



LUND UNIVERSITY
School of Economics and Management



Looking for the (fictitious) Employer – Umbrella Companies: The Swedish Example

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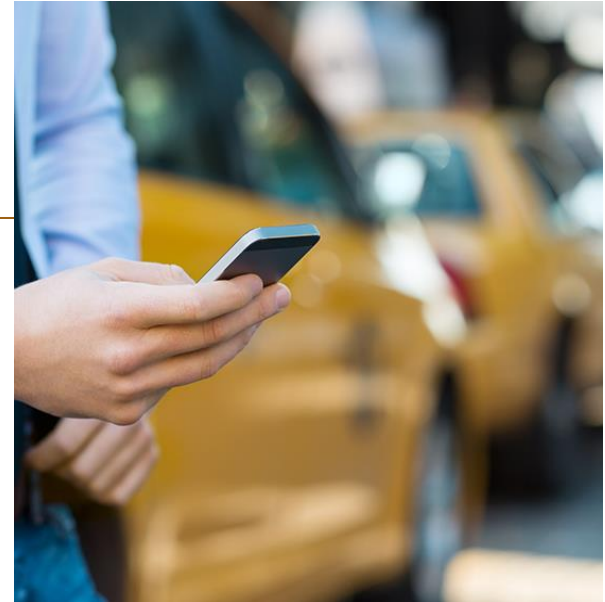


Umbrella Companies – the business model



1. UCW worker bids for/get a "work" (at a platform)
2. UCW arrange so client sign a contract with umbrella company
3. UCW is employed by the UC for the duration of the "work"
4. When work is done the UC invoice the Client
5. Client pays UC
6. UC pays the salary to UCW after deductions of tax and social security fees (like all employers in Sweden)

Umbrella companies a popular businessmodel



- A branch organization of it´s own
<http://www.egenanstallning.org/index/news:>
- Why are umbrella companies popular?
- Digitalisation of working life and growth collaborative economy. Umbrella companies sometimes are connected to a platforms. The worker is employed by the umbrella company when he works for the platform
- It is the Labour Law regulation in Sweden that makes it possible to have this business model –this business model are not used in the other Nordic countries

The concept of employment

- Sweden - A binary system where the performing party is either

 - employed
 - self-employed
 - there are no third category for economically-dependent workers or platform workers etc.
- Concept of employment in the 1982 Employment Protection Act. – wide and inclusive, based on cases and the doctrine.
- Who is the employer? *Principle of legal subject* - the legal person who concludes the employment contract. According to the intention of the parties are UCW employees and have a short-fixed term contract for the duration of the assignment

The 1982 Employment Protection Act and legal possibilities in Swedish labour law that are essential for the business model

1) The concept of employment in Swedish labour law is wide and covers both `employee´ and `worker´ - umbrella company workers are (probably) employees in labour law perspective

2) No demand for any duration of time. An employment can be short – a few hours

3) Generous possibilities for fixed-term employments

General – fixed term employment (max 2 years within 5 years) employer can hire temporary – no particular reason like temporary substitute employment or seasonal employment

Umbrella Companies and Temporary Work Agencies

- No Labour Court Rulings whether umbrella companies are Temporary Work Agencies
- Directive 2008/104/EC of the European Parliament and the Council of 19 November 2008 on temporary agency work
- Consequences; if umbrella companies are Temporary Work Agency their employees are entitled to the basic working and employment conditions set down in the end-user's collective agreements and other binding general provisions (section 5 (3) and 6 the 2012 Agency Work Act (2012:854)).
- No collective agreement jet for Umbrella Companies BUT most UC do not accept contract with remuneration under a minimum level

Umbrella Companies and Temporary Work Agencies

Similarities; the three-party constructions

TWA rent an employee

Umbrella company rent an employer

The agreement about the working conditions, salaries/price etc:

In umbrella companies; negotiation about conditions and price is between the client and UCW (though the contract in it selves is signed by client and umbrella company) If a platform is involved the price etc is likely to be fixed

In Temporary Work Agencies; between the client and TWA

Who pays the middleman

In umbrella companies - the UCW pays

In Temporary Work Agencies – the Client pays

Umbrella Companies and Social Security

- In the Swedish social security system self-employed are covered in a way that does not give the exact same protection, but similar to what employees has.
- The social security fees are 33% of the payroll for both employees and self-employed
- Who pays the social security fees; Employer pays for employees and for dependent contractors. Self-employed with Business Tax certificate pays themselves.

