skydd mot diskriminering, p. 151.
[51] Work Environment Act (1977:1160), Chapter 3 Section 3 paragraph 2 and Chapter 4 Section 1.

Beyond the legal requirements, most businesses are only required to implement simpler measures. The comprehensive assessment of what qualifies as a reasonable measure also takes into account the following factors:[52]

- The financial and practical conditions of the business,
- The duration and extent of the relationship between the individual and the business,
- Other relevant circumstances, such as the benefit of the measure.

Measures are considered sufficient if they result in a person with a disability being placed in a comparable situation with a person without that disability. Measures that should be considered may include those aimed at improving physical accessibility to the workplace and related facilities, as well as making these facilities as usable as possible for individuals with disabilities. This may involve technical aids, specialized work tools, or modifications to the physical work environment. Examples include enhanced lighting for visually impaired individuals, proper ventilation for those with allergies, technical aids to facilitate lifting or transportation, computer support, and more. Additionally, modifications to job tasks, working hours, or work methods may also be relevant.[53]

4.2 Are there examples of discrimination in the case law concerning employment conditions?

Below are cases where it has been alleged that the employer did not take the necessary measures to enable an employee to perform their work on equal terms, along with the Labour Court's assessments in these specific cases.

AD 2020 nr 58

In AD 2020 nr 58, a court administrator, who was employed on a permanent basis, worked at a district court. The employer claimed that the administrator was underperforming and had difficulties working independently. After a little over a year, the responsible manager decided that the employee should focus exclusively on a few limited work tasks to thoroughly learn

[52] Legislative Bill for the Discrimination Act, Prop. 2007/08:95 Ett starkare skydd mot diskriminering, pp. 150 ff., 500 f., and Legislative Bill for the Discrimination Act, Prop. 2013/14:198 Bristande tillgänglighet som en form av diskriminering, p. 60.
[53] Legislative bill for the Discrimination Act, Prop. 2007/08:95 *Ett starkare skydd mot diskriminering,* p. 499.

these processes. The administrator perceived this decision as a "suspension." The employer subsequently held discussions with the administrator and established an action plan, which was later revised after the administrator expressed the challenges she was experiencing in her work.

The administrator reported the employer to the Equality Ombudsman for harassment and unfair treatment, but the Ombudsman decided not to investigate the matter. Following this, the action plan was further revised. The administrator then sent an email of more than 30 pages, outlining to the employer why she believed she had been subjected to harassment and unfair treatment. As a result, the Swedish National Courts Administration conducted an investigation into whether unfair treatment had occurred but concluded that this was not the case.The employer continued to take measures to improve the situation. The administrator was, among other things, offered sessions with a career coach. A reassignment was carried out to another department within the court. After a referral from occupational health services, a neuropsychiatric evaluation was conducted by a licensed psychologist. The psychologist diagnosed the administrator with Autism Spectrum Disorder Level 1 and Asperger’s syndrome.

The Labour Court agreed with the employer’s conclusion that the administrator’s work performance was significantly below what could be required for the position and also noted that there had been serious collaboration difficulties between the administrator and her immediate supervisors. The measures taken by the employer before they became aware of the diagnosis were aimed at adapting the work to the administrator’s reduced ability, even though the employer was not aware of the diagnosis at the time. According to the Labour Court, the problems that arose could have been avoided if the employee had known about her diagnosis earlier, which was not something the employer could be held responsible for. The measures taken were well aligned with the adjustments recommended in the neuropsychiatric assessment. Furthermore, the employer had both in writing and verbally informed the administrator that she risked being dismissed if her work performance and behavior did not improve. Given the above, the employer could not reasonably remedy the problems through further measures. Therefore, there was just cause for dismissal (also taking into account the existing collaboration difficulties).

AD 2024 nr 12

A police officer had suffered a stroke and was on sick leave for a four-year period. Upon returning to the Police Authority, he was assigned adapted work tasks but was later dismissed because he was not considered capable of performing work of significance for the authority. The question for the court's examination was whether there was just cause for the dismissal and whether the police officer had been discriminated against.

If an employee has a reduced ability to work due to illness or injury, this generally does not constitute just cause for dismissal. The exception is if the impairment is permanent and so substantial that the employee can no longer perform work of any significance for the employer. The Labour Court began its examination by evaluating whether the police officer's ability to work was permanently impaired in relation to the adapted work tasks. In this part of the assessment, two work capacity evaluations from occupational health services played a decisive role. The evaluations led to the conclusion that the police officer could not handle regular duties as an investigator. However, he was able to manage the adapted tasks he had been assigned. The problem was that these adapted tasks were not sufficient to fill his 75% working hours.

The Labour Court then examined whether the police officer's reduced ability to work was also permanent in the sense required for it to serve as grounds for dismissal. The evidence showed that there was no possibility for the police officer to return to his regular duties, either in the short or long term, and that the prognosis for his ability to work was stable. Based on this, the court found that the police officer's impairment was permanent and severe enough to justify a dismissal.

Finally, the court assessed whether the Police Authority had fulfilled its duty to provide adaptation, rehabilitation, and reassignment before proceeding with the dismissal. The court found that, due to his stroke, the police officer had a very limited ability to perform work tasks independently. The assistive tools used, such as text-to-speech software, were deemed insufficient to remedy this. The employee's side argued that reassignment was possible but could not point to any specific vacant positions he could take, instead referring to two general

job descriptions. The Labour Court found that there were no vacant positions for one of the functions and that the police officer did not have the necessary qualifications for the other.

4.3 Are there restrictions for actually implementing law that assists persons with disabilities and for positive actions, such as: Are employers allowed to ask the disability status of job applicants? Do workers have to disclose their status to their employers in order to benefit from particular rules?

A disability may be more or less noticeable depending on the situation. Under Swedish law, employers have an obligation to take action when an employee's disability affects their ability to work. This includes assessing the need for accessibility measures to ensure equal working conditions.

Employers are generally allowed to ask job applicants whether they have a disability, as there is no general prohibition on such questions in Swedish law. The purpose of this is to allow employers to assess the need for and possibility of reasonable accommodations. However, while asking the question is permitted, an employer cannot use the response as an automatic basis for hiring decisions. If a candidate is excluded from employment solely due to their disability, without an assessment of reasonable accommodations, this could constitute unlawful discrimination.[54]

4.4. Does your law have measures to make it easier /more attractive for employers to keep their workers who have or develop a disability in employment?

Swedish law includes measures to encourage and facilitate the continued employment of workers who have or develop a disability.

One key measure is the employer's duty to reassign (*omplaceringsskyldighet*). The general principle is that dismissal should not be the first course of action; instead, the employer must

[54] See further Section 3.1 and 4.1.

first explore whether the employee can be reassigned to another suitable position within the organization. Only if reassignment is not possible may termination be considered.[55]

Additionally, the Swedish Public Employment Service (*Arbetsförmedlingen*) offers several financial support programs to help employers accommodate employees with disabilities, including:[56]

- Financial assistance for assistive tools: Employers can receive financial support for necessary workplace adaptations to accommodate an employee's disability.
- Financial support for interpretation services: Employers can receive funding if an employee needs sign language interpretation, written interpretation, sign-supported interpretation, or deafblind interpretation for workplace training.
- Financial support for workplace assistance: If a colleague helps an employee with reduced work capacity due to a disability, the employer can receive financial compensation.
- Wage subsidy (*lönebidrag*): Employers can receive financial support when hiring a person with reduced work capacity. The amount is based on an individual assessment and compensates for necessary workplace adjustments.

Beyond the above, employers can also receive financial support from the Swedish Social Insurance Agency (*Försäkringskassan*) when hiring a person with a disability. This support is provided in the form of grants for assistive tools and workplace adaptations to facilitate the employee's ability to perform their job. The grant can be used to purchase or rent assistive tools, conduct expert assessments to identify suitable aids, repair existing assistive tools, update computer-based assistive technology, and train staff in their use. Regarding the amount of the grant, it covers half of the cost of the assistive tool, but the employer must always contribute at least SEK 10,000. The maximum grant amount is SEK 50,000, although

[55] Employment Protection Act (1982:80) section 7 paragraph 2.
[56] Arbetsförmedlingen (Public Employment Agency), "Stöd när en person har en funktionsnedsättning eller ohälsa", https://arbetsformedlingen.se/for-arbetsgivare/anstallningsstod/stod-nar-en-person-har-en-funktionsnedsattning. Last visited on 2025-02-25.

in exceptional cases, such as for computer-based assistive technology, a higher amount may be approved. [57]

5. Equal treatment in the dismissal stage

5.1 What obligations does an employer have to retain a worker who develops a disability at work? (This question relates to the general framework of reintegration obligations for those who develop a disability; you do not have to describe the social security aspects)

When an employee has suffered a disability at work, three different sets of regulations are relevant: the Discrimination Act, the Work Environment Act and the Employment Protection Act.

According to the Discrimination Act, an employer may not discriminate against an employee.[58] If an employee develops a disability, the employer is therefore required to take measures to avoid discrimination based on lack of accessibility. This may include measures to enable the person to continue their employment as well as measures to ensure that the employee is placed in a comparable position with other employees so as not to miss out on opportunities for promotion.[59] When assessing whether discrimination due to lack of accessibility is present, consideration shall be given to whether the measures taken for accessibility are reasonable, based on accessibility requirements in law and other regulations, and taking into account the economic and practical conditions, the duration and extent of the relationship or contact between the operator and the individual, and other relevant circumstances.[60]

[57] Försäkringskassan (Swedish Social Insurance Agency), "Arbetshjälpmedel" https://www.forsakringskassan.se/privatperson/funktionsnedsattning/arbetshjalpmedel. Last visited on 2025-03-05.
[58] Discrimination Act (2008:567), chapter 2 section 1 paragraph 1.
[59] Discrimination Act (2008:567), chapter 1 section 4 item 3.
[60] Discrimination Act (2008:567), chapter 1 section 4 item 3.

The requirements for adaptations are generally higher for employers to take measures for accessibility because an employment relationship is of a lasting nature.[61] In terms of financial considerations, the employer must be able to bear the cost; excessively burdensome costs are not considered reasonable. In terms of practical measures such as adapting the workplace, the adaptations must be possible to implement in practice. An employer who rents premises may not have permission from the landlord to change the premises. When it comes to adaptations to the physical work environment, the cost also has to be proportionate.[62]

Accessibility requirements in law are found in the Employment Protection Act and The Work Environment Act. According to the Employment Protection Act, an employer may not dismiss an employee unless there are "objective reasons"[63]. If the employer can relocate the employee to other tasks, there are no "objective reasons" for dismissal.[64] This means that an employer whose employee has suffered a functional impairment may not dismiss the employee if it is possible to adapt the working conditions or relocate the employee to another position. The law therefore requires adaptations for accessibility. Provisions on how the employer must carry out rehabilitation and adaptation measures for an employee who has a disability are contained in the Work Environment Act.

The Work Environment Act establishes that working conditions must be adapted to people's different physical and mental conditions.[65] This means an obligation for the employer to adjust working conditions to suit an average person as well as a unique individual. This obligation is meant to be proactive. But the obligation to adapt working conditions may also occur if an employee becomes sick or injured. The employer is responsible for aiding the rehabilitation of an employee in order to help the employee to be able to return to work.[66]

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[61] A main rule in Swedish labor law is that employment contracts are valid until further notice and that full-time is the norm. However, fixed-term and part-time contracts may be made in accordance with law or collective agreements, Employment Protection Act (1982:80), sections 4 and 4a.
[62] Legislative bill for the Discrimination Act, Regeringens proposition 2013/14:198, *Bristande tillgänglighet en form av diskriminering*, p.128.
[63] "Objective reasons" is a legal concept found in section 7 of the Employment Protection Act. In previous legislation, the concept was called "objective grounds" but was changed to "objective reasons" in 2022. However, the assessment of whether "objective reasons" exist for dismissal due to illness or disability has not changed (see Legislative bill for the Employment Protection Act, *Flexibilitet, omställningsförmåga och trygghet på arbetsmarknaden*, Regeringens proposition 2021/22:176 pp. 446-447) with the new term and therefore this report will use the concept of objective reasons even when discussing older practices.
[64] Employment Protection Act (1982:80) section 7.
[65] Work Environment Act (1977:1160), chapter 2 section 1 paragraph 2.
[66] Ahlberg, Kerstin, *Arbetsmiljölagen med kommentarer*, p. 26, 17th edition, Prevent, 2024.

This obligation is evident from the Work Environment Act, chapter 3, section 3, paragraph 2 which states:

"The employer shall, by adjusting working conditions or taking other appropriate measures, take into account the employee's special conditions for the work. When planning and organising work, it shall be taken into account that people's conditions for performing work tasks vary."

The Work Environment Act is a framework and more specific regulations are found in the Swedish Work Environment Authority's regulations.[67] These regulations stipulate that the employer has a responsibility to make enquiries in order to be aware if an employee is in need of any adjustments of her working conditions. The employer shall also have routines in order on how to receive information about work adaptation needs. When a need for a work adaptation has been identified, the employer shall as soon as possible investigate and decide on how the work adaptation should be designed and then as soon as possible implement the work adaptation. The employer shall then continuously monitor and check whether the work adaptation is working, and if necessary, adjust the work adaptation.[68]

However, the regulations do not specify how these adaptations should be done and an assessment in each individual case has to be done. The employer is also obliged to hire occupational health care, or equivalent external expert help if needed to establish which work adaptations that need to be done.[69] These adaptations can be done in different ways to suit the needs of the employee. For example, to make ergonomic adaptations of the workplace as well as changing schedules and reorganising workload and tasks in order to reduce stress for an individual employee if needed. As mentioned above, the obligation to make these adaptations to suit the working conditions of an employee are both proactive and has to be done if an employee becomes sick or injured in order to rehabilitate the employee. This obligation occurs in the case of temporary illness or injury as well as in the case of an injury or illness that is permanent and thereby is defined as a disability.

