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

Nordic future of work project 2017–2020: Working paper 8. 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 Sweden 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.

August 2019

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1 Introduction and Legal basis¹

1.1 Generally about The concept of Employment

When labour is organized in new forms e.g. in the collaborative economy, key concepts in labour relations are challenged. This paper will discuss the concept of the employee, the concept of the employer and some specific challenges in the Swedish legislation.

Swedish labour law is a binary system in which someone is either employed or solo self-employed.² There is no intermediate category, and at the moment nothing indicates that the government is planning to legislate for one,³ largely out of fear of the new boundary issues that would arise, and the risk that the groups previously held to be employees would end up in the new intermediate category. If the work is occasional and small-scale, which is common in the digital economy, this is done often by an assignment worker (*uppdragstagare*). An assignment worker is someone who takes on work without being employed or having their own business. This group is the most difficult group to handle in the legal system at the moment. The terms employee and worker could have various meanings in different jurisdictions. In Sweden, an employee (as the term is used here) is virtually the same as both an employee *and* a worker.⁴ The workers in the collaborative economy are often called crowdworkers.

¹ Parts of this report has been presented in the conference paper A. Westregård, *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. It 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 report is also partly based on and partly corresponds to A. Westregård, ‘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) and 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, and A. Westregård, ‘Collaborative economy – a new challenge for the social partners’ in *Vänbok till Niklas Bruun*, November, 2017, Iustus, p. 427–438 and 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, Edward Elgar Publishing and 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, Pending.

² See A. Westregård, ‘The Notion of ‘employee’ in Swedish and European Union Law (2016); see also Ole Hasselbalch, *Arbejdsretten*, (11th edn, Djøf Forlag 2013, revise oktober 2017 available through Schultz arbejdsretsportalt, *Arbejdsretsnøglen*) Section III, section 1.1. and comments on the Danish binary system; see also Marianne Jenum Hotvedt, ‘Arbejdstaker-Quo vadis? Den nyere udviklingen av arbejdstakerbegrepet’ (1/2018) *Tidsskrift for Rettsvitenskap* vol 131 p 42–103 about Norway.

³ In the latest review of the concept of employment in 2002, the legislators made it clear that there are no plans to introduce a third category of party in addition to employee and solo self-employed; see Legislative Inquiry Ds. 2002:56 p 133.

⁴ UK legislation distinguishes between employee and worker, with worker being the far broader term, see the Employment Rights Act 1996, 230 (1)–(3); Jeff Kenner ‘Inverting the Flexicurity Paradigm: The United Kingdom and Zero Hours Contracts’ in Ales et al. (eds) *Core and Contingent Work in the European Union, A comparative analysis* (Hart Publishing 2017) p 153–83.

This term refers to the fact that work tasks are offered to a large number of people, the 'crowd'. The terminology of the collaborative economy is new, and is used in different ways depending upon the context. There are many different kinds of crowdwork, and there is no legal definition. Here crowdworker is used for the performing party (service producer) in the digital economy.⁵

The definitions of employee and solo self-employed are important in order to decide the scope of the labour legislation and the collective agreements as they, with some exceptions, only apply to employees. The most important legislations are the 1982 Employment Protection Act (Lag (1982:80) om anställningsskydd, LAS), the 1976 Co-determination Act (lag (1976) om medbestämmande i arbetslivet, MBL), the 2008 Discrimination Act (Diskrimineringslagen (2008:567)), the 1977 Annual Holiday Act (Semesterlagen (1977:480)), the 1982 Working Hours Act (Arbetstidslagen (1982:673)) and the 1977 Work Environment Act (Arbetsmiljölagen 1977:1160).

In Sweden there are no legal demands that there has to be a formal written employment contract. When an employee start to work for the employer their relation can be proved in other ways e.g. the employer pays remuneration to the employee. There could also be contracts of work in other parts of the Swedish legislation than the employment contract e.g. limited partnership (*kommanditbolag*), agricultural lease (*jordbruksarrende*) or a rent arrears (*hyresavtal*). It is only when the work is an essential part of the contract it is regarded as an employment contract. In all other cases the party's relations are solved by the other legislations.⁶

1.2 Collective agreements and the Swedish Model

Collective agreements are the most important instrument of regulation for the Swedish labour market. A collective agreement is binding for the employers who are members in the employment organisation and for the members in the union that have concluded the collective agreement (Section 26 in the 1976 Co-Determination act). There are also application agreements (*hängavtal*) between a union and an employer who are not members in any employers organisation.

Most of labour legislation in Sweden consists of semi-discretionary law.⁷ This means that these statutory regulations can be derogated by collective agreements between the social partners at an industrial level, but not by a personal contract between employer and employee or by a collective agreement at a local level. These statutory regulations can be improved but also – with few mandatory exceptions⁸ – be derogated in pejus for the employees.⁹ Thus, when they act together, the social partners at an industrial level have a great deal of influence and control the statutory regulations of the Swedish labour market which is typical for the Nordic model.¹⁰

⁵ Annamaria Westregård, 'Collaborative economy – a new challenge for the social partners' in Kerstin Ahlberg (ed.) *Vänbok till Niklas Bruun* (Iustus 2017). See also SOU [Government White Paper] 2017:26 *Delningsekonomin På användarnas villkor*, 64 p 191–2.

⁶ Källström/Malmberg (2016) p 32 f.

⁷ See the role of legislation Fahlbeck R, J Mulder (2009) *Labour and Employment Law in Sweden*. Juristförlaget i Lun p 23.

⁸ The mandatory minimum statutory often have their origins in EU-law.

⁹ Fahlbeck, *Derogation from Labour Law Statutes under Swedish Law*. *Juridisk Tidskrift* no 1 2006/07 vol 18: 42-56.