Sickness insurance in Social Insurance Code (2010:110)

- Self-employed – access and calculation could be less favourable than for employees
- Employees with irregular intermittent on-demand employment – if the employee becomes ill and do not have work scheduled the Swedish Insurance Agency investigates if there is any other job at all on the labour market that the person can perform (just as they do if an unemployed person becomes sick) - this makes the sickness insurance more unpredictable
- **The principal problem** in Sickness insurance is to separate unemployed from those who are sick

The 1997 Unemployment Insurance Act (1997:238) - an example

- The degree of independence decides whether the statutory regulation for self-employed or employees will apply. The case law from the Administrative Courts vary
- An employee will have unemployment benefits between two assignments – a self-employed will not. To get unemployment benefits a self-employed have to make a temporary hiatus in the operation of his company
- **The principal problem** is to separate those who is regarded as unemployed from those who are self-employed and just don't have so any assignments at the moment

Judgement from the Administrative Court of Appeal in Stockholm 30 October 2019 (case no. 5725-18)

- Umbrella Company Workers was not regarded as employed by the Umbrella company in accordance with that the 1977 Work Environment Act was not applicable - as it only applies for employees – not self-employed.
- In the cases the umbrella company worker had started working on the assignment before the contract between the umbrella company and the client was signed.
- An employment relationship only exists for the time period during which there is a signed contract and only for the duration of the assignment. This will not change even if an employment contract is signed later.

The Swedish Work Environment Authority, decision
October 9 2020, 2019/062973 (TaskRunner) and October
13 2020, 2020/000125 (Tiptapp AB).

- The Swedish Work Environment Authority decided that the 1977 Work Environment Act was applicable on platform workers.
- They **based their decision** that platform workers are employee based on the definition of employee in the 1982 Employment Protection Act (1982:80):
 - the platform workers voluntarily and personally performed work on behalf of another party.
 - the platform workers were under the leadership and control of the platform/employer.
 - If the platform worker did not show up he/she could be closed off permanently from the platform

The Swedish Work Environment Authority, decision October 9 2020, 2019/062973 (TaskRunner) and October 13 2020, 2020/000125 (Tiptapp AB).

- **Other circumstances**, pointing in the other direction and indicating that the platform workers were self-employed:
 - the workers were not compensated for direct expenses
 - the workers could take on work for others, including other platforms

Those circumstances did not weigh heavy enough to change the Swedish Work Environment Authority's decision. The 1977 Work Environment Act was applicable.

Malmö Administrative Court

no 13356-20

- Appealed to Malmö Administrative Court
- Changed and Taskerunner was not employer according to the 1977 Work Environment Act. The act was not applicable on platform workers.
- The decision was based on an over all assessment out of the purpose of the Work Environment Act.
- The platform have very little impact and possibilities to actually affect the work environment for the platform worker as it is decided by him and the client.
- A platform worker is not under the leadership and control of the platform

It is now appealed to Administrative Court of Appeal

Occupational injury annuity and injury insurance - the 2010 Social Insurance Code

- Anyone who works in Sweden is insured against occupational injury (illness and accidents at the workplace, travelling to and from work or at home during Covid 19)
- Mandatory - covers both employees and self-employed

Collective agreements and the Swedish model of Industrial Relations

- Collective agreement the most important regulation instrument
- Collective agreements coverage is 100 % in public sector, Private sector 96 % blue-collar workers and 75 % white collar workers
- There are no statutory legislation in Sweden e.g. about overtime compensation, unsocial hours etc. If nothing else is regulated in the individual employment contract the industry-wide collective agreement can be interpreted and applied as a supplementary norm when no agreements are present in the individual employment agreements
- The principle of Customary practice – a collective agreement covers all employees at the company – both union members and non members

