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Protection of platform workers in Iceland Part 2 Country report

Nordic future of work project 2017–2020: Working paper 11. Pillar VI

Fafo

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Preface

In the future of work project funded by the Nordic Council of Ministers, more than 30 researchers from the five Nordic countries study:

- What are the main drivers and consequences of the changing future of work in the Nordic countries?
- In what ways will digitalisation, new forms of employment, and platform work influence the Nordic models?
- What kind of renewal in the regulation of labour rights, health and safety, and collective bargaining is warranted to make the Nordic model fit for the future?

Through action and policy-oriented studies and dialogue with stakeholders, the objective is to enhance research-based knowledge dissemination, experience exchange and mutual learning across the Nordic boundaries. The project runs from 2017 to 2020, and is organised by Fafo Institute for Labour and Social Research, Oslo.

The project is divided into seven pillars. This paper is part of Pillar VI Labour law & regulations, and aims to highlight the effect of an unclear employment status on key elements of Nordic labour law and regulation, by using a typology of workers. The paper will map and discuss how the relevant legal norms apply to the traditional employee and the genuinely self-employed worker compared to a type of worker whose employment status is fundamentally unclear – the typical platform worker.

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1 Introduction

In Iceland, none of the large platform companies such as Uber, Foodora and Deliveroo are operating. Platform companies are rare in Iceland. In 2019 at least two companies that could be classified as platform companies opened websites in Iceland, Maur[1] and Plattinn.[2] The business models of these companies is linking together people or companies in need of service and people who are willing to provide that service. From the information on the websites it seems that the platform operates with the perception that the individuals who register would be self-employed. Among the information on the website of Maur is a short tutorial on how self-employed people should do their taxes and links to further info on the website of the tax authorities.[3] The people who are registered are a very diverse group. For example, a dog walker, a lawyer, a golf instructor, people looking for work in retail and service, designers, programmers, teachers and electricians. It is hard to say whether the elements that make the employment status of platform workers unclear in some instances are present or not. That would have to be evaluated in each case.[4]

As far as this author knows these are the only two online platforms in Iceland at this moment and it is impossible to know the extent of the services that have been provided through these two websites. According to a news story on Plattinn, 200 people had registered their services in September 2019.[5] There might be other websites or apps that provide a platform for exchange of labour or service. These two companies were recently founded, and this development might go on. The Icelandic courts have never dealt with platform companies so there is no case law available on the matter. These two facts, the lack of companies and the lack of case law, makes this study somewhat harder to do in the Icelandic context. However, the aim of the study is to look at the current situation of labour law in the different Nordic countries, under the umbrella of the cross-disciplinary project: *The future of work: Opportunities and challenges for the Nordic models*. The research questions are therefore relevant for Iceland, now and perhaps they will be even more relevant in the future. In this study there is an archetype of a typical platform worker that is used to assess labour and social security law. The types of labour relations in Iceland that are recognised by law and the courts are only the traditional employee (category 1, public servants fall under this category) and the genuinely self-employed (category 2). There is no third category and there have been no proposals to make a new category. In part I of the study these concepts were explored and case law where the nature of the relationship was under scrutiny was presented. The typical platform worker would therefore fall

[1] Website of Maur <https://maur.is/> Accessed December 30,2019.
[2] Website of Plattinn <https://plattinn.is/> Accessed December 30, 2019.
[3] *Upplýsingar fyrir verktaka* (Maur n.d.) <https://maur.is/upplysingar-fyrir-verktaka/>, Accessed December 30, 2019.
[4] This was examined in part 1 of the project. Dagný Aradóttir Pind 'Key concepts and changing labour relations in Iceland. Part 1 Country report' Nordic Future of work project 2017-2020: Working paper 6. Pillar VI < https://www.fafo.no/images/pub/2019/Nfow-wp6.pdf> Accessed December 30, 2019.
[5] *Tripadvisor fyrir verktaka* (Morgunblaðið September 25, 2019) < https://www.mbl.is/vidskipti/frettir/2019/09/25/tripadvisor_fyrir_verktaka/> Accessed December 30, 2019.

in category 1 or 2 and his or her legal status would be determined by that classification. If the conclusion would be that the person providing his or her service on the platform was an employee, the employer could be the platform company or the customer buying the service through the platform, an individual or a company. This would also have to be determined in each case. In this study the presumption is that the platform would or could be the employer in most cases, if the customer is likely to be considered as the employer in a specific context the employer that is stated especially.

This report will look at the typical platform worker from several perspectives within the field of labour and social security law. In chapter 2 the legal framework of trade unions and collective bargaining will be explored, as well as a brief look into the interplay between competition law and labour law. In chapter 3 we will look at health and safety regulations and in chapter 4 social security legislation and rules will be looked at.

2 Strong labour market actors – labour market organisation, collective bargaining and collective agreements

2.1 The legal framework of collective bargaining

The term "collective agreement" is not defined explicitly in Icelandic legislation, but there are legal provisions that state who can make agreements, what forms they can take, how the voting should be done and more. The main legislation on collective bargaining and collective agreements in the private sector is Act 80/1938. Articles 5-7 have provisions on collective bargaining. It says that trade unions can negotiate on wages and other terms of the job for their members. The term "trade union" is not defined, but article 5 refers to the statutes of the trade union in question. There are also provisions on how trade unions, or employers' organisations, can form negotiating committees or that these actors can transfer their agency to bargain to other actors, such as federations of unions. Collective agreements are valid from the date that they are signed, if it is not otherwise stated in the text of the agreement, or if they are declined in a secret vote by at least half of members that fall under the agreement. Provisions on collective bargaining for the public sector are in Act 94/1986 on collective agreements of workers in the public sector. The right for a trade union to bargain based on this legal act is much more limited than in act 80/1938, according to articles 4 and 5. The private sector is much more relevant than the public sector for this study, so the focus will be on that legislation, unless otherwise stated.

