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Protection of platform workers in Norway Part 2 Country report

Nordic future of work project 2017–2020: Working paper 09. Pillar VI

Fafo

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Preface

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

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

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

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

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1 Introduction

Changing labour relations challenge the key concepts of labour law and may bring a larger number of workers with an unclear employment status in the future.[1] In a system where an employment contract is the main gateway to labour law and important aspects of welfare protection, obscurity of legal status may have significant implications. This paper is a study of how an unclear employment status affects key elements of Nordic labour law and regulation, in a Norwegian context.[2]

The aim is to reveal risks and consequences related to changing labour relations in Norwegian law, both for the protection of the individual and for the societal interests inherent in the Nordic labour market model. This will provide a basis for discussing whether and how Nordic labour law and regulations should adapt in order to face the challenges in the future of work.

The study focuses on specific legal norms that underpin three characteristics of the Nordic labour market model: strong labour market actors (section 2), a healthy and productive work force (section 3) and basic social security (section 4). The relevant norms are presented under each section.

In order to highlight the effect of an unclear employment status, the paper will conduct a *comparison* using a *typology* of workers. The paper will map and discuss how the relevant legal norms apply to *the traditional employee* and *the genuinely self-employed* worker compared to a type of worker whose employment status is fundamentally unclear – *the typical platform worker*.[3]

As the aim is to compare the legal protection of different types of workers, the discussion will concentrate on the structure of the relevant norms – legal basis, personal scope and allocation of responsibility.[4] The material content of the legal norms will not be discussed in full detail.

In platform work, allocation of responsibility raises difficult questions. Both the platform company and the customers may be the employer(s) and/or be responsible for employer duties. The chosen point of departure for this paper is that the platform company is the most relevant employer. Implications of customers as employers will be addressed where this seems particularly relevant or sheds light on interesting aspects of the relevant norms.

[1] For a study of how changing labour relations challenge the key concept of labour law in Norway, see in Marianne Jenum Hotvedt, «Key concepts and changing labour relations in Norway: Part 1 Country report», Nordic future of work project 2017–2020: Working paper 7. Pillar VI [Report Part 1, Norway].

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

[3] Further on the typology, see Hotvedt/Munkholm 2019 p. 19.

[4] The research questions of this study (Part 2) are described in more detail in Hotvedt/Munkholm 2019 p. 20–22.

2 Strong labour market actors

2.1 The legal framework

Collective agreements (tariffavtaler) represent a main form of labour market regulation in Norway.[5] The legal framework allows and underpins this function. Collective agreements are not given *erga omnes* effect. Still, the labour law framework is characterized by the close interplay between statutory regulations and collective agreements. Statutory regulations set minimum labour standards covering a broad range of issues, such as health and safety, working time, employment protection, etc. The standards cannot be derogated *in pejus* (to the detriment) of the employee, neither by individual nor collective agreement, unless explicitly stated.[6] The social partners only enjoy a freedom to derogate *in pejus* from statutory standards in collective agreements on specific issues, and the freedom is particularly wide as regards working time.[7] There is however a strong tradition to leave wages to the labour market organisations to decide through collective bargaining. There is thus no statutory (general) minimum wage.[8]

The Labour Disputes Act (LDA)[9] sets the main framework for collective employment relations, by defining a collective agreement (tariffavtale) and recognizing its distinctive legal effects, and by establishing procedures and mechanisms for conflict resolution on a collective level.[10]

A collective agreement is legally binding, both for the parties and for the members covered by the agreement, whether they are individuals or organisations. Employers may therefore be bound by collective agreements by membership in employers' organisations or by entering into a direct agreement with a trade union. Terms and conditions in a collective agreement cannot be derogated by individual employers and employees bound by the agreement; such individual terms are not legally valid, cf. LDA § 6. Consequently, collective agreements have normative effects in individual employment relations where both the employer and the employee are bound by the agreement.[11]

Who is bound by a specific collective agreement however depends on the scope of the agreement, i.a. whether the relevant work is covered. The agreement is not necessarily automatically binding, the parties may have decided otherwise. Collective agreements in the private sector, must – as the main rule – be *claimed* (gjøres

[5] Collective agreements on industry level are particularly important. For a general introduction to the labour law framework, see Report Part 1, Norway, p. 5–8. Some of the text in the following paragraphs overlaps with this text.
[6] See i.a. WEA § 1-9.
[7] The provisions on working time are to a large extent derogable by collective agreements on a central level, cf. WEA § 10-12 (4).
[8] The Extension Act however empowers an independent administrative law body (Tariffnemnda) to adopt public law regulations on minimum terms and conditions for employment relations (allmengjøringsforskrifter), and these typically include rates of pay, see Report Part 1, Norway, p. 6 with further references.
[9] Lov 27. januar 2012 nr. 9 om arbeidstvister (arbeidstvistloven, LDA.
[10] There is a separate labour disputes act for the state sector, see lov 18. juli 1958 nr. 2 om offentlige tjenestetvister (tjenestetvistloven).
[11] See further Stein Evju, "Norge", i: Tore Sigeman m.fl., *Arbetsrätten i Norden*. 1990 p. 225–316, p. 251–253.

gjeldende) to be set in function.[12] The agreements between the main organisations set requirements for such procedures, and it usually requires that 10 per cent of the employees are organised in the relevant trade union.[13]

Collective agreements have indirect regulatory functions beyond their binding and normative effect. An employer bound by a collective agreement is under a duty to abide by its provisions in relation to "outsiders", both non-unionised and alternatively unionised employees. The duty has its basis in the collective agreement and applies in relation to the opposing party: It is considered a fundamental precondition of collective agreements.[14] The "outsider" employee cannot derive individual rights from this basis. Still, when interpreting the individual employment contract of the "outsider", there is arguably a presumption that the employer would not violate the collective agreement.[15] Consequently, the "outsider" employee may very well have corresponding rights based on the individual contract.

The main organisations have concluded a catalogue of collective agreements, covering different sectors and types of work.[16] Through membership in the main organisations, organised employers are therefore subject to a broad range of already existing agreements. If the employer is *not* organised, the situation is quite different. The employer may resist any agreement or may insist on a specific agreement, different from other agreements in the same sector.[17]

There is no legal general duty to bargain collectively.[18] Whether a collective agreement is concluded (and its content) depends on the force the bargaining parties are able and willing to mobilize. The traditional view is that industrial action (arbeidskamp) is permitted unless restricted by law or agreement.[19]

The right to industrial action is however restricted by the peace obligation (fredsplikt).[20] The peace obligation has a double basis. It is a fundamental precondition of a collective agreement *and* is set in statutory regulations. This leads to restrictions in different contexts. In disputes of rights, industrial action is totally forbidden.[21] Industrial action is also forbidden in disputes of interests on issues regulated by a collective agreement, in the agreement period.[22] In other disputes of interests, whether they concern a new collective agreement or revision, there is a time-limited ban and procedural restrictions on industrial action, linked to a system of arbitration.[23] The

[12] Torgeir Aarvaag Stokke, Kristine Nergaard and Stein Evju, *Det kollektive arbeidslivet,* 2. ed. 2013 [Stokke/Nergaard/Evju 2013] p. 137.
[13] See for example Hovedavtalen LO-NHO 2018–2021 §§ 3-7 ff.
[14] Stokke/Nergaard/Evju 2013 p. 140.
[15] Alexander Næss Skjønberg, «Tariffavtalers virkning for utenforstående arbeidstakere», *Arbeidsrett* 2011 p. 1–80, on p. 12–14.
[16] For catalogues of agreements concluded by the main private sector employers organisations, see http://tariffavtaler.nho.no/?page=list&&sort=navn (NHO), https://www.virke.no/tariff-og-lonn/finn-tariffavtale/ (Virke) and https://spekter.no/Avtaler-og-protokoller/ (Spekter).
[17] Trade unions are generally not obliged to abide by excisting collective agreements in relation to «outsider» employers, see further Tron Løkken Sundet, *Kollektiv arbeidsrett – en innføring* 2018 p. 162–163.
[18] In the state sector, there is however an explicit and mutual duty, see tjenestetvistloven § 2.
[19] Alexander Næss Skjønberg, *Fredsplikten i tarifforhold*, 2019 [Skjønberg 2019] p. 69–71.
[20] For a detailed analysis of the peace obligation in Norwegian law, see Skjønberg 2019.
[21] LDA § 8 (1), cf. § 1 i.
[22] The interpretation of what is covered by the peace obligation is affected by a presumption that the collective agreement is a comprehensive regulation, see ARD 1920–21 s. 155.
[23] LDA § 8 (2), cf. § 1 j. See also LDA § 8 (3) in the case of revision.

restrictions apply in principle to all types of industrial action (strikes, lockouts and other action). There is no general requirement that industrial action is proportionate.

Sympathy actions are permitted as long as the main conflict is legal. Unions may therefore use industrial action to show support to other unions in their conflicts. There are however some requirements and procedures for sympathy actions in the agreements between the main organisations.[24] Boycott aimed at third parties – for instance aimed at employers where the union has no members – is regulated by a separate statutory act. Whether this type of boycott is permitted, depends on several discretionary assessments, i.a. whether the purpose is unlawful and the action is proportionate.[25]

This brief presentation shows that collective bargaining is a gateway to labour market regulation of important conditions of work, such as pay. To the extent that new work relations – such as platform work – are not subject to collective bargaining mechanisms, this form of labour market regulation will be less effective. The discussion in the following therefore focuses on *access to collective bargaining mechanisms* for platform workers, compared to traditional employees and genuinely self-employed workers.

One issue is membership in labour market organisations (section 2.2). Here, the legal concepts of trade unions and employers' organisations in the Labour Disputes Act (LDA) are relevant as well as organisations' statutes and practices. Another is access to bargaining collective agreements (tariffavtaler) within the LDA framework (section 2.3).[26] The scope of this framework must however be aligned with national and EU/EEA competition law. Although collective agreements restrict competition, they are by virtue of their nature and purpose exempt from the prohibition of agreements etc. that restrict competition in EU/EEA law.[27] In national law, the legal basis for the prohibition and the parallel exemption (tariffunntaket) is the Competition Act § 10 and § 3, respectively.[28] The scope of the exemption will be addressed separately (section 2.4). An overall comparison is provided in section 2.5.

