



## Secondary employment at Umeå University – information in accordance with Chapter 4, Section 14 Higher Education Ordinance

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### 1. General assumptions

The regulatory framework on the secondary employment of public employees includes a tighter control system for secondary employment that undermine confidence which has also been clarified and made more transparent. As part of this control system the *employer* has been given a statutory duty to provide information on the conditions that can cause secondary employment to be confidence impairing, and *the employee* has been given a statutory duty to provide information upon request regarding his or her secondary employment. *Teachers* are obliged to regularly and voluntarily report the secondary employment they have or plan to undertake.

Umeå University regards secondary employment for teachers as an important part of the teacher's third stream activities. This secondary employment also needs to be managed properly. The general public should feel assured that teachers are not being influenced by their secondary employment in their professional role and its execution. Secondary employment should be handled transparently and kept quite separate from the employee's regular work at the university.

### 2. Execution of secondary employment

All work that a university employee performs for the University takes place in the context of his or her university position. Remuneration is paid in the form of salary or overtime

compensation. To collect payment for regular work in the form of consulting fees to a private company is not permitted. When it comes to working hours, we refer to existing local working hours agreements.

An employee who has secondary employment must keep this quite separate from his activities at the University. This means that the University's resources in terms of staff, facilities, consumables, etc. must not be used in connection with the execution of any secondary employment unless a special agreement is in place to this effect; see Umeå University agreements for the use of the University's infrastructure. Moreover, secondary employment must not be performed during working hours.

A secondary employment must normally not lead to *business transactions* between the University and an employee at the University or this person's company. If these transactions in exceptional cases take place due to extraordinary reasons, they must be approved by the University Director without exception.

Teaching at the university is conducted by staff employed for this task and only in exceptional cases by legal persons or sole proprietorships. Permits are required in each individual case in order to hire anyone other than physical persons for teaching at the university. Such authorisation is currently issued by the University Director following a special request, but only in cases where it is not possible to otherwise hire the necessary staff. See more about this in the rules for the use of legal persons in teaching.

No companies, sole proprietorships or other legal persons may conduct activities within the University or utilise the University's resources without special agreement being made to this effect. In such cases, Umeå University agreements on the use of the University's infrastructure are to be used.

### **3. The secondary employment concept**

**Secondary employment** in principle is *each* occupation or business – temporary or permanent – that an employee has in addition to his or her position that may be considered to be the employee's primary position (Bill 1970:72 p.75, see also p.58) and that is not attributable to his or her private life.

Factors other than employment rates must also be considered in determining whether the position at the University is to be considered the employee's primary position. A position at the University of less than 50 % of a full time post may, in light of the aim of holding the secondary employment, lead to the university position being considered to be the employee's primary position. A lecturer position at 40 % of full time that is supplemented with extra work as a taxi driver pending the scope of the lecturer position being expanded, is likely to lead to the conclusion that the lecturer position constitutes the employee's primary position. The need to make a judgement as to whether confidence is damaged in relation to a university position exists, regardless of the scope of the university position, may mean secondary employment reporting still needs to be submitted.

An example of a secondary employment that may be considered attributable to ones private life is a board member of a housing association where the employee lives and is a member of. A board position as external member of a housing association where the employee is neither a member or lives in does not count as a secondary employment attributable to ones private life.

According to the Labour Court (AD) *no requirements of any particular scale* and there is no need for it to relate to *business operations* for it to be considered a secondary employment. Additional work performed for the principal employer (i.e. work alongside what the main position covers, see above) or on behalf of another authority can be considered to be a secondary employment, as well as temporary or short-term activities performed in leisure time. (AD 1985:69) The fact that leave for other employment has been obtained to a lesser or greater degree does not detract from the character of the secondary employment when performing the secondary employment, although the leave affects the question of whether the activity can be considered as work hindering or not.

A secondary employment could be that the employee holds another position, work task, or performs other activities. The secondary employment can be paid or unpaid. When assessing a secondary employment, it is irrelevant whether the employee carries out his secondary employment in the form of employment, work task or in his own or an associate's business.