Collective agreements have to be in written form and the time they are valid for and the notice period shall be stated in the text. If these facts are not stated, the agreement is valid for one year and the notice period three months. Usually the time is stated in the agreement and when that time runs out the agreement runs out without either party notifying the other party.[6]

Collective agreements set minimum terms according to Article 1 of the Act on Workers' Wages and Terms of Employment and Obligatory Insurance of Pension Rights no. 55/1980.[7] This applies only to employees[8] in the relevant occupation within the area covered by the collective agreement. Contracts made between individual employees and employers on poorer working terms than those specified in the general collective agreements shall be void. This is unique for Icelandic labour law and makes collective agreements generally applicable through legislation.

Provisions on industrial action are in chapter II of Act 80/1938. The general rule is that striking is only allowed when there is no collective agreement in place. When a collective agreement is in force there is a peace obligation, both on the union and the employer. The right to strike is a collective right connected to the union, it is not an individual right. According to the legislation there has to be an industrial dispute taking place, and it is unlawful to strike on a matter that should go to the Labour Court (legal dispute) and political strikes are also not allowed.[9] The only time striking

[6] Article 6, Act 80/1938.
[7] Act 55/1980, lög um starfskjör launafólks og skyldutryggingu lífeyrisréttinda.
[8] The Icelandic term in this provision is "launamenn".
[9] Articles 14 and 17 of Act 80/1938.

is allowed while the peace obligation in is force are sympathy strikes, which are permitted if the original strike is lawful.[10] The law lays out a lot of formalities on for example how to vote on a strike, who to notify and when and how strikes can be postponed or cancelled. These have to be followed in order for the strike to be legal. The Labour Court has the final word on the legality of a strike.

Rules on workplace representatives (shop stewards) are also in Act 80/1938 as well as in most collective agreements. At each workplace where at least 5 people work the union has the right to nominate two shop stewards, according to the law.[11] Provisions in collective agreement might differ from this, in many of them there is one shop steward per fifty employees.[12] The role of the shop steward is to ensure that collective agreements are upheld at the workplace. Individual employees can seek the help of the shop steward if they have any problems with the employer and the shop steward has the duty to investigate the matter and try to solve the problem, in collaboration with the employer. According to the legislation, it is illegal to dismiss shop stewards, unless they have done something themselves to earn a dismissal.[13]

2.2 Membership of labour market organisations

In article 1 of the act the right to establish a trade union is laid out, a right for people to establish unions to collectively work towards common goals for employees and the working class in general. These concepts are not defined further, and this article has stood unchanged since 1938. In the preparatory documents it is stated that a trade union is a body that is established in order to protect the interests of people that make a living by selling their labour for a payment.[14] According to article 2 of Act 80/1938 on Trade Unions and Industrial Disputes, trade unions shall be open to all persons that work in the respective sector in a certain area. Further rules can be laid out in the statutes of individual trade unions. This legislation, as already mentioned, covers the private sector. Article 2 does not limit membership to employees it states that they should be open to all, but rather refers the matter to the statutes of the trade unions.

The statues of trade unions are different from one to the next. A few examples from different sectors will be mentioned here. VR, one of the larger unions, is open to all people working in retail, office and the service sector. It is open both to employees and the self-employed.[15] Efling, the biggest blue-collar trade union is open to all persons who work in various sectors, such as construction, hotels and restaurants, fisheries and more, but it is not open to people who are engaged in any kind of business. Self-employed people would therefore not be allowed in Efling. Félag íslenskra rafvirkja is open to all persons who hold a certificate as electricians or are studying to become electricians. Those who are independent contractors cannot become members.[16]

[10] Article 17(3), Act 80/1938.
[11] Article 9, Act 80/1938.
[12] Article 13.1 of Collective agreement between VR and SA.
[13] Article 11, Act 80/1938.
[14] Greinargerð með frumvarpi til laga nr. 80/1938, um 1. gr.
[15] Statutes of VR, available in Icelandic at <https://www.vr.is/um-vr/log-og-reglugerdir/log-vr/> Accessed December 30, 2019.
[16] Statutes of Félag íslenskra rafvirkja, available in Icelandic at <http://rafis.is/fir/um-fir/log-felagsins> Accessed December 30, 2019.

Fræðagarður, the biggest trade union for university graduates, is open to all persons that hold a BA or BS certificate from a university. Membership is open to everyone, no matter the type of employment relationship, traditional employee/employer relationship or for the self-employed.[17] This is typical for the academic unions, the same provision can be found in the statutes of several others.

As to whether unions have targeted self-employed people that does not seem to be common, even though there are examples of it. Félag kvikmyndagerðamanna, the Icelandic Film Makers Association, recently formed a union. The film industry in Iceland is mainly comprised of self-employed people and the association was trying to unionize the sector by forming the union. The union is open to self-employed people.

There are no numbers available on how many self-employed people are members of trade unions. If self-employed people join union, they have to pay their share of the membership fee (often 0,7-1% of salary), and also pay into all the funds the employer usually covers, such as holiday fund, sickness fund and other. The total of these can be between 2% and 3%, and the total of all fees up to 4% of salary. That can be a considerable amount.

As was stated earlier there are very few platform companies operating in Iceland. The biggest employer's organisation is SA (Confederation of Icelandic Enterprise), which is made up of six sector associations. None of them have any restrictions that could hinder platform companies from entering, they are either open to all businesses in a sector or to businesses and self-employed people or independent contractors in a sector. It does not seem that either of the two platform companies mentioned in chapter 1 are members of SA.