2.2 Membership in labour market organisations

The LDA defines the concepts of trade union and employers' organisation with reference to the general concepts of employee and employer. The definitions will be elaborated in section 2.3.

The LDA does not set any criteria for membership neither for trade unions nor employers' organisations. Statutory protection against discrimination in the WEA and The Equality and Anti-Discrimination Act however apply.[29] Criteria for membership are set in the statues of the organisations.

[24] See for example Hovedavtalen LO-NHO 2018–2021 § 3-6. Political strikes are also permitted, as long as the action is not aimed at a dispute of rights or interest and has a short length. See however procedural requirements in § 3-14 of the mentioned agreement.
[25] Lov 5. desember 1947 nr. 1 om boikott § 2. There are also procedural requirements.
[26] The specific labour disputes act for the state sector (tjenestetvistloven) is less relevant in the context of platform work and will not be discussed.
[27] The EEA-agreement (EEA) art. 53 (1) is a parallel to Treaty of the Functioning of the European Union (TFEU) art. 101 (1).
[28] Lov 5. mars 2004 nr. 12 om konkurranse mellom foretak og kontroll med foretakssammenslutninger (konkurranseloven, the Competition Act).
[29] Lov 16. juni 2017 nr. 51 om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven) prohibits discrimination based on gender, pregnancy, leave in connection with

Some trade unions only offer membership to workers of specific professions or occupations, while others organise workers in a specific sector or industry. As a general rule, membership in trade unions is not restricted to workers in *active* employment. Organisations often offer membership to students, unemployed and retired persons, typically on specific terms. The precarious nature of platform work would therefore not generally hinder a continuous membership.

Several organisations offer membership to both employees and self-employed. Some known examples are associations of medical doctors (Den norske legeforening), of journalists (Norsk Journalistlag) and of workers in art and culture (Creo – forbundet for kunst og kultur).[30] Organisations such as these actively target both traditional employees and genuinely self-employed workers.

The largest confederation of trade unions in Norway – LO – has recently launched a specific initiative targeting freelancers and self-employed workers. LO has established a consortium – LO Selvstendig (Independent). The consortium does not have individual members, but provides a forum for trade unions within LO who organise freelancers and self-employed workers. LO Selvstendig focuses broadly on working and living conditions of both the genuinely self-employed and workers whose employment status is less clear. Their initiatives cut across different professions, sectors and industries.[31]

There is also an example of a traditional trade union that mobilise platform workers specifically. An association of transport workers (Norsk Transportforbund, who later merged with Fellesforbundet) has organised couriers employed by Foodora, one of the largest platforms operating in Norway. The trade union organised a successful strike in the fall of 2019, resulting in a collective agreement with Foodora. Foodora had however already recognized the couriers as employees.[32] This indicates that the type of work (or profession) will be considered decisive, rather than the connection to a digital platform.

Employers' organisations typically offer membership within a specific sector or industry. It may be challenging to determine whether the technological aspect or the type of underlying service should be decisive for membership for platform companies. The companies themselves seem to emphasize the technology aspect. Platform comanies like Uber Norway and WeClean are members of Abelia – an organisation for the knowledge-, and technology industry, while others are unorganised.[33]

childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, (age) or combinations of these factors. The WEA chapter 13 prohibits discrimination based on political views, membership of a trade union, age and part-time or temporary work. The provisions of the WEA chapter 13 apply correspondingly to enrolment and participation in a trade union, employers' organisation or professional organisation, cf. WEA § 13-2 (3).

[30] See the respective websites, https://beta.legeforeningen.no/jus-og-arbeidsliv/, https://www.nj.no/om-norsk-journalistlag/ and https://creokultur.no/medlemskapicreo/.

[31] See LO Selvstendig's website, https://www.lo.no/hva-vi-gjor/lo-selvstendig/om-lo-selvstendig/.

[32] See further Report Part 1, Norway, p. 25–26.

[33] See Abelia's website, https://www.abelia.no/.

2.3 Scope of the collective bargaining mechanism of the LDA

The LDA sets the framework for collective bargaining of a specific type of agreement agreed collectively – a *tariffavtale*.[34] A collective agreement (tariffavtale) is defined as an agreement between a trade union and an employer or employers' organisation on conditions of work and pay or other working conditions.[35]

The definition sets requirements relating to the *parties* and the *content* of the agreement. In addition, there is a formal requirement; a collective agreement must be in *writing*.[36]

As regards the *parties*, only trade unions and employers or employers' organisations may conclude a collective agreement.

A trade union (fagforening) is defined as any association of employees (arbeidstakere) or of employees' organisations with a purpose to protect the interests of employees in relation to their employers.[37] An employers' organisation (arbeidsgiverforening) is defined as any association of employers or employers' organisations with a purpose to protect the interests of employers in relation to their employees.[38] The definitions of employee and employer in the LDA have the same wording as the definitions in the WEA.[39] Legal status as a trade union or employers' organisation is thereby linked to the classification of the workers and undertakings they represent.

Whether an association of workers is a trade union, depends on the classification of the workers it represents in the relevant context: When representing traditional employees, the organisation will clearly be a trade union. If the organisation only represents genuinely self-employed workers, it will not. As mentioned above, some organisations have members from both categories. A "mixed" organisation will be considered a trade union when representing members who are employees, but not when representing the self-employed.

When representing platform workers, the organisation *may* therefore be a trade union, depending on whether the relevant platform workers are considered employees. This, in turn, depends on an overall assessment of the realities. The workers *may* be employees even when working under a (formal) contract for service, and even if treated as self-employed for tax and social security purposes.[40] An organisation representing platform workers may therefore face both legal and practical obstacles to be recognized as a trade union when making claims on behalf of platform workers.

As regards the *content*, a collective agreement must include conditions of work and pay or other working conditions. "Conditions of work and pay" is the core element and refers to normative conditions in contracts of employment specifically. The reference to employees and employment contracts links the concept of 'collective agreement' to its specific legal implication – the binding and normative effect for

[34] In this report, «collective agreements» refers to the concept of 'tariffavtale' in Norwegian law. «Agreement agreed collectively» is used at a neutral term for agreements that may – or may not – be a 'tariffavtale' in the Norwegian legal sense.
[35] LDA § 1 e.
[36] LDA § 4.
[37] LDA § 1 c.
[38] LDA § 1 d.
[39] LDA § 1 a and b. See further Report Part 1, Norway.
[40] For an example, see ARD 1991 s. 140.

individual employers and employees who are members and covered by the agreement.[41] "Other working conditions" refers to contractual obligations between the parties, and includes in the concept such agreements that *only* concern the relation between the parties. Consequently, the legal status of the agreement depends on the classification of the work relations regulated in the agreement.

Working conditions of traditional employees are therefore clearly included in the framework of the LDA, and may be subject to normative conditions of work and pay set in a collective agreement. Working conditions of the genuinely self-employed fall outside the scope, and may not be subject to normative regulations in a collective agreement. An agreement agreed collectively with conditions of work and pay for platform workers *may* be a collective agreement, if the workers are considered employees after an overall assessment of the realities. Again, lack of a formal employment contract may turn out to be a practical obstacle.

There are a few examples in case law where the legal status of the agreement was disputed as a result of the unclear employment status of the workers covered. ARD 1955 s. 117 concerned an agreement agreed collectively with conditions of work and pay. The agreement covered "rent of truck with driver" for snowplough drivers in Troms county. Based on a broad assessment of the realities, the Labour Court found the drivers to be self-employed in relation to the county.[42] As a result, the agreement was not a collective agreement. ARD 1991 s. 140 concerned an agreement agreed collectively for "wagon men", who owned their own vehicles and drove for Oslo municipality. Here, the broad assessment of the realities led the Labour Court to conclude that the drivers where employees, and the agreement was a collective agreement.

In the latter case, collectively agreed conditions for the relevant drivers had a 40 year long history. Furthermore, the agreement clearly showed that the parties considered it to be a collective agreement, and – by implication – the drivers to be employees. The Labour Court stated that, as a point of departure, it is *not* for the parties to decide whether the workers are employees. The court emphasized that to be a collective agreement, the agreement must set conditions for workers who are employees in the material sense of the LDA.[43] Later in the judgment, when assessing whether the drivers in reality were employees, the court however included a supplementary argument. In light of the *purpose* of the LDA, the assumptions of the parties supported that the drivers were employees.

The court's reasoning implies that the parties may have *some* influence on whether workers with an unclear employment status are employees in the context of LDA and collective bargaining. This has relevance for platform workers. A purposive interpretation of the concept of employee in the LDA may provide some «leeway» for the labour market parties when it comes to what types of work relations that can be subject to normative conditions in a collective agreement.[44]

[41] LDA § 6 is one explicit expression of the binding and normative nature of a collective agreement in individual employment contracts, specifically.
[42] See also ARD 1968 s. 36, who concerned the scope of a collective agreeement for a forestry company. The Labour Court concluded it covered horse- and tractor drivers, but not self-owning machine teams, as they were "clearly" self-employed in relation to the company.
[43] ARD 1991 s. 140 (p. 169).
[44] See further, Marianne Jenum Hotvedt, «Kollektive forhandlinger for oppdragstakere? Rekkevidden av adgangen til å forhandle tariffavtaler i lys av internasjonal rettsutvikling», *Arbeidsrett* nr. 1 2010 [Hotvedt 2020, under publication].

This far, there is only one example in Norway of a collective agreement (on company level) especially drafted for platform workers. In September 2019, Foodora and Fellesforbundet concluded a collective agreement for the couriers. As mentioned above, Foodora had already recognized the couries as employees. Fellesforbundet agreed not to apply the traditional, excisting collective agreement for couriers and logistics. Instead, the parties drafted a novel collective agreement, to some extent adapted to the platform model.

