

ISF Report 2013:11

Application of the rules on sickness compensation

Swedish Social Insurance Inspectorate

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Summary

The Swedish Social Insurance Inspectorate (Inspektionen för socialförsäkringen, ISF) is an independent supervisory agency for the Swedish social insurance system. The objectives of the agency are to strengthen compliance with legislation and other statutes, and to improve the efficiency of the social insurance system through system supervision and efficiency analysis and evaluation.

The ISF's work is mainly conducted on a project basis and is commissioned by the Government or initiated autonomously by the Inspectorate. This report has been initiated by the Inspectorate.

Background

As from the 1st of July 2008, Sweden reformed its system of benefits to people who cannot work due to illness. According to the new legislation, people aged between 30 and 64 whose ability to work is reduced by at least a quarter due to illness or other reduction of physical or mental capacity can receive sickness compensation. To be able to receive sickness compensation, the ability to work must be permanently reduced, i.e. for the foreseeable future, and medical and occupational rehabilitation measures must not be expected to lead to the recovery of any ability to work.

Rules on sickness compensation, like many other rules in the field of social security, are designed in a way that leaves some room for manoeuvre. The reason for this is that it is difficult to anticipate every situation that could arise in the application of rules in individual cases and to decide in advance how they should be handled. Judgments from the administrative courts may provide guidance in the interpretation of the rules. Such judgments can affect the insured's right to indemnity. It is therefore important that the Swedish Social Insurance Agency (the Agency), which decides on sickness compensation, quickly adjusts to new precedents. A quick adjustment

to new court practices also leads to greater consistency in the application of the law, thus strengthening the rule of law.

In October 2011, the Swedish Supreme Administrative Court decided in three cases in which the court took a position on how to implement two of the constituent elements of the rules on sickness compensation, that the ability to work must be permanently reduced and that medical and occupational rehabilitation measures must not be expected to lead to the recovery of the ability to work.

Objectives

The purpose of this study is to examine how the Agency applies the rules on sickness compensation. The study especially focuses on the application of the requirements that the ability to work must be permanently reduced and that medical and occupational rehabilitation measures must not be expected to lead to the recovery of the ability to work.

Methods

In this study the decisions and other documents from 297 case files and 149 re-examination case files from the Agency have been reviewed with a focus on how the Agency applies the requirements for entitlement to sickness compensation.

Findings

The study shows that the Agency to some extent has interpreted the requirements that the ability to work must be permanently reduced and that medical and occupational rehabilitation measures must not be expected to lead to the recovery of the ability to work in a manner inconsistent with the way the Supreme Administrative Court interpreted these requirements. Such interpretations are observed almost exclusively in cases where the decision was made before the Court's judgments were announced. Given that the judgments only partially clarify how the requirement that the ability to work will be permanently reduced should be interpreted, and that in addition there are other uncertainties about how the rules on sickness compensation will be applied, there is still a risk that the rules are difficult to interpret and apply. This could lead to the rules not being applied uniformly.

The study also shows that the Agency has successfully spread information throughout the organisation about the Supreme Administrative Court's interpretation. Within six months after the judgments were announced the interpretations of the two requirements which have been studied in this report were consistent with the Court's interpretation, and deviations were only found occasionally.

ISF would like to emphasise that some of the problems of ambiguity in how the rules on sickness compensation should be interpreted could have been prevented before the promulgation of the new legislation if these questions had been better elaborated on in the preparatory documents to the legislative Act.