Sweden

Annamaria Westregård

I. Introduction

This update of Looking for the (Fictitious) Employer – Umbrella Companies: The Swedish Example, in Social Law 4.0: New Approaches for Ensuring and Financing Social Security in the Digital Age,[1] covers new developments from autumn 2020 to spring 2024.

So far, no new changes that focus on platform work and umbrella companies have been made in traditional labour law legislation, nor are there at the moment any legal inquiries which focus on platform work and umbrella companies. Some new collective agreements for platform and umbrella company workers were, however, concluded in 2021 and the first court rulings clarifying the employment status of umbrella company workers were issued. Of particular interest is a new case about platform work and temporary work agencies, involving a three-party construction, from the Labour Court, see section II.1.b). Legal inquiries have been made to determine the possibility of extending the health and safety protection in the 1977 Work Environment Act (Arbetsmiljölagen 1977:1066) to also include platform workers and umbrella company workers. These legal inquiries were prompted by new cases from the administrative courts, see section II.2.a). There have, so far, been no major changes in social security legislation, although legal inquiries have been made into the calculation of sickness and unemployment benefits that are meant to improve access to social security of non-standard workers, see section III. For some concluding comments on the Directive on improving working conditions in platform work[2] from a Swedish perspective, see sections IV and V.

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1 *Westregård, Annamaria*, Looking for the (Fictitious) Employer – Umbrella Companies: The Swedish Example, in: Becker, Ulrich/Chesalina, Olga (eds.), Social Law 4.0: New Approaches for Ensuring and Financing Social Security in the Digital Age, Baden-Baden: Nomos 2021, pp. 203-227.

2 Directive EU 2024/2831 on Improving Working Conditions in Platform Work, OJ L, 2024/2831.

II. Labour Law and Health and Safety Protection

1. Labour Law

a) General News in Legislation with Impact on Platform and Umbrella Company Workers

One of the most important Swedish labour laws, the 1982 Employment Protection Act (1982:80), underwent extensive revision in 2022. The changes in Section 4 a) are of special interest with regard to platform workers and umbrella company workers. Unless otherwise agreed by the parties, an employment contract will now be presumed to mean full-time employment.[3] This can have an effect on zero-hour contracts, although such contracts are still rare in the Swedish labour market, where employment contracts are generally concluded for each and every short assignment. In such cases, the presumption of an employment relationship is not activated. There have also been changes in Section 6 i), which states that an employer is not allowed to prohibit an employee from taking on employment with other employers unless the new position competes with the employer in a harmful way. This statutory legislation may also be useful for platform workers who work for more than one company and claim to be employees rather than self-employed.

b) New Practice from the Labour Court

The Swedish Labour Court recently delivered a judgement on platform work and temporary work agencies.[4] A food delivery platform company, Foodora, used a three-party construction involving a temporary work agency acting as an intermediary between Foodora and the performing party. The performing party, a moped courier, was employed by the temporary work agency on a very short contract for each assignment and then rented out for each assignment to Foodora. Foodora also had employees of its own who delivered food by bicycle. For these employees, Foodora has a collective agreement, the Bike Delivery Agreement, between Foodora and the Swedish Transport Workers' Union, see below. The three-party construction involving the temporary work agency was used only in relation

3 If the employer states otherwise, the burden of proof is on him.
4 Labour Court ruling 2022 no. 45.

to couriers delivering food by moped. The performing party switched from delivering by bike and being employed by Foodora on (short) fixed-term contracts, to delivering by moped and being rented out by the temporary work agency to Foodora. The reason for the performing party wanting to switch from bike to moped was that the remuneration for moped couriers was much higher than that for Foodora-employed bike couriers. The performing party did not understand that the change from bike to moped also meant a change of employer and in employment conditions. The legal issue was whether the performing party was still employed by Foodora or employed by the temporary work agency. The Union regarded the three-party construction as a case of bogus employment aimed at avoiding the collective agreement. The Labour Court decided that the three-party construction was not to be considered bogus employment and that the performing party was not employed by Foodora.