2.4 Exemption from the scope of competition law

The Competition Act prohibits different types of restrictions if competition, i.a. agreements between undertakings, decisions by association of undertakings and concerted practices that restrict competition, cf. § 10 (1).[45] According to § 3 (1), "conditions of work and employment" are exempt from the scope of the act. The exemption (tariffunntaket) is justified by the tradition of setting the "price" of labour in collective agreements and applies to conditions for employment contracts specifically.[46]

According to the preparatory works, the exemption is aligned with EU/EEA competition law.[47] An explicit national exemption was considered unnecessary, but was kept for the sake of clarity. Regardless on an explicit exemption, interpretation and application of the Competition Act § 10 to collective labour agreements should be in line with EU/EEA law. Norwegian case law confirms that the scope of the national exemption is interpreted in light of the parallel exemption in EU/EEA law.[48]

According to EU/EEA law, the exemption includes agreements concluded in the context of "collective negotiations between management and labour" that seek to improve "conditions work and employment", by virtue of the "nature and purpose" of such agreements.[49] Traditional employees are included in the personal scope of the exemption, while the genuinely self-employed are generally not. Service providers who act independently in the market are "undertakings" and covered by the prohibition in EEA art. 53 (1)/TFEU art. 101(1). The CJEU decision in *FNV Kunsten* however clarifies that the exemption also applies to "false self-employed", meaning workers who, although formally self-employed, are in a comparable situation as employees.[50] Whether this allows for the exemption in Norwegian law to be applied to platform workers and others workers with an unclear employment status, is an unresolved issue.[51]

There are a few examples of *other* types of collectively agreed working conditions for self-employed. There is a framework agreement for freelance journalists, but the agreement does not set specific conditions of pay.[52] Another example is the framework agreement for general practitioners, who are self-employed in the curative

[45] The Competition Act § 10 (1) implements EEA art. 53 (1).
[46] Ot.prp. nr. 6 (2003–2004) p. 35.
[47] Ot.prp. nr. 6 (2003–2004) p. 221–222.
[48] See ARD 2002 s. 90, where the Labour Court builds on case law of the CJEU and the EFTA-court.
[49] The exemption was recognized by the CJEU in the «Albany-trilogy»: case C-67/96 Albany, EU:C:1999:430, joined cases C-115/97, C-116/97 and C-117/97 Brentjens, EU:C:1999:434, and case C-219/97 Drijvende Bokken, EU:C:1999:437.
[50] Case C-413/13 *FNV Kunsten Informatie en Media*, EU:C:2014:2411437.
[51] For a discussion, see Hotvedt 2020.
[52] Rammeavtale mellom Norsk Journalistlag og Mediebedriftenes Landsforening om kjøp og salg av frilansstoff («Frilansavtalen»).

function.[53] The restrictions of competition law is presented as the reason why trade unions representing self-employed usually refrain from bargaining for conditions of pay.[54]

2.5 Overall comparison

The collective bargaining mechanism builds on the binary distinction between employees and self-employed. The legal framework of collective bargaining clearly covers the traditional employees, but exclude the genuinely self-employed workers. Access to effective bargaining on a collective level for platform workers therefore – as a clear point of departure – depends on the recognition of platform workers as employees.

The assessment of employee status rests on the realties in the work relation, and the concept is interpreted widely and in light of the purpose of the relevant legal regulation. Platform workers may therefore very well be recognized as employees in the context of collective bargaining and the LDA framework. Nonetheless, legal insecurity represents an obstacle for platform workers' access to collective bargaining.

Access to collective bargaining under the LDA framework is not solely a national law issue. EU/EEA-law sets restrictions on national law as regards what type of collective bargaining can be exempt from competition law. EU/EEA-law allows for "false self-employed" workers to be exempt. Still, to what extent national law can allow workers with an unclear employment status to bargain collectively is not fully resolved. This legal insecurity is a further obstacle for platform workers' access to collective bargaining in national law

[53] Rammeavtale mellom Kommunenes Sentralforbund (KS) og Den norske legeforening om allmennlegepraksis i kommunene ASA 4310 («Fastlegeavtalen»). An individual «model contract» is included as attachment I. The union bargain with the government and KS on economic terms in a separate agreement ("Statsavtalen"). This is however related to the patients' right to healthcare and is regulated in lov 24. juni 2011 nr. 30 om helse- og omsorgstjenester m.m. and the regulations in forskrift 29. august nr. 842 om fastlegeordningen i kommunene,.

[54] The considerations of trade unions in the cultural sector is described in Kristine Nergaard og Beate Sletvold Øiestad, *Fastsettelse av lønn og honorar for korttidsoppdrag på det kunstneriske feltet*, Fafo-notat 2016:19, s. 18–19.

3 A healthy and productive work force

3.1 The legal framework

A healthy and productive workforce is a hallmark of the Nordic labour market model. Regulations of *health and safety* at work, *working time* and *paid annual leave* are three sets of norms with important functions to protect the health and productivity of the workforce.

The personal scope and allocation of responsibility is discussed separately for regulations of health and safety (section 3.2), working time (section 3.3) and paid annual leave (section 3.4) in respect of the three categories of workers. An overall comparison is made in section 3.5.

Regulations on both health and safety and working time are set in the Working Environment Act (WEA).[55] The legal basis for the right to paid annual leave is the Holiday Act.[56]

The regulations on health, safety and working time in the WEA implement both the EU framework directive on occupational health and the working time directive, with the exception of paid annual leave, which is implemented in the Holiday Act.[57]

The WEA provides certain additional national requirements. As regards health and safety, there are a number of additional requirements. As regards working time, additional requirements are regulations on work on Sundays, more specific regulations on overtime and a requirement of 40 per cent additional pay for overtime.[58]

The WEA regulations of health and safety and of working time are interrelated, both in substance and in an enforcement perspective.

The fundamental principle is that the working environment must be "fully satisfactory" when factors influencing both physical and mental health and welfare of the employee are taken into account.[59] The principle thus builds on a broad approach to the working environment and a wide concept of health. It sets a high "standard" of the working environment regardless of the size, character or economic situation of the enterprise. Chapter 4 provide the main *functional requirements* of the standard. The requirements are specified further in a number of regulations pursuant to the WEA.

The regulations of working time in WEA chapter 10 build on the main principle that working hours must be arranged so that employees are not exposed to adverse physical or mental strain, and that they shall be able to observe safety considerations.[60] Thus, working time arrangements must be satisfactory in a health and safety perspective.

The duty to comply rests on the "employer", while the employees have a duty to cooperate actively to create a satisfactory and safe working environment.[61]

[55] Lov 17. juni 2005 nr. 62 om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven, WEA).
[56] Lov 29. april 1988 nr. 21 om ferie (ferieloven, the Holiday Act).
[57] Directive 89/391/EEC and directive 2003/88/EU.
[58] WEA §§ 10-6 and 10-10.
[59] WEA § 4-1 (1).
[60] WEA § 10-2.
[61] WEA §§ 2-1 and 2-3.

The *methods and measures* for compliance are set in WEA chapter 3. Important principles here are systematic work on all levels of the undertaking, risk assessment and prevention, internal control systems and information as well as consultation and co-operation with employees' representatives. WEA chapter 6 and 7 set the framework for the latter, by requiring that elected employees' representatives function as safety representatives (verneombud) and participate in working environment committees (arbeidsmiljøutvalg) in most undertakings, and by setting ground rules for election processes, tasks and competences.

This framework facilitates *internal* supervision and control of health and safety regulation as well as regulations on working time, where employee representation play an important role.

The main *external* enforcement mechanism for health, safety and working time regulation is inspection and control performed by the Labour Inspection Authority. The authority is entitled to free and unhindered access to all premises subject to the WEA, and may require information.[62] The Authority can issue binding orders and make such decisions as are necessary for the implementation of a number of provisions in the WEA, including all health and safety regulations.[63] The Authority may impose a coercive fine for time that passes after expiry of the time limit set for implementation of the order until the order is implemented, and may also decide to halt the activities of the undertaking, partially of wholly, to enforce orders or prevent immediate danger.[64] Effective from 2014, the Authority may also impose administrative fines (overtredelsesgebyr) within a maximum level of 15 times the National Insurance basic amount (Folketrygdens Grunnbeløp, G).[65]

Furthermore, breach of health, safety and working time regulation is criminally sanctioned in WEA chapter 19. The proprietor of an undertaking, employer or person managing an undertaking in the employer's stead are all criminally liable for willfully or negligent breach of provisions or orders issued pursuant to the WEA.[66] The enterprise as such is however also criminally liable, and this seems to be most used in practice.[67] Case law suggests that criminal sanctions are mainly reserved for serious cases, typically where breach of key health and safety regulations has led to accidents, or cases where regulations of health and safety or working time are systematically ignored.

There is a separate tribunal for certain disputes related to working time, rights of part-time workers and rights to parental leave etc. (Tvisteløsningsnemnda).[68] The tribunal's competence on working time is limited to provisions concerning individual adaption of the working time arrangements (exemption from night work and overtime, right to a flexible working time, and right to reduces working hours).[69] The tribunal is therefore not an enforcement mechanism for the main protective standards.

[62] WEA §§ 18-4 and 18-5.
[63] WEA § 18-6 stipulates what provisions the Authority can enforce by binding orders.
[64] WEA §§ 18-7 and 18-8.
[65] WEA § 18-10. The National Insurance basic amount (G) is adjusted annually and is NOK 99 858 (approximately € 10,000) per May 1. 2019.
[66] WEA § 19-1.
[67] WEA § 19-3, with reference to the Penal Code. WEA § 19-2 set a criminal liability for employees, but this is hardly used in practice.
[68] WEA § 17-2. The tribunal has competence to decide disputes related to WEA § 8-3, § 10-2 (2), (3) and (4), § 10-6 (10) § 12-14, 14-3 and § 14-4a, cf. § 17-2 (1) and § 10-13.
[69] WEA § 10-2 (2), (3) and (4), and § 10-6 (10).

