Marianne Jenum Hotvedt

National report Norway: Legal analysis part 1

Funded by
the European Union

National report 2026

Grant Agreement No	101177913
Project Acronym	Integrate Dialogue
Project Title	Integrating diversity in social dialogue: Strengthening the EU Labour Market in the digital and green age
Deliverable title	National report Norway: Legal analysis part 1
Deliverable number	D2.2
Deliverable version	
Contractual date of delivery	
Actual date of delivery	23.06.2026
Nature of delivery	
Dissemination level	Public
Work package	2
Task(s)	
Partner responsible	University of Oslo
Author	Marianne Jenum Hotvedt
Version	

National report Norway

Funded by the Horizon Europe Social Dialogue In The New World of Work. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or European Research Executive Agency (REA). Neither the European Union nor the granting authority can be held responsible for them.

Content

Preface by the project managers

The INDI project (Integrating Diversity in Social Dialogue: Strengthening the EU Labour Market in the Digital and Green Age), funded by Horizon Europe (101177913), examines how social dialogue can better include non-standard workers in a transforming labour market shaped by digital and green transitions. Focusing on the EU, the UK and Norway, the project explores existing and emerging models of worker voice and representation, with the aim of preventing rising inequality, in-work poverty, and social exclusion.

While social dialogue is a cornerstone of the EU's social market economy, non-standard workers often find themselves on the margins of such processes. This contributes to an increasing dualization of the labour market, with a clear divide between the better-off 'insiders' and the non-standard 'outsiders', who often find themselves in vulnerable positions. Both the scale and the consequences of such dualization vary significantly across countries, sectors, and business models.

The project adopts a comprehensive, multidisciplinary, and comparative approach encompassing eight countries, different business models, various forms of non-standard work, and social dialogue processes at various levels. We place the needs, interests, and motivations of non-standard workers for representation and voice at the centre (bottom-up perspective). These insights will be matched with strategies, willingness, and distributional costs among social partners when including workers in non-standard positions in social dialogue processes, as well as how these dynamics play out within different industrial relations and employment regimes (top-down approach). Our main research questions are:

i. How can non-standard workers strengthen their power resources?
ii. How are these processes influenced by prevailing industrial relations regimes, employment regimes, and business models?
iii. How are these processes shaped by the interests of (different groups of) workers in non-standard positions?
iv. How are these processes shaped by the interests of employers, investors, and contractors?
v. How can power resources be translated into social dialogue with favourable outcomes for workers in non-standard positions?

Researchers from Belgium, Denmark, Ireland, Italy, the Netherlands, Norway, Slovakia, and the United Kingdom are participating. The project is coordinated by The Fafo Foundation in Oslo, Norway. The project was launched in February 2025 and will be completed at the end of January 2029.

We wish to thank the European Commission and the Horizon Europe programme for providing the opportunity to carry out this important and exciting research project.

Preface by the leader of Work Package 2

The legal work package (WP 2) of the INDI-project will present a legal analysis that aims to evaluate the impact of EU and national legal frameworks as barriers or facilitators for inclusion of non-standard workers in social dialogue, with a focus on reform recommendations. With a four-step analysis, this will contribute to the realization of the aim of the INDI-project of creating a more cohesive, effective, and legally robust environment for social dialogue, by addressing and proposing enhancements to the existing legal framework.

Part 1 is the first step and focuses on the existing legal framework at a national level, with an aim to identify and compare legal obstacles and facilitators for access to social dialogue for non-standard workers in selected national systems. The analytical framework for the analysis is presented in a separate working paper (deliverable 2.1)1 This has guided analysis of facilitators and obstacles in national law in Denmark, Italy, the Netherlands, Norway and the United Kingdom. The present report is the national report from Norway (deliverable 2.2).

Part 1 will be concluded with a comparative analysis of exciting facilitators and obstacles in national law deliverable 2.3). Here, we will discuss commonalities and variations regarding access to social dialogue for non-standard workers with a focus on how this relates to differences in the national systems of social dialogue.

The next steps will be to examine the interplay between EU measures with potential to strengthen access to social dialogue for non-standard workers (Part 2, deliverable 2.4) and national law (Part 3, deliverable 2.5 and 2.6). Based on this, the aim is to develop recommendations for new strategies for including non-standard workers in social dialogue (Part 4, deliverable 2.7).

1 Non-standard workers in national law

1.1 Legal norms on employment status

1.1.1. Introduction[1]

The main legislative instruments in Norwegian labour law are the Working Environment Act (WEA)[2] and the Labour Disputes Act (LDA)[3]. Both acts have relevance for social dialogue. The labour law framework is characterized by the close interplay between statutory regulations and collective agreements. Statutory regulations set minimum labour standards that cannot be derogated *in pejus* (to the detriment) of the employee, neither by individual nor collective agreement, unless explicitly stated.[4] Statutory law however include certain provisions that provide a basis to derogate *in pejus* from statutory standards on specific issues, by collective agreements on different levels.[5] There is a strong tradition to leave wages to the autonomy of the labour market organisations through collective bargaining, and there is no statutory (general) minimum wage.[6]

The WEA primarily regulates *individual* employment relations, and covers a broad range of issues, including i.a. the working environment, working time, discrimination, employment terms and termination of employment. The WEA also sets minimums standards for information and consultation at company level (see further Section 3).

The LDA sets the main legal framework for *collective* employment relations, by defining the relevant type of collective agreement (*tariffavtale*) and recognizing its distinctive legal effects, and by establishing procedures and mechanisms for conflict resolution on a collective level (see further Section 2).

---

1 The general descriptions of Norwegian law in this report build on previous work, see in particular Marianne Jenum Hotvedt, «Key concepts and changing labour relations in Norway: Part 1 Country Report», Nordic future of work project 2017–2020: Working Paper 7, Pillar VI, Marianne Jenum Hotvedt, «Protection of platform workers in Norway: Part 2 Country report», Nordic future of work project 2017–2020: Working Paper 9, Pillar VI, Alexander S. Skjønberg, Eirik Hognestad and Marianne Jenum Hotvedt, *Arbeidsrett. Individuelle og kollektive emner*, Gyldendal akademisk, 4. ed. 2024 and Marianne Jenum Hotvedt and Alexander Sønderland Skjønberg, «Arbeidsretten», in Harald Irgens-Jensen (ed.), *Knophs oversikt over Norges rett*, 16th ed. 2024, p. 446–491.

2 Act 17 June 2005 No. 62 relating to the working environment, working hours and employment protection, etc. (Working Environment Act, WEA). Employment protection for state employees is regulated in Act 16 June 2017 No. 67 on state employees (State Employee Act), which for this group supplements the regulation on health and safety, working time etc. in the WEA. Seafarers are covered by a separate regulatory regime, where the Act 21 June 2013 No. 102 relating to employment protection, etc. for employees on board ships (Ship Labour Act) and Act 16 February 2007 No. 9 relating to ship safety and security (Ship Safety and Security Act) are most central. The regulations in these acts will only be addressed were particularly relevant.

3 Act 27 January 2012 No. 9 on labour disputes (Labour Disputes Act, LDA)..

4 See i.a. WEA § 1-9.

5 For example, the provisions on working time are to a large extent derogable by collective agreements on a central level, cf. WEA § 10-12 (4).

6 However, the Extension Act however empowers an independent administrative law body (*Tariffnemnda*) to adopt public law regulations on minimum terms and conditions for employment relations which typically include rates of pay, see further Section 2.3.

The concept of employee defines the personal scope of both the WEA and the LDA. Independent contractors/self-employed are, as a starting point and main rule, not covered.[7] Both acts build on the binary divide between an employee (working under a contract of employment) and an independent contractor/self-employed (working under a contract for service). There is no intermediary category in labour law legislation.[8]

In Norway, the unionisation rate is about 52 per cent and has changed little for the last 15 years. [9] The organisational landscape is dominated by a relatively small number of main confederations of trade unions and employer organisations, and sector level agreements play the main role in regulating pay and other working conditions. Collective agreement coverage for all employees was estimated at 64 per cent in 2025; 46 per cent in the private sector and nearly 100 per cent in the public sector. [10]

1.1.2 The concept of employee

The concept of employee is defined in the Working Environment Act (WEA) § 1-8 (1). The statutory definition had remained unchanged since in the early 1930s but was amended in 2023. The wording of the definition was adjusted, key criteria were codified, and a new employee presumption rule was introduced.

An employee is defined as "anyone who performs work for and is subordinate to another", cf. WEA § 1-8 (1) first sentence. This corresponds to the definition of employee in the LDA § 1(a).[11] There is thus a common concept of employee in legislation concerning social dialogue.

Although not stated explicitly, it is assumed that the employee performs work on a contractual basis. The employer is required to produce a formal written employment contract, but this is not a precondition for concluding an employment relationship. An employment agreement may also be concluded orally, by conclusive conduct or be based on the justified expectations of the other party. A person performing work on a contractual basis is therefore either an employee or an independent contractor. There is no explicit definition of independent contractor (or self-employed) in labour law legislation – an independent contractor is thus the negation of the concept of employee.

The fundamental characteristics of an employment contract are dependence and subordination, and a distinct imbalance of power between the parties. The 2023

7 However, certain specific employer duties in the WEA are extended to also cover self-employed. These duties concern, primarily, health and safety and protection against discrimination.

8 However, in tax and social security legislation rights and benefits are differentiated for three categories of workers: employee, freelancer and self-employed. This legislation still builds on the binary divide. Both freelancers and self-employed are independent contractors, while only the latter runs a *business* on own account.

9 NOU 2026: 5 p. 63 and 207, with reference to Kristine Nergaard, «Organisasjonsgrader, tariffavtaledekning og arbeidskonflikter 2023 og 2024». *Fafo-notat*, 2025 and Statistics Norway, 2024.

10 Kristine Nergaard, «Organisasjonsgrader, tariffavtaledekning og arbeidskonflikter 2023 og 2024», *Fafo-notat 2025:15*, p. 28 – 29. The rate however increase to 58 per cent in the private sector and 72 per cent in total when areas that are covered by regulations according to the Extension Act are included, see further on this mechanism in Section 2.3.

11 The preparatory works state that these definitions are to be interpreted in line with the definition on the WEA.

amendment to the definition aimed to highlight these aspects. The wording now seeks to reflect that particular weight should be given to dependence, subordination and imbalance in the contractual relationship when assessing whether an employment relationship exists.

In the labour law context, the protective purpose of statutory regulations has traditionally played a significant role in the interpretation and application of the concept of employee. An influential statement from the Supreme Court – that the concept of employee must be given "a wide interpretation" – was derived from the protective purpose and reflects an inclusive concept.[12] The Supreme Court has later stated that a purposive assessment is the "methodological approach" to the interpretation and application of the concept of employee, and has explained the protective purpose as follows: "It is the intention of the legislator that *those in need for the protection* provided by the Working Environment Act, the Holiday Act etc., *are protected*."[13] The purposive methodological approach in Norwegian law implies a relative concept of employee, where the interpretation and application of the concept can be affected by the purpose of the relevant rules. Consequently, it is recognized in preparatory works that employee status in the context of labour law does not necessarily fully correspond with employee status according to tax and social security law.[14]

The determination of employee status in a particular case requires a broad discretionary assessment of the individual work relation. The realities are generally decisive, not the contractual label or formal contractual terms. This is related to the protective purpose of the rules and the need to prevent circumvention of protective rules. The preparatory works of the WEA presuppose that courts "cut through" to hinder circumvention if the relation in reality is one of subordination and/or dependence (an employment contract).[15] The Supreme Court has stated that it has no significance for the assessment if the contract is classified as a contract for service.[16]

The preparatory works present a list of criteria indicating an employment relationship, based on earlier case law, to guide the assessment. The criteria reflect the broad and fact-oriented nature of the assessment:

- the worker is obliged to stay in service to perform personal work and cannot use substitutes on his/her own account;
- the worker is obliged to submit to the employer's supervision and control of the work;
- the employer provides the work location, machines, tools, work materials or other equipment necessary to perform the work;

12 Rt. 1984 p. 1044 (p. 1048). This statement is repeated in later cases, see i.a. Rt 2013 p. 354 (para. 39).

13 On the methodological approach, see Rt. 2015 p. 475 (para. 65), with reference to Rt. 2013 p. 354 (para. 39), which was reaffirmed in a labour law context in HR-2016-1344-A (para 60). The quote is from Rt 2013 p. 354 (para. 39).

14 Prop. 14 L (2022–2023) p. 29 and 66.

15 Ot.prp. nr. 49 (2004–2005) p. 74 and NOU 2004: 5 p. 163.

16 Rt. 2013 p. 354 (para. 37).

- the employer bears the risk for the work result;
- the worker is remunerated by some form of wage;
- the parties' relation is relatively stable and is terminable with notice; the worker mainly works for one employer.[17]

The list is not exhaustive; other factors and considerations may have relevance in a specific case.[18] However, the *key* criteria were codified by the amendment in 2023. WEA § 1-8 (2) second sentence now specifies that "particular weight shall, among other things, be given to whether the person continuously places their personal labour at the disposal of the employer, and whether the person is subordinate through governance, management and control". The central importance of these criteria stems from the fact that they provide clear indications of dependence and subordination.[19]

Whether one "continuously places their personal labour at the disposal" of the employer concerns, first, that the work must be performed personally and cannot be delegated to others. The personal obligation to perform the work is normally a prerequisite for being an employee. It is also central whether the labour is made available on an ongoing basis, typically through continuous and unspecified tasks, rather than having an obligation to deliver a specified work result.

This is connected to the second statutory criterium: "whether the person is subordinate through governance, management and control." This covers both general governance and organisation of the undertaking and more direct management and supervision – instructions, sanctions etc. – of the individual worker. This criterium is considered highly significant and is often decisive.

Supplementing criteria are still relevant. The preparatory works to the 2023 amendment include a discussion of the criteria in light of recent case law and present an «updated list of criteria».[20] Here, two of the traditional criteria – whether the relationship is stable, and/or whether the work is mainly done for one employer – are still considered relevant in the overall assessment. Furthermore, two "new" criteria are introduced: the possibility to negotiate terms of work and whether the work is performed in close connection with the employer's regular business and organisational structure. On the other hand, the last two of the traditional criteria – who provides the work location and materials etc. and the form of remuneration – are considered to provide less guidance for the assessment in a modern working life.

