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Employer responsibility in the platform economy

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Legal framework: Key questions

- 1: In what relations do employer duties apply?
- 2: What defines a contract of employment?
- 3: Who is the responsible party for employer duties protecting employees?

1: In what relations do employer duties apply?

Employer duties

Duties for «employer»:

Working environment act (WEA)

Holiday act

Discrimination acts

Work injury act

Occupational pensions act

...

Labour disputes act

Collective agreements

Individual contract

Purpose:

Protection of the weaker party
- Health and safety, economy,
equal treatment, co-determination
etc.

National insurance act (NIA)

Tax payment act (TPA)

Tax act

Purpose :

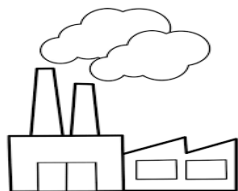
Economic safety-net
Ensure public revenue



Employer duties?

Labour law

Definition of employer: WEA § 1-8:
The (contract of) employment relation



Influence
on access to work

A contractual
responsibility

Operating
responsibility



Persons seeking work

A few employer duties

- Protection against discrimination, WEA ch. 13
- ++



**Independent contractors,
(other employees than your own)**

Some employer duties

- Health and safety WEA § 2-2?
- Protection against discrimination, WEA ch. 13
- ++

(Own) employees

All employer duties

Employer duties

Tax- and social security law

Employee

NIA § 1-8: «work **of service** for pay...»

Income tax

Reporting, withholding income tax,

Payroll tax

Unemployment benefit

Sick pay (100 %)

Freelancer

NIA§ 1-9: «work **not of service**, for pay..»

Sick pay first 16 days

Work injury benefits

Self employed

NIA § 1-10: «work at own risk and account .. **continuing business..**»

Business tax

Self reporting

No payroll tax

No unemployment benefit

Sick pay (65 %)

No sick pay first 16 days

Voluntary work injury insurance

Definition of employer: TPA § 4-1: The payment

Employer duties apply in *different* relations

- The contract of employment : «All» employer duties
= Full labour law and social security law protection for employees
- The relation to independent contractors performing work: Some employer duties
 - Labour law: An «operating responsibility»
 - Tax/social security law: Duties towards freelancers
- The relation to individuals seeking work: Some employer duties
 - Based on the influence of access to work

2: What defines a contract of employment?

Contract of employment?

WEA § 1-8 (1) ... «i annens tjeneste»: a contract of service?

A broad fact-based assessment of the contractual realities
Dependency and subordination

Continuous duty to perform personal work

Subordination: subject to supervision and control

The employer provides equipment, location etc.

The employer is responsible for the result

The person receives compensation as a wage

A stable relationship, terminable on specific terms

The person works mainly for one employer

An individual assessment of the need for protection

Cf. e.g. Rt. 1968 p. 725 , Rt. 2013 p. 354

Platform – worker relation

- Triangular relations – a comprehensive approach
 - Cf. agency work and other triangular relations, HR-2016-1366-A
- The realities include digital tools /apps
- Supervision and control? Workers perspective
 - By company, digital tools *and customer*
- **Duty to perform personal work, continuity?**
 - «Free» to use own employees – a reality?
 - «Free» to log off between short task ? Unclear implications
- Individual assessment of the need for protection
 - Platform defines/control work, sets the price / control earnings
 - Extensive work? Other «main» job?

3. Who is responsible for employer duties protecting employees?

Starting points

- The employer = the contracting party
- Nuances with a clear legislative basis:
 - Joint employer responsibility: Health and safety, discrimination, agency work, transfer of undertakings
 - Tax/ social security law: payment, not contract of employment
- Doctrine of joint employer responsibility /the «real» employer
 - Case law, case-by-case-assessments
 - **A reasonable correlation between power and responsibility**

A two-step assessment

1: Who is the contracting party/parties?

A reasonable correlation power and responsibilities?

If not – step 2:

2: Joint employer responsibility? /the «real» employer

-Typically: Groups of companies, exercised employer functions, some rights/obligations towards the employee

-Also: Piercing the corporate veil, restructuring to avoid employer duties



Rasier B.V
Contract party

Uber Norway
Contract party?
Joint responsibility?
Circumvention?

Uber B.V

Contract of
employment

Recruiting drivers
Sanctions
Controls pay?

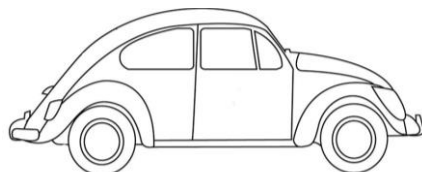


Drivers
employees

**Contracts for
rides**



Passengers



Platform – worker

- Platform companies have some employer duties even if the workers are independent contractors
- The platform – worker relation may be a contract of employment
- The responsibility for employer duties is flexible, varies with duties and responds to power relations
- *A framework for further development!*

Thank you for your attention!