Apart from these regulatory enforcement mechanisms, the individual contract may provide an avenue for enforcing health and safety regulations indirectly by contractual law sanctions. The Supreme Court decision in Rt. 1997 s. 1506 concerned employees who got sick and felt forced to quit their job due to the harassing behavior of the employer. The Court found that the employer's behavior constituted a material breach of the contract, and awarded compensation. As a central premise, the Court found it clear that the fundamental requirements of the working environment in the WEA, as a starting point, is "included as parts of the rights and duties in an employment relationship". The Court however emphasized that "it takes a lot" to conclude with material breach and compensation due to breach of working environment requirements.

The right to paid annual leave is also related to the health and safety of workers. The right to annual leave pursues health purposes, underpinned by the right to holiday pay. Still, the enforcement regime is entirely different from the regulations of health and safety and working time. The right to paid annual leave is considered a private law regulation of the employment contract relation.[70] The Labour Inspection Authority offers guidance, but does not have competence to control compliance with the Holiday Act by issuing binding orders, impose fines etc. Enforcing the right to paid annual leave is thus left to the individual.

3.2 Health and safety

Scope and allocation of responsibility – points of departure

As part of the WEA, health and safety regulations are included in the main legislative framework for individual employment relations. Consequently, the personal scope and allocation of responsibility for these provisions are – as a point of departure – governed by the general definitions of employer and employee in WEA § 1-8. These concepts are discussed in the country report from Norway part 1.

Therefore, as a starting point, the traditional employee is covered, while the genuinely self-employed is not. One-person undertakings (enpersonsforetak) are not considered to be "undertakings that engage employees" and thus fall outside the scope of the WEA.[71] Whether the self-employed worker is organized as a limited company (aksjeselskap) or by sole proprietorship (enkeltmannsforetak) has no relevance in this regard. As long as there is only one person working, and this person is the owner, the undertaking is not covered by the WEA. For the platform worker, being covered by the WEA depends on legal classifications as an employee of the relevant employer undertaking. As long as platform workers *formally* are self-employed workers, they are less likely to be treated as employees in a health and safety context.

The health and safety regulations are general in nature. Employees in leading and/or independent positions are covered on an equal basis as traditional employees. There is no legal basis for excluding employees with fragmented or marginal contracts, such as short fixed-term or marginal part-time. If platform workers are recognized as employees, they are thus not at risk to be exempt due to the fragmented and/or marginal character of the employment contract.

[70] Ot.prp. nr. 84 (1986–1987) s. 19.
[71] WEA § 1-2 (1) set the scope of the Act, and states: "The Act shall apply to undertakings that engage employees unless otherwise explicitly provided by the Act".

The location of work may however affect the protection. If a platform worker works in private homes, this may affect the application of the WEA in general and, more specifically, regulations on health and safety.

First, platform workers may work in *their own private home,* for instance when work is delivered online. Work in the private home of the employee is covered by the WEA as a starting point. However, unless the work at home is "short term and random", more lenient regulations apply.[72] The duty for the employer to provide a fully satisfactory working environment only applies to the extent this is practically possible, reflecting that the employer's possibility to control the working environment in the worker's home is limited. The regulation does not seem to affect platform workers different than traditional employees. Any employee working regularly from his or her own home to some extent has to take care of the working environment.

Second, platform workers may work in the *private home of the employer*. This has relevance if the customers are considered the employers. A private employer engaging an employee to work in his or her home will usually not be considered an "undertaking", and the activity thus may often fall outside the scope of the WEA.[73] However, certain provisions still apply – among them a duty for the employer to provide a fully satisfactory working environment – depending on the type and amount/stability of work.[74] The provisions apply to domestic work, care or nursing, unless the employment is shorter than one month or the weekly working hours are less than 8 hours. The typical platform worker will only have a short or marginal contract with the customer, and is thus likely to fall outside the scope of the regulation. Consequently, there is a particular risk that platform workers performing work in the private homes of customers will not be covered by health and safety standards if the customers are considered the employers.

Extensions by specific legislative provisions

There are several provisions in the WEA specifically extending the personal scope and allocations of responsibility of health and safety beyond the regular definitions of employee and employer.

The personal scope is extended by WEA § 1-6. The provision states that certain persons who are *not* employees, such as students, inmates, and patients working in their relevant institutions, are still "regarded as employees" in relation to the provisions concerning health, environment and safety "when performing work in undertakings subject to the Act". This extension has little relevance for platform workers.

Several provisions extend the responsibility for health and safety regulations, some of them thereby also affects personal scope.

First, WEA § 2-2 extends the responsibility of the "employer" to provide a safe and healthy working environment to other persons than the employer's own employees.

[72] WEA § 1-5 (1) is a legal basis for regulations concerning work performed at the home of the employee and the extent to which the Act shall apply to such work, and such regulations are stipulated in Forskrift 5. juli 2002 nr. 715 om arbeid som utføres i arbeidstakers hjem.
[73] The term "undertaking" in WEA § 1-2 has replaced the term business (bedrift) in earlier acts. The concept of undertaking thus set a thresold for applying the act – the activity has to have a certain organisation, stability and not be insignificant, see Ot. prp. nr. 31 (1935) p. 7–8.
[74] WEA § 1-5 (2) is a legal basis for regulations stating that provisions of the Act shall wholly or partly apply to an employee who performs domestic work, care or nursing at the home of the employer, and such regulations are stipulated in Forskrift 5. juli 2002 nr. 716 om arbeid i privat arbeidsgivers hjem.

The duties apply to other workers, including agency workers and self-employed workers who perform tasks in connection with the employer's activities or installations. The employer must ensure that own activities (including the activities of own employees) are arranged and performed in a manner that ensure "a thoroughly sound working environment" for such workers.[75] Furthermore, the employer must cooperate with other employers to ensure this, and ensure that working hours of agency workers comply with the regulations of working time.[76]

The extension clearly applies to the genuinely self-employed, when performing work at the premises of an employer. Consequently, it can also apply to platform workers. In principle, both the platform company and the customers may be an "employer" and responsible according to WEA § 2-2. The responsible party must however be an undertaking – a business engaging employees situated in Norway – to be covered by the provision.[77] The extensions are therefore only relevant for some customers and platforms. A company who buys cleaning services via a digital platform will for example be responsible that the company premises represents a safe and healthy working environment for the platform workers who do the cleaning.

When the extension applies, the protection of the platform workers in principle equals the protection of the genuinely self-employed – both should have "a thoroughly sound working environment" when performing work "in connection with the employer's activities or installations". Still, it is unclear if and how this applies to platform companies. The duty to ensure the working environment clearly applies to work performed at the premises of an employer. The remaining question is whether the duty applies to work *digitally* connected to the platform company.[78] The preparatory works indicate that the legislator had *physical* working environments in mind, at least primarily. It is therefore uncertain whether the extension provides any protection in the platform company – worker relation.

For workers covered by the extension – whether they are genuinely self-employed or platform workers – the protection does not equal the protection of traditional employees. In the contract of employment relation, the employer must ensure that *all* provisions laid down in and pursuant to the WEA are complied with, cf. WEA § 2-1. The duty to ensure that activities are arranged and performed in a manner that ensure "a thoroughly sound working environment" may seem more vague and does not necessarily represent the same type of reasonability. The preparatory works leaves the issues unanswered, and there is no case law resolving it, to this author's knowledge. Thus, it is uncertain whether the extension in WEA § 2-2 is a sound legal basis to hold the "employer" accountable for breach of specific health and safety requirements, in the WEA chapter 4 and related regulations.

Therefore, even when platform workers are covered by the extension, the protection is more uncertain than for traditional employees.

Second, WEA § 1-4 sets a legal basis for regulations that extend provisions in the WEA to one-person undertakings, wholly or partly. Pursuant to this provision, a number of specific health and safety regulations "apply correspondingly" to self-em-

[75] WEA § 2-2 (1) a.
[76] WEA § 2-2 (1) b and c.
[77] Otherwise, the activity will fall outside the scope of the WEA altogether, see further in footnote 71.
[78] The question is raised in Marianne Jenum Hotvedt, «Arbeidsgiveransvar i formidlingsøkonomien. Tilfellet Uber», *Lov og rett* 2016 p. 484–503.

ployed workers. This represents extensions of employer responsibility. The extensions typically concern situations where risks for health and safety are elevated, or requirements set to reduce risks that are more serious than normal.[79]

By these extensions, self-employed workers (one-person undertakings) are responsible to comply with the relevant requirements, regardless of their own employment status, and although there might not be any other employees to protect. Hence, the self-employed worker has a duty to protect him-/herself. The main practical consequence is that the Labour Authority Inspection can supervise and control compliance of the relevant standards in undertakings and situations that otherwise fall outside the scope of the WEA. This has relevance for platform workers insofar as the work is covered by the extensions.

Last, but not least, there is an addendum to the definition of employer in WEA § 1-8 (2): "The provisions relating to the employer in this act shall apply accordingly to a person who manages the undertaking on behalf of the employer". The addendum may seem like a general extension of the definition. It however stems from the introduction of personal criminal liability and is in practice applied as a basis for criminal sanctions for more severe infringements of health and safety provisions.[80] The main significance of the addendum is therefore that health and safety regulations may be enforced by personal criminal liability. The relevance for platform workers depends on whether they are covered by the regulations.

Extensions by interpretation

The Report Part 1, Norway, describes in more detail how the purpose of the relevant rules affects the concept of employee. Here, the doctrine on joint employer responsibility – representing a certain flexibility in the concept of employer – is also discussed. The strong protective rationale underpinning health and safety regulation *may* justify wider concepts of employee and employer in this context than in others.

Case law gives examples of broad interpretations of the concept of employer (and employee) in the context of health and safety and criminal liability, see in particular Rt. 1982 s. 645 and Rt. 1985 s. 941 and Rt. 1990 s. 419.[81] The case law is however based on WEA's precursor – the WEA of 1977. As a result of the explicit extensions of the current WEA described above, the need for broad interpretations of the concepts in order to ensure health and safety protection is clearly reduced.

