# Chapter 7
# Collective Agreements and Social Security Protection for Non-Standard Workers and Particularly for Platform Workers: The Danish Experience

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## *I. Introduction*

In Denmark, the flexibility of employers to align their labour with the ebb and flow of a fluctuating market goes hand in hand with a strong social security system, providing income benefits as well as fully funded retraining opportunities for persons whilst unemployed or otherwise not receiving salaries. A solid and broad social security system is an essential element of the Danish flexicurity system.

The Danish Constitution in Section 75 (2) provides, that "any person unable to support himself or his family shall, when no other person is responsible for his or their maintenance, be entitled to receive public assistance, provided that he shall comply with the obligations imposed by statute in such respect". The provision gives the right to any person residing lawfully in Denmark; citizenship is not a prerequisite. The specific state assistance is established in the social legislation. In 1933, as part of the "Kanslergade compromise", the social security system underwent a major reform, ensuring that social security measures were provided to everyone in a rights-based system on objective criteria, and without a loss of other types of fundamental citizens' rights.[1]

The social security system consists of a range of public social security benefits awarded in case of sickness (sick leave benefits), childbirth and parental leave (maternity/parental leave benefits), unemployment for those not insured (basic living benefits), and retirement (early retirement pensions and old-age retirement pensions). Some social security measures are co-financed by compulsory employer insurance, such as coverage for acci-

1 Petersen, Jørn Henrik/Petersen, Klaus/Christiansen, Niels Finn (eds.), Dansk Velfærdshistorie, Vol. 1 and 2, Odense: University of Southern Denmark Publishing 2011.

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dents at work and occupational diseases. Unemployment benefits are co-financed by personal private membership (unemployment insurance benefits). Occupational pensions for early retirement and old-age retirement are also contribution-based. In addition, a number of benefits in kind are offered to everyone regardless of their connection to the labour market, such as residence-based universal health care regardless of employment status, universal family benefits, public childcare from age 0 which is heavily subsidised, and free secondary and tertiary educations.

In addition to the social security measures in legislative acts, collective agreements improve the content as well as the scope for persons eligible for social security measures. In Denmark, 84 percent of all workers are covered by a collective agreement, i.e. 100 percent in the public sector and 67 percent in the private sector. The unionisation rate is also very high at an average of 74 percent for all workers in Denmark. The social partners are highly valued by the legislators and participate in the rule-making. Participation takes place in standing expert committees advising the Government on topics relating to the labour market, as well as in ad hoc expert committees when reforms are considered. In addition, the social partners on their own account negotiate and bring joint proposals to the Government for new steps in regulation aiming at addressing aspects that are particularly current challenges to the market. One recent example is the joint proposal by the main social partners to provide minimum salaries for workers in the goods transportation sector in order to counteract abuse of the rules on cabotage transportation. More recently, the social partners worked closely with the Danish Government to negotiate a number of efficient help packages to avoid and reduce lay-offs during the Covid-19 pandemic in 2020. In addition, the social partners contribute in all consultation procedures on legislation aiming at the labour market and interaction with social security measures.

With regard to social security measures, the public social security system is supplemented by the social partners by additional social benefits, such as occupational pensions, paid sick leave and paid maternity/parental leave. Likewise, the public system is supplemented by the social partners extending certain labour protections to persons in non-standard work such as platform workers.

The close involvement of the social partners in committees and councils recently resulted in a reform of the unemployment insurance system, with a view specifically to erasing systemic barriers for persons in non-standard employment, such as platform workers. As part of the former Government's overall focus on changes to the labour market and the drive to include everyone in the system, an interdisciplinary Disruption Council was


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established for two years (2017-2019), with a view to discussing risks and opportunities and to producing policy and regulatory recommendations.[2] One risk identified was the poor match between the way work is now performed – in a combination of different types of employment and self-employment, including platform work – and the system for being eligible for unemployment insurance benefits, based on the more traditional full employment or full self-employment.[3] A tripartite work group presented recommendations for a reform allowing for all income to count in the Unemployment Insurance Benefit System.[4] The proposal was adopted, and the new regulation for Unemployment Insurance came into force on 1 January 2018.[5] In other social security areas, similar developments have not yet taken place.[6]

In Denmark, a person can provide work either as an employee/worker[7] or as a self-employed person. This binary divide regulates rights under labour law, as well as in most other areas of law, including social security law.[8] There is no general definition of who is an employee in Danish labour or social security law, and the assessment of belonging to one or the other category can vary across legal bases. The categorisation in labour law and social security law is made on the basis of the factual circumstances in a case-by-case approach. In labour law, it is possible to have a status as employee under one act, and a status as self-employed under another act. The respective status as either employee or self-employed in the social security system, however, often decides on the method for being eligible for benefits, and on which types of income to use for calculation of the amount of benefits. This will be further explained below.

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2 About the Disruption Council, an initiative of the former Government see https://www.regeringen.dk/partnerskab/. Accessed 21 July 2020.

3 Output from the Disruption Council includes No. 3: A modern and flexible labour market, https://bm.dk/media/9598/output-fra-disruptionraadet.pdf. Accessed 21 July 2020.

4 For recommendations of the work group see https://bm.dk/arbejdsomraader/kommissioner-ekspertudvalg/arbejdsgruppe-selvstaendige-i-dagpengesystemet/oversigt-over-hovedforslag/. Accessed 21 July 2020.

5 Amendment Act No. 1670 of 26 December 2017 to the Act on Unemployment Insurance, https://www.retsinformation.dk/eli/lta/2017/1670. Accessed 21 July 2020.

6 September 2020.

7 In Denmark, both terms are used interchangeably; there is only one category of worker/employee.

8 Only in tax law has a third category recently been introduced for the income year 2018 and forward. The contents do not challenge the existing binary divide in labour law or social security law.

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This chapter presents *the overall social security measures* in Denmark and the implications of the *uncertain employment status of non-standard workers, in casu platform workers*. Furthermore, the role of the social partners in developing the *regulatory* measures in tripartite negotiations, and in negotiating *supplementing or specialised social security measures* in collective agreements for persons in non-standard forms of employment and particularly for platform workers. The role of the social partners is then discussed, with a view to *highlighting the strengths and weaknesses of the Danish experiences of providing platform workers* with access to the social security systems so far.

## *II. Social Security Measures – The Legislative Framework and Recent Reforms*

Statutory acts provide the primary framework for most of the social security elements. This includes sick leave (*sygedagpenge)* and maternity/parental leave benefits (*barsels/forældreorlovsdagpenge)*, basic living benefits (*kontanthjælp*), early retirement pensions in case of inability to work (*førtidspension*), and a small public old age pension (*folkepension*). Statutory acts also provide the framework for unemployment insurance (*arbejdsløshedsdagpenge)*, but this is available only to members of unemployment insurance associations, independent of the trade unions.

### *1. Sick Leave Benefits*

The right to sick leave benefits is provided in the Act on Sick Leave Benefits.[9] This differs for employed and self-employed persons. It is a requirement that the person applying for sick leave benefits has a current connection to the labour market. This is established in the basis of a number of working hours within a certain reference period.

Persons applying for sick leave benefits must choose whether to apply as employed or as self-employed, as the hours cannot be accumulated across different types of employment categories. The system uses *the labour market standard* for assessing whether a person is in employment or not. Hours can thus be counted towards being eligible *either* as employed *or* as self-employed. The system for being eligible for sick leave benefits differs for employees and self-employed persons. Non-standard employees and self-employed persons are covered by the right to sick leave benefits, but may have

9 Statutory Act on Sick Leave Benefits No. 68 of 25 January 2019.


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trouble achieving the required number of working hours, either as employed or as self-employed persons. Non-standard or self-employed persons are often caught between systems, and can end up without sick leave benefits. The local municipality assesses the status as employed/self-employed. There is a free public complaints procedure, but so far, no complaints have been heard about a right to sick leave benefits from the platform company as employer or from the local municipality.

