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Guidelines on secondary employment

This governance document has been adopted through a decision by the President (registration number V-2022-0669) and is valid from 1 December 2022. This governance document regulates and provides information on the handling of situations involving secondary employment. The Human Resources Department within the University Administration is responsible for review and questions relating to this governance document.

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1 Introduction

1.1 Regulatory framework

A person employed by KTH Royal Institute of Technology is a government employee, and the employment is subject to rights and obligations prescribed by law and in other regulations, which each such employee needs to be aware of and must comply with in the course of their work, including provisions regarding secondary employment. Applicable ordinances and collective agreements address the existence of different types of secondary employment.

Provisions regarding “secondary employment that undermines trust” are set out in sections 7 – 7 d of the Swedish Public Employment Act (1994:260). Rules on “secondary employment that interferes with the performance of work duties” and “secondary employment that represents competition” are set out in the “Villkorsavtal-T” agreement between the Swedish Agency for Government Employers and Saco-S (01/06/2013), the “Villkorsavtal” agreement between the Swedish Agency for Government Employers and OFR/S,P,O (01/10/2017), and the “Villkorsavtal” agreement between the Swedish Agency for Government Employers and Seko (01/10/2017), hereinafter collectively referred to as the “Villkorsavtal” agreements.

Teachers are also subject to the provisions regarding subject-related research and development secondary employment (“R&D secondary employment”) as set out in chapter 3, section 7 of the Swedish Higher Education Act (1992:1434) and chapter 4, sections 14–15 of the Swedish Higher Education Ordinance (1993:100).

Certain employees in executive positions are also subject to the regulations in the “Chefsavtal” agreement between the Swedish Agency for Government Employers and OFR’s affiliated unions in the area of public sector negotiation, Saco-S and Seko (01/10/2010). In the agreement on local employees in executive positions (V-2021-0172), it is stated that employees holding the position of Deputy President, Head of School, University Director and Director of Personnel are subject to the “Chefsavtal” agreement.

1.2 Points of departure when assessing secondary employment

Pursuant to the Swedish Instrument of Government, KTH and its employees must take into account the equality of all people before the law and must observe objectivity and impartiality in the course of their assignment (the principle of objectivity). Furthermore, pursuant to the Swedish Administrative Procedure Act (2017:900), KTH must be objective and impartial in the course of its assignment. The same act contains provisions regarding conflicts of interest, the aim of which is to guarantee impartiality in the processing of matters.

The various provisions regarding secondary employment mean that the employer and the employee must act in different ways depending on the type of secondary employment involved. An overall assessment of the secondary employment must be performed in each individual case based on all relevant circumstances and the scope of the employee’s employment. The division of responsibilities between the employee and the employer is described in more detail in each section below.

1.3 Points of departure for employees of KTH who have undertaken or intend to undertake secondary employment

The secondary employment must be kept clearly separate from the employee’s work on behalf of KTH and may not be performed during working hours.

The secondary employment may not be performed in a manner that involves marketing of the secondary employment within KTH's activities or with the help of KTH's resources. This also includes the use of KTH's logo, postal address, email address, phone numbers, websites and data networks.

It is not permitted to perform, as secondary employment, work involving teaching on behalf of KTH in a manner that entails invoicing KTH via a sole proprietorship or company in which the employee or a person closely related to the employee has an ownership interest or board assignment.

KTH's premises or equipment may not normally be used during the performance of secondary employment. The use of certain resources may be permitted, but only if such use is compatible with the law, other applicable ordinances/regulations and KTH's internal governance documents. In such cases, a decision shall be made in accordance with the applicable delegation system at any given time.

1.3.1 Research companies

A common form of secondary employment for researchers at the university is involvement in research companies. In this context, the term "research company" usually refers to a company that is wholly or partially owned by the researcher, or a company over which the researcher exercises significant influence. Such secondary employment is assessed in accordance with the criteria set out in section 2 (secondary employment that undermines trust), section 4 (secondary employment that interferes with the performance of work duties) or section 5 (secondary employment that represents competition).