For *teachers at higher education institutites*, various honorary academic activities and assignments as an faculty examiner along with external expert assignments, membership of an examining committee and less extensive assignments, for example, research and scientific journals do not count as secondary employment as these are considered as work in the context of the position. For those who are employed as a teacher combined with employment at a healthcare unit, known as joint employment or combination employment, the position at the nursing unit does not represent a secondary employment. This follows from the fact that the University is the principal for the employment in all respects and the healthcare unit engages the employee after agreement with the University.

### **3.1 Reporting of secondary employment**

Umeå University's Rules for reporting secondary employment for teachers and employees covered by the Managerial Agreement, reg no. 319-3114-12, specify who is to report a secondary employment and how reporting is to be done.

## **4. Prohibited secondary employment**

A secondary employment for an employee can be **authorised** or **unauthorised**.

**Prohibited secondary employment** can be divided into

- secondary employment that undermine confidence,
- secondary employment that hinders work and
- competing secondary employment.

Examples of secondary employment which are normally permitted include:

- political commissions in trust and other state and municipal assignments
- assignments in scientific associations
- assignments for trade unions
- commissions in trust in other non-profit organisations and associations unrelated to the position

- occasional involvement in the press, radio and television

#### ***4.1 Secondary employment that damages confidence***

Section 7 of the Public Employment Act (1994:260) (LOA) states that an employee, i.e. public employee, must not have a job or hold any office or engage in any activity that may undermine confidence in his or any other employee's impartiality in their work or which may damage the reputation of the Authority.

*This ban applies to all employees regardless of the nature or extent of the position.*

The purpose of the ban for the public employees to hold secondary employment that damages confidence and the systems that are available to check the secondary employment of public employees is to maintain full public confidence in the civil service, a cornerstone of the Swedish democratic society. Requirements are set to observe the equality of everyone before the law and to maintain objectivity and impartiality. If there is any factor that might undermine confidence in the impartiality of an official in a case, he will be disqualified and must not handle the case.

The provision in Section 7 of LOA on the ban on employees holding secondary employment that might *undermine confidence* to the impartiality of his or her or another employee's work or *damage the Authority*, i.e. Umeå University's *reputation*, it follows that a university employee may not undertake secondary employment if there is already a risk of disqualification arising. A disqualification does not need to be stated as *it is sufficient that a risk exists* in each individual case. It follows that a teacher must not undertake any teaching assignments for another education provider, or in his or her own business, if there is a risk that the teacher may examine the students of the university with respect to the same education.

It is not permitted for an employee to conduct an activity as a secondary employment in such a way that it gives the impression that the university is participating or is authorising the activity or otherwise guaranteeing the contents of the same. The university's logo or other distinguishing feature of the University may not be used in connection with any activity performed as a secondary employment by a university employee. An employee may not participate in the promotion and marketing of specific teaching materials in such a way that it could be understood that the university stands behind the teaching material or recommends this. Marketing of secondary employment via websites on the University's data networks is not permitted.

Among the factors influencing the assessment of whether a secondary employment might damage confidence or not include

- the extent of the secondary employment
- the remuneration paid
- the degree to which the secondary employment has contact with the department's scope of activity

- level of work duties in the secondary employment (simple or more qualified kind) and what influence the employee has on the activities within the secondary employment company
- the employee's position within the university (e.g, vice chancellor, dean, department head)
- number of workers in total that are engaged in the secondary employment (that a significant number of teachers at a Department through secondary employment have a common economic involvement that could possibly give rise to suspicions that this involvement is affecting the direction of the activities of the Department)

The risk of damaging confidence increases in situations where the employee concerned has typical authority functions, manages public property, has a post concerning matters of procurement or performs inspections of public activities.

The UHÄ of that time pronounced in a supervisory matter regarding secondary employment for a professor the following

“This assessment can not be made solely from the employer's point of view, but must be seen in a broader perspective that includes an assessment of the anticipated effects on public confidence for free research in general. Very high demands can be placed on research objectivity and the ordinary professors' role in this regard. A not only temporary representation of a party or interest group, the wider public will see this as undermining confidence in the person in his capacity as a researcher or expert so that they perceive the person as biased. UHÄ is therefore dubious about the suitability of this kind of secondary employment.”

#### ***4. 2 Secondary employment that hinders work***

The Terms of Agreement and Terms of Agreement-T specified in Chapter 13, Section 10 Paragraph 2 state that the employer may require the employee to fully or partly terminate the secondary employment if the employer believes that it has an impeding impact on the work (*secondary employment that hinders work*).

