

Position Paper

Safety Representatives in Swedish Work Environment Law

PETER ANDERSSON

PhD, Associate professor of private law

Department of law, School of Business, Economics and Law at the University of Gothenburg.

21 March 2024

Introduction

The Swedish Work Environment Act is based on the idea that collaboration between employers and employees is a prerequisite for creating healthy working conditions.¹

Regulations for safety representatives were introduced into Swedish law as early as 1912, being the first example in Sweden of workplace democracy supported by law.² Collaboration rules that give employees legal means for action in work environment issues were gradually developed and the right to stop work – the safety representative’s most powerful prerogative – was adopted in 1973. The introduction of the referral procedure in the Work Environment Act in 1991 further emphasized employee influence.³

This development reflects a regulatory strategy to achieve a good work environment by co-determination. The earlier regulatory strategy from the 19th century introduced regulations and state supervision, while the co-determination strategy is based on the idea that rules and state supervision is not enough and that the work environment is likely to improve only if employees themselves have the right to influence it.⁴ Here, the tripartite relationship regulated by Swedish work environment law is evident: employers are required to protect employees, and the state, through authorities such as the Swedish Work Environment Authority, supervises that this protection is implemented in practice. Safety representatives are key actors in this system, representing employees, supervising employers, and triggering actions from the authorities.

Appointment and removal

Chapter 6 of the Swedish Work Environment Act contains the most important rules regarding safety representatives. Safety representatives should be appointed at workplaces where at least five employees are regularly employed. The term ‘workplace’ refers to the locally defined area within which the employer conducts work. Safety representatives should also be appointed at smaller workplaces if the working conditions require it, and it is evident that the working conditions may pose health risks.⁵

Safety representatives are Sweden’s most significant work environment actor in the sense that the time collectively spent by safety representatives on work environment issues corresponds to at least 7,500 full-time positions,⁶ compared to the approximately 300 inspectors at the Swedish Work Environment Authority.⁷ The number of appointed safety representatives per employee in Sweden has slightly decreased in recent decades but remains high.⁸ However, small workplaces with fewer than five employees often lack safety representatives, which can cause problems regarding participation and enforcement of important work environment rules.

Safety representatives are appointed by a local employee organization that with a collective agreement with the employer or, if such an organization does not exist, by the employees themselves.⁹ If there is more than one

¹ Prop. 1993/94:186 p. 25. Chapter 3, Section 1a, and Chapter 6, Section 1 of the Work Environment Act.

² Maria Steinberg, Skyddsombud i allas intresse, Norstedts juridik, 2004, p. 61.

³ A referral procedure had previously been regulated in the Work Environment Ordinance. For an account of the origin of the rules on participation and safety representatives, see prop. 1973:130, p. 54 ff.

⁴ Håkan Hydén, Hur får vi en bättre arbetsmiljö? Om strategier i arbetsmiljölagstiftningen över tid och vad vi kan lära av det. In: Johansson, Bo; Frick, Kaj & Johansson, Jan (ed.), Framtidens arbetsmiljö- och tillsynsarbete, Studentlitteratur, 2004.

⁵ Chapter 6, Section 2 of the Work Environment Act.

⁶ John Sjöström and Kaj Frick, Arbetstagarmedverkan i arbetsmiljöarbetet - kvalitativa belägg från Esener-2. Europeiska arbetsmiljöbyrån, 2017, p. 21.

⁷ Arbetsmiljöverket, press release 16 March 2022, Fler inspektörer mot arbetslivskriminalitet.

⁸ John Sjöström and Kaj Frick, Arbetstagarmedverkan i arbetsmiljöarbetet- kvalitativa belägg från Esener-2. Europeiska arbetsmiljöbyrån, 2017, p. 21.

