

CEO agreement and terms of reference

Being the CEO entails more than being a manager, whatever the size of the business. As CEO, you hold ultimate responsibility under several laws. Here you will find Unionen's suggested content for an employment contract for CEOs, also known as a CEO agreement. There is also an example of terms of reference for the CEO.

Role and responsibilities of the CEO

Being the CEO entails more than being a manager, whatever the size of the business. The CEO holds ultimate responsibility under, for example:

- ✓ The Work Environment Act
- ✓ The Environmental Code
- ✓ Tax legislation
- ✓ The Annual Accounts Act and the Bookkeeping Act
- ✓ Labour legislation

In accordance with the first two pieces of legislation, there is a culpability which means that a CEO can personally be subject to fines or imprisonment. The other laws mentioned, with the exception of the labour legislation, can result in personal payment liability for the CEO. Under all of the laws, the company that the CEO manages may be held liable to pay financial damages and, in some cases, also penalties in the form of corporate fines.

Make sure an employment contract and terms of reference are in place before you take up your position

A CEO's daily and long-term duties are governed primarily by the Companies Act and through collaboration with the company's board of directors. You should ensure that terms of reference setting out your duties as CEO are already in place before you take up the position of CEO. Another important set of instructions relates to procedures for financial reporting to the board of directors and any other bodies.

With regard to labour legislation, there are a number of laws that need to be followed, and the size of the company that the CEO will be managing determines the legal knowledge required in order for you to manage employee relations.

The required knowledge concerning work environment legislation and environmental law is determined more by the type of operation that the CEO will be managing than the size of the company.

Below are some brief comments on the suggested provisions in the template “Employment agreement for CEO”, which you can use to create your own draft for the chairman of the board when you discuss the terms and conditions of employment. Further down this page you will also find examples of terms of reference for the CEO.

We otherwise recommend that you source your own knowledge in the areas that we mention, or refresh it if you have previously held a similar position.

Important points to cover in an employment contract for a CEO

General terms and conditions

A CEO's contract is an individual document, the content of which can vary greatly, depending on personal requirements and how the company normally manages these issues. It can also vary in scope. As a CEO, you are not covered by the Employment Protection Act (LAS). If this is the case for you, it is particularly important to cover issues related to the termination of employment in your contract. Employment commonly applies until further notice, with an agreed notice period from both parties as well as an agreement regarding severance pay. It is also preferable to stipulate what applies if the company changes location or if longer-term work abroad becomes necessary.

Competition clause

It is not unusual for employers to want a competition clause written into the employment contract. Under such a clause, an executive employee agrees, for a certain length of time after the termination of employment, not to accept employment with a competing company or to compete by launching their own business. These competition clauses may differ in their content and vary in scope. When taking up a new employment position, little consideration is often given to what happens after the termination of that employment. We would, however, encourage great caution with regard to signing a competition clause, as this can greatly limit your sources of income after the termination of employment. It is best to call Unionen's Executives Line on 0771-344 344 before the employment contract is signed.

Concluding employment

Many CEOs work for small-scale companies and organisations. In our experience, when confidence no longer exists between you as CEO and the board of directors, the owners or other executives, the best solution is for the collaboration to be terminated as soon as possible. Transfer options tend to be extremely limited in the majority of cases. To allow a reasonable period of time for you to find new employment without losing out financially, the employment contract should contain rules on severance pay. One method is for an agreement to be reached regarding a fixed sum to be paid when the employment is terminated, adjusted annually in line with certain indexes. Another method is for the salary and an average of other benefits to be paid for an agreed length of time after the employment has ceased. One reasonable arrangement is for the severance pay to provide an unchanged income level for 12 months after the employment has ceased.

Arbitration clause or court in the CEO agreement

Employers often want prospective disputes to be resolved through arbitration proceedings instead of through the court, and for this to be regulated in the employment contract.

Arbitration proceedings can cost considerably more than a court hearing, because in the former case the parties must also “remunerate” the arbitration tribunal, in addition to covering the usual legal costs. The cost for the employee can amount to several hundred thousand Swedish kronor. Outcomes from the arbitration tribunals also cannot be appealed. The normal practice should therefore be for disputes between employees and employers to be settled by a regular court. If an arbitration clause is accepted, it should be guaranteed that the employer will cover all the costs of the arbitration proceedings, regardless of the outcome.