¹⁰ 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*

Collective agreements lack an *erga omnes* effect in Sweden. Therefore, it is not possible to extend the scope of a collective agreement to make it applicable to employers that were not originally covered by it. Despite this, collective agreements have a normalising effect that extends far beyond the signatories and their members. The employer is obligated in relation to the union, but not to the individual workers, to apply the collective agreement to unorganised employees and members in other labour organisations. The principle of uniform conditions in the workplace is so strong that conditions of the collective agreement – to the benefit and disadvantage of the employee compared to discretionary law – are applied to the unorganised workers.¹¹

In Sweden the coverage of collective agreements is high. In the public sector it is 100 per cent for all groups of employees; for the private sector it is 98 per cent for blue-collar workers (*arbetare*) and 72 per cent for white-collar workers (*tjänstemän*) and professionals (*akademiker*).¹² The primary reason for this degree of coverage is that employers in Sweden are highly organised, and therefore collective agreements are applied to all employees in a workplace – irrespective of whether they are members in a union.¹³ As for the union aspect, union participation has decreased. In 2018 the degree of participation for blue-collar workers had declined to 57 per cent, while the degree of participation for white-collar workers and academically qualified professional was 67 per cent.¹⁴

1.3 Enforcement mechanisms

Sweden established legislation on collective agreements and the Labour Court as early as 1928.¹⁵ The Labour Court is the final instance for cases regarding interpretation and sanctions for violations of legislation of labour legislation and collective agreements. Since the 1970s, the Labour Court has also dealt with other disputes, such as disputes arising from dismissals. If an employee is represented by a union, the Labour Court is the first and only instance; otherwise, the District Courts serve as first instance and the Labour Court is the court of appeal.¹⁶

Sanctions for violations of legislation and collective agreements include both pecuniary damages and non-pecuniary damages. Compensation for non-pecuniary damages can be high, especially for an employer that violates a collective agreement.¹⁷

The Swedish Work Environment Authority supervises compliance with the 1977 Work Environment Act (1977:1160),¹⁸ and it is also the liaison office due to the 1999 Posting of Workers Act (1999:678).

Law, Scandinavian Studies in Law, vol 43. Almqvist & Wiksell International p. 87-133 and Bruun N et al, (1990) *Den Nordiska Modellen – Fackföreningarna och arbetsrätten i Norden – nu och i framtiden*. Liber and Nyström B (2017) *EU och arbetsrätten*. Wolter Kluwer.

¹¹ Fahlbeck (2009) p 35 and Fahlbeck (2006/07) and Bergqvist O, Lunning L, Toijer G (1997) *Medbestämmandelagen, Lagtext med kommentarer*. Norstedts, Stockholm p 321.

¹² See Annual report from The Swedish Mediation Office; *Avtalsrörelsen och lönebildningen. Årsrapport från Medlingsinstitutet 2018* p 200-01.

¹³ If a company do not have a collective agreement it is often in a 'new' industry.

¹⁴ Medlingsinstitutets årsrapport 2018 p 205.

¹⁵ See also Fahlbeck (2002) p 126 ff. and Fahlbeck (2002) p 90 f.

¹⁶ Schmidt, Folke et al (1997) *Facklig arbetsrätt*. Juristförlaget, Stockholm p 74 f.

¹⁷ Fahlbeck, Reinhold, *Praktisk arbetsrätt*, Liber (1989) p 107 f.

¹⁸ Chapter 7 Section 1 in the 1977 Environment Act (1977:1160).

The Equality Ombudsman (DO) supervises compliance with the 2008 Discrimination Act (2008:567).¹⁹

Social security legislation like the Health and sickness insurance and parental insurance in the 2010 Social Insurance Code (SFS 2010:110) and Unemployment insurance regulations in the 1997 Unemployment Insurance Act (1997:238) are to be judged by the Administrative Courts (Administrative Court, Administrative Court of Appeal and Supreme Administrative Court).

¹⁹ Chapter 4 Section 1 in the 2008 Discrimination Act (2008:567).

2 Concept of Employee

2.1 Overall assessment

There is no statutory, uniform definition of the concept of employee in Sweden. In the absence of a uniform definition there are no necessary prerequisites (*rekvisit*) – i.e. the prerequisites that would indicate which dispositive facts (*rättsfakta*) are required in order to apply the concept of employee. In order to determine whether a person, in a given situation, falls under the concept of an employee an overall assessment is made based on relevant circumstances or criteria (*omständigheter*).²⁰ Those criteria are formulated in the doctrine based among other things on settled case law and legislative preparatory work (*förfarbeten*) as Government White Paper (SOU), Legislative Inquiry (Ds.) and Government Bill to Parliament (proposition). A variety of circumstances may be relevant for the assessment and ‘schedules’ are often set up in a doctrine with different factors for employees and contractors.²¹

Professors Jonas Malmberg and Niklas Bruun state in a legislative inquiry that the overall assessment should be similar, regardless of which central Swedish labour law include the concept of an employee. However, they also say that outside the central labour law, there is a certain ‘differentiation within the framework of the overall assessment’. They refer to the different purposes which may lie behind different legislation, and mention the example of the employee’s priority rights in the case of bankruptcy in the Preferential Claims Act (*Förmånsrättslagen* (1970:979)).²² Källström/Malmberg also refers to social security legislation where it is important to decide the nature of the performing party as different statutory regulations apply to employees and solo self-employed and to penalty- and tort legislation where the purpose of the legislation is to influence human behavior.²³

2.2 The Criteria Relative Significance

In his theory of dispositive facts (*rättsfaktum teorin*),²⁴ Professor Axel Adlercreutz identifies a set of relevant circumstances or criteria that are so important that they all must be present if a relationship is to count as an employment. The professors Jonas Malmberg and Niklas Bruun call them the basic necessary prerequisite (*grundrekvisit*).

²⁰ Kent Källström and Jonas Malmberg; *Anställningsförhållandet – inledning till den individuella arbetsrätten* (2016) Iustus p 23 ff, Axel Adlercreutz, *Arbetsagarbegreppet* p 15 (1964), Legislative Inquiry Ds 2002:56 110, also presents a number of court cases where the Labour Court made assessments of the criteria p 116. See also Källström, Kent, (2002) *Employment Agreements and Contract Work in the Nordic Countries*. *Scandinavian Studies in Law* vol. 43 pp 77–86, p 84

²¹ See e.g. Källström/Malmberg (2016) p 26 and Tore Sigemen and Erik Sjödin; *Arbetsätten – En översikt*, Wolter Kluwer 2017 p 31.