2.3 Scope of the collective bargaining mechanism

In the legislation there are more provisions on the trade unions than on organisations on the employers' side. However, one or more trade unions can make a collective agreement with one or more employers, or a federation of employers. In the private sector there are no requirements to how many members a union has to have in a certain workplace in order to have the power to bargain collectively. In theory, a union can bargain collectively for one member, although that is not common practice. The legislation in the public sector is more restricted. Only certain unions have bargaining right in the public sector and Act 94/1986 has rules on what criteria unions have to meet to be able to bargain collectively in the public sector.[18]

Generally, a collective agreement only covers employees. According to article 1 of Act 55/1980 the minimum terms in collective agreements cover employees. The terms used in Act 80/1938, on Trade Unions and Industrial Disputes, have more variety. The act refers to labourers (verkafólk), members (meðlimir), employees (launafólk) and the working class (verkalýðsstéttin). As stated in chapter 2.2 the statutes of each trade union define who can be a member of a union. Most of the provisions on collective agreements in legislation 80/1938 use terms that fall within the employee concept.[19] There are no examples of collective agreements covering self-employed

[17] Statues of Fræðagarður, available in Iceladic at <https://www.fraedagardur.is/is/um-felagid/log-fraedagards> Accessed December 30, 2019.
[18] Act 80/1938, articles 4 and 5.
[19] For example articles 6 and 7.

workers or platform workers, but in the following chapter some examples of attempts to cover these groups will be mentioned.

2.4 The intersection of collective agreements and competition law

Act 44/2005 is the main legal act on competition. Salaries and other working terms as decided by collective agreements are exempted according to article 2(2). There are no further exceptions for agreements for self-employed or platform workers in any trade. There is little case law in this field of intersection between labour law and competition law, but there are a few decisions by the Competition Authority that touch on the issue. Overall, it can be said that the Competition Authority interprets the law and the exceptions from them textually, that is according to the wording of the provisions. One case concerned a price list that the union of musicians published for their organ players. The price list was for ceremonies which were not part of the regular mass, which was covered by a collective agreement, such as weddings and funerals. The union maintained that this list should be seen as a collective agreement and therefore be exempt from competition law. The competition authority disagreed, and said it was a list that was unilaterally decided by the union and was therefore a breach of the competition law.[20] In another decision the Competition Authority was willing to make a very narrow exception from the competition rules. The Union of Academics wanted to publish an index for their self-employed members. The index would be set up in a way that allowed self-employed people to calculate how much to charge, taking into account taxes, contributions into pension funds and other social security, holiday pay and other terms which are part of collective agreements. The Competition authority was against publishing an index of this kind at an open website but allowed that it would be published at a closed website and the union would hand out passwords to self-employed people who were in fact sham-self-employed. Another prerequisite was that no minimum terms would be published and that the index could not be downloaded, but only used at this closed website.[21] It is unclear what the Authority meant by sham-self-employed and whether the union would have the discretion to decide who fell into that category.

As was mentioned in chapter 2.1 collective agreements set minimum terms for employees in the relevant occupation and area. As far as this author knows there are no collective agreements that cover self-employed persons or platform workers in Iceland and the legal provisions concerning collective agreements are only set up for employees.

2.5 Overall comparison

Looking at the legal framework in Iceland in the light of protection of platform workers some strengths and weaknesses can be identified. The main legislation on collective bargaining, Act 80/1938 on Trade Unions and Industrial Disputes, does seem to

[20] Ákvörðun Samkeppniseftirlitsins 5/2006 from February 10, 2006 *Ólögmætt samráð innan Félags íslenskra hljómlistarmanna vegan útgáfu gjaldskrár fyrir organistadeild félagsins*.
[21] Ákvörðun Samkeppiseftirlitsins 18/2005 from June 7, 2005 *Ósk Bandalags háskólamanna um undanþágu á grundvelli 16. gr. samkeppnislaga til að fá að birta verktakastuðul fyrir háskólamenn á heimasíðu bandalagsins*.

have some flexibility as it refers to the statutes of individual trade unions. The provisions on collective agreements refer to labourers or employees. Some examples of trade unions that accept self-employed people as members were also mentioned. However, as of now there are no collective agreements covering self-employed people or platform workers and therefore no examples of clauses in collective agreements that define the scope of the agreement wider than only employees. The Competition Authority has not been progressive in interpreting exceptions from competition law. The two cases mentioned in chapter 2.4 are about 15 years old so it does not seem that trade unions have been trying to bargain on behalf of self-employed people or platform workers.

3 A healthy and productive work force: Health and safety, working time and paid annual leave

3.1 The legal framework

The main national legal basis for regulating a safe working environment is Act 46/1980 on Work Environment, Health and Safety in the Workplace (lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum, Work Environment Act).[22] The legislation implements the Directive on Occupational Health and Safety. In addition, there are provisions in collective agreements that add to the legislation as well as various regulations concerning different aspects of health and safety in the workplace. Some of these are very specific, covering only certain industries or certain chemicals or machines, while others apply for a larger group of workplaces, or even all of them.[23] Legislation 46/1980 covers all activities, where one or more persons are employed, whether they are owners of the enterprise or employees. Shipping and air traffic are excluded, but different laws and regulations cover those sectors.[24]

Working time is regulated by the same legal Act, which also implements the Working Time Directive.[25] The minimum rules are found in the legislation. When the Working Time Directive was implemented there were two industry-wide collective agreements made, one for the private sector and another for the public sector. In these agreements there are more detailed rules, some exceptions and provisions on how to deal with breaches of the rules on rest periods. The rules are almost the same for each of the two sectors and rules have then been made part of all collective agreements. This is common in Icelandic labour law. Minimum rules are laid out in legislation and more detailed and often more favourable rules are in collective agreements. The same situation applies to paid annual leave, the minimum rules are in the Holiday Act,[26] all collective agreements have more favourable provisions, and many have rules on how employees attain more holiday pay with longer service period. The minimum paid annual leave according to the legislation is 24 working days[27] for an employee that has been working for a full year and usually the maximum in collective agreements is 30 working days.

