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Key concepts and changing labour relations in Iceland
Part 1 Country report

Nordic future of work project 2017–2020: Working paper 6. Pillar VI



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Preface

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

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

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

The project is divided into seven pillars. This paper is part of Pillar VI Labour law & regulations, and this paper presents the labour law framework in Iceland and discusses the concepts of employer and employee. The aim is to provide a basis for an analysis of whether and how changing labour relations pose a challenge to Nordic labour law.

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1 Introduction

1.1 Legal framework

Icelandic labour law consists of legislation, case law and collective agreements as well as individual contracts. There is no general labour law act in Icelandic legislation, but various legal acts contain different rights and duties. The development of labour law in Iceland has in some ways been quite random, and to an outsider, the legislation may seem fragmented and complicated. Sometimes legal acts have been made to solve industrial disputes, in certain areas of law or with one act to cover many areas.¹ Some of the labour law acts apply for the labour market as a whole, other only for the private or public sector or workers in specific fields.² Iceland is a member of various international organisations. The most influential of Iceland's international commitments in the field of labour law is the European Economic Area agreement, and legal development in that field since the 1990s has in large part been through the EEA agreement. With membership of the EEA comes the duty to transpose EU legislation, for example directives, in certain fields into national legislation. Among those areas are free movement of persons and services, which have impact on labour law.

The most important legal rule in Icelandic labour law is without doubt Article 1 of the Act on Workers' Wages and Terms of Employment and Obligatory Insurance of Pension Rights no. 55/1980.³ According to the rule the wages and other working terms agreed between the social partners shall be considered minimum terms for all employees in the relevant occupation within the area covered by the collective agreement. Contracts made between individual employees and employers on poorer working terms than those specified in the general collective agreements shall be void. According to this legal rule, it does not matter whether employees are members of unions that make the collective agreement, or whether the employer is part of an employers' organisation, the minimum terms are set in collective agreements.⁴ Despite that, or maybe because of that, union density is very high in Iceland, or 90,4% in 2016, according to the ILO,⁵ and coverage of collective agreements is universal.

Act 80/1938 on Trade Unions and Industrial Disputes is the main collective labour law Act in Iceland and has provisions on the right to establish unions, the legal framework around unions, industrial disputes and mediation and the Labour Court. In the public sector there is a somewhat parallel Act, number 94/1986, about the Collective Agreements of Public Servants. Other notable legal Acts are Act no. 46/1980 on Working Conditions, Health and Safety in the Workplace, the Holiday Act no. 30/1987, the Working Terms and Pension Rights Insurance Act no 19/1979, the Act on the Rights and Obligations of Public Servants no. 79/1996 and the Act on Right to Advance Notice of Termination of Employment and to Wages on Account of Absence through Illness and Accidents no. 19/1979.

¹ Lára V. Júlíusdóttir, *Réttindi og skyldur á vinnumarkaði* (1997) 32.

² A good overview of different labour law Acts with the titles in English can be seen on pages 138-139 in Elín Blöndal and Ragnheiður Morgan Sigurðardóttir, *Labour law in Iceland* (2014).

³ Act 55/1980, lög um starfskjör launafólks og skyldutryggingu lífeyrisréttina.

⁴ Lára V. Júlíusdóttir, *Réttindi og skyldur á vinnumarkaði* (1997) 35.

⁵ ILOSTAT Country profile for Iceland (ILO, n.d.)

<<https://www.ilo.org/ilostatcp/CPDesktop/?list=true&lang=en&country=ISL>> accessed May 4, 2019.

1.2 Enforcement mechanisms

The Labour Court (Félagsdómur) was established with Act 80/1938 on Trade Unions and Industrial Disputes. The role of the Labour Court is explained with exhaustive lists in Acts 80/1938 and 94/1986, on the Collective Agreements of Public Servants. Individuals can generally not bring cases to the Labour Court,⁶ but trade unions, union federations or employers' organisations can. These bodies can also bring cases to the Court on behalf of individuals, provided that the case falls within the scope of the Court. According to Act 80/1938 the cases that the Court deals with are cases that arise because of a breach of that legislation, related to economic loss caused by unlawful industrial disputes, cases that deal with breaches of collective agreements or disputes in how collective agreements should be interpreted. The scope of the Court in the public sector is similar, cases regarding collective agreements or industrial disputes. The judgements of the Court are final, and only rulings on procedural matters can be appealed to the Supreme Court. The general courts deal with all other cases, and most cases where there is a claim for unpaid wages, whatever the grounds, would go to the general courts. Regarding tax law, there is a possibility to ask for a binding decision from the Directorate of Internal Revenue, based on Act 91/1998,⁷ if the interests of the claimant are considerable.

1.3 Key legal concepts and interpretation

The key legal concepts in labour law and this study in Pillar VI are 'employee', 'employer' and 'employment relationship'.⁸ None of these are defined in absolute terms in Icelandic legislation, though they are mentioned in various legal Acts for different purposes. The general concepts, and how they are applied in labour law in general, are derived from Court rulings and have developed over time.