17 Ot.prp. nr. 49 (2004–2005) p. 73, author's translation. The criteria are basically the same as in the preparatory works to the Holiday Act. A similar, but slightly different list is found in the preparatory works to the Social Security Act, which also has relevance for the Tax Payment Act.

18 See for example Rt. 2013 p. 342 and HR-2025-2615-A, where supplementing criteria (the nature of the work assignment and its proximity to family life) were decisive.

19 The codified criteria reflect the first, second and fourth criteria on the list from the preparatory works. See further NOU 2021: 9 p. 247–248 and 250 and Prop. 14 L (2022–2023) p. 27–29.

20 NOU 2021: 9 p. 250 and p. 246–249 and Prop. 14 L (2022–2023) p. 28.

The overall assessment is a purposive, overall evaluation of the criteria in light of the purpose of covering those with need for labour law protection.[21] As the hallmark of an employment contract is the subordinate and dependent position vis-à-vis the employer, the evaluation must consider whether the work relationship between the parties exhibits dependence, subordination and an uneven power balance on the one hand, or independence and autonomy on the other. In light of this, the concept can be characterized as both dynamic and flexible; it has developed and may continue to develop gradually through case law and is to some extent adaptable to the factual context and new forms of work.

1.1.3 Mechanisms to resolve employment status

Disputes on employment status are decided by the courts, and there is no specific tribunal, commission etc. available for solving these disputes. Ordinary courts decide on individual claims, whether the legal basis for the claims is statutory rights, individual contracts or collective agreements. When ordinary courts interpret collective agreements in order to decide on individual claims, the exclusive competence of The Labour Court (*Arbeidsretten*) must however be respected. The Labour Court decides cases concerning collective claims, i.a. on the scope and interpretation of collective agreements, which may include questions on the employment status of workers.[22] If the Labour Court has ruled on a specific interpretation of a collective agreement, this applies to any contract of employment based on the collective agreement, and ordinary courts – including the Supreme Court – must build on this interpretation.[23] See further on the Labour Court in Section 2.4.

The individual worker can bring legal action before the ordinary court. In practice, cases concerning employment status seem rare without the support and legal aid provided by a trade union. As regards legal costs, the general main rule is that the party who wins the case "fully or essentially" is entitled to have the necessary legal costs covered by the opposing party. The court may decide otherwise if "special reasons" apply, for example split the costs, and this exception is used quite frequently in favour of workers in labour law cases.

Questions on employment status may also arise in cases handled by other authorities, such as the Labour Inspection Authority (*Arbeidstilsynet*) and the Anti-Discrimination Tribunal (*Likestillings- og diskrimineringsnemnda*). These authorities have the competence to rule on breaches of specific rules that apply to employees. Although their competences do not explicitly include the definition of employee, an initial assessment of employment status may be carried out as part of considering whether the relevant rules are breached. However, in practice, the Labour Inspection Authority is reluctant to

21 NOU 2021:9 p. 249 and Prop. 14 L (2022–2023) p. 28 and 61.

22 On the exclusive competence of the Labour Court, see LDA § 33 and § 34. The Labour Court decides on legal disputes between organisations of employees and employers or organisations of employers concerning validity, interpretation or existence of a collective agreement, and claims based on a collective agreement. Furthermore, the Labour Court decides on disputes concerning breach of the peace obligation and of regulations on interest disputes, and on liability for breach of collective agreements. See further in Section 2.4.

23 Cf. LDA § 34 (2) and i.a.HR-2019-424-A (para. 39).

question formal employment status. Administrative enforcement therefore plays no significant role in resolving employment status in the context of labour law and social dialogue.[24]

A presumption rule on employment status was introduced by the 2023 amendment. The WEA Section 1-8 (1) third sentence reads:

> "It shall be assumed that an employment relationship exists unless the client shows it to be highly probable that an independent contract relationship exists."

The presumption rule aims to reduce uncertainty about employment status. An important objective is that as few workers as possible should be in the "grey area" between employee and independent contractor/self-employed.[25] The rule may be invoked in any legal dispute on employment status according to the WEA. As the concept of employee in the LDA is intended to correspond to the WEA, it can be argued that the presumption rule should also apply to disputes on employment status according to the LDA.[26] The issue is however not settled in case-law.

The presumption rule is characterized as a rule on the burden and standard of proof.[27] The starting point (the presumption) is employee status. First, the *burden* of proof for establishing an independent contractor is placed on the purchaser of labour, the potential employer. This is motivated by the employer's legal responsibility for classifying the work relationship correctly.[28] The employer is also regarded as best placed to ensure that the formal contract corresponds to the realities.

Second, the provision establishes an elevated *standard* of proof. The general standard of proof in Norwegian civil law – balance of probabilities – is not sufficient. To be classified as an independent contractor, a clear balance of probabilities is required, implying "high evidentiary demands".[29] The heightened standard of proof is intended to have a "preventive and normative effect" when working relationships are established.[30] The idea is that the rule will send an important signal and create an incentive for the parties to clarify employee status and thus avoid grey area cases.

The preparatory works state that the presumption rule is related to the assessment of *factual* circumstances and is thus not intended to affect the *legal* norms guiding whether a person is an employee. However, it is also acknowledged that it is challenging to distinguish the factual and legal assessment when applying the concept of employee. Being an employee is a *legal* status and not merely a factual situation, and the

---

24 There are, however, some examples in case law where the tax authorities have challenged formal employment status (as self-employed) according to the similar concepts in tax and social security law.

25 Prop. 14 L (2022–2023) p. 30.

26 Alexander Sønderland Skjønberg, «Legal presumptions in labor law, Nordic Journal of Labour Law 2025, p. 1–18, on p. 13–14.

27 Prop. 14 L (2022–2023) p. 30.

28 WEA Section 2-1, see also HR-2019-1914-A para. 35.

29 Prop. 14 L (2022–2023) p. 31.

30 Prop. 14 L (2022–2023) p. 31.

factual and legal assessments of whether a worker is an employee are closely intertwined both at a theoretical and practical level. [31]

This far, case law does not signal a significant impact of the presumption rule. In a recent Supreme Court ruling – HR-2025-2516-A – the court stated that the presumption rule "is only relevant if there is doubt about the factual circumstances of the case". Here, court's reasoning on employment status did not start by explicitly assuming the existence of an employment relationship.

In cases of misclassification, where a worker is reclassified as an employee, the implication will typically be that the worker is seen as having rights as an employee from the start of the employment relationship and will therefore be entitled to a post-settlement. In HR-2024-2368-A, the Supreme Court clarified the principles for this settlement. The mandatory rules of the WEA form the basis for calculating any additional payments, as long as nothing else is validly agreed upon. In the absence of an individual contract compatible with the mandatory provisions of the WEA, this means, among other things, that work performed exceeding the normal working hours stipulated by law should be classified and compensated as overtime according to the WEA.[32] If the already paid amount fully or partially compensates for the claims made, deductions based on an individual assessment must be made to avoid overcompensation. The burden of proof for overcompensation lies with the employer.

1.2 Categories of non-standard workers

1.2.1 Point of reference: The standard worker

In Norwegian law, the standard worker is an employee in a full-time, permanent employment contract between two parties. It is an explicit and agreed political objective that permanent and direct employment should be the general rule and dominate the labour market.[33] Promoting a full-time culture and preventing involuntary part-time work are also important social policy goals. This notion of the standard worker is supported by rules restricting the possibility of fixed-term employment and hiring of labour. There are also certain, more limited, requirements related to the use of part-time employment that aim to underpin and encourage full-time work.

About 67 per cent of workers in Norway are in full-time, permanent employment.[34] Another 9 per cent are considered to be in stable employment as they have permanent employment contracts with so-called "long part-time" (more than 20 hours per week).

---

31 Prop. 14 L (2022–2023) p. 30. Further on the presumption rule and its significance for the factual and legal assessment of employment status, see Marianne Jenum Hotvedt, "Arbeidstakerpresumsjonen under lupen. Særlig om skillet og samspillet mellom rettslige og bevismessige vurderinger", *Arbeidsrett* 2025, p. 1–35.

32 The WEA requires an overtime supplement of at least 40 per cent of the normal hourly wage, cf. WEA § 10-6 (11), while collective agreements often set higher overtime supplements.

33 The preparatory works to the WEA state that direct employment should continue to be the "norm". Prop. 74 L (2011–2012) p. 8.

34 NOU 2021: 9 p. 119–120, with reference to empirical work from 2018.

1.2.2 Non-standard worker 1: Employees with non-standard terms of employment

The concept of employee in Norwegian law is generally inclusive to workers with non-standard working conditions, such as part-time or fixed-term work, and workers who are hired out or work in other tri- or multiparty relationships. As long as the worker places their personal labour at the disposal of the employer on a continuous basis, and the worker is subordinate through governance, management and control, the worker will as a clear main rule be classified as an employee, see Section 1.1.2.

As regards *part-time and fixed-term work*, employee status does not depend on a certain duration or amount of work. Also, *marginal part-time*, *work on call* or *work with very limited duration* are generally recognized as contracts of employment. Furthermore, a *triparty* contract structure does not preclude a contract of employment in Norwegian law. *Agency work* is therefore classified as contracts of employment.[35] The formal contract party – i.a. the agency – is considered the contractual employer and is responsible to comply with labour law regulation. The user entity – the hirer of labour (*innleier*) – is however responsible for a broad range of statutory employer duties, including providing a safe and healthy working environment and respecting working time regulations, rights related to whistle-blowing and protection against discrimination.[36] The user entity also has joint liability vis-à-vis an agency worker for the payment of wages, holiday pay and any other remuneration pursuant to the principle of equal treatment.[37] The same classification applies to other types of hiring of labour, as long as the work is performed under the management and control of the user entity.[38] Case law illustrates that work in other types of triparty structures is classified as contracts of employment as long as the situation of the worker is characterized by subordination according to the overall assessment.[39]

The regulatory approach to non-standard terms of employment has been to provide specific protection aimed at *limiting* the use of various non-standard terms and enhancing predictability for employees working under non-standard terms, supplementing the minimum requirements of EU/EEA-law.[40] The type and level of protection however vary for different kinds of non-standard employment relationships. The restrictions are most severe on agency work and fixed-term employment. These terms of employment are only lawful when relatively strict conditions are met, and if not, the consequence is that standard terms apply. For example, if conditions for the use of agency work are not met,

35 Cf. WEA §§ 14-12 ff.

36 Cf. WEA § 2-2 (1) a and b, § 2A-1 (1), § 13-2 (2) and Act 16 June 2017 No. 51 relating to equality and a prohibition against discrimination (Equality and Anti-Discrimination Act, EDA) § 29 (2), respectively.

37 Cf. WEA § 14-12c.

38 The WEA distinguishes between hiring workers from undertakings whose object is to hire out labour (temporary-work agencies) which is regulated in § 14-12 ff. and hiring workers from undertakings *other* than those whose object is to hire out labour, which is subject to more lenient regulations in § 14-13.

39 Rt 2013 p. 354 and HR-2016-1344-A.

40 Cf. in particular Directive 97/81/EC concerning the framework agreement on part-time work, directive 99/70/EC concerning the agreement on fixed-term work and Directive 2008/104/EC on temporary agency work. All these directives are implemented in the WEA, see in particular § 13-1 (3), § 14-9 (2) and § 14-12 a.

the employee can claim direct employment with the user entity despite no original direct contractual bond. And, if conditions for the use of fixed-term work are not fulfilled, the employment contract is permanent. This implies, i.a., that *zero-hour contracts* are only legal in Norway as a framework agreement for subsequent fixed-term contracts. Each work period must meet the requirements for fixed-term employment in order to be lawful, and if not, the employment is considered permanent.

On this background, this type of NSWs in Norwegian law includes employees working fixed-term, part-time (including marginal part-time), on call (including "zero-hour"-contracts) as well as agency workers and other workers who are hired out to work under the management and control of the user entity.

There is no tradition of referring to employees in specific sectors as non-standard although the regulations that apply to them to some extent deviate from the general terms of employment according to the WEA. However, it can be mentioned that there are no restrictions on the use of agency work for seafarers under the Ship Labour Act.[41] As a result, there is extensive use of agency work – and thus a large proportion of employees with non-standard employment conditions – in this sector.

In Norway, part-time is the dominating type of non-standard employment condition. In 2020, 25 per cent of employees worked part-time.[42] Fixed-term employment is at ca. 8 per cent and has decreased in recent decades.[43] Temporary agency work was in 2018 measured to be about 1,5–2 per cent of employees.[44] The proportion of agency work has fluctuated over time and varies significantly between sectors. On a general level, the share of different types of non-standard work seems to reflect the regulatory framework, where the restrictions on the use of fixed-term and agency work are considerably stricter than for part-time work.

1.2.3 Non-standard worker 3: Independent contractor / self-employed

As explained above, the negation of the concept of employee in Norwegian labour law is an independent contractor (*oppdragstaker*). The preparatory works describe independent contractors as individuals who, without having their own employees, perform work for an enterprise without being an employee in the client enterprise.[45] What defines an independent contractor is therefore being the work performing party that operates solo and performs independent work according to a contract for service, as

41 NOU 2021: 9 p. 124–125. The relatively high proportion of part-time is partly due to the fact that many combine part-time work and education. The share of part-time work is higher among women (35 per cent) than among men (15 per cent).

42 NOU 2021: 9 p. 124–125. The relatively high proportion of part-time is partly due to the fact that many combine part-time work and education. The share of part-time work is higher among women (35 per cent) than among men (15 per cent).

43 NOU 2021: 9 p. 121.

44 NOU 2021: 9 p. 126 –127, see further Kristine Nergaard, «Tilknytningsformer i norsk arbeidsliv. Sluttrapport», *Fafo-rapport 2018:38* [Nergaard 2018] p. 103–104. The numbers do not reflect the stricter restrictions on the hiring of labour which were introduced in 2023.

