Attachment: elaboration of the Trade Unions' assessment of the template for employment contracts at NORCE

This appendix explains why the unions consider some of the provisions in the employment contracts that NORCE uses to be unacceptable. We first go through the latest version of the employment contract. This is the one we assume NORCE will use in the future. However, we would like to emphasize that this version has not yet been used. Those who have signed a contract with NORCE have, as far as we know, the wording discussed under point 2.

1. **Assessment of the latest version of a template for an employment contract in NORCE**

   16 Intellectual property rights, etc.

   Right to own intellectual property

The wording in the template for the employment contract means that you transfer the rights to your own creative work ("Åndsverk") to your employer. A creative work is defined in the Norwegian Copyright Act as the result of an «original and individual creative intellectual effort» (The act is only available in Norwegian: https://lovdata.no/lov/2018-06-15-40/§2). The law defines different types of creative work. In NORCE, creative works will in practice be non-fiction works (articles and books), teaching materials and oral lectures, etc. For certain types of creative work (e.g. software and databases), there are separate rules that ensure the employer's right to commercial exploitation. This is complicated judicial terrain, and we have received support from union lawyers and lawyers who have specialized in this field.

We would like to emphasize is that creative work is not results, data, inventions, solutions, methods, techniques or "knowledge". Creative works are the result of a creative intellectual effort - a creative process - which results in a "work", such as an (scientific, technical, popular science) article. The point of the Copyright Act is to protect your rights as a "creator" of the work. The main rule of the law is, however, that creative work you create when you are at work, can be utilized by the employer, so that the research and industry agreements that NORCE has entered with third parties (i.e. industry customers, research council, etc.) can achieve their purpose. The unions therefore believe that NORCE's commercial interests, as a general rule, are not about taking over the right to the creative work itself. We have, with the help of lawyers, proposed an alternative wording to ensure that NORCE's commercial interests are safeguarded, but we have not succeeded in persuading NORCE to use the alternative that we suggested.

If you transfer the rights for your creative work to NORCE, you will no longer have the rights to the work you have created. What you give away is the right to produce a permanent or temporary copy of the creative work and to make the work available to the public (Åvl. §3). The person or entity who is the copyright holder can thus decide if, where, and when the work is to be published. We believe that the right to one's own creative work, as well as the rights to freely choose where this work is published, is a fundamental part of academic freedom. It is important that the researchers themselves can choose in which academic journals and to which audience they want to communicate their research. This is also an important research policy principle, cf. 'Plan S'. In many disciplines, timely publication of results is critical. When you transfer your creative work rights to NORCE, it is NORCE that decides whether, where and when a work is published.

The employment contract emphasizes that publication is desirable and that, upon application, you can keep the rights yourself. We consider intellectual property rights as a matter of principle and do not consider this an acceptable solution. The main offices of both Tekna and Forskerforbundet are quite clear that they do not recommend members to sign employment contracts where the right to their own creative work is waived.

Giving away a creative work also has a number of practical consequences. If you are going to publish an article you have written, you must sign that you have the copyright to this. If you have given up the right to the creative work (copyright), your employer has this right. NORCE can also transfer (sell) your creative work to others. How this should be handled in cases where you have created a work together with others who do not work at NORCE is unclear to us. If someone wants to reuse the work you have created, they must ask NORCE for permission or they must quote NORCE so that it appears that it is NORCE's creative work they are reusing. You retain the right to be named (Åvl. §5) as the template for the employment contract is formulated.

NORCE is a new and complex research institute - we work closely with both industry customers on projects that involve industry secrets and great commercial values at stake, and we work with publicly funded, basic contributions to research where we have publishing obligations. For NORCE, this breadth is a strength, but then we must be able to balance different considerations. The unions believe that the employment contract does not do this. In our opinion, safeguarding the right to one's own creative work is a norm with long and strong traditions. For NORCE, a continuation of such norms is strategically important both for safeguarding our reputation as a research institute and to be able to become an attractive employer for researchers who can lift NORCE to achieve the ambitious goals we have set ourselves.

Consent requirements before publication

In the last section of §16, there is a requirement for consent before publication: "The employee shall notify the employer of planned publications within a reasonable time before the planned publication, and the employer shall within a reasonable time decide whether consent to publication shall be given."

The unions believe that such an approval scheme is unacceptable. An approval scheme will be perceived as a weakening of the core principles of academic freedom. The award criteria for basic financing (from the Norwegian government) and the contract requirements that RCN and the EU use to grant research projects also defines a duty to publish research results. The criteria for basic funding also stipulate that the researchers at institutions that receive such support must be guaranteed academic freedom. If publication might impair commercial interests (for example, a patent application), it is accepted that publication is postponed. The unions have therefore proposed that employees should have a duty to always consider potential commercial interests before publication and raise this with the employer if in doubt. We also find it difficult to see how such an approval scheme can be implemented in practice. NORCE had more than 500 publications in 2020, most in collaboration with researchers at other institutions.

Inventions

The employment contract means that you also transfer rights to inventions to the employer. The Employee Inventions Act stipulates that the employer can exploit inventions you make when you are

at work and that the values that are created are shared. If the employer does not want to take over the invention you have made, the starting point in the law is that you can exploit the invention yourself (apply for a patent on the invention, sell it or give others a license to exploit it). As far as we understand, the provision means that you give up more rights than the law stipulates.

Secondary positions

Explanation: The employment contract gives you an obligation to work for NORCE. When you are not at work, you can in general take on both other paid work and voluntary work (positions in sports clubs, political or religious organizations, etc.). However, if the obligations that you perform in your spare time prevents you from doing a good job for NORCE, your employer can ask you to terminate this work. This also applies to unpaid positions and investments in competing businesses and the like. The fact that you cannot do your job may also mean that your impartiality as a researcher on a research project may be called into question.

The employment contract requires the individual to register any activity that the employer has determined to be secondary employment, voluntary work and external financial interests. The unions have pointed out that such a register could contain information of a sensitive and private nature, for example if you have political or religious positions. As far as we know, there is no legal authority to create such a register with a registration obligation under Norwegian law. The unions have been positive that the employees are open about interests and positions, and that the employer arranges for NORCE to have a register where employees can (voluntarily) choose to enter their actvitities. Several universities have introduced such a scheme. We see it as important that the employer provides a good guide with recommendations for best practice in the area. We believe that University of Oslo's solution for this is a good starting point.

2. Regarding the employment contract used since 2018

The template that was used in the period between the merger and today differs from what is described above in several points. We highlight the differences that we consider significant:

Clause 16 on Intellectual Property Rights, etc. :

- The wording of the provision is somewhat more comprehensive and more difficult to understand. In this version you also give away all rights to your own creative work.
- There is no requirement for the employer to consent to publication.

Item 15 on Secondary positions etc.

The template states that you must have prior written consent before entering into paid or voluntary work. This is a very comprehensive application obligation, but it can be limited by the employer in the personnel handbook. The unions have argued that this gives the employer a disproportionate insight into what the individual does in their spare time (positions in sports clubs, political or religious organizations, etc.). The employee must be able to have short-term paid assignments and take on voluntary positions without always having to tell this to the employer and wait for a written consent.

The obligation to apply for secondary positions has been removed from the latest version of the template.