Essays on Temporary Work Agencies and the Economic Analysis of Law

Morgan Westéus

Akademisk avhandling


Fakultetsopponent: Docent, Per Skedinger, IFN, Stockholm, Sweden.
Abstract

Paper [I] adds to the theoretical literature on the incentives of Temporary Work Agencies (TWAs). Using a principal-agent model with hidden action to model two main types of contracts between a TWA and a Client Firm (CF), the TWA is shown to potentially act against the best interest of the CF when helping to fill a vacant position. The results also suggest that the adverse effect of the incentive misalignment is larger when the worker is going to be leased instead of hired by the CF. However, this effect could potentially be offset by introducing a sufficient level of competition among the TWAs.

Paper [II] uses individual-level data on young adults to estimate how the probability of being employed in the Swedish temporary agency sector is affected by whether a partner or other family member has experience of temporary agency work. The results show a significant effect from all peer groups of a magnitude that correspond to the other most influential control variables. We also find that this cohort of the agency sector has a relatively high education level compared to the regular sector, and that there are predominately men working in this sector.

Paper [III] analyses possible effects on total employment, and the distribution between agency work and regular contracts as a consequence of the implementation of the EU Temporary and Agency Workers Directive in Sweden. The analysis is based on changes in the compensation to agency workers in a calibrated extension of a Mortensen-Pissarides search model. Even though the results suggest a negative net effect on total employment, the implementation is shown to increase (utilitarian) welfare, and an increased transition probability from the agency sector into regular employment will increase welfare even further.

Paper [IV] focuses on settlement probabilities for different types of representation within the Swedish Labour Court. Empirical estimates on a set of unjust dismissal cases show that private representatives are generally less likely to reach a settlement than their union counterparts. The settlement probabilities converge following court-mandated information disclosure, which suggests that information asymmetry is an important factor in explaining differences in settlement behaviour. Privately instigated negotiations are therefore in general insufficient for making cases with non-union representation reach the same settlement rate as cases with union representation.

Keywords
Temporary work agency, family work experience, young adults, Sweden, labour law, EU directive, unemployment, unjust dismissals, negotiations, settlements, labour unions
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Morgan Westéus

Department of Economics
Umeå School of Business and Economics
Umeå University, SE-901 87 Umeå, Sweden

www.econ.umu.se

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Morgan Westéus
To my family
Abstract

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Stockholm, October 2014
Morgan
This thesis consists of an introductory chapter and the following papers on temporary work agencies and the economic analysis of law:


1 Introduction

Labour and capital are the two essential inputs in most production processes, and how to allocate labour constitute one of the fundamental fields in economics. In an influential paper, Atkinson (1984) defined the different types of workforce flexibility that constitute the Flexible Firm: numerical flexibility (both internal and external), functional flexibility, and financial flexibility. However, as financial flexibility could be impeded by collectively negotiated wage agreements that stretch over several years, the employer may primarily respond to changes in the demand for the produced goods through either functional and/or numerical flexibility.

The former type of flexibility implies that the employer should be able to continuously reassign workers to their (marginally) most productive position, and the scope for functional flexibility is arguably quite extensive in Sweden (cf. Section 4.1). The latter flexibility type suggests that the workforce should be partitioned into a core of skilled and motivated workers on long-term contracts that are central to the firm’s production, while keeping a separate buffer of peripheral workers at different levels of commitment to the firm1.

Swedish employers in search of numerical flexibility were in the past required to use external independent contractors, part-time contracts, and/or workers hired on either probationary or fixed-term employment agreements. The introduction of temporary work agencies (TWAs) has created additional possibilities for an employer wanting to obtain numerical flexibility (and arguably also some additional financial flexibility).

Whether employers actually adhere to the Flexible Firm theory and consciously utilise core-peripheral labour management strategies has been both debated and criticised (see e.g. Kalleberg, 2001). Other studies have also identified and emphasised several adverse effects from the use of similar flexibility strategies, and even challenged their alleged cost-effectiveness – especially with regard to the use of workers supplied through a TWA (see e.g. Nollen, 1996; Gibelman, 2005; Forde & Slater, 2005; Thommes & Weiland, 2010; Håkansson & Isidorsson, 2012; Walter, 2012).

The first three articles of this thesis add to the literature on TWAs. The analysis focuses on the potentially hidden costs associated with their incentive structure relative to their client firms (CFs), the composition of their workforce, and the effects from mitigating one of their comparative advantages: the wage paid to the TWA worker. The fourth article analyses the settlement behaviour in the Swedish Labour Court, particularly whether the settlement probability differs depending on the legal representation of the parties. Articles three and four directly apply economic methods to the study of how law, and the change in law, affects economic agents. Law constitutes an intuitive area of economic analysis as most economic issues are subjected to several institutional constraints2.

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1This is sometimes also referred to as the core-periphery model (cf. also to Handy, 1989, shamrock organization). These workers generally experience lower autonomy and lower employment protection (Kalleberg, 2001; However, cf. also Van Dyne & Ang, 1998, and Allvin et al., 2003).

2Indeed, Mackaay (2000, p. 89) states that “[e]conomic regulation denotes legal restraints upon market actors’ behaviour”. 
Furthermore, as new technologies evolve and economic agents find new uses for old products, new markets are continuously created. On this note, Mackaay (2000), referencing Heiner (1983), argues that although fixed rules might be both optimal and help facilitate the interaction between economic agents by allowing predictability at the time of their formation, the same permanence may also entail a sub-optimal result at a future point in time. The inherent dynamics of the economic systems thereby also require the law to be continuously evolving as well.

The notion in the introductory quotes by Box & Draper (1987) and Einstein (1934) captures an important inherent issue whenever modelling complex issues, such as legal analysis (with its traditional focus on the individual case study where the devil is often in the details), using economic methods (i.e. based on assumption on the relative level of information, costs and rationality of the involved agents; see e.g. Heiner, 1983). Following Einstein (1934), the necessity of adding an additional component to a model should be evaluated according to whether the marginal benefit of the inclusion outweighs its marginal cost. The notion carried by Box & Draper (1987) thereby becomes its logic consequence, and the results should always be interpreted with the underlying model and evaluation criteria in mind.

The introductory chapter of this thesis initially aims to provide a background to the evolution of the Swedish Model of regulating the labour market, and thereafter the emergence of the Swedish TWA sector. The following sections contain a brief summary of the sector’s main characteristics – primarily based on results from European studies. It also reviews the stated rationales for working in the sector, and why CFs utilise TWAs to either find matches to vacancies or to continuously lease workers.

The subsequent section focuses on the latter aspect and discusses what liabilities the CF may be able to hedge by renting labour from an external agent – as the CF thereby, either directly or indirectly, utilise the TWA as a type of redundancy insurance. This is used as a segue into the settlement behaviour of different types of representation in the Swedish labour court analysed in paper four. The introductory chapter is thereafter concluded with a summary of the included articles.

2 The Swedish Model of Labour Market Relations

Following in the wake of the early stages of liberalisation and industrialisation in Sweden, the nineteenth century saw a large number of work stoppages, lockouts, and threats of such actions. The employment agreement was at that time negotiated between the employer and the individual worker, which often put the individual at a significant disadvantage, and the workers realised the need to collectively organise in order to form a counterweight towards the employer.

The first labour unions were formed in the 1870s, and in 1898 four organisations joined together in the national Swedish Trade Union Confederation (Landsorganisationen, LO). The employers formed the Swedish Employers Association (Svenska Arbetsgivareföreningen, SAF) four years later and the first national collective agreements were negotiated in the early 1900s (e.g. verkstadsavtalet, 1905).

The negotiated agreement in 1906 is an important milestone where SAF and LO, in what has been known as the December compromise, reached an agreement that among other provisions established two central aspects of what has become known as the employer prerogative (also referred to as the employers § authority): the right to manage and employment at will. The labour unions conversely obtained the right to organise and collectively bargain over wages and working conditions (Glavä, 2011; Andersson et al., 2013).