The parties to an employment contract are the employer and the employee. The employer can be a "physical person" or a "legal person" but the employee can only be a physical person.⁹ **Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship** was implemented through collective agreements between the social partners. This entails that employers have the obligation of providing the employee with fundamental information of the employment contract either by a written contract or a letter of engagement. However, oral contracts are just as valid as written contracts in the field of labour law, but the contents of those contracts are of course much harder to prove. When there is no written contract or if the contract is unclear there is a special approach in interpreting the employment contract. The burden of proof is not exactly shifted, but all doubt is interpreted in favour of the employee (i. andskýringarregla, s. oklarhetsregln, l. in dubio contra stipulatorem).¹⁰ The reasoning is that the parties, the employer and the employee, are not equal parties and that it is easier for the employer to ensure that the agreement is clear. This principle is also based on the fact that the employer usually

⁶ There are narrow exceptions from this, in article 45(2) 80/1938 and 27(5) 94/1986.

⁷ Act 91/1998, lög um bindandi álit í skattamálum.

⁸ Marianne Jenum Hotvedt and Natalie Videbæk Munkholm, 'Labour law in the future of work. Introduction paper' [2019] 11.

⁹ Elín Blöndal and Ragnheiður Morgan Sigurðardóttir, *Labour law in Iceland* (2014) 48

¹⁰ Páll Sigurðsson, *Samningaréttur* (2004) 57-58.

writes the agreement and the employee only has minimal influence on the text. An example of a case where there was no written contract, and the doubt about the contents of the agreement was interpreted in favour of the employee is Case 568/2015.¹¹ Examples of cases where unclear contract terms were interpreted in favour of the employee are cases 10 and 11 from 2011.¹²

The study aims to reveal to which extent the key concepts have a flexible and purposive character. In order to do that different indicators are used. In this national report, an attempt will be made to answer the research questions laid out in the study design in the Icelandic context. The key concepts, employee and employer, will be addressed first, and later the responses to challenging characteristics, such as fragmented contracts and platform work, along with some discussions.

¹¹ Hæstaréttardómur 568/2015 frá 14. apríl 2016 *Sigurjón Þorkelsson gegn Bakstri of veislu ehf.*

¹² Hæstaréttardómur 10/2011 frá 19. desember 2011 *Hreint ehf. gegn Auði Björk Bragadóttur* and Hæstaréttardómur 11/2011 frá 19. desember 2011 *Hreint ehf. gegn Ingibjörgu Sunnu Friðriksdóttur.*

2 Concept of employee

2.1 Definitions in legislation

There is no general statutory definition of the concept of ‘employee’ in Icelandic legislation. Like stated in the introduction, Icelandic labour law is made up of many legislative acts. There are many concepts in the Icelandic legal language that mean employee. Examples are ‘launþegi’, ‘launamaður’, ‘starfsmaður’, ‘verkamaður’ and ‘verkafólk’. These Icelandic concepts are generally interchangeable, that is, they have the same meaning, employee or worker. The term ‘employee’ is defined in some Acts, like Act no. 54/2006, on Unemployment Benefits and the Act on Maternity/Paternity Leave and Parental Leave, no. 95/2000.¹³ Both of these state that an employee is whoever is working in the service of another at least 25% per month.¹⁴ In Act no. 46/1980 on Working Conditions, Health and Safety in the Workplace, the definition is broader, an employee is a person who works for salary in service of other/s.¹⁵ The definitions in these Acts only apply to the application of each legislation and the rights and duties conferred on people by them. Other Acts include other definitions or no specific definitions at all. The Holiday Act¹⁶ is an example of the latter, where the concepts ‘starfsmaður’¹⁷ and ‘launþegi’¹⁸ are both used, but neither concept is defined specially. Article 1 of the Act states that all persons that work the service of others have the right to holiday according to the Act. Without it being stated, that is the definition of the concept of an employee in that Act.

2.2 An approach of overall assessment

The general definition of the term in labour law has been developed by courts and it is not definite since it is evaluated in each case, based on the facts of the case, other evidence such as employment agreements and which legislation applies to the case at hand. The legal doctrine maintains that the realities of the working relations are more important than the contractual formalities and that the courts perform an overall assessment of each case.¹⁹ The factors that are taken into account are whether the person has one or more employer, the control of the employer, who provides the tools, machines and offices, the nature of the payments, for example whether they are calculated hourly or based on projects, whether holiday pay or sick pay is paid, whether there is need for personal contribution of work, whether there is a duty to work and how taxes are handled. It is not evident from case law that any one factor is more important than the others, most of the time the court will look at the case and all the facts and evidence as a whole and then decide whether it is an employment relationship or not.

¹³ Elín Blöndal and Ragnheiður Morgan Sigurðardóttir, *Labour law in Iceland* (2014) 25.