In certain cases, if the research company is to collaborate with the university, the researcher or the employer may need to undertake measures to prevent undue competitive advantages or a conflict of interest from arising.

1.4 Definitions

The following definitions apply to terms used in this governance document:

Teacher: refers to a person employed as a professor, associate professor, assistant professor or lecturer.

Employer: refers to the President, Head of School, University Director or other employer representative, such as Director of Personnel, HR Manager or the employee's immediate manager.

Secondary employment: refers to, in principle, any activity carried out alongside the employee's regular employment (primary employment) where such activity does not relate to the employee's private life. Extra work duties on behalf of KTH or another competent authority may also be deemed to constitute secondary employment. Secondary employment may also consist of an individual's own business activities (e.g. in the form of a research company) or leisure activities. This definition of secondary employment applies irrespective of the scope or duration of the secondary employment, or whether or not any financial compensation is received.

Examples of private activities which do not constitute secondary employment may include the management of property and family affairs, such as the drawing up of an estate inventory.

Academic activities which are related to an individual's employment at KTH, and which are carried out within the scope of such employment, are not deemed to constitute secondary employment, e.g. assignments as an external reviewer, specialist/expert or member of a grading committee, assignments on behalf of a research council or assignments as a speaker at higher education institutions and other competent authorities.

2 Secondary employment that undermines trust

The following provisions are set out in sections 7 – 7 c of the Swedish Public Employment Act:

Section 7. An employee may not have any employment or any assignment or perform any activity which could undermine the level of trust in his/her or another employee's impartiality at work, or which could damage the reputation of the agency/authority in question.

Section 7 a. The employer shall inform employees in an appropriate manner of the types of circumstances that could entail prohibition of a certain type of secondary employment pursuant to section 7. Act (2001:1016).

Section 7 b. At the request of the employer, an employee shall provide the information required to enable the employer to perform an assessment of the employee's secondary employment. Act (2001:1016).

Section 7 c. An employer shall have the right to decide that an employee shall cease or refrain from undertaking secondary employment in circumstances where an employee has undertaken, or intends to undertake, secondary employment that is not compatible with section 7. This decision shall be made in writing and shall include an explanation of the reasoning behind the decision. Act (2001:1016).

These provisions mean, inter alia, that an employee may not undertake secondary employment that entails a *conflict of interest* in the performance of the employee's work duties. The prohibition on secondary employment that undermines trust applies to all employees regardless of their position. The provisions on secondary employment that undermines trust also apply during periods of absence from work, e.g. during a leave of absence.

2.1 The employee's responsibility

The main rule is that the employee, based on section 7 of the Act, must assess whether a certain type of secondary employment could be deemed to constitute secondary employment that undermines trust. The information provided by the employer pursuant to section 7 a of the Act (see section 2.2 below) shall support the employee in performing this assessment. If, in the assessment of the employee, the secondary employment could be deemed to constitute secondary employment that undermines trust, this must be reported to the employer. There is a special form in the Form Archive on the intranet that is to be used for reporting of secondary employment.

The employer may request the employee to submit a report regarding potential secondary employment that undermines trust, including the information required to enable the employer to perform an assessment of the secondary employment in question (see section 7 b of the Act). The employee is obligated to reply to such a request.

2.2 The employer's responsibility and assessment

In order for secondary employment that undermines trust to be deemed to exist, an undermining of trust does not actually need to occur; it is sufficient that this *could* occur. In other words, it is the risk of trust being undermined that is of material consequence in the assessment. When examining the risk of trust being undermined, an overall assessment of all relevant circumstances must be performed.

The scope of the secondary employment is of relevance when assessing whether such secondary employment should be prohibited. For example, an extensive and time-consuming form of secondary employment could be more risky than a form of secondary employment that is of short duration and does not require any major work effort.