⁹ Chapter 6, Section 2, second paragraph of the Work Environment Act.

safety representative at a workplace one of the representatives should be appointed as the main safety representative with the task of coordinating the activities of the safety representatives.¹⁰

Safety representatives are appointed for a period of three years unless the employment conditions or other circumstances require an exception. Safety representatives should be individuals with insight into and interest in work environment issues, possessing good familiarity with the working conditions within their protective area.¹¹ They can be removed from their position by decision of the organization or the employees who appointed the representative.¹²

Tasks

Safety representatives represent employees in work environment matters and their basic task is to work towards a satisfactory work environment. To do this, they oversee protection against ill-health and accidents, as well as ensure that the employer complies with the requirements for systematic work environment management. Safety representatives shall participate in the planning of new or modified premises, equipment, work processes, work methods, and organizational aspects of work, as well as in the planning of the use of substances that may cause ill-health or accidents. Furthermore, safety representatives shall participate in the establishment of action plans according to the rules of systematic work environment management.¹³

The tasks of safety representatives cover overall workplace conditions, including work organization and various psychosocial factors such as work pace, conditions for group work, and the occurrence of work carried out alone. Employers must inform safety representatives of changes significant to the work environment.¹⁴ However, as representatives of employees, safety representatives shall not have responsibilities delegated to them by the employer, such as for systematic work environment management.¹⁵

Crucial powers in overseeing protection against ill-health and accidents include the safety representative's right to request decisions from the Swedish Work Environment Authority¹⁶ and the right to stop work.¹⁷ Both of these powers, which are discussed later in this paper, involve contacting the supervisory authority and activating state authority exercise. The safety representative, in a way, functions as a public servant appointed by the employees.¹⁸

Employers and employees are jointly responsible for providing safety representatives with necessary training.¹⁹ Local safety representatives are entitled to leave required for their assignment while maintaining employment benefits such as wages.²⁰

¹⁰ Chapter 6, Section 3 of the Work Environment Act. Regarding the appointment of safety representatives, see prop. 1976/77:149 p. 343 ff.

¹¹ Section 6 the Work Environment Ordinance.

¹² Section 6, Paragraph 4 of the Work Environment Ordinance.

¹³ Chapter 6, Section 4 of the Work Environment Act.

¹⁴ Chapter 6, Section 4, third paragraph of the Work Environment Act.

¹⁵ See AFS 2001:1 general advice to 6 §.

¹⁶ Chapter 6, Section 6a of the Work Environment Act.

¹⁷ Chapter 6, Section 7 of the Work Environment Act.

¹⁸ Selberg, Niklas, Reflections on the Enforcement of Labour Law: A Review of Re-inventing Labour Law Enforcement. A Socio-Legal Analysis by Louise Munkholm, Hart 2020. In: International Journal of Comparative Labour Law and Industrial Relations 37, n. 2&3, 2021, p. 319.

¹⁹ Chapter 6, Section 4, fourth paragraph of the Work Environment Act. Also, see prop. 1976/77:149 p. 335 ff.

²⁰ Chapter 6, Section 5 of the Work Environment Act.

Right to information and duty of confidentiality

With being a safety representative comes the right to access documents and receive other necessary information. The employer has a comprehensive obligation to share various types of information with the safety representative. This includes all information needed for the safety representative to fulfil their duties, both concerning the operations and more personal information regarding employees.²¹

In return, safety representatives are bound by confidentiality. They are not allowed to improperly disclose or exploit information acquired during their duties, whether it pertains to trade secrets, work procedures, business relationships, or an individual's personal circumstances.²² If a safety representative breaches this duty of confidentiality, he or she can be held criminally responsible. If someone discloses or unlawfully exploits information, they are obligated to keep confidential by law, they shall be punished for a breach of confidentiality with fines or imprisonment for up to one year. If the breach occurs negligently, fines are imposed.²³ Information may, under certain conditions, be passed on to other union representatives centrally within the organization. The right to pass on information only applies if the information provider informs the recipient about the duty of confidentiality, which then also applies to the recipient.²⁴

The right to request inspection

If a safety representative believes that measures are needed to achieve a satisfactory work environment, according to Chapter 6, Section 6a of the Work Environment Act, the safety representative should turn to the employer and request such measures. The safety representative can also request a specific investigation to be conducted to control the conditions within the protective area. The employer must promptly respond to the matter. If the employer fails to do so or the request is not considered within a reasonable time, the Swedish Work Environment Authority shall, upon the safety representative's request, assess whether an order or prohibition under Chapter 7, Section 7 of the Work Environment Act should be issued.