45 NOU 2021: 9 p. 106.

opposed to the dependent and subordinate work that would establish a contract of employment.

With respect to the WEA, independent contractor is also used as a collective term for individuals who are excluded from the concept of employee in the act.[46]

Independent contractor thus includes, first, the work performing party of a contract for service, who concludes the contract in *personal capacity*, without a registered business or company (often referred to as freelancers).[47] As the lack of a registered business may raise doubts on the legal status as independent contractor, this group is further described below (category 2).

Second, independent contractors include the work performing party of a contract for service concluded in the *capacity of a business/company,* whether as a registered business (*enkeltpersonsforetak, ENK*) or as a limited company (*aksjeselskap, AS*). For the purpose of this report, I refer to this group – independent contractors performing work in the capacity of a *business/company* (whether a registered business or a limited company) – as self-employed. Operating solo, without employees, is what separates this group from regular enterprises.

There is, however, an important legal difference between solo self-employed operating a registered business and a limited company. In the context of tax and social security law, a person operating a registered business (*ENK*) will be considered self-employed, if the operation is continuing and suited to provide a net income.[48] If the person owns and operates a limited company, he/she may conclude a formal contract of employment with his/her own company and thus be considered an employee in the context of tax and social security law. In other words, tax and social security law accept that the relation between a limited company and the person who owns and operates the company can be a contract of employment, although there in reality is no subordination of *another* party.

The difference between a registered business and a limited company is less obvious in the context of labour law. As they both in reality only consist of one person, they are traditionally treated the same: One-person businesses – solo self-employed – have

46 NOU 2021: 9 p. 106.

47 Tax and social security law is based on three categories of workers defined in Act 28 February 1997 No. 19 on national insurance (National Insurance Act, NIA): Employees, freelancer and self-employed. An employee is defined as anyone who works in the service of another (an employment relationship), for wages or other compensation, cf. NIA § 1-8. A self-employed (*selvstendig næringsdrivende*) is defined in NIA § 1-10 as anyone who runs a continuing operation or undertaking at own account, suited to provide a net income. A freelancer is an intermediary (residual) category, defined as anyone who performs work or assignments outside an employment relationship for wages or other compensation, *without* being a self-employed – namely without running an "undertaking" (virksomhet), cf. NIA § 1-9. These categories and definitions also apply to a number of provisions in tax law.

48 Cf. the definition of self-employed in NIA § 1-9. The definition includes a list of criteria indicating self-employment: whether the operation has a certain scope, whether the person is responsible for the result, has employees in his/her service or employ freelancers, runs the operation from a fixed place of business (office, workshop etc.), has the financial risk for the operation and use his/her own assets and equipment.

traditionally been considered to fall outside the scope of the WEA.[49] This is a result of the labour law concept of employee, where *realities*, not the formal corporate structures, are decisive. The person who owns and operates a limited company will not be recognized as an employee in his/her own company as there in reality is no relation of dependence and subordination of *another* person.[50] According to this understanding, the concept of employee in labour law differs from the concept in tax and social security law. However, the traditional view is recently challenged, and the issue is not fully resolved in Norwegian law.[51]

For practical reasons, I will in the following refer to one-person-businesses where the owner performs work for clients under contracts for service, as (solo) self-employed, regardless of whether the business is a registered company (*ENK*) or a limited company (*AS*).

The definition of self-employed according to tax and social security law includes a list of criteria to be assessed when deciding whether someone is self-employed, that do not fully mirror the (opposite) criteria indicating an employee in the labour law context: whether the operation has a certain scope, the person is responsible for the result, the person has employees in his/her service or employ freelancers, the person runs the operation from a fixed place of business (office, workshop etc.), the person has the financial risk for the operation and the person use his/her own assets and equipment.

There is no explicit labour law definition of self-employed or independent contractors more generally. Furthermore, there are no authoritatively set *positive* indicators of what characterizes a self-employed. Consequently, the defining characteristics must be derived from the criteria indicating an employee – although with the opposite approach.

As explained above, key criteria indicating an employment relationship are whether the person continuously places their personal labour at the disposal of the employer, and whether the person is subordinate through governance, management and control.

Whether the contract requires *personal work* is a relevant criterium but does not preclude a contract for service. An independent contractor or self-employed may therefore well undertake an obligation to perform the work herself/himself. However, an obligation to *deliver a specific work result* (as opposed to making the labour available on an

---

49 The WEA applies to "undertakings that engage employees", cf. § 1-2 and only applies to one-person businesses when specifically provided in the act, see § 1-4.

50 In Rt. 1986 p. 1322, the director of a company who owned the majority of the shares was not considered an employee according to the Holiday Act, as there was in reality no relation of dependence (of another party), and this was considered a general requirement to be an employee. The concepts of employee in the WEA, the LDA and the Holiday Act are considered to correspond.

51 The issue was put to the test when a licensing scheme for temporary work agencies was introduced in 2024. This revealed that one-person-businesses organised as a limited company had hired out labour, which raised the question whether the business was an undertaking with an employee and covered by the regulations on agency work in the WEA. The ministry appointed a working group with representatives from the social partners, which submitted its report in April 2026: Tilknytningsformer for selvstendige konsulenter og rådgivere - regjeringen.no The working group concluded that the issue is not fully resolved in Norwegian law, and the group was divided on what constitutes the most reasonable conclusion based on the available legal sources.

ongoing basis), will indicate a contract for service. Whether the *risk for the work result* is placed on the self-employed will be part of this assessment.

As management and control is considered a highly significant indicator of subordination – the absence of management and control must be equally important indicator of being an independent contractor.

Furthermore, in light of other relevant criteria, it can also be relevant whether the worker has multiple clients (as opposed to stable relationship and/or work for one employer), has possibility and bargaining powers to negotiate the terms and whether the work assignment is closely connected to the regular business and organisation of the client. Whether the worker provides the work location, materials etc. may also have some limited relevance.

According to the statistical data, Norway is the European country with the lowest share of solo self-employed in the workforce. The share is stable, ca. 4 per cent of persons in employment are self-employed without employees.[52] In addition, ca. 2 per cent of employees have a secondary job as an independent contractor.[53] The share of self-employment however varies considerably between sectors, industries and occupations.[54] The cultural sector stands out, with the largest proportion of self-employed and other independent contractors. Statistics show the highest shares of self-employed contractors in the industries personal services, which includes cultural activities, construction, financial services, professional, scientific and technical services, and transportation and storage. As regards occupations, there has been a clear decline in the share of self-employed among skilled trades, process and machine operators, and transport workers. The individual occupations with the highest shares of self-employed are carpenters, hairdressers, and musicians.

1.2.4 Non-standard worker 2: Unclear and/or ambiguous employment status

The legal assessment of whether a person is an employee or an independent contractor depends on an overall assessment of the realities in the work relation, guided by certain criteria, cf. Section 1.1. Whether the employment status of a person can be questioned depends on whether the formal contractual arrangement corresponds with the realities, and on how clearly the criteria indicating an employment relationship are present. Typically, employment status will be questioned for workers who formally work under a contract for service, while all or some criteria point towards an employment contract. It has long been recognized in Norwegian law that a worker may be an employee in the context of labour law even when working under a formal contract for service, and even if treated as self-employed for tax and social security purposes.[55]

The absence of a registered business or company can raise doubt as to whether the person is genuinely self-employed. However, the formal business arrangement is not an

52 Nergaard 2018 p. 124. See also the Labour Force Survey of Statistics Norway from 2021 in NOU 2021: 9 p. 107.

53 Ibid.

54 See to the following, NOU 2021: 9 p. 106 –109.

55 For an example, see ARD 1991 p. 140 and Rt. 2007 p. 1458.

explicit criterion, and a person working in a personal capacity (often referred to as freelancer) may well be classified as an independent contractor according to the overall assessment. On the other hand, even if the worker has a registered business, this does in no way preclude a classification as an employee.[56]

Discussion and disputes on employment status have in recent years been raised particularly in three types of contractual relations. These relations therefore illustrate typical grey areas of unclear or ambiguous employment status in Norwegian law.

The first type is workers in the cultural sector. As mentioned above, the cultural sector stands out, with the largest proportion of people working as self-employed or as an independent contractor in personal capacity (freelancer). This group has for a long time been considered a grey area where the formal status as independent contractor may not fully reflect the realities of a particular work relation and can be disputed. Furthermore, these workers typically have several clients and work relations where the real employment status may vary depending on the circumstances. In recent years, two cases have been brought to the Court of Appeal, with diverging results. In LH-2022-44364, a musician who performed regular church concerts under formal, time-limited contracts for service was reclassified as an employee (in permanent employment).[57] The Appeal Court placed particular emphasis on the fact that the musician had a personal duty to perform the work, and that the he both in legal and practical terms were subject to the management and control of the parish. However, in LB-2024-85425, a singer who was affiliated to a professional choir by formal, time-limited contracts for service, did not succeed with her claim to be reclassified as an employee (in permanent employment).[58] Here, too, the singer had a personal duty to perform the work, and was "to a large extent" subject to the management and control of the choir. Two other factors were in this case decisive for the conclusion of the Appeal Court: First, the singers' freedom to choose whether they wish to accept assignments, viewed in conjunction with the choir's obligation to offer assignments to the singers, was considered a deviation from the relationship of dependence and subordination that employees normally have. The second factor was that the singers' influence over the choir's activities, including their own conditions of work, though the choir's organisational structure, was seen to indicate that they do not have the same need for protection as normally applies in employment relationships. In sum, this illustrates the flexibility – and unpredictability – of the overall assessment, as different legal actors may weigh relevant factors differently.

The second area concerns care work, both in the public and private sector. From early 2000, there has been a tendency to contract workers in certain types of care work in the public sector as independent contractors. This includes respite care workers

56 F.ex. the Wolt case (LB-2025-94406), where neither the first instance court nor the Court of Appeal put any weight on the fact that two of the platform workers had registered businesses (*enkeltpersonforetak, ENK*). The ruling is appealed to the Supreme Court.

57 The ruling was appealed to the Supreme Court, but the appeal was only partly allowed to proceed, on a matter concerning the legal implications of the reclassification; the retroactive enrollment in the occupational pension scheme, cf. HR-2023-383-U.

58 The ruling was appealed to the Supreme Court, but the appeal was not allowed to proceed, cf. HR-2025-979-U.

(providing support and care for families with especially burdensome care work) and workers in emergency foster homes. The employment status of both types of workers has been considered by the Supreme Court. In Rt. 2013 p. 354 and HR-2016-1366-A two different types of respite care workers were classified as employees. In these cases, the Court put decisive weight on the personal duty to perform the work, and the fact that the worker was subject to management and control of the family. However, in Rt. 2013 p. 342 workers in an emergency foster home at state level were classified as independent contractors. The decisive factor was that the «core» of the foster home assignment – to make a home available – by its nature differed from ordinary employment. The classification was reaffirmed in HR-2025-2516-A, concerning emergency foster homes at municipality level. As there are several similarities between respite care work and foster care, especially when respite care work is provided in the worker's home, this too illustrates the grey area – and somewhat subtle line – between employees and independent contractors in Norwegian law. There have also been other cases concerning care workers in the private sector, where workers in health and care service institutions for youth and users with mental disorders and substance use problems have been reclassified from independent contractors to employees.[59]

Lastly, there has been considerable debate on the employment status of platform workers in Norway. Platform work is difficult to measure. Estimates from 2019 suggested that 0,5–1 per cent of workers in Norway were engaged in platform work.[60] The share of platform work may have increased since then, but more recent estimates seems to be lacking.

The issue of unclear employment status in platform work has been addressed and discussed in governmental reports and legal doctrinal works as well as in public debate.[61] One large scale platform company – Foodora – has treated couriers as employees from the beginning, but also "allows" couriers to be independent contractors. Another similar food-delivery platform – Wolt – initially treated all couriers as independent contractors. However, following the lawsuit that challenges their legal status, Wolt publicly stated that employment contracts will be offered to couriers.[62]

The first ruling on employment status in platform work was passed by a first-instance court (Oslo tingrett) in April 2025.[63] The case concerned delivery workers for the food-delivery platform Wolt. The Court classified the workers as employees. The ruling was appealed to the Court of Appeal, who concluded that classification as independent

59 LB-2019-184977 and TROG-2020-99730. The financial settlement following the reclassification in the latter case was handled by the Supreme Court in HR-2024-2368-A.

60 Kristin Jesnes and Fabian Braesemann, "Measuring online labour: A subcategory of platform work", *Nordic future of work brief 2*, Fafo, 2019. As t

61 NOU 2017: 4 and NOU 2021: 9. See also f.ex. Marianne Jenum Hotvedt, «Arbeidsgiveransvar i formidlingsøkonomien. Tilfellet Uber», *Lov og Rett,* 2016 p. 484–503, Marianne Jenum Hotvedt, «Arbeidstaker – quo vadis», *Tidsskrift for Rettsvitenskap*, 2018 p. 42–103 and Marianne Jenum Hotvedt «Kollektive forhandlinger for oppdragstakere», *Arbeidsrett*, 2020 p. 1–44.

62 Wolt utvider budmodellen for å tilby ansettelse og større valgfrihet for bud | Wolt Newsroom. It is not publicly known to what extent this in fact has led to employment contracts for the Wolt couriers.

63 TOSL-2024-140889.

contractor was correct.[64] The rulings illustrate that the overall assessment of employment status can lead to different conclusions when faced with the ambiguous nature of platform work. The couriers were free to decide their own working hours and which assignments to accept. At the same time, however, they were subject to direction and could not influence prices, remuneration or other terms of work. In the overall assessment, the majority of the first instance court emphasized the couriers´ need for labour law protection in light of the imbalance of power. Conversely, the majority of the Court of Appeal put more weight on the couriers' freedom. The ruling is not final and will be tried before the Supreme Court.[65]

In addition to these three grey areas of contractual relations, between employees and independent contractors, there are some workers with another type of ambiguous status in Norwegian law. As a *contract* of work for another is traditionally seen as a prerequisite for being an employee, workers performing work on a different legal basis such as people in elected office or other elected positions may fall outside the concept of employee. [66] They are still covered by some statutory protection concerning health and safety. This is a result of the extension of certain employer duties, to provide protection for other workers than the employer's own employees. [67] Furthermore, the WEA explicitly states that specific categories of workers "who are not employees", should be "regarded as employees" pursuant to provisions in the WEA on health and safety and whistleblowing when performing work in undertakings covered by the WEA.[68] This applies to, i.a., students at educational institutions, inmates in correctional institutions and some participants in labour market schemes. In other words, although these workers' legal status (as not being employees) may seem clear, they have a partly, quasi employee status, as they enjoy some of the same statutory protections as employees.

