

Open Access and the Labour Law Perspective

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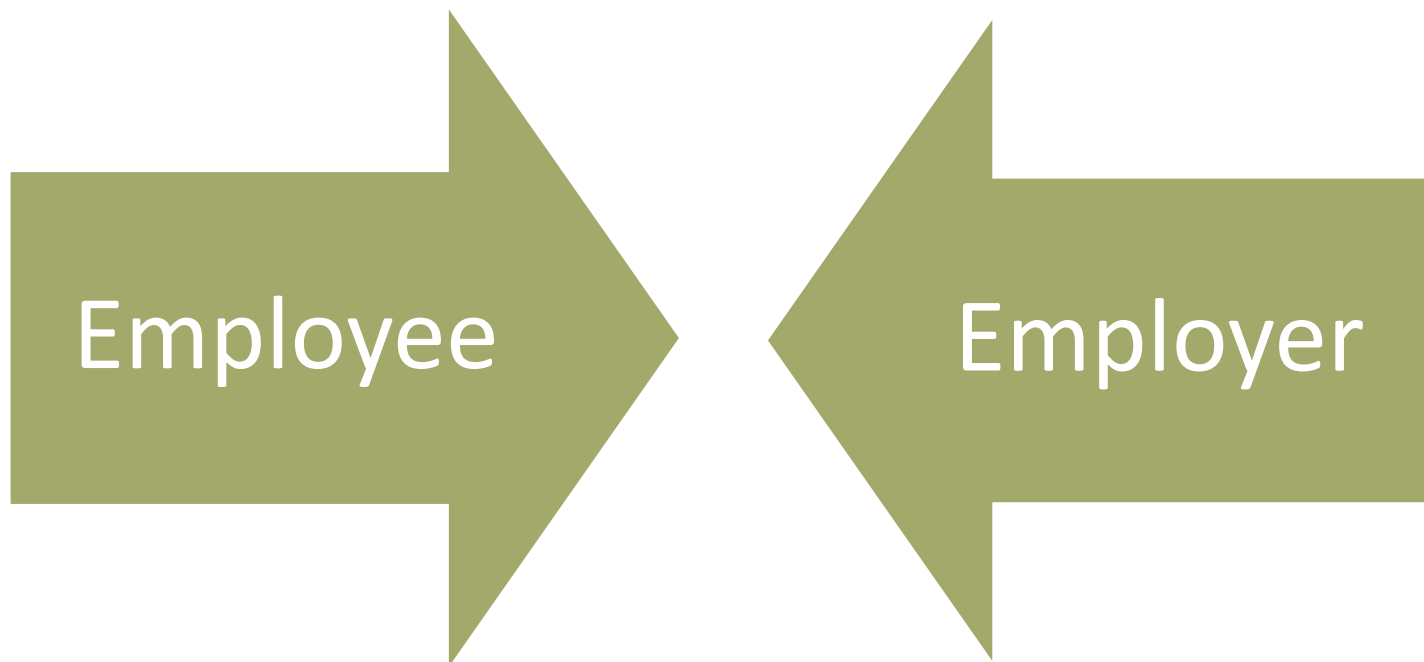
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