The function and status of the collective agreement, as well as a general right of negotiation and association (mainly applicable for white-collar workers), was established by law in 1928 and 1936 respectively. Even though Numhauser-Henning (2001) suggests that this was mostly a legislation of an already established code of conduct between the labour market parties, it still established the main rules necessary for continuously regulating the labour market through treaties and other (collective) agreements (Glavä, 2011).

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3 See e.g. Miceli (2009) for a discussion of some of the critiques of economic analysis of law.
4 See Eklund in Schmidt et al. (1997) and Nycander (2008) for an overview of the political climate and the ties between the political parties and the labour market parties during the emergence and evolution of the Swedish model and the wage formation process. For an economic perspective see e.g. Anxo & Niklasson (2006) or Fregert & Jonung (2010). Delsen & van Veen (1992) and Elvander (2002) provide a comparative view.
Thereafter when the Swedish government initiated public investigations and pressed the labour market parties to limit collective actions under the threat that the labour market would otherwise be regulated by law, the parties chose to sign the Saltsjöbaden agreement in December of 1938. This was the first principal treaty (huvudavtal) on the labour market and facilitated (among other things) complements and adaptations to the rules on collective action.

More importantly is that it showed that the labour market parties were willing to accept responsibility and negotiate applicable rules and restrictions without interference or guidance by the government, which thereby ushered a new era of cooperation and consensus (Numhauser-Henning, 2001; Sigeman, 2010; Glavä, 2011; Andersson et al., 2013; Källström & Malmberg, 2013).

With some exceptions (see Glavä, 2011) the legislator refrained from additional interventions, and what has become known as the spirit of Saltsjöbaden prevailed until the late 1960s. Arguably, the most important issue from the viewpoint of this thesis was restricting the employer prerogative through the implementation of a limited employment protection in the April settlement in 1964 (a just-cause, see Section 4.2, requirement for dismissal on personal reasons), and that the parties engaged in centralised wage negotiations (Glavä, 2011, Andersson et al., 2013).

Both Sigeman (2008) and Glavä (2011) note that wage negotiations have become less centralised over time, and that today negotiations are carried out on an industry level with minor local amendments and adaptations. A continuous negotiation process nevertheless makes the Nash bargaining solution (where the parties divide any surplus according to their relative bargaining power, see e.g. Binmore et al., 1986) an intuitive choice for the (collective) wage formation process in paper [III]. It is also reasonable to attribute any real bargaining power to the collective of workers rather than the individual worker in most cases.

The somewhat laissez faire attitude of the legislator changed in the 1970s following an increased demand for democratising the workplace and facilitating a higher degree of employee influence. This led to that more restrictions of the employer prerogative became codified through the Employment (Co-Determination in the Workplace) Act (SFS 1976:580, cit CWA), and the first Employment Protection Act (SFS 1974:12, followed by the current SFS 1982:80; cit EPA).

The CWA provides the signing labour union (and to a lesser extent the minority unions) the right to information and continuous negotiations. It also allows the signing union the mandate to interpret the workers scope of employment, and even in some instances to veto the decisions by the employer (see e.g. 38-39 §§ CWA). Even though having been continuously weakened over time, the EPA ended the notion of employment at will by introducing a legislated just-cause requirement for the employer to unilaterally end the employment. It also introduced an associated seniority principle, as well as adding provisions for fixed-term employment and re-hire clauses (Glavä, 2011).5

However, the legislator did not abandon the established procedural order and allowed the labour market parties to deviate from some of these provisions through a centrally negotiated collective agreement (see e.g. 4 § CWA and 2 § EPA). Sweden’s membership in ESS, and later the EG/EU, has required Sweden to implement some directives through legislation while at the same time often utilising similar deviations through collective agreements, when applicable, in order to maintain the Swedish model.

The flexibility obtained through a central agreement with local addendums is suggested to not only safeguard the interest of the exposed worker but also gain legitimacy as the decisions are allowed to take local conditions into consideration (Glavä, 2011).6

The evolution of Swedish labour law has been argued by Glavä (2011) and Sigeman (2010) to constitute a series of infringements on the employment at will part of the employer prerogative – except for the right to dismiss workers due to the lack of work-principle (Section 4.2) which has remained relatively unaltered. Glavä (2011) nevertheless also argues that the same provisions have in fact also strengthened the employer’s right to manage within the employer prerogative.

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5 Legislation requiring equal treatment of men and women in the workplace (SFS 1979:1118) further restricted parts of the prerogative. The current act (SFS 2008:567) prohibits discrimination due to gender, ethnicity, religious belief (or lack thereof), sexual orientation, transgender identity, disabilities and/or age. It applies to a wide range of situations related to the labour market; e.g. when hiring, managing or dismissing, but also with regard to promotion, wages, and fringe benefits.

6 This is analogous to the argument that no central authority may accumulate and interpret the same amount of information and complex relations as efficient as a continuously negotiating market.
The Swedish model today is characterised by (i) a high degree of organisation among both employers and employees with a low degree of inter-organisational competition, and (ii) that just-cause is required for the employer to unilaterally end the employment relationship, as well as (iii) a relatively high degree of autonomy through contractual freedom with the collective agreement as the main regulatory and normative document. This implies that many issues, even though regulated by law, may be deviated from in a negotiated collective agreement.

Other notable features are (iv) the absence of legislated minimum wages, and that (v) collective agreements cannot be made generally applicable (allmängiltigförklaras) for an entire industry. (Numhauser-Henning, 2001; Sigeman, 2010; Glavå, 2011) These characteristics constitute a base for the remainder of the introductory chapter, as well as providing an important framework for the contained articles.

3 The Temporary Work Agency Sector

The Swedish state monopoly on employment mediation (enforced by the 1935 Employment Mediation Act; SFS 1935:113, with amendment SFS 1942:209 that explicitly prohibited the leasing of workers to another company) was ended through two reforms in the wake of the economic downturn if the early 1990s. Since then the market for leasing workers to a CF through a TWA has grown considerably (Andersson-Joona & Wadensjö, 2010; Walter, 2012).

The first reform came through the first private mediation act (SFS 1991:746; enforced from Jan 1st 1992) which allowed temporary wok agencies by disassociating the leasing of workers to another employee from the concept of mediated employment. There was nevertheless significant restrictions in that mediation required both permission (awarded for a maximum of one year by the erstwhile Swedish National Labour Market Board; Arbetsmarknadstågyselsén AMS), and stated that it couldn’t be conducted for profit – although the mediator was allowed to charge some fees. There were also provisions stating that the activity should be acceptable from a broader labour marker perspective, and that the tasks should be of a temporary nature that couldn’t stretch for more than a total of four months. (Prop. 1990/91:124)

The second reform came in 1993 (Prop. 1992/93:218), one year after Sweden had revoked their 1950 ratification of ILO convention no. 96 (Fee-Charging Employment Agencies Convention, C096; through Prop. 1991/92:89). The reform replaced the previous act and removed the need to obtain permission from AMS to provide employment mediation services. It also allowed employment mediation to be conducted commercially, as well as removing the four month maximum duration requisite and the necessity of an underlying need for temporary labour.

The mediating company however was prohibited from requesting, negotiating, contracting or accepting compensation from the individual worker. The rules regarding the CF’s obligation to negotiate (when applicable) with the labour union before utilising a TWA (38-40 §§ CWA) was also left intact.

The introduction of TWAs on the labour market created a tripartite arrangement by disassociating the worker from the employee-employer concept. The worker carries out tasks under the supervision and guidance of the CF without being regarded as an employee of that CF (see also Spattini, 2012). The explicit employer is the TWA which thereby carries most of the associated labour law liabilities towards the worker. The relationship between the CF and the TWA is based on the written contract and thereby regulated through general contract law statutes. The result could be that the leased TWA workers may work on terms that do not apply to the workers directly employed by the CF (unless a collective agreement between the labour union and the CF includes specific provisions on the equal treatment of these two types of workers. However, see also Forde & Slater, 2005; Håkansson & Isidorsson, 2014).