[67] The Swedish Work Environment Authority's regulations and general advice (AFS 2023:2) on planning and organizing work environment work - basic obligations for you with employer responsibility.
[68] The Swedish Work Environment Authority's regulations (AFS 2023:2) chapter 3 sections 4-6.
[69] The Swedish Work Environment Authority's regulations and general advice (AFS 2023:1) on systematic work environment work - basic obligations for you with employer responsibility, section 15.

5.2 What rules apply if an employer wants to dismiss a person with a disability or who has developed a disability?

There are parallel legal systems that apply when an employer wants to dismiss an employee who has developed a disability. The prohibition to discriminate on the basis of disability in the Discrimination Act and the requirement for "objective reasons" for dismissals in the Employment Protection Act. An employer may not discriminate against a person, who in relation to the employer, is an employee. The prohibition against discrimination includes all the relation between an employer and an employee including the termination of an employment.[70] Specific rules that regulate dismissals of employees are found in the Employment Protection Act. Section 7 of the Act states that termination of the employment by the employer must be based on "objective reasons." "Objective reasons" in this context, can be redundancy or circumstances relating to the employee personally. A termination of employment is not based on "objective reasons" if it is reasonable to require the employer to arrange other work for the employee.[71] A dismissal that is discriminatory is never based on "objective reasons."[72] As for the case of an employee that develops a disability leading to reduced working capacity, it follows from established practice, that a dismissal is not based on "objective reasons" if the employer can make reasonable accommodations and adjustments of tasks that makes it possible for the employee to retain the employment. Both the Discrimination Act and the Employment Protection Act therefore assume that the employer may not dismiss an employee on the grounds that he or she has reduced working capacity as a result of an injury or illness, if it is reasonable to require the employer to adapt the work or take other measures that enable the employee to continue employment. The requirements for reasonable accommodation measures, which follow from the Employment Protection Act and the Discrimination Act, respectively, are the same in this respect.[73]

However, even though the main rule is that a disability is not an objective reason for dismissal. A disability that is reducing the working capacity of an employee to such an extent

[70] Discrimination Act (2008:567), chapter 2 section 1 paragraph 1.
[71] Employment Protection Act (1982:80) section 7.
[72] Källström, Kent & Malmborg, Jonas, *Anställningsförhållandet*,p. 97, 6th edition, Iustus förlag 2022.
[73] AD 2014 nr 26.

that the employee no longer can perform tasks of any significance can be an "objective reason" for dismissal.[74]

The case AD 2020 nr 58 illustrates how the Employment Protection Act, the Work Environment Act and the Discrimination Act interact. The dispute concerned the question whether there were "objective reasons" to dismiss an employee due to poor performance and cooperation problems linked to a disability in the form of autism. The employee was employed as a court clerk at a district court and had been employed for four years when she was dismissed. The employee claimed that the dismissal should be declared invalid on the grounds that there had been no "objective reasons" and that the employer, the state, should pay damages. The state, for its part, argued that the employee's work performance had been lower than acceptable for a long time, that there had been serious cooperation problems and that the employer had taken reasonable support and adaptation measures and that there were therefore "objective reasons" for dismissal. The plaintiff was claiming damages and invalidity under the Employment Protection Act. The reasons for the judgment illustrate how the Work Environment Act and the Discrimination Act play into the Labour Court's assessment. The Court states that an employer's mandate is to manage and distribute work but that the employer also has a responsibility in accordance with the Work Environment Act to adapt work tasks to the individual employee or reassign the employee to other work tasks. In addition, the obligation to adapt or reassign is greater if the employee has a disability because the Discrimination Act requires that reasonable measures be taken for accessibility in order for an employee with a disability to be in a comparable situation with people without this disability. This obligation to adapt or reassign must be fulfilled before "objective reasons" for dismissal can be present. If the adaptation puts the employee in a comparable situation with people without a disability, there are therefore no "objective reasons" for dismissal. In terms of when cooperation problems can constitute "objective reasons" for dismissal, the Court states that they must be of such a serious nature that they have a negative impact on the business. The same obligation to adapt and relocate exists in the case of cooperation problems and again to a greater extent if the cooperation problems are because of a disability.

[74] Legislative bill for the Employment Protection Act. "Regeringens proposition 1981/82:71 *om ny anställningsskyddslag m.m.*" p. 66. Section 7 of the Employment Protection Act was altered in 2022. However it is stated in the legislative bill, (Regeringens proposition 2021/22:176 *Flexibilitet, omställningsförmåga och trygghet på arbetsmarknaden*, p. 446) that the assessment of whether there are personal reasons for dismissal should be based on previous legislative work, case law from the Labour Court and other legal sources.).

The employee must also have been made aware that employment is at risk if the negative behavior continues.

The circumstances of the case were such that within the first year of employment it became clear that the plaintiff had difficulty performing her work duties and she stated that she had dyslexia. The employer made a long series of adjustments during the course of employment. The measures included a support person, reduced workload, time to develop her own work templates, not answering the phone at certain times to focus on a task, and not being included in the rotating schedule of tasks that the other court clerks worked, to give her the opportunity to learn a task properly. She was also transferred to another department as a result of the cooperation problems. However, the employee's work capacity was only 30-50% compared to her colleagues. During the course of employment, the employee was diagnosed with autism. The court concludes that her low work capacity and difficulties in cooperation were due to her diagnosis. The court also considered that the adjustments that the employer had made were in accordance with the type of adjustments recommended for people with autism even though the employer had no knowledge that the employee had an autism diagnosis and that there were no further reasonable adjustments that the employer could have been expected to make. Furthermore, the court considered that the difficulties in cooperation were of such a degree that they had a negative impact on the workplace and that there were no reasonable measures for the employer to take in this regard either. The court therefore held that the employer had "objective reasons" for dismissal.

The conclusion from the case is that an employee whose work capacity is 30-50% of that of his colleagues is an example of when a person is deemed unable to perform work of any importance to the employer and that there are therefore objective reasons for dismissal under the Employment Protection Act. It can also be concluded that there were no reasonable adjustments that the employer could make to put the employee in a comparable situation with a person without a disability and that it would therefore not be a case of discrimination on the grounds of lack of accessibility.

The case AD 2024 nr. 12 concerned a police officer who had suffered a stroke. The police authority dismissed the police officer on the grounds that the police officer could not perform

any work of importance for the Police Authority. The trade union, which brought the action, argued that the Police Authority had not fulfilled its obligation to reassign and adapt the work to the accessibility of the police officer and therefore did not have "objective reasons" for the dismissal. The trade union therefore claimed that the dismissal should be declared invalid and damages under the Employment Protection Act because the dismissal had been made without "objective reasons." The trade union also primarily claimed discrimination damages under the Discrimination Act on the grounds of direct discrimination as they believed that the police officer had been reassigned to tasks that were not suitable for his disability even though, according to the union, there were other tasks he could have performed. The union therefore considered that there were no "objective reasons" for the dismissal and that the police officer had been dismissed because of his disability and had thus been disadvantaged in comparison with other employees and subjected to direct discrimination. In the alternative, the union claimed discrimination due to lack of accessibility as the union considered that the Police Authority had not fulfilled the obligation to rehabilitate the employee by adaptation and reassignments of tasks that were incumbent on the authority.

In the reasons for the judgment, the Labour Court assumes that the main rule is that a permanent illness that causes the employee's work capacity to be reduced does not constitute an "objective reason" for dismissal in accordance with the Employment Protection Act, unless the reduced capacity means that the employee can no longer perform work of any importance to the employer. The Court states that the employer's participation in adapting the work for the employee is essential for the assessment of dismissal due to illness. The Court refers to the employer's obligation under Chapter 3 Section 3 of the Work Environment Act, which states that the employer must take into account the employee's personal ability to perform the tasks by adapting the working conditions or taking other appropriate measures. The extent of the employer's obligations is an assessment that must be made in the individual case and that it is the employer's responsibility to conduct a thorough investigation and that some reorganization of the workplace may be required. Several factors play a role in the assessment, such as the size of the workplace and the employee's participation in finding a solution. It is the employer's responsibility to make a careful assessment, and if it is unclear whether the employer has fulfilled its obligations, it is at the employer's expense. The court then begins the examination of whether the dismissal is in breach of the Discrimination Act

by reviewing the conditions for discrimination to be present when it comes to the discrimination ground of disability in relation to direct discrimination and lack of accessibility. In order for discrimination related to disability to be considered to exist, the starting point is that a comparable situation must exist. An employee who, due to a disability, cannot perform the most essential work tasks is not considered to be in a comparable situation with a person who does not have a disability. Furthermore, if the disability means that a person is not in a comparable situation, it may be a question of discrimination through lack of accessibility. The court clarifies by referring to the preparatory work that in the case of lack of accessibility, there is no need to make any connection to direct or indirect discrimination, but rather lack of accessibility itself may constitute discrimination. The court states that there is no need for a causal connection between the disability and the failure to take adaptation measures; it is sufficient to state that the lack of accessibility results in a person with a disability being disadvantaged by the failure to take reasonable measures for accessibility. However, for there to be discrimination on the basis of lack of accessibility, it must be possible for a person with a disability to be in a comparable situation with persons without a disability through reasonable measures for accessibility, otherwise there is no discrimination. When dismissing an employee who has a disability and is therefore not in a comparable situation, the dismissal constitutes discrimination if the employer could have eliminated or reduced the effects of the disability so that it would no longer be significant. Therefore, an employer who knows or should have known that an employee has a disability that prevents him from performing his work must investigate what accessibility measures are needed to eliminate or reduce the effects of the disability, in order not to risk being guilty of discrimination. In the case, the Court concluded that the Police Authority had fulfilled its duty in this regard and was not guilty of either direct discrimination or discrimination as a result of lack of accessibility.

5.3 Can these constitute forms of discrimination? Is there any case law on this?

As the case referred to above, AD 2020 nr. 58, shows,[75] section 7 of the Employment Protection Act requires redeployment measures before an employee can be dismissed for personal reasons, which is relevant in the event of a reduced capacity to work due to illness

[75] See further section 5.2.

and disability. This obligation interacts with the Work Environment Act's far-reaching requirements for rehabilitation and redeployment measures. Employment protection is strengthened in the event of illness and disability. Illness and disability cannot constitute "objective reasons" for dismissal without the redeployment, adaptation and rehabilitation responsibility having been fulfilled. The practice of the Labour Court[76] shows that the requirements set by the Work Environment Act regarding rehabilitation, adaptation of work and redeployment in the event of illness and disability correspond to the Discrimination Act's requirement that adaptations must be made in order for a disabled person to be in a comparable situation with a person without a disability so that there is no discrimination due to lack of accessibility.

Section 22 of the Employment Protection Act contains a provision on priority rules that must be followed in cases of dismissals due to redundancy. The rule means that those who have held their employment the longest shall have priority to remain. However, the employer has the right to exempt three people from the priority rules that the employer deems to be of particular importance to the business. The provision is also semi-dispositive if the workplace has a collective agreement, in which case the employer and the union can agree on a priority list for dismissals which deviates from the priority rules in section 22 of the Employment Protection Act. These two rules in section 22, the right of the employer to exempt three people from the priority rules and the possibility of the employer and union to negotiate the priority list, both risk having a discriminatory effect. The Discrimination Act applies in these situations, but it might be challenging to prove discrimination for a person who finds that they have been dismissed due to discrimination in a situation where the employer has used the exception rule and allowed other people with shorter employment periods to keep their jobs. Or when the employer and union have negotiated about who should be dismissed. To prove discrimination in these situations is hard since redundancy and reorganizations of a company are not something that a court normally assesses, but the employer's business decisions are within the employer's right to manage work.

When the employer and the union negotiate the priority list, the Labour Court has stated that the parties are given a great deal of responsibility and that the Court does not assess the

[76] AD 2014 nr 26.

parties' considerations. The Court declares a contractual priority list invalid only when it is discriminatory or otherwise implies that irrelevant considerations have been taken into account or that other circumstances exist that make it offensive to apply the list in the relevant respect.[77] The role of the union is ofcourse to look after the interests of the members and employees. So the risk that the union will agree to an agreement on a priority list that is discriminatory is probably not that high, but the risk exists.

The rule regarding the employer's right to exclude 3 employees from the priority list, however, carries greater risks of being discriminatory. In AD 2005 nr. 32, the Labour Court found that the priority rules had been used for a discriminatory purpose. An employee who had been diagnosed with multiple sclerosis was dismissed just over three months after the employer became aware of the illness. The employer claimed that there was redundancy, and before the priority list was determined, excluded two employees who, according to the employer, were of particular importance for the business. The Labour Court found that the employer's operation to dismiss the employee and retain two people with equivalent qualifications but with less experience and shorter employment in the company, arguing that they had skills of particular importance to the company, was directly aimed at dismissing the employee with multiple sclerosis. The Court held that it could not be ruled out that the excluded employees had personal qualities that were valuable compared to the employee who was dismissed, but the Court did not consider that the employer had fulfilled its burden of proof to prove that the dismissal of the employee was completely unrelated to his disability. The employer had therefore discriminated against the employee by dismissing him because of his disability.