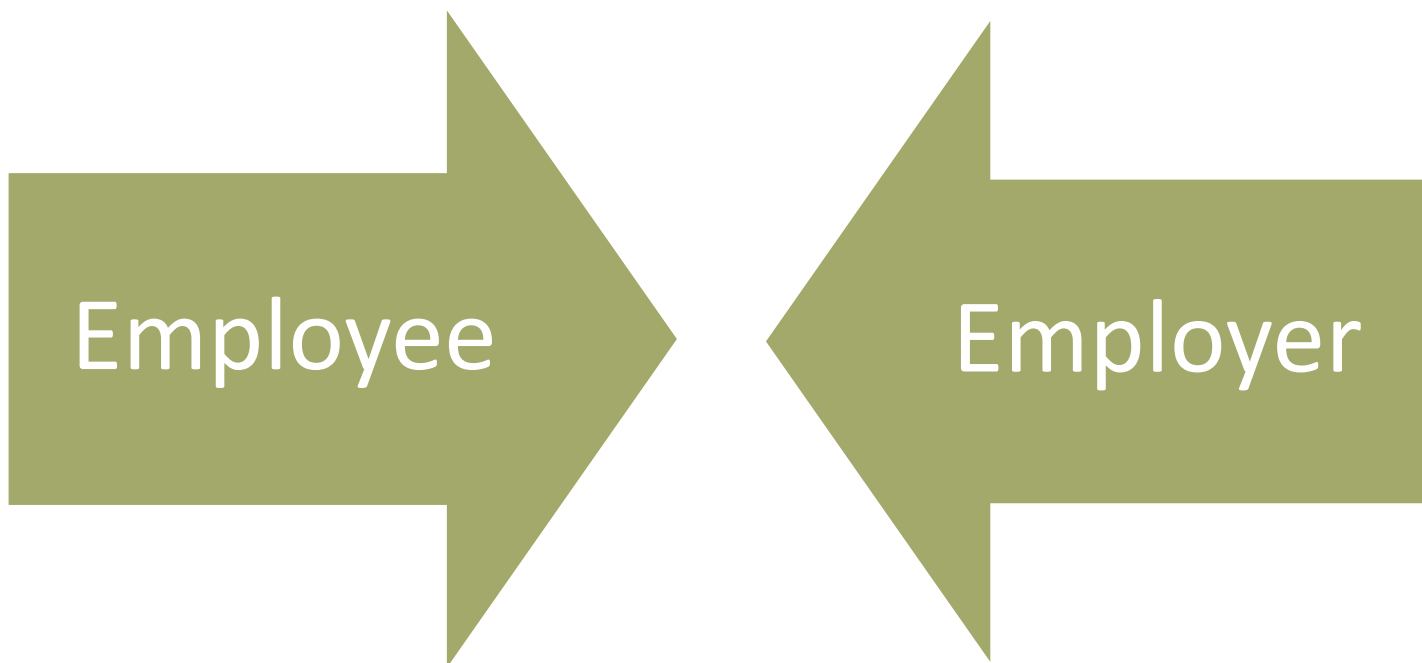
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What does subordination mean in labour law?