64 LB-2025-94406.

65 The appeal to the Supreme Court was accepted 12 May 2026, cf. HR-2026-1102-U.

66 Rt. 1987 s. 424 and Rt. 1995 s. 2018.

67 See in particular WEA § 2-2, which impose some employer duties concerning health and safety when "persons other than the employer's own employees, including hired employees or independent contractors, perform tasks in connection with the employer's activities or installations".

68 WEA § 1-6.

2 Access to effective collective bargaining

2.1 Concept of a collective agreement

2.1.1 Legal framework

A general right to organise was already recognized in Norwegian law when trade unions started to form in the 1870s. From 2014, the right is explicitly protected in the Constitution § 101, which states: "Everyone has the right to form, join, and withdraw from associations, including trade unions and political parties". The right to organise in the Constitution § 101 is interpreted in light of ECHR article 11, which should imply that it protects not only the individual right to organise but also the right to bargain collectively and collective action.[69] Selected human rights conventions, including The European Convention of Human Rights (ECHR), are however also incorporated directly into Norwegian legislation.[70] These conventions have a semi-constitutional status, as their provisions "shall take precedence over any other legislative provisions that conflict with them".[71] Furthermore, there is a presumption principle in Norwegian law, which means that Norwegian law – to the extent possible – should be interpreted in accordance with international legal obligations. The Norwegian legal framework on collective bargaining is therefore also shaped by other human rights conventions ratified by Norway, which protects the right to organise and bargain collectively, including ILO Convention 87 and 98 and The European Social Charter.

The Labour Disputes Act (LDA) sets the main legal framework for collective employment relations, by defining a collective agreement (*tariffavtale*) and recognizing its distinctive legal effects, and by establishing procedures and mechanisms for conflict resolution on a collective level.[72] The LDA framework concerns a specific type of agreement agreed collectively – a *tariffavtale*.[73] Other types of agreements of a collective nature are discussed separately in Section 2.5.

A collective agreement (*tariffavtale*) is defined as an agreement between a trade union and an employer or employers' organisation on conditions of work and pay or other working conditions.[74] The definition sets requirements relating to the *parties* and the

69 HR-2016-2554-P.

70 Act 21 May 1999 No. 30 relating to the strengthening of the status of human rights in Norwegian law (The Human Rights Act).

71 The Human Rights Act § 3.

72 There is a separate labour disputes act for the state sector, Act 18 July 1958 No. 2 on public labour disputes (Public Labour Disputes Act, PLDA).

73 In this report, «collective agreements» refers to the concept of 'tariffavtale' in Norwegian law. "Other types of agreements of a collective nature" refer to agreements that aim to influence on terms of work for an indetermined group of workers, without fulfilling the other legal requirements of a collective agreement.

74 LDA § 1 e.

content of the agreement. In addition, there is a formal requirement; a collective agreement must be in *writing*.[75]

As regards the *parties*, only trade unions and employers or employers' organisations may conclude a collective agreement. A trade union (*fagforening*) is defined widely as any association of employees (*arbeidstakere*) or of employees' organisations with a purpose to protect the interests of employees in relation to their employers.[76] An employers' organisation (*arbeidsgiverforening*) is defined as any association of employers or employers' organisations with a purpose to protect the interests of employers in relation to their employees.[77] The definitions of employee and employer in the LDA have the same wording as the definitions in the WEA, and the concept of employee in the two acts are considered to correspond.[78] Legal status as a trade union or employers' organisation is thereby linked to the classification of the workers and undertakings they represent.

The legal concept of a trade union is wide and functional, and there are no general requirements of representativeness.[79] Whether an organisation of workers is a trade union depends on whether the workers it represents in the relevant context are employees according to the LDA.

As regards the *content*, a collective agreement must include conditions of work and pay or other working conditions. "Conditions of work and pay" is the core element and refers to normative conditions in contracts of employment specifically. The conditions must apply to an indetermined group of employees. The reference to employees and employment contracts links the concept of 'collective agreement' to its specific legal implication – the binding and normative effect for individual employers and employees who are members of the contracting organisations and covered by the relevant agreement.[80] "Other working conditions" refers to contractual obligations between the contracting parties and includes in the concept of a collective agreement, agreements that *only* concern the relation between the organisations. Consequently, the legal status of the agreement depends on the classification of the work relations regulated by the agreement. See further below on the legal effects of a collective agreement.

The scope of this framework must however be aligned with national and EU/EEA competition law. Although collective agreements restrict competition, they are by virtue of their nature and purpose exempt from the prohibition of agreements etc. that restrict

75 LDA § 4.

76 LDA § 1 c.

77 LDA §1 d.

78 LDA § 1 a and b. See further in Section 1.1.

79 However, in the state sector, the right to bargain collectively is conditioned of certain requirements of representativeness, which also apply to the concept of a collective agreement in this context, cf. PLDA § 11, cf. § 3.

80 LDA § 6 is one explicit expression of the binding and normative nature of a collective agreement in individual employment contracts, specifically.

competition in EU/EEA law.[81] In national law, the legal basis for the prohibition and the parallel exemption (*tariffunntaket*) is the Competition Act § 10 and § 3, respectively.[82] The Competition Act prohibits different types of restrictions if competition, i.a. agreements between undertakings, decisions by association of undertakings and concerted practices that restrict competition, cf. § 10 (1).[83] According to § 3 (1), "conditions of work and employment" are exempt from the scope of the act. The exemption is justified by the tradition of setting the "price" of labour in collective agreements. Traditionally, and according to the preparatory works, the exemption applies to conditions for employment contracts specifically.[84]

According to the preparatory works, the exemption is aligned with EU/EEA competition law.[85] An explicit national exemption was considered unnecessary but was kept for the sake of clarity. Regardless of an explicit exemption, interpretation and application of the Competition Act § 10 to collective labour agreements should be in line with EU/EEA law. Norwegian case law confirms that the scope of the national exemption has been interpreted in light of the parallel exemption in EU/EEA law.[86]

2.1.2 Access to representation and membership in workers' organisations generally

In principle, all categories of NSWs can be members in the associations that may negotiate binding collective agreements. The LDA does not set any criteria for membership neither for trade unions nor for employers' organisations. Statutory protection against discrimination in the WEA and The Equality and Anti-Discrimination Act however apply.[87] Conditions for membership are set in the bylaws of the relevant organisations.

Some workers' organisations only offer membership to workers of specific professions or occupations, while others organise workers in a specific sector or industry. As a general rule, membership is not restricted to workers in active employment. Organisations normally offer membership regardless of employment status, including to students, unemployed and retired workers. Non-standard terms of employment, or work of a

81 The EEA-agreement (EEA) Art. 53 (1) is a parallel to Treaty of the Functioning of the European Union (TFEU) Art. 101 (1).

82 Act 5 March 2004 No.12 on Competition Between Undertakings and Control of Concentrations (the Competition Act).

83 The Competition Act § 10 (1) implements EEA Art. 53 (1).

84 Ot.prp. nr. 6 (2003–2004) p. 35.

85 Ot.prp. nr. 6 (2003–2004) p. 221–222.

86 See ARD 2002 s. 90, where the Labour Court builds on case law of the CJEU and the EFTA-court. See further in Section 2.5 on the significance of the EU Commission Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons from 2022.

87 Act 16 of June 2017 no. 51 relating to equality and a prohibition against discrimination (Equality and Anti-Discrimination Act) sets a ban against discrimination based on gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, (age) or combinations of these factors. The WEA chapter 13 prohibits discrimination based on political views, membership of a trade union, age and part-time or temporary work. The provisions of the WEA chapter 13 apply correspondingly to enrolment and participation in a trade union, employers' organisation or professional organisation, cf. WEA § 13-2 (3).

sporadic nature, would therefore not generally hinder continuous membership. This author is thus not aware of explicit restrictions for membership for NSWs in any category.

Several organisations explicitly offer membership to both employees and self-employed. Some known examples are the organisations of professionals such as medical doctors (*Den norske legeforening*), of physiotherapist (*Fysioterapeutforbund*), of journalists (*Norsk Journalistlag*) and of workers in art and culture (*Creo – forbundet for kunst og kultur*), but also organisations of workers in industry, construction and transport (*Fellesforbundet*).[88] These organisations actively target both traditional employees, freelancers and genuinely self-employed workers, and are thus eager to recruit members who are NSWs in category 2 and 3.

There are no known examples of organisations of workers established to promote the specific interests of NSWs. However, the largest confederation of trade unions in Norway – LO – has a specific initiative targeting freelancers and self-employed workers. LO has established a consortium for organisations promoting the interests of independent contractors (*LO Selvstendig*).[89] The consortium is not an organisation with individual members but provides a forum for trade unions within LO who organise freelancers and self-employed workers, to discuss issues that concern these groups. LO Selvstendig focuses broadly on working and living conditions of both the genuinely self-employed and workers whose employment status is less clear. Their initiatives cut across different professions, sectors and industries. Similarly, the confederation of Professionals (*Akademikerne*) has established a joint cooperation committee (*Akademikerne Næringsdrivende*) who engage in political work to promote the interests of self-employed, freelancers and entrepreneurs across the confederation.[90]

There are also examples of a traditional workers' organisation that has mobilised NSWs in category 2 – platform workers – specifically. A trade union for transport workers (*Norsk Transportarbeiderforbund*, now merged with *Fellesforbundet*) organised couriers employed by Foodora, a platform company that provides food delivery services. The trade union organised a successful strike in the fall of 2019, resulting in a collective agreement with Foodora specifically drafted for platform work. Foodora had however already recognized that most of their couriers were employees. Later, the same union mobilized among couries in Wolt, another platform based, food delivery company, who considered all couriers to be self-employed. This has led to a court proceeding on the couriers' employment status.[91]

88 See the respective websites, https://beta.legeforeningen.no/jus-og-arbeidsliv/, Arbeidsliv | Norsk Fysioterapeutforbund, https://www.nj.no/om-norsk-journalistlag/ and https://creokultur.no/medlemskapicreo/ and Velkommen til Oslo Transportarbeiderforening | Forside, which is a departement of Fellesforbundet.

89 See LO Selvstendig's website, Velkommen til LO Selvstendig | Landsorganisasjonen i Norge.

90 See Akademikerne Næringsdrivende's website: Næringsdrivende | Akademikerne.

91 TOSL-2024-140889 and LB-2025-94406, see further Section 1.2.

Trade union member fees vary both in level and method of calculation.[92] Trade union membership is supported by a right to tax deduction where the paid fee (up to certain limit) is deducted from taxable income.[93]

2.1.3 Access to representation in trade unions specifically

The functional concept of a trade union however implies that whether an organisations of workers is a trade union in the legal sense, depends on the legal classification of the workers it represents in the relevant context: When representing NSWs in category 1, the organisation will clearly be a trade union, as the workers are employees according to the LDA. Conversely, if and when the organisation only represents NSWs in category 3 – who are independent contractors/self-employed – it will *not* be considered a trade union. A "mixed" organisation with members from both category 1 and 3 will be considered a trade union when representing members who are employees, but not when representing the self-employed.

Due to the binary divide in the LDA, there is no legal "middle way" for NSWs in category 2. When representing the interests of these workers, the organisation *may* be a trade union, depending on the correct legal classification, which, again, depends on an overall assessment of the realities. This uncertainty – whether the correct legal classification is category 1 or 3 – represents an obstacle. The organisations where these workers are members may refrain from acting as a trade union when promoting their interests, and if they do, the opposing party may protest with reference to legal employment status.

2.1.4 Access to internal voice

Membership rights in trade unions are generally not subject to conditions that exclude or restrict access for NSWs specifically. [94] Voting rights are related to membership, and sometimes to being an active member of the workforce (as opposed to student members and retired members). The decision-making bodies of the organisations typically consist of people elected by and among the members. Decisions within the organisations, including priorities in negotiations, appear to generally be based on majority rule. This author is not aware of any explicit legal protection for minority groups such as NSWs.

As regards the topics and conditions of work that are subject to collective agreements, it is difficult to identify conflicting interests of a general nature between standards workers and NSWs in category 1 or 2, for whom the conditions may apply.

As mentioned above, the regulatory approach to non-standard terms of employment in Norway has been to provide specific protection aimed at limiting the use of various non-standard terms. Therefore, NSWs in category 1 already enjoy statutory legal

92 Some trade union fees are in per cent of income (for example is the fee of *Fellesforbundet* 1.5 per cent of gross salary) while other union fees are set at a fixed amount (for example is the fee for full members of *Legeforeningen* NOK 11.340 per year, ca. EUR 1.050), and fees can also be differentiated for different types for members.

93 For 2026, the upper limit of tax deduction is set at NOK 8.700 per year (ca. EUR 800)

94 The following is based on the bylaws of the four main confederations of trade unions (*hovedorganisasjonene*) in Norway, and the bylaws of a selected number of large trade unions (*fagforeninger/forbund*).

protection that pursue their specific interest in enhanced predictability when working under non-standard terms. There are nevertheless some regulations in collective agreements that supplement statutory protection and aim to limit the use of non-standard terms beyond the statutory requirements. [95]

Statutory protective standards cannot generally be derogated to the detriment of the employee by collective agreement, unless explicitly stated.[96] The restrictions are most severe on agency work and fixed-term employment, while there are only procedural requirements related to the use of part-time employment. However, there are provisions that allow deviations through collective agreements on issues of specific interest for NSWs in category 1 and 2.

