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Protection of platform workers in Sweden Part 2 Country report

Nordic future of work project 2017–2020: Working paper 12. Pillar VI

Fafo

Contents

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[1]

When labour is organized in new forms e.g. in the collaborative economy, key concepts in the labour relation are challenged.[2] In both labour law and social security the concept of employment is important for the applicability of the legislation. An unsettled legal status may have significant implications. This report studies how unclear employment status effects key elements in labour law and social security regulations in the Swedish context.[3] The aim is to reveal risk and consequences related to new models of performing work pose to both the individual and societal values inherent in the Nordic labour market model.

This report focuses on legal norms in three areas. The labour market organisation, collective bargaining and collective agreements analysed (section 2), work environment, working time and paid annual leave (section 3) and basic social security (section 4).

The statutory regulations are analysed from three perspectives: that of the traditional employee, that of the genuinely self-employed and that of the platform worker.[4] *The traditional employee* is a person performing work under an open-ended employment contract with one employing entity, providing full-time employment with a clear obligation to provide work and pay. *The genuinely self-employed* is a person performing work in the capacity of a legal entity owned and controlled by the same person. The legal entity is a registered company with several customers, it charges its services with VAT and deducts the relevant taxes. We will here be focusing on solo self-employed persons, so their companies have no employees. *The platform*

[1] Parts of this article have been presented in the conference paper Westregård, A., *How to regulate conditions for Crowdworkers – a new challenge for the social partners – an EU Law perspective*. LLRN 3rd Conference Labour Law Research Network, Toronto 25–27 June 2017. The article has also been presented as a part of the conference paper Westregård, A. and Milton, J., *Recent trends in collective bargaining structures in the Swedish model,* published at the 11th European Conference of the International Labour and Employment Relations Association (ILERA), Milano, 8–10 September 2016. This article is also partly based on and partly corresponds to Westregård, A., 'The Notion of `employee´ in Swedish and European Union Law. An Exercise in Harmony or Disharmony?' in Carlson, L., Edström, Ö. & Nyström, B. (eds), *Globalisation, Fragmentation, Labour and Employment Law – A Swedish Perspective* (Iustus 2016), Westregård. A. `Delningsplattformar och crowdworkers i den digitaliserade ekonomin – en utmaning för kollektivavtalsmodellen´ in *Modern affärsrätt*, Birgitta Nyström, Niklas Arvidsson och Boel Flodgren (red), Wolters Kluwer, 2017, A. Westregård, `Collaborative economy – a new challenge for the social partners´ in *Vänbok till Niklas Bruun,* November, 2017, Iustus, p. 427-438, A. Westregård, `Digital collaborative platforms: A challenge for social partners in the Nordic model´, Nordic Journal of Commercial Law NJCL 1/2018 Special Issue, `Precarity of new forms of employment under Swedish labour law´, in *Precarious Work. The Challenge for Labour Law in Europe*, *eds.* Izabela Florczak, Jeff Kenner and Marta Otto, 2019, A. Westregård, `Social protection for workers outside the traditional employment contract – a Swedish example´, in *Social Security outside the realm of the Employment Contract: Informal Work and Employee-like Workers*, *eds*. Mies Westerweld and Marius Olivier, 2019, Edward Elgar Publishing, and A. Westregård, `The Role of Collective Bargaining in Labour Law Regimes´ *National Report: Sweden*, 2019, Springer. A. Westregård, *Digital Collaborative platforms: A challenge for both the Legislator and the Social Partners in the Nordic Model,* European Labour Law Journal, June 2020.

[2] For a study on how changing labour relations challenge the concept of labour law in Sweden, see Annamaria Westregård «Key concepts and changing labour relations in Sweden: Part 1 Country report», Nordic future of work project 2017–2020: Working paper 7. Pillar VI (Report Part 1, Sweden).

[3] The study design is presented in Marianne Jenum Hotvedt and Natalie Videbæk Munkholm, "Labour law in the future of work. Introduction paper", *Fafo-paper 2019:06* (Hotvedt/Munkholm 2019).

[4] (Hotvedt/Munkholm 2019) p. 19.

worker is a person performing work, mediated or provided by a digital platform company, for different customers. The person is not party to a formal contract of employment, neither with the platform company nor with the customers. On the other hand, the person has not registered a company that charges VAT and deducts taxes. The person has no formal obligation to stay in service for the platform company, and the platform company has no clear obligation to provide work and/or pay. Thus, formally, the person has considerable freedom to decide the amount of work, what tasks to perform, and to choose the time and place of work. Platform workers are sometimes called crowdworkers in Sweden. Depending on the business model, both the platform company and the customer may act as employer to the platform worker. The chosen point in this report is that the platform company is the most likely employer. The implications of the customer being the employer will be addressed if it is of special interest.

The aim of the report is to compare the legal protection that the different types of workers are subject to and to analyse the synoptic structure of the norms, the legal basis, the personal scope and the allocation of responsibility associated with each form of employment.[5]

[5] The project plan is published as Fafo-paper 2019:06 *Labour law in the future of work.*

2 Strong labour market actors

2.1 The legal framework

Semi-discretionary labour law legislation

Sweden has constitutional protection for the right of assembly, organisation, demonstration and industrial actions.[6] The rules governing these rights as well as those governing collective agreements are found in the 1976 Co-determination Act (1976:580).

This binding mechanism ensures a high coverage of collective agreements in Sweden. In the public sector the coverage is 100 per cent for all groups of employees; in the private sector the collective agreements cover 96 per cent of all blue-collar workers and 75 per cent for white-collar workers and professionals.[7] The primary reason for this degree of coverage is that employers in Sweden are highly organised, and therefore collective agreements apply to all employees in a workplace – irrespective of whether they are members of a union or not.[8] With regards to the unionization aspect, union organisation has decreased. In 2016 the degree of organisation for blue-collar workers had declined to 60 per cent, while the degree of organisation for white-collar workers and academically qualified professionals was 72 per cent.[9]

If an employer who is not member of an employers' association concludes a collective agreement with a union, the resulting agreement is called an application agreement. The employer (usually) undertakes to comply the industry collective agreement that covers the employer's branch. An application agreement gives the union the same status in the 1976 Co-determination Act as an industry collective agreement does.

The collective agreements are the most important regulating instrument in the labour market as most of the labour legislation is semi-discretionary10 (semidispositiv). Thus, when they act together, the social partners at the industry level (central nivå) have a great deal of influence and control the regulation of the Swedish labour market, which is typical for the Nordic model.[11]

The collective agreements can improve the legislation for employees but also – with a few mandatory exceptions[12] – reduce the protection in the statutory regulation. The semi-discretionary legislation requires that a collective agreement which

[6] Chapter 2 Sections 1 (3-5) and 14 Instrument of Government.
[7] See Annual report from The Swedish Mediation Office; Avtalsrörelsen och lönebildningen. Årsrapport från Medlingsinstitutet 2018 p. 199 ff.
[8] If a company does not have a collective agreement it is often found in a 'new' industry.
[9] Annual report from The Swedish Mediation Office; Avtalsrörelsen och lönebildningen. Årsrapport från Medlingsinstitutet Medlingsinstitutets årsrapport 2019 p. 169.
[10] Semi-discretionary statutory regulation can be replaced by a collective agreement concluded at industry level. A discretionary statutory regulation can be replaced by an agreement concluded with the employee or by a collective agreement concluded with the local union at company level.
[11] Despite significant differences among the countries of Sweden, Norway, Denmark, Finland and Iceland, the term Nordic model is often used. Fahlbeck R. (2002) Industrial Relations and Collective Labour Law: Characteristics, Principles and Basic Features, Stability and Change in Nordic Labour Law, *Scandianavian Studies in Law*, vol 43. Almqvist & Wiksell International p. 87–133; Bruun N. et al, (1990) *Den Nordiska Modellen – Fackföreningarna och arbetsrätten i Norden – nu och i framtiden*. Liber; Nyström B. (2017) *EU och arbetsrätten*. Wolter Kluwer.
[12] The mandatory minimum regulations often have their origins in EU-law.

replaces statutory regulations must be concluded by a union at industry level, as unions at this level are assumed to be relatively strong and capable of securing an acceptable level of protection.[13] This means that these statutory regulations can be derogated by collective agreements between the social partners at industry level, but not by a personal contract between employer and employee or by a collective agreement at company (local) level between an individual employer and a union at company level (lokal nivå).

There are thus no statutory regulations on minimum wage, overtime pay, guaranteed minimum working hours, and so on – they are all regulated in the collective agreements.[14] Other important regulations in the 1982 Employment Protection Act (1982:80) are semi-discretionary rules like the ones on fixed-term employment and rehiring.[15]

Mechanisms for binding acceptance

The processes through which parties enter into binding acceptance of collective agreements are unique in relation to other contract processes in Sweden. When the parties conclude a collective agreement, the members of the employers' association and the union are also bound by it, according to Section 26 of the 1976 Co-determination Act. An employee or employer who becomes a member of the union or employers' association in question is immediately bound by the applicable industry wide collective agreement (called riksavtal or centralt kollektivavtal) concluded on industry level for that sector of the labour market.

An employee who resigns membership in the union in question continues to be bound by the applicable collective agreement until the curing time ends (avtalets bindningstid). The industry collective agreements normally have a curing time of one or two years. During this time the employer and employee are bound by the collective agreement and under peace obligation, i.e. no industrial actions are allowed.

A collective agreement 'binds parties within its scope of application',[16] which means that a collective agreement concluded for blue-collar workers in a specific sector is not applicable for the sectors' white-collar workers or blue-collar workers in another sector. If the work can be considered as `new´, e.g. in the IT business or the collaborative economy, it may be difficult to establish just which sector it belongs to. The scope of application for a particular collective agreement is a matter of interpretation, left ultimately to be decided by the Labour Court.[17]

Collective agreements lack an ergo omnes effect in Sweden. Therefore, it is not possible to enlarge the scope of a collective agreement to make it applicable to employers that are not members of the employers' association that concluded the collective agreement. Despite this, collective agreements have a normative effect that extends far beyond the members. The employer has an obligation – in relation to the union, but not in relation to individual workers – to apply the collective agreement

[13] Fahbeck, R. and T. Sigeman, *European employment and Industiral relations Glossary: Sweden, 2001*, Sweet and Maxwell, London, p. 301; Fahlbeck R. (2006/07) Derogation from Labour Law Statutes under Swedish Law. *Juridisk Tidskrift* no 1 2006/07 vol 18: p. 42–56.
[14] See the role of legislation Fahlbeck R., J. Mulder (2009) *Labour and Employment Law in Sweden*. Juristförlaget i Lund p. 23.
[15] Section 2 (3) the 1982 Employment Protection Act.
[16] Section 23 of the 1976 Co-determination Act, see also Fahlbeck (2009) p. 34 ff.
[17] Bergqvist O., Lunning L., Toijer G. (1997) Medbestämmandelagen, Lagtext med kommentarer. Norstedts, Stockholm p. 310.

to unorganised employees and members of other labour organisations. A non-member cannot go to court and clime that the employer break the collective agreement if the non-member have inferior conditions.[18] If nothing has been agreed between the employer and employee (which is very rare), the practice at the work place will apply as conditions. The practice at the workplace is (always) the same as the collective agreement and the employer can practice the conditions in the collective agreement also on non-members.[19] The principle of uniform conditions in the workplace is so strong that conditions of the collective agreement that have been made both better and inferior to a semi-dictionary legislation are applied to the unorganised workers.[20] This principle is developed by the Labour Court in its established practice.[21]

The strong normative effect of collective agreements is also apparent through their status as customary practice in the industry. If no legislation exists at all for a particular matter, for example overtime compensation (see section 3.3. below), an employer is not party to a collective agreement and there is no regulation in the individual employment agreement, the industry- wide collective agreement at industry level can be interpreted and applied as a supplementary norm.[22] If there are discretionary labour law regulations in place for the particular matter, however, these regulations apply and thus the industry-wide collective agreement does not have a complementary effect for the matter in question.[23] In the *absence* of statutory law, this principle of complementary effect is interesting, as legislation is lacking in important central areas of the Swedish labour legislation. The principle could be of interest for platform workers if a collective agreement were to be concluded at industry level for the platform industry.