In this case, the employer was found guilty of discrimination, but it is conceivable that the rule still opens up opportunities to discriminate against someone with a disability if the employer can show why the people who are exempt from the priority rules are important to the company. The employer's decision on which employees are exempted from the priority rules because they are important to the company cannot be legally challenged unless the person who was passed over can show that it is likely that they have been discriminated

[77] AD 1996 nr 114.

against.[78] The priority rules were changed in 2022; in the previous legislation, only employers with a maximum of 10 employees were allowed to exempt two people from the priority rules. According to the current regulation, all employers can make exceptions regardless of size and now 3 instead of 2 employees can be exempted from the priority rules. The case from 2005 was therefore treated according to the old rules and concerned a small company with few employees. If the employer had managed to show why the people who were allowed to keep their jobs were important to the business, it would not have been discrimination. It is conceivable that it will be easier to use the priority rules in a discriminatory way with the new legislation when the rule can be used by all employers regardless of size and more employees can be exempted from the priority rules.

6. Obligations of employers

6.1 Does your law have any measures to make it easier /more attractive for employers to engage workers who already have a disability?

When it comes to the hiring of people with an already existing disability, Swedish law does not regulate any benefits for the employer to hire people with disabilities. Instead, on the basis of the Swedish welfare system, it is up to the state to subsidize individual employment with a salary contribution.[79] If you are unemployed in Sweden, and want to receive unemployment insurance, you have to be in regular contact with the Swedish Public Employment Service (*Arbetsförmedlingen*) and actively look for jobs.[80]
The demand the Swedish Public Employment Agency puts on those in contact with them is that they search for jobs that are suitable for them. For instance, an engineer only needs to search for engineering jobs, and a lawyer only needs to search for a job that fits a lawyer, to be able to receive benefits.[81]

[78] Legislative bill for the Employment Protection Act, *Flexibilitet, omställningsförmåga och trygghet på arbetsmarknaden,* Regeringens proposition 2021/22:176 p. 453.
[79] Sideras, Georgios, Svensk Näringsliv, *Lönebidrag stärker kompetensförsörjningen* 2024-09-18. p. 2
[80] Arbetsförmedlingens webbplats (Swedish Public Employment Service website) on how to apply for unemployment insurance. Last visited on 2025-01-24. https://arbetsformedlingen.se/other-languages/english-engelska/unemployed---what-happens-now/unemployment-benefit.
[81] Arbetsförmedlingens webbplats (Swedish Public Employment Service website) on how to apply for unemployment insurance.

In the ordinance that regulates the Swedish Public Employment Service mandate to give out subsidies, (*Förordning 2022:811 med instruktion för Arbetsförmedlingen*) it is stated in paragraph 2, point 5 that the Swedish Employment Agency by means of employment promotion measures stimulate employers to hire job seekers who cannot find work without support. This is the legal basis for the Swedish Employment Agency to give contributions to individual employers who hire individuals who cannot find work any other way. This system is widely used to employ people with disabilities who may not find work in any other way, or to employ people who are educated, but their disability makes them more expensive to hire.[82] This system is far from perfect, and has been criticized both by trade unions, and the confederation of Swedish enterprise (*Svenskt näringsliv)*, which is the umbrella organization for nearly all Swedish employment organizations.[83] Both the confederation of Swedish enterprise, and the trade unions, criticize that the contribution is not indexed according to inflation, and to the current median salary in Sweden.[84] This means that the cost of hiring somebody with a disability becomes more and more expensive, since the real value of the contribution does not take rising cost into account.

The contribution is capped to 20 000 kronor (SEK) per employee in the contribution program per month. The median salary of an employee in the contribution program is 25 000 SEK.[85] All costs rising above the threshold of 20 000 SEK, such as salary above the threshold, and social insurances such as pension and holiday pay is on the individual employer to pay. Skoopi is the employer organisation for companies that have a work integrating purpose of putting people that are far away from the work market into work. Their statistics point out that the average worker with a disability in Sweden, has a work ability around 68 % of that of a worker who is not suffering from a disability.[86] This means that an employer pays 100 % of salary and social benefits after the limit of 20 000 SEK of subsidies are met, but still only

https://arbetsformedlingen.se/other-languages/english-engelska/unemployed---what-happens-now/unemployment-benefit. Last visited on 2025-01-24.
[82] Sideras, Georgios. *Lönebidrag stärker kompetensförsörjningen.* p. 17.
[83] Sideras, Georgios. *Lönebidrag stärker kompetensförsörjningen.* p. 11.
[84] Habibija, Adnan, Landsorganisationen Sverige, *Etablering eller segmentering? En analys av systemet med subventionerade anställningar.* 2022-04-13 pp. 45-46.
[85] Sider Persson, Ulrika, Skoopi. Svenska Dagbladet, 2024-09-14. https://www.svd.se/a/63ob53/skoopi-ett-svek-mot-manga-som-vill-jobba p. 10. Last visited on 2025-01-24.
[86]Sideras, Georgios. *Lönebidrag stärker kompetensförsörjningen.* p. 11.

gets an output of 68 % out of the worker. If a disability makes your work ability even less, there is less incentive for an employer to hire someone on the basis of this subsidy.

Another problem with these subsidies, is the amount of time it takes for an individual from the time of application, to the time of being granted the subsidy. Regarding these types of errands, the Public Employment Agency has a handling time of 366 days before an application is granted, and the subsidy can be paid out.[87] This means that a potential employee who has the legal right to be hired with the subsidy, might be out of work for over a year just waiting for their application to be accepted.

6.2 Reasonable accommodation according to EU directive 2000/78, in comparison with Swedish labour law

As previously mentioned in section 2 of this report, most of EEDs provisions regarding definitions of discriminatory actions, are mirrored in the Swedish Discrimination Act.[88] In the Discrimination Act it is stated that a person with a disability is disadvantaged by acts that have not been undertaken, that would have put the disabled person in a similar position as someone abled.[89] Furthermore the provision states that the obligation needs to be reasonable, and can be infringed upon if another law says otherwise. The law also states a few examples that should be taken into account when judging if an accommodation request is reasonable or not. First is the economical and practical basis for the accommodation. The second exemption is the duration and extent of the relationship or contact between the operator and the individual, where a short duration and extent of the relationship, could justify that an accommodation request would be unreasonable. The last provision states that an exemption from accommodation also can be made out of other circumstances that is of importance.

According to the Work Environment Act (Arbetsmiljölagen 1977:1160) chapter 2, 1 paragraph, an employer has an obligation to make sure that the working conditions must be adapted to people's different conditions in physical and psychological terms. Before the

[87] Sideras, Georgios. *Lönebidrag stärker kompetensförsörjningen.* pp. 11-12.
[88] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 27.
[89] Discrimination Act (2008:567) chapter 1 section 4 item 3.

inclusion of chapter 1, paragraph 4 point 3 of the Discrimination Act, a plaintiff with a disability could argue that their work environment was not adapted to their physical needs.[90]

As shown above, Sweden has implemented the provision that article 5 EED states into national law. When this provision was added, it created a new basis in Swedish law to pursue a case based on discriminatory grounds.[91] Before the provision was implemented, you had to prove that either direct, or indirect discriminatory actions had been taken against you, as the plaintiff. With the added chapter 1 section 4 item 3 in the Discrimination Act, the plaintiff only needs to prove that reasonable accommodation has not taken place, to prove that a discriminatory action has been undertaken. The exemptions to reasonable accommodation that the law states, also follow the exemptions in article 5 of the EED.[92]

6.3 How Swedish law, and case law define lack of reasonable accommodation

6.3.1 The economical and practical aspects of unreasonable accommodation

A few examples are listed in the Legislative bill for the Discrimination Act as exceptions regarding the economical and practical aspects of accommodation.[93] First, if an accommodation would be too expensive for the employer to take, for instance a small business owner who has to take significant economical steps to accommodate, it might qualify for the economical exemption. The financial conditions of the operator form an important part of the fairness assessment. A measure can only be considered reasonable if the operator is able to bear the cost of it. Expensive measures should not be considered reasonable to demand, but the costs should be reasonable and able to be financed within the framework of ordinary public employment and private employment. If a measure would have major consequences on private or public activities in general, it cannot be considered fair.[94]

[90] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 127.
[91] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 39.
[92] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 24.
[93] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 128.
[94] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 128.

Secondly, another exemption is when there is legal hindrance for the employer to be able to fulfill the request. This is the case for instance when the employer conducts business on a rented premise, and the property owner does not allow changes in the physical environment. Furthermore, if the request would hinder the employer from conducting business, it is also seen as an exemption. An example of this would be making a small corner store wheelchair accessible, when the whole layout of the store is already small, and could not fit the store's wares, and a wheelchair at the same time. However, if the store is big enough so that the employer could still display all his goods even if some were moved to make space for a wheelchair, the exemption is not applied.[95]

There are multiple instances where the economical exemption has been tried in Swedish case law in recent years.

AD 2017 nr 51: Costs of an interpreter too burdensome

In AD 2017 nr 51 a deaf lecturer in public law, applied to work at Södertörn högskola (Södertörn University) and was denied the position, even if the lecturer was the most qualified for the position. The lecturer appealed the decision to the Swedish Labour Court. The position of the university was that the lecturer was the most qualified candidate, but the economical exemption in the Discrimination Act was applicable. The university had made a thorough investigation into the cost needed to provide reasonable accommodation for the lecturer, and found that it would cost as much as another full-time position to hire an interpreter to translate sign language during the lecturer's classes. The Labour Court decided in favor of the university and argued that both Swedish national law, EED and the UN Convention on the Rights of Persons with Disabilities Act was in line with their judgment. The case has been widely publicized in regards to reasonable accommodation, and the UN committee on the rights of persons with disabilities criticized the whole chain of process regarding this case.[96] Not only did the university not seek other remedies for accommodation,[97] but the Labour Court just focused on the cost aspect of accommodation, and not the promotion of people with disabilities in the workforce.[98] Lastly the committee

[95] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 128.
[96] Decision 45/2018 UN committee on the rights of persons with disabilities CRPD/C/23/D/45/2018 https://lagensomverktyg.se/wp-content/uploads/sites/4/2020/09/CRPD-C-23-D-45-2018-English-clean-copy.pdf
[97] Decision 45/2018 UN committee on the rights of persons with disabilities p. 15.
[98] Decision 45/2018 UN committee on the rights of persons with disabilities p. 16.

urged Sweden to take steps into providing education regarding the UN Convention on the Rights of Persons with Disabilities Act due to the fact that not only did they find the university at fault, but also the state agents handling the process, especially the Swedish Labour Court.[99] As of 2025, no such steps have been taken regarding education for state actors.

AD 2024 nr 66: Costs for wheelchair accommodation too burdensome

In AD 2024 nr 66, a nurse who applied for a position at a neonatal ward, was denied a job interview after she informed the employer that she was in a wheelchair. The employer outright told her that she would not be able to perform the duties of the job in a wheelchair. The nurse, represented by her union Svenska Kommunalarbetareförbundet argued that the neonatal ward should be able to accommodate her, and she was able to do the duties of the job, and claimed that this was direct discrimination. As a secondary claim, if the head claim was dismissed, they argued that this was a case of unreasonable accommodation. The court dismissed the claim of direct discrimination, since she was not able to perform the duties of a nurse in a stressful environment without aid, and therefore was not directly discriminated against. Regarding unreasonable accommodation the court argued as follows. The neonatal ward had not done an investigation, or talked to her about how reasonable accommodation could be made. The court argued that the legislative bill for the Discrimination Act gave the neonatal ward the obligation to maybe change its layout to be more wheelchair accessible. They could also make sure that the few duties that the nurse could not be able to do, were instead handled by a colleague. The employer argued that since they already have had an employee that was in a wheelchair, they had already done the necessary inquiry into if the workplace could be made wheelchair accessible, and found it could not. The employer argued that the ward could not be made wheelchair accessible, since they always need to be ready to move hospital beds in the corridors, and it is not unusual that hospital staff quickly have to avoid the beds when they come rushing down the hall. Regarding the need to move hospital beds urgently, the employer argued that it is not possible to move as fast as needed in a wheelchair in a state of emergency. The Swedish Labour Court found that the employer had taken necessary investigation of how to make a reasonable accommodation for a wheelchair user at the workplace. The Swedish Labour Court found that there was no accommodation

[99] Decision 45/2018 UN committee on the rights of persons with disabilities p. 16.

method that would put the nurse in a similar position as an abled person, and therefore ruled in favor of the employer.

AD 2024 nr 12: Costs of stroke accommodations too burdensome

In AD 2024 nr 12, a police officer who suffered a stroke, was dismissed by his employer on the basis that he could no longer perform work of any value to his employer. After multiple attempts by his employer to find work in the police department that he would be able to perform, the department concluded that his disability was so severe that he could not perform any meaningful work for the police department. The policemen's union argued that this was a clear case of direct discrimination, and as a secondary claim that this was a case of unreasonable accommodation. The court argued that since the police department had tried to rehabilitate him and find meaningful work for him, and failed to accomplish that, they were in legal right to terminate his employment according to Swedish labour laws. In regards to his claim of discrimination, the court argued that he has not been in a comparable situation with someone without such a disability, partly that he does not through reasonable measures for availability could have come in such a comparable situation. What the Labour Court means by this is that he could no longer perform any jobs that the police department currently had, and therefore this is not a case of direct discrimination. There is also no existing way to reasonably accommodate his disability to get him to a point where he would be in the same position as someone not suffering the disability. Both claims were dismissed by the Swedish Labour Court.