First, the general restrictions on *fixed-term work* may be deviated by a collective agreement concluded with trade unions on national level, but only for a specific group of workers employed to perform artistic work, research work or work in connection with sport, cf. WEA Section 14-9 (4).[97] This can affect NSW in category 1 as well as in category 2, as the latter typically includes workers in the cultural sector.

Second, the strict requirements for the use of *temporary agency work* can be deviated from in undertakings bound by a collective agreement concluded with certain trade unions.[98] The deviation does not have to be made by collective agreement but must follow from a written agreement between the employer and specific elected representatives and is only permitted for limited periods.[99] This can directly affect NSWs in category 1.

However, as regards *part-time*, some degree of conflicting interests between part-time and full-time workers seem to emerge on the issue of overtime pay. Both the WEA and the large majority of collective agreements stipulate a right to overtime pay for work exceeding the normal working hours of full-time employees. Recent caselaw from the CJEU suggest that the threshold for overtime pay must be adjusted *pro rata temporis* for part-time employees, and there is considerable debate whether and how statutory law and collective agreements should be adjusted to comply.[100] Concerns on the implications for the labour market if *pro rata temporis* adjustments are widely implemented

95 Kristine Nergaard, Kristin Alsos, Stein Evju and Torgeir Aarvaag Stokke, *Det kollektive arbeidslivet,* 3. ed. 2026 [Nergaard et al 2026] p. 123–127.

96 See i.a. WEA § 1-9. (See also Section 1.1).

97 If the collective agreement is binding for a majority of the employees within a specified group of employees in the undertaking, the employer may on the same conditions enter into temporary contracts of employment with other employees who are to perform corresponding work, cf. WEA Section 14-9 (4).

98 These are trade unions with the right of nomination pursuant to the Labour Disputes Act § 39. The right applies to employers' association that comprises at least 100 employers which together employ at least 10,000 employees, and to trade unions with at least 10,000 employees as members.

99 The representatives must collectively represent a majority of the employees in the category of workers to be hired.

100 Case C-660/20 MK v. Lufthansa CityLine GmbH, EU:C:2023:789, and joined cases C-184/22 and C-185/22 IK and CM v. KfH Kuratorium für Dialyse und Nierentransplantation, EU:C:2024:637. See further also on the implications in Norwegian law in Marianne Jenum Hotvedt, "Substantive equality in part-time work. The evolving protection of the Part-time Work Directive", *European Labour Law Journal*, 2025 p. 343–359.

have been raised not only from employers, but also from the perspective of full-time and part-time employees.

2.2 Process of bargaining to conclude a collective agreement

2.2.1 Legal framework

There is no legal general duty to bargain collectively.[101] Whether a collective agreement is concluded (and its content) depends on the force the bargaining parties are able and willing to mobilise. The traditional view is that industrial action (*arbeidskamp*) is permitted unless restricted by law or agreement.[102]

The LDA sets the general legal framework for the process of bargaining a collective agreement, including the role of the National Mediator (*Riksmekleren*), and the right to use collective action for this purpose. The concept of employee plays a central role in defining the scope of the legal framework.

The starting point under the LDA is that a strike or lockout may be instituted in accordance with the rules in the act if the opposing party fails to attend negotiations on a collective agreement, or if a demand for a collective agreement is not met. The same applies during bargaining on the revision on collective agreements. However, industrial action is forbidden until the statutory conditions are met, cf. LDA § 8. Consequently, there is a time-limited peace obligation in every dispute on interests between parties that may conclude a collective agreement, see further on the peace obligation in Section 2.3.

The restrictions apply in principle to all types of industrial action (strikes, lockouts and other industrial action). The concepts of strike and lockout are explicitly defined with reference to the concepts of employee and employer.[103] There is no general legal requirement that industrial action is proportionate.

The LDA is based on a contractual-law notion that individual employment relationships must be terminated in connection with a strike or lockout, otherwise the employment contract would be breached when the employees cease work (strike) or employers shut employees out (lockout). Industrial action is therefore preconditioned by a written notice of dismissal from the workplace (*plassoppsigelse*), and the expiry of the notice period.[104] The notice period is 14 days unless the parties agree otherwise. In practice, more lenient requirements often apply.[105] The notice must make it clear which employment relationships are being terminated – a requirement of individualization – meaning

101 In the state sector, there is however an explicit and mutual duty, cf. PLDA § 2.

102 Alexander Næss Skjønberg, *Fredsplikten i tarifforhold*, 2019 [Skjønberg 2019] p. 69–71.

103 A strike is defined as a complete or partial cessation of work that *employees* undertake jointly or in concert with one another in order to force a settlement of a dispute between a trade union and an employer or employers' association. Also regarded as part of a strike is any action aimed at preventing the employer in question from obtaining labour, cf. LDA § 1 f. A lockout is defined as a complete or partial stoppage of work instituted by an *employer* to force a resolution of a dispute between an employer or employers' association and a trade union, regardless of whether other workers are brought in to replace those excluded. Also regarded as part of a lockout is any attempt to prevent the excluded workers from obtaining other employment. cf. LDA § 1 g.

104 cf. LDA § 18 and further statutory requirements in § 15..

105 See for example the LO–NHO Basic Agreement § 3-1.

that the notice must be accompanied by a list of names or otherwise make it clear what members who are included in the strike. This is nevertheless a special form of termination, as it does not aim to bring the employment relationship to a definitive end. It is recognized in case law that the employment relationship is only temporarily suspended, and that the employees have the right and duty to return after the strike or lockout.[106]

The starting point is that the employee him- or herself must terminate the employment relationship in the event of a strike. However, a trade union is generally deemed to have authority to give the notice of dismissal on behalf of its members, and this is how it is usually done.[107] During the strike, the employee is not entitled to wages. Trade unions however provide economic support (strike benefit) to the employees who are included in the strike initiated by the union. Employees who are not included in the strike continue to work as normal.[108]

Employees who become members of the trade union after the time of the notice of dismissal will not be covered by the notice and thus not by the conflict. The trade union may nevertheless give a new notice that extends the conflict and includes new members of the union.

A strike is practically not possible if the trade union does not have any members employed by the employer in the dispute. The trade union may then use a boycott to pressure the employer, see further on boycott in Section 2.5. A blocade is in principle a form of boycott. However, when a blocade is instigated in connection to a strike or a lockout, it is considered as part of that collective action, cf. LDA § 1 f and g. Sympathy actions – that aim to support one party in a conflict in *another* collective bargaining relationship – can be instigated as long as the main conflict is legal, without any requirement of proportionality. As sympathy actions are included in the definition of strike and lockout in the LDA, the rules on notice of dismissal nevertheless apply. Further regulations on sympathy actions can be found in collective agreements.[109]

The bargaining process is supported by a public mediation office. The National Mediator must be notified in writing before industrial action can be imposed. Furthermore, the statutory time limits which will then apply must be expired. The system of notification aims to allow the National Mediator to consider whether to intervene with mediation and a prohibition on industrial action, cf. LDA § 19. The Mediator should intervene with a prohibition where the industrial action may cause harm to public interests. There are also statutory rules on when mediation should start and when it must be concluded. Until all relevant time-limits have expired, the collective agreement has continuing effect based on LDA § 8.

106 AR-2020-23 para. 58 and ARD-1976-116 and ARD-1976-188.

107 LDA § 15 (2), which codified previous case law, see ARD-1992-90.

108 When some employees are on strike, the employer may use temporary layoffs (*permittering*) to suspend the duty to work and the right to wages for the remaining employees.

109 See for example the Basic Agreement between LO and NHO (Hovedavtalen LO-NHO 2026–2029) § 3-6.

The role of the Mediator is to mediate disputes of interests between a trade union and an employer or employers' organisation, and it thereby indirectly linked to the concept of employee, cf. LDA § 11.

When industrial action is instituted, the collective agreement and the peace obligation lapse. There are no statutory rules on how long a strike or lockout may last. Industrial action may push the parties to return to the negotiations and agree on a (new) collective agreement. However, the *consequences* of the industrial action may lead to compulsory arbitration; an avenue facilitated by the Wages Arbitration Act.[110] The act establishes the role and composition of the National Wages Board and stipulates that the decisions of the Board have the same effect as a collective agreement. In principle, the act establishes a system the parties may turn to for voluntary arbitration. *Compulsory* arbitration is however instigated when either the Parliament (by an *ad hoc* statutory act) or the Government (by provisional order) decide that the dispute in question *shall* be decided by the National Wages Board. [111]

As the role of the Board is defined with reference to the concepts of disputes of rights and collective agreements under the LDA, this statutory system of (voluntary and compulsory) arbitration is also indirectly linked to the concept of employee.

2.2.2 Access to participation in the bargaining process

As described above, the scope of the general legal framework for the process of bargaining a collective agreement, including the role of the National Mediator, is linked to the concept of employee in the LDA.

Therefore, NSWs in category 1 are included, while NSWs in category 2 *may* be included, depending on the correct legal classification. Bargaining efforts for NSWs in category 3 will fall outside the scope of this legal framework and will therefore be discussed separately, as bargaining for other types of agreement of a collective nature, see Section 2.5.

There are no statutory limitations as regards participation in the bargaining process, beyond the requirement that the worker is an employee. Similarly, the legal position of the employer in the bargaining process is not affected by whether the workers are standard workers or NSWs in category 1 or 2, as long as they can be legally classified as employees.

As the role of the National Mediator is defined with reference to disputes of interests involving trade unions, in their function to promote the interests of employees, the Mediator's support in mediating conflicts the bargaining process according to statutory law can only include NSWs in category 1, and category 2 to the extent that they are (or can be) deemed to be employees. However, there are examples where the National Mediator has provided support in mediating conflicts beyond the statutory role of the office,

110 Act 27 January 2012 No. 10 on arbitration on wages (Wages Arbitration Act).

111 Compulsory arbitration constitutes an interference with the right to strike and must be assessed in light of the protection of the right to strike under the Constitution § 101 and international law.

although not in a regular official capacity.[112] It thus cannot be completely ruled out that the office may have a practical function and impact in other conflicts, involving NSWs in category 3. See further in Section 2.5.

2.2.3 Access to collective action

The scope of the general legal framework described above furthermore implies that only efforts to bargain a collective agreement for employees can be supported by the type of industrial action regulated in the LDA: strikes (or lockouts, when instigated by the employer side). Therefore, NSWs in category 1 are included, while NSWs in category 2 are included insofar as they can be classified as employees.

Within this legal framework, there are no statutory limitations or special roles for specific categories of NSWs as regards participation in industrial action. However, for agency workers and other hired employees the collective bargaining relationship is with the contractual employer (i.a. the agency), not the user undertaking, which affects the right to strike.

However, outside the scope of the LDA, another type of collective action – boycott – is available regardless of legal employment status. Boycott may therefore be used to support efforts to bargain other types of agreements of a collective nature on behalf of NSWs also in category 3, see further in Section 2.5.

2.3 Legal effects of a collective agreement

2.3.1 Legal framework

A collective agreement (*tariffavtale*) is legally *binding*, not only for the parties, but also for the members covered by the agreement, whether they are individuals or organisations. Furthermore, a collective agreement has mandatory effect – it is non-derogable – in employment relationships where both the employer and the employee are bound by the agreement. This follows from LDA § 6, which states that a "provision in an employment contract that conflicts with a collective agreement to which both parties are bound is invalid". [113] This non-derogation principle covers both less favourable and more favourable terms; what "conflicts with" the agreement, depends on the regulations in the agreement.[114] In practice, however, the collective agreement will often allow for the agreement of more favourable terms.

If a provision in the employment contract conflicts with the collective agreement, the provision is treated as non-existent (effect of invalidity) and is automatically replaced by the positive regulation of the collective agreement (filling-in effect).

---

112 For example, in 2023, in the aftermath of a Supreme Court grand chamber ruling (HR-2021-1975-S) that found a decision granting permission for wind power development invalid as it infringed the reindeer-herding Sami's right to practise their culture under Article 27 of the UN International Covenant on Civil and Political Rights, the National Mediator took part in mediating an agreement between organisations of reindeer owners and wind power companies on a compensation for the interventions in nature caused by the wind power companies.

113 Cf. also for the state sector, PLDA § 11.

114 ARD 1945–48 p. 73.

The normative effect of the collective agreement means that the agreement's provisions on conditions of work and pay (that are suitable for this purpose) automatically become part of the individual employment relationship as terms of the employment contract.[115] These conditions of work and pay therefore have a dual legal basis, both in the collective agreement and in the individual contract of employment.[116]

Which members are bound by a specific collective agreement depends on the scope of the agreement, i.a. whether the relevant type of work is covered. The agreement is not necessarily automatically binding, the parties may have decided otherwise. Collective agreements in the private sector, must – as the main rule – be claimed (*gjøres gjeldende*) to be set in function.[117] The basic agreements between the confederations of trade unions and employers' organisations set requirements for such procedures, and usually require that 10 per cent of the employees are organised by the relevant trade union.[118]

Collective agreements have indirect regulatory functions beyond their binding and normative effect. An employer bound by a collective agreement is under a duty to abide by its provisions in relation to "outsiders", both non-unionised and alternatively unionised employees. The duty has its basis in the collective agreement and applies in relation to the opposing party: It is considered a fundamental precondition of collective agreements.[119] The "outsider" employee cannot derive individual rights from this basis. Breaches must be addressed by the opposing party, the trade union. Still, when interpreting the individual employment contract of the "outsider", there is arguably a presumption that the employer would not violate the collective agreement.[120] Consequently, the "outsider" employee may well have corresponding rights based on the individual contract.

Another legal effect of a collective agreement is the peace obligation (*fredsplikt*), which restricts the right to industrial action.[121] The peace obligation has a double basis. It is a fundamental precondition of a collective agreement *and* is set in statutory regulations. This leads to restrictions in different types of disputes between the parties that may conclude a collective agreement; a trade union and an employer or employers'

115 ARD 1926 p. 110 and AR-2020-14.

116 This implies that the provisions that were agreed collectively may apply even after the collective agreement seize to apply, with a basis in the individual contract, cf. HR-2021-1193-A, so-called "individual after-effect.