²² Legislative Inquiry Ds 2002:56 pp 110 and 116.

²³ Källström/Malmberg (2016) p 29 ff.

²⁴ The term dispositive facts (*rättsfakta*) has a variety of translations, here in the sense that facts decide a legal question.

These core criteria are;²⁵

- a contract that a performing party must personally perform work on behalf of another party.

Then, depending on the situation and the legislation applied, Adlercreutz, Malmberg and Bruun and other authors in the doctrine, add what they called circumstances of importance (*omständigheter*) or other criteria of importance for the overall assessment. The result of the overall assessment in the single cases also depends, as always on the situation and how the court evaluates the evidentiary facts (bevisfakta).

Those lists of criteria vary depending on the author and most of them include e.g.:²⁶

- work is performed under the principal's leadership and control (employment),
- whether there is a question of duration and not specific duties (employment),
- whether the performing party only has one principal (employment),
- who provides machinery and equipment (a self-employed provides their own equipment)
- form of payment (an employee is paid a salary),
- social criteria and practices in the industry,
- intention of the parties
- if the contracting party is a company (it is an argument for solo self-employment).

The circumstances of importance or criteria above are not all important at the same time in all situations. What criteria to take in consideration and how important they are (if some are fulfilled but others are not) in a specific case varies and their importance is described (if described at all) in the doctrine, the legislative preparatory work and the settled cases law.

One example of how the importance of the criteria vary depending on the legislation applied can be illustrated by the criterion 'whether the performing party only has one principal'. In labour law the criterion 'only one principal' and especially if the person just before the assignment has been employed by the principal, it is a strong indication that it is an employment.²⁷ In tax law on the other hand, according to legislative preparatory works to the statutory in Income Tax Act regulating who is allowed to have a Business Tax Certificate (*Godkänd för F-skatt*)²⁸, it is natural that a previous employer is the new company's first (and only) principal and operations shall nevertheless be considered as independent and the performing party can have

²⁵ Adlercreutz (1964) p 186, 276 ff; see also Ds. 2002:56 *Hållfast arbetsrätt för ett föränderligt arbetslivs* p 111, n 63; Westregård (2016).

²⁶ Adlercreutz (1964) p 186, 276 ff; Ds. 2002:56 *Hållfast arbetsrätt för ett föränderligt arbetslivs* p 111, n 63 Källström/Malmberg (2016) p 26 and Tore Sigeman and Erik Sjödin; *Arbetsätten – En översikt*, Wolter Kluwer 2017 p 31, Inghammar Andreas; *The Concept of 'Employee': The Position in Sweden*, Restatement of Labour Law in Europe, Volume 1, The Concept of Employee Ed. Bernhard Waas and Guus Heerman van Voss, Oxford AND Portland, Oregon (2017) p 686 Lars Lunning/Gudmund Toijer, *Anställningsskydd: En lagkommentar* (11th edn Wolters Kluwer 2016) p 27.

²⁷ See Sigeman/Sjödin (2017) p 33 and Labour court ruling AD 1979 no 155, AD 1981 no 85 and AD 2012 no 24.

²⁸ Chapter 13 section 1 of the 1999 Income Tax Act (1999:1229).

a Business Tax Certificate.²⁹ Another example is the importance of the criterion ‘intention of the parties’ and whether it is an employment contract or an entrepreneur contract (business to business). In labour law it is one criterion among others. In the individual case it is the real circumstance between the parties that matters more for the overall assessment than the intention of the parties or the written contract. If it is a false solo self-employment the Labour court can decide that it is an employment no matter what the parties have decided themselves.³⁰ In tax law the intention of the parties is much more important criterion for the overall assessment.³¹

How the different criteria are to be assessed may also change with the organization of work. For example, in knowledge- intensive service companies, employees and solo self-employed have great freedom in terms of how the work is carried out. Many employees with specialized and unique skills do not work under the employer’s immediate supervision, whereas contractors, to comply with their agreement, may be obliged to follow the principal’s instructions in detail. Technological progress and ‘work without borders’ also mean that the question of where and when work is carried out becomes less important. Working hours are unregulated, and both employees and the solo self-employed may very well carry out a significant part of their work outside the office and outside regular business hours. Classic criteria of an employment, such as the employer providing tools, may also be less important as in many cases the only tool required is a laptop. Many of the persons could still be classified as employees in an overall assessment even if they do not work without clear indications of subordination by management and control.

The collective agreements strong influence in the Swedish model of industrial relations can also be seen in cases law from the Labour Court when they decide the concept of employee. The Labour Court also takes into account traditional customs and usages in industry and that is how (if) the collective agreements define the concept of employment. In journalism, for example, there is a collective agreement known as the Freelance Agreement³², where drawing the boundary between employee and solo self-employed is facilitated by a clear, traditional practice. Due to the collective agreement 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’³³. This means that a performing party, in accordance with this agreement and commercial practice, may be considered a solo self-employed person in spite of the fact that based on an overall assessment of criteria such as only one principal; regular work for a long time period; the principal providing equipment and tools, etc. Without the definition in the collective agreement this person probably would have been regarded as an employee. The Labour Court does not create its ‘own’ concept here, but rather follows the agreement which is customary in the commercial area in question.³⁴

²⁹ Legislative Bill 2008/09:62 (*F-skatt år fler*) p 26.

³⁰ See Labour court ruling AD 2005 no 16 and AD 2012 no 24.

³¹ Legislative Bill 2008/09:62 p 26.

³² The 1994 Collective Agreement between the Swedish Media Publishers’ Association and the Swedish Journalist Association for Freelance work.

³³ Section 2.

³⁴ Swedish Labour Court AD 1994 no. 104 and Legislative Inquiry Ds 2002:56 p 121. and Lars Luning/Gudmund Toijer, *Anställningsskydd: En lagkommentar* (11th edn Wolters Kluwer 2016) p 25.