These cases provide examples of what the Swedish Labour Court looks at when it comes to deciding if accommodation according to the economic and practical aspects are possible. In all cases the deciding factor is the research of the employer if accommodation would be possible within the confines of the daily operations that the employer performs. In AD 2017 nr 51 it was the cost of hiring an interpreter, where the university showed clear examples of how much an interpreter would cost, which were nearly the same as hiring the lecturer, and therefore not reasonable from an economical standpoint. In AD 2024 nr 12, the police department had done a thorough job in investigating if there were any jobs in the department that he could perform with help, and in regard to his injury. Both the verdict and the circumstances are very similar to a case, AD 2022 nr 34, whereas the police department terminated an employee with multiple sclerosis. In both AD 2024 nr 12, and AD 2022 nr 34,

the police department had spent years documenting the decline in both persons, and relocating them to different departments to see if they would be able to perform duties connecting to that department. After these years, and multiple tries of accommodation, the police department terminated their employment when they could not find meaningful work the employees could perform for the employer.

Both AD 2024 nr 66 and AD 2024 nr 12 where cases were the main claim was direct discrimination, and unreasonable accommodation was a secondary claim. This proves that even if the plaintiff's claim of direct, or indirect discrimination is shot down, there is still a chance to prove discrimination. As for the procedural decision to make direct or indirect discrimination the main claim, and unreasonable accommodation a secondary claim, there is an economical aspect to it. Unreasonable accommodation cannot lead to compensatory damages in regards to lack of reasonable accommodation according to the Discrimination Act.[100] This means that a plaintiff who argues a claim of lack of reasonable accommodation, can only get nominal damages out of that claim. If the plaintiff wins a case where direct, or indirect discrimination has taken place, the plaintiff can receive both nominal damages, and compensatory damages.[101] This means that it will always be more economical for the plaintiff to argue lack of reasonable accommodation as a main secondary claim, in case the main claim of direct, or indirect discrimination is not accepted by the court

As all the cases discussed above prove, the question was never regarding if steps of accommodation were given, but if reasonable accommodation could be given, and what that would mean.

6.3.2 The duration and extent of the relationship, in regards to reasonable accommodation

In the second exemption listed in the Discrimination Act, it states that the duration and extent of the relationship or contact between the operator and the individual should be taken into account.[102] The preparatory works regarding this exemption, mentions for instance that the nature of the relationship between the employee, and the employer should be the fact that is

[100] Discrimination Act (2008:567) chapter 5 section 1 item 1.
[101] Discrimination Act (2008:567) chapter 5 section 1 item 1
[102] Discrimination Act (2008:567) chapter 1 section 4 item 3.

taken into consideration here.[103] An employer, and an employee have an ongoing relationship and therefore the employer should make the workplace accessible. If for instance the employee is supposed to be hired for a fixed-term employment for a short duration of time, it might statute an exemption from reasonable accommodation according to the duration and the nature of the employment.[104] Still according to the Work Environment Act, an employer would still need to accommodate the employee during the fixed-term employment.[105] This means that if the employer denies accommodation with the argument that the duration of their relationship does not mean that the employee qualifies for accommodation, the employee would have an easier time to prove that the employer does not comply with the Work Environment Act. This is because the Work Environment Act does not have exemptions to the rule of accommodation. In Swedish case law, this rule has not been tried in a court of law regarding labour law concerning people with disabilities. Most cases where this rule has been applied when it comes to people with disabilities, is where there has been a conflict between individuals, and some kind of public service. One example is a bus company that did not provide a ramp for a wheelchair user, with the argument that he uses the bus so rarely, so that the nature of their relationship does not qualify them to need to accommodate him.[106] Another instance is where a school argued that they did not need to make accommodation for a student in a wheelchair, since he had a graduation date and therefore their relationship had a time limit.[107]

The main thought behind the Swedish employer/employee relationship, is that employment is supposed to be permanent.[108] Even if an employee is on a fixed term employment, the Work Environment Act is still in effect, and requires accommodation even if this exemption in the Discrimination Act is in effect. This exemption is not toothless, but is used in cases regarding other forms of discrimination, or discrimination of people with disabilities, but not in relation to their employer.[109]

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[103] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 128.
[104] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, pp. 128-129.
[105] Work Environment Act (1977:1160) chapter 2 section 1.
[106] Svea hovrätt, dom 2021-10-19 i mål T 3836-20.
[107] Skaraborgs tingsrätt, dom 2017-05-24 i mål T 2447-16.
[108] Källström, Kent & Malmborg, Jonas, *"Anställningsförhållandet"*. 6th edition, Iustus förlag 2022. p. 124.
[109] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p 128.

6.3.3 Exemptions out of other circumstances of importance

The last exemption is the vaguely formulated phrase that exemption from accommodation also can be made out of other circumstances that are of importance. The legislative bill for this exemption mentions instances where the employer does not know that the employee has a disability.[110] That as long as the employer has not been informed of the disability, and the disability might not be visible by the naked eye, the employer can not be held accountable for not accommodating the employee. If the employer would inform the employer of the accommodation needed in regards to the employee's disability, the employer would still be under the exemption for sometime in regards to planning, and executing the accommodation needed.[111] The employer's time for planning could also be expended if the accommodation would affect other people negatively as well. This could be the case for instance where other employees' schedules would need changing to accommodate an employee with a disability.[112]

Another situation where this exemption is applicable, is when the accommodation would break local ordinance rules. This is the case where an accommodation would be a fire hazard, it could affect traffic safety, or hinder accessibility for emergency vehicles.[113] The general rule here is that an accommodation would be a threat to the health and safety of others in certain situations, and the threat can not be remedied in any other way, it is acceptable to not accommodate.

Lastly if the accommodation would impact a culturally, historically or architecturally sensitive and valuable building, the exemption would also apply. This differs from the practical aspects presented in Section 6.2.1. Whereas the practical aspect would pertain to the fact that the owner of a building, or manager does not allow a store owner to change the environment, and therefore the employer can't accommodate because of that. This exemption means that even if the owner of the building and the employer are the same, if it is deemed that the building holds a value in its current form, the employer has a right to exempt

[110] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 129.
[111] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 129.
[112] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 129.
[113] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 129.

accommodation.[114] Worth noting is that many older buildings in Sweden have protection against interference through other laws, which often would hinder an owner legally to change the buildings layout anyways, and therefore fall under exemption due to practicality instead.[115]

There is no relevant Swedish labour case law regarding this last exemption. If the employer is informed about the disability and does not take steps to accommodate, it would first be tried in a court of law to see if it's possible out of an economic and practical standpoint or not. The same can be said about the local ordinance rule, and in most cases the rule of sensitive buildings. This kind of unspecified paragraph is common in Swedish law, to give the courts some wiggle room when a case can not be tried under the other rules of the law. The preparatory works regarding this last sentence of the law states that *"different circumstances can weigh differently depending on the situation in the individual case. In the end, it becomes a question of weighing together all the relevant circumstances in the individual case to form an overall assessment"*.[116] This indicates that a judgment ruling regarding this exemption will take all factors into account, and if an exemption ruling cannot be made on grounds of the economical and practical aspect, or the duration and extent of the relationship, this third option out of outer circumstances might be applicable.

6.4 Remedies in case of non-compliance with reasonable accommodation

A case of unreasonable accommodation can be based on the Discrimination Act,[117] and/or the Work Environment Act.[118] In regards to the Discrimination Act it is stated that anyone who breaks any of the rules stated in the law, have to pay compensation for nominal damages. The compensation should be set accordingly to the damages pertained, in comparison to the damage felt by the person who was exposed to the discrimination. Furthermore, the reasoning behind the discrimination should be in consideration when deciding the compensation. If the culprit had intent, further compensation should be given. Lastly the compensation should be

[114] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p 130.
[115] Riksantikvarieämbetet (Swedish national heritage board) *Lagar och ansvar för kulturhistorisk bebyggelse.* Last visited on 2025-01-31. https://www.raa.se/hitta-information/bebyggelseregistret-bebr/stoddokument-bebr/lagar-och-ansvar/.
[116] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 130.
[117] Discrimination Act (2008:567) chapter 1 section 4 item 3.
[118] Work Environment Act (1977:1160) chapter 2 section 1.

based on the fact that society has an interest in deterring discrimination, and punish those who do it. Therefore the compensation is also based on a system where the economical muscles of a certain employer who do commit discrimination, in comparison if the employer has discriminated before, is also a point of consideration when it comes to the economical compensation.[119]

When it comes to compensatory damages for loss of income due to lack of reasonable accommodation, there is none. In the Discrimination Act it states that an employer does not have to pay compensatory damages for a lack of reasonable accommodation.[120] The general rule regarding compensation for a breach of the Discrimination Act, is nominal damage. When it comes to damages regarding decisions about promotion or employment due to discrimination, the lawmakers have pointed out that the calculation of the damages would be too far reaching, and therefore you can not base a compensatory damages complaint on those grounds.[121] The same thoughts are applied to the fact that when a compensatory payment would be based on a discriminatory action regarding reasonable accommodation, it would be hard to figure out what the economical damage of that decision is. The lawmakers have pointed out that if the plaintiff has suffered compensatory damages due to lack of reasonable accommodation, for instance if the plaintiff by themselves bought the instrument to accommodate themselves, it should be covered by the payment of nominal damages.[122]

In regards to actually pursuing a case through the courts regarding lack of reasonable accommodation, some matters in regards to access to justice arise. Most cases regarding discrimination in Sweden in work related matters, are settled before they ever reach the courts. Firstly, if the discriminated party is a union member, the union can represent you in these matters, and they also pay for the legal costs associated with a potential loss in the courts.[123] Most unions have rules that if an agreeable settlement can be reached before a potential court battle, they will urge the member to accept the settlement, and if they don't, the union might withdraw representation.

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[119] Legislative bill for the Discrimination Act, Prop. 2007/08:95 *Ett starkare skydd mot diskriminering*, pp. 386-393.
[120] Discrimination Act (2008:567) chapter 5 section 1 item 1.
[121] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering.* p. 106-107.
[122] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering.* p. 106.
[123] Björk, Lina. KOLLEGA. *Få arbetsgivare döms för diskrminering.* 2020-12-02 https://kollega.se/diskriminering/fa-arbetsgivare-doms-diskriminering.

If the discriminated party is not a union member, they can turn to the Equality Ombudsman to pursue their case. The Equality Ombudsman also has a high number of settlements in comparison to matters taken to court.[124] Since 2017 the Equality Ombudsman has practically stopped agreeing to settlements unless the opposite party agrees that a breach of the Discrimination Act has taken place, and agrees to pay the sum which the Equality Ombudsmans requests for the breach.[125] Since 2014 the Equality Ombudsman has also started with supervision in cases instead of taking them to court. This means that on the merits of the case, the Equality Ombudsman judges the situation, and decides if a breach of the Discrimination Act has taken place.[126] If the Equality Ombudsman finds that a breach has taken place, they publish it on their website, and inform the employer. These decisions are not legally binding, but means that the Equality Ombudsman sees the case as settled.[127] For the person who was discriminated against, the Equality Ombudsman has said that they can always pursue the matter on their own. But if a person has reported a case to the Equality Ombudsman, they might have had expectations that the matter would be taken to court, especially if the Equality Ombudsman has said that a breach has taken place. Another problem is that often when these non-legally binding decisions are announced, the time period to take these matters to court have expired.[128]

During 2024, the Equality Ombudsman had 32 ongoing cases that were resolved either by settlement or by court, or are still ongoing. Twenty-nine of these cases ended up in settlement, where the employer agreed to admit that a breach of the Discrimination Act had taken place. Two cases were taken to court, where the Equality Ombudsman won both cases, and one case is still ongoing.[129] The number of people who claimed they had been discriminated against in some way and reported it to the Equality Ombudsman for 2024 was 5520.[130] Reported discrimination cases regarding some kind of disability in connection to

[124] Svenaeus, Lina. Arena ide. *Tio år med Diskrimineringsombudsmannen En rapport om nedmontering av diskrimineringsskyddet.* 2020-11. p. 13-14.
[125] Svenaeus, Lina. Arena ide. *Tio år med Diskrimineringsombudsmannen En rapport om nedmontering av diskrimineringsskyddet.* 2020-11. p. 15.
[126] Svenaeus, Lina. Arena ide. *Tio år med Diskrimineringsombudsmannen En rapport om nedmontering av diskrimineringsskyddet.* 2020-11. p. 16-19.
[127] Svenaeus, Lina. Arena ide. *Tio år med Diskrimineringsombudsmannen En rapport om nedmontering av diskrimineringsskyddet.* 2020-11. p. 17.
[128] Svenaeus, Lina. Arena ide. *Tio år med Diskrimineringsombudsmannen En rapport om nedmontering av diskrimineringsskyddet.* 2020-11. p. 17.
[129] Diskrimineringsombudsmannens årsredovisning 2024 (The Equality Ombudsman yearly review 2024) p. 24. https://www.do.se/download/18.16a7b06f194b2d81742c4/1740143393367/DO-arsredovisning-2024.pdf
[130] Diskiminings Ombudsmannens årsredovisning 2024 (The Equality Ombudsman yearly review 2024) p. 17.

labour was 447 reported cases.[131] None of those 31 cases that reached a conclusion was about discrimination in connection to labour.