3.2 Health and safety

In general, the rules that are a part of collective agreements apply only to employees. Persons who are self-employed fall outside of them and if a person has unclear employment status, he or she would be at risk of not being covered by the respective rules.

For the legislative provisions, the picture is not so simple, at least not when it comes to health and safety. Responsibility can fall on those who are not employers

[22] Available in English at <https://www.government.is/lisalib/getfile.aspx?itemid=5d55e7a7-e82c-11e8-942f-005056bc530c> Accessed December 30, 2019.
[23] A list of all regulations can be found at <https://www.vinnueftirlit.is/log-reglur-og-stadlar/reglur-og-reglugerdir/> Accessed December 30, 2019.
[24] Act 46/1980, article 2.
[25] Chapter IX of Act 46/1980.
[26] Act 30/1987, Lög um orlof.
[27] Article 3(1), Act 30/1987.

and protect those who are not employees. There is a connection to tort law in this field, and there are examples of case law that show this broader scope of the work environment legislation through court interpretation, moving responsibility for work environment from the employer to the main contractor, because it can be difficultto separate.[28] In a recent case of the Appeals Court an owner of a sub-contractor got compensation from the contractor because the contractor did not fulfil their duties according to the Work Environment Act to ensure a safe environment and to perform work in a safe manner. In this case it was accepted that the man in question was following orders from the contractor, even if he was not employed there.[29]

Article 17 of the Work Environment Act states that where more than one employer takes part in activities at the same work place, they, and others who work there, should jointly work towards ensuring a good, healthy and safe work environment. This has been interpreted by the Supreme Court to mean that the duty to inform authorities about work accidents lies on each employer independently. An example is a case where a cleaner was working for a sub-contractor that did cleaning for several companies. She got injured at work at a car seller, but the Work Environment Agency was not notified. She sued the car seller, claiming they were responsible for the work environment. The fact that the car seller did not notify the authorities so that the accident could be investigated had the effect that they did not have proof that they had done nothing wrong, and they were responsible for the accident, while the employee was also partly responsible herself.[30] This extension of responsibility could apply to a self-employed person that had any control or similar type or degree of control over their work environment.

It is however, hard to give a clear line about where responsibility falls and why, because there is also case law that does not broaden the scope of the concept of employer within the work environment act. Again, it is important to note that these cases are part of tort law. In case 485/2006 an employee employed at V, a soda company, had the job of going between supermarkets and shops and refilling shelfs with soda and drinks. He was injured at the job when he fell down stairs at a particular supermarket, and he sued his employer V. The Supreme Court interpreted Act 46/1980 very restrictively in this case, saying that V had no control over the worksite at the supermarket, and that the supervisor of the employee also had no control there, therefore it was not within his power to demand that working conditions would be improved. The results of this case rest on the Court's interpretation of the words workplace, in chapter VI of the Work Environment Act. This has been criticized for being too narrow, and that the Supreme Court did not give a good enough reasoning for this interpretation. According to one author the reason the Supreme Court gave, that it was not possible for the Court to put the duty on ensuring a safe work environment on V because V did not have control over the supermarket, are not enough. The Work Environment Act puts duties on employers to ensure a safe working environment and V had many options in this case to do that, even if they maybe did not have the power to change the layout of the supermarket. They could have changed

[28] An example is Supreme Court Case 147/1995 from June 13, 1996 *Eldberg hf. gegn Ólafi Auðunssyni og gagnsök*, where the employee of a sub-contractor could get compensation from the main contractor, even though the accident happened during a part of the work that was subcontracted.
[29] Landsréttardómur 426/2018 from December 19, 2018 *Sjóva-Almennar tryggingar hf. og Orka náttúrunnar ohf. gegn A*.
[30] Hæstaréttardómur 198/2006 from November 16, 2006 *Fouzia Bouhbouh gegn Ingvari Helgasyni hf.*

the way the work was done, stop work on this day because it was snowing and slippery, or even stopped doing business with the supermarket until they had made changes to the work environment.[31]

According to the Work Environment Act, The Administration of Occupational Safety and Health in Iceland (AOSH) has the role of monitoring and enforcing the practice of the law. Their role is mainly laid out in chapter XII. Among their tasks are training and counselling companies, staff and safety representatives, doing preventative work and research and keeping a list of occupational diseases and how common they are.[32] Employers have a duty to report about all accidents that lead to at least one day absence from work to AOSH and there are also duties laid on doctors and Icelandic Health Insurance to report cases of work related sickness and accidents that they know of.[33] AOSH has the duty to investigate cases that are reported.[34] AOSH also has the duty to visit workplaces to monitor that the legislation is being upheld. Employers shall hand over information, documents or other things that AOSH staff asks for.[35] The social partners also have certain rights to monitor workplaces based on Act 42/2010 on Workplace identification and workplace inspection. They do not have the same rights as AOSH, but their inspectors have the right to enter workplaces and ask for identification of employees.[36] They can enter all workplaces that fall under the act, irrespective of whether the people working there are employees or not. There is also collaboration between the social partners, AOSH, tax authorities and other official bodies, and that is described in both legal acts.[37] AOSH can demand that employers take action to ensure a safe and healthy workplace and if they have not acted or if there is immediate danger they can shut down the workplace.[38] They can also impose sanctions, such as fines per diem.[39] This goes for all working places, as the scope of the Work Environment Act is broad and covers all activities, where one or more persons are employed, whether they are owners of the enterprise or employees.[40]

It is safe to say that platform workers would be covered by the Work Environment Act, in some cases at least. However, when a worker has to work at more than one work-site, the picture is not clear. Platform work is very often not connected to one location, such as cleaning, food delivery and driving passengers. The results in many cases rest on the facts of the case and how much the worker can prove. If there he or she can prove fault on behalf of the employer, it is more likely that a worker or a self-employed person will be covered. Control over the work and who gives orders is also important, but also a matter that can be hard to prove.