The case raises a number of questions. In its decision, the Labour Court kept strictly to the regulations in the 2012 Agency Work Act (2012:854) and focused on interpreting the definition of temporary work agencies in Sec. 5 (1). The Labour Court did not analyse the role of the temporary work agency in question, which differed from that of regular temporary work agencies in that it rented out employees exclusively to Foodora, after the performing party had accepted an assignment on Foodora's platform. The employment was not, as is normally the case in temporary work agencies, a permanent position. The Labour Court also accepted the construction wherein the temporary work agency employed the performing party, on a short, fixed-term contract, only for the duration of the assignment. If the Labour Court had instead decided that the performing party was (still) employed by Foodora, this would have had consequences for the whole temporary work agency industry in Sweden. The judgement must be seen as an important signal from the Labour Court, indicating that temporary work agencies are now an established industry in their own right.[5] Abuse of law might have been an alternative route to pursue for the Union, but no question of abuse of law was invoked.

5 There was no discussion in the case of whether the blue-collar agreement on general employment conditions in the temporary work agency industry was applicable, so the temporary work agency was probably not a member of the employers' organisation.

c) Collective Agreements Concluded for Platform and Umbrella Company Workers

Two new types of collective agreement were concluded in 2021, one for platform workers and one for umbrella company workers.

The only collective agreement in Sweden so far that covers platform work was concluded at local company level: the above-mentioned Bike Delivery Agreement between Foodora and the Swedish Transport Workers' Union. The solution chosen in that collective agreement is that platform workers are permanently employed by the platform and receive a salary per hour and extra payment for each delivery.[6] They are regarded as regular employees and therefore the collective agreement falls outside the scope of Art. 101 TFEU. There are, so far, no collective agreements that cover Foodora's moped and car couriers.

There is also an industry-wide collective agreement for umbrella companies, between the Swedish Umbrella Companies' Trade Association and the union Säljarna.[7] In the umbrella company business model,[8] umbrella company workers are regarded as employees, and according to the collective agreement, they are employed on a short, fixed-term employment contract for the duration of an assignment.[9] They are not regarded as self-employed.[10] The employer is, according to the collective agreement, obliged to provide sickness insurance, accident insurance, life insurance and pensions. The other Swedish unions are still reluctant to conclude collective agreements in cases where the employment is a short, fixed-term contract, as most unions want the main employment to be a permanent position and fixed-term contracts to be exceptions.

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6 Sec. 2 in the Foodora Agreement, see also Labour Court ruling AD 2022 no. 45.

7 https://saljarnas.se/om-saljarnas/in-english/ (accessed on 1 September 2024).

8 Umbrella companies in Sweden have a special design: The umbrella company worker (to be) bids for work, and, if successful, arranges both the work and the remuneration with the client. After having made sure the client has signed a contract with the umbrella company, the umbrella company worker (to be) goes on to sign a short, fixed-term employment contract for the duration of the assignment with the umbrella company. The client is invoiced by the umbrella company when the work is done. Once the client has paid the umbrella company, the performing party is credited, after deductions for tax, social security contributions, and the umbrella company's commission.

9 Para. 2 in the Säljarna Collective Agreement.

10 See *Westregård, Annamaria*, Who Counts as an Employer in Sweden?, Italian Labour Law e-Journal 13 (2020) 1, https://illej.unibo.it//article/view/10997/11359 (accessed on 1 September 2024).