Employers that do not follow the recommended plans of the Equality Ombudsman, or do not work with them in regards to their investigations, can receive a fine according to the Discrimination Act.[132] The Equality Ombudsman has received criticism for not only being bad at informing about their ability to issue fines in these regards, but also not using that opportunity. [133] In cases where they have discovered that an employer does not follow the Discrimination Act, their viewpoint is that the employer will start to follow it after their review. In cases where they do follow up reviews, and find that the employer has not taken any action after their first review, they still do not issue fines.[134]

The legal costs, in comparison with the amount of money one could possibly pertain in a court battle, makes it risky as an individual to take these matters to court by yourself. Therefore the best way to possibly assert one's right in regards to reasonable accommodation is to be presented by a union, or the Equality Ombudsman, and follow their rules for representation. Cases of discrimination are hard to win, as proven in Section 6.2. The possibility for a settlement might be the easiest, least costly, and fastest way to maybe ensure that some compensation for the violation of the Discrimination Act is enforced.

6.5 NGO's and other labor market parties' views on pursuing compensation

When reasonable accommodation, and the means to pursue damages according to lack of reasonable accommodation was going through the process of being enacted as Swedish law, there was a secondary suggestion of vicarious liability against third parties as a ground for lack of reasonable accommodation.[135] This suggestion took aim at the situation described in Section 6.1.2, where a legal hindrance for a person to accommodate arose due to the fact that a third party hindered it. The clear example is a building manager forbidding an employer to

[131] Diskiminings Ombudsmannens årsredovisning 2024 (The Equality Ombudsman yearly review 2024) p. 19.
[132] Discrimination Act (2008:567) chapter 4 section 4.
[133] Linder, Ola. Independent Living institute, *Diskrimineringsombudsmannens tillsynsarbete - särskilt fokus på aktiva åtgärder mot diskriminering.* 2020-10. p. 8.
[134] Linder, Ola. Independent Living institute, *Diskrimineringsombudsmannens tillsynsarbete - särskilt fokus på aktiva åtgärder mot diskriminering.* 2020-10. p. 7.
[135] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering.* p. 107.

change the layout of the store to accommodate. This suggestion would have meant that a disabled person could aim a vicarious claim against the property owner for denying reasonable accommodation instead, when a legal hindrance under the property owner's control was the reason for the discrimination. The referral bodies that were positive for enactment of this vicarious liability where for instance the Personal Injury Association (Personskadeförbundet RTP), the founders of Independent Living in Sweden, Independent Living Institute, March for accessibility (Marschen för tillgänglighet), Sweden's Anti-discrimination Agencies (Sveriges Antidiskrimineringsbyråer), Sweden's Disabilities Association (Handikappförbunden), The Asthma and Allergy Association (Astma- och Allergiförbundet) and the Swedish Confederation of Professional Associations, (Sveriges Akademikers Centralorganisation).[136] As shown above, multiple organisations with clear connections to providing for, and coming into contact with disabled persons were for a vicarious liability clause. The lawmakers did not include a vicarious liability clause on the grounds that it would be hard to hold a third party accountable on a claim that they might not have knowledge of that they hindered. The lawmakers did agree that such a clause could serve a purpose, but needed further investigation, which has not taken place since this suggestion.[137]

7. Positive action measures

7.1 Are there quotas in employment for persons with disabilities?

There are no quotas in employment for persons with disabilities in Swedish law. Some preferential treatment on the grounds of gender is allowed in employment.[138] Quotas, defined as preferential treatment where the premiered quality constitutes an automatically determining factor, are never allowed.[139]

[136]Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering.* p. 106.
[137]Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering.* pp. 107-108.
[138] Discrimination Act (2008:567) chapter 2 section 2 item 2.
[139]Legislative bill for the Discrimination Act, Prop. 2007/08:95 *Ett starkare skydd mot diskriminering*, p. 165.

7.2 Does your country's law have positive action measures for persons with disabilities and if so, what does it entail?

The Discrimination Act requires employers to take active measures to prevent and prohibit discrimination in the workplace and to promote equal rights. The demand for active measures include continual investigation into risk of discrimination and obstacles to equal rights, analysis of the causes for any risks or obstacles identified, taking any action to prevent discrimination and promote equal rights that can reasonably be demanded, monitoring and evaluating such actions continually. Employers must cooperate with employees on active measures. Employers are also required to document their work on active measures, but there is not a requirement to turn in that documentation or report on work on active measures, unless there is an inquiry by the Equality Ombudsman.[140]

The Swedish Public Employment Service offers subsidies to employers who hire individuals with disabilities.[141] These subsidies help offset costs related to reduced productivity or necessary workplace adjustments. Employers can receive funding to improve workplace accessibility, such as installing assistive technologies or modifying workspaces.

7.3 Are best practices and case law on positive action known in your country?

There is not much case law or official best practices on active measures because individuals do not have right of appeal concerning active measures, only the Equality Ombudsman. The Equality Ombuds has not brought any claims of lack of active measures to the Labour Court and very rarely issues supervisory decisions on the matter either. The Discrimination Act previously required employers to create a yearly plan to promote equal treatment in the workplace, but this requirement has been supplanted with the requirement to document work with active measures mentioned in section 7.2.[142]

[140] Discrimination Act (2008:567) chapter 3 section 1-14.
[141] Regulation on special measures for persons with disabilities resulting in reduced ability to work (*Förordning (2017:462) om särskilda insatser för personer med funktionsnedsättning som medför nedsatt arbetsförmåga*), section 3-6.
[142] Equality Ombudsman (DO), *Dokumentera arbetet med aktiva åtgärder*, https://www.do.se/for-arbetsgivare-och-utbildningsanordnare/aktiva-atgarder-for-arbetsgivare/dokumentera-arbetet-med-aktiva-atgarder. Last visited on 2025-03-03.

Collective agreements in Sweden, which are binding between employers and trade unions, often include provisions that indirectly function as positive action measures for persons with disabilities.[143] Agreements may encourage employers to take advantage of government wage subsidies when hiring individuals with disabilities. These subsidies help mitigate financial risks for employers while fostering inclusive hiring practices. Provisions requiring employers to collaborate with unions to ensure workplace environments are accessible for employees with disabilities, including ergonomic adjustments or assistive technologies.[144] Many collective agreements include specific clauses for employees with disabilities or long-term illnesses to facilitate their reintegration into the workforce through modified tasks, reduced working hours, or vocational training. Wage subsidies and financial support for workplace accessibility are promoted by the Swedish Public Employment Service, and unions often work with employers to ensure these programs are utilized effectively.[145]

7.4 Are positive action measures permitted only for limited grounds of discrimination, including disability, or is there a general derogatory provision authorising unilateral implementation of positive action measures?

There is no general derogatory provision that authorizes broad implementation of positive action measures under Swedish law. Positive action measures are permitted only for the grounds of gender under the Discrimination Act. Positive action must be proportionate and targeted, meaning it is implemented to address a specific disadvantage faced by individuals on a case-by-case basis.[146]

[143] Habibija, Adnan, *Etablering eller segmentering? En analys av systemet med subventionerade anställningar*, The Swedish Trade Union Confederation (LO), 2022, pp. 16-20.
[144] Work Environment Act (1977:1160), Chapter 3, Section 3.
[145] Arbetsförmedlingen (Public Employment Agency), *Lönebidrag (Wage Subsidies)*, https://arbetsformedlingen.se/for-arbetssokande/extra-stod/stod-a-o/lonebidrag. Last visited on 2025-03-03.
[146] Legislative bill for the Discrimination Act, Prop. 2007/08:95 *Ett starkare skydd mot diskriminering*, pp. 166-171.

8. The role of workers representatives and the social dialogue

8.1 Worker representation and inclusion of accommodation in regard to employees with disabilities

The Work Environment Act serves as the primary law that regulates employers' requirements as to accommodating an employee that needs accommodation in their work environment. Worker representation in Sweden is regulated through the Co-determination act (*lag om medbestämmande i arbetslivet 1976:580*) which governs several instances where the employer needs to inform the local union, and if there is not a local union, the central union about changes at the workplace.[147] For instance the employer needs to inform the union about ongoing changes of the organization, further plans and development of the company, the company's economy and budget, and the guidelines implemented for personal policy. Per the guidelines for personal policy, it is not unusual for companies in Sweden to have a plan in place for how an accommodation procedure should take place.[148] The Swedish Work Environment Agency (*Arbetsmiljöverket*) also has the duty to help companies that feel that they don't have the knowledge to implement accommodations in a correct way.[149] As shown in Section 6.2.1 with the cases of AD 2024 nr 12, and AD 2022 nr 34 (the police department cases), there had been multiple attempts at finding work, and accommodating the police officer before termination was even seen as an option, which is in accordance with the Work Environment Act and the the Employment Protection Act.[150]

8.2 Representative Worker Bodies for employees with disabilities

As most major companies have a local union representative, they also have safety delegate (skyddsombud) who often are part of local union clubs, but their responsibilities differ in regards to the local union representative. Whereas the local union representative only represents that union's members, the safety delegate has an overall responsibility for all

[147] Co-determination Act (1976:580) section 1.
[148] Arbetsgivarverket (The Swedish Employer Agency) "*Funktionsnedsättning"* https://www.arbetsgivarverket.se/arbetsgivarguiden/funktionsnedsattning. Last visited on 2025-02-05.
[149] Arbetsmiljöverket (The Swedish Work Enviroment Agency) "*Vägledning om arbetsanpassning"* https://www.av.se/halsa-och-sakerhet/arbetsanpassning-individuella-atgarder/vagledning-om-arbetsanpassning/. Last visited on 2025-02-05.
[150] Work Environment Act (1977:1160) chapter 2 section 1. Employment Protection Act (1982:80) section 7.

workers within the confines of the workplace.[151] Oftentimes these responsibilities include making sure that practices of the workplace are up to code, that the Working hours act (arbetstidslagen 1982:673) is being followed and so on. In regards to the safety of the workplace, the safety delegate has a mandate to also be a part of the accommodation process for employees with disabilities in accordance with the Work Environment Act. [152]

An employee individually cannot pursue a case in accordance with the Work Environment Act.[153] It is the Swedish Work Environment Authority (Arbetsmiljöverket) that has the mandate to sanction employers who do not follow the Work Environment Act. If an employer does not, or does not want to take certain measures that the safety delegate deems are in accordance with the Work Environment Act, they have an obligation to contact the Work Environment Authority.[154]

8.3 Are there any collective agreements that promote the inclusion of persons with disabilities? If these exist, at what level (branch, company) and what do they entail?

There are no collective bargaining agreements that promote, or separate an able-bodied person from a person with a disability in Sweden. This follows what was presented in Sections 7.1 and 7.2 regarding that there are no positive action requirements in Swedish law. The Work Environment Act does not separate people with disabilities in comparison to able-bodied persons. The Work Environment Act states that *"the working conditions must be adapted to people's different conditions in physical and psychological terms".*[155] A person with a disability might need more adaptation to the workplace to reach the same levels as an able-bodied person, but the same rule still applies. For an abled person this might for instance

[151] Arbetsmiljöverket (Swedish Work Environment Authority) *Skyddsombud och arbetsmiljöombud.* Last visited on 2025-02-24.
https://www.av.se/arbetsmiljoarbete-och-inspektioner/skyddsombud-och-arbetsmiljoombud/
[152] Arbetsmiljöverket (Swedish Work Environment Authority) *Skyddsombud och arbetsmiljöombud.* Last visited on 2025-02-24.
https://www.av.se/arbetsmiljoarbete-och-inspektioner/skyddsombud-och-arbetsmiljoombud/
[153] Work Environment Act (1977:1160) chapter. 7 section 1
[154] Arbetsmiljöverket (Swedish Work Environment Authority) *Skyddsombud och arbetsmiljöombud.* Last visited on 2025-02-24.
https://www.av.se/arbetsmiljoarbete-och-inspektioner/skyddsombud-och-arbetsmiljoombud/
[155] Work Environment Act (1977:1160) chapter. 2 section 1.

apply when they return from sick leave and are not able to handle the same workload as before.

What can be said is that most unions' articles of association deal with the fact that the union is for democratic values such as equality and diversity and the equal value of all people.[156] This also includes that the unions strive for equality and diversity at distribution of fiduciary duties.[157] Every member of a union should have the same opportunity to represent the union at local, regional or national levels. There is no outright mention of people with disabilities in these articles of association, but when it comes to being included on the grounds of equality and diversity, it can be assumed that people with disabilities are included.