The political opposition raised concerns about the hasty deregulation procedure, and they stated that there was a number of issues that had not been analysed in the proposition nor referenced to any preceding research. Specifically mentioned was the possibility of hollowing-out employment protection due to the tripartite arrangement, and the effects from any increased precariousness for the individual worker. Also brought up was the effects on the overall labour market dynamics; the impact on the matching and wage formation process, as well as the asserted efficiency gains in general. (Report 1992/93:AU16)

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7See also Bergström et al. (2007), Berg (2008), Johnson (2010) and Walter (2012).
3.1 Rationales

The studies by Spermann (2011), Thommes & Weiland (2010), Tijdens et al. (2006) and ECORYS-NEI (2002) include surveys of a number of mainly European studies on both supply and demand side rationales for choosing labour supplied through a TWA\(^8\). CFs (demand side) state that their rationales are to recruit and screen workers both for open-ended and fixed-term contracts, and both for anticipated and unanticipated increases in production demand, (see also Den Reijer, 2007, and Pfeifer, 2005), and replace absent workers as well as increasing flexibility by supplementing and adding buffer capacity.

The above aspects correspond well to the flexibility aspects in Atkinson’s (1984) model. The first types of rationales may be summarised into that a TWA is utilised for matching purposes when the supply of the required labour is uncertain (see Milner & Pinker, 2001, for a theoretical approach), as well as acting as a type of insurance that allows for short-term flexibility (see Koene et al., 2004). Other rationales include strategic cost-shifting in publicly traded companies and reducing human resource management costs.

Worker (supply side) motivations include hoping to increase the probability of finding a non-TWA job by being directly exposed to potential employers, while at the same time being a part of a flexible and dynamic environment through which they gain experience that could increase their overall employability. Other stated reasons are being able to better combine working life with leisure and also having a (complementary) source of income.

The supply side rationales could be summarised into two main categories: either the workers utilise TWA employment as a stepping-stone into regular employment and/or as a source of income (i.e. accepting rather than choosing). Other workers view this type of employment as a way of combining a dynamic professional working life with their preferences for leisure activities (i.e. choosing rather than accepting).

3.2 Matching

Permitting private employment mediation was assumed to allow vacancies to be filled with the right worker as soon as possible and that the employer would regularly benefit from having a larger pool of candidates to choose from (Report 1992/93:AU16). However, this is only true if candidates are defined as workers with at least sufficient characteristics, and not the overall sample of applicants – as that could arguably increase the cost of identifying and sorting the subset of eligible workers.

It is nevertheless reasonable to assume that the TWAs role as a specialised labour market intermediary allows it to benefit from technological advantages (such as specialised IT-systems, matching algorithms and classification systems; Walter, 2005) and economies of scale (Hevenstone, 2008) in order to quickly match a worker to a vacant position.

The TWA could thereby be regarded as helping to reduce any information deficit in the coordination between workers looking for employment and employers looking for workers. The notion of a relatively high matching speed is also a recurring theme in the literature (Houseman, 2001; Autor, 2001 & 2003; Neugart & Storrie, 2002 & 2006; Den Reijer, 2007; De Graaf-Zijl & Berkhout, 2007; Mltlacher, 2007; Peck & Theodore, 2007; Hevenstone, 2008; Baumann et al., 2011; Walter, 2012).

On the other hand, any possibility for the CF to capture nuances or unique qualities by continuously adapting the worker demand specification as a response to private information shared by the prospective worker during a personal interview could also be lost when outsourcing the recruitment process to an external agent (cf. Walter, 2005 & 2012). What constitutes the right worker could also depend on what point of view that is taken: the TWA, the worker, or the CF – unless they all have equivalent incentives and/or goal functions (cf. to the problem of over-education and mismatched TWA workers in De Graaf-Zijl, 2012, and Håkansson, Isaksson & Strauss-Raats, 2013).

In paper [I] we outline a principal-agent model with asymmetric information and hidden action where a TWA is tasked by a CF to supply a worker with an exogenously determined (i.e. true) minimum productivity for a vacancy that pays a certain wage. Our framework shows that the TWA most often will provide the first (random) match that fulfils the minimum productivity – regardless of any remaining time and resources available for carrying out additional searches.

\(^8\)These rationales also correspond to those from the U.S. market (Houseman, 2001; Autor, 2001 & 2003). See also Gibelman (2005) or Forde & Slater (2005) for a review of both CF and worker rationales along with a critical discussion of the merits and potential hidden costs of using temporary agency workers.
We argue that these differing incentives could be a sufficient requirement to allow for a quicker matching procedure. However, we also show that the TWA may sometimes even have incentives to actively search for, and supply, the worker with the lowest (although still sufficient) productivity.

This type of search behaviour is furthermore not necessarily inconsistent with a desire to secure repeated business (see e.g. Neugart & Storrie, 2002), since it implies that a sufficient worker is indeed supplied whenever a match is found. The match is therefore, by definition, not a bad match per se and should not have a negative effect on their reputation, especially if the CF is unable to assess the matched worker's relative productivity due to that they have little to no information on the foregone alternatives (i.e. the productivity distribution of the remaining workers in the sample).

Studies based on data from the late 1990s and early 2000s have found that workers in the Swedish temporary agency sector were often from groups that traditionally held a more marginal position on the labour market: youths, women, less educated people and immigrants (Andersson-Joona & Wadensjö, 2008, 2010; cf. also Forde & Slater, 2005). More recent studies however suggest an increased use of more skilled workers within the sector (Andersson-Joona & Wadensjö, 2012; Petersson, 2013; cf. also Tijdens et al., 2006).

Although not being its primary purpose, the results in Paper [II] similarly suggests that the education level among young adults in the Swedish temporary agency sector in 2007 has increased compared to the estimates for the entire sector in 1999 (Andersson-Joona & Wadensjö, 2008). Moreover, we also find that within our sample of young adults there are now more men than women employed by TWAs.

Paper [I] discusses the possibility that the increased education level could be demand side driven due to the CFs exaggerating their worker demand profile in order to compensate for any differing search-incentives between them and the TWA. Walter (2012) offers a (complementary) supply side explanation by suggesting that supplying (too) highly educated personnel could be a consequence of the TWA’s need to continuously emphasise their superior matching ability.

### 3.3 Characteristics

In their survey of the relatively scarce literature on temporary agency workers’ physical work environment and work-related injuries, Håkansson, Isaksson & Strauss-Raats (2013) found that temporary agency workers perform riskier tasks and experience poorer working conditions than other types of employees (cf. Tijdens et al., 2006; MacEachen et al., 2012). Fabiano et al. (2008) find similar differences with regard to working conditions for Italian TWA workers who suffer more work-related injuries which also causes them to be absent from work for longer periods of time.

Håkansson, Isaksson & Strauss-Raats (2013) also concluded that temporary agency workers often receive an insufficient amount of training, safety information, and work place introduction at the CF. There are two main reasons mentioned: unclear responsibilities between the TWA and the CF for such education, and that the imminent and/or short-term demand for a worker might not leave sufficient time for similar information and training.

The theory of compensating wage differentials (see e.g. Rosen, 1986) suggests that workers will accept negative aspects in their occupation and work environment if they perceive that they are being compensated within other areas (usually wages). However, a number of European studies on the wage differentials between TWA workers and those employed directly by the CF find that there is a significant wage penalty for workers within the TWA sector (Forde & Slater, 2005; Tijdens et al., 2006; Böheim & Cardoso, 2009; Jahn, 2010; Andersson-Joona & Wadensjö, 2010, 2012; Jahn & Pozzoli, 2013). Most of the studies also find that the wage differences have been growing over time and cannot be fully explained by controlling for personal characteristics. There is also research suggesting that these differences exist even in the presence of national statutes compelling non-discrimination of TWA workers with regard to wages (Nienhüser & Matiaske, 2006; see also Jahn & Bentzen, 2012).