117 Nergaard et al 2026 p. 149–150.

118 See for example the Basic Agreement between LO and NHO (Hovedavtalen LO-NHO 2026–2029) §§ 3-7 ff.

119 Nergaard et al 2026 p. 1540.

120 Alexander Næss Skjønberg, «Tariffavtalers virkning for utenforstående arbeidstakere», *Arbeidsrett* 2011 p. 1–80, on p. 12–14.

121 For a detailed analysis of the peace obligation in Norwegian law, see Skjønberg 2019.

organisation.[122] In *disputes of rights*, industrial action is totally forbidden.[123] Industrial action is also forbidden in *disputes of interests* on issues regulated by a collective agreement, in the agreement period.[124] In other disputes of interests, whether they concern a new collective agreement or revision of an existing agreement, there is a time-limited ban and procedural restrictions on industrial action, linked to the process of re-negotiating a collective agreement, see further above in Section 2.2.[125]

There is no mechanism to make collective agreements universally applicable in Norwegian law. The legislator has traditionally refrained from legislating on wages and rather left wages to the autonomy of the social partners and collective bargaining. However, the Extension Act provides a mechanism where rates of pay and certain other conditions of work set in a collective agreement may apply beyond the work relations covered by the agreement.[126] The act empowers an independent administrative law body (*Tariffnemnda*) to adopt public law regulations on minimum terms and conditions, i.a. rates of pay, for employment relations in a specific branch or industry (*allmenngjørings-forskrifter*).[127] The levels of pay etc. in the regulations are based on, and have reference to, provisions in a specific collective agreement for the branch or industry concerned. In other words, there is a mechanism to set statutory, industry-specific minimum wages, with a content based on a collective agreement.

The mechanism was established in light of concerns that the EEA Agreement could lead to foreign workers who were not covered by the collective agreement system to be offered poorer conditions, and the competitive disadvantage this would represent for Norwegian companies. The Extension Act thus aims to ensure that foreign workers have pay and working conditions that are equivalent to those of Norwegian workers, and to prevent distortion of competition to the detriment of the Norwegian labor market. An estimated 10 per cent of employees in the private sector are covered by these types of regulations.[128]

2.3.2 Access to being covered by collective agreements

The binding and normative effect of collectively set conditions of work is inextricably linked to the concept of a collective agreement sui generis (*tariffavtale*), and thus to the

122 While disputes of rights concern the validity, interpretation or existence of a collective agreement, or claims arising from a collective agreement, disputes of interests concern the arrangement of *future* working and wage conditions, or other employment terms *not* covered by a collective agreement, or intended to replace a previous collective agreement, cf. LDA § i and j.

123 LDA § 8 (1), cf. § 1 i.

124 The interpretation of what is covered by the peace obligation is affected by a presumption that the collective agreement is a *comprehensive* regulation, see ARD 1920–21 p. 155.

125 LDA § 8 (2), cf. § 1 j. See also LDA § 8 (3) in the case of revision.

126 Act 4 June 1993 No. 58 on the extension of collective agreements etc. (the Extension Act).

127 See further Stein Evju, "Safeguarding National Interests. Norwegian Responses to Free Movement of Services, Posting of Workers and the Services Directive", in Stein Evju (ed.) *Cross-Border Services, Posting of Workers and Multilevel Governance*, Departement of Private Law Skriftserie 193 2013 p. 225–259.

128 Nergaard 2018 p. 36.

concept of employee.[129] Consequently, NSWs in category 1 can be covered by binding and normative conditions of work and pay set in a collective agreement, while NSWs in category 3 cannot. Whether NSWs in category 2 can be covered depends on being recognized as employees according to an overall assessment of the realities.

There are only a few examples in case law where the legal status of the collective agreement was disputed as a result of the unclear employment status of the workers covered.[130] The most recent case, ARD 1991 p. 140, concerned an agreement agreed collectively for "wagon men", who owned their own vehicles and drove for Oslo municipality. The overall assessment led the Labour Court to conclude that the drivers were employees, and the agreement was a collective agreement. Interestingly, collectively agreed conditions for the relevant drivers had a 40 year long history and the agreement clearly showed that the parties considered it to be a collective agreement, and – by implication – the drivers to be employees. The Labour Court stated that, as a point of departure, it is *not* for the parties to decide whether the workers are employees, this must be considered in light of the concept of employee in the LDA. However, in the concrete assessment, the Court found that the assumptions of the parties supported that the drivers were employees. This reasoning implies that the parties may have *some* influence on whether workers with an unclear employment status are employees and therefore may be covered by a collective agreement. This has relevance for NSWs in category 2. The concept of employee in the LDA may provide some «leeway» for the labour market parties when it comes to what types of work relations that can be subject to binding and normative conditions of work in a collective agreement.[131]

There are no national rules that extend or delimit the application of collectively set conditions of work for NSW specifically. As the collective agreement itself determines what type of work is covered, specific agreements might entail provisions that result in the exclusion of certain types of NSWs. Protection against discrimination based on i.a. part-time and fixed term work and the principle of equal treatment for agency workers must however be respected.

Furthermore, the Extention Act only applies to employees, cf. § 2 (1). The preparatory works stipulates that the concept of employees in this act corresponds with the LDA.[132] This mechanism to set industry-specific minimum wages based on a collective agreement is therefore only available to NSWs in category 1, and to NSWs in category 2, provided that they are classified as employees.

---

129 This follows from the requirements relating to the parties, where one party must be a trade union, promoting the interests of employees, and to the content, where conditions of work and pay in contracts of employment is a core element, see further in Section 2.1.

130 ARD 1968 p. 36 concerned the scope of a collective agreement for a forestry company. The Labour Court concluded it covered horse- and tractor drivers, but not self-owning machine teams, as they were "clearly" self-employed with contracts for service. ARD 1955 p. 117 concerned an agreement agreed collectively with conditions of work and pay that covered "rent of truck with driver" for snowplough drivers. Based on a broad assessment of the realities, the Labour Court found the drivers to be self-employed, and thus concluded that the agreement was not a collective agreement.

131 See further, Marianne Jenum Hotvedt, «Kollektive forhandlinger for oppdragstakere? Rekkevidden av adgangen til å forhandle tariffavtaler i lys av internasjonal rettsutvikling», *Arbeidsrett*, 2020, p .1–44.

132 Ot.prp. nr. 26. (1992–1993) p. 34.

Working conditions of NSWs in category 3 fall outside the concept of a collective agreement and may not be subject to normative regulations in a collective agreement. For this group, other types of agreements of a collective nature, without binding and normative effect, is the only possible way to set conditions of work collectively, see further Section 2.5.

2.4 Enforcement of collective agreements

2.4.1 Legal framework

The Labour Court is a separate public enforcement mechanism – a specialised court – for collective disputes concerning collective agreements. The composition and competences of the court are regulated by the LDA.

The Labour Court has the exclusive competence to decide on legal disputes between organisations of employees and employers or organisations of employers concerning validity, interpretation or existence of a collective agreement, and claims based on a collective agreement, cf. LDA § 34 and the definition of disputes of rights § 1 i. Furthermore, the Labour Court decides on disputes concerning breach of the peace obligation and on liability for breach of collective agreements, cf. LDA § 8 and § 9. The rulings of the Labour Court are generally not subject to appeal, the court therefore rules in first and last instance within its area of competence, cf. LDA § 59. The Labour Court may render a judgment on a specific interpretation of the collective agreement, rule on allegations of breach of the agreement and the peace obligation, rule on claims for back pay based on the collective agreement and may award damages. It is a procedural prerequisite for proceedings before the Labour Court that the parties must have conducted, or attempted to conduct, negotiations before the dispute can be brought before the court, cf. LDA § 35 (3) and § 45 (4).

Damages is the central sanction for breach of a collective agreement, cf. LDA § 9 and § 10. In practice, damages are mainly awarded for breach of the peace obligation, namely illegal collective action. The organisations are liable for their own breach of the agreement, and for breach by their members insofar as the organisation has contributed or supported the illegal actions. Individual members can also be held liable for breach of the collective agreement. Damages should, as a starting point, cover the economic loss, but may be reduced, and the Labour Court has consistently reduced it for individual members.

Only the parties to the collective agreement may bring proceedings before the Labour Court, cf. LDA § 35. The individual workers' rights and claims based on a collective agreement must be asserted through the party to the collective agreement that has legal standing to bring proceedings to this court. Legal proceedings before the Labour Court may, however, in some cases be brought *against* individual workers and employers, for example claims related to breach of the peace obligation. The LDA § 58 has a special provision on costs for proceedings before for the Labour Court. The main rule is that costs are not rewarded, which means that each party bears its own costs

regardless of the outcome of the case. However, the court may decide otherwise if "special grounds" apply.[133]

Disputes concerning individual contracts of employment or claims arising from the individual employment relationship, on the other hand, must be brought before ordinary courts. This includes disputes where the contractual claim is based on a collective agreement that has binding and normative effect between the parties to the individual employment contract.

This is referred to as the "two-tier procedural system" in Norwegian labour law: Some legal issues – for example the right to pay according to provisions in a collective agreement – may be pursued both as an individual claim concerning the contract of employment before the ordinary courts and as a collective claim concerning the collective agreement as such before the Labour Court. However, ordinary courts must respect the exclusive competence of the Labour Court. Therefore, if the Labour Court has ruled on a specific interpretation of the relevant collective agreement, this applies to any contract of employment based on this agreement, and ordinary courts – including the Supreme Court – must build on this interpretation.[134]

Disputes concerning other agreements that are not collective agreements according to the LDA fall outside the competence of the Labour Court. Furthermore, disputes on pay etc. based on statutory, industry-specific minimum wages set in regulations according to the Extention Act (*allmenngjøringsforskrifter*) fall outside the competence of the Labour Court. These disputes concern individual claims and must be brought before ordinary courts. The same applies if "outsider" employees (non-members) claim rights based on the argument that their individual contract of employment should be interpreted to correspond with a collective agreement.

2.4.2 Access to enforcement of collectively bargained conditions of work

The collective enforcement mechanism provided by the Labour Court can only be used to enforce collective agreements and is thereby linked to the concept of employee in the LDA. Consequently, this mechanism is only available to enforce conditions of work for NSWs in category 1, and for workers in category 2 insofar as they are classified as employees. Provided that the NSWs are classified as employees, the access to enforcement is the same as for standard workers. There are no specific limitations or special roles for NSWs within the legal framework of the LDA.

The individual enforcement mechanism provided by ordinary courts can be used to enforce contractual claims regardless of whether the contract is an employment contract or a contract for service. This basic access to enforce conditions of work set by an individual contract is the same for NSWs in category 1, 2 and 3.

However, only workers who are classified as employees may have individual claims based on the industry-specific minimum wages set according to the Extention Act.

---

133 According to case law, costs are as a clear main rule awarded in certain types of cases, for example cases on breach of the peace obligation, cf. AR-2024-19.

134 Cf. LDA § 34 (2) and i.a.HR-2019-424-A (para. 39).

Similarly, only employees may have claims based on that their individual contract of employment should be interpreted to correspond with a collective agreement. Therefore, only NSWs in category 1 have undisputed access to enforce these types of claims before ordinary courts, and access for NSWs in category 2 depend on being classified as employees.

2.5 Other types of agreements of a collective nature

The legal framework for effective collective bargaining on conditions of work described this far, in Section 2.1–2.4, rests on key concepts such as trade union, collective agreement, disputes of interest and disputes of rights which are all linked to the concept of employee. As this excludes independent contractors and self-employed, NSWs in category 3 do not have access to this type of collective bargaining, and access for NSWs in category 2 is contingent on being classified as employees.

Collective bargaining efforts to promote the interests of these workers will therefore be considered as attempts to conclude *other* types of agreements of a collective nature, for which a completely different legal framework applies.

Engaging in a collective form of bargaining does not require any specific legal basis. The starting point in Norwegian law is the principle of private autonomy and freedom of contract. *All* NSWs can therefore, in principle, bargain collectively. The issue, however, is whether this freedom for some groups is limited by law, and in particular by competition law. As explained in Section 2.1, collective agreements *sui generis* are explicitly exempt from the restrictions in competition law, and the exemption in Norwegian law is interpreted in line with the parallel exemption in EU/EEA law. According to EU/EEA-law, the exemption applies to both employees and "bogus self-employed", while the genuinely self-employed are considered to be undertakings and covered by competition law restrictions.[135]

Consequently, NSWs in category 3 can only engage in collective forms of bargaining within the limits of competition law. The same applies to NSWs in category 2 to the extent that they are not considered "bogus self-employed". The prohibition of anti-competitive agreements or arrangements in TFEU Art. 101 does not exclude all types of collective arrangements, but price-fixing is generally considered a serious restriction of competition.

As a result, there are only a few examples of agreements of a collective nature on conditions of work for independent contractors in Norway, and even fewer that set prices or renumeration of work.[136] The "mixed" trade unions who also organise independent

135 Case C-67/96 *Albany*, EU:C:1999:430, cases C-115/97, C-116/97 and C-117/97*Brentjens*, EU:C:1999:434, and case C-219/97 *Drijvende Bokken*, EU:C:1999:437 and case C-413/13 *FNV Kunsten Informatie en Media,* EU:C:2014:2411

136 There are examples of so-called "framework agreements" for freelance journalists and medical doctors in the public scheme for general practitioners: Rammeavtale mellom Norsk Journalistlag og Mediebedriftenes Landsforening om kjøp og salg av frilansstoff [Frilansavtalen], in force from 1st April «until further notice», cf. § 13. *Rammeavtale mellom KS og Den norske legeforening om allmennlegepraksis i kommunene* ASA 4310 for 2024–2025.

contractors normally refrain from bargaining for, or even recommending, a specific remuneration.[137]

However, these practises may now evolve following the EU Commission Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons from 2022. Once the guidelines were communicated, the Norwegian Competition Authority issued a press release stating that the new guidelines "make it clear that the EU competition rules do not bar solo self-employed people from collectively negotiating for better pay and working conditions", and that "[t]his group of people may be in need of improving their pay and working conditions collectively without risking breaching EU competition law". The Authority further stated that they "will follow the approach of the new guidelines when enforcing the Norwegian Competition Act".[138] It is too soon to say whether and how this will affect collective bargaining practices.[139]

There is no specific legal framework to support efforts to bargain for agreements of a collective nature outside the scope of the LDA. As mentioned above, the bargaining process falls outside the competence of the National Mediator according to the LDA. The National Mediator may still provide support on a voluntary basis, outside his regular, official capacity. There is at least one example where the National Mediator has engaged in mediating a conflict on conditions of work for self-employed.[140] The Mediator – Mats Ruland – then specified that he took part in a personal capacity, and not in a formal role as National Mediator.