Legal effects of collective agreements

If an industry collective agreement is in effect at a workplace, the employer is not allowed to conclude any agreements in conflict with that agreement: no collective agreement with a local union at company level and no employment contracts with individual employees who are members of the union. Any such agreements are invalid according to Section 27 of the 1976 Co-determination Act.

However, there is certain leeway to conclude local collective agreements. Firstly the sectorial-wide agreement can be designed with minimum conditions. These days, salary is almost always structured according to the principle of minimum wage. This means that agreements regarding higher salaries are allowed, and such agreements do not violate Section 27. On the other hand, if the agreement is designed as a standard-condition agreement, deviations are not permitted. Regulations in collective agreements regarding holiday in addition to the legislated minimum of 25 days[24] are almost always constructed as standard-condition agreements. When the industry-wide agreement stipulates 30 days, an individual agreement on e.g. 32 days is invalid, even if this would be more beneficial for the employee. Secondly, industry wide

[18] Glavå, M. and Hansson M., *Arbetsrätt*, Studentlitteratur, 3e uppl. 2016, p. 535.
[19] Bergqvist (1997) p. 322 and Supreme Court ruling NJA 1967 p. 513 and NJA 1948 p. 1, see also Government Bill 1991/92:170, (om Europeiska ekonomiska samarbetsområdet (EES)) on the European Economic Area (EES), attached document 9, 25 f.
[20] Fahlbeck (2009) p. 35 and Bergqvist (1997) p. 321.
[21] Labour Court ruling AD 1978 no 163, AD 1984 no 79, 1990 no 33 and 2007 no 90.
[22] Fahlbeck R. *Praktisk arbetsrätt*. Liber, Stockholm (1989) and Supreme Court ruling NJA 1968 p. 570.
[23] Bergqvist (1997) p. 322 and Labour Court ruling AD 1977 no 10.
[24] Section 4 of the 1977 Annual Holidays Act.

agreements do not always regulate all matters, meaning that a matter may be unregulated.In this case it is possible to conclude individual agreements on the local and individual level. Unregulated matters are unusual in collective agreements, because the obligation to maintain industrial peace does not apply to these areas. Lastly, a special clause in an industry wide agreement can allow the local parties, the company and the local union, to regulate a specific matter in some other way, should they wish to do so.[25]

Collective agreements in Sweden have other significant legal effects as well. In the Swedish legal system, there is a clear and important line of demarcation between companies with collective agreements and companies without.[26] Workplaces with collective agreements, however, are subject to a whole host of regulations. Examples include the following: The 1974 Workplace Union Representatives Act is applicable only if a collective agreement is in place; A number of regulations in the 1982 Employment Protection Act including the rules for negotiation in Sections 28-32; The Co-determination Act contains so many special rules that apply only if a collective agreement is in place, that this legislation could almost be considered 'two laws in one' including the reinforced right to negotiation for unions with collective agreements, Sections 11 and 12, rules about business information, Section 19, rules about the priority of interpretations, Sections 33-35, and rules on a union right of veto if the employer plans to contract out a function to an outside firm, Sections 38-40.

In many cases the 1976 Co-determination Act rules for unions without collective agreements have origins in EU-law. The Swedish regulatory system clearly favours unions with collective agreements. The employee participation regarding members in a union with a collective agreement is much stronger due to the legal construction. They can act through their union as employees but they do not have any individual rights to participation themselves. This also means that non-union members have very little influence and that the influence of members of unions without collective agreements is very limited.

Implied terms

Through the case law of the Labour Court, and despite the requirement of written form in Section 23 of the 1976 Co-determination Act, collective agreements have been given a broader content than only the written agreement, the so-called Implied Terms.[27]

The Implied Terms include the employer's prerogative on the right to direct work.[28] The employees have a duty to work in accordance with 29/29 principles, after the Labour Court ruling from 1929 no 29. This means that employees must carry out all work within the employer's area of activity, which coincides with the collective agreement's scope of application. The collective agreement does not stipulate the tasks included in its scope of application – these are an implied term. Other implied terms include the employer's obligation to apply the collective agreement to non-

[25] Fahlbeck (2009) p. 34 f.
[26] Small-scale Swedish employers with few employees on the other hand, are not exempted or subject to special rules. Exceptions exist in Chapter 3 Sections 13 and 14 of the 2008 Discrimination Act (2008:567) and in Section 22 of the 1982 Employment Protection Act.
[27] Fahlbeck R., Sigeman T. (2001) *European Employment & Industrial Realtions Glossary: Sweden*. Sweet and Maxwell, London p. 116 f.
[28] See also Fahlbeck (2009) p. 22 f.

union employees, or so-called outsiders, and the employee's obligation of loyalty to the employer.

Violation of an implied term is considered a violation of the collective agreement and results in liability for the party committing the violation.[29]

Industrial actions

One of the most significant legal effects of a collective agreement is the enforcement of peace obligations during the term of the agreement.[30] Industrial action must be duly sanctioned by the union. This means that the industrial action is decided in accordance with the union's bylaws (stadgar). If an employer or union intends to implement industrial actions or extend pending actions, it shall give written notice to the other party and to the Mediator Office seven days in advance. The most common legal actions are employee strikes and employer lock outs. There are also various types of boycott.[31]

In Section 41 of the 1976 Co-determination Act, the peace obligation is designed as a four-point prohibition. Nevertheless, the four points are so comprehensive that there is little margin for industrial actions while the agreement is applicable. When the parties have a valid collective agreement they are not allowed to take legal actions in four situations: 1) In a dispute over the validity of a collective agreement or its interpretation; 2) To bring amendments to the collective agreement; 3) To effect a provision that is intended to enter into force upon termination of the collective agreement; 4) In sympathy with or in order to aid someone who is not permitted to implement an industrial action. Even if an employer and the union have a collective agreement sympathy actions could be allowed in other situations and that could affect the employer severely. Swedish law does not contain a general principle of proportionality that can be applied to sympathy actions.

If there is no collective agreement at the company, the employer or employees are entitled to take industrial action. If there are no union members at a work place a strike would be less efficient than a blockade. There are statutory regulations that prohibit taking industry actions against businesses that not have any employees (e.g. a solo self-employed business) and businesses where the only employees are the owner and the owner's family members (familjeföretag).[32]

The most important strike action that remains in spite of peace obligations is perhaps the right to take sympathy actions, under certain conditions, despite an existing collective agreement. In order for the sympathy action to be permissible, the primary conflict must be permissible and the sympathy action must not serve the purpose of making changes in the collective agreement. The employees on strike must be members of the organisation that decides upon the sympathy actions. White-collar unions often, due to their choice, engage in sympathy actions to help other white-collar unions, while blue-collar unions take part in sympathy actions amongst themselves. Sympathy actions can be highly effective when an employer is reluctant to conclude a collective agreement and the union has so few members that a strike will not have any great effect or consequences for the employer. For example, a shop that does not

[29] See Källström K. et al (2016) *Den kollektiva arbetsrätten*. Iustus, Uppsala, p. 88 and Fahlbeck (1989) p. 98 f.
[30] See also Fahlbeck (2009) p. 37 f.
[31] Section 41 in the 1976 Co-determination Act.
[32] Section 41 b) in the 1976 Co-determination Act.

want to conclude a collective agreement with the retail union will soon discover that goods will not be delivered when haulage unions declare a blockade or boycott; rubbish is not removed when municipal workers' unions join the blockade and so on.[33]

The collective agreement and the laws applicable in workplaces with collective agreements have a continuing effect during the period when no collective agreement applies – for example from the point of termination of the old agreement to the conclusion of a new one. This applies on the condition that the lack of agreement is temporary and as long as the collective agreement has not been terminated for new and other rules to apply.[34]

Enforcement

Swedens's laws on collective agreements and the Swedish labour court date as far back as 1928.[35] The Labour Court is the only instance for cases regarding interpretation of collective agreements and sanctions for violations of collective agreements. Since the 1970s, the Labour Court has also dealt with other conflicts, such as conflicts arising from dismissals.

Sanctions for violations of collective agreements include liability for both pecuniary damages and non-pecuniary damages. Compensation for non-pecuniary damages can be high, especially for an employer that violates a collective agreement.[36] If a party has violated a collective agreement and this action is significant for the agreement as a whole, the Labour Court can annul the collective agreement.[37] Annulment of a collective agreement is very unusual and the last time the Labour Court decided on annulment was in 1935.[38]

When the Labour Court interprets a collective agreement, it does so on the basis of the meaning intended by both parties – if this meaning is possible to establish. Thereafter the literal wording is assessed.[39] Considering that a lot of the labour law regulations is optional law, the social partners wield considerable influence over how Sweden's labour conditions are designed. One might say that because these partners act in cooperation, they are the country's most powerful institution when it comes to regulation of the labour market. If a collective agreement is concluded for platform workers, it would be a very powerful instrument for regulating their conditions.

2.2 Membership in labour market organisations

New phenomena such as platform workers will force social partners to take a position on how unions and employers' associations should organise workers of platform companies. The platform worker concept also requires the parties to deal with the matter of the solo self-employed and decide whether to act beyond the scope of the traditional employer-employee relationship.

The 1976 Co-determination Act (1976:580) section 6 defines an *employees' organisation* as 'an association of employees that, under its bylaws (stadgar), is charged

[33] Fahlbeck (1989) p. 116 f.
[34] Fahlbeck (1989) p. 108 f.
[35] See also Fahlbeck (2002) p. 126 ff. and Fahlbeck (2002) p. 90 f.
[36] Fahlbeck (1989) p. 107 f.
[37] Section 31 the 1976 Co-determination Act.
[38] Labour Court ruling 1935 no 9.
[39] Schmidt, Folke et al (1997) *Facklig arbetsrätt*. Juristförlaget, Stockholm, p. 187f.

with safeguarding the interests of the employees in relation to the employer´ and an *employers' association* as an equivalent association of employers'.

There is no legislation that applies to associations like unions and employers' associations.[40] Some general principles of law apply, like equal treatment of members. Criteria for membership are set in the bylaws of the organisation. There is only one case where a would-be member who met the membership criteria was denied membership.[41]

The unions

The rules on 'dependent contractors' (section 2.3. below) in the Swedish legislation have so far opened up opportunities for the unions to act on behalf of those solo self-employed who are regarded as 'dependent contractors'. Some unions for white-collar workers and academic professionals offer membership both for employees and solo self-employed. They have special departments for the solo self-employed, and offer legal aid and advice, and can also help members with registered close companies to make application agreements (hängavtal).[42] A company, even if it is solo self-employed, is entitled to sign up for the supplementary labour market social security insurances that are based on collective agreement at federation level if it has concluded a collective agreement. The labour market social security insurances are comparatively more affordable than other private insurances (see section 4 below).