3.3 Working time

In general, the same thing can be said about working time as on the rules on health and safety. Provisions in collective agreements generally cover employees, but the

[31] Viðar Már Matthíasson 'Vinnuveitandaábyrgð, ýmis álitaefni tengd vinnustaðahugtakinu*' [2009] Úlfljótur tímarit laganema 62(3) 297-314, 312-313.
[32] Article 75, Act 46/1980.
[33] Article 79, Act 46/1980.
[34] Article 81, Act 46/1980.
[35] Article 82, Act 46/1980.
[36] Article 4(1) act 42/2010.
[37] Article 4(3) act 42/2010 and article 82(8) of Act 46/1980.
[38] Articles 84 and 85 of Act 46/1980.
[39] Article 87, Act 46/1980.
[40] Act 46/1980, article 2.

legal rules can have a wider scope. When it comes to working time there is another exception from the scope that is very relevant, at least for self-employed people, and can be for platform workers as well, depending on their control over their working hours.

In the legislation on working time, senior managers or other persons who decide their own working hours are emitted from the scope of the rules altogether.[41] The same exception can be found in collective agreements. The rules in the collective agreements apply to employees only and there is no case law that makes clear that the legal rules on working time from the Work Environment Act apply to people who are self-employed. In fact, Icelandic courts have interpreted the exceptions for people who decide their own working time very broadly, and therefore the scope of the working time regulations narrowly. An example is a recent case from the Supreme Court. The employee in question was the head chef at a construction site where a tunnel was being built. He was hired for a set monthly salary and among his duties was to provide all meals for all the staff working on site, between 50 and 70 people at each meal. Breakfast at 6, coffee at 10, lunch at 12, afternoon coffee between 15 and 16 and dinner at 18, in addition to buying and ordering ingredients to cook with. He claimed to have been working every day from 5 am to 20 or 21 in the evening. However, he sometimes took breaks during the day after lunch for one or two hours and he had one person assisting him in the kitchen. There was no written contract of employment. He claimed that minimum rules on rest had been breached and wanted compensation according to the collective agreement. The employer claimed that the chef had been hired for a monthly salary and that he controlled his working hours himself. The majority of the Supreme Court ruled in favour of the employer, saying that the exception from the working time rules, about senior managers or other persons who decide their own working hours covered the chef and that he fell outside the scope of the working time rules.[42] Before the case went to the Supreme Court the Appeals Court had ruled in the chef's favour, and one Supreme Court judge did so as well. The dissenting Supreme Court judge cited the preparatory documents of the legislation where the concepts of "other persons who decide their own working hours" are explained. According to the preparatory documents this covers employees that because of their position within a company control their working hours themselves, or those who work at home or those who work at a family business. The dissenting judge was of the opinion that the facts of the case did not make it clear that the chef did in fact control his working hours because of the duties and tasks that he had to provide.[43] Based on this case law it is very likely that this exception would cover self-employed people and platform workers as well, unless someone else decides their working hours and they have no or limited control over when they work.

If individuals have cases concerning breach of working time regulations, health and safety and annual leave they can go to the general courts. Cases that are based on breaches of the rules in collective agreements can also be taken to the Labour Court by the respective union. In chapter 3.2 some cases have been mentioned and some of them criticized. Another point that can be mentioned here and is relevant for this study is that Icelandic Courts frequently shift responsibility over working

[41] Article 52a, Act 46/1980.
[42] Hæstaréttardómur 27/2019 from September 30, 2019 *Suðurverk hf. gegn Viktori Spirk*.
[43] Dissenting opinion from judge Ólafur Börkur Þorvaldsson in Hæstaréttardómur 27/2019 from September 30, 2019 *Suðurverk hf. gegn Viktori Spirk*.

time and rest from the employer to the employee. This has happened when the employee did not complain or go to court until some time had passed since the breaches took place. According to the Icelandic Confederation of Labour this is not in line with the practice in Europe, for example case C-55/18 where it was rather clear that responsibility to recording and monitoring working time was on the employer.[44] The Confederation has initiated a complaint with the EFTA Surveillance Authority because of this.[45]

For inactive working time, such as waiting time between different gigs or tasks, the legislation and collective agreements contain no provisions on that. In the sector agreements on working time the term "working hours" is defined as the time where an employee is working, at the employer's service and performing his/her duties. Time spent travelling to and from work, breaks and waiting time are generally not considered working time, regardless whether they are paid or not.[46] The aim of these rules is to ensure minimum rest and there can therefore be a discrepancy between paid time and working time. Historically, for example, in collective agreements coffee breaks twice per day (35 minutes total) have been paid, while the lunch break has not.[47] As with platform work in general, there are no cases that deal with this break between gigs or other types of inactive working time.

3.4 Paid annual leave

The minimum rules on paid annual leave are in the Holiday Act.[48] All collective agreements have more favourable provisions, and many have rules on how employees attain more holiday pay with seniority The minimum paid annual leave according to the legislation is 24 working days[49] for an employee that has been working for a full year and usually the maximum in collective agreements is 30 working days. In individual employment contracts employees can negotiate for a right to longer paid annual leave. The scope of the Holiday Act is, according to article 1, "everyone that works in the service of others for a salary," so it is only for employees. Self- employed people have to save up for their own holiday pay and platform workers would have to be classified as employees in order to get the right to paid annual leave.