As shown in Section 6.1, the Swedish government takes a more active role in providing work for people with disabilities, and the same can be said regarding promoting inclusion of persons with disabilities. The government owns a corporation called Samhall, whose main objective is to create meaningful and fulfilling work for people with disabilities that are far from the job market.[158] The company's business model is to hire people with disabilities and rent them out to other businesses, in the hopes that those businesses will hire them full-time after a test period. The collective bargaining agreement between Samhall, Landsorganisation Sverige (an umbrella employee organisation of 13 workers unions) and Fremia (an employer organization) mentions the term "disability" a total of three times.[159] These mentions are all in the ingress of the collective bargaining agreement and only mentions that Samhall's

[156] Unionen, *stadgar*. Adopted 2023. p. 4.
https://www.unionen.se/sites/default/files/files/3292-1_Unionen_Stadgar_2023_WEBB_0.pdf. Last visited on 2025-02-05.
Kommunal, *stadgar.* Adopted 2022 p. 6.
https://webbfiler.kommunal.se/sites/default/files/2022-10/Stadgar%202022%20Svenska%20kommunalarbetaref%C3%B6rbundet.pdf. Last visited on 2025-02-05.
IF metall, *stadgar.* Adopted 2023. p. 4-5
https://www.ifmetall.se/globalassets/avdelningar/forbundskontoret/resurser/dokument/stadgar/stadgar-2023-2025.pdf. Last visited on 2025-02-05.
[157] Unionen, *stadgar*. Adopted 2023. p. 4.
https://www.unionen.se/sites/default/files/files/3292-1_Unionen_Stadgar_2023_WEBB_0.pdf. Last visited on 2025-02-05.
Kommunal, *stadgar.* Adopted 2022 p. 6.
https://webbfiler.kommunal.se/sites/default/files/2022-10/Stadgar%202022%20Svenska%20kommunalarbetaref%C3%B6rbundet.pdf. Last visited on 2025-02-05.
IF metall, *stadgar.* Adopted 2023. p. 4-5.
https://www.ifmetall.se/globalassets/avdelningar/forbundskontoret/resurser/dokument/stadgar/stadgar-2023-2025.pdf. Last visited on 2025-02-05.
[158] Samhall, "*Vårt uppdrag"*. https://samhall.se/om-samhall/. Last visited on 2025-02-05.
[159] Kollektivavtal Samhall 2023-2025.

organization structure, like all companies, might need to structure itself according to its economic situation, and adapt to change if needed to. But if Samhall does need to change its organization in any way, the company needs to keep in mind that they have employees who might not adapt to change well, due to their disabilities.[160]

Another way people with disabilities are included in the job market is through work integrated social enterprises (arbetsintegrerande sociala företag). These are companies that have two set goals, conducting profitable business where the main income is reinvested into the business, and have as a purpose to help integrate people into society and the work market.[161] These kinds of companies are not only aimed to help people with disabilities, but also to support migrant workers, and other groups that are far from the job market. The collective bargaining agreement for the work integrated social enterprises never mentions the word disabled.[162]

Both the collective bargaining agreement for Samhall, and for the work integrated social enterprises are structured as collective bargaining agreements in Sweden usually are. As shown in 6.5 it is not unusual for employer organisations, and unions to work for different forms of inclusion, and other work integrating programs for people that are disabled. The collective bargaining agreement's main purpose is that of regulating employment benefits, and therefore do not include passages of how to promote inclusion of certain members of society. Whereas Samhall and the work integrated companies have an outspoken aim of inclusion of people with disabilities, other companies do not differentiate. These two companies as examples are aimed at people with disabilities that are the furthest away from the job market. In many cases reasonable accommodation is a reasonable solution, and employers only need to act within the confines of reasonable accommodation to achieve inclusion.

[160] Kollektivavtal Samhall 2023-2025. p. 3.
[161] Verksamt.se, *Arbetsintegrerande sociala företag,* https://verksamt.se/starta-foretag/andra-satt/socialt-foretagande/arbetsintegrerade-sociala-foretag. Last visisted on 2025-02-05.
[162] Kollektivavtal: *Arbetsintegrerande och sociala företag 2023-10-01-2025-09-3.*

Within the confines of workplaces that are connected to a collective bargaining agreement, both in private and public employment, there is something called transition support.[163] This support is aimed at employees whose employment is terminated for various reasons, for instance if they develop a disability which makes their current job impossible to perform. This support includes finding a new job, starting studies in your current field or a new field, or help starting your own business.[164]

8.4 Practices at the workplace in regards to accommodation

8.4.1 How to handle a dispute at the workplace

If a single employee with a disability feels that accommodation is not taking place according to the Work Environment Act, the first step would be to contact the local union, or central union if the employee is a member of one. The chances that the person is connected to a union is high, since about 62 % of all women in labour are in a union, whereas 57 % of men in labour are in a union. When it comes to white-collar workers, 76 % of all women are in a union, and 69 % of the men are also in unions.[165] If there is a safety delegate at the company, the employee can turn to that person in regards to if their accommodation needs are being met or not. In the end, it is up to the employer to decide which steps of accommodation are reasonable according to the company's business practices, and out of the economical and practical aspects.[166] Though case law regarding reasonable accommodation were presented in Section 6.3.1, there are not that many cases where the employer and the employee take matters to court. In regards to the Work Environment Act, there is no relevant case law regarding accommodation.

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[163] Avtalat, *Transition support.* Last visited on 2025-03-03. https://www.avtalat.se/in-english/white-collar-worker/transition-support/
Omställningsfonden, *Avslut vid nedsatt arbetsförmåga.* Last visited on 2025-03-03. https://www.omstallningsfonden.se/privatperson/stod-nar-anstallningen-tar-slut/avslut-vid-nedsatt-arbetsforma ga/

[164] Avtalat, *Transition support.* Last visited on 2025-03-03. https://www.avtalat.se/in-english/white-collar-worker/transition-support/
Omställningsfonden, *Avslut vid nedsatt arbetsförmåga.* Last visited on 2025-03-03. https://www.omstallningsfonden.se/privatperson/stod-nar-anstallningen-tar-slut/avslut-vid-nedsatt-arbetsforma ga/

[165] LO, *Facklig anslutning 2023* https://www.lo.se/start/lo_fakta/facklig_anslutning_2023. Last visited on 2025-02-05.

[166] Legislative bill for the Discrimination Act, Prop. 2013/14:198 *Bristande tillgänglighet som en form av diskriminering*, p. 107.

When it comes to disputes handled by the union, it is up to the union to decide if they are willing to take matters to court or not. Most unions have rules that if an agreeable settlement can be reached before a potential court battle, they will urge the member to accept the settlement, and if they don't, the union might withdraw representation. In Sweden, the loser pays principle is applied when it comes to distributing the cost of a court proceeding. This means that a settlement is more beneficial than going to court, and risk having to pay the other party's legal fees and costs as well.[167]

8.4.2 The union's opinion on cases regarding reasonable accommodation

When it comes to reasonable accommodation in the workplace, and if practices regarding reasonable accommodation are being followed, we have contacted multiple unions regarding their opinion on the matter. Not all unions that we contacted responded, but of those who did, a summarized version of their responses is presented.

Unionen (the biggest white-collar union in Sweden) and the engineers of Sweden (*Sveriges ingenjörer*) both gave similar answers. They both responded that they can't for certain say that good practices are applied in Swedish workplaces regarding reasonable accommodation, but that they believe so. According to their statistics regarding reasonable accommodation, most of these matters seem to be handled on local levels. Most errands they have regarding reasonable accommodation is that the local unions contact them at central level to get their legal view on how far-reaching reasonable accommodation is supposed to be, when the employer has denied some suggestion on reasonable accommodation. They also urge the local union to contact them again if steps of accommodation are not taken, so they then can take the matter forward. Both unions responded that almost all of the time the local union don't need their help beyond that point.[168]

Handelsförbundet (the retail workers union) reported that they definitely see a difference between how different errands at the workplace affect able bodied persons, and people with disabilities. First of all it is rather common for Handelsförbunde's members to have their hours cut, which is one of the things the union tries to combat. When one of their members

[167] The Swedish Code of Judicial Procedure (Rättegångsbalken 1942:740) chapter 18, item 1.
[168] Email correspondence with ombudsman at Unionen, 2025-02-16 on file with the author (Olle Andersson Gunnarsson). Oral correspondence with chief of negotiating and legal counseling at Sveriges ingenjörer, multiple times between the dates of 01-25-2025 until 02-28-2025.

has their hours cut, it is not unusual that the member tries to pick up shifts at other stores if they work for a larger employer. Handelsförbundet says that it is easier for an able bodied person to work at different stores, whereas it is more of a problem for a person with a disability to switch stores. They took up two examples of this. First is one member they had who was in a wheelchair, and had applied, and got the job at a larger store close to home. This store was wheelchair accessible. When that store cut the members' hours, the member was advised to pick up shifts at stores in the general area to be able to cover food and rent. The problem was that the stores were smaller which made it harder to be able to move around in them, and since the member was not a full time employee at those stores, they did not want to accommodate. The member also had a harder time commuting to those stores because of the wheelchair.[169]

They also pointed out that in some cases their members with neurological disabilities have a harder time picking up shifts at other stores since they have a harder time adapting to change.

Kommunal (the union for those who work in the Swedish welfare sector) reported that their main focus, and main problem regarding disabilities, is the disabilities that arise due to the workload of their members. This in their opinion is a failure to meet reasonable accommodation. They especially pointed out that healthcare workers' work environment is becoming unsafe, and are leading to long term damages to the employees. They pointed out both long term damages to the body, but also to the mind. This view of what a disability is, is shared by the Swedish Public Employment Service who views long term sick leave the same as a disability.[170]

IF Metall (the union for industrial workers) reported that most of their cases are regarding disabilities that have arisen during the employment. They said that on a structural level they of course work for a sustainable working life, where a worker can work their entire life without sustaining an injury that could lead to a disability. When disabilities arise, accommodation is often handled by the local union clubs. Since most of the disabilities they handle are connected to the heavy labour their members perform, employers and the union seem to have a shared view on how to accommodate those disabilities in the workplace,

[169] Email correspondence with legal advisor at Handelsförbundet, 2025-02-14 on file with the author (Olle Andersson Gunnarsson).
[170] Email correspondence with ombudsman at Kommunal, 2025-02-20 on file with the author (Olle Andersson Gunnarsson).

according to IF Metall. IF Metall also pointed out that they have a disability insurance for their members if they should sustain a disability at their work which makes it impossible for them to work in the future.[171]

It has to be said that these are only a handful of all unions in Sweden, and most of these answers come from a union representative. These representatives have also focused on specific parts of the questions that they were asked. The unions who answered the question of reasonable accommodation practices work well (Unionen, Sveriges ingenjörer and IF Metall) all pointed to the fact that most cases are handled, and seemingly handled well by their local union clubs.

9. Remedies, procedures and sanctions

9.a Remedies against discrimination

9.a.1 Does an individual worker have judicial means to combat his/her discrimination on the basis of a disability at work? Does an individual worker have judicial means to combat any rights connected with disability (proper working conditions to particular disability)?

Chapter 6 of the Discrimination Act contains provisions on the legal proceedings concerning discrimination claims. The first section stipulates that some cases are to be dealt with using the procedures in the Labour Disputes (Judicial Procedure) Act (1974:371). These cases are, firstly, the ones concerning an employee, a person who is enquiring about or applying for work or is applying for or carrying out a traineeship, or is available to perform work or is performing work as temporary or borrowed labour.[172] Secondly are the exceptions from the prohibition of discrimination.[173] Thirdly is the obligation of the employer to investigate and

[171] Email correspondence with ombudsman at IF METALL, 2025-02-17 on file with the author (Olle Andersson Gunnarsson).
[172] Discrimination Act (2008:567) chapter 2 section 1.
[173] These exceptions are found in the Discrimination Act (2008:567) chapter 2, section 2. They include inter alia, the difference in treatment due to the nature of the work or the context in which the work is carried out, measures (other than pay and terms of employment) that contribute to efforts to promote equality between women and men. Also, the application of age limits with regard to the right to pension, survivor's or invalidity benefits in individual contracts or collective agreements and

take measures against harassment.[174] Fourthly is the prohibition of reprisals of the employer against an employee who reports the employer for breaches of the Discrimination Act.[175] Other disputes under the Act are tried by the general district courts where the procedural provisions of the Swedish Code of judicial procedure (1942:740) are applicable.

The Labour Court is the first and only instance to settle disputes when the lawsuit has been filed by an employer organization, the union, by an employer who has concluded a collective agreement by themselves, or by the Equality Ombudsman. If the dispute concerns a labor dispute or otherwise, provided that a collective agreement applies between the parties or that the individual employee affected by the dispute is employed in work referred to in a collective agreement by which the employer is bound.[176] Consequently, an employee who wants to file a lawsuit against an employer with the cause of action being discrimination can do so, with the Labour Court as the first and only instance, if he or she is a member of a union and the union is filing the lawsuit on behalf of the employee, or by the Equality Ombudsman. An employee who is not represented by a union or the Equality Ombudsman cannot file a lawsuit at the Labour Court as the first instance but must instead file a lawsuit at the general district court.[177] The decision of the district court can then be appealed to the Labour Court.[178] Hence, there are different procedures depending on if the employee who considers themself to be a victim of discrimination is backed up by a union or the Equality Ombudsman. This creates inequality because the losing party generally has to bear the other party's legal costs.[179] When the union or the Equality Ombudsman joins as a party, they bear the financial risk and only for one judicial instance. An employee who brings a lawsuit on their own, risks having to bear the other party's costs not only in one but in two instances. A legal process in two instances is also time-consuming and can be mentally stressful. On the other hand, an employee represented by a trade union or the Equality Ombudsman only has their case heard in one instance, which can be criticized from a perspective of procedural safeguard, especially as the prohibition of discrimination is a human right.

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differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

[174] Discrimination Act (2008:567) chapter 2 section 3.
[175] Discrimination Act (2008:567) chapter 2 section 18.
[176] Labour Disputes (Judicial Procedure) Act (1974:371) chapter 2 sections 1 and 4.
[177] Labour Disputes (Judicial Procedure) Act (1974:371) chapter 2 section 2 paragraph 1.
[178] Labour Disputes (Judicial Procedure) Act (1974:371) chapter 2 section 3 paragraph 1.
[179] The Swedish Code of Judicial Procedure (1942:740) chapter 18 section 1.