Therefore as TWA workers may be required to suffer even a negative wage difference, one factor that may possibly account for why an individual would choose TWA work, apart from being compelled to do so for pressing financial reasons or a lack of other options, is the view that temporary agency work serves as a stepping-stone into regular employment (ECORYS-NEI, 2002, Tijdens et al., 2006; and Spermann, 2011).9

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9See also the agency sector dynamics in Neugart & Storrie (2002, 2006), and Baumann et al. (2011). Connell & Burgess (2002) similarly found that temporary agency workers will leave the current assignment if they are offered a better deal elsewhere, even if it too is temporary.
Amuedo-Dorantes, Malo & Muñoz-Bullón (2008) argue that the probability of transitioning into employment directly at the CF is conditional on (or at the very least indicative of) the CF’s underlying rationale for utilising this type of flexible labour. If the main rationale is to save on variable labour costs the CF may very well continuously maintain a pool of temporary agency workers indefinitely.

Forde & Slater (2005) similarly caution that as either entire operations or specific types of jobs are subcontracted to TWAs (instead of being carried out side-by-side with direct-hire employees), the temporary agency workers’ accumulation of CF-specific capital will also be reduced as compared to the direct-hires (see also Håkansson & Isidorsson, 2012). This could arguably reduce the probability that the temporary agency worker will transition into employment directly at the CF. However, if hiring a temporary agency worker is seen as a way for the CF to screen a candidate before offering a more typical type of employment, then temporary agency employment might indeed be a stepping-stone into a more sought after employment role.

Whether or not different types of temporary employment actually has an effect on the transition probability into regular employment has been surveyed by Zijl and van Leeuwen (2005) who established that there are considerable differences between the European countries. They concluded that there seems to be a strong positive effect on the transition probability in some parts of Italy. However, one of the referenced studies (Ichino et al., 2005) note that the positive effect from temporary agency work is conditional on the reference group including both atypically employed workers and unemployed individuals, and that the effect disappears when only comparing temporary agency workers to other workers on atypical contracts. It is therefore not certain that temporary agency work has a more pronounced stepping-stone effect compared to other types of non-standard employment in Italy.

Results based on data for the Netherlands show a strong positive effect on the transition probability from having temporary employment. A recent study by de Graaf-Zijl, Van den Berg & Heyma (2011) found that Dutch temporary workers (incl. temporary agency workers) have a slightly lower initial transition rate than unemployed workers, but that the transition rate increases over time. They also found that ethnic minorities benefit more than natives from temporary employment (cf. the surveyed studies in Tijdens et al., 2006). The authors suggest that larger personal networks or the accumulation of human capital might be the reason behind the increased transition rate.

The surveyed results in Zijl & van Leeuwen (2005) suggest a strong negative effect for the sample of several types of temporary workers in Spain (cf. García-Pérez & Muñoz Bullón, 2011, who found that tenure increases the transition probability for young workers, but also that repeated spells of temporary employment reduces it). Amuedo-Dorantes, Malo & Muñoz-Bullón (2008) even found that Spanish temporary agency workers have a lower likelihood of becoming hired on a permanent basis than similar direct-hire temporary workers. Similarly, while Zijl and van Leeuwen (2005) reported a moderate positive effect from temporary employment in Germany, more recent studies that target temporary agency work specifically (surveyed in Spermann, 2011) found either no evidence of a positive effect, or only so for the long-term unemployed10.

In a Scandinavian setting, Jahn & Rosholm (2010) found a significant positive effect from temporary agency work in Denmark, especially for first- and second generation non-western immigrants and less educated workers. In the few available studies of the Swedish TWA sector, Andersson & Wadensjö (2004) found (weak) statistical evidence of a stepping-stone effect for workers with a specific type of immigration background. However, Hveem (2013) found a negative effect on the probability of obtaining a regular job if starting to work for a TWA compared to remaining unemployed (but not so for non-western immigrants).11

It should be noted that both Andersson & Wadensjö (2004) and Hveem (2013) estimate the stepping-stone effect from TWA employment at the turn of the millennia. At that time the composition of the workers in the TWA sector was disproportionally comprised of youths, immigrants, less educated individuals and women (Andersson-Joona & Wadensjö, 2008).

10 The different results for temporary agency workers and other types of atypical employees further strengthen the notion that not all non-standard work arrangements share the same traits and impacts on the worker (De Cuyper et al., 2009. However cf. also De Witte & Näswall, 2003).

11 In comparison, Liljeberg et al. (2010) found an internal stepping-stone effect for fixed-term employees hired directly at the (client) firm in Sweden.
Since then, Andersson-Joona & Wadensjö (2012) found that the negative wage differential between workers in the agency sector compared to other workers has been growing. This has occurred during the same time that paper [II] suggests that there has been a change in the composition of the TWA workforce to include significantly more men and also individuals with a higher education level (cf. also Petersson, 2013). To my knowledge, there is unfortunately no research on any associated changes in the transition rate.

The psychological impact and subjective perception of atypical employment is however not merely based on differences in wages, working conditions and the possibility to transition out of the sector. Rather, those aspects are theorised to be the result of the workers’ prior expectations and the realised outcome. Differences therein could constitute a breach of what is referred to in the literature as a psychological contract (see e.g. Rousseau, 1989; Isaksson et al., 2003; Guest, 2004) that a worker implicitly forms with the employer regarding the job’s expected characteristics.

Data from Statistics Sweden suggests that over half of the Swedish TWA workers (private sector, 1st qtr. 2014) are employed on what is defined as an open-ended contract. However the subjectively perceived level of precariousness is not necessarily determined by the underlying type of employment either. Employment protection in Sweden in some aspects is stricter for fixed-term employees compared to open-ended employees (Källström & Malmberg, 2013), each assignment at a CF is still (relatively) temporary (see also Forde & Slater, 2005; Spattini, 2012) and lack of work constitutes a just-cause to end an open-ended employment in Sweden (Glavå, 2011).

The relatively short duration aspect could potentially be quite strenuous in of itself, regardless of an underlying open-ended contract with the TWA, as it requires the individual to continuously adapt to new environments and co-workers (see the concept of job strain vs. employment uncertainty as a stressor in Lewchuk et al., 2003). It could arguably also negatively affect the development of intra-workplace social connections, while at the same time facilitating a wider inter-workplace network. Both of these aspects could influence the job satisfaction and productivity of the worker (cf. the arguments in Gibelman, 2005, and Böheim & Cardoso, 2009).

Håkansson, Isaksson & Strauss-Raats (2013) also surveyed the literature on the psychosocial environment of temporary agency workers and found clear evidence that temporary agency workers experience significantly less employment protection and employability (cf. Forde & Slater, 2005). Temporary agency workers are also found to be utilised primarily in jobs with either low expectations and low self-monitoring, or with high expectations and low self-monitoring (the authors use the terms passive and tense jobs to refer to the respective job types), as well as in jobs with a relatively high degree of repetitiveness.

They similarly concluded that temporary agency workers experience the lowest degree of autonomy (compared to fixed-term, open-ended, probationary and on-call workers), exhibit the highest incidences of feeling depressed (significantly more often than open-ended and on-call workers), and the lowest degree of overall job satisfaction (cf. Wilkin, 2013). The stress experienced by temporary agency workers is found to be alleviated through feeling supported socially. However, the surveyed studies also suggest that the TWA may not be fulfilling its expected role in this aspect either (cf. Kantelius, 2010).

It should be noted that temporary (agency) work is not necessarily experienced as something inevitably negative for all workers. Some individuals actively chose different types of temporary or agency employment due to their personal preferences (Loughlin & Barling, 1999; ECORYS-NEI, 2002; Guest, 2004; Tijdens et al., 2006). European temporary agency workers overall are e.g. seemingly quite happy with their working hours – with some of the surveyed studies in Håkansson, Isaksson & Strauss-Raats (2013) even suggesting that better control over working hours was a key rationale for choosing temporary agency work over the more regular types of employment.