¹⁴ Article 3a of Act 54/2006, Lög um atvinnuleysisstryggingar and article 7 paragraph 2 of Act 95/2000, Lög um fæðingar- og foreldraorlof.

¹⁵ Article 24 of Act 46/1980, Lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum.

¹⁶ Act nr. 30/1987, Lög um orlof.

¹⁷ Article 6.

¹⁸ Article 5.

¹⁹ ‘Launamaður eða verktaki (ASÍ, n.d.)’ <<https://www.asi.is/vinnurettarvefur/rettindi-og-skyldur/radningarsambond-stofnun-og-edli/launamadur-eda-verktaki/>> Accessed June 15 2019.

When the decisions of the Icelandic Courts are examined it becomes evident that there are very few clear-cut labour law cases that deal with the distinction between employee and self-employed. Many of the cases are either tax cases or bankruptcy cases, even though they revolve around the interpretation of the key concepts in labour law. The tax cases are initiated by the employer and arise because the tax authorities have undergone their own assessment of the employer and reached the conclusion that persons that have been classified by the employer as self-employed should be employees. The bankruptcy cases are employee initiated because of companies having become bankrupt and self-employed people are trying to get recognition for their status as employees, so they can claim their salary from the Wage Guarantee fund. However, there are also a few labour law cases, concerning issues such as holiday pay, sick pay and applicability of collective agreements. In legal writing about the distinction between employee and self-employed, cases from all these fields are mentioned and they are all used as examples of how the courts handle the distinction.²⁰ There does not seem to be a distinct “labour law approach” to the concepts, the methodology is similar in these cases, regardless of the legal field. There are no cases that refer to the purpose of labour law. Most of the cases come from the Supreme Court, which is the main body dealing with individual labour law cases. There are also two cases from the Labour Court, which will be mentioned at the end of this section.

In Case number 286/1998 (tax case) the relationship was classified as an employment relationship. The person in question had only one employer, was paid daytime and overtime salary according to working hours, was working under control of the employer and did not have his own tools and machines and offices.²¹ In case number 255/1997 (bankruptcy case) the relationship was also classified as an employment relationship. The determining factors were that the job in question was the sole source of income for the person, it demanded the personal contribution of the person in question, the employer provided offices and tools, and the person in question had some control over other employees. Even though there was no written agreement between the parties, there was an oral agreement on notice period and holiday and the payment was the same every month.²² Other similar cases where the Court looks at the nature of the relationship and classifies it as an employment relationship are Case 381/1994²³ and Case 3/1987.²⁴ Case 3/1987 was a labour law case, concerning the right to sick pay. The Court stated that it was not clear from the facts and evidences of the case whether the agreement was an employment agreement or a regular contract. Facts were pointing in different directions. The Court mentioned the fact that there was a demand for a personal contribution and that the payments were calculated based on hours worked. The Court used the interpretation method referred to in section 1.3, interpreting doubt in favour of the employee, and said that since there was uncertainty, the employer needed to prove that it was a contract for service.

²⁰ See for example Lára V. Júlíusdóttir, *Réttindi og skyldur á vinnumarkaði* (1997) 43, and ‘Launamaður eða verktaki (ASÍ, n.d.)’ <<https://www.asi.is/vinnurettarvefur/rettindi-og-skyldur/radningarsambond-stofnun-og-edli/launamadur-eda-verktaki/>> Accessed June 15 2019.

²¹ Hæstaréttardómur 286/1998 frá 6. maí 1999 *Halldór G. Baldursson gegn íslenska ríkinu*.

²² Hæstaréttardómur 255/1997 frá 23. júní 1997 *Sæmundur Guðvinsson gegn Þrotabúi Miðils ehf.*

²³ Hæstaréttardómur 381/1994 frá 27. september 1994 *Þrotabúi Miklaðarós hf. gegn Einari Erlendssyni*.

²⁴ Hæstaréttardómur 1988, bls. 157 frá 16. febrúar 1988 *Kaupfélag Eyfirðinga og Samband íslenskra samvinnufélaga vegna Efnaverksmiðjunnar Sjafnar gegn Tryggva Georgssyni*.

He did not do that, according to the Court, and it was deemed to be an employment agreement.

It is evident from these judgements that the Court looks at the facts of the case as a whole and does an overall assessment of the nature of the relationship. Sometimes the Court states especially the methodology it is using, an example is case 255/1997 where the Court uses the wording “when the factors mentioned are assessed as a whole”²⁵ but in other cases it is evident from the judgment itself, without the Court stating it clearly, like in Case 286/1998 where the Court says “that the relationship has such strong features that point towards it being an employment relationship”.²⁶