The unions want to attract platform workers as members and they have already started recruiting. In early June 2016, the largest union for white-collar workers in Sweden, the Union, concluded a strategic partnership agreement with Germany's IG Metall regarding online collaborative platforms.[43] The purpose was to allow unions to cooperate and create transparency in work performed in the collaborative economy, to cooperate in regulatory and policy matters for work in the field, and to share experiences in union recruitment of platform workers. The Union has also presented a concept for the social partners' role in the Swedish model.[44]

The employers' associations

The employers' associations are important stakeholders in the process to regulate the labour market in collective agreements, and this is definitely true in the Swedish model. The Private Swedish employers' association has not yet given its point of view on how to handle workers in the collaborative economy.

The legal definition of an employer is usually fixed with reference to the concept of employment. Section 1 the 1982 Employment Protection Act states which employees are covered by the Act, and Section 1 (2) the 1976 Co-determination Act defines

[40] See Fahlbeck (2009) p. 28 ff.
[41] Supreme Court (NJA) 1948 p. 513. The court ruled in favor of the employee.
[42] See http://www.unionen.se/in-english and http://www.unionen.se/medlemskapet/egen-foretagare and, for example, for university-educated union members in the legal sector http://www.jusek.se/For-dig-som-ar/Egenforetagare/ and the Union's report: *Unionen om plattformsekonomin och den svenska partsmodellen*. Unionen (2016) p. 55 ff.
[43] Joint declaration between IG Metall, Germany and Unionen, Sweden, signed 8 June 2016.
[44] See further the Union's report: *Plattformsekonomin och den svenska partsmodellen*. Unionen 20 p. 97.

an employer as the party that the employee works for. Possible employers in the digitalized economy are platform companies, the service consumers´ principal or umbrella companies.[45]

The problem at present is that the platform companies' representatives claim that platform employees are self-employed. They argue they are not employers and thus have no employers' responsibilities. The platform companies therefore have no interest in joining employers' associations or regulating working conditions in collective agreements. The employers' associations do not act until they have members that demand negotiation and collective agreements.

Solo self-employed can join most of the employers' associations. This means that platform workers with their own registered companies can join.

2.3 Scope of the collective bargaining mechanism

The collective agreements contain a number of special characteristics that distinguish them from other agreements. These include special formal requirements and legal effects.[46] According to Section 23 of the 1976 Co-determination Act, a collective agreement is 1) a *written* agreement between an 2) employers´ association or *employer* and an *employee organisation* that 3) regulates the *employment conditions* for *employees* or *other conditions or working relationships* between employers and employees. The three components that must be present are certain parties, a certain content and a certain format.

Principal problems that arise in the legislation when regulating conditions for solo self-employed in collective agreements are more or less solved for some of them in the national Swedish legislation (see section 2.4) though the term 'dependent contractor'. A 'dependent contractor' in Section 1 (2) of the 1976 Co-determination Act is someone 'who works for another and at that time is not employed by them, but has a position that in essentials is the same as an employee's'.[47] If someone is considered a 'dependent contractor', this does not mean that they are also subject to Section 1 of the 1982 Employment Protection Act and its definition of an employee. The concept of 'dependent contractor' only applies in the scope of the 1976 Co-Determination Act. In the binary system a 'dependent contractor' is self-employed, but in the context of the 1976 Co-determination Act he is treated as an employee. This means that the solo self-employed have the same rights as employees in the 1976 Co-determination Act. They have the right to organize, to negotiate and to strike and the social partners can conclude collective agreements for them.[48]

The conflicts that arise when the solo self-employed take employees' jobs by working for less than the wages agreed in the collective agreement were settled. Källström argues that the reason why the 1976 Co-determination Act also covers some of the genuinely self-employed is that they can negotiate and enter into collective agree-

[45] See Westregård, Annamaria, *Key concepts and changing labour relations* Part 1 Country report from Sweden, The future of work: Opportunities and Challenges for Nordic models. Pillar VI: Labour Law & regulations – needs, hurdles and pathways for legal reform, 2019, section 2.2.2.
[46] Källström K., Malmberg J., Öman S. (2016) *Den kollektiva arbetsrätten*. Iustus, p. 80 f, and Glavå M., Hansson M. (2016) *Arbetsrätt*. Studentlitteratur, Lund, p. 164 ff. See also Articles 23, 26 and 27 of the 1976 Co-determination Act.
[47] Section 1 (2) of the 1976 Co-dermination Act.
[48] Sections 7–9, 10, 26–7, 41 of the 1976 Co-determination Act.

ments without affecting the application of other labour laws, such as the 1982 Employment Protection Act.[49] The 'dependent contractors' have been a part of the Swedish labour law legislation since the mid-1940s.[50] The legislation was originally applied in the forest industry, where farmers worked for the forest companies during the winter with their own tractors. Another example was head of a petrol stations, who had their own business but was very dependent on deliverance of oil.

Whether someone is regarded as a 'dependent contractor' or not, depends on the degree of dependence on the principal. In some cases the self-employed persons are deemed too independent to be considered 'dependent contractors'. In Labour court ruling 1980 no 24 the travelling sellers of sewing machines where not considered 'dependent contractors' due to the fact that they bought the machines from the manufacturer before selling them and also sold a large assortment of other products. In the 1980´s there was debate amongst scholars as to whether the concept of 'dependent contractors' was actually needed anymore. The concept of the employee had over time been broadened to cover many of those formerly regarded as 'dependent contractors'.[51] Some scholars were of the opinion that the broadening of the concept of employment had meant an even further broadening of the concept of 'dependent contractors'. The concept was extensive enough to catch new phenomena, such as franchising, which emerged as a new business model in the 1980's.[52] This discussion and the idea of expanding the concept of both the employee and the 'dependent contractor' could be very fruitful if applied to new phenomena such as platform workers. Whether a platform worker can be regarded as a 'dependent contractor' depends on the worker's dependency on the platform. That would differ depending on the platform company's business model.

For an existent collective agreement covering ordinary employees to also cover genuinely solo self-employed regarded as 'dependent contractors', a number of specific conditions must be fulfilled. There must be a specific regulation in the collective agreement which broadens the concept of the employee to also cover 'dependent contractors'. Otherwise the agreement is not applicable outside the normal concept of the employee, such as it is expressed in e.g. the 1982 Employment Protection Act.[53]

The social partners have the possibility of defining the concept of the employee in accordance with industry practice (branchpraxis) through collective agreements. This makes it easier to adapt the concept of employment to new forms of work. One example can be found in journalism and the collective agreement known as the Freelance Agreement,[54] where drawing the boundary between employee and self-employed is facilitated by clear, traditional practice. Under the terms in Section 2, a freelance worker is any person who 'without being employed has journalism as his main occupation and by agreement undertakes assignments for one or more companies and is normally paid for each assignment'. In accordance with this agreement and commercial practice, a performing party may be considered a self-employed person

[49] Kent Källström *Löntagarrätt,* (Juristförlaget JF AB) 1994 p. 70 f.
[50] See Bergqvist (1997) p. 45 ff and prop. (Legislative Bill) 1945:88.
[51] See Labour court ruling 1985 no 57.
[52] See Bergqvist (1997) p. 45 and the references there to Tore Sigeman SvJT 1987 p. 613 and Kent Källström, *Löntagarrätt*, p. 70 ff and Frenchiseutredningen (Government White Paper) SOU 1987: 17 p. 183 ff.
[53] See Labour Court ruling AD 1994 no 130.
[54] 1994 Collective Agreement between the Swedish Media Publishers' Association and the Swedish Journalist Association for Freelance work.

in spite of the fact that, based on an assessment of evidentiary facts such as only one principal, regular work for a long time period, the principal providing equipment and tools etc., this person in 'normal' cases would be regarded as an employee.[55] The Labour Court does not create its 'own' concept here, but rather follows the agreement which is customary in the commercial area in question.[56]

In Sweden the white-collar union Unionen has concluded collective agreements with three platform companies.[57] The collective agreements are not written especially for platform workers, platform companies or umbrella companies. In two of the Swedish companies the industry collective agreement for Temporary Work Agencies[58] is applied and in one company the industry collective agreement for Media[59] is applied. Since they are not specifically designed for platform work, the collective agreements do not deal with the special problems present in the digitalized economy. At the moment the unions conclude collective agreements with one company at a time, as there are so far no collective agreements at industrial level.

Until the employers take on a more organized form, there will be no collective agreements at industry level for platform work. It seems likely that those least averse to collective bargaining are the umbrella companies – this in spite of the lack of clarity about their position as parties to an action – because they already have a trade organisation and claim they are fulfilling their responsibilities as employers.[60]

2.4 Exemption from competition law

The margin for action to regulate salaries and general conditions in collective agreements that are available to the social partners can be related to the definitions of the concept of the employee. One problem here is the classical conflict between collective agreements and competition law.[61]

The regulation of working conditions and salaries for employees is excluded from the field of the 2008 Swedish Competition Act (2008:576).[62] The concept of the employee in the 2008 Swedish Competition Act is linked to the concept of the employee in the 1976 Co-determination Act. This means that it includes 'dependent contractors'. If it had instead been linked to the narrower civil law concept of the employee in the 1982 Employment Protection Act, the 'dependent contractors' would have

[55] Swedish Labour Court AD 1994 no. 104 and Legislative Inquiry Ds 2002:56 p. 121 and Lunning (2010) p. 25.
[56] Swedish Labour Court AD 1987 no 21, AD 1994 no 104 and AD 1998 no 138.
[57] Carl Fredrik Söderqvist and Victor Bernhardtz; Union Working Paper 2019:57, Labor Platforms with Unions Discussing the Law and Economics of a Swedish collective bargaining framework used to regulate gig work
March 15 2019 p. 4.
[58] The white collar agreement for Temporary Work Agenies (Tjänstemannaavtalen) between the unions Unionen and Akademikerförbunden, and the employers' association Almega Kompetensföretagen (The Competence Agencies of Sweden); and Bemanningsavtalet between LO (The Swedish Trade Union Confederation and Almega Kompetensföretagen).
[59] Tjänstemannaavtalet between Unionen and Almega Medieföoretagen (The Media Industries Employer Association).
[60] *Egenanställningar – den svenska partsmodellens ingenmansland* 2017:1 FURION TCO:s (Federation of White-collar Workers) think tank.
[61] See Niklas Bruun & Jari Hellsten (eds.) *Collective Agreement and Competition in the EU, DJOF by the Association of Danish lawyers and economists*, 2001.
[62] Chapter 1 section 2 in the 2008 Competition Act (2008:576).

been excluded.[63] In the current state of things, a collective agreement that covers 'dependent contractors' does therefore not conflict with the Swedish competition legislation.