Rogers (2000), De Cuyper & De Witte (2007), and De Cuyper et al. (2008) noted that factors such as culture, norms and individual expectations could influence the subjective perception of the individual worker and potentially mitigate some of the negative aspects (relating to the aforementioned literature on psychological contracts). Similarly, Koene et al. (2004) highlighted the importance of what they refer to as sociocultural dynamics; i.e. changes in attitudes, practices and national normative (work-related) values, when discussing the evolution of temporary agency work throughout Europe.
That TWA workers are heterogeneous with respect to skills and preferences (cf. Wilkin, 2013), and also toward other atypical employees (De Cuyper et al., 2009. However cf. also De Witte & Naswall, 2003) implies that some caution should be taken when making generalisations. Håkansson, Isaksson & Strauss-Raats (2013) nevertheless concluded that the psychosocial work environment for temporary agency workers is generally worse-off than for other types of atypical workers – even on-call workers.

Job content and the matching of the worker’s skills to the work tasks are especially important factors for reducing the strain on the worker, as well as the worker having a feeling of integration and support in the workplace (cf. Forde & Slater, 2005; Salvatori, 2009; Håkansson & Isidorsson, 2014). The surveyed literature further suggests that the sector does indeed share many of the traits that are regularly associated with a precarious job situation for the worker (see Sverke et al., 2004).

The results in Paper [II] show that, irrespective of the surveyed negative aspects and adverse working conditions, the Swedish TWA sector has a strong over-representation of workers with parents, siblings and/or partners that have had previous experience of working in the sector. We suggest some different rationales for these results, but the theory of compensating wage differentials suggests that working for a TWA is at the very least still preferable to remaining unemployed (cf. Skans et al., 2004), and that each possible recruitment channel is utilised to exit unemployment.

These results follow the previous findings that family and other reference groups do not only constitute one of the main recruitment channels (irrespective of contract type: fixed-term or open-ended), but will also have an impact on the outcome and career development of their younger peers due to their conveyed labour market experience (Dickinson & Emler, 1992; Penick & Jepsen, 1992; Young & Friesen, 1992; Morningstar, 1997; Barling el al., 1998; Loughlin & Barling, 2001; Whinston & Keller, 2004; Greg et al., 2012; Haisken-DeNew & Kind, 2012).

With regard to the negative wage difference for the workers in the TWA sector, and following the harmonised legislation for other exposed groups on the European labour market, the EU Temporary and Agency Workers Directive (2008/104/EC) was enacted on November 19th 2008. The directive was implemented into Swedish law (through SFS 2012:854) on January 1st 2013. The directive emphasises the exposed position of the TWA worker (Article 2 of the directive; see also Boheim & Cardoso, 2009, and Spattini, 2012) and implements a principle of equal treatment – implying that not only the wage, but also other working- and employment conditions, should correspond to those of a comparable worker employed directly at the CF.

The Swedish implementation of the directive utilises the provision to make exemptions from the principle of equal treatment through collective agreement (Article 5.3, and for workers on open-ended contracts that are receiving wages between assignments: Article 5.2). Exemptions are however only allowed through collective agreements as long as it does not deteriorate the overall level of protection for the worker intended by the directive (SOU 2011:5). Collective agreements also have both a normative effect on the rest of the labour market and are even deemed applicable when only the CF has a valid collective agreement (SOU 2011:5). In Paper [III] I therefore argue that the wage determination in the two largest collective agreements and their extensive coverage (together with associated substitute agreements; hängavtal) differ sufficiently from the wage setting of TWA workers in previous studies (Neugart & Storrie, 2006; Baumann et al. 2011) to model the theoretical effects of an implied principle of equal treatment with regard to wages.

13 See Spattini (2012) for an extensive review of the content of the directive and a comparative analysis of temporary agency work characteristics throughout Europe.
14 This exemption only applies to the nominal wage and not the real wage. The exemption is motivated by that it is considered a legislated minimum wage that does not belong in the Swedish model, but also that it should convince more workers to organise in labour unions (SOU 2011:5). The authors do however raise some concerns with the sufficiency of the Swedish implementation with regard to the exemptions when neither the TWA, nor the CF, have a collective agreement. This view is also shared by Malmberg (2010).
15 The blue-collar (LO; 2012-2015) collective agreement states that the wage paid to the TWA worker should correspond to the average compensation for similar work at the CF, including performance pay, piece work pay, bonuses and provisions. The white-collar (Unionen/SSR; 2013-2016) collective agreement requires individual and differentiated wages that are to be negotiated in the same manner as elsewhere on the Swedish labour market. Both agreements contain minimum wages paid to workers currently not assigned to a CF. There are also some more specialised collective agreements, e.g. in the healthcare sector and for journalists.
16 These two studies assume that the TWA may unilaterally determine the wage paid to the temporary agency worker. The wage is therefore set so that the worker becomes indifferent between being either unemployed, kept on retention, or being leased to a CF.
The results correspond to the review in Thommes & Weiland (2010) which stated that even though a majority of CFs, prior to a reform in Germany in 2004, indicated that even a marginal increase in the wages paid to TWA workers would make the use of TWAs unprofitable, the sector nevertheless continued to grow extensively following the reform’s implementation of an equal wages-regime\textsuperscript{17}.

A history of poor compliance of similar national statutes in Europe, that were implemented prior to the directive and also requiring analogous non-discriminatory practises, further suggests that the real effects on TWA workers’ wages might be limited (Nienhüser & Matiaske, 2006) – especially since the labour market parties, which mainly monitor the compliance of the directive in Sweden, requested that exemptions were to be allowed (SOU 2011:5, cf. Jahn, 2010).

3.4 The Relative Cost and Insurance Aspect

The previously reviewed studies show temporary agency workers’ wages to be significantly lower than the wages paid to similar workers outside of the sector. However, the wage is only of indirect concern for the CF (apart from the argument of strategic cost shifting in Spermann, 2011; from fixed labour costs to flexible capital costs). The main issue is rather the fee charged by the TWA for finding and leasing the worker relative to the cost that the CF would have to incur if it had done the recruitment through another channel. Several authors have noted this and also questioned the perceived cost-effectiveness of utilising TWAs (e.g. Nollen, 1996; Kalleberg, 2000; Gibelman, 2005; Thommes & Weiland, 2010).

When a CF is leasing a worker, the TWA assumes the role as the de facto employer and thereby assumes most of the uncertainties and liabilities associated with the contingent need for the worker (cf. Forde & Slater, 2005). Consequently, it serves much the same purpose as redundancy insurance for the CF if the demand for the produced goods would decline and the services of the worker would become redundant. The utilisation of TWAs has correspondingly also been shown to closely follow the business cycle (Tijdens et al., 2006; De Graaf-Zijl & Berkhout, 2007; Den Reijer, 2007; Antoni & Jahn, 2009; Spermann, 2011; Jahn & Bentzen, 2012). Neugart and Storrie (2002, 2006) and Baumann et al. (2011) also captured the insurance aspect in the way that they model the temporary agency market and their determination of the fee paid to the TWA.

However, as data on the size and structure of the fee are unfortunately not readily available, the existence of an assumed efficient price must rely on a qualitative analysis of the three main comparative advantages that the TWA might have relative to the CF (not including the possibility of paying lower relative wages): lower search costs, a more advanced matching technology, and reduced severance liabilities.

It is reasonable to assume that while having a vacancy the search-cost is lower for the TWA than the CF as the former arguably does not suffer foregone production to the same extent. The product of the TWA is the created match – regardless of whether the worker is to be continuously leased to the CF or merely matched before being employed directly by the CF, which only implies a difference w.r.t. the implied payment scheme. The TWA may as previously mentioned also invest in specialised software to keep databases with potential candidates, utilise specific and recurring advertisement channels, and streamline the recruitment process workflow which help to keep average costs low (Hevenstone, 2008).

With regard to alleviating the information deficit between firms with vacant positions, unemployed workers, workers kept on retention by the TWA, and already employed workers looking for a new opportunity, the TWA fills a similar role as the Swedish Public Employment Service (Arbetsförmedlingen; cit SPES). The costs and benefits of utilising a TWA to find a match must thereby arguably be seen in relation to the alternative of recruiting through the SPES which offers similar services for free. These services include, but are not limited to: advertising a vacant position (which in many instances will also show up in the TWAs’ vacancy databases), active matching by professional recruiters, recruitment events, and access to the candidate database as well as providing the client access to information, screening tools and forecasts.