There are also some instances where relationships are classified as contracts for services, or contracts between independent contractors, or self-employed people and companies. In Case 58/2002²⁷ (bankruptcy case) the relationship fell outside the scope of the employment relationship. The reasoning of the Court is very short. The deciding factor is that the person knew about being self-employed and accepted that. She did her own taxes as a self-employed person and did deduct some cost from her taxes, as self-employed people can do. The relationship did, however, have some elements of an employment relationship, the employer provided tools, the employer decided the working time, she had to notify the employer if she was sick, and the relationship was personal. She did not receive holiday pay or sick pay, and the salary payments were performance based. It is not evident from the judgement whether the Court assessed all these elements and the relationship as a whole, which is a slightly different methodology from cases previously mentioned. Other cases of the Supreme Court are much older.²⁸ An example of a labour law case is from 1978, where a translator at the National Broadcasting Service (RÚV) claimed holiday pay. The Court assessed that relationship from various perspectives, she did not have a duty to work, but was among a group of translators that were offered certain tasks when needed. The payments were also examined, she got paid for different tasks as well as the time she spent on doing them and there was a special contribution paid on top of the payment so that the individual could pay into a pension fund and save for their own holiday pay.²⁹

The Directorate of Internal Revenue has given one binding decision on the issue. The methodology is the same as the Supreme Court generally uses, that is assessing the relationship as a whole. The Directorate says that the relationship has some elements that are more common in employment relationships, the agreement was long-term, there were monthly payments, the fact that the other party would pay for travel and that there was a 3 month notice period of termination. Facts that pointed towards a contract for service were that there was no sick pay or insurance, the way taxes should be paid and, there was no duty for personally doing the work. The claimant wanted to expand his business in the coming years, and even though he was the only person working, at the moment the case was referred to the Directorate, he planned

²⁵ Translation of author.

²⁶ Translation of author.

²⁷ Hæstaréttardómur 58/2002 frá 12. febrúar 2002 *Kristín Gissurardóttir gegn þrotabúi Genealogia Islandorum hf.*

²⁸ Hæstaréttardómur 1986, bls. 1241 frá 3. október 1986 *Sigurður V. Hallsson gegn Gjaldheimtunni á Seltjarnarnesi og Sjóefnavinnslunni h/f og gagnsök* and Hæstaréttardómur 1983 bls. 1751 frá 24. október 1983 *Erlingur B. Thoroddsen gegn Ragnari Halldóri Hall borgarfógeta f.h. þrotabús Sælgætisgerðarinnar Víkings h/f.*

²⁹ Hæstaréttardómur nr. 84/1977 frá 7. júní 1978 *Ríkisútvarpið gegn Dóru Hafsteinsdóttur.*

to hire more people and get more clients. The conclusion was that in this case it was a contract for service.³⁰

It is interesting that there are very few cases from the Labour Court dealing with the distinction between employees and the self-employed. There is a provision in the Act on Trade Unions and Industrial Disputes which allows the Labour Court to rule on the “applicability” of a collective agreement.³¹ One interesting older case is based on that provision. The Supreme Court dismissed the case from the Labour Court in a very short ruling. The case concerned musicians performing on television. Their union claimed that they were getting paid less than the collective agreement stated. The national broadcasting service (RÚV) claimed that they were self-employed and that therefore the collective agreement was not applicable. RÚV wanted the case to be dismissed from the Labour Court. The Labour Court disagreed and wanted to admit the case and said that it was within the Court’s role to rule whether the musicians were employed or self-employed, but RÚV appealed to the Supreme Court, where it was dismissed and therefore it was never decided on substantially by the Labour Court. The Supreme Court said that the agreement “had features of a regular contract and payments and taxes were done accordingly.” It was therefore outside the scope of the Labour Court to deal with the issue.³² There is also a provision in the legislation on the Collective Agreements of Public Servants that allows the Labour Court to rule on which workers fall under a collective agreement of a specific union.³³ There is one, even older, example from the public sector where the Labour Court ruled on whether certain mail workers were employees or self-employed. The union wanted the collective agreement to apply for these workers, but the Court said they were self-employed.³⁴ Perhaps the Labour Court route is under used in cases where there is doubt whether there is an employment relationship or not present. Even though there is this one case (RÚV) where the Supreme Court has said that it is not within the role of the Labour Court to deal with these cases there is at least some uncertainty as to what that means, and it would be interesting for the field of labour law to have more case law from the Labour Court on the issue.

2.3 Self-employment and sham self-employment

Legislation regarding employee rights is meant to guarantee certain minimum rights and benefits. A lot of the labour market legislation does not cover self-employed persons or independent contractors. They are not entitled to all the same rights and benefits as employees, such as minimum wages, paid vacation and sick days. As with the other key concepts, no general statutory definition of the term self-employed or independent contractor exists in Iceland, but there are definitions in some legal Acts. Examples can be found in the Unemployment Benefits Act³⁵ and the Act on Maternity, Paternity and Parental Leave.³⁶ The definitions in these two acts are similar, a

³⁰ Bindandi álit ríkisskattstjóra nr. 3/02 frá 16. apríl 2002.

³¹ Article 44(1)2 of Act 80/1938.