The payment of sick leave benefits is shared between the employer/self-employed and the local municipality. The employer pays for the first two weeks of benefits for their employees on sick leave, after which the local municipality takes over. Employees can be entitled to receive *salaries* rather than sick leave benefits during sick leave, whereas such a right requires explicit legal basis.[10] This section focuses only on the right to public sick leave benefits.

*An employee* in current employment is entitled to receive sick leave benefits. The first 30 days of sick leave benefits are paid by the employer, if the employee has been employed with the employer in the last 8 weeks prior to his/her sickness and has worked a minimum of 74 hours with the employer during those 8 weeks.[11] After the first 30 days of sick leave, the local municipality pays the sick leave benefits. If the work relationship with the employer does not entitle to employer-paid sick leave benefits, but the work history entitles to municipality-paid sick leave benefits, the employee will receive sick leave benefits from the local municipality from day 1.

*Non-standard workers, such as casual workers and platform workers who are not genuinely self-employed*, who have worked the required hours, are eligible to receive sick leave benefits from the employer during the first 30 days of sick leave. For workers in casual employment, where the work is provided on an ad-hoc basis at the initiative of the employer, from day to day and without a set number of working hours or days per week, the biggest challenge is that sick leave benefits compensate for the loss of income during sick leave, and is therefore conditional on the employee being employed and having missed working hours/expected income due to the sickness. This is not an issue in ongoing employments, with planned or expected working hours during the sick leave. For workers performing work on a casual basis, such as 0-hour contracts, on-call employees or platform workers, this criteria is difficult to fulfil, as eligibility presupposes being "em-

10 A right to salaries during sick leave can be provided either by special statutory law, e.g. Section 5 of the Salaried Employees Act or by collective agreement.

11 Section 30 of the Sick Leave Benefits Act.

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ployed" the day before the sick leave as well as having missed working hours during the days when off on sick leave. An administrative ruling has assessed how to handle casual workers in this respect.[12] The ruling stated that casual workers are only viewed as "in employment" in periods where the worker is actually currently working for the employer. If the casual work, on the other hand, has ended on a day earlier than the day before the leave, the criterion of being "in employment" is not met. Elements such as having agreed to an average working time, a notice of termination, how and for how far ahead the work is planned, whether the employer is obliged to offer assignments, and whether the worker is obliged to accept offers of assignments can indicate a current employment relationship. If the employment is assessed as current, it is of less influence that the worker is not performing work specifically on the day before the leave. If the worker, on the other hand, is not viewed as in current employment and is not working on the day before the leave, he or she is not eligible for sick leave benefits. In this case, there is no need to go on to assess whether the requirement of working hours has been met.

Platform workers would face the same challenge as casual workers. Platform workers who have worked regularly over a longer period of time, and have worked a considerable amount of hours each week, and where there are e.g. a number of assignments lined up for the future days, could perhaps be considered in "current" employment with planned working hours, and thus fulfil this requirement for sick leave benefits from the platform company and the local municipality. The typical contract of work for platform workers may not have elements indicating that the work is current. Most platform workers would most likely be assessed as not in current employment, if they did not perform assignments the day before the leave.

*Genuinely self-employed* persons are entitled to sick leave benefits from the local municipality after two weeks of self-financed sick leave.[13] Sick leave benefits require that the self-employed person has been conducting business to a substantial degree (more than 50 percent of part-time, i.e. 18.5 hours per week) during at least 6 out of the last 12 months. The information provided by the self-employed platform worker is used as a starting point. If the number of months with the required level of activities is less, hours in employment *prior* to being genuinely self-employed can be in-

12 Section 2.1.2.10 and Ruling 100-15 in Guideline 9510 of 26 June 2018; cf. Appeal Committee Ruling 100-15 on the right to sick leave benefits, https://www.retsinformation.dk/Forms/R0710.aspx?id=176826. Accessed 21 July 2020.

13 Cf. Section 42 of the Sick Leave Benefits Act.


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cluded. Self-employed persons can take out a voluntary private insurance granting a right to sick leave benefits from the municipality from day one or day three respectively, instead of financing the first two weeks of sick leave themselves. This applies to genuinely self-employed persons also in non-standard work relationships, such as platform workers. This means that platform workers who have worked less intensively with their business, i.e. for less than 18.5 hours per week, or who have worked for less than 6 months, are ineligible for sick leave benefits from the municipality.

The system for sick leave benefits is difficult for persons in non-standard employment, in particular for those who are not in a stable work relationship with foreseeable work tasks. This applies also to platform workers. If assessed as employees, the biggest hindrance is being considered in "current" employment, as there are often no mandatory assignments or working hours for platform workers. If assessed as genuinely self-employed, they would have to finance the first two weeks of sick leave out of their own pocket, unless having taken out the voluntary sick leave insurance. In reality, periods of being indisposed for providing work in causal employment, 0-hour-contracts or via platform work would, to a large extent, be at risk of having to be self-financed by the worker, regardless of employment status.

### *2. Maternity Leave Benefits*

The right to take parental leave and to receive benefits during parental leave is governed by the Act on Entitlement to Leave and Benefits.[14] Also concerning access to maternity/parental leave benefits, non-standard employees and self-employed persons are covered, but may have trouble achieving the required number of working hours in order to be eligible, either as employed or as self-employed persons. The purpose of the Act is to ensure all parents a right to take leave in case of pregnancy, childbirth and adoption, and that parents connected to the labour market are entitled to receive benefits during these periods of leave.[15] The Act applies to all parents and both employees and self-employed persons have a right under

14 Statutory Act No. 67 of 25 January on Entitlement to Leave and Benefits in the Event of Childbirth (The Maternity Leave Act).

15 Section 1 of the Act on Entitlement to Leave and Benefits.

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the Act to receive benefits.[16] Maternity/parental leave benefits are paid to employees as well as to self-employed persons by the local municipality.

Employees and genuinely self-employed persons are in most aspects treated equally under the Act. One difference is that the Act grants employees a right to take parental leave, which can be enforced vis-à-vis the employer. Self-employed persons must plan their own work schedules and their own periods of leave. The assessment of whether one is considered to be an employee or self-employed is based on the labour law assessment.[17]

*Employees are eligible* for maternity/parental leave benefits on terms similar to being eligible for sick leave benefits. Employees are eligible only if employed on the day before the leave, and having worked a minimum of 160 hours within the last four months.[18] Being employed on the day before the leave is taken literally.[19] For persons in non-standard employment with atypical employment patterns, such as part-time work, fixed-term work, casual work or temporary agency work, assessment of the end date will be determined *inter alia* from a work schedule.[20] The 160 working hours for being eligible are counted on the basis of income and working hours registered with the tax authorities.[21] If the hours are not registered (unknown working hours), the number of working hours are calculated on the basis of registered income divided by an hourly income rate,[22] which in 2020 is set at DKK 202 per hour.[23]

*Persons in non-standard employment, including platform workers who are assessed as employees* must be "in employment" on the last day before the

16 Sections 2 and 2 (2) of the Act on Entitlement to Leave and Benefits.

17 Section 4 (1) in Executive Order No. 953 of 17 September 2019 on the Calculation of Maternity Leave Benefits.

18 Section 27 (1) (1) of the Maternity Leave Act. Additional requirements apply.

19 Section 2.1 in Guideline No. 9510 of 26 June 2018 on Employment Requirements for the Right to Maternity or Parental Leave Benefits, *Vejledning om beskæftigelseskravet for ret til barselsdagpenge*.

20 Section 2.1.1 of Guideline No. 9510 of 26 June 2018.

21 Section 27 (2) of the Maternity Leave Act.

22 Section 2 (2) of Executive Order No. 953 of 17 September 2019 on the Calculation of the Employment Requirement and Calculation of the Rate of Benefits for Maternity and Parental Leave, *Bekendtgørelse om opgørelse af beskæftigelseskrav og beregning af barselsdagpenge mv*, set each year in January by the tax authorities.