The assessment here is based largely on the extent of the secondary employment. It is not permitted that an employee in addition to his post conducts employment or holds private commissions to the extent that it adversely affects his ability to perform his duties. Even if the secondary employment is not conducted during working hours, it may still mean that an employee is not doing his job satisfactorily. A secondary employment of a larger scale and a more specialised nature may also pose a risk that it is considered to represent a secondary employment that damages confidence. Likewise is the case when the secondary employment generates good returns. It is the employer who decides where this boundary lies.

At Umeå University it is assumed a full-time employee performs work at 100 per cent for the main employment. *Each secondary employment must be performed entirely outside of the university position.* No secondary employment may therefore mean a reduction of the employee's total hours worked per year. Even a secondary employment covering a few hours per year may, depending on the circumstances, be considered as work hindering which is why it is not possible - nor appropriate - to indicate a general time limit for working hindering secondary employment.

Circumstances that may indicate that the secondary employment is work hindering are extensive absenteeism, poor work performance and long delays in completing a binding work task.

#### **4. 3 Competing secondary employment**

The Terms of Agreement and Terms of Agreement-T Chap. 13 Section 11 state that employees at authorities engaged in a business or other commission may not have employment or commissions with a company in the area for this activity. The employee must not have an interest in, by his own or through someone else run such a company, nor otherwise for the purpose of making money perform activities that relate to this area (*competing secondary employment*). Possession of a competing secondary employment also involves a high risk that damage to confidence is presumed to exist.

The foregoing does not apply if the employer agrees otherwise. The general rule is thereby that *competing secondary employment is prohibited*. If the employer has consented to such secondary employment, the employee is obliged, upon request, to inform the employer of the nature and extent of the competing secondary employment.

Umeå University conducts other commissions in the form of contract research and contract education. An employee at the University must not pursue an activity as a secondary employment that competes with the activities the university itself conducts at any of its departments or other work units or in any other form. An employee who is considering pursuing *an activity that normally can and should be conducted by Umeå University*, must seek written approval to do so before the secondary employment commences if complete clarity cannot be reached following an oral consultation with the Head of Department or equivalent as to whether the secondary employment does not compete with any of Umeå University's activities.

Requests for written permission are submitted to the University Director.

The significance is essentially that anyone who is employed by Umeå University may not have commissions or run a business in the same area as the university's operations. At an undergraduate level, the ban means, for example, an employee may only conduct educational activities if the university actively on request has declined to provide the requested education.

### **5. Special rules for teachers**

#### **5.1 Research and development work**

Chapter 3, Section 7 Higher Education Act (1992:1434) states that a **teacher** at a higher education institution in addition to his or her position as a teacher may hold positions or assignments or activities relating to research or development within the subject area of the position, if a teacher does not thereby undermine public confidence in the higher education institution. A secondary employment of this kind – often referred to as subject bound or R&D secondary employment – should be clearly separate from the teacher's work in the context of his position.

The rule should be viewed positively in that it gives teachers the right to hold secondary employment within the subject area of the position in a manner not permitted to other public service employees. The aim is to utilise the available social resources in the best way in the highly qualified and specialised skill areas of university teachers. Teachers are encouraged in this way to be involved in the transfer of knowledge to society's benefit. In addition, the

activities of the university are strengthened by the experiences gained from external operations.

Examples of *subject-bound R&D secondary employment* include:

- Advice on scientific matters or other comparable consulting assignments in the teacher's subject area
- In-house production based on the teacher's own inventions or production methods developed by the teacher
- Member of the board of directors for a company whose business is linked to the teacher's subject area

Secondary employment that can *not* be considered as subject-bound R&D secondary employment, and therefore must be assessed under the general rules above, are for example the following:

- Assignments that the teacher obtains on account of his general skills, and less because of his subject – specific skills
- Purely teaching assignments, whether they relate to the teacher's subject area or not

In order to be accepted, the R&D secondary employment must not undermine confidence, inhibit work or be in competition.

Note the teacher's responsibility to notify the University of his secondary employment, see below.

### **6. The employer's obligation to inform**

According to Section 7a of LOA, the employer shall notify employees in an appropriate way about the types of relationships that can cause a secondary employment to damage confidence and thereby impermissible according to Section 7a of LOA.