If the social partners were to conclude a collective agreement that directly included genuinely self-employed people with regard to conditions of employment, e.g. minimum salary, the agreement would easily come into conflict with Article 101 of the Treaty on the Functioning of the European Union, TFEU, and the 2008 Swedish Competition Act (2008:576), since the trade union acted as an association for genuinely self-employed workers and not as an employees' association.[64] The Judgment in *FNV Kunsten Informatie en Media*, C-413/13, EU:C:2014:2411 clarified that the exemption for collective agreements also applies to 'false self-employed'. The court defined a 'false self-employed' as a self-employed service provider who is a member of one of the contracting employees' organisations and who performs work for the employer under a work or service contract, and performs the same activities as that employer's employed workers: in in other words a service provider in a situation comparable to the situation of other employees at the company. [65]

The Swedish concept of the 'dependent contractor' in the 1976 Co-determination Act and in the 2008 Competition Act probably has a wider meaning than the concept of the 'false self-employed' found in EU Law after the judgement in *FNV Kunsten Informatie en Media*. It could potentially be in conflict with the EU Law. On the other hand, in light of the case Irish Congress of Trade Unions v. Ireland from the European Committee of Social Rights, it is not likely that the Swedish concept of the 'dependent contractor' is illegal, and therfore the concept is probably not in conflict with the European Social Charter. The European Committee of Social Rights recognized the need for protection also for some self-employed and stated that a collective agreement covering those self-employed would not disturb the balance between consumer and company any more than a collective agreement for employees does.[66]

The uncertainties in the EU Law about the possibilities of regulating the terms for self-employed in collective agreements, affects the possibilities of regulating all those platform workers who are to be considered genuinely self-employed on condition that they are also considered as 'dependent contractors'.

2.5 Overall comparison

Collective agreements are normally only concluded for traditional employees and not for genuinely self-employed, as the labour legislation, with its binary distinction be-

[63] See prop. (Legislative Bill) 1981/82:165 *Proposition med förslag till konkurrenslag* p. 194 and Kenny Carlsson et al: Konkurrenslagen. En lagkommentar (1999) p. 35. The rules have been transferred to the new 2008 Competition Act (2008:576) and the Legislative Bill 2007/08:135 p. 247.
[64] Judgment in FNV Kunsten Informatie en Media, C-413/13 EU:C:2014:2411 paragraphs 27 and 28.
[65] C-413/13 EU:C:2014:2411 paragraph 42: In light of those considerations, the answer to the questions referred is that, in a proper construction of EU law, it is only when self-employed service providers, who are members of one of the contracting employees' organisations and perform for an employer, under a work or service contract, the same activity as that employer's employed workers, are 'false self-employed' (in other words, service providers in a situation comparable to that of those workers), that a provision of a collective labour agreement, such as that at issue in the main proceedings, which sets minimum fees for those self-employed service providers, does not fall within the scope of Article 101(1) TFEU. It is for the national court to ascertain whether that is so.
[66] European Committee of Social Rights, 12.9.2018, Collective Complaint 123/2016, Irish Congress of Trade Unions v. Ireland.

tween employees and self-employed, does not apply to them. There are some examples where the social partners in spite of this have concluded collective agreements for performing parties in a grey zone, e.g. for freelance journalists, so that they thereafter have been regarded as employees by the Labour Court.[67] When the Labour Court decides (both under the statutory regulations and in the collective agreement) how to interpret the concept of employment the collective agreements have an impact as practice in the industry.[68]

To some extent collective agreements could be concluded or extended to cover also the genuinely self-employed who work under 'employee-like' conditions – the concept of the 'dependent contractor' in the 1976 Co-determination Act. The concept of the 'dependent contractor' might be too wide, compared to the concept of the 'false self-employed' as it is defined in *FNV Kunsten case*, C413-/13. If so, there will be problems with the collective agreements for 'dependent contractors'.

Where the platform workers are placed in the binary system depends on the business model of the platform company in the specific case, and on how the performing party is defined. If a platform workers are defined as self-employed workers, numerous of those platform workers will be regarded as 'dependent contractors'. The unclear legal status of the Swedish 'dependent contractor' in the EU Law after the *FNV Kunsten case* is unfortunate from a Swedish perspective, as the case coincided with the appearance of platform workers in the digitalized economy.

There are as yet no collective agreements written specifically for the collaborative economy and the platform companies in Sweden. In time the social partners will probably be able to conclude collective agreements for the new industry, just as they did for the Temporary Agency Workers.[69] Normally, the first step involves the unions recruiting members, which they are currently doing with platform workers (both employed and self-employed). Following that, the unions approach the employers to ask for a collective agreement. The employers can choose to conclude an application agreement (hängavtal), join an employer´s association (they normally have a collective agreement in the industry applicable to the company, but at the moment there are no agreements that focus on platform work) or to say no and risk industrial actions. Once the employers' associations have members asking for an industry-wide collective agreement, they start negotiating with the unions. Negotiating a whole new agreement for a new industry will take time and both parties must be patient. It took about ten years before the collective agreement for Temporary Agency Workers was in place. In the meantime, it is likely that the unions will try to conduct local collective agreements at company level with the platform companies.

[67] Labour court ruling AD 1994 no 104.
[68] Labour Court ruling AD 1998:38 and AD 1987:21.
[69] The white collar agreement for Temporary Work Agencies (Tjänstemannaavtalen) between unions Unionen and Akademikerförbunden, and the employers' association Almega Kompetensföretagen (The Competence Agencies of Sweden); and Bemanningsavtalet between LO (The Swedish Trade Union Confederation) and Almega Kompetensföretagen.

3 A healthy and productive workforce

3.1 The legal frame

Statutory regulations that ensure a healthy and productive workforce are an important part of the Nordic labour market model. The Swedish Work Environment Authority was founded in 1890 to inspect the enforcement of the first Work Environment Act, applicable to factory work. The present Work Environment Act was passed in 1977. In 1919 The Working Hour Act regulated the working time to 8 hours a day (including Saturday) and in 1973 the 40-hour week was validated. In 1938 the first Annual Leave Act statutorily regulated 2 weeks of paid holiday, which in 1951 became 3 weeks, in 1963 4 weeks, and finally in 1978 5 weeks.

The 1977 Work Environment Act, the 1982 Working Hour Act and the 1977 Annual Leave Act with a small exception in the 1977 Work Environment Act only applies to employees and not to self-employed.

Directive 89/391/EEG on *Occupational Health and Safety* is implemented in the 1977 Work Environment Act and in the Statute books.[70] The Directive 2003/88/EC *Concerning certain aspects of the organisation of working time* is implemented in the 1982 Working Hour Act and the 1977 Annual Leave Act.

Enforcement

The Swedish health and safety regulations are part of administrative law (förvaltningsrätt). The Swedish Work Environment Authority supervises the enforcement of the 1977 Work Environment Act. Sanctions include confiscation and financial penalties and persons responsible for work environment can be fined or sentenced to imprisonment.[71]

The Swedish Work Environment Authority also supervises the enforcement of the 1982 Working Hour Act. The Authority may issue any orders or prohibitions, and the Authority may be accompanied by the conditional financial penalties (sanktionsavgift) necessary to ensure compliance with the 1982 Working Hour Act. An employer who intentionally or negligently fails to comply with an order or prohibition may be fined or sentenced to imprisonment.[72] There are also fixed-price financial penalties for unpermitted overtime (overtime fees) which can make violation very costly.[73]

Like other labour law cases, violations of the 1977 Annual Leave Act are handled by the Labour Court. An employer that violates the employee's legal right to *holiday pay* and *holiday allowance* (see terminology section 3.4.) shall pay *holiday pay* or *holiday allowance* but also remunerate any detriment.[74]

[70] Prop. (Legilative Bill) 1991/92:170, see also SOU (Government White Paper) 1993:81 and B Nyström (2017) *EU och arbetsrätten* Wolters Kluver p. 386
[71] Chapter 7 and 8 the 1977 Work Environment Act.
[72] Section 20, 22 and 23 the 1977 Working Hours Act.
[73] Section 26 the 1982 Working Hours Act.
[74] Section 32 and 34 in the 1977 Annual Leave Act.

3.2 Health and safety

In Sweden the 1977 Work Environment Act (Arbetsmiljölagen 1977:1066) regulates working environment. In addition to the 1977 Work Environment Act, the Swedish Work Environment Authority can also issue legally binding Statute books (AFS).

The 1977 Work Environment Act applies to 'every activity in which employees perform work on behalf of an employer'[75] and there are special regulations for work on ships. In principle, the 1977 Work Environment Act does not apply to the genuinely self-employed, except for in certain regulations about technical arrangements and dangerous substances, chapter 3 section 5 (2). For example, the safety representative only represents the employees in work environment matters.

Chapter 3 section 12 (1) in the 1977 Work Environment Act stipulates that the person who is in control of the workplace must also ensure that *permanent equipment* located in the workplace is safe to use, so that no persons who work there (including persons who are not employees) are exposed to risk or illness or accident. Any person who engages contract labour to perform work in his business must take the safety measures required for this work, chapter 3 section 12 (2). This should be compared to chapter 2 section 2 in the 1977 Work Environment Act, which states that the employer must take all necessary measures to prevent the employee from being exposed to illness or accidents. This means that someone who has engaged a temporary agency worker to perform work for him is responsible at the work place, but that the temporary work agency, which is the worker's employer, still has responsibility for 'all' measures, including e.g. long-term measures like rehabilitation and competence development. This is called *the double or shared responsibility*.[76]

Like other parts of Swedish labour legislation, e.g. the 1982 Work Employment Protection Act, the 1977 Work Environment Act holds an extended interpretation of the concept of the employee.In the 1977 Work Environment Act there is currently no legal figure like the 'dependent contractor' in section 1(2) in the 1976 Co-determination Act (section 2.3. above). In a Government White Paper (SOU 2017:24 *Ett arbetsliv i förändring – hur påverkas ansvaret för arbetsmiljön?*) the Committee of Inquiry took into consideration that something similar to the concept of the 'dependent contractor' in the 1976 Co-determination Act might in future be suggested to clarify that the 1977 Work Environmental Act could apply to more than traditional employees.[77]

When it comes to umbrella companies (see Sweden report 1 section 4.1) the concept of the employee becomes crucial. The responsibility for work environment that rests on collaborative platform companies and umbrella companies is ambiguous in the legislation. The Committee of Inquiry (SOU 2017:24) said that the special triparty construction makes it unclear whether any responsibility at all can be demanded from some of the collaborative platform companies at the moment. It depends on the amount of control that the platform company has over the worker and his performance, on whether the activities are performed by a private person or a professional, by an employee or a self-employed etc. Due to the common business model in the industry, the legal investigation found it difficult to define the umbrella companies' workers as employees.[78]

[75] Chapter 1 section 2 in the 1977 Work Environment Act.
[76] SOU (Government White Paper) 2017:24 *Ett arbetsliv i förändring—Hur påverkas ansvaret för arbetsmiljön?*, 55.
[77] SOU (Government White Paper) 2017:24 p. 239.
[78] SOU (Government White Paper) 2017:24 p. 221 f.

The responsibility of umbrella companies for work environment has passed judgment in one case. The Swedish Work Environment Authority charged an umbrella company with financial penalties for a violation of chapter 3 section 12 in the 1977 Work Environment Act. The worker started work before the contract between the umbrella company and the client was signed. Due to that the worker was not regarded as employed by the umbrella company and the umbrella company could therefore not be charged with the financial penalty. The special business model in which umbrella companies operate was of particular importance for the outcome of the case. There is only employment during the time that there is a signed contract, i.e. for the duration of the assessment. Even if an employment contract is signed after the worker has started work, this will not change. The worker will not be regarded as employed by the company according to the rules stated in the 1977 Work Environment Act.[79]

3.3 Working time

The concept of the employee in the 1982 Working Hour Act (Arbetstidslagen (1982:673)) corresponds with the normal concept of the employee as expressed in e.g. the 1982 Employment Protection Act, so the 1982 Working Hour Act does not apply to the genuinely self-employed.