23 Section 2 (2) of Executive Order No. 953 of 17 September 2019, Section 2 (8) of the Executive Order on Supplemental Occupational Pension, *Bekendtgørelse om Arbejdsmarkedets Tillægspension*, No. 1385 of 25 November 2015. The level in Section 2 (8) is amended each year, and in 2020 is set at DKK 211.93 for men and DKK 191.39 for women, https://indberet.virk.dk/sites/default/files/ukendt_arbejdstid_timeloenssatser.pdf. Accessed 21 July 2020.


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leave. The rules regarding maternity leave benefits reflect the rules for sick leave benefits on this issue, see above. The assessment of being in "current" employment is uncertain for persons in casual work, on 0-hour contracts and engaged in platform work under the current legislation. Particularly as regards platform workers and the requirement of having worked 160 hours, the income for platform workers will most likely not be registered with the tax authorities as a number of working hours, but instead as a total income. In this case, the number of working hours must be calculated at the rate of DKK 202 per hour. Most hourly rates for platform workers in Denmark are considerably lower than DKK 202 per hour. The hours calculated for platform workers, and any other worker in non-standard employment with an hourly rate of less than DKK 202, would then not reflect the actual hours worked.

*A genuinely self-employed person* is entitled to parental benefits if the person for 6 months out of the last 12 months has had activities amounting at least to half of the normal weekly working hours.[24] All hours with activities as a self-employed person can be included, as the calculation is not limited to hours with assignments.[25] The authorities take as a starting point the information provided by the self-employed person for the number of hours in activities as a self-employed person.[26] If specific circumstances give rise to doubt, the authority can ask for further information. This applies also to genuinely self-employed workers in non-standard work relations, such as genuinely self-employed platform workers. It is doubtful whether "logging on" and being available for assignments counts as "hours with activities as a self-employed person" in relation to being eligible for Maternity Leave Benefits.

The rate of benefits received depends on the income before taking leave.[27] The amount is capped, in 2019 at DKK 4,355 (approx. EUR 581) per week,[28] and the cap is the same for the employed and the self-em-

24 Section 28 (1) of the Act on Maternity Leave.

25 Section 5 of Executive Order No. 953 of 17 September 2019.

26 Section 3.1 of Guideline No. 9510 of 26 June 2018.

27 Section 32 of the Act on Maternity Leave. The manner of calculation is provided in chapters 8 and 9 of the Act, in Sections 6-21 of the Executive Order 953 of 17 September 2019, and further explained in the Guideline on Calculating Rates of Benefits for Maternity and Parental Leave, No. 9829 of 27 September 2019, *Vejledning om beregning af barselsdagpenge*. Only registered and otherwise documented income counts.

28 Maximum benefits per week for employees and self-employed persons are the same, cf. Sections 35 (1) and 37 of the Act on Maternity Leave. The maximum level in 2019 is set at DKK 4355 (approx. EUR 581) per week.

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ployed. The income level is calculated either on the basis of income in employment or on the basis of income as a self-employed person.[29] The income sources are *not* cumulated.

*For employees*, the benefits are paid for a number of hours per week at a certain rate per hour, reflecting the levels before commencing the leave. Benefits are paid on the basis of the average hourly income and the average weekly hours before the leave.[30] For employees with *varying* weekly working hours, such as many workers in non-standard employment, the number of hours is calculated from the average working hours per week during the last 4 weeks before the commencement of leave.[31] For employees with *unforeseeable* working hours, the number of hours is calculated using the total income and dividing it by the hourly rate of DKK 202 in 2020.[32] These calculations then arrive at a number of average weekly working hours, and an average payment per working hour for the employee.

*For workers in non-standard employment*, where the number of working hours is not registered by the employer, such as platform workers performing work via a platform company, the working hours are considered "unknown". The number of hours will be calculated on the basis of the overall income divided by the set hourly rate of DKK 202. This means that platform workers, and other workers in non-standard work relationships where the employer does not register the working hours but rather the income, are likely to be eligible for fewer hours of maternity/parental benefits per week. This results in reduced benefits per week, compared to employments where the weekly or monthly working hours are registered by an employer.

*For the self-employed*, the benefit rate is based on the annual income as a self-employed person the year before the commencement of leave, regardless of the hours worked.[33] The annual tax return, *Årsopgørelsen*, is used as the basis.[34] This applies to all self-employed persons, including platform

29 Section 4 of Executive Order No. 953 of 17 September 2019. The tax authorities' assessment is the starting point for categorising the income, unless this would be in breach of a labour law assessment, cf. Section 4 of Executive Order No. 953 of 17 September 2019.

30 During the 3 months just prior to the commencement of the leave, cf. Section 33 (1) of the Act on Maternity Leave.

31 Section 11 of Executive Order No. 953 of 17 September 2019.

32 Set in the Executive Order on ATP, mentioned above, in 2020 on average amounting to DKK 202 per hour.

33 Section 6 (1) of Executive Order No. 953.

34 Section 6 (2) and 7 (1) of Executive Order No. 953.


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workers who are genuinely self-employed. The benefits will match the income, regardless of working hours, but cannot exceed the cap.

In particular non-standard workers in casual employment will have difficulties obtaining a right to benefits during maternity and parental leave, similar to the difficulties of obtaining a right to sick leave benefits. The problem lies in the "current" employment status, where the employment must not have ceased prior to commencing the leave. If eligible, workers in non-standard employment, where the employer does not register the working hours, in particular platform workers, can encounter problems with the calculation of the hourly benefits. As the working hours are unknown, the calculation results in reduced weekly maternity benefits. Genuinely self-employed persons who have worked a significant amount of hours over at least 6 months have better access to maternity and parental leave benefits from the local municipality. Their rate of benefits will match the annual income in the tax returns, the year before commencing the leave.

These major problems with sick leave benefits and maternity leave benefits for persons with more fragmented work relationships that do not resemble the standard unlimited full-time employment with one employer, or for genuinely full time self-employed persons are evident. These issues surfacing in particular due to the non-standard character of the work patterns in fragmented work was to a certain degree solved by the reform of the unemployment insurance system in 2018 focusing on *global income* rather than *hours* worked.

### *3. Unemployment Insurance*

Income during periods of unemployment can be divided into two separate sources: Unemployment Benefits, *Arbejdsløshedsdagpenge*, which is an insurance-based source relying on membership of unemployment benefit associations;[35] and Basic Social Assistance, *Kontanthjælp*, provided by the local municipality, for those who are not members hence not insured. More than 70 percent of employees are members of an unemployment insurance fund.[36] Unemployment insurance is almost fully state-financed, with a

35 Now independent of trade unions and available across industries.

36 *Mailand, Mikkel/Larsen, Trine P.*, Study: Hybrid Work – Social Protection of Atypical Employment in Denmark, WSI Institute of Economic and Social Research, Hans-Böckler-Stiftung, March 2018, p. 5, https://www.boeckler.de/pdf/p_wsi_studies_11_2018.pdf. Accessed 21 July 2020.

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small fee-based contribution. Membership fees are tax-deductible, i.e. supplementing state-financing. The rules on Unemployment Insurance Benefits (UIB) are provided in the Act on Unemployment Insurance.[37]

In 2018, the unemployment insurance system underwent a substantial reform with a view to adapting the system to the changed labour market reality.[38] The system now focuses on the *activities* of a person, rather than on the *employment status* of a person. The amendment was a response to recommendations by the Disruption Council, which pointed to the rigidity of the existing categorisation of persons as either employees or as self-employed in two separate pillars in the system, which was not reflecting the modern pattern of fragmented or atypical employments.[39] The reform entailed that all income earned can be cumulated towards being eligible for unemployment benefits. This adapts the current system of unemployment insurance benefits to the work reality of persons in atypical employments, including self-employment.