\textsuperscript{17}Other studies on the sector’s response to policy changes found that more liberal labour market policies increased the use of temporary workers (incl. temporary agency workers) in Canada (MacPhail & Bowles, 2008). However, Jahn & Bentzen (2012) argued that liberalisation of the rules regulating the TWA sector have on the contrary not been responsible for the sector’s growth in Germany.
The SPES arguably has the most comprehensive sample of unemployed workers as a requirement for obtaining unemployment benefits, and some types of social security benefits, is having to be registered with the SPES while also actively applying for jobs. However, the TWAs could potentially have an advantage in that those who already have a job might not be registered with the SPES to the same extent that they have registered with other intermediaries while performing on-the-job search.

Unlike the SPES, the TWA may furthermore choose to specialise and mainly offer a certain type of worker (within construction, IT, cleaning, etc.). Candidates could thereby self-select with the employment mediator that most closely corresponds to their characteristics and preferences. The business interest of the TWA further incentivises their recruiters to more actively create matches and may even offer a screened applicant a different position than what was originally applied for. Arguably, this effect may not be as prominent at the SPES where the responsibility of finding and applying for a job is regarded to be the responsibility of the individual prospective worker (although the SPES do offer similar services). These differences could potentially also correspond to a superior matching technology.

However, as highlighted in paper [I], the business interest could also entail some negative aspects for the CF with regard to the type of worker that is matched (cf. also Walter, 2012). Furthermore, any cost effectiveness in creating a match does not in itself justify the CF’s subsequent decision to continuously rent the worker from the TWA. Given that TWAs would be considered to produce better (and not just quicker) matches than other recruitment channels this decision is especially noteworthy.

Basic economic theory states that the CF will only continuously lease the worker if the expected benefit from this arrangement is deemed at least as profitable as employing the worker directly. This implies that the CF must consider not only the cost and the probability of being able to make match, but also the associated liabilities of employing the worker directly and then risk being stuck with unproductive labour or having to pay severance payments (corresponding to the dynamics in Neugart & Storrie, 2002 & 2006; Baumann et al., 2011). The demand for the services of a TWA (especially to continuously lease the worker) must therefore be seen in relation to the other possibilities of achieving flexibility that are available for the CF.

Based on the concepts of functional and numerical flexibility in Atkinson (1984), the final part of this introductory chapter contains a non-exhaustive review of the main provisions in the Swedish EPA (SFS 1982:80) concerning the employer’s ability to meet changes in the demand for its produced goods or services18 and the associated liability structure.

This provides a hint of the comparative advantages that a TWA could have relative to CFs by emphasising instances when the EPA allows for negotiated deviations and adaptations through a collective agreement19. I also discuss the economic risks carried by any firm when utilising certain types of employment contracts which serves as segue into paper [IV] and the rationales of pursuing settlements rather than seeking a court verdict when disputes arise.

4 Flexibility and Liabilities

4.1 Functional Flexibility

The delimitation of a worker’s obligation towards the employer is regulated by what has come to be known as the 29/29 principle (referencing to verdict no 29 in the Swedish Labour Court, Arbetsdomstolen; cit AD, in the year 1929; i.e. AD 1929 no 29). Since then the principle has been upheld in a number of subsequent verdicts through which its scope and restrictions has been defined (see e.g. AD 1978 no 89, AD 1980 no 51, AD 1993 no 160, AD 1998 no 39, AD 2008 no 40 and AD 2010 no 51).

A worker in Sweden is in summary generally obliged, within the applicable collective agreement area and in reciprocity of the wage, to carry out any task within the employer’s natural scope of business for which the worker is qualified (Andersson et al., 2013; Glavå, 2011). A written job description thereby only weakly limits an employee’s obligations towards the employer (see AD 2002 no 134).

18It is also possible that the employer wants to either change the orientation or scope of the business – or even discontinue all production.

19See e.g. 2 § EPA which allows deviations with regard to the types of fixed-term employment and terms for the probationary employment, dismissal priority principles, re-hire agreements, when to give due-notice etc. This follows Håkansson & Isidorsson (2014) in that labour unions could allow the use of TWAs to protect their members with more standard types of direct-hire contracts with the CF (see also Nollen, 1996; Ericcek et al., 2002; Jahn, 2010; Thommes & Weiland, 2010).
The principle, originating in the employer prerogative, constitutes a hidden and implicit clause within every collective agreement (unless explicitly stated otherwise, see AD 1933 no 159, AD 1986 no 127). Although not explicitly included in any codified law, it is also regarded as a core legal principle (rättsgrundsats) in Swedish labour law (see AD 1930 no 52, and AD 1932 no 100). This allows the principle to be applicable even if the affected worker is not a member of the labour union with whom the employer has signed a collective agreement (AD 2003 no 20).

The interpretation of the principle is more restrictive for white collar workers than blue collar workers (AD 1983 no 174, 1995 no 31), and even more so for public servants (AD 1980 no 51, AD 1995 no 101). There is however a trend in that the obligation for public servants approaches that of white collar workers (AD 2002 no 134).

The scope is also limited in that it cannot be discriminatory (see the Swedish Discrimination Act, SFS 2008:567), and cannot fundamentally alter the employment agreement in such a way that it constitutes a completely new employment altogether (Källström & Malmberg, 2013; see also AD 2000 no 76). It also cannot put the worker’s life and/or health at risk, or be impossible to carry out.

This establishes a rather far-reaching obligation for the worker to perform a large range of services for the employer – even outside of the written job description. The employer thereby has a correspondingly large degree of discretion on how to utilise the employees if there would be an unexpected change in demand for the produced goods or services. Källström and Malmberg (2013) summarises the overall notion well by stating that just because a worker has committed themself to carry out some specific task does not give him/her the right to do so.

4.2 Numerical Flexibility

Other than reaching a mutual (often economic) agreement with the worker, the employer may unilaterally end an employment agreement by either dismissing the worker (uppsägning; 7 § EPA), or terminating the agreement (avsked; 18 § EPA). Swedish labour law requires just-cause (7 § EPA) for both types – except in the case of probationary employment and with some restrictions for fixed-term contracts (both reviewed below).

Termination is always based on the former cause whereas a worker may be dismissed due to either cause. Termination regularly ends the relationship directly as a consequence of the employee grossly neglecting his duties towards the employer and thereby does not require the aforementioned review of less intervening actions.

Just-cause relates to either personal reasons (personliga skäl) or the concept of lack of work (arbetsbrist) and also requires that the employer following a relocation investigation has not been able to offer another job, adapting the workplace or help to increase the worker’s knowledge, skill or expertise (where applicable and within certain limits; Andersson et al., 2013).

Personal reasons relate to the individual worker and an array of factors interplay in the court’s verdict: e.g. misconduct, criminal actions, cooperation difficulties and/or insufficient knowledge, skill or expertise. It is also important as to whether the behaviour is recurrent, and if the worker has been made aware of that the behaviour is not accepted. Other factors include the size of the firm, documentation, proportionality, and the worker’s position, seniority and prognosis. (Glavå, 2011)

Lack of work is regularly, but not limited to, cases where the employee is deemed redundant due to the employer not having any tasks to be carried out. It also includes any other reason (i.e. reasons relating to the employer prerogative to organise and manage the company: e.g. AD 1993 no 101, AD 1994 no 122) to dismiss a worker that is not attributable to personal reasons.

The preparatory documents to the 1974 EPA (Prop. 1973:129) state that it regularly does not fall on the Swedish Labour Court to challenge the financial assessment of the firm when claiming lack of work20. The employer is nevertheless required to present a basis for the underlying changes that is not too arbitrary or which mainly rely on highly uncertain appraisals (AD 2006 no 92).