³² Félagsdómur nr. 4/1995 frá 19. maí 1995 *Alþýðusamband Íslands f.h. Félags íslenskra hljómlistamanna gegn Ríkisútvarpinu* og dómur Hæstaréttar frá 9. júní 1995.

³³ Article 26(1)1 of Act 94/1986.

³⁴ Félagsdómur nr. 5/1975 frá 6. nóvember 1975 *Bandalag starfsmanna ríkis og bæja f.h. Braga Guðmundssonar, Gissurar Inga Geirssonar, Guðgeirs Ólasonar, Guðmars Ragnarssonar, Kristófers Þorvarðarsonar og Magnúsar Guðmundssonar gegn Fjármálaráðherra f.h. ríkissjóðs.*

³⁵ Act 54/2006, lög um atvinnuleysisstryggingar.

³⁶ Act 95/2000, lög um fæðingar- og foreldraorlof.

person that works independently and is obliged to pay taxes and insurance fees to the tax authorities every month or regularly.³⁷ Self-employed persons have the right to both unemployment benefits and maternity, paternity and parental leave. Self-employed persons are also obliged to pay into pension funds, according to the Pension Act, but the term is not defined in that Act.³⁸

In the Act on Public Procurement, there is a provision about sham self-employment. The clause states that a direct employment contract is the main rule and that contractors and subcontractors are not permitted to contract employees or groups of them as self-employed where they should be employed, according to the nature of the matter.³⁹ The provision has been the same since 2001 but nowhere in the preparatory documents is there any explanation of how this should be evaluated. In fact, in the preparatory documents of the original provision, it's stated that the clause needs no explanation.⁴⁰

The term 'gerviverktaka' or sham self-employment is not used often by the courts or other official bodies. An example is in binding decision 3/2002 from the Directorate of Internal Revenue. Like mentioned already the cases are mostly bankruptcy cases or tax cases, the latter being initiated by the employer. Since there are very few clear labour law cases, and most of them are old, there might be some kind of a hurdle for people who believe that they are sham self-employed to get recognition as employees, and consequently, get the rights and benefits that come with that. It would be interesting to study this further in the Icelandic context and try to find out the reasons for that. According to the research done in Pillar III, the ratio of solo-self-employed persons has remained stable in Iceland between 2008 (8%) and 2015 (8,7%).⁴¹

³⁷ Art. 7(3) of Act 95/2000 and art. 3(b) of Act 54/2006.

³⁸ Art. 4(1) of Act 129/1997, lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða.

³⁹ Art. 89 Act 120/2016, lög um opinber innkaup.

⁴⁰ Frumvarp til laga um opinber innkaup, Session 126, Case 670, Document 1048. About article 55. <<https://www.althingi.is/altext/126/s/1048.html>> Accessed May 4, 2019.

⁴¹ Katrín Ólafsdóttir, Kolbeinn Stefánsson and Arney Einarsdóttir, 'Atypical Labour Markets in Iceland. Nordic future of work brief 8' [2019].

3 Concept of employer

There is no general statutory definition of the concept of employer in Icelandic legislation and very few legal acts include a definition of the concept. The Holiday Act, the Act on Act on Right to Advance Notice of Termination of Employment and to Wages on Account of Absence through Illness and Accidents or the Working Terms and Pension Rights Insurance Act not include any definitions either in the legal text or in the preparatory works. In legal writing the term has been defined as the party to an employment relationship that purchases work, whether being an individual, limited company, institution, municipality or the state.⁴² This definition is broad and rests on the presence of an employment relationship, an employer is the party to an employment relationship that buys the services of the other party, the employer.⁴³ There are no cases that deal with the identification of the employer, so it is hard to draw guidance on the interpretation of the concept in Icelandic law. Therefore, it is not possible to address the research questions about the concept of employer set forth in the study design, other than those who regard triparty contracts, see next section.

In the field of health and safety the concept of employer is defined in legislation. Act number 46/1980 on Working Conditions, Health and Safety in the Workplace, article 12, paragraph 1 states that employer is whoever runs a business or an establishment. The term is defined further in Article 90, and in paragraph 2 various types of legal establishments are mentioned in a non-exhaustive list. Individuals can also be employers, regardless of whether they have other people in their service or work alone. This legislation is based on the EU Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

3.1 Triparty contracts

When it comes to temporary work agencies, there are instances where entities other than the formal employer can be held liable as an employer. The Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work was implemented in Icelandic law in 2013, with Act no. 139/2005, on temporary work agencies.⁴⁴ In triparty work relationships the employment relationship is between the worker and the agency, so the agency is the contractual employer. However, the worker performs work for a third company, the user undertaking. According to law and agreements that will be mentioned in this section, the user undertaking can, or must, take on some employer responsibilities.