All forms of work count, i.e. either self-employed work, A-employment (primary employment), B-employment (supplementary employment), or honorarium-based employment. The assessment of income generated from either self-employed or employed work in the Act on Unemployment Insurance is aligned with the definition in tax law.[40] Any activity with the purpose of generating income on the basis of personal work activities can be viewed as self-employment if one of five criteria is met. One of these criteria is registration with the Central Business Registry, unless the tax authorities tax the income as salaries in employment.[41] Registration with the Central Business Registry is a prerequisite for contracting as a self-employed person in Denmark. Registration is carried out online via a simple registration of information without a test, it is immediate and completely free of charge. Having registered a business with the Central Business Registry is not in itself decisive for the status as genuinely self-employed in relation to unemployment benefits, but an individual assessment of the status should be carried out. The tax authority's assessment is a primacy-of-

37 Statutory Act No. 199 of 11 March 2020 on Unemployment Insurance.
38 Statutory Amendment Act No. 1670 of 20 December 2017 to the Act on Unemployment Insurance.
39 See Proposal for Amendment to the Act on Unemployment Insurance, L88, 2017-18, https://www.ft.dk/samling/20171/lovforslag/l88/index.htm. Accessed 21 July 2020.
40 Section 57a of the Act on Unemployment Insurance.
41 Section 57a (1) of the Act on Unemployment Insurance.


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facts test, to a large extent resembling the labour law assessment of employment status.[42]

Membership of an Unemployment Insurance Association for one year is a prerequisite for unemployment benefits.[43] Everyone, regardless of employment status can be a member of an unemployment insurance fund, also self-employed persons. A person seeking unemployment insurance benefits must first of all be unemployed. For self-employed persons, whose work under self-employed status is the primary or sole source of income, this requires the person to close and liquidate all self-employed activities.[44] If the self-employed work is a secondary or supplementing source of income, the relevant activities must be reduced. In order to be eligible for benefits, the person must document a connection to the labour market. This must be documented in the form of an accumulated income over the last three years, a total of DKK 233,376 in 2019 (EUR 31,117). All income earned as an employee as well as income earned as a self-employed person are accumulated towards meeting the income level. Supplementing work also counts.[45] In order to count income from "employment", the work must be performed in a traditional employment relationship, i.e. on terms similar to pay and working conditions in collective agreements for the type of work performed.[46] Hours worked in non-standard work relationships, where the salaries are not similar to those in collective agreements, such as is the case for most platform workers, would in this regard not count as hours in "employment".

The rate of benefits is calculated as hourly rates on the basis of all income within a set reference period.[47] All types of registered income are accumulated to form the basis for calculating the rate of benefits.[48] Unemployment benefits can be granted as *supplementing unemployment benefits* for persons temporarily in part-time employment.[49] Supplementing unem-

42 Tax Legal Guidelines 2020-21, C.C.1.2.1 Self-Employed Work, Delimitation towards Employees, https://skat.dk/skat.aspx?oID=2048530&chk=216701. Accessed 21 July 2020.
43 Statutory Act No. 1213 of 11 October 2018 on Unemployment Insurance.
44 Sections 13 and 20 of Executive Order No. 1182 of 26 September 2018 on Self-Employment in the Social Security System.
45 Section 53 (3) and (15) of the Act on Unemployment Insurance.
46 Section 53 (6) of the Act on Unemployment Insurance.
47 Section 46 (1) and Section 49 (2) of the Act on Unemployment Insurance.
48 Section 53 (15) of the Act on Unemployment Insurance, and preparatory works to the Amendment Act No. 88 of 17 November 2017, p. 13.
49 Section 59 of the Act on Unemployment Insurance.

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ployment benefits are available for a period of up to 30 weeks.[50] Only persons performing work in part-time employment or in self-employment as a secondary or supplementing source of income can be eligible for supplementing unemployment benefits. Genuinely self-employed persons whose main or sole income is under self-employed status, such as is the case for some platform workers, cannot receive supplementing unemployment benefits.

Access to Unemployment Insurance Benefits for workers in non-standard work, such as platform workers and workers providing work in a number of work-relations, is in principle more flexible now, as eligibility and calculation of benefits can be based on an accumulated income from any type of work, employed as well as self-employed. However, income from employment can only be included, if it is earned on terms similar to those in collective agreements, which primarily refers to a certain level of remuneration. This is an obstacle, as e.g. much non-standard work, including most forms of platform work, is not remunerated at the level of collective agreements. Income received by workers under self-employed status can count fully towards being eligible for unemployment benefits and towards calculating the rate of unemployment benefits that can be received. A genuinely self-employed person who has a business as his or her primary source of income must however cease activities in the business before being eligible for such benefits. If persons in non-standard work are eligible for unemployment insurance, supplementing unemployment benefits can be awarded for up to 30 weeks if these persons temporarily work part-time. If work under self-employed status generates the primary income, supplementing unemployment benefits cannot be awarded.

### *4. Cash Benefits*

Basic Cash Benefits, *Kontanthjælp,* are provided by the local municipality, for those who do not receive unemployment insurance. The Cash Benefit rate is significantly lower than unemployment insurance rates. The rules on Cash Benefits are provided in the Act on an Active Social Policy.[51] The Act on an Active Social Policy was not amended as part of the unemployment insurance reform. The Act on an Active Social Policy continues to categorise persons as either employees or as a self-employed.

50 Section 60 of the Act on Unemployment Insurance.
51 Act on Active Social Policy No. 981 of 23 September 2019.


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Cash Benefits are available to persons who are unable to provide for themselves, including by way of savings, who are not provided for by a family member, and who do not receive other benefits.[52] Eligibility is based on assessment of the current financial situation of the household, i.e. it is means-tested. In order to be eligible, the person must have had ordinary full-time employment for 2.5 years within the last 10 years.[53] Furthermore, the person must be available for job offers, and must actively pursue employment.[54] Actively pursuing employment for persons that are married or who have received Cash Benefits for one year requires a demonstration of a minimum of 225 working hours within the preceding year.[55] These working hours can be accrued via employment on terms similar to those in collective agreements[56] via self-employment as a supplementing source of income[57] or via substantive self-employment with activities of a minimum of 18.5 hours per week.[58] For the self-employed, the hours are calculated on the basis of annual income from the business in the preceding calendar year.[59] Access to Cash Benefits furthermore requires that the applicant is unemployed and available for work. For self-employed persons, this means that the company has to be shut down.

*For workers in non-standard employment, such as platform workers,* access to Cash Benefits requires that the applicant has held ordinary employment for 2 years and 6 months within the last 10 years. Furthermore, when the worker has received Cash Benefits for one year, or if the worker is married, the worker must in addition document 225 working hours within the preceding year. The 225 working hours can be performed in employment, but only hours performed on terms similar to those in collective agreements count, i.e. not hours provided by performing work via a digital platform. Alternatively, the 225 working hours can be performed to generate secondary income as a self-employed person, or in terms of substantial self-employment if the work is carried out during at least 18.5 hours per week. Platform work that is substantial genuine self-employed platform work

52 Section 11 (2) of the Act on Active Social Policy.
53 Section 11 (8) of the Act on Active Social Policy. Certain groups, such as young persons who have not had the opportunity to work 2.5 years, are subject to different criteria.
54 Section 13 (1) and 13a of the Act on Active Social Policy.
55 Section 13f (6) and (7) of the Act on Active Social Policy. If this requirement is not met, the rates are reduced, cf. Section 13f (2).
56 Section 13f (14) of the Act on Active Social Policy.
57 Section 13f (15) of the Act on Active Social Policy.
58 Section 13f (16) of the Act on Active Social Policy.
59 Section 11 (9) of the Act on Active Social Policy.

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would in this case count towards the 225 working hours. Ministerial guidelines provide, as a starting point, that work performed via digital platforms counts as self-employed working time.[60] The company of the platform worker would, accordingly, have to be shut down in order for the respective worker to be eligible for Cash Benefits.