This provision regarding a right to request decisions from the Swedish Work Environment Authority – often called to as the 'referral procedure' or simply '6:6a' with reference to the section number – was introduced into Swedish law in 1931 based on a recommendation from the ILO, which discussed various methods of collaboration between regulatory authorities, employers, and employees. The ILO proposed the introduction of provisions giving employees the right to request visits from inspectors, thus supporting tripartite collaboration.²⁵ The referral procedure now also finds support in EU law.²⁶

The purpose of the referral procedure is to provide the safety representative, when assessing the risk of occupational injury, with a tool for preventing work-related injuries through collaboration with the employer. This provision allows the safety representative to influence the employer by having the current work environment issue reviewed by the Swedish Work Environment Authority. This right to formally raise issues with the employer and, in the next step, with the Swedish Work Environment Authority, is, in practice, one of the most important legal enforcement mechanisms in Swedish work environment law.

²¹ Chapter 6, Section 6 of the Work Environment Act. See prop. 1973:130 p. 157, prop. 1976/77:149 p. 332 ff.

²² Chapter 7, Section 13 of the Work Environment Act. This regulation applies to safety representatives in the private sector. Equivalent provisions for safety representatives in the public sector are found in Chapter 10, Sections 11-14, and Chapter 12, Section 2 of the Public Access to Information and Secrecy Act.

²³ Chapter 20, Section 3 of the Swedish Penal Code.

²⁴ Chapter 7, Section 13, second paragraph of the Work Environment Act.

²⁵ See The International Labour Organization's Recommendation No. 31 on the Prevention of Accidents at Work, adopted in 1929.

²⁶ EU Framework Directive on Occupational Safety and Health 89/391/EEC, Section 2, Article 11, Paragraph 6.

There are no explicit limitations on the safety representatives' right to request inspection and a decision from the Swedish Work Environment Authority, as long as the prescribed procedure is followed, and the employer is initially contacted. This means that there are no requirements for how serious the problems in the work environment should be and there is no legal scrutiny of whether safety representatives have acted correctly when using the referral procedure. It is only in the next step of the process, if the Swedish Work Environment Authority decides on intervention in the form of an order or prohibition after being contacted by safety representatives that there may be to judicial review.

The right to stop work

Work stop

According to Chapter 6, Section 7, Paragraph 1 of the Work Environment Act, safety representatives can decide to interrupt a specific task pending a decision from the Swedish Work Environment Authority when it involves immediate and serious danger to the life or health of employees, and rectification cannot be promptly achieved by the safety representative addressing the employer. The right to stop work is the most extensive authority granted to safety representatives. It temporarily supersedes the employer's right to manage work and affects the work obligation of employees. The right to stop work adds weight to the actions of safety representatives in risky situations and emphasizes the importance of companies having an effective safety organization capable of promptly making decisions on safety issues.²⁷

Through this rule, safety representatives can influence the work environment by prompting the employer to take measures to address the occupational safety and health issues that led to the stoppage. In cases where the employer addresses work environment issues that resulted in a stoppage, there is typically no legal review of whether the safety representative was justified in the stoppage. A prerequisite for a stoppage is that the safety representative cannot promptly resolve the issue by turning to the employer.

A safety representative's stoppage remains in effect until the Swedish Work Environment Authority decides to lift it. Employers wishing to challenge the stoppage shall contact the Swedish Work Environment Authority, which promptly determines the matter by deciding on a potential prohibition of continued work.²⁸

The right of safety representatives to stop work can be used to protect both employees at the workplace and external individuals, such as hired personnel.²⁹

Immediate danger

A danger must be *immediate* and *serious* to the life and health of employees in order to constitute legal ground for a safety representative to stop work. *Immediate danger*, to begin with, emphasizes the importance of the time aspect. The safety representative's right to stop work applies only if there is no time to resolve occupational health and safety issues through other means, such as collaboration or recourse to the Swedish Work Environment Authority.