2. Health and Safety Protection

a) New Practice from the Administrative Courts

Two important judgements on whether the 1977 Work Environment Act (Arbetsmiljölagen 1977:1066) is applicable to platform work were delivered by the Administrative Court of Appeal in the autumn of 2021.[11] The question was whether the Swedish Work Environment Authority had the mandate to inspect the workplace of platform workers and impose conditional fines. The Court focused on whether the platforms Taskrunner AB and Tipptapp AB were employers in the sense intended in the Work Environment Act according to the aims formulated in the *travaux préparatoires* (government bill).[12] The Court came to the conclusion that the platforms' influence over the work environment of platform workers was virtually non-existent, and that the platforms were therefore not employers in the sense of the Work Environment Act. No party was thus found to be responsible for the work environment of platform workers.

b) Proposed New Legislation

After these judgements, a legal inquiry was initiated, resulting in a government inquiry report, SOU 2022:45 *Steg framåt, med arbetsmiljön i fokus* (Step Forward with the Work Environment in Focus.) A new concept, that of a *responsible principal*, was introduced. According to the proposal in SOU 2022:45, a principal that has influence over and can improve the work environment, is responsible for the work environment of platform workers and umbrella company workers, even if they are not employed by him. The responsible principal can be either the platform or the service consumer. In a three-party construction, only a service consumer that is a company can be a responsible principal, as the proposal does not apply to private persons. So far, the proposal has not resulted in any legal changes, which means there is still a gap in the legislative protection of platform workers.

11 Administrative Court of Appeal in Gothenburg Judgement of 19 November 2021 in case 4120-21 (Taskrunner AB) and Judgement of 9 December 2021 in case 6394–21 (Tipptapp AB).

12 Government Bill, prop. 1976/77:149, pp. 194-196.

III. Social Security

1. Sickness Benefits

The social security system for sickness benefits and parental leave as it is described in Social Law 4.0 Sec. III.3. has not yet undergone any major legal changes. The social security insurances are still designed for employees with full-time permanent positions and the traditionally self-employed. Employees with intermittent working hours and no planned schedules still have problems compared to regular employees, both with regard to entering the insurance and with regard to the calculation of benefits. This particularly affects umbrella company workers and platform workers who decide for themselves when to work. For the genuinely self-employed who hold a business certificate, it is easier to access sickness benefits as the Swedish Social Insurance Agency assumes these self-employed work full time.[13]

According to the Swedish Social Insurance Agency, the employment contract is of particular importance in their assessment of whether platform workers and umbrella company workers should receive sickness benefits. The problem is that a formal employment contract is not at all necessary, according to labour law. This, along with the non-existent definition of the concept of employment, creates difficulties for administrators charged with the task of assessing the right to benefits for those with unregular working hours offered at short notice – often the case for platform workers.[14]

Most umbrella company workers are regarded as either employees or on-demand workers.[15] Changes to the 2010 Social Insurance Code (2010:110), which entitle on-demand workers to sickness benefits for 90 days, subject to the same conditions as other employees,[16] were introduced on 1 February 2022.[17] Before the changes, on-demand workers without scheduled work who became ill were regarded as unemployed. They were entitled to sickness benefits on the same conditions as other unemployed workers, which is unfavorable compared to sickness benefits for employees. Surprisingly, in

13 The Swedish Social Insurance Inspectorate, ISF Report 2023:3, p. 45.
14 ISF Report 2023:3, p. 65.
15 ISF Report 2023:3, p. 68.
16 Government inquiry report SOU 2020:26 En sjukförsäkring anpassad efter individen, pp. 62 ff.
17 *Westregård, Annamaria*, Looking for the (Fictitious) Employer – Umbrella Companies: The Swedish Example (fn. 1), pp. 203-227.

spite of what is said in the Swedish *travaux préparatoires*, administrators apply this rule to umbrella company workers, which is of course advantageous for them and solves some of the problems they have accessing and calculating sickness benefits.[18]

Calculating benefits for part-time workers with irregular working hours is still problematic, as calculations focus on what the performing party could have been expected to earn if not sick. A legal inquiry that resulted in government inquiry report SOU 2023:30[19] may improve their situation as it suggests that "historical income" should instead be used as the basis for the calculation of benefits. For self-employed persons with a registered company this would mean using the average income gained over the previous three years, and for employees the income over the previous year. One of the main aims in SOU 2023:30 is to eliminate the differences between employees and self-employed workers, so that it does not matter whether the performing party is categorised as an employee or as self-employed. Regulations for the two categories can, of course, not be exactly the same, but the legal effects can be similar. Income from both employment and from a company can be combined and is accumulated so the benefits are calculated on the whole sum.