3.3 Working time

As part of the WEA, the regulations on working time are subject to the general definitions of employer and employee in WEA § 1-8. Thus, the personal scope is, as a point of departure, the same as for health and safety regulations: The traditional employee is covered, while the genuinely self-employed is not. The regulations on working time only apply to platform workers if classified as employees.

The allocation of responsibility for working time regulations also seems parallel to health and safety: The duty to comply rests on the "employer", cf. WEA § 2-1. However, regulations on working time only apply to work for *one* employer. It is therefore

[79] See further Marianne Jenum Hotvedt, *Arbeidsgiverbegrepet*, 2016 [Hotvedt 2016] p. 237–241.
[80] Rt. 1982 s. 878, Rt. 1983 s. 196, Rt. 1984 s. 773, Rt. 1985 s. 185 and Rt. 1988 s. 692. See further Hotvedt 2016 p. 229–234.
[81] See further Hotvedt 2016 p. 234–237.

significant whether the platform company or the customer(s) is considered the employer(s). The regulations restrict maximum working time and set minimum requirement for rest periods. If the employers are a number of customers, the effect of the protection is clearly reduced, and the total work of the platform worker may exceed the protective standards. Effective protection for platform workers therefore depend on the platform company being the employer.

The main standard – that working time arrangements must be satisfactory in a health and safety perspective – has a general nature and covers all employees. Employees in leading positions (ledende stilling) or positions with a high level of independence (særlig uavhengig stilling) are however exempt from the specific restrictions in chapter 10.[82] The latter exemption may seem to have relevance for the typical platform worker, who can decide on time (place) and amount of work. According to the preparatory works, the exemption for independent positions is narrow, meant for employees who, although not in leading positions, have senior positions with specific responsibilities.[83] Flexible working hours is not sufficient, the employee must have a clear and obvious independence as regards both how tasks are organized and when tasks are performed. These requirements will only be fulfilled for some platform workers.

Hence, platform workers who are considered employees will generally be covered by the same protective standards as traditional employees. The protective standards are however more lenient to work which is wholly or mainly of a passive nature. The parties may agree on somewhat longer working hours for such work.[84] The threshold is however quite high, there must be a significant element of passivity.[85] This might be relevant for platform workers, for instance if time logged on a platform (but not actively working) is considered working time.

Working time regulations are not subject to parallel extensions as regulations on health and safety. The only extension that may have some relevance for platform workers, is WEA § 2-2 (1) c, which applies to agency work. In agency work, the duty to comply with working time regulations rests on the agency as the contractual employer. WEA § 2-2 (1) c however extend the responsibility to the user entity: The "employer" (here in capacity of being a user entity) has a duty to ensure that working hours for agency workers comply with WEA chapter 10. The extension results in a *joint* responsibility for working time regulations, and strengthens the protection of agency workers. The extension is however less suited to strengthen the protection of platform workers, even if the platform worker is recognized as an employee *and* the platform company is considered the contractual employer. The extension only applies to user entities who are undertakings – businesses engaging employees (operating in Norway). As the customers often are private individuals, the extension will typically not apply. This illustrates that specific regulation of agency work does not necessarily fit well for platform work.

[82] WEA § 10-12 (1) and (2).
[83] Ot.prp. nr. 49 (2004–2005) p. 181.
[84] WEA § 10-4 (2). The Labour Inspection Authority may also allow wider derogations for passive and "particularly passive" work, see WEA § 10-4 (2) and § 10-12 (7).
[85] Ot.prp. nr. 49 (2004–2005) p. 317.

3.4 Paid annual leave

As mentioned above, the right to paid annual leave is considered a private law entitlement related to the employment contract. The Holiday Act – and the right to paid annual leave – only applies to "employees" (arbeidstakere). The definition of employee is identical as in the WEA, while "employer" is not explicitly defined.[86]

As regards the personal scope, the starting point is the same as for health, safety and working time regulations: The traditional employee is covered, while the genuinely self-employed is not. There are no provisions in the Holiday Act extending the personal scope of the right. Consequently, a right to paid annual leave for platform workers depends on being classified as employees.

Case law does not support a particularly wide interpretation of the concept of employee in this context. The Supreme Court has applied the same approach to the Holiday Act as to the WEA in general, and seems to assume a corresponding interpretation of the concept.[87]

The responsibility to ensure the right, both to annual leave and to pay, rests on the employer.[88] The concept of employer is interpreted in accordance with the general definition of employer (in the WEA § 1-8). In line with the private law approach in the Act, the duty rests on the contractual employer as a clear main rule. Holding a platform company responsible for paid annual leave for a platform worker, therefore depends on the platform company – worker relation to be a contract of employment.

The duty to provide holiday pay is however extended when there is a legal basis for joint liability (solidaransvar) for remuneration. In the context of agency work, the user entity has joint liability for the payment of wages, *holiday pay* and any other remuneration pursuant to the principle of equal treatment.[89] The Extension Act provides a basis for public law regulations on minimum terms, i.a. rates of pay (allmengjøringsforskrifter).[90] According to § 13 (1) of this act, contractors have joint liability for the payment of wages, *holiday pay* etc. pursuant to such regulations. Where joint liability applies, holiday pay must be paid at the same time as the wages it is calculated on the basis of.[91]

The right to leave cannot be exchanged for money. The employer has a duty to ensure that the employee takes leave, and the employee has a duty to take leave. Holiday leave not taken by the end of the holiday year, is transferred to the next year.[92] The employee can only oppose to take leave if the right to corresponding pay is not (fully) earned.[93] Platform workers who are considered employees are thus not free to refrain from holiday leave in exchange for higher remuneration.

[86] Holiday Act § 2 (1).

[87] See Rt. 2013 s. 342 (para. 38 and 39).

[88] Holiday Act § 5 (1) and § 10 (1).

[89] WEA § 14-12c, see further in Report Part 1, Norway, section 4.2.

[90] Lov 4. juni 1993 nr. 58 om allmenngjøring av tariffavtaler m.v. (allmenngjøringsloven,the Extension Act), see furter Report Part 1, Norway, p. 6.

[91] Holiday Act § 11 (6).

[92] Holiday Act § 7 nr. 3 (1). This also applies where sickness or parental leave is the reason why holiday is not taken in the holiday year, see § 9 nr. 1 and nr. 2.

[93] An amendment to the Holiday Act in 2014 restricted the exemption to seek compliance with EU/EEA law, see Prop. 73 L (2013 – 2014).

3.5 Overall comparison

The binary distinction between employees and self-employed is deeply rooted in regulations of health and safety, working time and paid annual leave. The three sets of norms all provide clear protection of health and safety of traditional employees, while the same protection does *not* apply to the genuinely self-employed. Protecting the health and productivity of platform workers by these norms therefore depends on the recognition of platform workers as employees.

The system of enforcement leaves the protection of health and safety vulnerable to the challenge of unclear employment status. Workers who are formally self-employed – such as platform workers – are not represented in the WEA's system for information, consultations and cooperation on working environment issues. This makes it hard to voice their concerns, even when they – based on a proper legal assessment – should be classified as employees.

Still, the discussion has revealed interesting differences as regards the ability to provide *some* basic protection of self-employed workers, and – consequently – a basic protection of platform workers irrespective of employee status. While there are several extensions of health and safety regulations, the regulations of working time and paid annual leave are strictly reserved for employees. The extensions reveal a somewhat broader protective rationale: Protecting health and safety of workers justifies some basic protection in certain contexts, irrespective of employment status. However, the expressions of this broader protective rationale is neither consistent nor clear: The extensions are patchy and leave considerable uncertainty as to the scope and level of protection. The typical characteristics of platform work – such as digital connections to the platform and a number of private customers – seem to enhance uncertainty.

4 Basic social security

4.1 The legal framework

The idea of basic social security for all has played an important part in the development the Nordic labour market model. One central aspect of social security is to provide income for individuals who are out of work. Benefits related to *unemployment*, *parental leave*, *sickness*, *injury* and *retirement/old age* have this purpose in common.

The National Insurance Act (NIA)[94] is the general legal framework for social security and ensures a *basic level* of all these benefits. The main legal basis is therefore the NIA, more precisely:

- Chapter 4: unemployment benefit
- Chapter 8: sickness benefit
- Chapter 11: work assessment benefit
- Chapter 12: disability benefit
- Chapter 13: occupational injury benefit
- Chapter 14: benefits related to parental leave
- Chapter 19 and 20: retirement pension

The approach to the personal scope of social security in this framework is neither universal nor based on a clear-cut binary divide. Rights and benefits are to some extent differentiated for *three categories of workers*: employee (arbeidstaker), freelancer (frilanser) and self-employed (selvstendig næringsdrivende). The definitions of the three categories are discussed further below (section 4.2).

The Labour and Welfare Administration (NAV) administers social security benefits. A separate, independent appeals tribunal (Trygderetten) handles appeals on administrative decisions under the NIA.[95] The decisions of the tribunal can be brought to the ordinary courts. There is also a separate board of appeals for disputes concerning sickness benefits in the employer period (Ankenemnda for sykepenger i arbeidsgiverperioden).

The National Insurance system (Folketrygden) is financed by two main charging schemes: payroll tax paid by employers (arbeidsgiveravgift)[96] and national insurance tax (trygdeavgift)[97] paid by persons with membership in the national insurance system. [98] Expenditures are however higher than the revenues, and the deficit is covered by direct transfers of public funds in the national budget.[99] The Tax Administration (Skatteetaten) takes part in administrating the charging schemes.[100]

[94] Lov 28. februar 1997 nr. 19 om folketrygd (folketrygdloven, NIA).
[95] Lov 16. desember 2966 nr. 9 om anke til Trygderetten (trygderettsloven).
[96] Payroll tax is based on gross salaries, and the rates vary from 0 to 14,1 per cent, depending on the region in which the business is located, and with specific rates for primary industries, see https://www.skatteetaten.no/satser/arbeidsgiveravgift/.
[97] The contribution rates vary for different types of income. The rate is 8,2 per cent of personal income (personinntekt), 11,4 per cent of personal income of business income (personinntekt av næringsinntekt) and 5,1 per cent of pension income (pensjonsinntekt), see https://www.skatteetaten.no/satser/trygdeavgift/.
[98] The rules on membership are set in NIA chapter 2.
[99] This principle of financing the National Insurance system is expressed in NIA § 23-1.
[100] NIA § 24-1 and § 24-4.