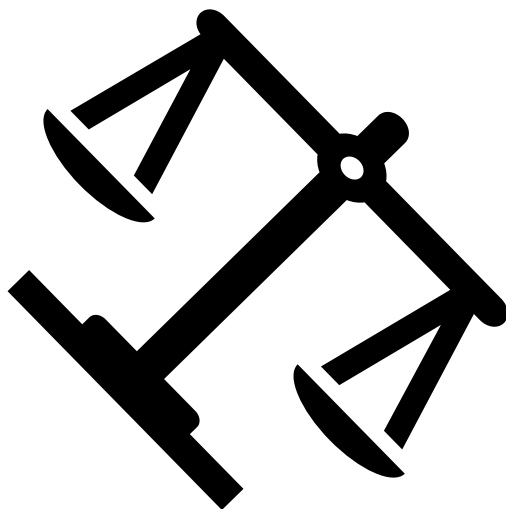
The employment contract – freedom of contract



The employment contract – freedom of contract



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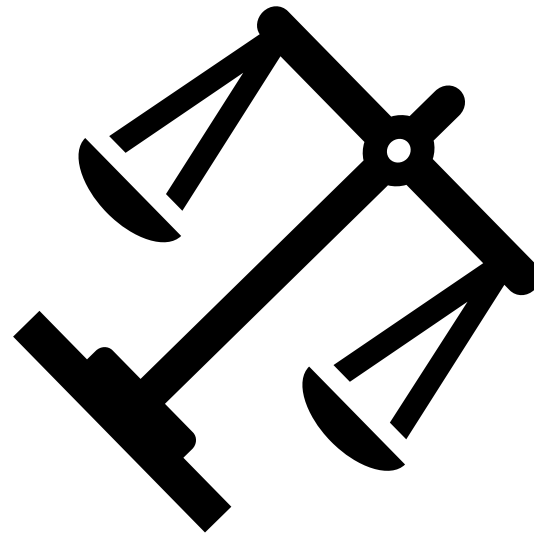


The Declaration of Philadelphia

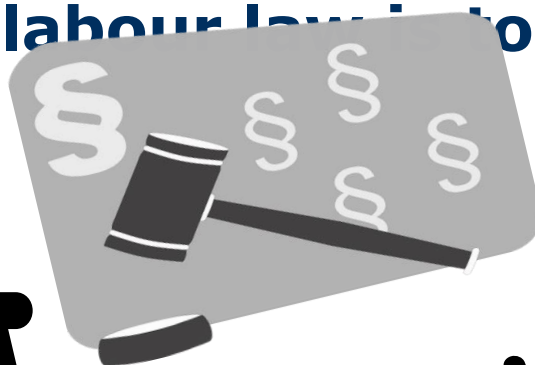
In 1944 the ILO adopted the Declaration of Philadelphia which included the following principles:

- Labour is not a commodity
- Freedom of expression and association are essential for sustained progress
- Poverty threatens prosperity everywhere and ...

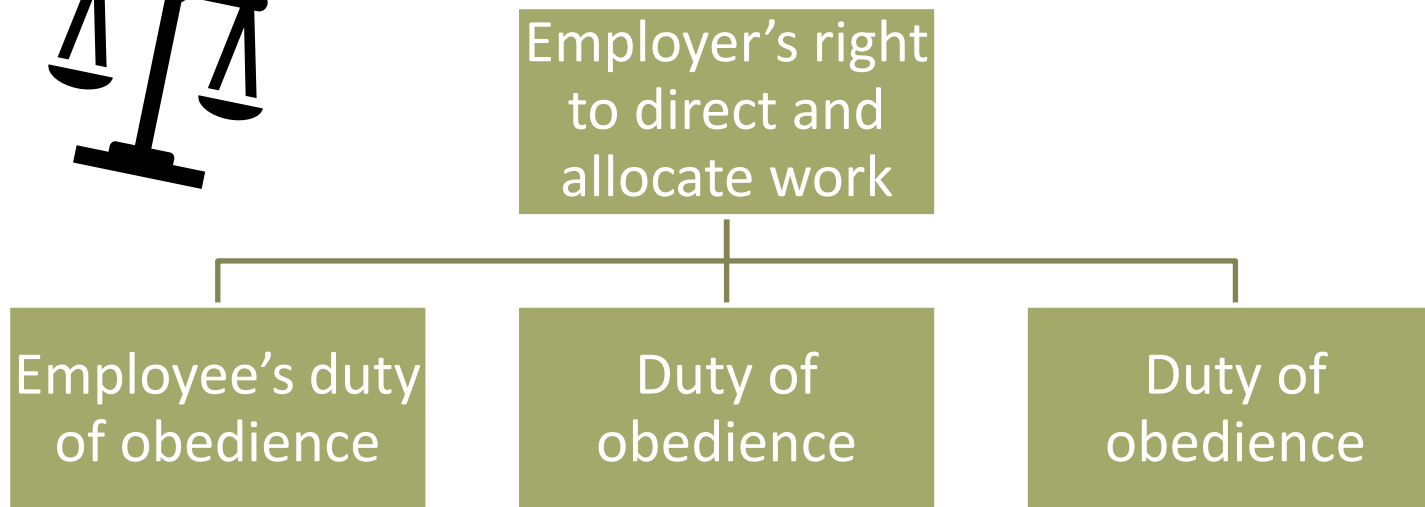
The aim of labour law is to even out the imbalance



The aim of labour law is to even out the imbalance



An element of imbalance will always last



Two important aspects of flexibility

- Functional flexibility
 - Vary the content of work in relation to changing demand of production
- Financial flexibility
 - Making wages more adaptable to circumstances, such as the profits of the business or the employee's knowledge and efficiency
- (Atkinson, 1986, Rönmar 2004)

What does this mean in a university context?