Remuneration

It is common for CEOs to receive fringe benefits in addition to a fixed monthly salary. The variable salary component may comprise different forms of performance-related remuneration such as profit sharing and bonuses. However, other forms of remuneration that are not purely fringe benefits are becoming more common, such as convertible shares and options. Remuneration in addition to the fixed monthly salary should be regulated in such a way that no disputes regarding interpretation can arise in the future. It is also important that the value of these remunerations can be estimated, in order to establish a reasonable level for the fixed salary component. If it is difficult to make this estimation, the value of this element as a proportion of the total salary should be limited, so as not to jeopardise income security. Any discussion regarding options and convertibles should be separate to the salary discussion, as these are associated with risks and have limited connection to work performance. It is also important to ensure that all salary components constitute the basis of pension and other social benefits; that is, that the company reports all salary components to the relevant authorities. Moreover, when setting the salary, it is also important to discuss what the employer expects from you in terms of availability. Leisure time and work are not supposed to merge completely and, as a manager, you should not feel that you have to be available around the clock. When it comes to salary increases, there are a few different models to choose from. The simplest is to follow the salary agreements that have been ratified within the industry. Another method of protecting against inflation is to link the salary to the consumer price index or the price base amount.

Annual leave

CEOs usually have more annual leave than the 25 days that the law prescribes.

Sick pay

Sick pay is regulated to a sufficient extent by law and collective agreements. However, if the salary consists of variable salary components in part or in full, it is recommended that a separate agreement is concluded with the employer concerning the amount of sick pay, since the calculation of sick pay can be quite complicated.

Pension and insurance

The ITP occupational pension plan is a collectively agreed plan for salaried employees in the private sector. The ITP encompasses, among other things, retirement pension, disability pension and family pension, and is an excellent complement to the legally mandated insurance provision.

The collective agreement also includes occupational group life insurance (TGL), occupational injury insurance (TFA) and career readjustment insurance.

Individuals born in 1979 or later are covered by ITP1. In accordance with the ITP plan's general rule, ITP2 applies to individuals born in 1978 or earlier. In accordance with the exemption rules, however, in certain companies, ITP1 can be applied to all employees at a certain salary level

irrespective of age (even those born before 1979). Since 2007, companies have had the option of choosing to have only ITP1 for all employees, regardless of age or salary level.

The ITP plan includes different options regarding withdrawal of pension and survivors' protection, for example.

If you are sick for a prolonged period and are receiving compensation from the Swedish Social Insurance Office, this is supplemented with the ITP disability pension. The ITP disability pension is available until the insured person reaches the age of 66.

There is also a collective agreement guarantee that ensures the premiums will be paid even if the employer enters into bankruptcy. Check with your employer that you are covered by ITP. If not, you should make sure that your contract contains a corresponding pension plan. The employer is not obligated to cover CEOs in limited liability companies with the ITP plan.

Liability insurance

It is recommended that a CEO agreement includes a commitment by the company to take out and pay for liability insurance for the CEO, covering any personal liability that they may incur in the performance of their duties.

Other benefits

A common benefit for more senior salaried employees is a company car; that is, the company covers all expenses related to the car. Other benefits that may be relevant and that should be regulated in the employment contract include rent-free accommodation, company phone, free newspapers and free healthcare. However, the tax consequences of these other benefits should be checked with the local tax authority in order to avoid any unpleasant surprises.

Terms of reference for the CEO

When it comes to the terms of reference for the CEO, it is equally important to consider what is included and what is not included. Sometimes there are also instructions on the procedure for the CEO's financial reporting to the board of directors. However, these can vary greatly between companies, depending on the scope of the reporting and how the collaboration with the board and its chair is organised, making it impractical to give any examples.

Examples of terms of reference for the CEO

The CEO manages the ongoing administration in accordance with the guidelines and instructions of the board of directors. The CEO takes the measures required for the company's bookkeeping to be managed in accordance with the law, and so that the management of funds is conducted in a secure manner. The CEO is responsible for the daily activities of the company. In addition, the CEO must make decisions in cases of such urgency and importance that there is no time to obtain the decision of the board of directors. In such cases, the board of directors must be informed about the measures as soon as possible.

The CEO manages the following issues in accordance with the board of directors' guidelines.

- Prepare board meetings in consultation with the chairman of the board, and compile supporting information for proposals and decisions on board matters.
- All ongoing activities within the framework of the budget are set by the board of directors and in accordance with its guidelines.

- Represent the company and sign on its behalf for the aforementioned tasks.

Do you have any questions or want help with reviewing a contract?

If you have questions concerning the role of CEO or would like assistance with reviewing your contract, you can contact the ombudsman for executives in your region or call Unionen's Executives Line on 0771-344 344.