One case that illustrates this is the first in which the Labour Court examined the right to stop work: AD 1979 No. 164. Several employees had complained of issues such as headaches, nausea, dizziness, and eczema. One employee had died of cancer, which was thought to be linked to the handling of a specific adhesive. A stop was issued. The supervisory authority conducted an investigation, revealing that the adhesive was not hazardous. The employer was deemed entitled to deduct employees' wages for the time the work was halted after a safety representative, without justification, had stopped the work. There was no immediate danger.

For a situation to constitute an immediate danger, it must be hazardous even if the time of exposure for the employee is only brief. If the occupational health factor is hazardous with short-term exposure but the harm may only manifest itself much later, as with asbestos that can lead to cancer decades after exposure, the

²⁷ Prop. 1973:130 p. 158.

²⁸ Arbetsmiljöverkets årsredovisning 2017 p. 84.

²⁹ Chapter 6, Section 7, Paragraph 4 of the Work Environment Act.

requirement of immediacy is considered met. Stress and high workload usually do not meet this criterion, and in such situations, the referral procedure is typically the route the safety representative should take.³⁰

Serious danger

Condition for a work stoppage is also that there is a *serious danger*. According to the preparatory works, this means that the assigned task goes beyond the obligations arising from the employment contract. The right to stop work is intended to be used only if a risk-taking appears unnecessary and exceeds what can be considered anticipated given the nature of the work.³¹

In a decision from the Labour Court, AD 1987 No. 58, a safety representative had stopped work on a ship on the grounds that a rat had been observed onboard. The Labour Court stated that the presence of rats in such a work environment and in connection with the work tasks at hand must be considered a serious matter from a safety perspective.

The requirement that the danger must be serious to invoke the right to stop work excludes everyday situations involving infections such as colds in a workplace. If it concerns more serious infectious diseases, the right to stop work may apply. During the first two years of the COVID-19 pandemic, up until February 2022, 136 work stoppages occurred due to the risk of COVID-19 transmission.³²

Expanded right to stop work

Safety representatives can stop work that an employee performs *alone* if it is necessary from a safety perspective, and correction cannot be immediately achieved by the safety representative addressing the employer.³³ Thus, concerning work that is performed alone, the safety representative can stop work even if it does not pose an immediate and serious danger to life and health; it is sufficient if it is necessary from a safety perspective.³⁴ Performing work alone is considered to be risk in itself.³⁵

In the case AD 2000 No. 92, a work stoppage due to solitary work was examined by the Labour Court. The issue was whether a safety representative at a prison had been prevented by the employer from performing his duties. The safety representative claimed to have issued a stop for work performed alone for a guard in relation to a specific inmate, which the employer had not followed. The key for the assessment was whether the safety representative had formulated it in a way that would be considered a stop. The Court found that this was not the case, and therefore, the employer was not liable for damages.

A third situation when safety representatives have the right to stop work is when a prohibition from the Swedish Work Environment Authority is violated.³⁶ In these situations the right is not limited to serious and immediate danger or even a specific need, since those questions have already been decided by the Work Environment Authority that has decided the prohibition.³⁷

³⁰ See for example Arbetsmiljöverket, distriktet i Göteborg, decision 2010-04-16, ISG 2010/15085.

³¹ SOU 1972:86 p. 250.

³² Arbetsmiljöverket: Sammanställning av skyddsombudsstopp kopplat till corona, <https://www.av.se/om-oss/press/jobbrelaterade-coronaanmalningar/skyddsombudsstopp>.

³³ Chapter 6, Section 7, Subsection 2 of the Work Environment Act,

³⁴ This rule was introduced in the Work Environment Act in 1978 and motivated in prop. 1976/77:149 p. 338 f.

³⁵ According to Chapter 3, Section 2, Paragraph 2 of the Work Environment Act, the employer should consider the special risk of ill-health and accidents that may result from the employee working alone. The provision is supplemented by the Work Environment Authority's Provisions AFS 1982:2 Solitary Work.

³⁶ Chapter 6, Section 7, Paragraph 3 of the Work Environment Act.

³⁷ See also prop. 1976/77:149 p. 339.