Individual circumstances (such as age, competence, financial/family situation etc.) are not viewed as a criteria and do not have any particular relevance when applying the concept of employee.

Legal persons cannot be employees; however, agreements are often made by legal persons where the performing party is a natural person. It could be a sole trader or a limited company with a single shareholder. The fact that the agreement has been made by a legal person does not prevent the Labour Court from coming to the conclusion that the physical performing party is an employee in a legal sense. A company as a contracting party may be a criteria indicating that this is an entrepreneurial contract (business to business).³⁵ In the Labour Court ruling AD 1994 no. 130, the Court said that there was no employment contract despite the fact that several traditional 'employee criteria' were met. In this case it was a limited company, and the Court stated that the level of control which is referred to in the Companies Act, among others, suggests that it was not a question of an employment contract. The Supreme Court has also stated that a joint owner who has signed an agreement cannot change his mind and become a contracting party just because it is more favorable for him.³⁶ On the other hand, in some cases the Labour Court has determined that there was an employment contract, despite the fact that it was a limited company, because the Court feared it was a made to circumvent the law or a collective agreement.³⁷ Another strong 'item of circumstantial criteria' in this case was that the performing party had previously been employed by the principal.

2.3 The vagueness of the concept – practical consequences

The overall assessment made in each case create some problems in practice. The concept of employee in Sweden where the overall assessment is made out of criteria that differs depending on legislation with diverging classification practices makes the concept blurred. To this comes also the evidentiary facts (*bevisfakta*) in each single case. All this makes it difficult to draw any wider conclusions beyond the case in question. The twists and turns of the case below show the difficulty of overcoming the problems that exist e.g. within the road haulage industry in Sweden. Even if the union does win a case and that specific driver is regarded as an employee, it is difficult to transfer the impact of the verdict to all other drivers, even those in the company that lost the case.

The Labour Court ruling AD 2013 no 92, is a good example of the complex situation: A polish driver with his own company in Poland was working for a Swedish haulage company. For many years, the haulage company had no employees; all the work was performed using independent contractors from other countries in the European Union, they were mediated via another company with the same owners. The driver in the case thought he had been employed by the haulage company. When it was time for the driver to be paid, the haulage company discovered that he had no company of his own, so he did not receive any remuneration until he had started a company (a sole trader (*enskild firma*) in Poland and this company could invoiced the Swedish

³⁵ See also the Government White Paper, Ds. 2002:56 p. 123 Labour Court ruling AD 1994 no 130 and Tore Sigeman, *Arbetsrätten – en översikt*, 30 (2010) where Sigeman says that if the performing party is a limited company, this indicates more strongly that an employment relationship do not exists.

³⁶ See Supreme Court 1996 page 311 (NJA 1996 s 311).

³⁷ Labour Court ruling AD 1995 no. 26.

haulage company. The Labour Court made an overall assessment of all the relevant criteria in the case including the following: the driver did not own a tow-truck, but only provided his labour; the contract was for six weeks at a time; invoicing was for SEK 150 (about EUR 14) per hour relating only to labour, while the haulage company paid for fuel costs; he only worked for the haulage company and no other party during that time etc. The Labour Court considered that there was no reason to doubt the driver's belief that he was employed by the haulage company. The Labour Court made an overall assessment and said that the driver was employed by the haulage company. The haulage company had to pay SEK 100,000 in damages for not complying with the collective agreement between the haulage company and the union, among other things, the haulage company had not paid extra for overtime and unsocial hours. The union then sued the haulage company for damages of approximately SEK 20 million for another hundred drivers, arguing that the company paid too little in compensation in relation to the collective agreement.³⁸ The parties later reached a conciliation agreement and the haulage company paid SEK 175,000, without the issue being taken to the Labour Court. The union apparently was afraid that it would be difficult to win the case with respect to evidence. The union also found it hard to get more drivers to testify. 'We continue as before, but we check carefully that all the drivers have their own companies before they start,' said the employer in an interview.³⁹

In the above case (AD 2013 no 92) an important evidentiary fact was that the driver actually had reason to believe that he was employed by the haulage company. The procedure when another driver was recruited may have been different, and they may have perceived the situation differently. The evidentiary facts obviously makes the concept of employment even more difficult to apply in a specific case. In a case with other drivers it may be so that the performing party's actually wants to be solo self-employed, even though the union wants to pursue the case because they are afraid that the collective agreement is being circumvented by false self-employed persons. Without the drivers on their side, it is obviously difficult for the unions to pursue a case.

The owner of the haulage company, who also owned the mediating company, should perhaps have had more reason to be wary of the tax implications rather than of labour law. The Swedish Tax Agency demanded that the mediating company pay social insurance fees of over SEK 15 million for all the drivers who have driven for the haulage company, except those who have A1 certificates.⁴⁰ Drivers without A1 certificates or Business Tax Certificates were judged to have such a dependent position that in relation to tax legislation they would be considered as employees. Then the mediating company was responsible for paying their social insurance fees.⁴¹ In the case the drivers themselves were required to pay income tax, because they were considered as employees and no income tax had been paid for them (this claim on the drivers has since been reduced by the Tax Agency). The mediating company went

³⁸ Case A 228/12 in the Labour Court.

³⁹ See Lag & Avtal 2014/3 p 22.

⁴⁰ Regulation (EC) no 987/2009 of the European Parliament and of the Council of 16 September 2009, laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.

⁴¹ The Tax Authority won the case in the Administrative Court of Goteborg (Kammarrätten I Göteborg), case 7409–7411-13, and a main hearing has been held in the Administrative Court of Appeal, cases 4303-04-14 and 4306-14.

bankrupt in 2013. If the assets (e.g. tow-trucks) are owned by the haulage company the bankruptcy of the mediation company might be a minor problem.

The example with the tax authority's decision in this case shows the effect of a concept of employee that vary depending on which legislations that is applied. Another fact of importance is how the burden of proof is placed. That differs from labour law where the union had to prove that the drivers where employees, to tax law where the Tax Authority decided that the mediation company had to pay social fee and the company had to prove that the drivers where solo self-employed.