The 1982 Working Hour Act is semi-discretionary at industry level. Collective agreements concluded or approved by a central employee organisation can make exemptions from the Act in its entirety. An agreement is invalid in so far as it entails that less favorable conditions shall apply for the employees than those prescribed by Directive 2003/88/EC. An employer bound by a collective agreement may also apply the agreement to employees who are not members of the employee organisation that is party to the agreement if they are engaged in work to which the agreement refers.[80]

A lot of employees are exempted from the working time regulations in the 1982 Working Hour Act. This includes employees who, because of the nature of their duties are entrusted with organizing their own working time, and employees who perform work under conditions that entail that the supervision of how the work is organized is not the employer's responsibility.[81] That exemption may apply to platform workers, depending on the business model. The exemptions shall be interpreted restrictively. There are some other excemptions, such as work on ship, some road transports and work in employer's household.

Working hours are 40 hours per week and overtime may be worked with a maximum of 48 hours over four weeks (or 50 hours per calendar month) and a maximum of 200 hours a year (general overtime). To this the employer can add a maximum of 150 hours a calendar year if there are special grounds for doing so and no other reasonable solution can be found (extra overtime). For part-time employees the term 'additional time' is used. The limitations are the same as for overtime.

A regulation that might be of interest for platform workers is the regulation of *on-call time*.[82] On-call time is relevant in cases where the nature of work necessitates that the employee is at the disposal of the employer at the place of work. The time during which an employee actually performs work on behalf of the employer is not

[79] Judgement from Administrative Court of Appeal in Stockholm 30 October 2029 (case no. 5725-18).
[80] Section 3 in the 1982 Working Hours Act.
[81] Section 2 in the 1982 Working Hours Act.
[82] Section 6 in the 1982 Working Hours Act.

considered on-call time, but ordinary working time. The maximum amount of on-call time allowed is 48 hours over a period of 4 weeks or 50 hours per calendar month. This statutory regulation might be applicable for platform workers when they have turned on the app and are waiting for a task. This regulation only applies if the platform worker is regarded as an employee. Worth noticing is also that the 1982 Working Hour Act's restrictions only apply to each employer separately. If a person is performing work for two employers (e.g. platform companies) then he can work legally 40 hours a week for each of them.

The 1982 Working Hour Act is semi-discretionary at industry level except for in the parts that are implemented from the Working Time Directive 2003/88/EC.[83] Almost all collective agreements contain some Industry-specific deviations. It is common for white-collar workers' collective agreements to have shorter weekly hours, e.g. 37,5 hours per week. The 1982 Working Hour Act does not contain any statutory regulations on over-time pay, payment for unsocial hours and on-call time pay – such pay is always regulated in the collective agreements. The collective agreements also often contain exemptions from the over-time regulations. Such exemptions may only be made for directors and employees who are trusted to organize their own work or whose working hours are difficult to control. They are also compensated through a higher salary and/or an additional five days of annual leave.[84]

To summarize the situation for platform workers in regard to working time, the social parties at industry level can construct the regulations more or less as they want. The only restriction lies in the Directive 2003/88 EC.

3.4 Paid annual leave

The concept of the employee in the 1977 Annual Leave Act (Semesterlagen 1977:480) corresponds with the normal concept of the employee as defined in e.g. the 1982 Employment Protection Act and does not apply to the genuinely self-employed.

The 1977 Annual Leave Act is semi-discretionary at industry level, except for in some minimum statutory regulations. An example is the regulation that stipulates that an employee is entitled to twenty-five days of annual leave (five days if he starts work after 31 August).[85] The annual leave can be paid or unpaid. An employee can waive annual leave days that are without holiday pay.

The employee receives *holiday pay* (semesterlön) in accordance with the terms stated in the act, which depend on the period of time that the employee has been in the employer's service during the qualifying year.[86] Holiday pay more or less corresponds with ordinary monthly pay according to the same-pay (sammalöneregeln) rule in section 16 a or, if the work is irregular, it amounts to 12 per cent of the total annual pay in accordance with the percentage rule (procentregeln) in section 16 b.

If the duration of the employment is shorter than three months the employer and the employee can agree that annual leave will not be scheduled. In that case the employee is entitled to *holiday allowance* (semesterersättning).[87] This means that the

[83] See SOU 1995:92 and B. Nyström (2017) p. 390 f.
[84] Collective agreement between Unionen and Almega concerning tech and media companies for the period 1 May 2017 to 30 April 2020. The regulation is in § 4.1.1. of the collective agreement.
[85] Section 4 in the 1977 Annual Leave Act.
[86] Section 7 in the 1977 Annual Leave Act.
[87] Section 5 in the 1977 Annual Leave Act.

employee is paid an additional 12 percent of the total pay from the employment when the employment ends.

For platform workers (considered as employees) the employment is likely to be short. The parties can agree on no leave, in which case the employee is entitled to holiday allowance. Since the work is most likely irregular, the allowance will amount to 12 per cent of the total pay from the employment. If the duration of the employment is longer, the employee is entitled to holiday leave and holiday pay, which is likely to fall under the percentage rule (and thus be calculated as 12 per cent of the total pay for that year). Ordinary salary and holiday allowance may not be amalgamated. If they nonetheless are, the employer may have to pay holiday allowance 'again', when the employment ends. On the other hand, if no collective agreement is applicable, the employer can decide on a 12 per cent 'lower' salary and then pay the holiday allowance, since there are no statutory regulations about minimum salary.

Another regulation that might be of interest for platform workers is section 30 a) on uncontrolled employees. If an employee performs work under such circumstances that it cannot be deemed to be the task of the employer to monitor how the work is organized, a contract may be concluded between the employee and employer on a deviation from the provisions on scheduling of annual leave. Such deviations may not lead to a restriction to take out twenty-five days of annual leave, or such lower number of days of annual leave as the employee is entitled to each annual leave year. This statutory regulation on uncontrolled employees might give the employer and employee more flexibility when it comes to scheduling the annual leave.

3.5 Overall comparison

The binary system is very distinct in statutory legislation in the area of healthy and productive workforce. Employees are protected and genuinely self-employed are not. The protection for platform workers depends on their classification in the binary system. This is likely to vary depending on the platform company's business model.

In summary an employer has the responsibility for all measures in the work environment for traditional employees. For other persons performing work at the workplace, the 'employer' has some responsibilities for the equipment at the workplace so no one is exposed to risks. The 1977 Work Environment Act is more or less non-applicable to genuinely self-employed when they perform work, except for in a few regulations about technical arrangements and dangerous substances. 'Dependent contractors' are also excluded from the 1977 Work Environment Act, as they are self-employed. For platform workers the triparty construction makes the delegation of responsibilities unclear and dependent on the business model of the platform company. Compared to the temporary work agency workers, the problem for platform workers is that there is still uncertainty as to whether they are to be considered solo self-employed or employees etc. After almost 30 years the legal situation for temporary work agency workers in Sweden is rather clear and not so problematic. There has been an idea (not a suggestion) by a Committee of Inquiry, with regard to platform, to extend the scope of the 1977 Work Environment Act to 'dependent contractors'.[88]

The 1982 Working Hour Act applies only to employees. Whether or not it is applicable to employed platform workers depends on how the exemption for people working under conditions where it is not the employer's responsibility to control how the

[88] SOU (Government White Paper) 2017:24 p. 221.

work is organized, is interpreted. As the exemption should be interpreted restrictively, the 1982 Working Hour Act might be applicable to platform work. If so, platform workers are protected by the legislation (limits for working hours, over-time etc.). They are not entitled to over-time pay, payment for unsocial hours, or payment for on-call time unless the employer has a collective agreement that regulates this. A collective agreement could also cover solo self-employed if they are regarded as 'dependent contractors'. A platform company without a collective agreement does not have to pay for over-time, unsocial hours, on-call time etc. A possible exemption could be cases where the regulation is regarded as practice in the industry (Supreme Court ruling NJA 1968 page 570, see section 2.1.). Even if the employer has an applicable collective agreement, it is very likely that uncontrolled work like platform work is exempted from the regulation about overtime payment etc. in the collective agreement. If the platform worker is self-employed or a 'dependent contractor' then there is no limitation in working hours, no remuneration for over-time etc.

The 1977 Annual Leave Act only applies to employees and not to self-employed or 'dependent contractors'. If a platform worker is classified as an employee, he or she is entitled to paid holiday if the employment is long. If the employment is shorter than three months (this also includes employment as short as 10–20 minutes) the platform company and the platform worker can agree on a holiday allowance of 12 per cent of the total pay. The holiday allowance may not be included in the salary. If it is, the employer has to pay holiday allowance again, on the whole amount, when the employment ends. However, since the platform worker (or his union if he is a member) has to take legal action and sue the employer in a civil case in order to get the second allowance, the enforcement might not be so efficient.

4 Basic social security

4.1 The legal framework[89]

A basic social security system for all is important in the Nordic labour market model. The work-based insurances secure the income of the individuals if they are out of work. In this section entrance the social insurances and calculating of the benefits from to *unemployment* benefits, *sickness- and injury* benefits, *parental allowance* and *retirement* and *old age* benefits is analysed from the perspective of the traditional employee, the genuinely self-employed and the platform worker.

Unemployment benefits are regulated in the 1997 Unemployment Insurance Act (1997:238) and unemployment insurance funds are regulated in the 1997 Unemployment Funds Act (1997:239). There are 25 unemployment insurance funds in Sweden that administrate unemployment benefits. Most of them are administrated by different unions but there are also funds for self-employed (Småa).[90] From the beginning the unemployment insurance funds were founded and administrated by the unions and to qualify for membership in an umemployment insurance fund, workers had to be members of a union. Membership in a union is not a condition anymore. Joining an unemployment insurance fund is optional for employees and self-employed. Only members of an unemployment fund will have unemployment benefits. Unemployment insurance is financed to around 90 per cent by employer contributions (a labour market fee as part of the mandatory payroll tax)[91] and to around 10 per cent by membership fees.[92]

Sickness- and injury benefits, *parental allowance* and *retirement* and *old age* benefits are regulated in the 2010 Social Insurance Code (2010:110) and The Swedish Pensions Agency distributes income pension, supplementary pension, premium pension and guaranteed pension.[93] The rest is distributed by the Swedish Social Insurance Agency (Försäkringskassan). The government financed (by employer contributions) sickness- and injury insurance, parental allowance and retirement schemes covers both employees and self-employed.

The sickness benefits are financed to 85 per cent by the mandatory employer contributions (a health insurance labour market fee as part of the mandatory payroll tax) and the rest is financed by state taxes.[94] The parental allowance is to 100 per cent financed by mandatory employer contributions (a parental insurance fee as part of the mandatory payroll tax).[95]

[89] See Annamaria Westregård, 'Social protection for workers outside the traditional employment contract—A Swedish example', in Mies Westerveld and Marius Olivier (eds.) *Social security outside the Realm of the Employment Contract*, Edward Elgar (2019) Cheltenham UK and Northampton USA.
[90] See https://www.sverigesakassor.se/om-oss/in-english/
[91] The 2000 Social Insurance Contribution Act (2000:980).
[92] SOU (Government White Paper) 2015:21 p. 738.
[93] https://www.pensionsmyndigheten.se/other-languages/english-engelska/english-engelska/your-pension-if-you-live-outside-sweden
[94] The 2000 Social Insurance Contribution Act (2000:980) and Försäkringskassan *Socialförsäkring i siffror* (2017), p. 24.
[95] The 2000 Social Insurance Contribution Act (2000:980); Socialförsäkring i siffror (2019).