The basic social security of the NIA is supplemented by mandatory insurance schemes based on statutory regulations. For basic occupational injury benefits the supplement is a mandatory occupational injury insurance scheme.[101] The basic retirement pensions are supplemented by a mandatory occupational pension scheme with minimum requirements.[102] Both regulations hold employers responsible and require schemes to cover employees. There are also supplementing benefits and insurance schemes based on collective agreements.

Particular aspects of this legal framework will be discussed in the following. The discussion is structured according to the type of benefit: unemployment (section 4.3), sickness and injury (section 4.4), parental leave (section 4.5), and retirement and old age (section 4.6). The focus is on *criteria and calculations principles related to labour market activity*. The aim is to map and discuss how such criteria and calculation rules affect the platform worker, compared to the traditional employee and the genuinely self-employed worker. An overall comparison is made in section 4.7.

4.2 Categories of workers and definition of employer

The NIA differentiates rights and benefits for three categories of workers: employee (arbeidstaker), freelancer (frilanser) and self-employed (selvstendig næringsdrivende).

The definition of *employee* is similar to the WEA, but not identical: an employee is anyone who performs work in the service of another *for remuneration*, cf. NIA § 1-8.

A *freelancer* is defined as anyone who performs work or service for remuneration, while not being in the service of another and not being a self-employed, cf. NIA § 1-9.

A *self-employed* is defined as anyone who runs a continuing operation or undertaking (virksomhet) at own account, suited to provide a net income, cf. NIA § 1-10. This definition includes a list of criteria to be assessed when deciding whether someone is self-employed:

- the operation has a certain scope (omfang)
- the person is responsible for the result
- the person has employees in his/her service or employ freelancers
- the person runs the operation from a fixed place of business (office, workshop etc.)
- the person has the financial risk for the operation
- the person use his/her own assets and equipment.

The definitions are not only relevant in the social security context. Due to the close connection between social security benefits and tax-related duties, the definitions are also relevant for the scope of a number of tax law provisions.[103] The demarcation lines however vary. In the social security context, the main divide is between employees on the one hand and freelancers/self-employed on the other hand. Still, some social security provisions distinguish freelancers from self-employed. The main di-

[101] Lov 16. juni 1989 nr. 65 om yrkesskadeforsikring.
[102] Lov 21. desember 2005 nr. 124 om obligatorisk tjenestepensjon.
[103] The distinctive definitions is one reason why the concept of employee is slightly different in a tax/social security context than in a labour law context, see further Report Part 1, Norway, p. 7 and 11.

vide in a tax context is between employees/freelancers and self-employed. For instance, the duty on the "employer" to pay payroll tax (and deduct income tax) applies to salaries to both employees and freelancers.[104]

According to the definitions, the employee is the only category of worker doing subordinate work, while the two other categories of workers are doing independent work. Freelancer is the intermediary category. As the wording suggests, freelancer is a *residual* category. In a recent case concerning sickness benefits for a major, the Supreme Court referred to the definition of freelancer as a "bag provision" (sekkebestemmelse) that applies to whoever is neither an employee nor self-employed, even if a characterization as a freelancer may seem strained.[105] The major was obviously not self-employed. He was not regarded as an employee, as he held an elected office and did not have a (regular) contract of employment. As a logical consequence he belonged to the residual category – the major was a freelancer. In this case, the lack of a contractual basis made the employment status unclear.

The definitions of employee and self-employed in the NIA apply to the traditional employee and the genuinely self-employed, respectively. One distinction regarding one-person undertakings (enpersonsforetak) is however important. As mentioned in section 3.1, one-person undertakings are not considered to be "undertakings that engage employees" and thus fall outside the scope of the WEA, regardless of how the undertaking is organized. In the social security context, on the other hand, the organization matters. If the undertaking is organized as a limited company (aksjeselskap) with a formal contract of employment, the worker will generally be considered an employee in the context of social security, even if he or she is both the owner and the only worker. This must be kept in mind in the following discussions.

Which category the platform worker belongs to, is not clear. Whether the platform worker is doing subordinate work or not, depends on an overall assessment of the realities in the individual case. Therefore, a platform worker *may* be classified as an employee in the context of the NIA. The lack of a formal contract of employment however implicates that a platform worker – at least at the outset – is likely to be *treated* as doing independent work, by the principal as well as by the relevant authorities. The platform worker *may* be classified as self-employed in light of the above-mentioned criteria, depending on the circumstances. In the typology of this paper the platform worker does not act as a genuinely self-employed (by registering a company, charging VAT etc.). Therefore, the platform worker will presumably not be *treated* as self-employed. One might therefore assume that platform workers will usually be treated as belonging to the residual category – as freelancers. The following discussions are based on a general assumption that a platform worker is a freelancer in the context of the NIA.

The NIA does not define the employer, but the Tax Payment Act (TPA) does. The employer is anyone who – themselves or by proxy – pay wages or other remuneration of allowance subject to tax deductions, including payroll tax (arbeidsgiveravgift).[106] Here, the employer is defined by reference to one specific employer function – to provide pay. The reference to whether the pay is subject to tax deductions and payroll tax, has an interesting conceptual implication. Pay to freelancers is subject to tax

[104] NIA § 23-2, see also the Tax Payment Act, lov 17. juni 2005 nr. 67 om betaling av skatte- og avgiftskrav (skattebetalingsloven) § 5-4.
[105] HR-2016-589-A (para. 42).
[106] TPA § 4-1 (1) c.

deduction and payroll tax. Consequently, the freelancer's principal or contractual party is an "employer" in the tax and social security context although the relation is not one of subordination, but independent work.[107]

Whether a platform company will be considered the employer of the platform worker in the context of the NIA, therefore depends on the payment-function and on the personal scope of the relevant provision.

4.3 Unemployment

The unemployment benefit of the NIA chapter 4 covers both employees and freelancers, but not self-employed.[108] Hence, traditional employees and platform workers are covered, while the genuinely self-employed are not.

Labour market activity has significance and is reflected in both criteria and in calculation principles. Although both criteria and calculation principles are the same for employees and freelancers, platform workers might be affected differently than traditional employees.

In order to be eligible for the benefit, there must be a *loss of earned income* caused by *unemployment*. The income previously earned must exceed a minimum level in order for the loss of income to be relevant.[109] Income earned by work and benefits related to pregnancy and parental leave are included.[110] The gross earned income the last 12 months must exceed 1,5 G or exceed 3 G for the last 36 months. An overall assessment of 12 or 36 months provides an important leeway for platform workers, whose income often vary. Still, the minimum level is likely to affect platform workers more than traditional employees. Platform workers risk not qualifying, as they typically work occasionally.

To constitute unemployment, there must be a minimum reduction of regular working hours.[111] The working hours must be reduced by a minimum of 50 per cent, compared to the actual working hour the person used to have. There is no requirement that limits the assessment to work for one employer. This relatively wide concept of unemployment has significance for platform workers. Due to the lack of employment protection, platform workers are particularly exposed to variations in working hours. The unemployment benefit may thus ensure income not only when (totally) out of work, but also in "slow" periods of fewer gigs or tasks. On the other hand, the requirement may exclude workers who are doing platform work while seeking work as employees. In practice, this requirement is the main reason for refusing unemployment benefits.[112]

The benefit is calculated individually, based on earned income.[113] The *base* of the benefit (dagpengegrunnlaget) is set based on gross earned income the last 12 months, or – if it leads to a higher base – average annual income the last 36 months. Here,

[107] For a clear illustration of this conceptual «leap», see HR-2017-344-A.
[108] NIA § 4-3 (1).
[109] NIA § 4-4.
[110] These benefits are included as the rules would otherwise be discriminatory, see Asbjørn Kjønstad, Aslak Syse and Morten Kjelland, *Velferdsrett I*, 6. ed. 2017 [Kjønstad/Syse/Kjelland 2017] p. 156.
[111] NIA § 4-3 (2). The person also has to sign up as a jobseeker at a NAV office and be a "real" jobseeker (fit and able to work and – as a point of departure – willing to accept any work, anywhere in Norway, irrespective of whether it is full- or part-time), cf. NIA §§ 4-5 and § 4-8.
[112] Kjønstad/Syse/Kjelland 2017 p. 156.
[113] NIA § 4-11.

this includes both income earned by work and a number of social security benefits, such as sickness and unemployment benefits. The concept of income is thus wider than in the qualifying criteria.[114] Income exceeding 6 G is however excluded.[115] The total income earned by the individual (within a certain period) counts, irrespective of whether it comes from different sources. Platform workers will therefore not be affected negatively by having several sources of income.

The *size* of the benefit is calculated as a daily rate of 2,4 per thousandth of the base, covering five days a week.[116] In average, this equals 62,4 per cent of previous gross income up to 6 G. Being *partly* unemployed triggers a proportionate benefit (graderte dagpenger). The benefit is reduced proportionately according to the reduction of working hours.

The benefit period also depends on gross earned income.[117] Where income exceeds 2 G the last 12 months, or as an average for the last 36 months, the full period is 104 weeks. If the income is lower, the full period is 52 weeks. Platform workers working occasionally, often for low pay, are thus risking a shorter benefit period than a traditional employee who used to be in full-time employment.

This reveals a few particular risks for platform workers, even though they (as freelancers) are formally treated equally to employees. Platform workers risk not qualifying for unemployment benefit or only qualifying for a shorter period. Income protection when out of work due to unemployment is therefore somewhat less secure for platform workers than for traditional employees.