The biggest social partners, The Icelandic Confederation of Labour and the Confederation of Icelandic Enterprises, have made several agreements about temporary work agencies. In the collective agreements in 2011, the parties agreed on that the main rule should be direct employment because of the flexibility in the labour market, which results in companies being able to deal with fluctuations on the market. The Icelandic labour market is quite flexible, there are generally not restrictions on

⁴² Elín Blöndal and Ragnheiður Morgan Sigurðardóttir, *Labour law in Iceland* (2014) 25.

⁴³ Lára V. Júlíusdóttir, *Réttindi og skyldur á vinnumarkaði* (1997) 43.

⁴⁴ Act 139/2005, lög um starfsmannaleigur.

letting people go and notice periods are not long.⁴⁵ Recently another agreement was made, where the social partners state the importance of temporary work agencies being responsible and respecting law and collective agreements. They also agreed on making subcontracting liability mandatory.⁴⁶ With Act no. 75/2018,⁴⁷ Act 139/2005 was amended according to the agreement and articles 4b and 4c were added. Article 4b establishes subcontracting liability for the user undertaking. The main principle is, like in EU law, that during the time in which they work on projects for user undertakings, employees of temporary-work agencies shall enjoy at least the same wages and other terms of service as they would if they had been engaged directly by the user undertakings to do the same work, cf. also Article 1 of the Employees' Terms of Service and Compulsory Pension Rights Insurance Act, No. 55/1980,⁴⁸ with subsequent amendments. During the time in which they work on projects for user undertakings, employees of temporary-work agencies shall be granted the same access enjoyed by employees of the user undertaking to facilities of all types in the user undertaking, such as canteens and transport, unless any difference in treatment can be justified by objective reasons (Article 5a). The subcontracting liability covers unpaid minimum wages and other payment that the employee would have received if he or she would have been a direct employee of the user company, according to article 5a.

There have been no Court cases based on this new amendment, but in theory, the user company could be held liable. The subcontracting liability does not change the employment relationship, the agency is still the contractual employer and the user undertaking only takes on some responsibilities, based on the service agreement between the agency and the user undertaking, and the legislation.

There is one interesting ruling that touches on triparty contracts and the distinction between employment and self-employment from the Labour Court. Case 8/2017,⁴⁹ which concerns the legality of a strike imposed by the Union of Flight Attendants. The majority of the Court deemed the strike unlawful because of a formality, but it would have been very interesting if the Court would have gone into the substance of the case and the legal situation of the workers. The union wanted to make a collective agreement with the airline, Primera Air Nordic SIA, which was registered in Latvia but owned by a mother company registered in Iceland, Primera Air. According to the company the staff were self-employed at a third company, Flight Crew Solutions Ltd., which was registered in Guernsey, and were working for Primera based on a contract between FCS and Primera Air Nordic SIA, which was regulated by Act 45/2007,⁵⁰ which is based on Directive 96/71/EC on the posting of workers in the

⁴⁵ Kjarasamningur milli Félags bókagerðamanna, Flóabandalagsins (Efling, Hlíf, VSKF), Landssambands íslenskra verslunarmanna, Matvís, Mjólkurfræðigafélgs Íslands, Rafiðnaðarsambands Íslands, Samiðnar, Starfsgreinasambands Íslands, VM Félags vélstjóra og málmteknimanna, VR, samninganefndar ASÍ og Samtaka atvinnulífsins <https://www.asi.is/media/2722/Samningur_ASI_SA_-_lokaskjal_D.pdf> Accessed May 4, 2019.

⁴⁶ Samkomulag milli Alþýðusambands Íslands og Samtaka atvinnulífsins um eftirlit með launum og starfskjörum starfsmanna starfsmannaleiga, ábyrgð notendafyrirtækja og sérstaka viðurkenningu starfsmannaleiga <https://www.asi.is/media/314549/samkomulag-asi-og-sa-um-starfsmannaleigur-05022018_lok.pdf> Accessed May 4, 2019.

⁴⁷ Act 75/2018, lög um breytingu á lögum um réttindi og skyldur erlendra fyrirtækja sem senda starfsmenn tímabundið til Íslands og starfskjör starfsmanna þeirra og fleiri lögum (vernd réttinda á vinnumarkaði, EES-mál).

⁴⁸ Act 55/1980, lög um starfskjör launafólks og skyldutryggingu lífeyrisréttinda.

⁴⁹ Félagsdómur 8/2017 frá 20. nóvember 2017 *Primera Air Nordic SIA gegn Alþýðusambandi Íslands, f.h. Flugfreyjufélags Íslands*.