No liability for safety representatives stopping work

For damage resulting from a work stoppage, a safety representative is exempt from liability.³⁸ The purpose of this limitation of liability is to ensure that safety representatives are not discouraged from intervening in cases where the stoppage may be costly for the employer. Even in cases where the Swedish Work Environment Authority determines that the safety representative had no grounds for the stoppage, the representative is exempt from liability.

According to an old ruling from the Labour Court, AD 1979 No. 164, employers can, in certain cases, deduct wages from employees who have interrupted their work when the safety representative's stoppage was unfounded.

There have been instances where safety representatives have been prosecuted in criminal law for violations of occupational health and safety regulations. When one was charged in 2009 for committing an offense by causing danger to others in the workplace, a debate arose about whether they have criminal liability for occupational health and safety offenses. The court (a first level district court) dismissed the charges against the safety representative, reasoning that he had not been negligent, but essentially accepted that safety representatives could have criminal liability and be convicted of occupational health and safety offenses. The verdict was not appealed, and there is no legal precedent to determine whether safety representatives can be held liable in occupational health and safety cases. However, both the charges themselves and the district court's wording of the verdict have been criticised.³⁹

Employer's liability for hindering a safety representative

A safety representative must not be hindered from fulfilling his or her duties.⁴⁰ In the case decided by the Labour Court, AD 2008 No. 77, a safety representative had stopped an electrical installation work, believing it posed an immediate and serious danger to an employee's life or health. The decision to stop work was made without the safety representative first attempting to contact the employer to rectify the situation. Later that same day, despite the safety representative's intervention and without awaiting a position from the Swedish Work Environment Authority, the employer decided that the employee should carry out the work. The issue in this case was whether the employer had hindered the safety representative from performing his duties, thereby incurring liability for damages towards the safety representative. The Labour Court concluded that the primary responsibility for safety at the workplace lies with the employer, and safety representatives can only take over decision-making authority in exceptional cases. In this case, the employer was not considered to have hindered the safety representative since the safety representative, according to the Court, had time to contact the management before stopping the work and failed to do so. This case illustrates a question that is relatively often examined under these rules, namely the consequences of an employer not complying with a safety representative's decision to interrupt work. It emphasizes the importance of the safety representative being clear and following the procedure outlined in Chapter 6, Section 7 of the Work Environment Act, as well as recognizing the strong starting point of the employer's management rights.

Furthermore, a safety representative must not be subjected to worse working conditions or employment terms due to the assignment. When the assignment as safety representative ends, the employee should be ensured working conditions and employment terms that are equivalent to those that would have existed if they had not had the assignment.⁴¹ Employers who violate this rule are liable to compensate for any resulting

³⁸ Chapter 6, Section 7, Paragraph 5 of the Work Environment Act.

³⁹ Umeå tingsrätts 2009-06-04 case B 2683-08.

⁴⁰ Chapter 6, Section 11 of the Work Environment Act.

⁴¹ Chapter 6, Section 10 of the Work Environment Act. Also prop. 1976/77:149 p. 416 f.

damages. When assessing whether and to what extent damage has occurred, considerations should also be given to circumstances of a nature other than purely economic significance.⁴²

Concluding remarks

Safety representatives play an important role in Swedish work environment law complementing the supervision of the Work Environment Authority and the criminal investigations concerning work environment offence. The Swedish legal system to prevent accidents and ill-health at work is largely based on enforcement by state actors. The most important exception comes with the safety representative supervising the work environment, requiring efforts by the Work Environment Authority, and stopping work in case of immediate and serious danger. The safety representatives are usually appointed by the union that has a collective agreement and are more closely linked to the Swedish model of labour law than other work environment actors. Their influence on certain work environment issues is temporary, awaiting decision from the Work Environment Authority. Still their day-to-day presence at the workplace enables safety representatives to have a large influence in practice, making the work environment safer for their co-workers. In this process, the employer gets a counterpart that can help attaining the high standards of work environment responsibility in Swedish work environment law.

⁴² Chapter 6, Section 11 of the Work Environment Act. Also prop. 1976/77:149 p. 417.