4.4 Sickness and injury

introduction

The benefits in the NIA related to sickness and injury are related to different phases: *sickness benefit* (sykepenger) for the first period of sickness, *work assessment benefit* (arbeidsavklaringspenger) for the phase of rehabilitation and work-related measures and *disability benefit* (uføretrygd) if the capacity for income-generating work has been permanently reduced. For workers who do not qualify for these benefits, the alternative is a social aid benefit. [118] The emphasis here is on the sickness benefit (4.4.2), the two other benefits are only briefly discussed (4.4.3).

In the case of *occupational injury* or sickness (yrkesskade), there are additional rights and insurance schemes (4.4.4).

Sickness benefit

A right to sickness benefit covers both employees, freelancers and self-employed. The benefit is however regulated separately, and there are some significant differences.[119]

[114] Kjønstad/Syse/Kjelland 2017 p. 164.
[115] The National Insurance basic amount (G) is adjusted annually and is NOK 99 858 (approximately € 10,000) per May 1. 2019.
[116] NIA § 4-12. A child allowance is also available.
[117] NIA § 4-15.
[118] Lov 18. desember 2009 nr. 131 om sosiale tjenester i arbeids- og velferdsforvaltningen (sosialtjenesteloven) § 18.
[119] The sickness benefits for employees, freelancers and self-employed are regulated in NIA chapter 8, subchapters II, III and IV, respectively.

One main difference is that only employees are covered the first period of sickness. Employees are entitled to sickness benefit *from the employer* during the "employer period" (arbeidsgiverperioden), which lasts up to 16 calendar days. In contrast, freelancers and self-employed are not entitled to any benefit during the first 16 days of sickness.[120] They may however sign up for a voluntary insurance scheme to cover this period.[121]

In the typology of this paper, the genuinely self-employed worker has signed up for – or at least considered – a voluntary insurance scheme, while the platform worker has not. Platform workers will therefore generally not be entitled to any benefit during short-term sickness (up to 16 days).

Even if recognized as an employee, the platform worker might not be eligible for sickness benefit in the employer period. There is a qualifying period of four weeks of employment, and the sickness benefit only covers days when the employee has a *right* to pay.[122] With occasional work and/or hourly pay, the platform worker risk not qualifying.

After the employer period, The National Insurance (Folketrygden) provides sickness benefits to all three categories: employees, freelancers and self-employed.

A minimum requirement of work activity and the main principles of calculation are common: The worker must have earned an income that equals an annual income of ½ G. The benefit is calculated individually. An annual income is estimated based on reported income.[123] The base for the sickness benefit is a daily base of 1/260 of the annual base.[124] Workers who are partly incapacitated, have a right to a proportionate benefit, but only if the ability to perform income-generating work is reduced by at least 20 per cent.[125]

The minimum requirement is so low that practically every worker with an income is included. Platform workers who work only very sporadically for low pay still risk not to qualify.

The calculation of the benefit differs between the three categories. The main difference is that the benefit to employees and freelancers is 100 per cent of the base (sykepengegrunnlaget), while the benefit to self-employed is at 80 per cent of the base.[126] Platform workers are thus formally protected on an equal basis as employees in the case of long-term sickness (more than 16 days).

There are only minor differences in the details of the calculation principles for employees and freelancers. For employees the estimated income is mainly based on employer reporting, usually for the previous three months.[127] It includes earned income,

[120] NIA §§ 8-38 (2) and 8-34 (2), respectively.
[121] NIA §§ 8-39 and 8-36, respectively.
[122] NIA § 8-18 (1) and (4).
[123] In the employer period, the base is an estimated *monthly* income, cf. NIA § 8-28 (1). For benefits after the employer period, the base is converted to an estimated *annual* income, cf. NIA § 8-30.
[124] NIA § 8-10 (1).
[125] NIA § 8-13.
[126] The voluntary insurance scheme for self-employed may provide coverage of 100 per cent, cf. NIA § 8-36.
[127] The estimated montly income is the average monthly income according to the employer's mandatory reporting to the authorities in a specific period, normally the last three months, cf. NIA § 8-28 (2) and (3). If reporting is insufficient or wrong, the income is set according to what the employer should have reported, cf. NIA § 8-28 (5). There is also some room for discretion when estimating the annual income, see NIA § 8-30 (2) and (3).

both wages and other remuneration for working efforts.[128] For freelancers the calculation is based on the same type of income and according to mainly the same provisions as for employees.[129] If workers have combined income as employee with income as freelancer, the benefit is calculated according to the provisions for employees.[130] Consequently, the calculation principles do not seem to represent particular risk for the platform worker compared to traditional employees.

The period of sickness benefit from the National Insurance is maximum 248 days.[131] For employees who are entitled to sickness benefit in the employer period, this provides income protection for one year. The days of sickness benefit may be continuous or occur within a period of three years. When the right to sickness benefit has expired, the relevant benefit is a work assessment benefit, see below.

In sum, platform workers are entitled to sickness benefit during long-term sickness, but lack protection during short-term sickness. The latter puts platform workers in a considerably weaker position compared to both traditional employees and genuinely self-employed workers. The level of earned income is reflected in the size of the benefit.

A number of collective agreements provide supplementing rights to sickness benefits for employees. Agreements in the public sector provide a right to "full sickness pay", but this is less common in the private sector.[132] The agreements typically require employers to provide *full* pay, including pay exceeding 6 G, and leave it to employers to seek the employee's benefit from the National Insurance as a refund.[133] Supplementing rights to sickness benefit will generally not apply to platform workers, both because they lack recognition as employees and because they usually work in the private sector.

Work assessment benefit and disability benefit

The right to a *work assessment benefit* does not depend on a right to sickness benefit or previous work activity. Anyone who has been a member of The National Insurance for the last three years, or one year when the reduction in work capacity occurred, is eligible.[134] The main criterion is a reduction in the capacity for work by at least half, due to sickness or injury.[135]

Consequently, the benefit covers platform workers irrespective of employment status. The details of the regulations however differ somewhat, depending on

[128] NIA § 8-29. In comparison, the base for self-employed equals annual pensionable income. It only includes 1/3 of income between 6 and 12 G, and income above 12 G is excluded, cf. NIA § 8-35.
[129] NIA § 8-38 (5).
[130] NIA § 8-40. The provisions for employees also applies to workers who has combined income as employee and as self-employed, although with some specific calculation provisions, cf. NIA § 8-41. This provision also applies to combinations of income as freelancer and self-employed, cf. NIA § 8-42.
[131] NIA § 8-12 (1).
[132] Kristin Alsos, "Tariffavtalenes regulering av lønn under sykdom", *Fafo-notat 2019:01* [Alsos 2019], p. 7–10.
[133] Alsos 2019 p. 11–13. The details vary, i.a. whether the right to sickness pay under the collective agreement is conditioned by a right to benefit under the NIA.
[134] NIA § 11-2.
[135] NIA § 11-5. Sickness or injury must be a significant contributing cause.

whether the person has a right to sickness benefit, is a student, is establishing an undertaking, is seeking work etc.[136]

The benefit is calculated based on pensionable income (pensjonsgivende inntekt) for the previous year, or based on an average income for the last three years if this is higher.[137] Income exceeding 6 G is not included.[138] The benefit is 66 per cent of the base, but the minimum annual benefit is 2 G.[139] The minimum level provides extra protection for workers with limited work activity and/or low pay, and is therefore relevant for platform workers.

Pensionable income as a base for calculating the benefit does not seem to pose a particular challenge for platform workers. A main component of pensionable income is "benefit achieved by work".[140] This includes wages, remuneration and other allowance gained by work of employees and freelancers, but not business income or profits.[141] All hours worked as a platform worker therefore counts, irrespective of employment status.

The right to a *disability benefit* (uføretrygd) also applies to all three categories: employees, freelancers and self-employed. Previous work activity is not required. Anyone who has been a member of The National Insurance for the last three years, or one year when the disability occurred, is eligible.[142] To qualify for the benefit, there must be a lasting sickness or injury, resulting in a lasting disability, and the ability to perform income-generation work must be reduced by at least half.[143]

This benefit is also calculated based on pensionable income, but for the previous five years, and the average income in the best three years is decisive, up to 6 G.[144] The benefit is 66 percent of the base as a starting point.[145] There are minimum annual benefit levels between 2 and 3 G.[146] This may be a relevant protection for platform workers with low income.

To summarize, platform workers are formally protected on an equal basis as other workers as regards work assessment benefit and disability benefit. As in the case of sickness, the level of previous income is reflected in the size of the benefits. Minimum benefit levels however ensure extra protection for workers with low income. This is a relevant safety net for platform workers where sickness has led to a lasting incapacity to work.

[136] NIA §§ 11-11 to 11-18.
[137] NIA § 11-19.
[138] Pensionable income exceeding 6 G as an average in one calender year is not included, cf. NIA § 11-19 (2).
[139] NIA § 11-20. The benefit is calculated as a daily rate of 1/260 or the annual rate, for five days a week.
[140] NIA § 3-15, cf. The Tax Act § 12-2. Certain social security benefits are equated to occupational activity, i.a. benefits related to unemployment and sickness, cf. NIA § 14-6 (2).
[141] The Tax Act § 5-10 (1) a.
[142] NIA § 12-2.
[143] NIA §§ 12-6 and 12-7. Sickness or injury must be the main cause of the lasting disability.
[144] NIA § 12-11.
[145] NIA §§ 12-12 and 12-13. The level may be reduced depending on the length of membership in the national insurance (trygdetiden).
[146] See in particular NIA §§ 12-13 (2) and (3). The exact minimum varies depending on i.a. whether the person lives alone or in marriage or partnership.

Occupational injury benefits and insurance

Occupational injury benefit (yrkesskadedekning) is more precisely a *set* of benefits, i.a. an annual compensation for permanent injury (ménerstatning) and a number of special provisions on criteria and calculation of other benefits, such as sickness -, work assessment - and disability benefits.[147] Only employees are covered, while freelancers and self-employed are not. Platform workers are therefore generally not covered.