Chapter 4, Section 14 of the Higher Education Ordinance states that higher education institution, in addition to this duty to notify, must inform teachers in an appropriate way as to which secondary employment or types of secondary employment that do not comply with Chapter 3, Section 7 of the Higher Education Act. The higher education institution should also give its teachers advice when assessing whether a particular secondary employment is consistent with this provision and, if a teacher requests it, give written notice in such a matter.

This memorandum is part of the employer's imposed obligation to inform.

The fact that the employer has or has not supplied information does not affect the assessment of whether a secondary employment of a specific employee is consistent with the provision on secondary employment that damages confidence in Section 7 of LOA or not.

## 7. Employee's obligation to disclose information

According to Section 7 b of LOA , *following a request from the employer*, an employee must provide the information necessary for the employer to assess the employee's secondary employment. This applies to all employees regardless of the nature or extent of the position.

For employees covered by the Managerial Agreement 2010, Section 9 Paragraph 2 of the agreement states that they are required to *voluntarily* submit information to the employer about and to what extent he or she holds or intends to undertake the secondary employment. Which employees that is covered by the Managerial Agreement are stated in the Vice Chancellor's decision dated 25/03/2011, reg no. 301-845-11 on Posts covered by the Managerial Agreement and rules for reporting of secondary employment for teachers and employees covered by the Managerial Agreement dated 17/12/2013, Reg no. 390-3114-12.

An obligation to disclose information about their secondary employment must, for obvious reasons, include all kinds of secondary employment, but the employer may, of course when there is due cause, limit his requests for information to relate to only certain types of secondary employment. The authorities should, when exercising their right to request information, consider the integrity aspects. The control purpose can often be achieved by information in the first place only being requested about the nature of the secondary employment that the employees have. First, if there is any particular reason, detailed information on secondary employment should be requested from an employee. The authorities are authorised to request information, consider the general requirement for objectivity and impartiality in Chapter 1, Section 9§ the Instrument of Government and, of course, must not apply its authorisation in a manner contrary to the provisions of fundamental law.

In addition to Chapter 4, Section 32 of the Higher Education Ordinance, **teachers** are required to keep the college informed of the secondary employment that he or she has, and that is *related to the subject area of the position* – whether the secondary employment applies to research, development work or other activities such as teaching, and regardless of the scope and duration of the secondary employment.

The college must document notifications and any documentation must be kept so organised that it is possible to continuously monitor the secondary employment each teacher has. The forms and scope of this report and which are covered by the teacher concept are made more apparent from the Vice Chancellor's decision on Rules for reporting secondary employment for teachers and employees covered by the Managerial Agreement dated 17/12/2013, Reg no. 390-3114-12.

The obligation of, without special notice being served, reporting secondary employment within the position's subject area only applies to university teachers. Sometimes, there may nevertheless be situations where the employer suspects that an employee other than a teacher holds secondary employment that negatively affects the way of performing his job.

The Terms of Agreement and Terms of Agreement-T governs this relationship through the provision in Chapter 13, Section 10 that an employee is *required, on request*, to notify the employer if and to what extent he has a secondary employment. The employer may only request information of this type if he believes that there are reasons for this with regard to the employee's way of performing his work tasks. If the employer has permitted the employee to have a competing secondary employment, the employee in accordance with Chapter 13, Section 11, Paragraph 2 is required, on request, to notify the employer as to the nature and extent of the secondary employment.



### **8. Decision to terminate secondary employment that damages confidence**

According to Section 7 of LOA, an employer may decide that an employee who has or intends to undertake a secondary employment that is inconsistent with Section 7 of LOA, must terminate or not undertake the secondary employment. The decision must be in writing and contain the reasons that settled the outcome of the decision. Decisions of this type are taken according to the University delegation order by the Vice Chancellor.

A dispute relating to such a decision must be dealt with according to the law on trial of labour disputes and therefore cannot be appealed administratively.

When it concerns a secondary employment that damages confidence being actualised, the University must in each case make an overall assessment of the circumstances which may have a role in maintaining public confidence in impartiality, i.e. assess the degree of risk in this case and what risk level can be justified. Both the university and the individual employee's duties must be considered.

Here are a few **examples** of some official positions in terms of damage to confidence that can serve as a guide.