The right to holiday can be separated in two: the right to take leave from work on the one hand and on the other hand the right to payments while on leave. For example, a person that has recently changed jobs might not have earned a right to paid leave at his/her new employer but will regardless be entitled to go on unpaid leave. The legislation lays out the way the payments shall be calculated, and that a person should get their holiday pay before they go on leave.[50] For most full-time employees they simply go on holiday and keep their salary while they are away. For others, the

[44] Case C-55/18 of May 14, 2019 *Federación de Servicios de Comisiones Obreras v Deutsche Bank SAE*.
[45] Snorri Már Skúlason 'Nýr dómur – Vinnutímareglur eru grundvallarréttindi' (ASÍ, May 17, 2019) <https://www.asi.is/frettir-og-utgafa/frettir/almennar-frettir/nyr-domur-vinnutimareglur-eru-grundvallarrettindi/> Accessed December 30, 2019.
[46] Article 2(1), Samkomulag um ákveðna þætti er varða skipulag vinnutíma milli fjármálaráðherra f.h. ríkissjóðs, Reykjavíkurborgar og Launanefndar sveitarfélaga og Alþýðusambands Íslands, BHM, BSRB og Kennarasambands Íslands.
[47] This is changing. In the collective agreements in 2019, some trade unions negotiated for giving up paid coffee breaks in exchange for shorter working week.
[48] Act 30/1987, Lög um orlof.
[49] Article 3(1), Act 30/1987.
[50] Article 7(3), Act 30/1987.

amount is usually deposited into a separate bank account that the employee gets access to at the beginning of May each year. The legislation also has an exception that says that holiday pay can be paid out each month if the majority of employees accept that.[51] If a person leaves a job before the holiday period starts, he or she should be paid out their holiday payments that they have earned the past holiday year.[52] These are the two instances where annual leave can be exchanged for money.

3.5 Overall comparison

From these previous sections, it is clear that platform workers would not have a right to paid annual leave unless they are classified as employees. It is not possible to answer whether platform workers fall outside or inside the rules on health and safety and working time. In many cases they would be covered by the regulations on health and safety, as was demonstrated in chapter 3.2. We saw some examples of case law that show this broader scope of the work environment legislation, and where responsibility for work environment has been moved from the employer to the main contractor, because it can be difficult to separate the two or because the main contractor gave the orders. Complications could arise when the platform worker would be working at more than one place because it would be difficult to decide who bears the responsibility for the working environment in such cases. For working time, it is unlikely that platform workers would be covered most of the time, unless they had no say in the organisation of their working hours.

[51] Article 7(4), Act 30/1987.
[52] Article 8, Act 30/1987.

4 Basic social security – benefits related to unemployment, parental leave, sickness, injury and retirement/old age

4.1 The legal framework

Basic social security is regulated in a few different legal acts and parts are in collective agreements. In general, the benefits that are regulated by law apply both for employees and the self-employed. This chapter will look at each type of insurance or benefit separately. For many of these social security schemes that will be mentioned, it is the duty of the employer to pay the contribution fees. In some cases, the employee pays some of them. For self-employed people, they have to pay both parts, the part that the employee pays and the one the employer pays. In some cases participation is mandatory. It is mandatory for all employers to insure their employees against sickness, injury and death, provisions on the insurance are in collective agreements. In addition, members of trade unions have benefits from the sickness funds of the unions, which are financed by employers. The basic universal health insurance is financed by the state, through tax money.

4.2 Unemployment benefits

The same legislation applies to the unemployment benefits of employees and the self-employed, Act number 54/2006.[53] The legislation defines the two concepts in article 3. An employee is a person that works for a salary for someone else in at least 25% job every month. For some platform workers, who work sporadically, this criteria could be hard to fulfil. It is also a requirement that the insurance contribution is paid. A self-employed person is someone that has his or her own company or works for him or herself. That person has to calculate a salary each month according to the tax rules on calculated salaries. They also have to pay income tax and the insurance contribution.

For the most part, the same rules apply to both groups of people, but they are in different chapters of the legislation. The rules on employees are in chapter III and the rules on self-employed people are in chapter IV. To be eligible for unemployment benefits there are certain requirements. The person has to be between 18 and 70 years old and the waiting period is three days. The person has to be actively seeking a job and be ready to take any job. They must also be healthy enough to be able to take most general jobs.[54] There are also requirements to take part in the activation policies that the unemployment agency demands of the applicant.[55] People earn their right to full unemployment benefits after working (as an employee or self-employed) for 12 months in Iceland. The minimum working period in the last 12 months is 3 months and if people have worked between 3 and 12 months, they get benefits in accordance with that.[56]

[53] Act 54/2006, lög um atvinnuleysistryggingar.
[54] Article 13 for employees and article 18 for self-employed, Act 54/2006.
[55] Article 14, Act 54/2006.
[56] Article 15 for employees and article 19 for self-employed, Act 54/2006.

Both employees and the self-employed have the right to benefits of 70% of their average salary for the first three months before becoming unemployed.[57] For workers the average is found using the six month period that begun two months before he or she became unemployed.[58] For the self-employed the average is found using the calendar year before the person became unemployed.[59] According to the preparatory documents, this difference can be explained with the fact that it is very likely that a self-employed person would know that their business was in trouble a few months before they stop it. If the time period was the same as for the workers, it would open up some possibilities for fraud.[60] After this three month period of 70% replacement both groups drop to the basic unemployment benefit.[61] The basic full-time unemployment benefit is less than the minimum salary according to collective agreements.[62] This amount is changed every year when the state budget is approved.[63] There is a 4% extra for each child that the person has to provide for.[64]

There are some special requirements that only apply to the self-employed. They have to have quit their business operation. That does not apply to employees, even though employees can also get benefits if their employer goes bankrupt or quits their business for other reasons. The self-employed also need to have paid all their taxes and the insurance contribution up until the time they stopped their business operation. The tax authorities publish the amount for calculated salary for self-employed for the various sectors and occupations. If a person pays less than 25% of that amount for the job in question, they have no rights to benefits. In the same way as the 25% criteria for employees can be a problem for platform workers, this criteria for self-employed persons can also be difficult to fulfil for platform workers.

