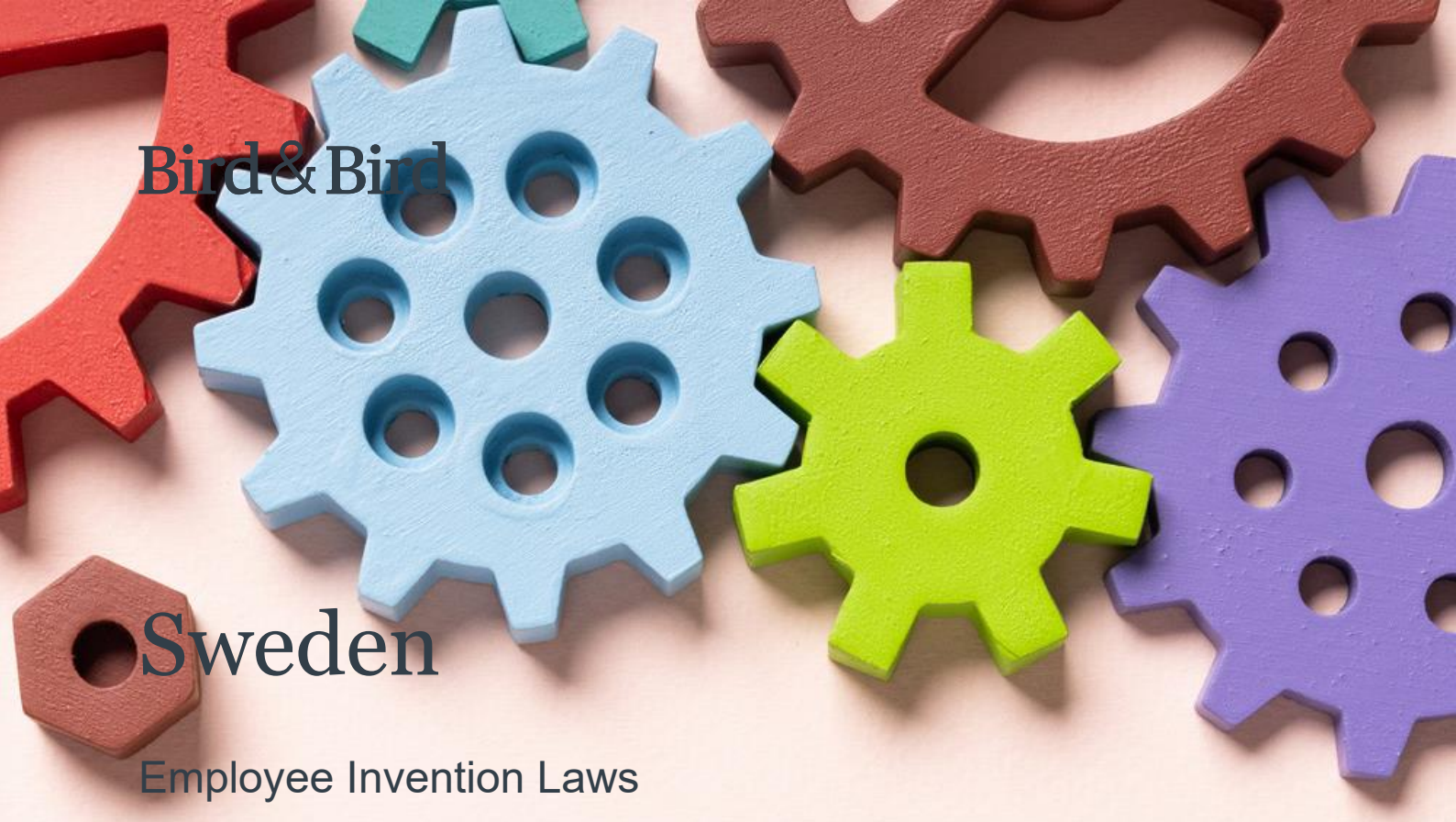

Bird & Bird

Sweden

Employee Invention Laws

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Sweden – Employee Invention Laws

Does your country have specific laws governing employee inventions?

Yes, but with flexible application allowing contractual arrangements.

Primary Law: Swedish Act on the Right to Employee's Inventions (1949:345) (Lag om rätten till arbetstagares uppfinningar).