⁵⁰ Act 45/2007, lög um útsenda starfsmenn og skyldur erlendra þjónustuveitenda.

framework of the provision of services. The State Conciliation and Mediation Officer had earlier in the process concluded that there was too much doubt with regarding whether the Act on Trade Unions and Industrial Disputes no. 80/1938⁵¹ was applicable and dismissed the case, so there had been no meeting with disputing parties at the Conciliation and Mediation Office, which, according to the majority of the Court, is a prerequisite for imposing a lawful strike. The minority was of the opinion that it should have been enough to send the dispute to the Office, as the union had already done. The union maintained that the crew were in fact employed at Primera Air Nordic SIA, but not self-employed at FCS. Because of the formality issue, the Court did not need to elaborate on the legal situation of the crew, the strike was deemed unlawful. The minority did not go further with that line of reasoning either. Part of the argument of the union was that the Court should look into the substantive situation of the crew and their jobs. They maintained that it was impossible to be self-employed as flight attendants, and cited rulings from Icelandic Courts, the Directorate for Internal Revenue and the ECJ, about control over working hours, personal contribution, tools and more. The union maintained that this was sham self-employment, which could not take away important rights, such as the right to collective action, and other labour rights. Shortly afterwards the airline went into bankruptcy, so the legal situation of the crew was never cleared up.⁵²

Recently the legislation on public procurement was amended, making subcontracting liability mandatory in public tenders.⁵³ The main contractor will then be liable for paying salary and ensuring rights and insurances for all staff according to law and collective agreements, whether they are employed directly by him, a subcontractor or a temporary agency. This provision will enter into force on January 1 2020.

⁵¹ Act 80/1938, lög um stéttarfélög og vinnudeilur.

⁵² 'Primera Air gjaldþrota' (mbl.is, 2018)

<https://www.mbl.is/vidskipti/frettir/2018/10/01/primera_air_gjaldthrota/> Accessed May 4, 2019.

⁵³ Lög um breytingu á lögum um opinber innkaup, nr. 120/2016 (markviss innkaup, keðjuábyrgð o.fl.). <<https://www.althingi.is/altext/149/s/1442.html>>, accessed June 13 2019.

4 Legal responses to specific challenges

In the field of Icelandic labour law, the main rule is that an employment contract shall be concluded for an indefinite period and is valid until the agreement is terminated by notice from one of the parties. If the contract of employment does not contain a provision on the duration of the contract, it is considered to be valid for an indefinite period.⁵⁴ There is no statutory rule stipulating this principle of indefinite contracts. Council Directive 1999/70/EC concerning the framework agreement on fixed-term work was implemented into Icelandic law with the Act on Fixed-Term Employment no. 139/2003.⁵⁵ In the preparatory documents for the Act, the principle of indefinite contracts is mentioned and stated that the proposed act shall not change the situation.⁵⁶

4.1 Fragmented employment contracts in the private sector

There is no legislation on fragmented employment contracts or zero-hour contracts, and it will depend on the collective agreement whether such contracts are allowed or not. Zero-hour contracts can be defined as contracts where the duty to provide/perform work and to provide/receive pay – are not defined or very limited in scope. Fragmented employment contracts are similar, the duty to work is not definite. In general, they are not forbidden, and are used in many sectors of the labour market. Some examples of provisions in collective agreements will be mentioned here, along with some court cases. In the collective agreement that covers the retail sector, between the Federation of Icelandic Retail Workers (VR) and the Confederation of Icelandic Enterprises (SA), there are provisions about “tilfallandi vinna”, where it is stated that the employee has no duty to work.⁵⁷ Article 1.11.3 of that agreement states that employees on zero-hour contracts do not need a written agreement if there are objective reasons for not making one. The same provision is in all collective agreements in the private sector, and it comes from the Written Statement Directive, article 1.⁵⁸ The retail agreement is the only collective agreement that defines the concept, stating that it means that the employee has no duty to work. In the view of the author of this study, ‘tilfallandi vinna’ classifies as zero-hour contracts.

4.2 Hourly workers in the public sector

In the public sector, there are provisions about marginal contracts in the collective agreements. The three main employers in the public sector, the Government, the Icelandic Association of Local Authorities and Reykjavík Municipality, all have provisions that allow “tímavinna” or hourly workers, in certain instances. These instances are slightly different from one employer to the next, but they all allow students that are working during school breaks, employees that are working during busy seasons

⁵⁴ Elín Blöndal and Ragnheiður Morgan Sigurðardóttir, *Labour law in Iceland* (2014) 43.

⁵⁵ Act 139/2003, lög um tímabundna ráðningu starfsmanna.

⁵⁶ Frumvarp til laga um tímabundna ráðningu starfsmanna, Session 130, Case 410, Document 558.

⁵⁷ Articles 1.11.3 and 3.1 of the Collective agreement between the Federation of Icelandic Retail Workers and the Confederation of Icelandic Enterprises, the 2015-2018 version available <https://www.vr.is/media/5414/kjarasamningurvr-sa2016_vefur.pdf> Accessed May 4, 2019.

⁵⁸ Council Directive 91/533/EEC.

for less than two months, employees that work on specific defined projects and employees that work irregularly for shorter or longer periods, but only as an exception. For the Local Authorities, the main rule is that if a person is working more than 20%, they should be hired part-time and for Reykjavík Municipality the same applies to persons working more than 33,33%. There is no such rule for the Government.⁵⁹ In these collective agreements, there are also rules on all sorts of rights, and it is noteworthy that the right to sick pay and notice period are worse for hourly workers than those that have a contract for either full-time or part-time work.