- Our tasks are spelled out in law – The Swedish Higher Education Act (1992:1434)
- Content of work for a senior lecturer or professor
 - Teaching and research
- In the local collective agreement that governs our work it says how much of our work that shall consist of research and how much that shall consist of teaching (4 §)
- But n.....

The Swedish Higher Education Act (1992:1434)

Chapter 1, Section 4

The operations of higher education institutions shall be arranged to ensure that **high standards are attained inin research.**

The resources available shall be used effectively to sustain a **high standard** of operation.

Quality assurance procedures are the shared concern of staff and students at higher education institutions. Ordinance (2013:119).

The Swedish higher education act (1992:1434)

- **Ch 1, Sec. 6**
 - Higher education institutions must operate under **the general principle that academic freedom must be promoted and protected:**

The instrument of government,

Ch. 2, Art. 18. Education and research

.....**The freedom of research is protected according to rules laid down in law.**

The Swedish higher education act (1992:1434)

Ch. 1, Sec. 6

Higher education institutions must operate under the general principle that academic freedom must be promoted and protected:

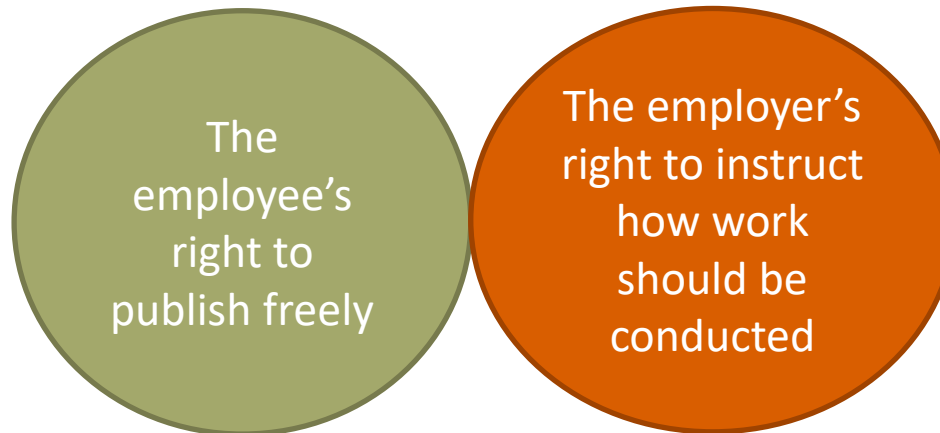
- research issues may be freely selected,
- research methodologies may be freely developed, and
- **research results may be freely published.**

The tension.....

