

# CEO position

COMPREHENSIVE INFORMATION ABOUT YOUR POSITION AS  
CHIEF EXECUTIVE OFFICE.

## **THE POSITION - ITS RESPONSIBILITIES**

Being the CEO entails more than being a director regardless of the size of the business. The CEO is ultimately responsible in accordance with, for example:

- Work Environment Act
- The Environmental Code
- The Finance Act
- The Annual Reports Act and the Bookkeeping Act
- Labour legislation laws

In accordance with the first two pieces of legislation, there is a culpability which means that an CEO can personally be sentenced to pay fines or imprisonment. The other laws mentioned, with the exception of the labour legislation laws, can result in a personal obligation to pay for the CEO. All of the laws can lead to the company that the CEO manages being obligated to pay financial damages and, in some cases, even penalties in the form of corporate fines.

An CEO's daily and long-term duties are governed primarily by the Companies Act and through collaboration with the company's board of directors. The CEO shall ensure that terms of reference to the CEO which specify duties are already in place before the CEO position is assumed. Another important set of instructions relates to how financial reporting shall be made 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 shall manage will determine the knowledge required with regard to the laws in order for you to manage employee relations.

The knowledge required concerning work environment legislation and environmental law are determined more by the type of operations that the CEO shall manage than the size of the company. On the basis of the aforementioned remarks, you will find briefer comments for the suggestions regarding regulations in an employment contract for an CEO, in the form of a template contract that you can use to create your own suggestions for the chairman of the board when you discuss the terms and conditions of employment. They are categorised under the headings General terms and conditions, Remuneration and Insurance. There is also an example of terms of reference to the CEO. In this regard, what is encompassed is equally important as what is not encompassed. Sometimes there are even instructions for the financial reporting from the CEO to the board of directors. However, they do vary greatly between different companies, and examples differ depending on the scope of the reporting, and how the collaboration with the board and its chair is organised.

Otherwise, we recommend that you obtain your own knowledge in the areas that we mentioned, or update them in the event that you have previously held a similar position.

## **GENERAL TERMS AND CONDITIONS**

An CEO's contract is an individual document and can have extremely varied content depending on personal requirements and how the company normally manages these issues. It can also vary in scope. An CEO is not encompassed by the Employment Protection Act (LAS). It then becomes even more important to regulate issues relating to the cessation of the employment position.

It is common that the employment position applies until further notice with an agreed upon notice period from both parties as well as an agreement regarding severance pay. It is not unusual within mu-

nicipal and state operations that an employment contract lasts for a specific length of time, for example, 6 years. This can also be the case in private companies. In these cases, it is important to regulate what the conditions are for renewing the contract, and what applies if the contract is terminated prematurely. 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 to have a competition clause written into the employment contract. This entails, among other things, that for a certain length of time after the termination of the employment position, a director commits to not accepting employment with a competing company or competing through the launching of a private company. These competition clauses may possess different content and vary in scope. What is going to happen after the termination of an employment position is not generally considered when a new employment position is commenced. We would, however, encourage great caution with regard to signing a competition clause, as this can greatly limit the sources of income after the termination of an employment position. It is best to contact Unionen before the employment contract is signed.

#### **CONCLUDING EMPLOYMENT**

Many CEOs work for smaller companies and organisations. In our experience, when confidence no longer exists between you as CEO and the board of directors, owners or other directors, the best solution is for the collaboration to be terminated as soon as possible. The possibilities for transfer are extremely limited in the majority of cases. In order for you to have the opportunity to find new employment without economic loss for a reasonable length of time, the employment contract shall contain rules concerning severance pay.

One method is for an agreement to be reached regarding a fixed sum to be paid when the employment position is terminated, which is adjusted to indexes annually. Another method is for the salary and an average of other benefits to be paid for an agreed upon length of time after the employment position has terminated. A reasonable minimum level is that severance pay should entail an unchanged income level for 12 months after the employment position has terminated.