In article 15(9) there is a provision that states that if an employee has also been self-employed in the last 12 months, all his or her income shall be taken into account. The same provision in the reverse is in the chapter about self-employed persons, which for some platform workers at least could make it more likely that they would be eligible for benefits.[65] Platform workers in general, whether they would be classified as self-employed or employees, have a possibility to be covered by the Icelandic unemployment scheme. However, some of the criteria, might make it harder for them to be eligible, especially the criteria of at least a 25% job.

[57] Aricle 32(1), Act 54/2006.
[58] Article 32(2), Act 54/2006.
[59] Article 32(3), Act 54/2006.
[60] Frumvarp til laga um atvinnuleysistryggingar, þingskjal 1078, mál 742, 132. löggjafarþing 2005-2006, comments on article 32.
[61] Article 33, Act 54/2006.
[62] From January 1, 2019 full benefits are 279.720 ISK <https://vinnumalastofnun.is/atvinnuleitandi/fjarhaedir-og-greidslur-atvinnuleysisbota/fjarhaedir-atvinnuleysisbota> Accessed October 28, 2019. The minimum salary for full time work according to the collective agreement of Starfsgreinasambandið and SA is 317.000 ISK from April 1, 2019 <https://www.sgs.is/media/1366/taxtar_sa_1-april-2019-til-31-mars-2020.pdf> Accessed December 30, 2019.
[63] Article 33(3), Act 54/2006.
[64] Article 34(1), Act 54/2006.
[65] Article 19(9), Act 54/2006.

4.3 Sickness and injury benefits

Sickness and injury benefits are regulated through collective agreements and legislation. The minimum rules for employees are laid out in legislation 19/1979. All employees that have worked at least one year at the same employer have one month full salary in case of sickness. They then get up to two more months of base salary if they have served for five years at the same employer For many platform workers these seniority criteria could be hard to meet, but in some cases they might be covered by collective agreements, see further below. All employees also have an independent right to three months of base salary in case of an accident at work or on the way to or from work. In addition to this, all collective agreements have provisions about income replacement in cases of sickness, most of them have better rights than the minimum right in the legislation. The length of the sickness period is very diverse, it is common in the private market that in the first year, employees get 2 days for each month of service period and then the total time for sickness pay goes up to 3 or 6 months.[66] In the public sector the period usually goes up to one year for 18 year service period.[67] Usually collective agreements do not deviate from the minimum three-month period for work-related accidents, but these two periods can be combined, in case of a long recovery process from a work accident. Employers are required, according to collective agreements, to buy insurance for work related accidents. Some collective agreements provide for better insurance for employees.

Labour unions usually also insure their members against income loss because of accidents or sickness. This right is different from one union to the next, but it is common that there is between 70 and 80% replacement rate and the period ranges from 3 months to one year.

Self-employed people either have to buy their own private insurance or they can rely on the basic universal health insurance that is based on Act 112/2008.[68] People who have lost their income due to sickness or injury can, after being without pay for 21 days, get a small amount from the public health insurance, for up to 52 weeks of every 24 months.[69] The amount from this scheme is much lower than the minimum pay in collective agreements for every profession. The protection of platform workers when it comes to sickness and injury would therefore be very dependent on them being classified as employees, as self-employed people have much less protection if they don't have private insurance.

4.4 Maternity, paternity and parental leave

The rules on parental leave are in Act 95/2000 on maternity, paternity and parental leave. The definitions of concepts can be found in article 7. They are the same as the ones in the Act on unemployment benefits, the minimum work for both employees

[66] Collective agreement of VR and SA, article 8.2.2 states 6 months after 10 year service period <https://www.vr.is/media/5414/kjarasamningurvr-sa2016_vefur.pdf>, Collective agreement of RSÍ and SA states 3 months after 5 year service period <https://rafis.is/images/stories/pdf_skjol/Kjarasamningar/2016/Kjarasamningur_2015_SA_og_RSÍ_-_heildarskjal.pdf> Accessed December 30, 2019.

[67] See for example article 12.2.1 in the collective agreement of SFR and fjármálaráðherra f.h. ríkissjóðs, available at <https://www.sameyki.is/library/Kjarasvid/Kjarasamningar/Riki/SFR%20riki%20lok%202015.pdf> Accessed December 30, 2019.

[68] Act 112/2008, Lög um sjúkratryggingar.

[69] Article 32, Act 112/2008.

and self-employed people is 25%. These criteria could affect platform workers, in the same manner as with unemployment benefits. The insurance contribution is used to determine the extent of the work of the self-employed person. The tax authorities have guidelines for salaries for self-employed people in various sectors and these are used to find out the job percentage. Parents who are not working or working less than 25% also have a right to a minimum maternity/paternity grant.[70]

A parent gains rights to maternity/paternity leave after having been active for six months on the labour market.[71] The replacement rate is 80%, with certain minimums and caps.[72] The reference period is different for employees and self-employed persons, as it is for the unemployment benefits. For employees the period is a 12-month period that ends 6 months before the child is born.[73] For self-employed people the reference period is the calendar year before the year the child was born.[74] The reason for this difference is, according to the preparatory documents with the proposal for the legislation, is that self-employed people may have more influence over their income than employees. The legislator also named that it would be better to use the same time period as the tax authorities do, which is the calendar year.[75]

If a parent is both self-employed and employed it depends on how much of his or her income comes from the employment. If it is over 50% they follow the rules for employees, if not the reference period is like they are self-employed. The salaries of both jobs counts, so they get 80% of their gross income, or up to the ceiling.[76] This could benefit some platform workers who might work for more than one employer and in different forms. If the parent was not active in the labour market for all of the reference period only the months that he or she was working (as an employee or a self-employed person) shall be counted, but never less than 4 months.