Furthermore, industrial action in the form of strikes (or lockouts) is not available. Another type of collective action is, however, possible. Boycotts are regulated by the Boycott Act and may be used as a collective action.[141] A boycott is broadly defined as "an appeal, agreement, or similar measure which, for the purpose of coercing, harming, or punishing someone, is aimed at preventing or making more difficult a person's or an undertaking's economic intercourse with others", cf. § 1. The Act sets out several grounds that render a boycott unlawful in § 2 litra a–d. In sum, this implies that a boycott must fulfill requirements related to its purpose, the procedure and effect in order to be lawful. Compared to the right to strike according to the LDA, one fundamental difference is, first, that the boycott is not reserved for workers who are employees. Second, the boycott must fulfil not only procedural but also material requirements, including requirements of proportionality both concerning the measures and the effect of the boycott. As this entails several discretionary legal standards, it is somewhat unclear where the legal

137 Considerations on the limitations of competions law from trade unions in the cultural sector are described in Kristine Nergaard og Beate Sletvold Øiestad, *Fastsettelse av lønn og honorar for korttidsoppdrag på det kunstneriske feltet*, Fafo-notat 2016:19, p. 18–19.

138 Press release from the Norwegian Competition Authority of 19th October 2022: Solo self-employed may now negotiate collectively - Konkurransetilsynet.

139 This will be analysed later on in this project.

140 The National Mediator was engaged in mediating a conflict between the Norwegian Bar Association and the Ministry of Justice on the public rates for legal aid, see: Avslutter advokataksjonen og går til mekling - Rett24.

141 Act 5th December 1947 No. 1 on Boycott. For a thorough analysis of boycott in the context of industrial action, see Kurt Weltizen, *Boikott i arbeidskampsammenheng*, Fagbokforlaget 2017.

boundary between lawful and unlawful boycott lies. This legal uncertainty may undermine the effectiveness of boycotts to promote collective bargaining.

Consequently, collective action is available also for NSWs in category 2 and 3 – but it is fundamentally different from, and less effective than, the type of industrial action for available for employees; NSWs in category 1 and possibly for NSWs in category 2.

There are examples where a boycott has been used to support efforts to bargain conditions of work collectively for NSWs in category 3. In 2024, the Bar Association in Norway (*Advokatforeningen*) organised a collective action aimed at raising the levels of public rates for legal aid, where specific groups of lawyers refused to take legal aid assignments.[142] Although the collective action was referred to as a "strike", it was in legal terms a boycott. Over the years, there have also been a number of protests organised by the Norwegian Farmers Association (*Norges Bondelag*) to support the claims of self-employed farmers in the annual agricultural income settlement between the State and the farmers' organisations, and some of these protests fall within the definition of boycott.

If and when an agreement of a collective nature is concluded outside the scope of the LDA, the legal implications of the agreement are distinctly different from a collective agreement *sui generis*. Only the parties to the agreement will be bound by it. The specific legal effects of a collective agreement – such as the binding and normative effect for members of the organisation that have concluded the agreement – do not apply. These types of agreements are therefore clearly less effective tools to regulate terms and conditions of work.

2.6 Obstacles and facilitators

The collective bargaining mechanism builds on the binary distinction between employees and independent contractors/self-employed. The legal framework of collective bargaining and collective agreements (*tariffavtaler*) clearly covers NSWs in category 1, and no major legal obstacles have been identified for this type of NSWs.

As the legal framework of collective bargaining and collective agreements excludes NSWs in category 3, the major obstacle for this category is their legal employment status.

NSWs in category 3 have, in principle, access to representation and membership in workers' organisations. Within the limits of competition law, these organisations may bargain for *other* types of agreements of a collective nature. There is also a possibility to use a specific type of collective action (boycott) to support these efforts. Nonetheless, outside the scope of the collective bargaining mechanism in the LDA, this is clearly a less effective type of collective bargaining, and the agreement does not have the same binding and normative effect on conditions of work.

Access to this statutory system of effective collective bargaining for NSWs in category 2 depends on the recognition as employees. The assessment of employee status rests

142 Advokatene streiker | Advokatforeningen

on an overall assessment of the realties in the work relation, and the concept is interpreted widely and in light of the purpose of the relevant legal framework. NSWs in category 2 may therefore very well be classified as employees in the context of collective bargaining and the LDA framework. There is still legal insecurity as this assessment is difficult to predict. This legal uncertainty represents an obstacle for their access to collective bargaining that persists as long as the issue is unresolved and the worker is not treated as an employee.

The Norwegian legal framework also includes several measures facilitating access to effective collective bargaining for NSWs.

First, there is a relatively wide and inclusive concept of employee which clearly includes NSWs in category 1 and to some extent facilitates that NSWs in category 2 are in fact classified as employees. Combined with the presumption rule on employee status and the – potentially very costly – legal implications of misclassification, the risks related to contracting with NSWs in category 2 are relatively high. This is likely to stimulate the recognition of NSWs as employees and thus their inclusion in the legal framework of collective bargaining.

Second, as long as NSWs are classified as employees, they generally have the same access to effective collective bargaining as standard workers. This is facilitated by the relatively clear and stable statutory framework on collective bargaining with right to industrial action, supported by public institutions for mediation (*The National Mediator*) and resolving legal disputes (*The Labour Court*). Another measure that facilitates access is the "two-tier" procedural system, which provides NSWs with possibilities to enforce rights in collective agreements both as individuals and as a collective.

Even though the situation is significantly different for NSWs who are not classified as employees – category 3 and to some extent category 2 – there are still some measures that facilitate collective bargaining for them. The fact that trade unions generally are open for membership regardless of employee status facilitates collective representations of NSWs also in category 2 and 3 and is reflected in initiatives within several trade unions to promote the interests of independent contractors and self-employed specifically. Furthermore, the clear link between national and EU/EEA competition law implies that if and when the possibility for collective bargaining for solo self-employed under EU/EEA competition law is clarified and or expanded – Norwegian law and will follow, and practices may evolve.

3 Access to information and consultation at company level

3.1 The system of information and consultation at company level

3.1.1 Legal framework

A principle of workplace democracy has a long history in Norwegian law and was introduced in the Norwegian Constitution § 110 (2) in 1980. The provision states: "Specific provisions concerning the right of employees to co-determination at their workplace shall be laid down by law." This is a declaration of a principle intended to strengthen the position of workplace democracy in Norwegian legislation and public opinion.[143] It does not provide a legal basis for claims in employment relationships that can be enforced by the courts. Employee co-determination is supported by several sets of statutory rules, most importantly the rules on employee representation in corporate organs and the rules on information and consultation in the Working Environment Act (WEA).[144] Only the latter will be further elaborated in this report.

The general framework for informing and consulting employees in Directive 2002/14/EC was implemented in WEA Chapter 8 in 2005.

Chapter 8 regulates information and consultations with *employees'* elected representatives in the undertaking – the company level. The framework thus applies to workers who are classified as employees according to the WEA. The right to information and consultation is presented in the preparatory works as a *collective* right, not a right for the individual employee.[145]

Many collective agreements already had provisions on information and consultation between employers and employees' elected representatives on company level. The provisions in Chapter 8 do not restrict these rights. The preparatory works emphasize that these matters are particularly well suited to be regulated by collective agreements, and that the social partners should have broad discretion as to *how* information and consultation are to be carried out.[146] Therefore, a derogation clause was introduced in § 8-2 (4), which allows alternative regulation in collective agreements on how to provide information and conduct consultations.[147] Collective agreements must nevertheless fulfil the

143 Innst. S nr. 207 (1979–80) p. 3–4.

144 Employee representation in corporate organs is regulated by several acts, see for example Act 13 June 1997 No. 44 on Limited Companies § 6-4, § 6-5 and § 6-35. See also Act 23 August 1996 No. 63 relating to the general application of provisions in collective agreements on European Works Councils, etc., which implements Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

145 Ot.prp. 49 (2004–2005) p. 124.

146 Ot.prp. 49 (2004–2005) p. 126.

147 The derogation clause was based on the freedom for the states to determine the practical arrangements for exercising the right to information and consultation in the Directive Article 4 and the possibility in

basic duty to provide information and consultations in line with the objectives and principles in Chapter 8 and Article 1 of the Directive. The general framework in Chapter 8 is thus seen as a starting point and minimum standards for regulations on information and consultation in collective agreements. The Basic Agreements between the main federations of trade unions and employer organisations typically include more comprehensive and detailed requirements for information and consultation. For example, the Basic Agreement LO-NHO has a separate chapter on information, cooperation and co-determination at company level.[148]

Furthermore, the general legal framework in Chapter 8 does not restrict other provisions on information and consultations in statutory law or regulations. While Chapter 8 provides a 'general' right to information and consultation as part of managerial decisions, other provisions in the act set explicit duties on information and/or consultation on a number of more specific issues, both on an individual and a collective level. The latter include, i.a. provisions on information and consultation on control measures (§ 9-2) and in connection with collective redundancies (§ 15-2) and transfer of undertakings (§ 16-5). Furthermore, two sets of rules are particularly relevant for NSWs and will be further elaborated.

First, the WEA sets a framework for structured cooperation between the employer and employees' representatives on health and safety issues at the workplace. The cooperation is structured by rules that require Safety Representatives (*verneombud*) and Working Environment Committees (*arbeidsmiljøutvalg*) in the undertakings, cf. WEA Chapter 6 and 7, respectively. As a general rule, all undertakings must have a Safety Representative, and larger undertakings may need several.[149] At undertakings with fewer than five employees, the parties may agree in writing upon a different arrangement, including no safety representative.

The role of the Safety Representative has traditionally been to safeguard the interests of the *employees* in matters relating to the working environment, and to ensure the safety, health and welfare of the employees in the undertaking. The role was, however, recently expanded.[150] The role and responsibility of the Safety Representative now apply correspondingly for hired employees and independent contractors who perform work in close connection with the undertaking, cf. WEA § 6-2 (1).[151] The obligation to establish a Working Environment Committee depends on the size of the undertaking, and it is required where the undertaking regularly employs more than 30 employees, cf. WEA § 7-1.[152] The committee is a cooperative body with representatives of both the employer

Article 5 to establish different provisions than those referred to in Article 4, while respecting the principles set out in Article 1, cf. Ot.prp. 49 (2004–2005) p. 126.

148 The Basic Agreement Chapter 9. There is in addition a separate Part B with more detailed provisions on cooperation at company level, but this does not apply to all industries.

149 Cf. WEA § 6-1 and amendment act 17 March 2023 No. 3, in force from 1 January 2024.

150 Amendment act 17 March 2023 No. 3, in force from 1 January 2024. The safety representative has specifically defined duties and the authority to stop dangerous work, cf. WEA § 6-2.

151 The safety representative has specifically defined duties and the authority to stop dangerous work, cf. WEA § 6-2.

152 The threshold was lowered from 50 to 30 employees by the same amendment act, 17 March 2023 No. 3, in force from 1 January 2024.

and the employees that advises on working environment issues and has decision-making authority in certain matters.

Although this system is designed for information and consultation on matters of health and safety specifically, the employer may choose to use this structure to fulfil the more general information and consultation duties according to WEA Chapter 8. The rules are also linked as regards who can be employees' representatives and how they are elected, see further below.

Second, the WEA requires consultations with employees' representatives on the use of non-standard work specifically. As explained in Section 1.2, the regulatory approach to non-standard terms of employment has been to provide specific protection to limit the use of various non-standard terms. As part of this protection, the WEA § 14-14a sets a duty for the employer to consult with employees' elected representatives on the use of part-time and fixed-term employment and hiring of workers (including agency work) in the undertaking.[153] This duty to consult was recently amended to also include the use of independent contractors and purchases of services from other undertakings that have consequences on staffing.[154] Consultations should take place at least annually, or when one of the parties so require. The duty to consult was thus expanded from a focus on the use of non-standard terms of employment (NSWs in category 1) to also include the use of independent contractors and self-employed (NSWs in category 2 and 3). The purpose of the duty is to raise awareness of the use of non-standard work and of the impact this may have on the employees and the working environment.[155] This indicates a main focus on the implications for standard workers and to some extent NSWs in category 1. Still, raised awareness on the use of non-standard work may also indirectly improve the working conditions for NSWs in category 2 and 3 by affecting hiring practices, for example hiring employees instead of independent contractors and hiring employees on standard terms instead of on non-standard terms.

Although the focus of the following analysis is on the 'general' right to information and consultation in WEA Chapter 8, I will to some extent also refer to the two other sets of statutory rules, as they are interrelated. The more comprehensive regulations on information, consultation and co-determination in collective agreements vary considerably. I will limit myself to giving some examples of how these differ from statutory regulation, using the Basic Agreement LO-NHO as an illustration.

3.1.2 Access to representation

The duties concerning information and consultations apply in undertakings that regularly employ at least 50 employees, cf. WEA § 8-1. As a starting point, both full-time and

153 The procedural requirements that apply when the employer wants to employ a person part-time, also include a duty for the employer to discuss the question of part-time work with the employees' representatives in the undertaking before deciding on the use of part-time, cf. the WEA § 14-1 b. If the undertaking hires workers from temporary work agencies, the practice on equal treatment shall also be discussed, cf. WEA § 14-12 a.