Key Characteristics:

- Largely non-mandatory framework
- Section 2(2): Parties may agree on alternative arrangements
- Agreements may be explicit or inferred from circumstances

Industry Practice:

- Inventor's Agreement (Swedish: Uppfinnaravtalet)
- Negotiated between employer organisations and trade unions, widely applied across Swedish industry

What types of intellectual property are covered by your national employee invention laws (patents, utility models, trade secrets, etc.)?

Employee Inventions Act applies to inventions patentable in Sweden that fulfil conditions in:

- Swedish Patents Act
- European Patent Office requirements
- Fall within employer's business activities

Application Threshold: Patent grant not required - sufficient that patent protection is theoretically possible.

Extended Scope:

- Trade Secrets: Patentable inventions kept secret still fall within Act scope
- Utility Models: Though not recognised in Sweden, patentable inventions subject to utility model protection elsewhere still covered

Non-Patentable Inventions: Considered employer property through longstanding labour law principles Example: Copyright Act (SFS 1960:729), Section 40a - computer programs created by employees automatically transfer to employer unless otherwise agreed.

Which categories of employees are covered by your national employee invention laws?

Private Law Employment with Notable Exemptions Employee Definition: No statutory definition - relies on established private law employment concept.

Included categories

- Private sector employees
- Public sector employees

- Municipal service employees
- State service employees

Assessment: Case-by-case determination of employee status considering all relevant circumstances.

Exemptions:

- University teachers (Section 1(2)) - "Teacher's Exemption"
- Specific military personnel categories (Section 1(3))

Teacher's Exemption Significance:

- Teachers retain all invention rights even when using university resources
- Differs from typical university ownership approach
- Promotes academic freedom and innovation incentives
- Significant implications for university-industry collaboration and technology transfer

What temporal and territorial restrictions apply to employee invention laws in your jurisdiction?

Yes. The Employee Inventions Act applies to inventions that are patentable and created in Sweden, in principle regardless of the inventor's nationality.

If an employment relationship exists, the Act—or where applicable, the Inventor's Agreement—governs inventions made during the course of that employment. Upon termination of employment, the employee's duty of loyalty ceases. However, in order to prevent misuse of knowledge or resources obtained during employment, any patent application filed within six (6) months after termination will be presumed to relate to an invention created during the employment period. This presumption may be rebutted only if there are probable grounds to show that the invention was developed after the employment ended (Section 7(1) of the Act).

The Act permits the parties to extend this six-month period to up to one (1) year by mutual agreement. However, any contractual provision that restricts an employee's rights in respect of inventions created more than one year after termination is deemed null and void (Section 7(2) of the Act). Equivalent provisions can also be found in the Inventor's Agreement.

Do the national employee invention laws recognise different kinds of inventions or are all inventions treated equally?

Yes, the Employee Inventions Act (the Act) recognises four categories of inventions: research inventions, other service inventions, other inventions, and free inventions (see Section 3 of the Act). Free inventions fall outside the employer's rights - either because they do not relate to the employer's business activities or because the employer has waived its rights.

For research inventions, other service inventions and other inventions, two conditions must be satisfied for the employer to assert rights. First, the invention must fall within the scope of the employer's business activities. Second, either the invention must have been made during the course of an employment relationship, or a patent application must be filed within the time limit set out in Section 7(2) of the Act.

Research inventions refer to inventions created where the employee is specifically tasked with conducting research or developing new inventions, and where the invention is a direct result of such assigned duties. For these inventions, the employer is entitled to acquire full rights,

irrespective of whether the invention was developed during working hours or personal time (Section 3(1)).

Other service inventions are inventions that are not classified as research inventions but still fall within the employer's business activities. In such cases, the employer has the right to use the invention in its operations and enjoys a priority right to negotiate for broader rights (Section 3(2)).

Other inventions are those that fall within the employer's business scope but were not made in the context of the employment. For these inventions, the employer only has a right of first refusal to enter into an agreement with the employee (Section 3(3)).

Under the Inventor's Agreement, inventions are categorised as A, B or C inventions.

- **A inventions** fall within the scope of the employment and are the property of the employer.
- **B inventions** may be of relevance to the employer's business but are not A inventions. These remain the property of the employee unless the employer exercises its right to acquire the invention within four months of its registration. Otherwise, the rights remain with the inventor.
- **C inventions** fall entirely outside the employer's field of business and do not give rise to any employer rights.