3 Concept of the employer

3.1 Definition

In the Swedish labour legislation the concept of employer is defined mirroring the concept of employee, and there are no independent legal definition. Section 1 (2) of the 1976 Co-Determination Act (1976:580) the employer is identified as 'the party on whose behalf the employee performs work'.

The Labour Court has defined the employer as 'the physic or legal person that have concluded a contract with another (physic) person that this person must perform work under such circumstances that an employment contract is at hand'⁴². The concept of employer in Swedish legislation is based on the principle of legal subject. It is the legal or physical person that have concluded the employment contract that is regarded as the employer. If an employee is employed in a subsidiary (dotterbolag) and, without special regulation in collective agreements or statutory regulations,⁴³ the employers responsibilities does not go beyond that company. If the structure of a concern changes and is subject to a subsidiary creation or legal separation (bolagisering) the result might be lead to different responsibilities for the new employer. The employees employment protection could be inferior with the 'new' minor employer than it was with the 'old' major employer.⁴⁴ If it is dubious whether it is a physic personal or his company that is the employer, it is the employers' responsibility to make it clear to the employee who is the employer.⁴⁵ In case law the Labour Court tries to identify who has concluded the employment contract. To make changes in the parties of the contract to another legal or physical person is not allowed without the consent of the other party – the employee.⁴⁶

The technique to mirror the definition of employee to identify the employer makes the concept of employer vague and difficult to handle. So far most efforts in the doctrine has focused on define the concept of employee not on the employer. Niklas Selberg has focused on challenges of the concept of the employer in complex organizations (concerns, subsidiary creation (bolagisering), entrepreneurs and temporary work agencies).⁴⁷ With the use of solo self-employed increasing and the opaque legal constructions in the collaborative economy, there is now more focus on the employer.

⁴² Labour Court ruling 1984 no 141 and Lunning (2016) p 41.

⁴³ See e.g. how length of service is counted in Section 22 and 25 in the 1982 Employment Protection Act.

⁴⁴ Lunning (2016) p 41.

⁴⁵ See Lunning (2016) p 49 ff and e.g. Labour Court ruling 1976 no 128 and 1995 no 84.

⁴⁶ Lunning (2016) p 50.

⁴⁷ Selberg, Niklas, Arbetsgivarbegreppet och arbetsrättsliga ansvar I komplexa organisationer En studie av anställningsskydd, diskriminering och arbetsmiljö (2017) Media-Tryck, Lund.

3.2 The Double Responsibility

An employer could have responsibility for other persons at the working place than his own employees. This does not mean that the employer also becomes the employer for the other person. He only carries out some employers' responsibilities.

In chapter 3 section 12 (1) the 1977 Work Environment Act stipulates the person who in control of the workplace also must ensure that *permanent equipment* located at the workplace is safe to use so no persons who work there (also those who not are his employees) are exposed to risk of illness or accidents. Any person who engages contract labour to perform work in his business must take safety measures required by this work, chapter 3 section 12 (2). This should be compared to chapter 2 section 2 where the employer must take all necessary measures to prevent the employee from being exposed to illness or accidents. This means someone that have a temporary agency worker to performing work for him has an extensive responsibility for the work environment concerning the actual work at issue. The Temporary Work Agency who is the employer still have responsibility for 'all' measures including e.g. long-term responsibilities like rehabilitation and competence development. This is called *the double or shared responsibility*.⁴⁸

⁴⁸ Guvernement White Paper, SOU 2017:24 *Ett arbetsliv i förändring—Hur påverkas ansvaret för arbetsmiljön?*, p 55.

4 Legal responses to Specific Challenges

In Sweden 26 % of all employees are either part-time, fixed-term employees or solo self-employed. The number of small companies without employees has tripled over the past 25 years, and there are indication that a majority of them are solo self-employed.⁴⁹ Private enterprise accounts for some 9 % (EU average is 15 %) of the working population.⁵⁰ Of all Swedish companies, 73 % are one-person companies with no employees.⁵¹ The number of fixed-term employees are 15 %.⁵² The biggest increase came during Sweden's economic crisis in the 1990s. The most common type of fixed-term employment are those 'employed by the hour with an agreed schedule for a specified period'⁵³, who now constitute about 25 % of all fixed-term employees and of the fixed-term employees, 20 % work on an on-demand basis.⁵⁴ Temporary Work Agency workers are 1,5 % of all employees.

4.1 Triparty contracts

Temporary Work Agencies

In the early 1990s the phenomenon of temporary agency workers began to appear in the Swedish labour market. The working conditions for employees at temporary work agencies are for all established companies who are members in the Employers' Organisation for the Swedish Service Sector (Almega) and are regulated in their collective agreement.⁵⁵

The Employers' Organisation for the Swedish Service Sector (Almega) and all LO organisations concluded in 2000 a collective agreement for blue-collar workers. As a result the industry had a collective agreement that covered a new, large market. The interesting aspect here is that the agreement was concluded with all LO organisations; this means that an employee of a temporary work agency can work in the entire LO area without necessitating the application of different agreements. Workers for whom the agency cannot find an assignment received a guaranteed salary. Thus, in contrast with many other countries, Sweden gives temporary agency workers a level of security approaching the security of 'regular' employees.⁵⁶ Corresponding full-coverage agreements have also been concluded for white-collar workers.⁵⁷

⁴⁹ See SOU 2017:24, 107 and the SCB statistics cited there.

⁵⁰ <http://www.ekonomifakta.se/sv/Fakta/Foretagande/Naringslivet/Foretagare/> > accessed 9 June 2019.

⁵¹ <http://www.ekonomifakta.se/sv/Fakta/Foretagande/Naringslivet/Naringslivets-struktur/> > accessed 9 June 2019.

⁵² Berglund et al, Atypical labour markets in Swede, Nordic future of Work, Brief 6, March 2019.

⁵³ Hence the investigation of general fixed-term employment in Sector 5 (1) the 1982 Employment Protection Act (1982:80)

⁵⁴ See SOU 2017:24 p 132 and 137 and the SCB statistics cited there.