There have been no accounts of the situation of platform workers that had their profile with a platform company deactivated temporarily or permanently by unilateral decision on the part of the platform company. This presents a new situation, where the assessment of the status of the platform worker would most likely depend on the circumstances of the deactivation decision. A permanent deactivation made unilaterally by the platform company resembles a termination in employment. Deactivations of self-employed platform workers would influence only the provision of work via that particular platform, and as assessment of being genuinely self-employed is not dependent on the business relationship with one customer only, this would not in itself be sufficient to document that a genuinely self-employed platform worker has ceased business. The platform worker could already be – or could choose to be – registered with another platform company providing the same kind of services. As mentioned, this has not yet been assessed by administrative or judicial review.

### *5. Retirement Pensions*

Pensions in Denmark consist of public and private pension programs, in a three-pillar system: state-funded public old-age pension, employer/employee funded private occupational pensions, and employee-funded private pensions. About 90 percent of all workers have supplementary private pensions, either in the form of occupational pension plans or individual pension plans.

The public old-age pension scheme is a universal, residence-based, non-contributory, statutory old-age pension scheme, regulated in the Act on Social Pensions.[61] The public old age pension scheme is designed to secure a decent minimum standard of living for all citizens of pension age. The pension is paid out to everyone who resides in Denmark and who has lived

60 Ministry of Employment. Statement in Collaborative Economy and the Basic Social Assistance System. Statement No. 9433 of 14 June 2018, https://www.ft.dk/samling/20171/almdel/BEU/bilag/378/1911151.pdf. Accessed 28 July 2020.

61 Act on Social Pensions No. 983 of 23 September 2019.


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in Denmark for a significant part of their working life, currently amounting to 30 years between the age of 15 and retirement age.[62] The public old age pension scheme consists of a flat-rate benefit. In 2020, the age for being eligible for public pension is 66 years (planned to increase over the next decades). The public pension is the same for retired employees and retired self-employed persons, irrespective of any earlier income sources and levels. The number of years of permanent residency influences the rate.[63] Depending on marital status, household income and/or income earned, the flat-rate can be supplemented or reduced.[64] This includes reduction for income earned via platform work performed as an employed or self-employed person.

Occupational pension schemes are provided in collective agreements, often as industry-specific plans with an appointed pension provider.[65] Occupational pension schemes are applicable only to employees who work in a company that is covered by a collective agreement. If provided, the employer is obliged to make pension contributions to the agreed private pension fund of the employee. Payment to the employees directly, as part of their salaries, would be a breach of the collective agreement. Employer contributions are typically set at a percentage in addition to the salaries, e.g. 5-15 percent in private employment and 10-17 percent in public employment. The employee also contributes, typically with half of the employer's percentage, which is withdrawn from the salaries and deposited in the pension fund alongside the employer's contribution. Employee deposits are tax-deductible. The collective agreement determines which groups of employees are covered. This could include traditional employees as well as freelancers working on terms similar to employees. Genuinely self-employed persons do not have access to the occupational pension schemes provided in collective agreements. Genuinely self-employed platform workers must make their own private pension agreement, and pay the pension contributions out of their own earnings.

62 Section 2 and 3 of the Act on Social Pensions. The number of required years of residence for being eligible fluctuates over time with the political climate.

63 Section 5 of the Act on Social Pensions.

64 Section 15 and 27 of the Act on Social Pensions.

65 Except for Civil Servants, *Tjenestemænd*, who are a special group of public employees (approx. 6.50 percent of public employees, approx. 1.95 percent of the entire workforce). Source: Statistics Denmark, Work, Income and Assets Tables 2018 with a special public retirement scheme. In 2018, the number of *Tjenestemænd* was 54,640, out of 832,557, being 6.56 percent of all public employees, i.e. is approx. 30 percent of the entire work force in 2018.

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Platform workers who are employees or "false self-employed" persons could technically be covered by a collective agreement. Collective agreements can obligate the platform company to make contributions to occupational pension schemes of the platform workers' choice, including mandatory contributions from the platform worker. In reality, by far most platform workers are not covered by an occupational pension scheme, obligating the employer to make pension contributions in addition to their salary. Platform workers who are not covered by a collective agreement do not receive pension contributions paid by the employer. They are left to make their own savings from their remuneration.

Private pension schemes can be established by self-employed persons and employees alike. The terms are set by the private pension provider. Deposits into pension plans with life-long payments are tax-deductible. Deposits into pension saving accounts with lump sum payments (or a set number of payments) are tax-deductible up to a certain amount each year. Due to the character of non-standard work with fluctuating income, such as platform work with irregular earnings, it can be difficult to engage in a private pension plan with set contributions each month.

The overall question for platform workers with regard to retirement pensions is whether they do engage in private pension schemes supplementing the public old-age retirement pension, as does 90 percent of the workforce in Denmark. Very few platform workers are covered by a collective agreement with provisions on mandatory employer contributions. In reality, it is the platform workers themselves who must take the initiative to establish a private pension plan with a pension provider of their choice. As a private pension scheme is established at the initiative of the worker rather than set in a collective agreement at the commencement of employment also in younger years, it is likely that this takes place only at a later stage in their career. It is a simple fact that very few young people choose to start their own pension plan at the beginning of their career. A second issue is the question of earning interests on the pension deposits, as there could be a difference between the industry-wide occupational pension schemes with appointed pension providers, and the privately established pension schemes with any form of pension provider. Workers who generate their main income through platform work over a large portion of their lives are likely left with considerably less in pension income compared to the average workers in Denmark.


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### 6. Occupational Injury Insurance

Statutory acts mandate employers to contribute to the public occupational injury insurance system as well as take out private occupational accident insurance. Any size employer must insure their employees. This duty rests also with self-employed persons who are their own employer.

Liability for industrial injuries is regulated by the Workers' Compensation Act.[66] The Workers' Compensation Act covers persons engaged to perform work for an employer in Denmark.[67] The work can be paid or unpaid and may be permanent, temporary, or casual. The employer is under a duty to take out occupational accident insurance and contribute to the public occupational injury insurance for all employees.[68] The Workers' Compensation Act grants employees a number of compensatory benefits in case of injuries incurred when performing work, *inter alia* compensation for loss of ability to work and compensation for permanent injuries. If an employer has not taken out insurance as prescribed, and one of the employees becomes injured at work, the public Labour Market Insurance will provide the benefits to the employee irrespective of the violation by the employer.[69] The funds are then retrieved by the Labour Market Insurance from the employer.

The Workers' Compensation Act applies to employers. An employer is defined as the entity with an economic interest in the work as well as having the right to instruct and control the work. If this is not clear, an entity can be the responsible employer under the Act according to an overall assessment of the social and occupational status of the parties.[70] In this, the formal setup of the self-employed company is assessed as well as the relationship between the self-employed and the alleged employee. The assessment takes into consideration the social purposes of the Act in the interest of general society. Genuinely self-employed persons are not covered by the definition of employee in the Act, and are not insured by an employer. Instead, genuinely self-employed persons have the option of voluntarily tak-

66 Act on Workers' Compensation No. 977 of 9 September 2019.
67 Section 2 (1) of the Act on Workers' Compensation.
68 Sections 48 and 50 of the Act on Workers' Compensation.
69 Section 52 of the Act on Workers' Compensation.
70 This was established in early case law under the Act e.g. Supreme Court ruling U.1920.529 H, cf. detailed analysis in *Magnus Nørgaard, Sørensen*, Platformsøkonomien og arbejdsskadesikringsloven, 2018, https://law.au.dk/fileadmin/Jura/dokumenter/forskning/rettid/Afh_2018/afh27-2018.pdf. Accessed 28 July 2020.

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ing out an insurance for themselves.[71] If the genuinely self-employed person has not taken out insurance against occupational injury, the costs must be borne by themselves in case of injury, unless a third party is liable for the injury according to personal injury law.