2. Unemployment Benefits

The government has just announced it will proceed with legal inquiry SOU 2020:37, described in Looking for the (Fictitious) Employer – Umbrella Companies: The Swedish Example. So far, there has been no government bill, and it is therefore impossible to say which parts of the legal inquiry the government intends to proceed with.

IV. The Directive on Improving Working Conditions in Platform Work

In the Directive on improving working conditions in platform work (hereinafter: the Platform Work Directive), the concept of employment is constructed as a presumption. In Sweden, an overall assessment is made in all legal areas (labour law, tax law, social security legislation etc.) when categorising persons performing work as either employees or self-employed

18 ISF Report 2023:3, p. 68.
19 Government inquiry report SOU 2023:30 A security system for everyone.

in the binary system. From a Swedish perspective, the idea of a definition that rests on a presumption is problematic as it clashes with the Swedish practice of an overall assessment where all relevant criteria are taken into account. In this overall assessment, some criteria are also regarded as more important than others; this depends on the legislation and differs between e.g., labour law, tax law, sickness and unemployment insurances. In the Platform Work Directive the construction of the presumption is now handed over to the Member States, but it is still a presumption.

Both the Swedish Parliament and the powerful social parties on the labour market were negative to the presumption in the first proposal.[20] According to their line of reasoning, the idea of a presumption determining the concept of employment is alien to the Swedish legal order, goes against the Swedish model of industrial relations and limits the influence of the social parties; the concept of employment should be defined completely by national legislation, not by EU law.

V. Conclusion

The legal developments concerning platform workers and umbrella company workers these past three years have been rapid. There have been court cases that have challenged the legislation and the legislature needs to catch up. This pattern is most visible when it comes to social security and health and safety protection. In the past few years, Sweden has seen government inquiry reports investigating legal changes in sickness insurance, unemployment insurance and work employment protection that will fill the legal gaps for the above-mentioned groups of workers. So far, there have been no legal changes that focus on platform work or umbrella company workers in traditional labour legislation, even though the biggest changes to the 1982 Employment Protection Act for decades were implemented in 2022. Some of those changes will, of course, also apply to platform workers and umbrella company workers with short, fixed-term contracts.

It is not surprising that there have been no legal investigations in labour law. In the Swedish model, the legislator leaves it to the social parties to solve problems, if and when they might arise, in collective agreements. This

20 Remiss av Europeiska kommissionens förslag till direktiv om förbättrade arbetsvillkor på digitala plattformar, https://www.regeringen.se/remisser/2021/12/remiss-av-europeiska-kommissionens-forslag-till-direktiv-om-forbattrade-arbetsvillkor-pa-digitala-plattformar/ (accessed on 1 September 2024).

is not possible when it comes to social security legislation or health and safety legislation, and that is why we now see more legal activity from the legislator concerning platform workers and umbrella company workers in these areas. We can only speculate about the different scenarios when the Platform Work Directive is to be implemented in Sweden. One scenario is that the Platform Work Directive's definition of platform workers will come to spread from labour law to other legal areas in national legislation, e.g., sickness and unemployment benefits and health and safety regulations. Another scenario is that the presumption will come to be used also to define other atypical workers than platform workers in national-level labour and social security legislation.

Since 2020, we can see that the social parties, in accordance with the traditional Swedish method of handling new developments in the labour market, have started to negotiate and conclude collective agreements for platform workers and umbrella company workers. The unions are, however, probably not satisfied with the fixed-term employment constructions in the collective agreements, as their aim in the long run is permanent full-time positions, which means that this legal development is likely to continue.