⁵⁵ Lunning (2016) p 52.

⁵⁶ LO's collective agreement on general employment conditions with Almega Temporary Work Agencies.

⁵⁷ See the collective agreement of the Union and the Academic Alliance with Almega Temporary Work Agencies on general employment conditions. The Swedish Association of Graduate Engineers is the representative for the Academic Alliance. The Academic Alliance includes a variety of associations for different professional occupational groups, such as university teachers, physiotherapists, scientists, engineers etc: Akademikerförbundet SSR, Civilekonomerna, DIK, Sveriges

The labour market parties took an active approach to the situation, and in a short time they had included this form of work in the collective-agreement system.⁵⁸ The result is that the temporary work agencies now form an industry of its own where the employee is employed by the temporary work agencies who takes the employment responsibilities for them.

Umbrella Companies – A New Business model

A new business model that has been rapidly adopted in Sweden is a version of the umbrella company. In the collaborative economy the platforms use umbrella companies as middlemen.⁵⁹ The umbrella companies have a special design; 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.⁶⁰ The parties rarely meet in real life, with all contact between them conducted electronically.

Swedish umbrella companies have a trade organization, where membership is predicated on companies taking responsibility for the performing parties for the time they are working.⁶¹ Umbrella companies are similar to temporary work agencies in their operations, with the difference that a temporary employee works when the employer decides, while the performing party of an umbrella company decides when to work and then 'hires' an employer.

The question of whether umbrella companies are covered by the Agency Work Act (2012:854) depends on the interpretation of the definition of temporary work agencies in section 5 (1). Umbrella companies scarcely existed in Sweden in 2012 when the law was passed, and they were not mentioned in preparatory work for the Bill to Parliament.⁶² By law, temporary agency work is when a company employs temporary agency workers in order to assign them to work for users, under their supervision and direction. If a company instead places its employees to do a particular job under its direction for another company, then that is contract work, which is not covered by the law.⁶³ Any decision whether a company is a temporary work agency or not must also correspond to the interpretation under the Temporary Agency Work Directive.⁶⁴

Arbetsterapeuter, Fysioterapeuterna, Jusek, Naturvetarna, Sveriges Farmaceuter, Sveriges Ingenjörer, Sveriges Psykologförbund, Sveriges Skolledarförbund, Sveriges universitetsläraresförbund och Sveriges Veterinärförbund.

⁵⁸ See Westregård/Milton ILERA Milano (2016).

⁵⁹ SOU 2017:24 167. According to the branch organization, the number of umbrella companies employees grew from 4,000 in 2011 to 44,000 in 2017, and increased by 31 per cent in 2016, <http://www.egenanstallning.org/index/news> > accessed 30 March 2019. See also Eurofound, *New forms of employment*, Publications Office of the European Union (2015).

⁶⁰ See SOU 2017:24 p 161 ff, p 198; the Swedish Tax Agency, <https://www.skatteverket.se/privat/skatter/arbeteochinkomst/inkomster/egenanstallning> > accessed 30 March 2019; Eurofound, *New forms of employment*, Publications Office of the European Union (2015) p 120.

⁶¹ <http://www.egenanstallning.org/> > accessed 30 March 2019.

⁶² SOU 2011:5 *Bemanningsdirektivets genomförande i Sverige*; Guvernemang Bill Prop. 2011/12:178 *Lag om uthyrning av arbetstagare*.

⁶³ SOU 2011:5 p 55; see also Labour Court ruling 2006 no 24 on contract versus agency work.

⁶⁴ Directive 2008/104/EC of the European Parliament and the Council of 19 November 2008 on temporary agency work.

Where an umbrella company is judged to be temporary work agency, the consequence is that its employees are entitled to the basic working and employment conditions set down in the end-user's collective agreements and other binding general provisions.⁶⁵

Digitalised Platforms

In Sweden, as elsewhere, online platforms have a variety of business models, but that said, two main types can be distinguished. One alternative is that the platforms specialize in local, physical work, or in completely digital work where the parties never meet one another.⁶⁶ The platform can serve to bring together service producers and service consumers, and nothing more. Another alternative is a business model with a far more structured organization, where all contact between service producers and consumers goes via the platform, which also has a clear set of rules for how services should be provided, price-setting, and so on. The platform provides the service, which the service producer then performs.⁶⁷

About the employers responsibility for health and safety in the tripartite construction (umbrella companies and collaborative platforms) the definition of the crowdworker as an employee or solo self-employment becomes crucial. The responsibility for the work environment for the collaborative platforms and umbrella companies are ambiguous in the legislation. A legal investigation in the Government White Paper (SOU 2017:24 *Ett arbetsliv i förändring—Hur påverkas ansvaret för arbetsmiljön?*) stated that the special tripartite construction makes it unclear if any responsibility could be demanded from some of the collaborative platforms at the moment. It depends on what control the platform have over the worker and his performance, if the performance is made by a private person, a professional, an employee or a solo self-employed etc.⁶⁸

Collective Agreements in the Tripartite construction

For the Temporary Work Agencies the Employers' Organisation for the Swedish Service Sector (Almega) and all LO organisations concluded a collective agreement for workers in 2000⁶⁹ and a corresponding full-coverage agreements have also been concluded for white-collar workers⁷⁰, see section 4.1.1.

⁶⁵ Sections 5 (3) and 6 the 2012 Agency Work Act (2012:854).

⁶⁶ SOU 2017:24 p 197.

⁶⁷ See Valerio De Stefano, 'The rise of the 'just-in-time workforce: On-demand work, crowdwork and labour protection in the "gig-economy"' ILO, *Conduction of Work and Employment* 71 (2016), 1; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A European agenda for the collaborative economy*, Brussels 2 June 2016 COM (2016), 356 final; De Stefano (2016).

⁶⁸ SOU 2017:24 p 222.

⁶⁹ LO's collective agreement on general employment conditions with Almega Temporary Work Agencies.