Another option of an employee who has been subject of discrimination is to file a complaint at the Equality Ombudsman. The role of the Equality Ombudsman is to supervise compliance with the Discrimination Act and primarily to induce those to whom the Act applies to comply with it voluntarily.[180] At the Ombudsman's discretion, the Ombudsman can bring a case against an employer if the employee is consenting.[181] If the Ombudsman wants to initiate a workplace inspection, the employer has to provide information about circumstances in their activities that are of importance for the supervision exercised by the Ombudsman. This information includes information about qualifications when the Ombudsman is assisting in a request from an individual who has been denied an employment, an employment interview, a promotion or selected for an education provided by the employer when the individual wants information of what qualifications the successful applicant had and how they were assessed in accordance with chapter 2, section 4 of the Act. The employer also has to give the Ombudsman access to workplaces for the purpose of investigations and also has to oblige to attend discussions with the Ombudsman.[182] Failure to comply with the information obligation means that the Ombudsman can impose a fine on the employer.[183]

9.a.2 What are the sanctions against employers for discrimination on the grounds of disability?

The sanction for violating the prohibition of discrimination or reprisals under the Discrimination Act is to pay discrimination damages for the offence resulting from the infringement to the person who has been subjected to discrimination. When the damages is decided, particular attention shall be given to the purpose of discouraging such infringements of the Act.[184] The legislative bill states that the damages is to be calculated on how severe the violation is. Several circumstances are to be taken into account when assessing the violation. The starting point is the nature and extent of the violation. As regards to the nature of the violation, a violation shall be considered more serious when it has more far-reaching consequences, for example if the discrimination involves losing a job or a home

[180] Discrimination Act (2008:567) chapter 4 section 1.
[181] Discrimination Act (2008:567) chapter 4 section 2 and chapter 6 section 2.
[182] Discrimination Act (2008:567) chapter 4 section 3.
[183] Discrimination Act (2008:567) chapter 4 section 4.
[184] Discrimination Act (2008:567) chapter 5 section 1.

or the opportunity for education. A violation that does not have lasting consequences is considered less severe. Circumstances such as if the violation of the law takes on a disgraceful expression for the affected person, occurs in public or is otherwise likely to attract public attention shall also be considered aggravating. In the assessment, both the affected person's interest in the rules being enforced and the personal experience of the violation entailing must be taken into account. Moreover, the intention of the person who discriminated shall also be taken into account. Typically, it is aggravating if there has been a desire to offend someone. The discrimination damages is to be determined so that it fairly compensates the person affected by the violation of the law. The various factors must be weighed up taking into account the circumstances of the individual case.[185] The Labour Court is using an overall assessment of all the circumstances of the case when determining the amount of damages for discrimination.[186]

An employer shall also pay compensatory damages for the loss incurred due to discrimination or reprisals of an employee, a person enquiring about or applying for work, a person applying for or carrying out a traineeship or a person who is available to perform work or is performing work as temporary or borrowed labour. However, this does not apply to loss incurred in decisions concerning employment or promotion. Nor does it apply to loss incurred as a result of discrimination in the form of lack of accessibility.[187] This is due to the fact that it is not seen as a compensable financial loss to miss out on an employment or promotion since the person is considered to be able to stay in his or her old position or apply for other jobs. Hence, only the damages for discrimination are applicable.[188]

Moreover, contractual content in employment contracts or collective agreements that is discriminatory and prohibited under the Discrimination Act can be adjusted or declared invalid if the person who has been discriminated against requests it. The same applies if an employment contract is terminated in violation of the prohibition of discrimination.[189]

[185] Legislative bill for the Discrimination Act, Regeringens proposition 2007/08:95, *Ett starkare skydd mot diskriminering* pp. 553-554.
[186] AD 2020 nr. 13.
[187] Discrimination Act (2008:567), chapter 5 section 1 paragraph 2.
[188] Källström, Kent & Malmberg, Jonas, *Anställningsförhållandet,* 6th edition, Iustus förlag, 2022.
[189] Discrimination Act (2008:567), chapter 5 section 3.

However, this does not mean that the employer can be forced to reinstate a person who has been dismissed from employment.

Discrimination damages are low in Sweden compared to legal costs. Since the main rule in Swedish law is that the party that loses the case must pay the opposing party's legal costs.[190] For example, in the case AD 2024 nr. 66, the union claimed SEK 150,000 in discrimination damages but lost the case and had to pay the opposing party's legal costs of SEK 374,000. The risk of losing and having to pay legal costs can have a deterrent effect on pursuing discrimination cases, as it can be very expensive if you lose. Even if you win on the merits and the court finds that discrimination has occurred, the court can distribute the legal costs in a way that makes it expensive for the plaintiff. In the case AD 2015 nr. 44, the plaintiff had claimed SEK 100,000 but the court awarded SEK 25,000 in discrimination damages. The plaintiff was therefore not seen as winning by the court which ordered them to pay the other party's legal costs of SEK 42,300. In the case AD 2020 nr. 13, the state admitted that the police authority had subjected a job applicant to discrimination in the form of lack of accessibility. The dispute concerned whether the police authority had also been guilty of indirect discrimination when it had terminated the employment during the probationary period and applied a language requirement. The employee who was hired as an administrator had dyslexia. There was also a dispute about how much discrimination damages the state should pay. The plaintiff had claimed SEK 175,000 and the state had agreed to pay SEK 20,000. The labor court did not consider that the state had been guilty of discrimination due to indirect discrimination. The court awarded SEK 75,000 in discrimination damages due to lack of accessibility. The union that brought the employee's case had also claimed compensatory damages but that claim was not upheld. The court considered that the union had lost more in terms of the amount of discrimination damages than the state and considered that it was not possible to distinguish which of the legal costs were attributable to different parts of the case. However, the court considered that it was clear that the issue of indirect discrimination and thus whether there was any right to financial compensation had required more work than the issue of the amount of discrimination damages. The court therefore ruled that the state should be reimbursed four-fifths of its legal costs by the union, which amounted to SEK 140,682.

[190] The Swedish Code of Judicial Procedure (1942:740) chapter 18 section 1.

9.a.3 Does an individual worker have non-judicial means to combat his/her discrimination on the basis of a disability at work (a non-judicial procedure may include an internal complaint body or person of the company, the possibility to address labour inspectorate; asking assistance or advice of an association)?

In a workplace where at least five employees are regularly employed, or if the working conditions require it because the work is hazardous, at least one Safety Delegate shall be appointed from among the employees. The Safety Delegate is appointed by the union, that is, or usually is, bound by a collective agreement in relation to the employer. If there is no union represented at the workplace, the Safety Delegate is appointed by the employees. In a workplace with fewer than fifty employees that has not got a Safety Delegate appointed amongst the employees, a regional Safety Delegate may also be appointed from the union that has a collective agreement at the workplace.[191] At a workplace with at least fifty employees, or if it is requested by the employees, a safety committee composed of representatives of the employer and the employees shall be appointed. The representatives of the employees are appointed from among the employees, by the local union that is or is usually bound by collective agreements in relation to the employer. If there is no such organization, representatives shall be appointed by the employees.[192]

The Safety Delegate represents the employees in matters concerning the work environment and shall work towards a satisfactory work environment. The Safety Delegate shall ensure that the employer meets the requirements for a good working environment and safety standards.[193] If the Safety Delegate believes that measures need to be taken to achieve a satisfactory working environment, the safety delegate is to contact the employer and request such measures. The Safety Delegate can also request that a specific investigation at the workplace is to be carried out. The employer is obliged to act and notify the Safety Delegate in such matters without delay. If the employer fails to act, the Safety Delegate can notify The

[191] Work Environment Act (1977:1160) chapter 6 section 2.
[192] Work Environment Act (1977:1160) chapter 6 section 8.
[193] Work Environment Act (1977:1160) chapter 6 section 4.

Swedish Work Environment Authority and request that the Authority consider whether to issue an injunction or prohibition to resolve the problem.[194] If certain work poses an immediate and serious danger to the life or health of employees and if correction cannot be achieved immediately by way of the Safety Delegate contacting the employer, the Safety Delegate may decide that the work should be suspended pending a decision by the Swedish Work Environment Authority.[195] Hence the Safety Delegate has a strong mandate, and an employee who is experiencing discrimination or inadequate accessibility can turn to the Safety Delegate for assistance and this is how work environment related problems are meant to be dealt with. However, smaller workplaces with less than five employees are not covered by the legal requirement to have a Safety delegate and therefore runs the risk of having poorer work environment protection and knowledge about work environment standards. On the other hand, it is up to the employees themselves to decide on whether to appoint a Safety Delegate in a small workplace.[196] But then again employees in a small workplace might not know that they are able to appoint a Safety Delegate. An employee can also advise The Swedish Work Environment Authority to do an inspection by contacting the Authority or by filling out a form on their website.

In issues concerning dismissals or termination of employment due to circumstances relating to the employee personally, the employee shall be notified of this in advance by the employer and the employer is also obliged to notify the union if the employee is a union member. The employee and the union then have the right to consult with the employer. However, a prerequisite is that consultation is requested no later than one week after the notification or notice was given. If consultation has been requested, the employer may not implement the termination or dismissal until the consultation has been completed.[197]

An employee who is a member of a union may also ask the union for help in negotiating with the employer in matters concerning the employment. The employer is obliged to negotiate with the union in matters concerning their members.[198]

[194] Work Environment Act (1977:1160) chapter 6 section 6 a.
[195] Work Environment Act (1977:1160) chapter 6 section 7.
[196] Ahlberg, Kerstin, *Arbetsmiljölagen med kommentarer*, p. 99, 17th edition, Prevent, 2024.
[197] Employment Protection Act (1982:80) section 30.
[198] Co-determination Act (1976:580) section 10.

9.a.4 Who has to prove discrimination in case of conflict? How does this work and do you have examples how this works from case law?

The Discrimination Act has a rule of the shifted burden of proof that stipulates:

"If a person who considers that he or she has been discriminated against or subjected to reprisals demonstrates circumstances that give reason to presume that he or she has been discriminated against or subjected to reprisals, the defendant is required to show that discrimination or reprisals have not occurred."[199]

This provision has its origin in EU law.[200] The purpose of the rule is to facilitate an alleviation of evidentiary burden for the plaintiff in order to make sure the prohibitions on discrimination can be enforced in practice. If the plaintiff is able to prove facts that give reason to assume that he or she has been discriminated against, there is a so-called prima facie case of discrimination. This means that discrimination appears to exist and it is therefore incumbent on the defendant to prove that discrimination has not occurred, for example by showing that an actual disadvantage was not connected with the alleged ground of discrimination. If the plaintiff fails to make discrimination even admissible, the burden of proof never shifts to the defendant, since it can already be established that discrimination cannot be proven in the case.[201]

The Swedish Supreme Court has described the rule as a presumption rule. This means that if the factual circumstances that the plaintiff refers to, in the first stage of the evidentiary examination, shows that it is likely that discrimination has occurred this creates a presumption of discrimination. The defendant can then break the presumption through his counterarguments and the evidence in this regard. In the reasons for the judgment of the Swedish Supreme Court, there is a discussion of how the rule on alleviation of evidentiary burden should be interpreted.[202]

[199] Discrimination Act (2008:567) chapter 6 section 3.
[200] Council directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, article 10.
[201] Legislative bill of the Discrimination Act, Regeringens proposition 2007/08:95, *Ett starkare skydd mot diskriminering*, p. 443.
[202] NJA 2006 p. 170.

In a case concerning a person diagnosed with multiple sclerosis who then got dismissed from his job, the Labour Court found that the person had shown circumstances which gave reason to presume that discrimination had occurred. The Court considered that the applicant had, by the time interval of four months between the plaintiff telling the employer about his illness and the time of dismissal, shown such circumstances which led to the burden of proof being shifted to the employer.[203]

In the case the Labour Court applied the shifted burden of proof by first determining whether the plaintiff had been disadvantaged. Since the plaintiff had been dismissed from his job, it was clear that there had been a disadvantage. The Court then went on to assess whether the plaintiff had been in a comparable situation in relation to people without disabilities. The comparison was made against the employees who had kept their jobs and who had equivalent work duties, training and experience. Since the plaintiff's illness had not affected his ability to work and other factors were equivalent, the Court considered that the plaintiff had been in a comparable situation to these employees and had thus been treated worse than them even though they had all been in a comparable situation. The Court then examined whether it could be assumed that there was a causal link between the disability and the dismissal. The circumstances were such that the plaintiff was dismissed four months after he reported his illness and that during that time he had been on sick leave for a couple of periods and that he was on sick leave when he was dismissed. Furthermore, he was the only one who lost his job and that another person had been given a permanent position shortly before the plaintiff was dismissed. The court also reasoned that it is typically a disadvantage, especially for a smaller employer, as was the case, to have an employee who is on sick leave a lot. The Court concluded that these circumstances made it likely that the plaintiff was treated differently because of his illness. Where the connection in time between when the plaintiff fell ill and the dismissal was the decisive factor. The burden of proof thus shifted to the employer to show that there was no discrimination because of the illness.[204]

[203] AD 2005 nr 32.
[204] AD 2005 nr 32.