Secondary employment may be deemed to constitute secondary employment that undermines trust even if no financial compensation is payable in relation to the activity in question. However, the issue of whether the employee directly or indirectly benefits financially from the secondary employment may be of relevance when performing the assessment. The greater the financial benefit, the greater the risk that the secondary employment may be deemed to entail.

Secondary employment involving duties of a more qualified nature often entails a greater risk of trust being undermined. This applies even in circumstances where the secondary employment is in some way related to the university's area of activity (please note the special rules applicable to teachers with R&D secondary employment, as described in section 3 below).

The employee's work duties at KTH are also of relevance when performing the assessment. Only a low level of risk can be accepted if the employee has work duties involving the exercise of authority. Examination is one example of a work duty involving the exercise of authority.

Furthermore, the risk of trust being undermined increases if the employee holds a managerial position or a senior academic position, or if the employee otherwise has a major opportunity to impart influence on KTH's activities.

2.2.1 Examples of types of secondary employment that are not usually prohibited

The following are examples of types of secondary employment that are usually of such a nature that they are not generally prohibited:

- Political and trade union assignments of a fiduciary nature.
- Assignments on account of an appointment by a court of law.
- Government or municipal assignments in general.
- Board assignments on behalf of a non-profit association, tenant-owner association, cooperative association or other such association.

2.3 The employer's decision (in applicable cases)

The President delegates to the Head of School or University Director the responsibility, within their area of activity, to decide that an employee shall cease or refrain from undertaking secondary employment in circumstances where an employee has undertaken, or intends to undertake, secondary employment that is not compatible with section 7 of the Swedish Public Employment Act (secondary employment that undermines trust). (This responsibility may not be further delegated to another person.)

Pursuant to the second paragraph of section 42 of the Swedish Public Employment Act, the provisions set out in sections 11–14 of the Swedish Employment (Co-Determination in the Workplace) Act (1976:580) shall not apply. At KTH, this means that the decision shall not be subject to collaboration in accordance with a local collaboration agreement at KTH.

Pursuant to section 7 c of the Swedish Public Employment Act, the decision must be made in writing and must include an explanation of the reasoning behind the decision.

Decisions regarding issues of principle importance, and decisions regarding employees who are subject to the “Chefsavtal” agreement, must be referred to the President.

3 Teachers with subject-related research and development secondary employment (R&D secondary employment)

The following provision is set out in chapter 3, section 7 of the Swedish Higher Education Act:

Section 7. Alongside his or her employment as a teacher, a teacher at a higher education institution may have employment or assignments or perform activities relating to research and development work within the subject area of the teacher's regular employment, provided that the teacher does not thereby damage the general public's confidence or trust in the higher education institution. Such secondary employment must be kept clearly separate from the teacher's work within the scope of his or her regular employment as a teacher.

Provisions regarding secondary employment are otherwise set out in the Swedish Public Employment Act (1994:260). Act (1997:797).

The following provisions regarding teachers are set out in chapter 4, sections 14–15 of the Swedish Higher Education Ordinance:

Section 14. A higher education institution shall inform its teachers in an appropriate manner of the types or forms of secondary employment which are not compatible with the provision set out in chapter 3, section 7 of the Swedish Higher Education Act (1992:1434). A higher education institution shall provide its teachers with guidance in relation to the assessment of whether or not a certain type of secondary employment is compatible with the aforementioned provision. If a teacher so requests, the higher education institution shall provide a written decision in relation to such a matter.

Pursuant to section 7 a of the Swedish Public Employment Act (1994:260), a higher education institution shall inform its employees in an appropriate manner of the types of circumstances that could entail prohibition of a certain form of secondary employment pursuant to section 7 of the Swedish Public Employment Act.

Ordinance (2010:1064).