#### **ARBITRATION CLAUSE OR COURT**

Employers often want prospective disputes to be resolved through arbitration proceedings instead of through the court ("arbitration") and that this shall be regulated in the employment contract. The costs for arbitration proceedings can be considerably higher than a court hearing, which is because in the former case, the parties must also "remunerate" the arbitration tribunal in addition to covering the usual litigation costs. The costs for the employee can amount to several hundred thousand Swedish kronor. Outcomes from the arbitration tribunals 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 still accepted, it should be guaranteed that the employer will cover all costs for arbitration proceedings, regardless of the outcome.

#### **REMUNERATION**

It is common that CEOs receive fringe benefits in addition to a fixed monthly salary. The variable salary component may take the form of different results-based remuneration such as profit sharing and bonuses. Furthermore, 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 a similar way so that no disputes regarding interpretation can arise in the future. It is also important that it is possible to make an estimation of the value of these remunerations in order to establish a reasonable level for the fixed salary component. If it is difficult to make this estimation, its value 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 the work contribution. 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.

It is essential that the expectations which the employer has of you regarding your availability for work are discussed when the salary is set. It is not viable for recreation time and working hours to merge entirely with one another and for you to feel that as CEO you should be at the company's disposal 24 hours a day. With regard 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 regulate the salary with consideration of the consumer price index or base price amount.

#### **HOLIDAYS**

CEOs usually have a greater number of holidays than the 25 days that the law prescribes.

#### **SICK PAY**

Sick pay is regulated to a large enough extent by law. But if the salary consists partly or completely of variable salary components, it is recommendable that a separate agreement is concluded with the employer concerning the amount of sick pay, since the calculation of sick pay can be quite complex.

#### **PENSION AND INSURANCE**

The occupational pension insurance (ITP) is a collectively agreed plan for privately employed salaried employees. The ITP encompasses, among other things, retirement pension, invalidity pension and family pension, and is an excellent complement to legislated insurance. Also included in the collective agreement is an occupational pension scheme (TGL) and work injury insurance (TFA).

Individuals born in 1979 or later are encompassed 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 irrespective of age.

The retirement pension is a defined contribution plan, and the size of the pension is not determined beforehand. The size of the pension is dependent, among other things, upon the paid premiums and the return received on these. The premium for ITP1 is 4.5 per cent of income up to and including 7.5 income base amounts, which corresponds to SEK 34,000/month (year 2012). The premium is 30 per cent on higher incomes.

The retirement pension in ITP2 is a defined benefits plan, and it is known in advance how large a portion of the final salary will be received at retirement. The pension is calculated as a percentage of the pensionable income with different rates for different income brackets.

There is a pension level of 10 per cent on incomes up to 7.5 income base amounts, the pension level is 65 per cent between 7.5 and 20 income base amounts, and the pension level is 32.5 per cent on an income level between 20 and 30 income base amounts.

A person who is covered by ITP2 also receives the complementary retirement pension ITPK. ITPK is a defined contribution plan and the premium is 2.0 per cent of the pensionable salary.

The ITP plan contains different choices regarding, e.g., the withdrawal of pension and survivors' protection. The possibility also exists to agree upon a lower pension age than 65, within the ITP plan. If you are sick for a prolonged period and receive compensation from the Swedish Social Insurance Office, this compensation is supplemented with ITP's invalidity pension.

There is also a collective agreement guarantee that entails the premiums being 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.

#### **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 medical care. However, the tax consequences of these other benefits should be investigated with the local tax authority in order to avoid any unpleasant surprises.

#### **EXAMPLES OF TERMS OF REFERENCE TO 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 about matters in certain cases that are so urgent and important that there is no time to obtain the decision of the board of directors. In such cases, the board of directors shall 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 inboard matters.
- All ongoing activities within the framework of the budget are set by the board of director's and in accordance with its guidelines.
- Represent the company and sign on its behalf for the aforementioned tasks.

#### **MORE INFORMATION**

If you have questions with regard to an CEO position or if you would like assistance with reviewing your contract, you can contact the ombudsman for directors in your region. You can find contact details at [unionen.se/chef](http://unionen.se/chef), or call Unionen's Directors Line on 0771-344 344.