*For platform workers* this entails, that the platform company can be viewed as the employer, due to a traditional assessment of the relationship between the platform worker and the platform company, including an assessment of the degree of instruction and control of the platform company. If this is not clear, the formal company setup of the platform worker will be considered as part of an overall assessment. In addition, the overall protective purpose of the regulation will be considered as part of the overall assessment. For this reason, the platform company is, in relation to industrial injury insurance, more likely to be assessed as an employer under the Workers' Compensation Act due to the protective purpose of the regulation. Platform companies could be obliged under the Workers' Compensation Act to provide coverage for platform workers who provide services as self-employed persons but without a formal business setup outside of the relation to the platform company. If a platform company has an injury in connection with work and the platform company has not taken out industrial injury insurance, the Labour Market Insurance will cover the payments incurred to the platform worker, and have the payments reimbursed by the platform company. Genuinely self-employed platform workers are not covered by the definition of employee in the Act, and are not automatically insured by an employer. Instead, genuinely self-employed persons can take out voluntary occupational injury insurance for themselves. Genuinely self-employed platform workers must take out cover against the financial risk of occupational injuries themselves.

No complaints have been assessed on occupational injuries of platform workers and the question of liability of the platform company in its role as employer. Many platform companies offer a special occupational injury insurance that can be taken out by platform workers with self-employed status. The insurance scheme is provided especially for platform work by a private insurer.

71 Section 48 (2) of the Act on Workers' Compensation.


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### III. The Role of Social Partners in Improving Social Security for Platform Workers

Social partners participate in improving social security measures in several ways. Occupational retirement pensions with mandatory employer contributions are found only in collective agreements. Sick leave benefits are regulated by statutory acts, but some collective agreements improve the rights of the employees to receive salaries during sick leave and/or during maternity/parental leave. Furthermore, some agreements include additional work-life-balance elements, such as days off in the case of children's illness, additional days off for seniors, etc. These elements could be extended as terms of work also to platform workers, if the negotiations for collective agreements for platform workers are continued. The Danish social partners have used a number of ways to improve the social security rights of platform workers.

First of all, the social partners have a long history of being closely consulted or directly involved in tripartite negotiations with the Government and in expert committees on reforms affecting social security and the labour market. The role of the social partners representing both employers and employees is essential to the legislators when preparing regulations aimed at the labour market and is well-established in Denmark – by tacit understanding, as there is no legislation obliging the legislators to include the social partners. This is understood as making rules of a better quality and, as such, with better effects on the market, as well as with the support of employers as well as employees for reforms. This respected role in society is a preunderstanding of the social partners, and part of the goodwill in society – with rule-makers, workers and employers alike. For platform workers, this was very clear in the negotiations for the 2017 reform of the unemployment insurance system, which aimed at moving away from categorising platform work and at setting up a universal income model.

Second, the social partners extend negotiated rights in collective agreements to non-standard groups of workers. Negotiating agreements specifically for persons in non-standard work had taken place several times before the emergence of platform work, such as for e.g. *freelance* journalists and photographers. Negotiating agreements that cover platform workers has likewise taken place. Three models have been used for this: A tailor-made collective agreement for the Danish platform company *Hilfr* offering cleaning services to private users, an accession agreement with the Danish platform company *Voocali* offering translation services to private and public entities, and temporary agency work models used by the platform com-

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panies *meploy* offering logistics services, and *Chabber* offering restaurant staff temps.

The most innovative development was the negotiation of a tailor-made collective agreement for the platform company *Hilfr* as a pilot-project in 2018. The platform company *Hilfr* was set up in 2017 by three young Danes, who started the platform making use of digital technology to match small cleaning jobs with a wider audience of cleaners. The platform is the second largest platform offering cleaning services in Denmark, with 216 cleaners and 1.700 customers.[72] The entrepreneurs initiated contact with the trade unions, as a way to develop their business and give their platform a competitive edge in the market.[73] The platform company owners negotiated with 3F, the largest trade union in Denmark for unskilled workers. In 2018, the parties agreed to the *Hilfr*-agreement.

The agreement entails[74] that cleaners at the *Hilfr* platform are either *FreelanceHilfr* or *SuperHilfr*. *SuperHilfr* are covered by the agreement, *FreelanceHilfrs* are not. The agreement ensures that a *SuperHilfr* is employed by *Hilfr.dk*, and works at an hourly minimum rate of DKK 141.21 has a right to paid holidays, and to sick leave benefits. The agreement settled the issue of scope with an innovative provision stating that freelancers automatically obtain employee status as *SuperHilfrs* after 100 hours of work via the platform. However, freelancers who wish to transfer their status from freelancer to employee before having worked 100 hours can notify *Hilfr* of this, and in this case the agreement covers new work assignments accepted after the notification. Likewise, freelancers who wish to remain freelancers after 100 hours of work facilitated by the platform must inform *Hilfr* of this decision, and in this case they will not obtain employee status and will not be covered by the collective agreement. In reality, the agreement was based on a fully individual opt-in-opt-out mechanism for the individual cleaner.[75] The agreement instituted a pension plan for cleaners above the age of 20, with employer contributions at 4.15 percent and employee con-

72 https://hilfr.dk. Accessed 28 July 2020.

73 *Anna*, *Ilsøe*, The Hilfr Agreement, Negotiating the Platform Economy in Denmark, FAOS Research Paper No. 176, March 2018, https://faos.ku.dk/publikationer/forskningsnotater/rapporter-2019/Rapport_176_-_The_Hilfr_agreement.pdf, p. 6. Accessed 28 July 2020.

74 Collective Agreement between Hilfr ApS. CBR.no.: 37297267 and 3F Private Service, Hotel and Restaurant, 2018, https://www2.3f.dk/~/media/files/mainsite/forside/fagforening/privat%20service/overenskomster/hilfr%20collective%20agreement%202018.pdf. Accessed 28 July 2020.

75 This element was heavily criticised.


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tributions at 4 percent. In addition, all employees were covered by a health care plan, also paid by employer contributions. The right to pension contributions is earned after a minimum of 320 hours of paid employment with *Hilfr* within a 3-year-period. The agreement protects against dismissal by stating that deletion or depersonalisation of the employee's profile on the platform can only take place after a 2 weeks' notice in writing, and a discretionary decision of dismissal must be based on substantial reasons relating to the company or the employee.

The *Hilfr* agreement was in force from 1 August 2018 to 31 July 2019. The parties are currently renegotiating the terms, and the provisions have been extended to cover *SuperHilfrs* in the negotiations. The agreement has shown that it is possible to create a collective agreement for platform workers that is fully adjustable to the special working situation of platform workers. However, as is clear, having a *special* agreement for platform work comes at a cost. In the *Hilfr* agreement, the cost was to sacrifice an essential principle of industrial relations, namely that the individual worker and employer cannot derogate the protections of the collective agreement to the detriment of the worker by individual opt-in-opt-out provisions. However, as mentioned, no cases have arisen since the agreement came into force in August 2018.

The pilot project has also shown that it is possible to *clarify* the status of persons providing work via digital platform by way of collective agreement. This is a supplementary aspect of concluding collective agreements that could have a normative effect also on clarifying the rights and duties between the parties in matters regulated by statutory acts, such as mandatory occupational injury insurance. The fact that the agreement determines who is an employee under the agreement could have some bearing on the public social security systems regarding eligibility – in that working hours in employment are counted towards eligibility for sick leave benefits, maternity/parental leave benefits, and towards the requirement of 225 hours of annual work for continuing to receive basic living benefits from the local municipality. The assessments under these regulations are based on the assessments of employment status carried out in labour law. The project has shown that it is possible to engage in negotiations with platform owners, with a view to establishing the working conditions for service providers along the existing Danish standards for work, specifically with regards to *social security contributions* similar to those of more standard employment relationships. The platform is to pay sick leave benefits for the first 30 days of sick leave, and to make contributions to occupational pension schemes.