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20This notion has since then been consistently reiterated and upheld by the Swedish Labour Court (e.g. AD 1984 no 26, AD 1997 no 121, AD 2009 no 6, and AD 2009 no 7. See also Andersson et al. (2013) and Glavå (2011).
A proper account of the factors that underlie the decision to reduce the number of employees may in principle not be challenged, and the employees are regarded as safeguarded primarily through the applicable statues regulating due-notice periods (11 § EPA), dismissal priority principles (cf. seniority rules; 22 § EPA), and re-hire agreements (25-27 §§ EPA). (AD 1993 no 101)

The provisions in all of these statutes could however be adapted through a collective agreement (2 § EPA). This implies a relatively large scope of discretion for the employer to (re)arrange the organisation and its staff to fit the current and future needs of the firm (see Glavå, 2011, for an elaborated discussion on the subject).

The dismissal notice period could thereby be seen as the soft liability of the firm as it defines a period during which the firm has an obligation to remunerate the worker, but cannot unconditionally expect the same productivity. The worker is nevertheless expected to remain loyal to the employer and carry out the assigned tasks as the employment agreement persists during the entire dismissal notice period. (Glavå, 2011)

The employer may however reduce these liabilities even further by choosing the appropriate employment type depending on the underlying situation.

The **probationary employment** (6 § EPA) allows the employer to test the presumptive worker at the workplace with the applicable tasks and colleagues during a pre-specified probationary period that normally cannot surpass six months. This allows the employer to assess the matched worker over several dimensions both work related and social.

A probationary employment nevertheless presupposes that such a need actually exists (cf. AD 1991 no 40 to AD 1991 no 92). This employment type is characterised by its limited liability since a dismissal does not require just-cause, and the dismissal notice period is limited to two weeks unless stated otherwise in a collective agreement. However, if the probationary period is not ended prematurely, the employment automatically transitions to an open-ended employment.

The probationary period leaves both parties in a state of relative uncertainty as to the other party’s intention of fulfilment. However, the employer is arguably the superior risk bearer (Posner & Rosenfield, 1977) through being able to reduce its risk of losing the worker by offering another employment type (e.g. a fixed-term employment) that guarantees the employer the services and productivity of the worker for the expected duration of the contract.

**Fixed-term employment** (5 § EPA) in Sweden is a collective term for: general fixed-term employment, substitute employment, seasonal employment and special rules regarding the employment of older workers (>67 years), but a collective agreement could contain provisions for other types as well. The fixed-term contract is often associated with the completion of some project, assignment or, similar to the probationary employment, with some pre-specified period of time. This employment type resembles a general contract where one party is compensated for carrying out a specific service for another party. The contract normally ends on the pre-determined date and there is usually no need for either party to give due notice.

The specific nature of the fixed-term contract generally precludes lack of work as a just cause, and either party might be entitled to economic compensation if the other party wants to end the employment relationship prematurely (Källström & Malmberg, 2013)\(^\text{21}\) This basically translates this employment type into a fixed cost for labour during a certain period.

The firm may also offer the same worker several sequential (or even non-sequential) fixed-term contracts over an extended period of time through which the associated liability is always bounded by the obligation to pay wages during the current assignment. The frequency which repeated fixed-term employment with the same worker may be used by a firm has been reviewed both by the Swedish Labour Court and the European Court of Justice (CURIA), and has seemingly been left to the discretion of the employer as long as some objective reasons have been put forth\(^\text{22}\).

\(^{21}\)It is possible to phrase the agreement so that both parties may end the employment prematurely following a notice period (see 11 § EPA, if nothing else has been negotiated) but also requires the employer to show just-cause. The notice period may however not stretch past the final date in the employment agreement which still limits the firm’s liability. (Källström & Malmberg, 2013)

\(^{22}\)See e.g. AD 1984 no 66 and AD 2002 no 3 for the national perspective, and C-53/04 (Marrosu and Sardino v. Azienda Ospedaliera Ospedale San Martino di Genova e Cliniche Universitarie Convenzionate), C-180/04 (Andrea Vassallo v. Azienda Ospedaliera Ospedale San Martino di Genova e Cliniche Universitarie Convenzionate), C-212/04 (Konstantinos Adeneler and Others v. Ellinikos Organismos Galaktos) or C-586/10 (Bianca Kücük v. Land Nordrhein-Westfalen) for the perspective of the CURIA.
A fixed-term employment automatically transitions into an open-ended employment if an employee has worked for the same employer for a total of two years during the previous five years (5.2 § EPA, unless stated otherwise in a collective agreement; 2 § EPA, or other legislation). The transition rule is however interpreted as being type dependent, i.e. implying that a mix of e.g. general fixed-term employment and substitute employment (where each type has a cumulated duration of less than two years) with the same employer does not trigger the transition rule. (Källström & Malmberg, 2013)

The open-ended employment constitutes the norm in Sweden (4 § EPA) and all employment contracts are presumed to be of this type unless explicitly stated otherwise. It is potentially also associated with the highest risk for the employer since the employment status remains intact for the duration of the conflict whenever an employee challenges a dismissal decision as being invalid and calls for an annulment (34 § EPA). The obligation for the employer to pay wages and for the employee to perform the assigned tasks thereby also remains until the conflict is resolved.

On the other hand, a termination regularly dissolves the relationship immediately, and thereby also cancels the reciprocal obligations. The termination decision can be invalidated in two ways. Either the court finds that there is not just-cause for a termination, although it’s still sufficient for a dismissal. In this case the worker is entitled to retroactively obtain economic damages corresponding to wages during the dismissal period and potentially additional economic and punitive damages. If the court would fully invalidate the decision to terminate the worker (stated reasons are not sufficient even for a dismissal), then the employment relationship is revived and the employer must pay the full retroactive wages from the time of the termination, and punitive damages as well. (Källström & Malmberg, 2013)

There are however some checks and balances to this system. During an ongoing dismissal validity dispute, the employer may request a preliminary injunction for the employment to end after the applicable dismissal notice period (34 § EPA, although not retroactively; AD 1984 no 7). The employer could similarly be found liable to pay wages during a termination validity dispute if the worker requests a preliminary injunction and the court assesses that the circumstances are such that there is not even reasonable just-cause for a dismissal (35 § EPA; see also AD 1974 no 57).

43 § EPA states that these types of disputes should be dealt with promptly, and the time from dismissal/termination until a verdict during 2005-2010 for cases where the worker has claimed invalidity has been reviewed in SOU 2012:62. The review suggested that these cases take on average just over one year (15 months) in the district courts, whereas the process in the Swedish Labour Court takes an average of almost two years (23 months). It should however be noted that the procedure in the Swedish Labour Court requires formal settlement negotiations, both prior to the actual court process and during this process, which could help explain the longer duration – at least in part.

However, the worker may never force an employer to actually reinstate him or her, which relates to the sentiment of the employer prerogative. An employer that is not willing to comply with the court’s verdict stating that the dismissal or termination is not valid may always end the employment relationship by paying the worker normative damages based on the preceding employment duration (39 § EPA). This possibility requires there to be a legally binding verdict to oppose, and the employer may therefore not pre-emptively pay the normative damages to unilaterally resolve the conflict.

Although non-exhaustive, this overview gives some indication of the monetary costs that may accumulate during a conflict – along with the cost of legal representation. This is presumably why the vast majority of disputes also become settled out of court (SOU 2012:26). Although there is a vast literature on litigation and settlement, there is very little research on the settlement process and behaviour in these types of cases in a Swedish setting (SOU 2012:62). Paper [IV] adds to this scarce literature by estimating a model on how the relative settlement probability evolves over time conditional on the type of representation based on a theoretical model initially developed by Spier (1992) and subsequently applied in different variations to settlement behaviour.