The national pension is financed by general taxes and the income pensions are financed to 100 per cent by mandatory employer contributions (a pension contribution fee as part of the mandatory payroll tax that amounts to 10.21 per cent (1/3) of the total employer contribution).

For 2020 the total mandatory employer contribution (social security fees) is 31.42 per cent of paid gross salary.[96] It is the same for employees and for self-employed. The employer's contribution is based on the whole income. The benefits to the individual is limited to 8 price base amounts (380 000 SEK). If the employee's salary is higher than 380 000 SEK, the employer's contribution over that limit is similar to an ordinary tax, not earmarked for anything in particular.

Who is responsible for paying tax and social fees?

As mentioned, it is mandatory for employees and self-employed to have and contribute to the social insurances. According to the 2000 Social Insurance Contribution Act (2000:980), persons deemed to be the owner of a business must pay the social fees themselves (the genuinely self-employed). A principal, however, must pay social fees for self-employed who do not carry out work independently. The employer's responsibility for paying social fees thus goes beyond the concept of employment and includes some independent solo self-employed without a firm registered with the Business Authority. Employers must pay social fees for their employees.[97]

When it comes to platform workers it is difficult to pin down who is responsible for the payment of social insurance contributions and tax – the platform company, the service consumer, or the platform workers themselves (if they are held to be genuinely self-employed). A problem, as a Committee of Inquiry noted in Government White Paper SOU 2017:26 (*Delningsekonomi På användarnas villkor*), is that an assumption for all social security insurances is that employers are 'in the system', and that all taxes and social security contributions are reported and paid correctly.[98] Income that is not accounted for is not included in the calculation of social benefits, which are based on declared income. The result is that the entire informal sector falls outside of Sweden's social and unemployment insurance system. The Swedish Tax Agency has identified a number of tax issues in the new collaborative economy. Its primary concern has been who should be responsible for paying social security contributions and handling tax credits for everyday services and transport services. It can be difficult in a collaborative economy to judge whether it is the client or the platform that is renumbering the performing party, and thus is responsible for paying tax and social insurance contributions, if the performing party does not have Business Tax Certificate approval.[99]

[96] For 2020 the total employer contribution is 31.42 per cent of paid gross salary https://www.skatteverket.se/foretagochorganisationer/arbetsgivare/arbetsgivaravgifter-ochskatteavdrag/arbetsgivaravgifter.4.233f91f71260075abe8800020817.h.tml accessed 19 February 2020.

[97] Chapter 2 of the 2000 Social Insurance Contribution Act (2000:980); see also Kent Källström, 'Employment and contract work' (1999), *Comparative Labour Law & Policy Journal* 21/1 p. 162.

[98] Government White Paper SOU 2017:26 p. 62

[99] Skatteverkets Rapport Dnr 1 31 129651–16/113 *Delningsekonomi. Kartläggning och analys av delningsekonomins påverkan på skattesystemet* 2016.

Another problem is that remuneration under 1 000 SEK a year from a principal or employer is exempted, and no social fees are paid.[100] There are corresponding exemptions for incomes from a principal under 1 000 SEK in the SGI calculation for sickness benefits etc., and for calculation of pensions, see below.[101] This may be of consequence for platform workers if the platform company's business model involves the platform worker being paid by the principal and not by the platform company. If the platform worker has many short assignments that pay under 1 000 SEK, this remuneration is not registered in the system and hence not included when social benefits are calculated. The social security system needs to adapt its regulations to the gig economy.

Supplemental collective agreements

In this report the focus is on the mandatory state social security insurances. It is important to notice that there are also collective agreements between Sweden's major federations (that have very wide coverage) which contain important supplemental compensation to the state social security insurance and pensions.[102]

All employers with a collective agreement (92 per cent in the private sector and 100 per cent in the public sector) are obliged in the collective agreement at industry level to also keep their employees insured in accordance with the federal collective agreements. Those federal collective agreements contain sickness insurance, work occupational injury insurance, supplementary industrial injury insurance, occupational life insurance, ITP- pension schemes for white-collar workers and occupational pension schemes for blue-collar workers, occupational group health insurance etc. There are also supplemental benefits in the industry wide collective agreements (see example in 4.3. and calculation of SGI).

If a collective agreement does not cover the workplace the employees do not get any of the benefits in the federal collective agreements. They only have the state social security insurances: Sickness- and injury benefits, parental allowance and retirement and old age benefits (see sections 4.4–4.6). An employer who is a not a member of any employers' association can of course sign a private insurance. They are normally more expensive than the federal collective agreement insurances. The collectively agreed federal social security schemes, including pensions, have better terms than other private social security schemes that are available for individual companies, due to the large number of insured.

Solo self-employed who operate in a close company (small limited company – fåmansaktiebolag) and who also are members of the white-collar union Unionen, can sign an application agreement (hängavtal) for their own work in their limited company.[103] They then have the right to sign the labour market insurances in the federal

[100] Chapter 2 section 14 and chapter 3 section 9 in the 2000 Social Insurance Contribution Act (2000:980)

[101] Chapter 25 section 16 and chapter 59 section 22 in the 2010 Social Insurance Code.

[102] The federal level comprises the private-sector employers – the Confederation of Swedish Enterprise and Industry (Svenskt Näringsliv – SN). The union representatives are the Swedish Federation of Professional Associations (Sveriges akademikers centralorganisation – SACO) for academically qualified personnel, the Federation of White Collar Workers (Tjänstemännens centralorganisation – TCO) for white-collar workers, and the Swedish Trade Union Confederation (Landsorganisationen – LO) for blue-collar workers.

[103] https://www.unionen.se/medlemskapet/egenforetagare/teckna-hangavtal-egenforetagare 13 March 2020.

collective agreements. In the social security legislation solo self-employed who operate in limited companies (aktiebolag) are regarded as employees (see section 4.2).

In Sweden, healthcare is not connected to employment, and therefore it is not relevant here.

The aim of the legislator and inquiry for new legislation

The aim of the legislator is to create parity in the social security system between employees and genuinely self-employed, but also between different business models and company structures. This can be seen in the reforms of the last decade. In 2010, reforms were made in social security and tax regulations with the express ambition to encourage all types of work, including work performed in non-traditional forms.[104] Complementary reforms where made or initiated in 2018 and 2019.[105]

Legal enforcement

The legal enforcement of the benefits in the social security insurances are as follows. A decision by the Swedish Social Insurance Agency or by an unemployment insurance fund about access to an insurance and calculation of benefits for a person can be appealed to administrative courts. Their decisions can be are appealed to the Administrative Court of Appeal and as a final instance to the Supreme Administrative Court. A review permit is needed to appeal to the Administrative Court of Appeal and to the Supreme Administrative Court.

Decisions about who should pay social security fees are made by the Tax Authority. The decisions are appealed to the Administrative Courts.

4.2 Categories of workers and definition of employer

In Sweden the social security system is connected to the concept of the employee in tax law and not in labour law. The concept of employment in tax law (and social security law) is based on the same 'core' as in labour law; there has to be '*contract that a performing party must personally perform work on behalf of another party*'.[106] The different circumstances (or evidentiary facts) are viewed differently in tax and social security legislation when deciding whether the performing party is sufficiently independent for Business Tax Certificate approval and therefore to be regarded as genuinely self-employed.

[104] See prop. (Legislative Bill) 2009/10:120.

[105] A legal change in SFS 2018:670 and prop. (Legislative Bill) 2017/18:168 *Stärkt försäkringsskydd för studerande och företagare*; proposal for legal changes in SOU (Government White Paper) 2018:49 *F-skattesystemet – några särskilt utvalda frågor*; inquiry for new legislation in Kommittédirektiv Dir. 2017:56 *Trygghet och utveckling i anställning vad gäller arbetstid och ledighet*; Kommittédirektiv Dir. 2018:8 *En ny arbetslöshetsförsäkring för fler, grundad på inkomst*; Dir. 2018:26 *En trygg sjukförsäkring med människan i centrum*; SOU (Government White Paper) 2019:2 *Ingen regel utan undantag – en trygg sjukförsäkring med människan i centrum*. In the inquiry for legislation SOU (Government White Paper) 2019:41 *Företagare i de sociala trygghetssystemen* the intention is to create more explicit regulations for calculation of SGI for the genuinely self-employed operating with a company as a simple partnership (enskild firma). The inquiry also suggest changes in the system with qualification days in the sickness insurance. An analyse of the regulations on part time sickness benefits is also made and there are also a more general analyse of the collaborative economy and the platform workers.

[106] A. Adlercreutz, *Arbetstagarbegreppet* (Norstedts 1964) pp. 186, 276 ff; Ds. 2002:56 *Hållfast arbetsrätt för ett föränderligt arbetsliv* p. 111, n. 63; A. Westregård (2016).

In social security regulations the concept of the *employee* is defined as someone who has an income from employment.[107] The concept *self-employed* in the context of social security legislation refers to those operating a company as a simple partnership (enskild firma), trading partnership (handelsbolag) or limited partnership (kommanditbolag). Those company forms constitute one category.[108] People operating a close company (fåmansaktiebolag) do not belong to this category; from a social insurance perspective, they are employed in their own company, and are therefore regarded as employees. The term close company here refers to small shareholder companies with only one employee – usually the owner.[109] What company structure a person chooses to operate in will have consequences for the social insurance protection that the person receives.

A performing party can be regarded as an employee under the 1982 Employment Protection Act, but as genuinely self-employed under the 1999 Income Tax Act (1999:1229), and thus qualify for for Business Tax Certificate approval. Business Tax Certificate approval adds little of weight, when the concept is assessed under labour law.[110] (See also Report 1 where the concept of employment in labour law is discussed.)[111] Statutory regulations in tax law were introduced in 2009 to make it easier for individuals to obtain approval for Swedish Business Tax Certificate (godkänd för F-skatt).[112] The problem is that the rules for Business Tax Certificate approval can result in more people being hired as sole traders, even though they are actually employed — so-called 'false self-employed'. This was brought to the attention of the Ministry of Finance, which appointed an inquiry to look at possible alterations to the legislation.[113] In the SOU (Government White Paper) 2018:49 (*F-skattesystemet – några särskilt utpekade frågor)* the Committee of Inquiry was especially critical of the fact that the former employer can be the new company's only client. The Committee proposed a change in statutory regulations in the tax legislation to avoid 'false self-employed'.[114] If there is a change in the legislation this will also affect the scope of the social security regulations as the classification in social security is linked to the classification in tax law. It is however still unclear if and when a change will be made.