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A specific learning point to take home from the *Hilfr* agreements during their first year of existence was the response of the users. When booking assistance, the user can choose between a *FreelanceHilfr*, at individual hourly rates, and a *SuperHilfr* covered by the collective agreement starting at 141.21 DKK per hour. 1 out of 7 cleaners in *Hilfr*, approx. 14 percent, are *SuperHilfrs*, covered by the collective agreement.[76] Approximately 35 percent of all assignments are however carried out by a *SuperHilfr*. This large proportion indicates a preference to use *SuperHilfrs*, despite the services being performed at a higher rate. There are no empirical studies on why the end users prefer *SuperHilfrs*. Explanations could be that the users prefer to engage persons that provide work on approved terms, or to avoid circumvention of the Danish model. More details can be found in a new report on *Hilfr* agreements and lessons learned.[77]

The pilot project did not give guidance on future negotiations with more uncooperative platforms. *Hilfr.dk* initiated the negotiations by contacting the trade unions. However, the largest platform company providing cleaning services to private homes, *HappyHelper*, has refused to enter into negotiations at all. A further unclear topic is that there is yet to be a specific judicial review of the right of trade unions to engage in industrial action against digital platforms as a follow-up to potential unsuccessful negotiations with uncooperative platform companies. Earlier caselaw on non-standard workers and causal self-employed persons may suggest that industrial action is indeed possible, but caselaw has not yet confirmed this in relation specifically to non-standard workers on platforms.

Another agreement negotiated in 2018 was the *Voocali* agreement.[78] The *Voocali* agreement was an accession agreement. *Voocali.com* is an interpretation platform company which offers interpretation services to public and private entities. The agreement entails that interpreters, who are employees, are provided with all the rights of the Collective Agreement for White

76 32 out of 212 in all, cf. Denmarks Radio. Kun hver syvende rengøringsmedarbejder er på banebrydende overenskomst, 27 November 2019, https://www.dr.dk/nyheder/penge/kun-hver-syvende-rengoeringsmedarbejder-er-paa-banebrydende-overenskomst. Accessed 28 July 2020.

77 *Anna*, *Ilsøe*, The Hilfr agreement (fn. 73).

78 HK Danmark, HK indgår overenskomst med platformsvirksomhed, 1 October 2018, https://www.hk.dk/aktuelt/nyheder/2018/10/01/hk-indgaar-overenskomst-med-platformsvirksomhed. Accessed 28 July 2020. The accession agreement is available in Danish at https://www.hk.dk/-/media/dokumenter/raad-og-stoette-v2/freelancer/erklringvoocalihkprivatendelig.pdf?la=da&hash=F220F50F58285F3F4681F9AE6A81E2E716EF953C. Accessed 28 July 2020.


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Collar Workers in Trade, Knowledge and Service,[79] as negotiated between *HK Privat*, the largest union for salaried employees, and *Dansk Erhverv*, the Danish Chamber of Commerce. The parties agreed to conclude a *special* collective agreement for freelance interpreters at *Voocali*.[80] This agreement entails[81] that freelance interpreters receive a guaranteed fee agreed to in the collective agreement with HK Privat, transportation supplements, a no-show fee in event of cancellation, a requirement of objective reasons for being excluded from the platform, registration of taxes for freelancers without a Business Registration Number, no restrictions with regards to carrying out assignments outside of *Voocali.com*, and data portability to take their user ratings with them. The freelance agreement did not include occupational pensions, retraining programmes, additional tax registrations, a complaints mechanism for ratings, as these elements were part of the future negotiations envisaged in mid-2018. The rates were negotiated on the basis of the salary statistics, which includes salary, holiday pay, hardship allowances, sickness pay, supplements, employee fringe benefits, pension contributions on the part of the employer, special holidays, education costs and insurance. These elements were not separated in the agreement, and the rates for the freelancers included these elements indicating that the freelancers themselves should put aside money from the salaries to cover these additional costs, also those relating to pension payments and sickness pay. The freelance agreement was in force for one year in a trial basis. The agreement was renegotiated in 2019, and now also covers police interpreters[82] providing services via *Voocali.com*.

Finally, a few platform companies have chosen to provide services under terms similar to those of the Act on Temporary Agency Workers. This is the case for the platform companies *Chabber*,[83] offering catering personnel such as bartenders, chefs, waiters and receptionists, and *meploy*, offering temporary work agents to retail, production, warehouses. *Chabber* is an

79 https://www.danskerhverv.dk/siteassets/mediafolder/dokumenter/03-overenskomster/overenskomster-2017-2020/funktionaroverenskomsten-2017-2020.

80 Standard contracts and terms for freelancers available at https://www.hk.dk/-/media/dokumenter/raad-og-stoette-v2/freelancer/appendix41.pdf?la=da&hash=62EC78D86F778B2EAC6042E523299052. Accessed 28 July 2020.

81 Appendix 7.4 to the Agreement between Voocali and HK Privat, https://www.hk.dk/-/media/dokumenter/raad-og-stoette-v2/freelancer/appendix74.pdf?la=da&hash=4F6B32877A1D5F6A50AD08129D961D6A. Accessed 28 July 2020.

82 HK Danmark, Ny aftale for polititolke skal sikre fair vilkår i nyt udbud, 29 July 2019, https://www.hk.dk/aktuelt/nyheder/2019/07/29/ny-aftale-for-polititolke-skal-sikre-fair-vilkaar-i-nyt-udbud. Accessed 28 July 2020.

83 Chabber Homepage, https://www.chabber.com/. Accessed 28 July 2020.

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online freelance platform, tailor-made to the hotel and restaurant industry. Freelancers are employed by *Chabber*, and the latter platform takes care of salary payments and tax registration. Rather than direct payments between the customers and the freelancers, the company ProLøn[84] has tailored a solution so salaries are paid out by *Chabber* to the freelancers. In *Chabber's* Terms and Conditions the user entity is defined as the employer, obliging the user entity to pay the *Chabber* employee all benefits under the collective agreement applicable at the user entity, with *Chabber* administrating the payments and registrations. *meploy* is a Danish platform company matching the needs of temporary workers in the retail, warehouse and production sectors. *meploy* is set up like a temporary work agency. The temporary work agencies provide services based on an equality principle, meaning that temporary agency workers will receive salaries and benefits similar to those of the other workers in the user entity. If the user entity is covered by a collective agreement, *Chabber* and *meploy* will receive these rates. If the user entity is not covered by a collective agreement, *Chabber* and *meploy* will receive the rates of the other workers in the user entity. *Chabber* and *meploy* do not have their own collective agreements for the temporary agency workers, and as such any right to pension contributions, sickness pay, and other benefits depends entirely on the user entity. *meploy* is a member of Dansk Industri, the Confederation of Danish Industry, a private business and employers' organisation representing approximately 11,000 companies in Denmark.[85]

However, the biggest amendment to the social security status of non-standard workers and the self-employed was not the platform agreements but the statutory amendment in 2017 for unemployment insurance. In this regard, the important and essential role of the social partners in tripartite negotiation and consultation with the Government in any matters relating to the labour market and social security system was evident and also a prerequisite for aiming to make the interaction between the labour market and the social security system a smooth and dynamic match. The unemployment insurance reform was a good example, and the reform could be seen as a consequence of unemployment insurance traditionally being an issue provided by the trade union membership and insurance-based. The sick leave benefit and maternity/parental leave benefit scheme, however, have not yet been reformed to match the new labour market. This lack of

84 https://proloen.dk/kundecases/chabber/. Accessed 28 July 2020.

85 DI Digital, meploy, 1 April 2019, https://www.danskindustri.dk/brancher/di-digital/nyhedsarkiv/manedens-medlem/meploy/. Accessed 28 July 2020.


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reform could be explained by the fact that these types of benefits are seen as traditionally part of a fully public social benefit system, rather than related to trade union membership or insurance.