Section 15. A teacher is obligated to keep the higher education institution informed of his or her secondary employment activities in relation to the subject area of his or her regular employment as a teacher. The higher education institution shall document this information, and the documentation shall be kept in sufficiently good order to enable ongoing monitoring of the secondary employment activities undertaken by each teacher.

Ordinance (2010:1064).

3.1 The employee's responsibility

Pursuant to chapter 4, section 15 of the Swedish Higher Education Ordinance, a teacher is obligated to keep the higher education institution informed of his or her secondary employment activities in relation to the subject area of his or her regular employment as a teacher.

There is a special form in the Form Archive on the intranet that is to be used for reporting of secondary employment.

In addition to the main rule that the teacher must inform the employer of R&D secondary employment, the employer may request the employee to submit a report regarding R&D secondary employment if there are grounds for such a request.

3.2 The employer's responsibility and assessment

R&D secondary employment may not be secondary employment of a nature that undermines trust, interferes with the performance of work duties or represents competition.

The extra possibilities afforded to teachers to undertake, within the subject area of their regular employment as a teacher, certain forms of secondary employment concerning research and development, entail a higher level of tolerance in relation to the issue of secondary employment with a connection to work duties within the scope of regular employment, in comparison to that which normally applies to other government employees. As is the case for other types of secondary employment, R&D secondary employment may not be undertaken during working hours.

Given the importance of maintaining objectivity in research activities, a teacher should not, for example, have secondary employment in an organisation that has an interest in maintaining a certain understanding or interpretation of the teacher's scientific field.

A risk of trust being undermined may also exist if the teacher is in a position to impart major influence over a company that conducts activities in the subject area of the teacher's own research group, or if several teachers at an institution, through secondary employment, have a joint financial engagement outside of KTH (please also see section 1.3.1 above regarding research companies).

Such an engagement is particularly serious if it could give rise to suspicions of influencing the institution's activities or choice of collaboration partners.

The following are examples of R&D secondary employment:

- Advice on scientific issues within the subject area of the teacher's regular employment.
- Board assignments within the subject area of the teacher's regular employment.
- Consulting assignments within the subject area of the teacher's regular employment.
- Assignments based on an invention/product/method that the teacher has developed within the subject area of his/her regular employment.

Teaching is one example of an activity that does not fall within the definition of the term "R&D secondary employment".

Another example of an activity that does not constitute R&D secondary employment is research or development work performed by the teacher on the basis of general knowledge rather than subject-specific expertise.

In doubtful or ambiguous cases, it is the Head of School who decides whether the secondary employment is of such a nature that it should be deemed to constitute R&D secondary employment.

3.3 The employer's decision (in applicable cases)

At the request of a teacher, the Head of School shall provide a written decision as prescribed in chapter 4, section 14 of the Swedish Higher Education Ordinance. (This responsibility may not be further delegated to another person.)

R&D secondary employment may not be secondary employment of a nature that undermines trust, interferes with the performance of work duties or represents competition. If the employer intends to make a decision regarding R&D secondary employment, such a decision must be made in accordance with section 2.3, section 4.3 or section 5.3 of this governance document.

4 Secondary employment that interferes with the performance of work duties

The following provisions are set out in chapter 13, section 10 of the “Villkorsavtal” agreements:

Section 10. Secondary employment that interferes with the performance of work duties
Upon request, an employee is obligated to provide the employer with details of whether, and to what extent, he or she has secondary employment. However, the employer may only request such information if the employer feels that there are grounds for such a request, taking into account the manner in which the employee performs his/her work duties. The employer may order the employee to wholly or partially cease the secondary employment if the employer feels that the secondary employment is interfering with the employee’s performance at work (secondary employment that interferes with the performance of work duties).

4.1 The employee’s responsibility

Pursuant to chapter 13, section 10 of the “Villkorsavtal” agreements, an employee is obligated to provide the employer with details of whether, and to what extent, he or she has secondary employment.