#### ***1. A research officer at a university has commissions at a private company***

Research concerning ventilation is being undertaken at a university department. Research officer X was one of the project managers for this research. X also owned half of the shares in a company that manufactured and sold the ventilation parts. Other companies in the ventilation industry had challenged the department's objectivity and integrity. Both the University Board and the government considered that X's operations at the company were detrimental to public confidence and therefore impermissible. (Government Decision May 29, 1980)

#### ***2. A professor and a principal research engineer at a college own shares in a private company***

Professor X was the Head of Department within which even the principal research engineer Y worked. X and Y each owned one-third of the shares in Company A and were additionally both members of the same company's board. Company A owned half the shares of another company B, on whose board Professor X was a member. The A and B companies both engaged in economic activities within the Department's field of activity. The Department had conducted contract research on behalf of the A and B companies to a significant extent. According to the government's judgement, the involvement of X and Y in the companies was damaging to confidence and is therefore considered to be an impermissible secondary employment. (Government Decision September 16, 1982)

#### ***3. A research engineer at the Institute of Space Physics (IRF) had his own company for the manufacture and sale of electronic equipment, etc.***

IRF was tasked to conduct and promote research and development, and carry out measuring and recording activities. Research engineer Q at the Department worked as technical project manager. Q also had a private firm that worked on both the manufacture and sale of computers and related equipment, as well as consulting in the field of electronics and computer technology. Q also constituted the single board member of a limited company with his wife as deputy. Q also owned shares in another company which was subsequently declared bankrupt. The government assessed with respect to the link that existed between Q's work tasks and the business he had in addition to his position, that Q's secondary employment was incompatible with LOA (and thereby impermissible) and stated that, for

this statement, it was not necessarily the case that confidence had actually been impaired or that something special had occurred that was likely to endanger public confidence.

***4. The head of a state school runs a business in the same field as the school***

The Chancellor of Justice (JK) has criticised that the head of the armed forces letters school (whose duties include communicating correspondence teaching and developing and producing educational aids) was permitted to run his own business in the same field as the school because he had thereby infringed LOA , i.e. as the secondary employment was detrimental to public confidence and thereby impermissible. (Chancellor of Justice decision December 20, 1974)

**9. Liability and sanctions**

If the employee refuses to provide information when it is requested or provides false or incomplete information, he or she - just as for other violations of obligations in employment - can be subject to the standard rules of legal sanctions such as disciplinary action and termination.

The University has, as mentioned above, the obligation to prohibit secondary employment that damages confidence and may also require an employee to cease working with any secondary employment that hinders work. Redress following violations of the regulations should primarily be achieved through talks and consultation with the employee. If an employee does not comply with the University's decision regarding impermissible secondary employment or otherwise does not comply with university rules regarding secondary employment, it may be appropriate to invoke disciplinary sanctions (warning or payroll deductions) and, ultimately, dismissal for serious offences.

**10. Information and advice**

The University will appropriately notify its employees about secondary employment which, in its opinion, is damaging to confidence. It is not always easy to provide generally tenable advice, as each situation must be evaluated individually. This memorandum is, as mentioned earlier, a part of this information. Questions about secondary employment are also developed in conjunction with local staff training of various kinds.

Individual advice and information on issues concerning secondary employment to heads of department and employees is primarily submitted at the university by university senior legal advisors and the Personnel Director.

The University, following a request by an employee, is also subject to give written notice if a secondary employment according to the university's assessment is consistent with Section 7 of LOA and Chapter 3, Section 7 of the Higher Education Act. Such matters are decided according to the delegation rules of the University Director following preparation by the University Counsel.

**11. Summary**

The assumption is that all the work that an employee performs for the University takes place in the position, if the work tasks are covered by the same. Employees can sometimes have employment or engage in activities outside of their employment, known as secondary employment. Secondary employment may be permissible or impermissible. Confidence damaging, work hindering or competing secondary employment is impermissible. For teachers, somewhat more freedom applies in this respect compared to other employees for having a secondary employment within the subject area of the position. In each case, it is a question of an individual assessment of whether the secondary employment is impermissible

or not. Teachers are required to voluntarily report any secondary employment related to the subject area of the position and, according to local regulations, any secondary employment that involves corporate commitments. The employees covered by the managerial agreement are obliged to report any secondary employment. Other employees have an obligation to, upon request, state which secondary employment they have.