For social security rights, in order to counteract abuses, only hours earned in employment that resembles the terms provided by collective agreements used to be counted towards being eligible. This element is of less significance in the reformed unemployment insurance system, as the focus switched to *income*, which can be accumulated from any type of work, rather than *status*. The element is still significant with regard to all other social security measures. However, as illustrated, being covered by a collective agreement improves the retirement pensions of employees compared to pension rights following from statutory legislation only. Mandatory employer contributions to the occupational pension schemes of their employees follow only from collective agreements. These schemes in collective agreements are normative also for employment relationships that are not covered by collective agreements. Employers not covered by a collective agreement sometimes opt to offer company-level pension schemes as an avenue to attract and keep qualified employees, either as a company policy or negotiated in the individual employment contracts. For platform workers, however, there are no indications that they are offered occupational pension plans or similar in their contracts. Occupational pensions are still left to the private initiative of the platform worker.

Likewise, many collective agreements improve the rights during sick leave by providing a right to sickness pay. Salaries during sick leave and partial salaries during maternity/parental leave are provided for white collar workers in the White Collar Workers' Act. Collective agreements can extend these rights to other groups of workers not covered by the White Collar Workers' Act. Salaries during maternity/parental leave likewise have a normative effect for relationships not covered by a collective agreement, as an employee benefit provided by the company.

Additionally, collective agreements often improve the work-life balance of employees, e.g. by providing periods with paid leave during maternity/parental leave, or days off in case of children's sickness. These provisions are mandatory only for employers covered by a collective agreement stipulating these rights. However, the provisions are normative also for employment/self-employment not covered by a collective agreement. This can be either in the form of general company level policies to this end, or of negotiated provisions in individual employment contracts. There is, however, no indication that such work-life balancing provisions have as yet been part of the regulations of platform companies.

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The categorisation of the platform workers is still unclear and heavily debated by practitioners, tax authorities, social security authorities, and labour lawyers. Recently, the competition law authorities have established a task force monitoring digital platforms as potentially in breach of competition law. In August 2020, the Competition Authority task force issued their first ruling on the platforms *HappyHelper* and *Hilfr*.[86] Both platforms were found in breach of competition law by posting minimum prices for the services on their websites, concerning the platform workers who are genuine self-employed. For *Hilfr*, the Competition Authority did not find that the current collective agreement established "an employment situation" as understood in competition law. The *Hilfr* platform agreed to ensure that the persons covered by the collective agreement are more clearly "employed". The implications of this ruling and development are not yet certain.

At the same time, the social partners and the platform companies themselves have made significant progress in Denmark with regards to ensuring decent working conditions for platform workers, as well as some progress in including social security measures alongside. The drivers of this development have primarily been the platforms themselves, wanting to use digital technology to meet the demands of the market and at the same time ensure decent working conditions for the platform workers. The public discourse on the status of platform workers and the role of collective agreements has likewise intensified over the last years. There is an ongoing dialogue between the trade unions and the platforms, with a view to informing the platforms about certain problems for the service providers. Negotiations for new collective agreements are currently taking place with the delivery platform *JustEat*.[87]

## *IV. Conclusion*

The Danish experience with improving the social security of platform workers yields a number of learning points. First of all, the drivers in the first wave of platform companies and collective agreements were the platform companies themselves, looking to align their company with the Danish model as well as to create a competitive edge to their platform with the

86 https://www.kfst.dk/pressemeddelelser/kfst/2020/20200826-rengoringsplatforme-fjerner-minimumspriser/. Accessed 28 July 2020.

87 *Anna*, *Ilsøe*, The Hilfr Agreement (fn. 73), p. 18.



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customers. The first wave of collective agreements used different strategies for providing the platform workers with basic working conditions, i.e. the tailor-made collective agreement of *Hilfr.dk*, the accession agreement of *Voocali* with a tailormade freelance agreement as a supplement, and the temporary agency strategies of *Chabber* and *meploy*. Across these attempts, the focus was on essential working terms rather than social security measures. In particular, the lack of mandatory employer pension contributions is clear, as is sickness pay and pay during maternity/parental leave. To this end, the *Hilfr.dk* and *Voocali.com* agreements are still pending, whereas *Chabber* and *meploy* delegate these matters to the user entity in principle providing the platform workers with a better coverage and additional benefits – at par with the standard workers with the user entity.

Second, the lack of focus on social security matters could be seen in continuance of the reform of the unemployment insurance system in 2017, changing a system of accruing working *hours* in either employment or self-employment in order to be eligible for unemployment benefits, to a system of accrual of rights based on universal income. The reform received a lot of public attention, as it was the first tangible result of the work in the highly promoted Disruption Council of the former Government. However, as has been described above, the reform is still experiencing systemic setbacks for platform workers.

Collective agreements for platform workers *can* improve social security in areas where the public system is less strong, such as in areas with a low public system for platform workers, most notably retirement pensions. Also in areas where the public system is not yet aligned smoothly with new ways of providing work, such as sick leave and maternity/parental leave benefits, and occupational injury insurance, collective agreements could clarify the status of platform workers and in this way assist their accrual of rights in the public benefits system. Most influential to the social security of platform workers was, however, the amendment to the statutory act on unemployment insurance changing the accrual method to universal income from all types of work, rather than single-employment-based accrual either in employment or self-employment.

The outcomes from the first attempts are varied. The uncertain status of platform workers has spurred attention also from the competition authorities. For the sake of the companies and of the platform workers as well as the users and broader society, it would be recommended that the stakeholders engage in dialogue on how to assess and distinguish between freelancers working on terms more similar to employees and freelancers working on terms more similar to genuine self-employment via the platforms. This clarification and understanding could also pave the way for more col-

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lective agreements for platform workers as the preferred avenue of improving not only the basic working conditions of platform workers, but also their overall social security coverage in their active work life, when injured at work, when on sick-leave and maternity/parental leave, and during their retirement.

The involvement of social partners in the rulemaking of the legislators, the invitation to be part of the consulting and negotiation of new initiatives is probably the most influential element. The social partners are always close to new developments and influence the systemic choices of the legislators. This cooperation is not based on any legally binding instruments, but is at the free choice of the legislators at any time. This influenced the 2017 reform of the unemployment benefit insurance system, and recently resulted in a historic proposal by the social partners to the legislators for statutory regulation of minimum pay in the transportation industry for foreign transporters with a view to counteracting abuse and circumvention of the collective agreements in this specific sector.[88] Such dual and tripartite negotiations could perhaps over time also open up further dialogue at the political level to provide solutions for platform workers. There are still questions outstanding with regard to collective agreements and platform workers, such as the lawfulness of collective action against platform companies and, in this respect, the status of the platform workers, how categorisations of the platform workers in collective agreements can influence assessments in the public social security system. There have been no complaints reviewed under the *Hilfr* agreement or the *Voocali* agreement.

The platform companies in Denmark provide services within all areas. The work performed is not new, but the form of organising the work is new and based on digital technology which has a number of administrative benefits. The work is performed on non-standard contracts; however, this is not necessarily precarious work. Some platform companies offer services by highly skilled workers, some offer services in highly regulated areas, and some in less regulated and more at-risk areas. Platform companies are different and vary in their social and commercial outlook, much like other types of companies. In this, the platform companies represent a new form of company model rather than new forms of work. The need for social security of persons performing work has likewise not changed – persons are still in need for social security. The fragmentation of work pat-

88 Aftale om vejtransport, January 2020, https://www.bm.dk/media/12316/aftale-om-vejtransport.pdf. Accessed 28 July 2020.


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terns, as well as the uncertain and fragmented categorisation of the status of platform workers under the variety of social security regulation and collective agreements, contribute to the social security status of platform workers being indeed very uncertain. The steps forward taken by the Danish Government and the social partners in providing the 2017 reform of unemployment insurance, as well as by the social partners in testing collective agreements tailormade for platform workers have definitely improved the status. However, the agreements were made with friendly platform owners, and so far no industrial action has been taken against more uncooperative platform companies in Denmark. Also, the preliminary results focused on parts of the social security system and parts of social security provisions in the collective agreement. The learning points and good results from these processes could form a better starting point for the next wave of focus on the rights of platform workers – their overall standing in the social security system in Denmark, allowing them to be part of the Danish flexicurity system also when utilising the new digital forms of flexible work made possible by platform work.

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