23 Invalidity cannot be claimed if the decision only violates the ordering of the affected workers (34 § EPA).

24 The employer could also be liable for not following the applicable procedural requirements: e.g. failing to negotiating/inform according to the provisions in the CWA or related paragraphs in the collective agreement, or be in violation of the provisions in the Discrimination Act, or even interfering with the workers freedom of association (7-9 §§ and 54, 55 §§ CWA).
5 Summary of Papers

**Paper [I]: The Misaligned Incentives of Temporary Work Agencies and Their Client Firms**

In this paper we analyse the search behaviour of a TWA in a principal-agent model with hidden action and asymmetric information between the TWA (agent) and the CF (principal). The productivity distribution of the applicants is known by the TWA, but not by the CF, as a consequence of the former's specialisation in creating vacancy/worker matches. Hidden action is an intuitive corollary to the CF minimising its involvement when outsourcing the recruitment process, and the CF is assumed to only be able to observe the actual output of the TWA (i.e., the supplied worker), but not the forgone alternatives.

The TWA screens the distribution of applicants in discrete time in search of a worker that fulfils some (exogenous) minimum productivity level and the remuneration to both the worker and the TWA is modelled as independent of the (marginal) productivity of the match. Instead, the wage paid to the worker is related to the vacant position whereas the fee paid to the TWA differs depending on the contract type.

The case where the TWA is tasked with identifying a candidate who then becomes employed directly at the CF is referred to as a Recruitment Contract. This contract type is modelled using three different payment types to the TWA: continuous payment throughout the search process, payment on delivery and payment at a predetermined point in time (conditional on a match being delivered). The results show that conditioning payment on delivery is a necessary condition for any search to be carried out. The TWA will also always supply the first sufficient match regardless of any remaining resources, and potentially even defer the search rather than utilising all available time.

The second contract type is a Recruit-and-Rent Contract where the fee to the TWA is determined by the time the TWA expects to be able to lease the worker to the CF. The duration of the lease is modelled to be negatively related to the productivity of the match as a more productive match is assumed to be employed by the CF, or will transition to another type of employment, quicker than a less productive worker. This gives the TWA incentives to perform additional search, but always for a less productive (but still sufficient) worker.

We thereafter show that the CF may potentially offset this search behaviour by increasing the number of TWAs competing for the contract. However, the CF might be unable to attract a sufficiently large number of competing TWAs as their expected payoff for any given match will also decrease with the degree of competition.

**Paper [II]: Young Adults in the Swedish Temporary Agency Sector: Implications of Family Experience**

Family (including friends and relatives) constitutes one of the most important channels for obtaining employment. Family is also regarded as the peer group that has the strongest influence on youth career development through an array of structural- and process variables, while also being one of the strongest identity determinants (second only to labour market affiliation). A person's first exposure to working life is furthermore not considered to be the individual's first job, but rather the experience and opinions conveyed by his or her family and other reference groups.

The reviewed literature on the working- and employment conditions for temporary agency workers suggests that this type of worker suffers lower wages and worse working conditions while carrying out primarily repetitive jobs with a low degree of autonomy and short average durations. The survey also shows that the temporary agency worker experiences notable adverse psychosocial effects such as a relatively high degree of depression syndromes and a very low degree of job satisfaction. Although some workers might actively choose agency employment, the associated precariousness could still arguably impact the information conveyed to the worker's peer groups, either directly or indirectly.

In this paper we estimate the impact of immediate family members' and the current partner's previous work experience from the TWA sector on the observed individual's relative probability of working in the sector. We focus on young individuals (age 18-34) not only because this cohort constitutes the largest subset of the Swedish agency sector, but also due to that the sector has only been deregulated for a relatively short period of time which directly affects the possibility of having (preferably older) peers with previous experience from the sector.
The focus on the younger cohorts also allows us to acknowledge the need to differentiate between those who are primarily gainfully employed and those we define as students. Not only could these two groups potentially differ greatly in their motives for accepting temporary agency work, but the student group has also been largely excluded in previous studies on the Swedish temporary agency sector.

The main results show that there is not only a highly significant impact from the work experience variables of all included peer groups, but the relative size of these effects also suggests that they are among the most influential determinants. Their importance and size is furthermore consistent for both the gainfully employed workers and the student group.

Other results show that even though the sector is primarily comprised of workers born in Sweden, an immigration background is still an influential determinant as the sector has a disproportionally large number of second-generation immigrant workers, and workers born in other countries. The transitory characteristic of the sector, either as a strive for employment outside of the sector (supply side) or that younger individuals might be favoured by the TWAs (demand side), could be discerned in the steadily declining relative number of TWA workers in the older cohorts.

The relatively high level of education in the sector, for both the gainfully employed and the student group, although individuals in the latter group most likely have not yet attained their final level of education, is also a noteworthy result. This result, along with noting that it is predominately men employed within the sector, constitute two notable differences compared with the results of a previous study of the Swedish TWA sector almost a decade earlier.

**Paper [III]: Employment Effects of the EU Temporary and Agency Workers Directive in Sweden**

Several statutes of European legislation are intended to protect the rights of certain groups on the labour market by guaranteeing them equal treatment in relation to their co-workers. The equal treatment concept is not only limited to wages, but includes all aspects such as access to training and fringe benefits.

Having only been allowed in Sweden since the early 1990’s, TWAs constitute a relatively new phenomenon on the labour market. The TWA worker carries out the assigned tasks within a characteristic tripartite relationship where the relationship between the worker and the agency is regulated by labour law, whereas the agreement between the CF and the TWA is governed by specific contracts limited by the general contract law statutes.

This has resulted in significant wage differentials and adverse working conditions as compared to workers on more standard forms of employment. It has thereby also brought a need for legislation in order to regulate some of the fundamental working conditions in the sector. The EU Temporary and Agency Worker Directive (2008/104/EC) ensures that the leased TWA worker should have the same wage and other benefits as those directly employed at the CF, while also facilitating that the worker may transition into employment directly at the CF.

The theoretical implications of the equal treatment principle is modelled using an augmented Mortensen-Pissarides search model with frictions and interacting (dual) labour markets: the regular labour market and the market for temporary agency workers. Vacancies in the agency sector may only be filled with unemployed workers, whereas vacancies in the regular sector may be matched with both unemployed workers and temporary agency workers.

Initially the model is calibrated to the situation prior to the implementation by applying insights from previous research, after which the effects on unemployment and the distribution of employment between each sector is estimated. This is done by increasing the compensation to the workers in the temporary agency sector until their valuation of working there corresponds with a job in the regular sector.

The results suggest that the overall wage rate in the labour market will increase both directly through the increased compensation paid to the TWA workers, and also indirectly due to agency employment becoming an alternative to regular employment rather than unemployment. This reduces the number of workers employed in the regular sector and the mark-up that the TWA is able to charge for their services. The reduced price of the TWAs’ services and the increased wage rate will nevertheless increase their market share through their relatively low search costs and the ability to hedge severance liabilities.

The positive impact on social welfare, modelled as the change to a utilitarian welfare function, suggests that the increased wage for temporary agency workers will nevertheless compensate for the reduced number of employed workers in the regular sector.
This paper estimates a (non-proportional) Cox model with time-varying effects to empirically test for different settlement probabilities in a sample of unjust dismissal cases from the Swedish Labour Court with either union representation or non-union (private) representation.

Underlying the hypotheses of potentially differing settlement probabilities is a sequential bargaining model where the defendant is assumed to form a Bayesian subjective prior assessment of the plaintiff’s minimum acceptable settlement amount. The structure of the model allows the time until a (potential) settlement is reached to be expressed as a discrete hazard function, which is only influenced by the size of the assessment and the costs associated with continued bargaining.

The cost structure, and its relation to the duration of the case, however is only discernible in cases that have been resolved through an enforced verdict. An initial test is therefore carried out, and there are no statistically significant differences in the cost structures between the two types of representatives. This enables the relative settlement probability (i.e. hazard) rate to be estimated, and any statistical difference attributed to a differing underlying liability assessment of that type of representation.

The relative hazard rate of the two types suggests that there are differences in the relative settlement probability where cases with private representation are significantly less probable to reach a settlement. However, these differences become non-significant when controlling for the timing of court mandated sharing of information. This suggests that privately instigated negotiations and private sharing of information is not sufficient for making the settlement hazard rate of cases with non-union representation reach that of cases with union representation.

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