Those working in new, precarious forms of employment, like platform workers, are often called assignment workers. This is not a legal category but the term is used in the SOU (Government White Paper) 2015:21 (*Mer trygghet och bättre försäkring*). An

[107] Chapter 6 section 2 and for calculation of SGI see chapter 25 section 10 in the 2010 Social Insurance Code.
[108] SOU (Government White Paper) 2015:21 *Mer trygghet och bättre försäkring* p. 969.
[109] A close company (fåmansaktiebolag) is a limited company in which four or fewer owners hold at least 50 per cent of voting shares, chapter 56 Section 2 in the 1999 Income Tax Law (1999:1229). Companies listed on the stock exchange are not close companies.
[110] Källström and Malmberg (2016) p. 31; In Denmark and Norway the established practice in tax law seems to follow the established concept of employment in labour legislation; Ole Hasselbalch, *Arbejdsretten*, (11th edn, Djøf Forlag 2013, revise oktober 2017 available through Schultz arbejdsretsportalt, *Arbejdsretsnøglen*) Section III, section 1.2.1.; Marianne Jenum Hotvedt, 'Arbeidstaker-Quo vadis? Den nyere utviklingen av arbeidstakerbegrepet' (1/2018) *Tidsskrift for Rettsvitenskap* vol 131 pp. 42–103, 51, 58 and 64.
[111] Westregård, Annamaria, *Key concepts and changing labour relations* Part 1 Country report from Sweden, The future of work: Opportunities and Challenges for Nordic models. Pillar VI: Labour Law & regulations – needs, hurdles and pathways for legal reform, 2019, section 2.
[112] See chapter 13 section 1 in the 1999 Income Tax Law (1999:1229).
[113] Dir. 2017:108 *Översyn av F-skattesystemet*.
[114] SOU (Government White Paper) 2018:49 *F-skattesystemet – några särskilt utpekade frågor* p. 211 f see also SOU (Government White Paper) 2019:31 *F-skattesystemet – en översyn.*

assignment worker is not employed by the platform company, nor does he or she have a firm registered with the Business Authority, nor a Business Tax Certificate. Traditionally assignment workers have been classified as self-employed in the binary social security system.[115] How platform workers will come to be classified in the social security system in future is still an open question. The worker's degree of independence will probably be an important factor in the assessment. If workers have income from an employment they are regarded as employees. Otherwise they are regarded as self-employed.

4.3 Unemployment insurance

The unemployment insurance is voluntary. Both employees and genuinely self-employed can be members of an unemployment fund. Only members are covered by Swedish unemployment insurance. The insurance includes basic insurance as well as loss-of-income insurance. *Basic insurance* is provided by a basic amount to persons who fulfil the basic requirements and work requirements, but who have not been members of an unemployment insurance scheme for the past 12 months.[116] Persons who have been members for the past 12 months and who fulfil the basic requirements receive *compensation from the loss-of-income* insurance scheme. The basic work requirements are that the person has worked at least 80 hours a month for 6 months during the last year or 480 hours totally and at least 50 hours a month 6 months in a row during the last year. With some variation, benefits amount to 80 per cent of the income for 200 days and 70 per cent of the income for the following 100 days.[117] The government sets a monetary limit for the amount received per a day.[118] Around 70 per cent of the workforce are members of an unemployment fund. Out of all unemployed only 40 per cent get unemployment benefits out of a loss-of-income insurance scheme, since not all insured fulfil the requirements. Ten years ago, 64 per cent of the unemployed where entitled to loss-of-income benefits.[119] In summary platform workers are covered on the same conditions as others if they fulfil the requirements.

In 2010 changes were made to the 1997 Unemployment Insurance Act (1997:238).[120] Before, self-employed had to close down their business activities completely in order to receive benefits, which made it difficult for them to restart their companies. Since 2010, a hiatus in operations can either be temporary or permanent. With a temporary hiatus the company owner does not need to close down the company to receive unemployment insurance. The only requirement is that the business owner states that he or she is not operating the company.

[115] SOU (Government White Paper) 2015:21 p. 944. In this case social insurance law and unemployment insurance rely on chapter 13 section 1 in the Income Tax Law (1999:1229).
[116] The basic amount is determined by the government, and for 2019 the maximum amount is SEK 365 per day for full-time work.
[117] Sections 7 and 24 in the 1997 Unemployment Insurance Act.
[118] Section 25 in the 1997 Unemployment Insurance Act. Currently 80 per cent of a monthly income of 25 025 SEK, i.e. 910 SEK /day.
[119] Arbetslöshetsrapporten (2019) https://arbetsloshetsrapporten.se/ersattning-akassa/.
[120] Section 35 a (2010:445).

In the collaborative economy the platform companies sometimes use umbrella companies as middlemen. The umbrella company construction is unique for Sweden.[121] There have been difficulties in deciding whether the umbrella company workers are to be considered employees or solo self-employed; this effects whether the worker will get unemployment benefits between two assignments.

The Administrative Court of Appeal has ruled on whether umbrella company workers are to be considered employees in the sense of the 1997 Unemployment Insurance Act (1997:238) in a few cases. Settled case law from the Administrative Court of Appeal varies and the most essential criteria has been the degree of independence.[122] It is of crucial importance for the umbrella company workers whether they are regarded as employees or not. An employee is unemployed between assignments and therefore entitled to unemployment benefits. An independent contractor or a solo self-employed is entitled to unemployment benefits for self-employed, which means that they will not receive any unemployment benefits between assignments unless they state a temporary hiatus in their business activity.

Platform workers are entitled to unemployment benefits under the same conditions as other employees and self-employed. Like many others they will have difficulties fulfilling the working conditions even if they are members of an unemployment fund. They will encounter the same kind of problems when they apply for unemployment benefits as umbrella company workers. To be entitled to benefits between assignments, platform workers need to be able to prove how much they usually work.

Calculation of compensation from unemployment insurance

The law on unemployment insurance uses a different income basis than SGI – which is used to calculate the other social insurances, see below. Compensation on a basic benefit level is determined by the government. For employees, income-related benefits are based on income earned during the past 12 months, as documented in a so-called employer's certificate based on income declared to the tax authorities. The government sets the limit for maximum daily benefits each year for the daily benefit.

For genuinely self-employed, the benefit level is based on the most recent decision on final tax for an income year, or if it is more advantageous for the individual, on the average of the past two years of taxation. The definition of company owners in the 1997 Unemployment Insurance Act has been related to the concept of economic activity in the 1999 Income Tax Law (1999:1229). A company owner according to the 1997 Unemployment Insurance Act is a physical person who operates a business and who personally performs work over which he or she exerts significant influence. This

[121] The business model of the Swedish umbrella companies is that the performing party bids for work and, if successful, arranges both the work and the remuneration with the client. The performing party then makes sure the client has signed a contract with the umbrella company. The client is invoiced by the umbrella company, which in turn employs the performing party for the duration of the assignment. Once the client has paid the umbrella company, the performing party is credited, after deductions for tax, social security contributions, and the umbrella company's commission.

[122] Judgement from Administrative Court of Appeal in Gothenburg 11 May 2010 (case no. 3059–09); Judgement from Administrative Court of Appeal in Gothenburg 17 February 2015 (case no. 911–15); see also the Swedish Unemployment Insurance Board (IAF) appeal to the Supreme Administrative Court in the Judgement from Administrative Court of Appeal in Gothenburg 11 May 2010 (case no. 3059–09) review not granted (case no. 4218–10). See also *Uppdragstagare i arbetslöshetsförsäkringen*, 2016:3, 15–16, about the particular difficulties relating to the solo self-employed.

means that this regulation, unlike the health insurance regulations, applies to all forms of companies – also small close companies

Genuinely self-employed company owners who close down their company within 36 months of establishment now receive benefits based on income from previous employment.[123] Combiners receive benefits based on both employment and the operation of their own businesses.[124] A parliamentary inquiry committee was appointed in 2018 and will leave proposals for new legislation adapted to new situations in working life in 2020.[125]

4.4 Sickness and injury

Sickness benefits

When an employee becomes ill, the employer pays sickness benefit at the level of 80 per cent of the salary from day 2 to day 14 (day 1 is a qualifying day for sickness and neither salary nor sickness benefits are paid).[126] After 14 days, the Social Insurance Agency takes over the responsibility for paying sickness benefit. The sickness benefit is 80 per cent of the sickness benefit qualifying income (see calculation of SGI below), for 364 days and thereafter the benefit is paid at 75 per cent, without an ending date.

The sick pay from the employer is applicable from the first day of employment. If the employment is shorter than a month, there will be no sick pay until the employee has worked for 14 days. This is of disadvantage to some platform workers, who might have short employments for many different principals.

If an employee does not qualify for sick pay from the employer, the employee instead receives sickness benefit from the Social Insurance Agency from day 2 (as day 1 is a qualifying day).[127] A problem here is that sickness benefits are only payed if the person was scheduled to work. For platform workers this presents a problem since their work is often 'on demand' and seldom planned in advance. It is the platform worker who decides when to work, when to sign up at the platform and when to turn on the app.[128]

Owners of a simple partnership, trading partnership or limited partnership (but not those operating a company as a close company) can decide their own number of qualifying days (1 to 90) and thus pay a correspondingly higher or lower sickness insurance contribution.[129] After the selected number of qualifying days, the company owner receives sickness benefit from the Social Insurance Agency. Those operating a close company, however, are considered employees in their companies, and their companies are obligated to pay out sickness benefit for days 2 to 14. The owner of a close company cannot choose a different number of qualifying days.[130]

[123] Section 34, 37-7 b in the 1997 Unemployment Insurance Act (2010:445).
[124] A combiner receives income from both employment and clients, or employment and work on an assignment basis, SOU (Government White Paper) 2015:21 p. 941.
[125] Kommittédirektiv Dir. 2018:8 *En ny arbetslöshetsförsäkring för fler, grundad på inkomst*. Tilläggsdir. 2019:34 The result will be declared 15th May 2020.
[126] Section 6 in the 1991 Sickpay Act (1991:1047).
[127] Chapter 27 section 10 in the 2010 Social Insurance Code.
[128] An inquiry for legislation "*En trygg försäkring med människan i centrum*" (Dir. 2018:26) investigates the requirement for new legislation and will be reported 30th April 2020.
[129] Chapter 27 section 29–33a in the 2010 Social Insurance Code.
[130] A legal investigation SOU (Government White Paper) 2019:41 *Företagare i de sociala trygghetssystemen* has suggested changes to create better parity between different forms of companies.

Rehabilitation allowance and sickness compensation

In 2008 new regulations were introduced in the sickness insurances.[131] The most controversial of these was that after 180 sick days a person was now only entitled to continue to get sickness benefits if he could do no work at all in any part of labour market. Before, an employee was entitled to sickness benefits if he could not work for *his* employer – his ability to work was not assessed in relation to the whole labour market. On the other hand, if a person is too sick to do any work at all, there is no time limit to the benefit. That person can continue to receive sickness benefits until permanent sickness compensation (early retirement pension) is conceded. If a person between 19 and 64 is so sick or injured that he will never be able to work again, he is entitled to permanent *sickness compensation* (early retirement pension).[132] This benefit includes everyone who is insured in Sweden. After a recent change in the regulations sickness compensation is only conceded if it is obvious that the person will never in any way be able to work again.[133] Nowadays this regulation is applicable to very few.

An employee who participates in occupational rehabilitation is entitled to *rehabilitation allowance* from the Social Insurance Agency – the aim of which is to help employees back to work.[134] The rehabilitation must be part of a plan. Under normal circumstances the employer is not allowed to terminate the employee's contract during the rehabilitation. Self-employed are also entitled to rehabilitation allowance.

Occupational injury annuity and injury insurance

Anyone who works in Sweden is insured against occupational injury (illness, accident at the workplace or while travelling to and from work and if a person have to stay at home because of contagion like during the covid 19-crisis).[135] The insurance is mandatory and covers both employees and self-employed, meaning that both are entitled to occupational injury annuity if approved by the Social Insurance Agency. Insurance against occupational injury covers the self-employed, here defined as those operating a company as a simple partnership (enskild firma), trading partnership (handelsbolag) or limited partnership (kommanditbolag), but also assignment workers (tillfälliga uppdragstagare).[136] The unclear classification of platform workers can pose a problem, since they may not fit into either of the insured categories (employees and self-employed).