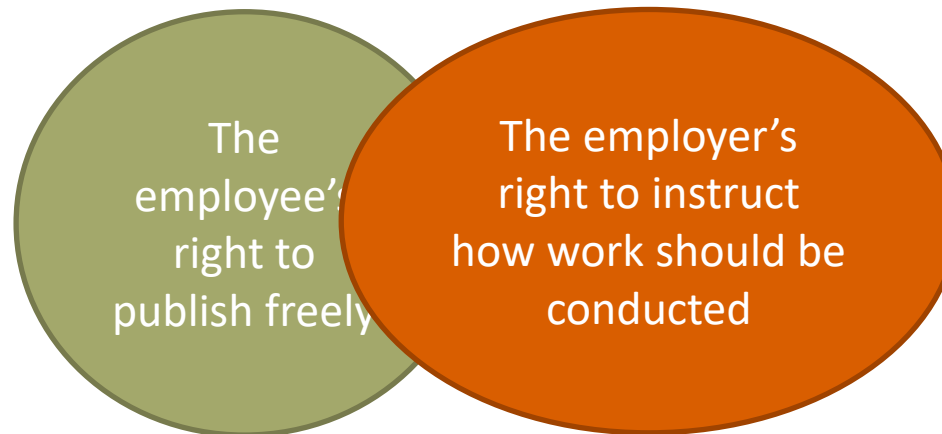
The
employee's
right to
publish freely

The employer's
right to instruct
how work
should be
conducted

The tension.....



The tension.....



The higher education ordinance (1993:100)

- Qualification criteria for position as professor
- Ch. 4, sec. 3 research expertise
 - The assessment criteria for appointment as a professor shall be the **degree of the expertise** required as a qualification for employment. As much attention shall be given to the assessment of teaching expertise as to the assessment of research or artistic expertise. **Each higher education institution determines itself what assessment criteria are otherwise to apply to the appointment of a professor.** Ordinance (2010:1064).

The employment contract

- Nothing about how research should be published
- BUT: Strategies from the
 - Government: Legislative bill 2020/21:60
 - Stockholm university: 'The main rule at Stockholm university is that research that is in total or in part public financed should as far as possible be openly accessible'.
 - Law Faculty: 'Promote that the faculty's research is made available through open access'

But, it may influence or have a direct effect of our terms of employment

- Financial flexibility
 - Making wages more adaptable to circumstances, such as the profits of the business or the employee's knowledge and efficiency

Salary Criteria - research

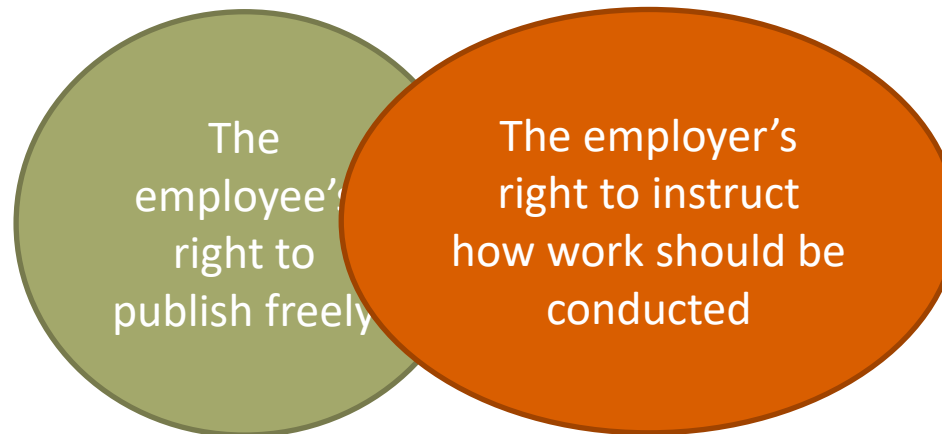
- The annual pay raise at Stockholm is governed by a collective agreement
- No individual pay raise is guaranteed
- The salary criteria in the local collective agreement regarding research are:
 - A demonstrated ability to conduct research of high quality
 - A demonstrated ability to convey information about research and to collaborate with the community
- Etc.....Nothing directly on open access

But of course.....

- Publication is part of the salary criteria as
 - National and international publication is a factor
- The question is if other requirements than those mentioned in the document can be taken into account when deciding upon what 'high quality' is.

Summary

The tension.....



The possible labour law impact in two situations

- Functional flexibility
 - Vary the content of work in relation to changing demand of production – publish open access
- Financial flexibility
 - Making wages more adaptable to circumstances, such as the profits of the business or the employee's knowledge and efficiency –publish open access
- (Atkinson, 1986, Rönnmär 2004)

- Thank you for your attention!