A inventions broadly correspond to research and other service inventions under the Act, while **B** inventions are comparable to other inventions.

What is the statutory process of acquiring rights to employee inventions under your national laws? Does the employer acquire rights directly under the law or does the employer need to take separate actions?

Under the Employee Inventions Act, employers do not automatically acquire rights and must follow a formal process.

Employees must notify the employer if the invention falls within the business scope (Section 4). The employer then has four (4) months to declare its intention to acquire rights, including for research or other service inventions. For other invention types, the employer has a four-month priority right (Section 5(1)).

During this time, the employee must maintain confidentiality but may file a patent application in Sweden after giving at least one (1) week's written notice (Section 5(2)).

If an Inventor's Agreement is in place, "A inventions" automatically transfer to the employer, removing the need for formal notification.

How are employee invention disputes governed in your jurisdiction? Is there a special dispute resolution mechanism / a body for employee invention related disputes?

Under Section 9 of the Employee Inventions Act, disputes fall under the jurisdiction of the Swedish Patent and Market Court, unless the parties agree otherwise by contract.

The National Board for Employee Inventions may also issue non-binding opinions on the Act's application at the request of either party (Section 10). While these opinions are not legally binding, the parties may agree in advance to be bound by them.

If an Inventor's Agreement applies, disputes may instead be resolved by a designated arbitral tribunal.

Are policies on employee inventions commonly used in your jurisdiction? Are there regulatory requirements for implementation of a policy on employee inventions?

Yes. It is common practice for employers in Sweden to adopt internal policies on employee inventions that supplement or deviate from the default provisions of the Employee Inventions Act. However, there is no statutory requirement to implement such a policy.

Do your national laws on employee invention obligate employers to pay compensation to employees when taking rights to an employee invention?

Yes. As stipulated by Section 6(1) of the Employee Inventions Act, compensation to the employee is mandatory. Inventors are entitled to fair remuneration (Sw. skälig ersättning), and this right arises at the point in time when rights to the invention are transferred to the employer.

It is important to note that the right to fair remuneration is not contingent upon the employer's subsequent commercialisation of the invention. Accordingly, it is irrelevant whether patent protection is sought or granted.

There is no fixed statutory amount or percentage defined as fair remuneration under Swedish law. Instead, Section 6 of the Act provides guidance on how such remuneration should be assessed and quantified

What are the principles of determining the mandatory compensation according to your national laws on employee inventions?

Under the Act bases fair remuneration on a balance of interests: the invention's commercial and industrial value and the scope of rights acquired by the employer must be weighed against the employee's role and employment circumstances.

If the employer provided resources (e.g. funding or technical support), this may reduce the compensation owed (Section 6(2)).

For research inventions, there is a presumption that the employee has already been fully compensated through salary and benefits. In such cases, only actual costs incurred in connection with the invention are reimbursable (Section 6(2)).

Does your national laws on employee inventions obligate and/or provide for payment of certain fixed amounts or running compensations, such as royalties?

No, the Act does not stipulate any specific form or amount of compensation. The Act merely requires that fair remuneration shall be awarded to the employee, which may take various forms - such as fixed payments or running royalties - depending on the circumstances.

In a recent judgment by the Swedish Patent and Market Court of Appeal (PMÖD 2023:4), the court clarified that fair remuneration may comprise both a one-off lump sum for a defined period and a percentage-based royalty linked to the employer's turnover from the commercial product incorporating the invention during a subsequent period.

What is the general level that is considered sufficient or customary in your jurisdiction as a mandatory compensation?

There is no fixed statutory amount or percentage defined as "fair remuneration" under Swedish law. In practice, compensation for employee inventions varies significantly, with documented cases ranging from SEK 5,000 to SEK 6,000,000.

However, the Inventor's Agreement (Section 4) offers useful guidance and has become a widely accepted benchmark in Sweden. It states that rules for standardized compensation should be determined at the company level. As a general principle, the standard amount paid to an employee—whether in a single payment or in installments—should correspond to at least half a price base amount, or more if decided by the company. If the invention is considered to have significant value to the business, the standard amount should be one full price base amount.

These compensation levels are indexed to the annually adjusted Swedish price base amount, and due to the widespread recognition of the Inventor's Agreement—even among non-union companies—these standards are often treated as a customary baseline in practice.

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