⁷⁰ See the collective agreement of the Union and the Academic Alliance with Almega Temporary Work Agencies on general employment conditions. The Swedish Association of Graduate Engineers is the representative for the Academic Alliance. The Academic Alliance includes a variety of associations for different professional occupational groups, such as university teachers, physiotherapists, scientists, engineers etc: Akademikerförbundet SSR, Civilekonomerna, DIK, Sveriges Arbetsterapeuter, Fysioterapeuterna, Jusek, Naturvetarna, Sveriges Farmaceuter, Sveriges Ingenjörer, Sveriges Psykologförbund, Sveriges Skolläraryrkeförbund, Sveriges universitetsläraryrkeförbund och Sveriges Veterinärförbund.

So far in Sweden, the white-collar union ‘Unionen’ has concluded collective agreements with three platform companies. The collective agreements are not written specifically for crowdworkers and platform companies, or umbrella companies.⁷¹ In two companies are the industry agreement for Temporary Work Agencies⁷² applied and in one company is the industry agreement for Media⁷³ applied. The agreements do not deal with the special problems in the digitalized economy as they are not specifically designed for crowdworkers.

Concluding remarks

There have been no cases in the Labour Court that concern crowdworkers in the collaborative economy, or that indicate whether the performing parties in an umbrella company should be considered to be employees, or whether umbrella companies are temporary work agencies in the meaning of the 2012 Agency Work Act. Since the parties themselves say that the performing party is an employee—and that the umbrella company has all the responsibilities of an employer—the Labour Court might decide it to be an employment. On the other hand, a legal investigation in the Government White Paper (SOU 2017:24 *Ett arbetsliv i förändring—Hur påverkas ansvaret för arbetsmiljön?*), found it difficult, due to the normal business model in the industry, to define the umbrella company’s workers’ as employees.⁷⁴

The Administrative Court of Appeal has in some cases assessed work for an umbrella company is an employment in the meaning of the 1997 Unemployment Insurance Act (1997:238). Settled cases law from the Administrative Court of Appeal vary and the most essential criterion has been the degree of independence.⁷⁵

⁷¹ Carl Fredrik Söderqvist and Victor Bernhardt; 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.

⁷² 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.

⁷³ Tjänstemannaavtalet between Unionen and Almega Medieföretagen (The Media Industries Employer Association).

⁷⁴ SOU 2017:24 p 221.

⁷⁵ 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.

4.2 Fragmented, Marginal and Zero hour contracts

Permanent- and Fixed-term Employment - The Legal Frame

Time-limited fixed-term employment is regulated in Article 5 and 5(a) of the 1982 Employment Protection Act.⁷⁶ There has to be a contract of employment for fixed-term work and a special reason as temporary substitute employment (*vikariat*), a seasonal employment (*säsongsarbete*), and if the employee has reached the age of 67. Sweden has also a much discussed employment form; the General Fixed-term Employment (*allmän visstidsanställning*). In contrast to other forms of work, this means that employers can hire on a temporary basis without having to give particular reasons why the positions are temporary.⁷⁷ The limitation in time for General Fixed-term Employment is in Section 5 (a) of the 1982 Employment Protection Act. It sets down that a General Fixed-term Employment or temporary employment must automatically convert into permanent employment once it totals more than two years over a five-year period. If the conditions for fixed-term employment are not fulfilled, the employment will be classified as of an unspecified duration. All employees are entitled to be rehired if the employer begins to recruit within nine months of the employee being laid off in the case of redundancy or if they had ended a fixed-term contract. To qualify for re-employment the employee must have worked there for at least a total of twelve months in the previous three years, or for seasonal employment for at least six months in the previous two years.⁷⁸ The right to re-employment is important for fixed-term employees, as it provides job security of a sort. A part-time employee is entitled to convert to full-time employment (before the employer can recruit a further employee) if the employer extends the business.⁷⁹

In Swedish labour law, permanent, full-time employment of an unspecified duration is the typical form of employment. In the absence of a contract to the contrary, any position is presumed to be of unspecified duration, and if the employers then claims otherwise the burden of proof falls on them. When it comes to short-fixed term employments like on-call jobs, see section 4.2.2. below, it is probably common that the parties do not sign any contract at all, and the employee come and work when the employer calls for him. In this situation the employer has the burden of proof that it is not a permanent employment (which without a written contract could prove difficult). In that case the employment will be classified as an employment of an unspecified duration.

In legal terms, an employee on a fixed-term contract, that specifies a period of service, has greater job security during the term of the contract than even permanent employees have. Permanent employees can be made redundant, while fixed-term employment cannot be ended prematurely, unless there is a serious breach of contract that gives the employer the right to summarily dismiss the employee.⁸⁰ Because it is difficult to terminate a fixed-term contract early, employers often give an end date that is not too far in the future, and rarely longer than twelve months, so that the employee cannot claim the right to priority in re-employment.

⁷⁶ Trial periods of employment regulated in Art 6 will not be further discussed here.

⁷⁷ Government Bill to Parliament Prop. 2006/07:111 Bättre möjligheter till tidsbegränsad anställning, m.m. p 32; Lunning (2016) p 251.

⁷⁸ Art 25 of the 1982 Employment Protection Act.

⁷⁹ Art 4 & Art 25(a) of the 1982 Employment Protection Act.

⁸⁰ Labour Court ruling 1991 no. 36 and Lunning (2016) p 173.

Fragmented Employment Contracts

Those who are most exposed to precarious working conditions are those who has a succession of short fixed-term contracts—which is a characteristic of several ‘new’ forms of employment. Their treatment will depend on what the parties have agreed. Here there is ample room for the employer and the employee to agree upon the working conditions.⁸¹

One alternative that probably is most common in Sweden is short-fixed term, part-time, contract (*timanställning*) where the employer and the employee make an agreement for each separate period of employment, on call-contract (*behovsanställning*). The protection in the legislation (rehiring and conversion to permanent employment) does not extend to those employed on a string of short-term fixed-term jobs until they reach the qualification time and that takes a long time as only the worked days count. There is no guarantee they will be asked to continue to work, and their situation is thus insecure. Anyone in temporary employment has the right to refuse any job opportunity offered, and also has the right to perform work for another employer. In a Government White Paper (SOU 2019:5) (*Tid för trygghet*) the committee of investigation presented a legislative proposal with the intention to improve the condition for employees with short fixed-term employments; if an employee has more than two short fixed-term employments within 30 days then the time between the employments should also be regarded as worked time in the meaning of the 1982 Employment Protecting Act and it’s statutory regulations about re-employment and conversion to permanent employment.⁸² It is at the moment very uncertain if the proposal will become legislation.