There is a special form in the Form Archive on the intranet that is to be used for reporting of secondary employment.

4.2 The employer’s responsibility and assessment

Secondary employment may be deemed to interfere with the performance of work duties if, for example, it causes repeated or extensive periods of absence from work or impaired work performance, in which case the secondary employment may be prohibited by the employer.

4.3 The employer’s decision (in applicable cases)

The President delegates to the Head of School or University Director the responsibility, within their area of activity, to decide that an employee shall be ordered to wholly or partially cease secondary employment that interferes with the performance of work duties. (This responsibility may not be further delegated to another person.)

The decision shall be preceded by collaboration in accordance with applicable local collaboration agreement at KTH.

Decisions regarding issues of principle importance, and decisions regarding employees who are subject to the “Chefsavtal” agreement, must be referred to the President.

5 Secondary employment that represents competition

The following provisions are set out in chapter 13, section 11 of the “Villkorsavtal” agreements:

Section 11. Secondary employment that represents competition
An employee at a government agency or other competent authority who conducts business or contract activities may not have employment or assignments on behalf of a company operating in the area of such activities. Furthermore, the employee may not have ownership in or operate, either directly or through another person, such a company,

or otherwise conduct activities in relation to this area for the purpose of gain (secondary employment that represents competition).

That which is stipulated in the first paragraph does not apply if the employer grants consent to the contrary. If such consent has been granted, the employee is obligated, upon request, to provide the employer with details of the nature and scope of the secondary employment that represents competition.

5.1 The employee's responsibility

It is the employee's responsibility to perform an assessment of whether a certain type of secondary employment constitutes secondary employment that represents competition, in the manner described in chapter 13, section 11 of the "Villkorsavtal" agreements. If, in the assessment of the employee, the secondary employment could be incompatible with the aforementioned provision, the employee must refrain from undertaking the secondary employment or request that the employer grant consent to such secondary employment.

5.2 The employer's assessment

The regulation of secondary employment that represents competition is formulated differently than other rules regarding secondary employment, in that this regulation expresses a prohibition on undertaking secondary employment that represents competition. However, the employer can decide to grant consent to the employee to undertake secondary employment that represents competition.

The provisions on secondary employment that represents competition also apply during periods of absence from work, e.g. during a leave of absence.

An example of secondary employment that represents competition is any form of secondary employment that competes with KTH's research or KTH's courses and study programmes, e.g. contract research or contract education.

5.3 The employer's decision

The President delegates to the Head of School or University Director the responsibility, within their area of activity, to decide

1. to approve or deny the employee's request for consent to undertake secondary employment that represents competition. (This responsibility may not be further delegated to another person.)
2. that an employee must cease secondary employment that represents competition. (This responsibility may not be further delegated to another person.)

A decision made in accordance with point 1. or point 2. above shall be preceded by collaboration in accordance with applicable local collaboration agreement at KTH.

Decisions regarding issues of principle importance, and decisions regarding employees who are subject to the "Chefsavtal" agreement, must be referred to the President.

6 Judicial examination of a decision regarding secondary employment

The employer's decision regarding secondary employment may be tried in accordance with the rules prescribed in the Swedish Labour Disputes (Judicial Procedure) Act (1974:371). More

information on judicial examination of a decision regarding secondary employment is available in the Swedish Agency for Government Employers' publication (in Swedish) "*Bisyslor*" (2012), which can be downloaded from the agency's website at: <https://www.arbetsgivarverket.se/avtal-skrifter/skrifter/bisyslor/>.

7 Consequences of pursuing prohibited secondary employment

An employee who undertakes or continues to pursue secondary employment after such secondary employment has been prohibited by KTH, or who fails to fulfil the obligation to report secondary employment, may be subject to labour law consequences such as disciplinary action pursuant to the Swedish Public Employment Act or termination of employment pursuant to the Swedish Employment Protection Act (1982:80).