The right to parental leave is 4 months for each parent, but there are no provisions on payments during this time.[77] Platform workers in general, whether they would be classified as self-employed or employees, have a possibility to be covered by the Icelandic maternity and paternity benefit scheme. However, some of the criteria, might make it harder for them to be eligible, especially the criteria of at least a 25% job.

4.5 Retirement/Old age

According to legislation 129/1997 every employee and those who are self-employed are obliged to pay into a pension fund between the ages of 16 and 70.[78] The minimum amount is 12% of gross salary according to the legislation, but for employees usually the payments and how much the employee pays and how much the employer pays

[70] This amount is considerably lower than for working people, it is 77.624 ISK for parents with children born after January 1, 2019 <http://www.faedingarorlof.is/files/Upph%C3%A6%C3%B0ir%202019_232393447.pdf> Accessed December 30, 2019.
[71] Article 13(1), Act 95/2000.
[72] The cap is 600.000 ISK. The minimum for people who work 50-100% is 177.893 ISK and the floor for people working 25-49% is 128.357 ISK. These amounts apply to parents with children born after January 1, 2019 <http://www.faedingarorlof.is/files/Upphæðir%202019_232393447.pdf> Accessed December 30, 2019.
[73] Article 13(2), Act 95/2000.
[74] Article 13(5), Act 95/2000.
[75] Frumvarp til laga um breytingu á lögum nr. 95/2000, um fæðingar- og foreldraorlof, með síðari breytingum. Þingsskjal 631, mál 387, 135. löggjafarþing, 2007-2008, comments on article 13.
[76] Article 13(6), Act 95/2000.
[77] Article 24, Act 95/2000.
[78] Article 1(3), Act 129/1997, lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða.

and which fund the person pays into, are decided in collective agreements.[79] Historically, the payments on behalf of the employer were a higher percentage of salary in the public sector, but in 2015 an agreement was reached that evened out the pension rights between markets.[80] Now employers in the public and private sector pay 11,5% and the employees pay 4%.[81] The pension funds are then obliged to insure that a person gets at least 56% of their monthly salary after they go into retirement, based on paying into the fund for 40 years.[82] Pension are therefore connected to the payments over the working life. For people who work part-time or irregularly their pension benefits can become lower. Platform workers in general would have the same rights as employees or self-employed people, but perhaps if they were working few hours or unregularly, that would affect their pension over time.

4.6 Overall comparison

The different benefits are financed in different ways. For many of them it is the duty of the employer to pay the contribution fees. The self-employed have to pay the employer portion themselves. The unemployment and parental leave schemes are financed with an insurance contribution that is regulated with Act 113/1990.[83] All employers have to pay 6,25% of salaries paid (in money, in kind, in benefits) into this fund.[84] Self-employed people have to pay this as well.[85] This contribution is collected the same way as regular income taxes.[86] For self-employed people the rights to unemployment and paid maternity/paternity leave are connected to them having paid the insurance contribution.

The contributions into the pension scheme are divided between the employer and the employee. The part of the employer is higher. In most funds it is 11,5% of gross salary from the employer and 4% from the employee. Self-employed people have to pay the minimum 12% according to the legal rules, and they pay the part of the employee and the employer. Participation in the pension scheme is mandatory.

For platform workers it would depend on the nature of their relationship whether they would be treated as employees or self-employed persons. Their contributions would be calculated accordingly. In general, it can be said that platform workers would be covered by all the statutory schemes, that is unemployment, maternity/paternity/parental leave and retirement and old age, regardless of whether they would be classified as employed or self-employed. The legislation has certain criteria, such as working 25% over a certain period of time, so some people who work irregularly could be at risk of not being covered. The reference periods can also be different for employees and self-employed (and platform workers) and people who work part-time

[79] Article 2, Act 129/1997.
[80] Rammasamkomulag milli aðila vinnumarkaðar <https://www.stjornarradid.is/media/fjarmalaraduneyti-media/media/Starfsmannamal/Rammasamkomulag.pdf> Accessed December 30, 2019.
[81] Kjarasamningur milli ASÍ, Flóabandalagsins, LÍV, RSÍ, Samiðnar, SGS, VR, Stéttarfélags Vesturlands, VM, Félags hársnyrtisveina, Grafíu, Félags leiðsögumanna, MATVÍS og Mjólkurfræðinga Íslands og SA <https://www.asi.is/media/275030/Kjarasamningur-AS%C3%8D-og-SA-211-2016.pdf> Accessed December 30, 2019.
[82] Aticle 4(1), Act 129/1997.
[83] Act 113/1990, article 3.
[84] Act 113/1990, articles 1 and 2.
[85] Act 113/1990, article 4.
[86] Act 113/1990, article 1(3).

as employees and part-time as self-employed, or change between formats in the reference periods, could fall in either category, depending on the situation at hand (see section 4.4). This could have consequences, especially if people do not earn the same or a similar amount over a longer period. For most of the benefits, other than sickness and injury, platform workers would be covered unless they were working less than 25%.

For the sickness and injury benefits employees are in a much better situation than the self-employed. Platform workers could therefore be at risk of not being covered by a proper sickness and injury insurance scheme, if they do not buy their own insurance. It is mandatory for all employers to insure their employees against sickness, injury and death, provisions on the insurance are in collective agreements. The additional sickness and injury benefits provided for by the trade unions, that employees can collect after the time the employer is supposed to pay has run out, are financed through contributions from employers. They pay a set percentage of salary into these funds, often between 0,25% and 1%. The universal health insurance scheme is for everyone, but as was mentioned in section 4.3, these payments are much lower than minimum wages.