Collective agreements for umbrella companies

- At the moment there are not yet any collective agreements concluded for umbrella companies
- A stumbling block in the collective bargaining is the umbrella companies business model - with the short fixed-term employments – permanent employments is important for the unions
- An industry-wide collective agreement important for the identity of an industry
- The industry-wide collective agreements usually contains important supplementary - sickness insurance, occupational injury insurance, occupational life insurance, ITP-pensions etc.

The Swedish labour market model

- Legislative initiatives makes the social partners coming to the negotiating table and conclude a collective agreement Legislation are (always) semi-dictionary and overruled in a collective agreement (no minimum regulation)



Conclusions

- Labour legislation generally tries to prevent classification of persons as ‘false self-employed’
- Social security legislation generally tries to identify ‘false employees’
- There is no contradiction that an umbrella company pays social security fees and taxes for fixed-term employees (who are employees in labour legislation) but that the umbrella company worker at the same time in the social security system will be regarded as self-employed without current assignments instead of unemployed employees
- The main **problem** is that umbrella company workers easily fall between the regulations for employees and self-employed – disadvantage that make them vulnerable

Conclusions

A lot of more general questions about Umbrella companies are also unsolved:

- What are the Umbrella companies function as employers ?
- Who takes responsibilities for damages caused by the worker?
- Who takes responsibilities if the work is not properly performed?
- Who takes responsibilities if the worker is injured?
- Who takes the economical consequences if the client does not pay?

Conclusions

- A new business model like umbrella companies´ will – from a social security perspective maybe complicate more than ease the situation particularly when the classification is uncertain
- So far has the legislator not shown much interest in including umbrella company workers in the inquiries for new legislation to improve the statutory regulation for this vulnerable group

Inquiry for new legislation to protect precarious workers - employees and self-employed

Labour Law / precarious work and work environment

- SOU 2017:24 (Work environment) *Ett arbetsliv i förändring—Hur påverkas ansvaret för arbetsmiljön?*
- SOU 2017:26 *Delningsekonomi på användarnas villkor*
- SOU 2018:24 *Tid för utveckling*
- SOU 2019:5 *Tid för trygghet*
- SOU 2020:30 *En moderniserad arbetsrätt* (among other things employment protection for different working conditions)

Tax Law / self-employed tax certificate

- SOU 2018:49 *F-skattesystemet – några särskilt utvalda frågor,*
- SOU 2019:31 *F-skattesystemet en översyn*

Social Security / parity self-employed and employees and precarius work

- SFS 2018:670 and prop. 2017/18:168, *Stärkt försäkringsskydd för studerande och företagare,* improvements in social security for self-employed when starting a company
- SOU 2018:66 *Ett mer konkurrenskraftigt system för stöd vid korttidsarbete*
- SOU 2019:2 *Ingen regel utan undantag – en trygg sjukförsäkring med människan i centrum*
- SOU 2019:10 *Stöd för validering eller kompetensåtgärder i samband med korttidsarbete*
- SOU 2019:41 *Företagare i de social trygghetssystemen*
- SOU 2020:26 *En sjukförsäkring anpassad efter individen*
- SOU 2020:37 *Ett nytt regelverk för arbetslöshetsförsäkringen*



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Conclusions

- The classification – Employee or Self-employed - Effects who pays taxes, social security fees and responsibilities due to the 1977 Work Environment Act.
- Still there are questions about the umbrella companies as employers
- What are the Umbrella companies function as employers ?

There must be more than just administrative tax and social security fees

It is the UCW and the client who decides the conditions – Umbrella companies some interests of minimum conditions as their fees are based on what the umbrella company worker earns.

- The employment relation is important for the identity of the umbrella companies to separate them from ordinary accounting firms