4.3 Court cases and discussion

There are some court cases that deal with alleged zero-hour contracts. One of them is Supreme Court Case number 344/2004.⁶⁰ One of the issues that were debated was whether there was a transfer of undertaking, according to legislation 77/1993,⁶¹ which is based on EU directive 2001/23/EC. The claimant was laid off shortly before the transfer but continued to work for the transferee. He was then laid off again, and the case concerned his right to pay during the notice period, and some sickness pay because he had had an accident at work. The employer (the alleged transferee) claimed that the employee had no duty to work, and he, therefore, had no obligation to pay a period of notice or sick pay. The Court ruled that there was no transfer of undertaking in this case, but according to legislation and the collective agreement the claimant had rights to both sick pay and the notice period. About the alleged zero-hour contract, the Court says that the employer has not proved that he was allowed to make an exception from minimum rights laid out in Act 19/1979,⁶² about the right to sick pay and paid notice period.

Another case about zero-hour contracts is Labour Court Case number 25/2015.⁶³ The employee was working full time during the summer of 2014, and during the school year (from September 2014 to April 2015) she was on call, working between 4% and 30% each month. She was then hired full time again from May 1 2015 and laid off shortly after. The case concerned the length of her notice period. She claimed that because she had been working for over 12 months, she was entitled to a 3 months' notice period according to the collective agreement, but the company had given her a week notice because she had been working less than three months' full time. There was also a provision in the collective agreement that said that part-time jobs, less than 33%, did not count towards seniority. The employee maintained that this provision was null and void, according to Act 10/2004,⁶⁴ which is based on EU Directive 97/81/EC about part-time work. The company claimed that each on-call shift was a separate temporary contract. The Court did not go into either of those arguments, but the employee lost the case regardless. The Court states that she was a part-time employee according to the legislation, but she did not gain rights to a notice period

⁵⁹ Provision 1.4.2 in the Collective agreements of the Government and Reykjavík Municipality, and provision 1.4.3 in the Collective agreements of the Icelandic Association of Local Authorities, with the respective unions.

⁶⁰ Hæstaréttardómur 344/2004 frá 3. febrúar 2005 *Djúpiklettur ehf. gegn Björgólfi Einarssyni*.

⁶¹ Act 77/1993, lög um réttarstöðu starfsmanna við aðilaskipti að fyrirtækjum.

⁶² Act 19/1979, lög um rétt verkafólks til uppsagnarfrests frá störfum og til launa vegna sjúkdóms- og slysaforfalla.

⁶³ Félagsdómur 25/2015 frá 10. mars 2016 *Rafíðnaðarsamband Íslands f.h. Félags íslenskra símamanna gegn Samtökum atvinnulífsins vegna Já hf.*

⁶⁴ Act 10/2004, lög um starfsmenn í hlutastörfum.

since she did not have any duty to work. The judgement is based on the interpretation of the collective agreement, and the Court says that to gain rights to a notice period she would have had to work regularly, at least some percentage or some days of the month, but the Court does not say how much would have been enough.

Looking at the research questions about fragmented and empty or marginal contracts, the situation in Iceland is unclear to some extent.⁶⁵ It is clear, however, that zero-hour contracts are, or at least can be, classified as employment contracts. It is unclear what the minimum duration or amount of work is for an employment contract to be established. The answer to the second question, whether zero hours contracts are one open-ended contract or a series of temporary contracts, seems to be that they are one open-ended contract with a flexible duty to perform work. The employer in the Labour Court Case number 25/2015 claimed that they were a series of temporary contracts, but the Court did not go into that argument. From the judgement of the Supreme Court in Case 344/2004, it seems clear that they are one open-ended contract. As to the third question, about the duty of the employer to provide future work and pay, the employee in case 344/2004 had rights to the paid notice period and sick pay, and in the Labour Court Case 25/2015 she had the right to at least a weeks' notice period according to the collective agreement. However, she was employed full time at the moment of termination, so she had a duty to work. There are no cases that deal with the duty of the employer to provide future work for on-call workers, so that would depend on the collective agreement and the facts of each case.

4.4 Platform work

To this author's knowledge, no platform companies are operating in Iceland. According to the Icelandic Confederation of Labour, the development and discussion on platform work is not well underway in Iceland.⁶⁶ It does not seem either that platform work has been discussed in Parliament or within other official bodies.

⁶⁵ Marianne Jenum Hotvedt and Natalie Videbæk Munkholm, 'Labour law in the future of work. Introduction paper' [2019] 16.

⁶⁶ 'Nýtt skipulag vinnunnar' (ASÍ, n.d.) <<https://www.asi.is/vinnurettarvefur/rettindi-og-skyldur/radningarsambond-stofnun-og-edli/nytt-skipulag-vinnunnar/>> Accessed May 4, 2019.