The federal collective agreement insurance, Work Injury Insurance (Arbetskadeförsäkring TFA), is paid by the employers and is an important supplement to the mandatory occupational injury insurance. The TFA is a 'no-fault' insurance, which means that remuneration is paid regardless of whether anyone is to blame for the injury. The Work Injury Insurance takes over the employer's responsibility and pays the benefits to the employee instead of the employer. An employee cannot go to court with claims on an employer that has the insurance.[137]

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[131] Chapter 27 section 46-49 in the 2010 Social Insurance Code.
[132] Chapter 36 in the 2010 Social Insurance Code.
[133] Chapter 27 and 35 in the Social Insurance Code; Annamaria Westregård, 'Changes in the Swedish Sickness Insurance System and Labour Law due to influence of flexicurity' *Europaeische Zeitschrift fur Arbeitsrecht/European Journal of Labour Law*, (2014) 1/2014.
[134] Chapter 29-31a in the 2010 Social Insurance Code.
[135] Chapter 39-42 in the 2010 Social Insurance Code.
[136] SOU (Government White Paper) 2015:21 p. 676.
[137] See more https://www.afaforsakring.se/globalassets/alla-broschyrer--faktablad/arbetsskadeforsakring/f6358_trygghet-vid-arbetsskada.pdf.

Sickness benefit qualifying income (SGI) for sickness insurance and parental allowance

The level of compensation is naturally of great significance to a person who is sick or on parental leave. The payment of sickness and parental benefits is based on sickness benefit qualifying income (Sjukpenninggrundande inkomst, SGI). The right to benefits requires that the individual is covered by the employment-based insurance stipulated in chapter 6 in the 2010 Social Insurance Code or in the EU Regulation on the coordination of social security systems,[138] and has an annual income from own work in Sweden. This work must be expected to last at least six months or be of an annually recurring nature (seasonal work) and result in income over a minimum level (decided each year, for 2020 that level is just over 11 500 SEK).[139]

SGI is at the moment limited to almost 380 000 SEK,[140] but many of the collective agreement stipulates that the employer pays the difference between the social insurance allowance and the ordinary salary. As the state social security benefits are limited, most employees do not get 80 per cent of their salary when they are sick. The collective agreements at industry level offers very important supplementary benefits. In the White-Collar Employee Agreement[141] between the white-collar trade union Unionen and Almega (the Employers' Organisation for the Swedish Service Sector) sick pay is 80 per cent of the salary days 2 to 14 In accordance with the statutory regulation in the 1991 Sick Pay Act (1991:1047). The employer then pays 10 per cent of the salary up to 8 price base amounts for days 15 to 90 (while the Swedish Social Insurance Agency pays 80 per cent up to 8 price base amounts). For salaries over 8 price base amounts the employer pays 90 per cent of the salary. For employees who have not yet been employed for a whole year, the employer only pays for days 15 to 45. In the blue-collar agreements is it more common that the employer only pays 80 per cent of the salary for days 2 to 14 according to the statutory regulation.[142]

For employees and owners of small close companies, SGI A is calculated using predicted annual income as the basis. Previous income levels are not determined; instead the individual's future income is predicted. Historical income can be used as a point of reference but not as a ground for decision.[143] If a worker has an irregular income, for example from sporadic work, the calculation shall be based on information from both the individual and the employer, as well as on the estimate used for determining income tax. Using predicted income as the basis for calculating SGI has been simple, since Sweden has traditionally had large workplaces where pay rises have been controlled in collective agreements and thus have been easy to predict.

For those receiving income for other types of work, SGI B is calculated. These include persons operating small non-incorporated businesses and persons approved for

[138] Regulation (EC) No 883/2004 — on the coordination of social security systems.
[139] It is 24 per cent of the price base amount, chapter 25 Section 3 in the 2010 Social Insurance Code.
[140] The limit is 8 price base amounts. For 2020 the price amount is 47 300 SEK. https://www.scb.se/hitta-statistik/statistik-efter-amne/priser-och-konsumtion/konsumentprisindex/konsumentprisindex-kpi/pong/statistiknyhet/prisbasbeloppet-for-ar-2020/.
[141] Collective agreement between Unionen and Almega concerning tech and media companies for the period 1 May 2017 to 30 April 2020. The regulations are in § 10 of the collective agreement.
[142] See e.g. 8 § in the collective agreement for blue-collar workers in the agreement between the Association of Swedish Engineering Industries an IF Metall, 1 April 2017-31 March 2020.
[143] Lottie Ryberg-Welander, *Socialförsäkringsrätt: Om ersättning vid sjukdom* (2nd edn Norstedts Juridik 2014) p. 72.

the Swedish Business Tax Certificate (godkänd för F-skatt[144]).[145] SGI B is also calculated on the basis of expected future income. Estimating future income for these persons is far more complicated than for employees and owners of close companies. To determine a basis, the Social Insurance Agency asks the individual to provide a prediction of future income; the Social Insurance Agency then compares this information with the worker's accounts and information from the accountant and the Tax Agency.[146] The calculation method has been criticised, since it makes it difficult for the individual to foresee what SGI B will be decided.

During a start-up phase (currently 36 months) the owners of a simple partnership, trading partnership or limited partnership[147] are allowed to specify a fictitious income for the purpose of calculating the SGI B. The comparison income shall correspond to the income that a comparable employee/self-employed would have earned. After a change in the legislation in 2018, this statutory regulation also applies to close companies when SGI A is calculated for them during a start-up phase. This has been one way of creating parity between different forms of company structures.[148] Before the change, the regulation was of disadvantage to owners of close companies and had significant consequences in cases where the owner drew a small salary during the start-up phase and then became ill.[149] In an inquiry for legislation 2019, the legislators intention is to create more explicit regulations for how to calculate SGI for the genuinely self-employed who operate with a simple partnership (enskild firma).[150]

4.5 Paid parental leave

As soon as a child is born, the parental insurance scheme begins paying out parental benefits. The amount is either work-based or housing-based (if the work requirement cannot be fulfilled). Parental benefit is paid out at three different levels. The parental benefit levels are 80 per cent of income (SGI), basic level, and the lowest level for a parent who is insured for the housing-based benefit. Benefits are paid for 480 days: 390 days at the sickness-benefit level and 90 days at the lowest level. Half of the days are earmarked for each parent for their parental leave, but any number of the 390 days can be transferred to the other parent. Parental leave is usually taken during the child's first year, as day-care is offered to all children from one year of age. The remaining parental leave days can be taken out any time until the child turns 12.[151]

If a child becomes ill, needs care or must visit the doctor the parent has a statutory right to Care of a Sick Child (VAB) i.e. temporary parental benefit. This is paid out with a maximum of 60 days per child annually until the child turns 12.[152] Parental allowance covers both employees and self-employed and therefore also platform workers.

[144] Chapter 13 Section 1 in the 1999 Income Tax Law (1999:1229).
[145] Chapter 25 Sections 8 and 10 in the 2010 Social Insurance Code.
[146] See Ryberg-Welander (2014) p. 80.
[147] Chapter 25 Section 9 in the 2010 Social Insurance Code; SOU (Government White Paper) 2015:21 p. 966 f.
[148] SFS 2018:670; prop. (Legislative Bill) 2017/18:168 p. 20 f.
[149] SOU (Government White Paper) 2015:21 p. 324.
[150] SOU (Guvernement White Paper) 2019:41 *Företagare i de sociala trygghetssystemen* p. 11.
[151] Chapter 12 paragraphs 21-24 in the 2010 Social Insurance Code
[152] Chapter 13 paragraphs 16, 20 and 21 in the 2010 Social Insurance Code.

4.6 Retirement and old age

The Swedish Pensions Agency distributes the pension. The statutory pension system is complex and has changed a number of times.

- The old system for persons born before 1937: their guaranteed pension is the supplementary pension,
- The system for persons born between 1938 and 1953: their guaranteed pension is the supplementary pension, income pension and premium pension,
- The new system for people born after 1954: their guaranteed pension is income pension and premium pension.[153]

There is also a state funded guaranteed basic pension at lowest level (garantipension). This is not dependent if a person have worked at all.[154]

Calculation of the pension

For both employees and genuinely self-employed the income-based state pension depends on lifelong income, the Pension Qualification Income (PGI). The PGI for employees and self-employed is calculated every year by the tax authorities and depends on the yearly income.[155]

An important difference between employees and genuinely self-employed is that almost all employees in Sweden have some form of occupational pension regulated either in the collective agreements or private pension solutions paid by the employer as an important complement to their state pension. The genuinely self-employed must arrange a private (and often more expensive) solution if they want something more than the state system.[156]

Platform workers are covered by the pension scheme in the same way as employees and self-employed. There is a similar exemption for incomes from a principal under 1 000 SEK as in sickness benefits.[157] Income under this amount is not part of the pension system. This could be a disadvantage for some platform workers who earn small incomes from many different principals.

4.7 Overall comparison

The social security insurances in focus in this report are all mandatory except the unemployment insurances. For a long time the aim in Sweden has been to construct statutory regulations that give traditional employees and the genuinely self-employed similar social protection. Workers that are genuinely self-employed do have the similar protection as employees in many parts of the system but when it comes to platform work there are areas that still leave platform workers in a disadvantaged position.

The concept of employment is different in the social security legislation than in labour law as it is based on the concept of employment in tax law. The company form that the insured person works in is essential for the classification: someone who has

[153] https://www.pensionsmyndigheten.se/other-languages/english-engelska/english-engelska/your-pension-if-you-live-outside-sweden
[154] 2020 it is 8 597SEK/month for single persons and 7 690 SEK for married.
[155] Chapter 59 in the 2010 Social Security Code.
[156] SOU (Government White Paper) 2019:41 p. 78 f.
[157] Chapter 59 section 22 in the 2010 Social Security Code.

a close company (fåmansaktiebolag) is for example regarded as an employee (in their own company). Platform workers have classification problems. Many of them are assignment workers, i.e. they work without being formally employed but have no firm registered with the Business Authority. They are normally classified as self-employed in relation to social security. This classification could put them at a disadvantage compared to employees. When it comes to entrance to statutory insurance and calculating the benefits, the statutory regulations make it more difficult and more complicated for self-employed to get benefits, e.g. between two assignments.

The social security system is mainly financed through the mandatory employer contributions of 32 per cent of paid gross salary. The 'employer' contributions are also paid by genuinely self-employed to the same amount.

The calculation of the benefits (SGI) in sickness benefits and parental allowance is based on expected income. That works well for genuine employees with a steady income, but less well for genuinely self-employed. For platform workers in particular it creates problems, since the system is not designed to handle many small incomes from many different principals. The calculation of pensions and unemployment benefits is based on the already reported earned income. This might suit platform workers with irregular incomes better.

The collective agreements on industry- and federal level are a very important supplement to the mandatory state system, but only cover workplaces where there are collective agreements. Most of the Swedish labour market is covered by collective agreements, but in the platform industry there are very few collective agreements so far. This means that platform workers are not a part of all those benefits. One of the most important is the Work Injury Insurance (Arbetskadeförsäkring TFA). If the employer has TFA, then an injured employee is payed allowance from the insurance directly and does not have to (and cannot) sue the employer and go to court. This is an advantage for both parties as the procedure is cheaper and faster.

The social security insurances are generally not adapted to the particular working conditions of platform workers, who work short assignments on an irregular basis. The on-demand nature of platform work and the fact that platform workers decide when to work themselves, will make it difficult for platform workers to prove that they should have worked a particular day. If a person cannot do that, then he or she is not entitled to the benefits. This is a problem in all the social security insurances analysed here, and a problem that platform workers share with other employees with irregular working hours. For platform workers though, this is the main business model.