154 Amendment Act 17 March 2023 No. 3, as also mentioned above.

155 Prop. 14 L (2022–2023) p. 50.

part-time employees shall be included.[156] The provision provides a legal basis for regulations on how to calculate the number of employees in the undertaking, which has not been used. However, there are regulations on the estimation as regards the duty to establish a Working Environment Committee.[157] These are relevant, as the two sets of rules originally had the same threshold and were supposed to have the same scope of application.[158] The regulations stipulate that the calculation shall be based on the average number of employees during the last calendar year who have had more than 20 hours' weekly working time.

Therefore, NSWs in category 3 fall outside the scope of this legal framework, while NSWs in category 1 will only partly be counted towards the threshold. Workers in part-time employment will be counted for the employment period, and workers in part-time employment will be counted as long as the working time is more than 20 hours a week. Agency workers and other hired employees will be counted towards the threshold in the agency (the contractual employer), but not in the capacity of doing work in the user undertaking.[159] This can be seen as a paradox, as the user undertaking has several employer duties to protect hired employees, i.a. ensure a "thoroughly sound working environment", cf. WEA § 2-2. NSWs in category 2 may be covered, depending on their classification as employees, and taking account of the limitations towards part-time, fixed-term and agency work. Some NSWs in category 2 – those doing subordinate work without a contractual basis – are explicitly excluded.[160]

In contrast, the duties concerning information and consultation according to the Basic Agreement LO-NHO apply in *all* undertakings covered by the agreement, irrespective of the number of employees. Whether NSWs will be counted towards the statutory threshold is therefore not an issue.

For undertaking with less than 50 employees, that are not covered by collective agreements, no general legal framework of information and consultation applies. For undertakings with less than 30 employees, a work environment committee is not required either. The industrial structure in Norway is dominated by small and medium size enterprises, and more than a million employees work in undertakings with less than 50 employees.[161]

The right to information and consultation in WEA Chapter 8 applies vis-à-vis the "employees' elected representatives" (*tillitsvalgte*). The same concept is used throughout the WEA, i.a. as concerns the consultation duty on non-standard work in WEA § 14-14a. The concept is not confined to a narrow understanding as only representatives of

156 Ot.prp. 49 (2004–2005) p. 312.

157 Regulation of 6 December 2011 No. 1355 on organisation, management and participation § 3-7.

158 Ot.prp. 49 (2004–2005) p. 124.

159 Prop. 74 L (2011–2012) p. 64.

160 Regulation on organisation, management and participation § 3-23, with reference to WEA § 1-6.

161 Small (1-20 employees) and medium-sized (21-100 employees) enterprises account for more than 99 per cent of all businesses in the country and employ about 50 per cent of the workforce in the private sector, see Statistics Norway.

employees who are organised in a trade union; it may also include elected representatives of employees without any organisational affiliation.[162]

It is the responsibility of the employer to make sure that the employees are represented. The duty to inform and consult may be fulfilled in the Working Environment Committee. In that case, the Safety Representative and the employees' representatives on this committee will satisfy the statutory standard.[163] In other words, these representatives may in practice exercise the right to information and consultation on general issues according to WEA Chapter 8.

Detailed rules regarding the employee representatives are set in regulations. Both the Safety Representative and other representatives in the Committee are, as a starting point, *elected* by the employees, by majority rule. All employees have the right to vote, and all employees are in principle eligible to be elected.[164] There is a qualification requirement – of experience and insight into the working conditions of the undertaking – to be elected a Safety Representative.[165] The regulations require an Election Board, who shall lead the election process.[166]

However, if the majority of employees are organised in a local union, the union may *appoint* the Safety Representative. If several unions in sum organise the majority of employees, the unions may jointly appoint the representative. If the employees are unwilling to elect a representative, the employer may appoint one.

On this background, NSWs in category 1 have voting rights, and the same applies to NSWs insofar as they are classified as employees. The same groups are in principle eligible to be elected. However, the qualification requirement may represent a challenge for NSWs, as non-standard terms of employment and a less stable relation to the undertaking may be perceived as affecting their insight into the working conditions.

The system to elect employees' representatives is based on majority rule. However, the regulations stipulate a right to ad hoc quasi representation in § 3-13: When the Working Environment Committee deals with matters that particularly concern a group of employees that is not represented on the committee, representatives for this group of employees shall be called in. These representatives have the right to speak and to submit proposals, but not the right to vote. This may have particular relevance for NSWs in category 1, for example when the committee discusses the use of non-standard terms of employment according to WEA § 14-14a. The right to quasi representation explicitly applies also to a specific group of NSWs in category 2; those doing subordinate work

162 Prop. 14 L (2022–2023) p. 50.

163 Ot.prp. 49 (2004–2005) p. 312.

164 The chief executive of the undertaking is excepted from voting rights, cf. regulation on organisation, management and participation § 3-2 (Safety Representative) and § 3-8 (representatives to the committee).

165 Regulation on organisation, management and participation § 3-2.

166 The Election Board is primarily appointed by the Work Environment Committee, secondly (if there is no committee established) by the local trade union/s or – thirdly (in case the unions do not agree or there is no local union) – by the employer, cf. the regulation § 3-2.

without a contractual basis. Beyond this provision there are no statutory mechanisms to ensure representation of minority groups.

Collective agreements and trade union bylaws have extensive rules on the election of employees' representatives (*tillitsvalgte*). In the Basic Agreement Agreement LO-NHO, there is a similar requirement as in the WEA, that only capable employees with experience and insight into the working conditions of the undertaking are eligible to be elected.[167] The agreement also regulates the *number* of representatives in the undertaking, taking the number of employees into account, and sets rules for the organisation of their work, including rules on working committees and coordination committees.[168]

3.1.3 Access to information and consultation

The general right to information and consultation based in WEA Chapter 8 applies to workers who are employees according to the WEA, as a collective right. Similarly, the right to information, consultation and co-determination in collective agreements will apply to workers who are employees according to the LDA and who are covered by the relevant agreement. NSWs in category 1 are therefore in principle included, while NSWs in category 3 are excluded, and NSWs in category 2 are included, depending on the legal classification.

The topics for information and consultation reflect the interests of employees. Generally, the information and consultation rights in the statutory framework concerns issues of importance for the working conditions of employees, cf. § 8-1. According to § 8-2 (1) this includes, first, *information* concerning the current and expected development of the undertaking's activities and economic situation. Second, it includes *information and consultation* concerning the current and expected workforce situation in the undertaking, including any cutbacks and the measures considered by the employer in this connection. Thirdly, *information and consultation* concerning decisions that may result in considerable changes in the organisation of work or conditions of employment are included. However, as indicated above, collective agreements may derogate from these provisions as long as the basic obligations in the Directive are respected, cf. § 8-2 (4).

For the right to function in line with its purpose, the employees' representatives should forward the information they receive to the workers they represent. Furthermore, the representatives should ensure that their engagement in consultations is based on positions that are anchored in the group of workers they represent. There are, however, no explicit statutory obligations of this kind.

This general right to information and consultation is however supplemented by more specific information and consultation duties. This includes the duty according to WEA § 14-14a to consult on the employment conditions for NSWs in category 1 (the use of part-time, fixed-term and hiring of workers) and the use of NSWs in category 2 and 3

167 In addition, the Basic Agreement § 5-3 seem to set a higher standard, by stating: «As far as possible, they shall have worked in the company, or in the group as a whole, for the last two years».

168 The Basic Agreement § 5-3 and § 5-4.

(the use of independent contractors and purchases of services from other undertakings with consequences on staffing).

As mentioned above, collective agreements set requirements of information, consultation and co-determination that are more ambitious and far-reaching, both in terms of objectives, topics and implementation. To illustrate, the Basic Agreement LO-NHO has general provisions as well as separate provisions on consultations concerning the undertaking's regular activities, reorganisation of activities, company law matters and on information on accounts and financial matters, change of ownership and the use of external advisers.[169]

3.1.4 Enforcement of access

The right to information and consultation according to WEA Chapter 8 rests with the collective of workers, not the individual.[170] This affects the avenues to enforce the statutory minimum standards.

The Labour Inspection Authority has the competence to monitor the dialogue at company level is established in accordance with the rules on information and consultation in WEA Chapter 8. Furthermore, the Authority may issue orders and make such individual decisions as are necessary for the implementation of these provisions, cf. WEA § 18-6. Coercive fines may be imposed if an order pursuant is not implemented within a set time limit, cf. WEA § 18-7. The possibility of imposing an administrative fine on the undertaking in cases of negligence or willful infringement of the provisions was introduced in WEA § 18-10 in 2013. The upper limit for an administrative fine was recently raised to 50 times the National Insurance basic amount or four per cent of the undertaking's annual turnover.[171] A fine can now also be imposed on the person who manages the undertaking, although within a limit of 25 times the National Insurance basic amount, cf. WEA § 18-10a.[172] What sanctions that are actually used however also depends on the authorities' discretion and priorities.

The same type of enforcement applies to the duty to have safety representatives and a Working Environment Committee according to Chapter 6 and 7, as well as the duty to inform and consult on the use of non-standard terms of employment, independent contractors and self-employed in § 14-14a.

Enforcing the statutory right to information and consultation on company level is thus left to public authorities. Although this may ensure access for those NSWs in category 1

169 The Basic Agreement Chapter 9.

170 Whether other rights to information and consultation for the collective according to the WEA, for example in connection with collective redundancy, also may have legal implications that can be enforced by the individual is a complex issue that is not elaborated further here.

171 The upper limits were lifted substantially by amendment act 14 June 2014 No. 31, in force 1 July 2024.

172 This provision was introduced by amendment act 20 June 2025 No. 34, in force 1 July 2025. The National Insurance Amount (*Folketrygdens grunnbeløp, G*) is set annually by the Norweigan parliament (*Stortinget*) and is used in the calculation of social security benefits as well as in a number of other regulations. In March 2026, the amount is NOK 130 160 (ca. EUR 12.000), see further Grunnbeløpet i folketrygden - nav.no.

and 2 who are covered by the legal framework, the relevant NSWs can neither influence monitoring nor the sanctions directly.

In undertakings where more detailed rules on information and consultation in collective agreements apply, these standards may be enforced by the parties to the collective agreement, by bringing a claim of breach of the collective agreement before the Labour Court, see further in Section 2.4. Some collective agreements also set sanctions and separate mechanisms to solve disputes that may be relevant. For example, according to the Basic Agreement LO-NHO, material breaches of the rules on information and consultation may be sanctioned with a fine, and disputes concerning this are decided by a joint dispute resolution committee.[173]

However, there are no enforcement mechanisms through which an *individual* worker may pursue obstruction of access to information and consultation.

3.2 Obstacles and facilitators

Access to information and consultation on company level for NSWs is influenced by some of the same aspects of the legal framework as access to effective collective bargaining, as described in Section 2.6. Here, too, the binary distinction between employees and independent contractor/self-employed is entrenched in the legal framework, both in statutory law and in collective agreements. NSWs in category 1 are included and generally have the same rights as standard workers. For NSWs in category 3 the major obstacle is lack of employee status, while the main issue for NSWs in category 2 is legal insecurity in this regard.

There are, however, some aspects that affect access to company level information and consultation more specifically. One general observation is that the statutory framework only provides minimum standards, clearly inferior to the more detailed and extensive requirements that follow from many collective agreements. Combined with the threshold of 50 employees for the statutory right to information and consultation to apply in the undertaking, this leaves workers with very different standards of information and consultation, and a substantial number of workers who work in small undertakings may fall outside any general legal framework for information and consultation. Another important obstacle is the lack of possibilities for workers – as individuals or a collective – to enforce the statutory requirements. These aspects, however, affect workers generally and not NSWs specifically.

As regards NSWs specifically, the qualification requirement in both statutory regulations and collective agreements – of experience and insight into the working conditions of the undertaking – may in practice be an obstacle to be elected as an employee representative and take an active part in the social dialogue in the undertaking.

On the other hand, it is interesting to note how the statutory framework has been extended in recent years beyond the binary divide, to include NSWs also in category 2 and 3. Both extending the role of the Safety Representative and highlighting

173 173 The Basic Agreement § 9-14.

employment conditions for NSWs as specific topics for information and consultation may enable a broader and more inclusive notion of social dialogue on company level.

4 Access for non-standard workers to social dialogue

The report has shown the central role of the binary divide and legal status as an employee for access to social dialogue in the Norwegian legal system. Access to the established and effective systems for collective bargaining and information and consultation on company level are, in essence, contingent on legal employee status. For NSWs this is both a blessing and a curse, depending on category. While NSWs in category 1 have undisputed access, for the most part fully in line with standard workers, NSWs in category 3 are largely excluded or referred to inferior and less effective forms of social dialogue.

This system is anchored in a *statutory* legal framework, which provides stable and relatively clear legal protection of rights related to social dialogue, to the advantage of the workers covered. However, for the workers who fall outside this framework, stability and clarity of the legal framework represent an obstacle that can be perceived as unsurmountable. The few examples of developments towards a broader notion of social dialogue described here, are therefore of particular importance: The wider possibilities for collective bargaining that EU/EEA competition law now allows, and the amendments to the statutory system of information and consultation to reach beyond the binary divide, may prepare the ground for a broader understanding of the need for social dialogue. However, it is too soon to say what the effects may be. Regardless, these developments on EU/EEA and national level are interrelated and illustrate the potential EU/EEA measures may have to affect national law.

Collective agreements are an essential and integrated part of the legal framework of social dialogue, by providing more comprehensive regulations of the process to bargain and conclude a collective agreement and for information, consultation and co-determination at company level. Being covered by these agreements are therefore pivotal for NSWs opportunities to participate in established systems for social dialogue. Although NSWs of all categories can seek membership in trade unions, and despite trade union initiatives to also promote the interests of independent contractors/ self-employed, legal employee status is still a precondition to be covered by binding collective agreements with normative conditions of work.

As legal employee status still is the key gateway to social dialogue, the relatively wide and flexible concept of employee is of central importance for NSWs. For NSWs in category 2, the unclear and/or ambiguous employment status is in itself a major obstacle. At the same time, the wide and flexible concept implies that the obstacle is – at least partly – an enforcement issue and not a material and conceptual challenge. The new presumption rule illustrates political will at national level to adopt new measures to avoid grey areas and strengthen the effectiveness of labour law protections but does not seem to fully meet the expectations this far.