9.b External legal assistance to persons with disabilities

Under certain conditions, individuals may receive legal aid in accordance with the Legal Aid Act.[205] The general conditions for being granted legal aid are that it is a natural person applying, whose financial means do not exceed SEK 260,000.[206] Financial means refers to the claimant's estimated annual income after taking into account maintenance for children, financial circumstances and indebtedness.[207] However, legal aid is not be granted if the applicant has legal expenses insurance or other similar legal protection covering the matter. Moreover, if the applicant does not have legal protection but, taking into account his or her other insurance coverage or his or her financial and personal circumstances, ought to have had such protection, legal aid is not granted unless there are special reasons and also taking into account the nature and importance of the matter for the applicant.[208] The idea is that legal protection should primarily be covered by insurance, and a person who lives in orderly conditions and has an income that is within the upper half of the SEK 260,000 is expected to have insurance that includes legal protection.[209] "Other similar legal protection" refers to, for example, union membership and the assistance with legal representation that is included therein. The Act does not exclude labor disputes, but those who are union members should primarily seek help from their union.[210]

However, trade unions are not obliged to pursue legal proceedings on behalf of their members and legal expenses insurance often excludes employment disputes because the union is expected to pursue legal proceedings for its members. One consequence of the current system is that the thresholds for obtaining legal aid under the Act are high and that many people who do not qualify for legal aid under the Act often do not have insurance that covers employment disputes. If they are not members of the union, or if the union chooses not to pursue their case, the costs become too dissuasive for most people to pursue legal proceedings.

[205] Legal Aid Act (1996:1619) section 1.
[206] Legal Aid Act (1996:1619) section 6.
[207] Legal Aid Act (1996:1619) section 38.
[208] Legal Aid Act (1996:1619) section 9.
[209] Legislative bill, Regeringens proposition 1996/97:9 *Ny rättshjälpslag* p.208.
[210] Legislative bill, Regeringens proposition 1996/97:9 *Ny rättshjälpslag* pp. 88-89.

9.b.1 Are there mechanisms to support access to justice for persons with disabilities?

The rule of the shifted burden of proof under chapter 6 section 3 of the Discrimination Act is intended to ease the burden of proof for those who believe they have been discriminated against. As regards legal costs, the main rule in Swedish law is that the losing party must pay the costs of the opposing party.[211] The Discrimination Act contains a provision stating that the parties may bear their own legal costs if the losing party had reasonable grounds to have the matter heard. However, in the case of disputes in employment, this provision refers to the Labour Disputes (Judicial Procedure) Act (1974:371)[212] which has a similar provision.[213] However, this provision is not intended to facilitate access to justice for someone who has been discriminated against, but rather to provide an adjustment that benefits both parties, employees and employers which may have the opposite effect when used to benefit employers and hinder access to justice instead.

9.b.2 Do NGOs play a role in this?

The Independent Living Institute is an organization that works to promote the rights of people with disabilities to promote their personal and political power, self-determination, equality and being able to participate fully in society by using information, education, lobby and project activities.[214] The organization ran the project Using the Law as a Tool. The Project ran from March 2016 to February 2019 with funding from The General Inheritance Fund.[215] The aim of the project was to contribute to ensuring that the rights of people with disabilities are better met by using the law and case law as tools to combat negative discrimination and structural discrimination. The objectives were as well as to increase the expertise on discrimination related to disability and engage in strategic litigation to drive legal development through practice. The project aimed to reach people with disabilities, disability organisations and other human rights organisations, lawyers and law students, as well as

[211] The Swedish Code of Judicial Procedure (1942:740) chapter 18 section 1.
[212] Discrimination Act (2008:567) chapter 6 section 7.
[213] Labour disputes (Judicial Procedure) Act (1974:371) chapter 5 section 2.
[214] https://www.independentliving.org/. Last visited on 2025-02-24.
[215] The purpose of the General Inheritance Fund is to promote activities of a non-profit nature for the benefit of the target groups children, young people, the elderly and people with disabilities. The General Inheritance Fund consists of property that has accrued to the fund through, among other things, inheritance from people without heirs or a will.

public and private actors and thereby, increase the disability movement's access to legal expertise and contribute to the legal profession's competence in the field of disability discrimination. The project considered itself to have achieved these objectives.[216]

Moreover, the Swedish Agency for Youth and Civil Society is accepting applications to financially support organizations and foundations who work to combat and prevent discrimination. Rules for being granted funds are set out in a government regulation.[217] To qualify for grants the organization needs to work long-term with free advice to private individuals about their rights and how they can exercise their rights as well as with educational activities and opinion-forming by arranging courses, seminars and providing general information and advice. Furthermore, the organization has to be run on a non-profit basis, have clear goals and methods and be run by people who have knowledge of discrimination and the regulations that apply in the area. The organization also actively has to work with all seven grounds for discrimination. When deciding on whether to grant funds to an organization the Agency prioritizes activities that are geographically spread across the country and that have already ongoing activities. There are currently 18 anti-discrimination offices. For the 2024 financial year SEK 28 million was allocated.[218]

Funktionsrätt Sverige is a collaborative organization for human rights. The organization's members are 53 different organizations that work for the interests of people with disabilities, such as the Dyslexia Association and Autism Sweden. Together, they represent just over 400,000 people. Funktionsrätt Sverige works with interest policies for people with disabilities and for the realization of the UN Convention on the Rights of Persons with Disabilities.[219] Funktionsrätt Sverige is also running Funktionsrättsbyrån, a project funded by The General Inheritance Fund. Funktionsrättsbyrån offers rights-based advice and provides information on how those seeking advice can claim their rights themselves. Rights-based advice can, for example, involve interpreting a decision, supporting with formulating an appeal or explaining how different laws work. The project also involves setting up a rights database linked to the

[216] *Arvsfondsprojektet, Lagen som verktyg 2016-2019, Slutrapport 28 februari 2019*, p. 5. (https://lagensomverktyg.se/wp-content/uploads/sites/4/2019/02/Slutrapport-Lagen-som-verktyg-Arvsfondsprojekt-190228.pdf. Last visited 2025-02-24.
[217] Ordinance (2002:989) on state support for activities that prevent and combat discrimination.
[218] https://www.mucf.se/bidrag/antidiskrimineringsverksamhet. Last visited on 2025-02-24.
[219] Statutes for Funktionsrätt Sverige section 1.

counselling. For the purpose of systematically collecting information about access to rights for adults with disabilities. The database is also meant to be a tool to see structures, highlight social problems in order to then demand change.[220]

Corporativistic culture is strong in Sweden. There are a multitude of different special associations that represent different groups with disabilities. The National Association of the Visually Impaired and the National Association of the Hearing Impaired are two of the largest associations. What the different associations have in common is that they work to influence politics in order to implement improvements in society. Some, such as the National Association of the Visually Impaired, offer their members legal advice, which may include issues related to discrimination in the workplace.[221]

9.b.3 Are associations, organisations and trade unions entitled to act in support of victims of discrimination before adjudication bodies or courts?

The Equality Ombudsman and non-profit associations whose statutes permit it, may as a party, bring proceedings on behalf of an individual who is consenting. However, the non-profit organization must be suitable to represent the individual in the case, taking into account the organization's activities and financial conditions.[222] These associations are meant to be able to assist the individual to the same extent as the Ombudsman or a union could have done. It is thus left to the court to decide in each individual case whether the organization is suitable.[223] When the employee is a member of the union and the union has the right to pursue the member's claim under the Labour Disputes (Judicial Procedure) Act (1974:371), non-profit organizations and the Equality Ombudsman can only bring a case if the union does not choose to do so.[224]

[220] https://funktionsratt.se/vi-paverkar/projekt/funktionsrattsbyran/?_gl=1*v7keen*_up*MQ..*_ga*NTEzODgyMzAuMTc0MDE3Njk0Mg..*_ga_VBQHXDH2XF*MTc0MDQxOTU0NC4yLjAuMTc0MDQxOTU0NC4wLjAuMA. Last visited on 2025-02-24.
[221] https://www.srf.nu/rad-och-stod/juridisk-radgivning/. Last visited on 2025-02-24.
[222] Discrimination Act (2008:567) chapter 6 section 2.
[223] Legislative bill for the Discrimination Act, Regeringens proposition 2007/08:95 *Ett starkare skydd mot diskriminering,* p. 438.
[224] Discrimination Act (2008:567) chapter 6 section 2.

There is no obligation for either the Equality Ombudsman, non-profit organizations or trade unions to pursue cases for individuals. These actors, of course, have better financial opportunities to sue in court than the average person, but none of these actors have unlimited financial resources to pursue lawsuits. The Equality Ombudsman also has guidelines to follow regarding which lawsuits should be brought in court. The criteria that determine whether the Equality Ombudsman chooses to bring an action include whether it is a precedent issue or a legal issue that has not yet been tried by court, whether it concerns an issue that is of high priority, whether it concerns a problem that is of great relevance in society or whether it is a case that involves a serious violation of a ground for discrimination. The possibilities of getting help from the Equality Ombudsman to pursue one's case are therefore limited.[225]

It seems unusual for non-profit organizations to take legal action on behalf of their members, and perhaps especially in labor disputes, since that is the role of the unions. Funktionsrättsbyrån, as mentioned above, only provides advice. Anna Quarnström, Lawyer at the National Association of the Visually Impaired, states that they have the opportunity to take legal action on behalf of their members in labor disputes involving discrimination. But they refer their members to the unions in these cases because they are better placed to take legal action partly due to the statute of limitations being short. She states that she has not taken any legal action in labor disputes during her five years in office and is not aware of any representative having done so. However, she has helped members reach a settlement on a couple of occasions. DHR is an association for the physically disabled, and their lawyer Malin Palm states that they do not assist in disputes in the workplace, but are doing so in cases involving social insurance law or social law. The National Association Attention (for people with neuropsychiatric disabilities) and the Dyslexia Association state that they do not have the resources to act as representatives or provide legal advice.[226]

[225] Carlson, Laura, *Festskrift till Ann Numhauser-Henning Discrimination damages – promoting or preventing access to justice?,* Juristförlaget i Lund 2017 p. 141.
[226] Email correspondence, the author (Märta Lundberg) holds the source, and it can be released upon request.

9.b.4 Is there a special organisation that can give advice, mediate, decide on cases of alleged discrimination of persons with disabilities?

There is no specific organization or authority that only works with discrimination against people with disabilities. The Equality Ombudsman is an authority whose mission is to work against discrimination and promote equal rights and opportunities and to work for a society free from discrimination of people covered by the grounds for discrimination in the Discrimination Act. The Equality Ombudsman shall, through advice and in other ways, contribute to ensuring that those who have been subjected to discrimination can exercise their rights.[227] The Equality Ombudsman is also tasked with overseeing compliance with the Discrimination Act. This review shall be independent and shall primarily aim to get those actors who are bound to comply with the Act to do so voluntarily.[228] The Equality Ombudsman may, as a party, bring proceedings on behalf of an individual who consents to it.[229] Hence, the Equality Ombudsman receives complaints about discrimination and can provide advice and mediation.

In its supervisory activities, the Equality Ombudsman may submit a petition to the Discrimination Board to order an employer to fulfill its obligations under the Discrimination Act to work with active measures to counteract discrimination. These obligations include working conditions, regulations and practices regarding wages and other employment conditions, recruitment and promotion, training and other skills development, and opportunities to combine gainful employment with parenthood. As well as guidelines and procedures for the operation with the aim of preventing harassment, sexual harassment and retaliation for an employee invoking rights under the Discrimination Act. The order shall be accompanied by a fine if the order is not fulfilled.[230] In this way, a complaint to the Equality Ombudsman due to, for example, a lack of accessibility in a workplace can lead to an injunction combined with a fine for the employer to remedy the deficiency.

[227] Act concerning the Equality Ombudsman (2008:568) sections 1 and 2.
[228] Discrimination Act (2008:567) chapter 4 sections 1 and 1a.
[229] Discrimination Act (2008:567) chapter 6 section 2.
[230] Discrimination Act (2008:567) chapter 4 section 5.

Trade unions can of course advise their members and also have a statutory right to negotiate with employers on matters relating to their members' employment.[231] Negotiations, agreements and settlements between employers and unions are a common way of resolving employment law disputes in Sweden.

9.b.5 Are there limitations for instituting legal action in employment matters (limited period for legal action, condition of access to litigation....)?

If an employee brings an action against the employer due to termination or dismissal as a result of discrimination, the provisions of the Employment Protection Act apply.[232] Dismissal or termination by the employer must be in writing and, the employer must state what the employee must observe in the event that the employee wishes to claim that the termination is invalid or to claim damages due to the termination.[233] An employee who wishes to claim the invalidity of a termination or dismissal must notify the employer of this no later than two weeks after the termination or dismissal took place.The employee must then file the lawsuit within two weeks after the notification period has expired. If the employee has not received a written notice of the measures he must take to claim invalidity, the deadline is one month and is calculated from the day on which employment ended. If negotiations have been requested in accordance with the Co-determination Act or with the support of a collective agreement within the two weeks that the employee must notify the employer, the action must be brought within two weeks after the negotiations have concluded.[234]

Consequently, union members have the option of obtaining a longer statute of limitations compared to non-union members. One could argue that this is rather problematic in relation to the principle of equality and if there were to be a difference in statute of limitations it should rather be the opposite since a non-union member does not, in general, have the same opportunity to receive legal counseling as a union member.

[231] Co-determination Act (1976:580) section 10.
[232] Discrimination Act (2008:567) chapter 6 section 4.
[233] Employment Protection Act (1982:80) sections 8 and 19.
[234] Employment Protection Act (1982:80) section 40.

Regardless, violations of the prohibition of discrimination are violations of human rights even in a horizontal legal relationship. It is therefore questionable whether dismissals and terminations that are to be contested on grounds of discrimination are treated under the rules of the Employment Protection Act with its short statute of limitations.

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