Even if recognized as employees, platform workers might face particular obstacles due to the temporal element in the definition of occupation injury. An occupational injury is an injury, sickness or death caused by a work accident that happens *while the person is covered*.[148] Employees are only covered when at work, at the workplace, during working time.[149] This provides clear coverage for traditional employees working at a physical premises of the employer within regulated working hours. For platform workers, both workplace and working time may be harder to define. This may represent a risk of not being covered.

Freelancers and self-employed may sign up for a voluntary occupational injury scheme, but only if expected annual income exceeds 1 G.[150] In our typology, the genuinely self-employed will typically sign up and be covered, while platform workers will not. The minimum income requirement may also be an obstacle for platform workers who only work sporadically for low pay.

As mentioned above in section 4.1, a mandatory occupational injury insurance scheme supplements the statutory benefits. This protection only covers employees, and hinges on a similar definition of occupational injury/sickness.[151] There is also supplementing protection in collective agreements for employees in the public sector, but this is less relevant for platform workers.[152]

In sum, protection related to injury or sickness caused by work is clearly weaker for platform workers compared to both traditional employees and genuinely self-employed. Statutory protection depends on employment status, and even if recognized as an employee, platform workers may face a particular risk of not being covered.

4.5 Parental leave

A right to parental leave (for employees) is regulated in the WEA, while the right to the related benefit is set in the NIA.[153] All three categories – employees, freelancers and self-employed – are entitled to benefits. Both criteria and calculation principles are formally the same, but platform workers might be affected differently than other workers.

[147] NIA § 12-2.
[148] NIA § 13-3. Certain occupational diseases are also included, cf. NIA § 13-4.
[149] NIA § 13-6. The employee may be covered during travelling time on certain conditions.
[150] NIA § 13-13.
[151] Yrkesskadeforsikringsloven §§ 1, 10 og 11. The risk of not being covered is however somewhat reduced, as there is a legal presumption that the injury or sickness is caused when at work, at the workplace, during working time, cf. § 11 (2).
[152] See for example Hovedtariffavtalen i staten 2018–2020 mellom Staten og LO Stat, Unio og YS Stat, Fellesbestemmelsene §§ 23 og 24. This author is not aware of similar regulations in collective agreements in the private sector.
[153] WEA chapter 12, in particular §§ 12-4 and § 12-6, and NIA chapter 14 II.

Occupational activity is a qualifying criterion.[154] As a point of departure, a pensionable income (pensjonsgivende inntekt) in at least six of the last ten months is required, and the income must exceed ½ G.[155] The minimum level of ½ G is low, but still represents a risk not to qualify for platform workers with sporadic work and low income. However, persons not eligible for the benefit are entitled to a lump sum grant (engangsstønad) at birth or adoption at close to 1 G.[156]

As regards calculation, the base is calculated by the same principles as sickness benefits.[157] In contrast to sickness benefits, all workers – including self-employed – are entitled to a benefit of 100 per cent of the base.

The benefit period is fairly generous and flexible. The worker can choose a period of 245 days (49 weeks) on a full rate or 295 days (59 weeks) on a reduced rate.[158] There is also an opportunity to combine part-time work with a lower rate over a longer period (gradert uttak), with a proportionate benefit.[159] In practice, this flexibility may be easier to achieve for traditional employees than for others. Employees need a written contract with the employer on part-time work for the relevant period, while freelancers and self-employed need a written agreement with the welfare authorities.

A number of collective agreements provide supplementing rights for employees. In the public sector, there is a right to "full pay" related to parental leave, and similar rights occur in the private sector.[160] Such rights will generally not cover platform workers, mainly because they lack recognition as employees.

To summarize, there does not seem to be significant risks for platform workers as regards basic income protection when out of work due to birth or adoption: The right to parental leave benefits in the NIA is equal for all workers, and there is an alternative grant if occupational activity requirements are not met. However, also in this context, a low level of income is reflected in the size of the benefit.

4.6 Retirement and old age

There is a complex and interrelated set of rights to benefits related to retirement and old age. A number of occupational pension schemes (tjenestepensjonsordninger) set by statutory regulations and collective agreements supplement the basic rights in the National Insurance pension scheme (Folketrygdens alderspensjon). Due to the complexity of the system, the discussion will be brief and limited to some main features.

The supplementing schemes typically only cover employees. Platform workers' rights to occupational pensions therefore depend on recognition as employees.

[154] Other main criteria are birth or adoption of a child the person has a parental responsibility for (NIA § 14-5) and occupational activity (NIA § 14-6).
[155] NIA § 14-6 (1). The minimum level is related to the income converted to an annual income.
[156] The grant is set by the Parliament, cf. NIA § 14-17 (5). From January 1. 2019, the grant is NOK 83.140.
[157] NIA § 14-7 (1), see further in section 4.4.
[158] The benefit period can start before birth, see further NIA § 14-10. There is however also a maximum period *after birth* at 230 days/45 weeks or 280 days/56 weeks on full or reduced rates, resepectively. This equals the benefit period in case of adoption, cf. § 14-9 (2).
[159] NIA § 14-16. The benefit is then proportionate to the difference between a full-time position and the person's time position.
[160] See for example Hovedtariffavtalen i staten 2018–2020 mellom staten og LO Stat, Unio og YS Stat, Fellesbestemmelsene § 19. For an example from the private sector, see Sentralavtalen mellom Finans Norge og Finansforbundet 2018–2020 § 13.

The National Insurance pension scheme is complex in itself.[161] The system underwent a fundamental reform in 2010–2011, and the reformed scheme is introduced gradually. As a consequence, there is today a four-tier system:

- the "old" pension scheme for persons born 1943 or earlier
- the revised pension scheme for persons born 1943–1953
- the combined pension scheme for persons born 1954–1962
- the "new" pension scheme for persons born 1963 and onwards.

The latter scheme is most relevant for this study, due to the future perspective and because most platform workers are relatively young.[162]

The new pension scheme (as well as the others) is a system of *earning* pension rights through membership in The National Insurance, with two main modes of earning:

- earning by *active membership* – by earning a pensionable income (pensjonsgivende inntekt)
- earning by *passive membership* – by a being a member

Hence, the model is a synthesis of a minimum financial security for all residents and an income-related component. In the new pension system, the two components are named *guaranteed pension* (garantipensjon) and *income-pension* (inntektspensjon). In addition, there are certain needs-related elements, such as a child-allowance (barnetillegg) and a marriage-allowance (ektefelletillegg).

The system as such does not differentiate based on employment status. The mode of earning rights by pensionable income does not seem to pose a particular challenge for platform workers, as already discussed.[163]

A right to a guaranteed pension requires minimum three years of membership, and full rights require 40 years of membership.[164] At the moment, full annual guaranteed pension varies from NOK 176.099 to NOK 190.368 depending on relationship status.[165]

The calculation of the income-pension in the new system differs from the old. The changes are mainly due to the need for austerity measures, but also seek to provide more freedom for the individual and to encourage work activity. Important new principles are life expectancy adjustment, index regulation (by an index lower than the growth in wages), calculation based on all years of income (instead of the "best" years) and flexible withdrawal of rights from the age of 62 to 75 (not affecting the total pension).[166] This facilitates combinations of pension and work. Income exceeding 7,1 G is however excluded.

This brief presentation shows the varying significance of employment status and labour market activity as regards benefits related to retirement and old age. The National Insurance pension scheme covers all workers, and calculation of these basic pensions only partly depends on previous income. Supplementing occupational pension schemes, on the other hand, are generally reserved for employees. The guaranteed pension represents an important safety net very relevant for platform workers.

[161] The presentation here leans considerably on Kjønstad/Syse/Kjelland 2017 p. 359–365.
[162] NIA chapter 20 regulates the new scheme.
[163] See section 4.4.2.
[164] NIA § 20-10.
[165] NIA § 20-9.
[166] See in particular NIA §§ 20-12 to 20-18.

Still, unclear employment status and low income levels leave platform workers with less secure protection than traditional employees when out of work due to old age.

4.7 Overall comparison

The legal framework providing basic social security for persons out of work is complex. Rights and benefits are differentiated according to i.a. the legal basis, categories of worker and the reason why the person is out of work. The protection of platform workers compared to traditional employees and genuinely self-employed workers therefore varies substantially, depending on the specific context.

The basic statutory rights and benefits in the NIA are less dependent on employment status than the supplementing rights and insurance schemes. Although the NIA defines three categories of workers (employee, freelancer and self-employed), all workers are covered by some basic protection when out of work, irrespective of whether the reason is unemployment, sickness/injury, parental leave or retirement/old age. One distinctive difference remains: Only employees have a right to sickness benefit during short-term sickness (up to 16 days). This represents a significant risk for platform workers, as short-term sickness affects practically everyone.

The benefits of the NIA are, in general terms, based on previous income. One the one hand, income earned by platform work is generally included. On the other hand, a low level of income – as platform workers may have – is reflected in the size of the benefits. There are only guaranteed minimum levels in the long-term benefits related to disability and old age (work assessment benefits, disability benefits and pension). Consequently, the precarious position of the typical platform worker – with occasional work for low pay – is "reproduced" in the level of social security.

Additional rights and benefits with a different legal basis, on the other hand, typically only applies for employees. The mandatory schemes for occupational injury insurance and occupational pension only cover employees, and the same applies for additional rights based on collective agreements. Collective agreements provide additional income protection during sickness and parental leave, particularly in the public sector. Collective agreements also provide important additional pension rights, both in the public and private sector. The unclear employment status of platform workers represents a high chance of not being covered by these additional rights in practice. Platform workers thereby risk a lower level of income security than traditional employees, when out of work for different reasons.

Even if platform workers are recognized as employees, some specific risks related to platform work can be pinpointed. Occasional work activity and low pay seem to put platform workers at a particular risk not to qualify for unemployment benefit, or only qualify for a shorter period. A similar risk is present in the context of sickness and parental leave, but lower minimum requirements reduce the risk. Furthermore, platform workers may face a risk of not being covered by protection related to occupational injuries, as platform work makes it harder to define the workplace and working time.