The other alternative is a marginal contract where the employer and employee sign an employment contract (fixed-term or permanent) with very few working hours and no schedule. There are no statutory regulations about minimum duration or amount of working hours in Swedish labour legislation. An employment contract could be with very few (even one) working hours and the employer have to give the employee the working hours agreed and the statutory rights about converting to full-time employment if the employer extends the business are applicable.⁸³

The existence of numerous short contracts ensures that zero-hour contracts (a contract without any working hours arrangements), in the sense the position is permanent but there are no set minimum hours, are largely absent in Sweden compared to other countries.⁸⁴ In Sweden there are actually no real use for zero hour contracts as the employer instead use numerous short fixed-term contracts (on call-contracts). It is not on the agenda for the moment to legislate minimum hours of work in total per employment contract in Sweden.⁸⁵

An employment contract with no working hours at all (or very few hours) would probably cause legal problems with section 10 of the 1982 Working Time Act (SFS 1982:673) if the employee is supposed to work more than the stipulated hours. Working Time Act regulates that maximum 200 hours ‘extra hours’ (*mertid* - meaning

⁸¹ Källström/Malmberg (2016) p 120 f.

⁸² SOU (Government White Paper) 2019:5 *Tid för trygghet*.

⁸³ Art 4 & Art 25(a) of the 1982 Employment Protection Act.

⁸⁴ SOU 2019:5 (Government White Paper) *Tid för trygghet* p 372.

⁸⁵ SOU 2019:5 p 376.

hours above the working hours contractually agreed in a part-time employment contract)⁸⁶. If an employer on top of a permanent employment with very few working hours put in place short fixed-term contracts it is not regarded as a separate employment.⁸⁷ It could also be regarded as violating the ‘good labour market practice’⁸⁸ for the purpose of avoiding the regulation in the 1982 Employment Protecting Act.⁸⁹

Collective Agreements for fragmented Employment contracts

The statutory regulations on fixed-term employment are governed in their entirety by semi-discretionary law, and social partners can agree on other regulations in their collective agreements.⁹⁰ What follows are some examples where social partners have used collective bargaining to agree the conditions of employment for those on short fixed-term contracts, on call-contracts and marginal contracts. As the legislation do not guarantee an employee any minimum working time or minimum duration of an on-call contract this demonstrates how the social partners instead, in their collective agreements, gives the employees better conditions than the legislation does.

In the recent White-Collar Employee Agreement⁹¹ between the white-collar trade union *Unionen and Almega* (the Employers’ Organization for the Swedish Service Sector), there is a special form of fixed-term employment, which means it must exceed a minimum employment period—which is missing from the law—of seven days, unless the employer and the employee specifically agree on a shorter period. If it is abused there are restrictions.⁹² The statutory regulation for automatic conversion to permanent employment are extended to a total period of three years—one year more than the law requires—in a five-year period.⁹³ This regulation in the collective agreement is particularly important as it covers the service sector where a lot of the ‘new’ precarious forms of employment exists with fragmented employment contracts.

Another example is the Restaurant Collective Agreement, which regulates employment for single days (*anställning för enstaka dagar*).⁹⁴ The employee is entitled to refuse the work offered if the minimum chargeable time is three hours a day. The parties here have struck a balance between the employer’s interest in only having staff in place when there is work to be done, and the employee’s interest in having to endure no more short fixed-term employment than is necessary and rules for minimum hours.

⁸⁶ Fahlbeck, Reinhold and Tore Sigeman; European employment and Industrial relations glossary: Sweden, Sweet and Maxwell, Office for official publications of the European communities, 2001, 239.

⁸⁷ Labour court ruling AD 2008 no 92 and AD 1997 no 40.

⁸⁸ Fahlbeck/Sigeman (2001) p 164.

⁸⁹ See Labour court ruling AD 1984 no 76.

⁹⁰ Section 2(3) of the 1982 Employment Protection Act.

⁹¹ Collective agreement between Unionen and Almega concerning tech and media companies for the period 1 May 2017 to 30 April 2020. The new regulations are in Section 2.2. valid from 1 November 2017. See also Labour Court ruling 2015 no. 50, reinterpretation of the previous rules. The regulation is the same in all Almega’s 22 collective agreements for white-collar workers.

⁹² See section 2.2.

⁹³ See section 2.3.

⁹⁴ 4 § 1.2. *Anställning för enstaka dagar* in the collective agreement between Visita and Hotel and Restaurant, HRF for the period 1 April 2017 to 31 March 2020.

In all the collective agreements, there are only rare examples of zero hour contracts. One is the on-call work covered by the Security Industry Agreement (*Väktaravtalet*).⁹⁵ Working hours are not determined in advance, the employer only offers work when staff is needed and employees can at any time refuse the work offered. The reason for the regulation in the collective agreement is unusual. Private security guards must be licensed by the County Administrative Board, which can be difficult to arrange in time for fixed-term employees called in at short notice to help with a major incident..⁹⁶ Those who take on-call work often have other jobs where they decide their own schedules, such as students or farmers.⁹⁷

⁹⁵ 1 § moment 4 *Behovsanställning* in the Security Industry Collective Agreement between the security companies and the Transport Workers' Union, 1 June 2017 to 31 May 2020.

⁹⁶ Decree (1989:149) on security companies etc. (Förordning (1989:149) om bevakningsföretag m.m.)

⁹⁷ Interview with Jonas Milton, former CEO and current Senior Adviser, Almega, the Employers' Organization for the Swedish Service Sector, 8 February 2018.