

# Guidelines regarding the regulations for incidental employment

## Introduction

These guidelines are a summary of the legal conditions that apply to the right to incidental employment for teachers and other employees at LiU. For teachers, it is primarily the rules stated under point 6) that apply. If nothing is stated to the contrary, the guide-lines refer to the rules that generally apply for other employees at LiU.

The guidelines have been produced in view of the decision made by the University Board on 19 October 2010, Ref no LiU-2010-00981; they are in force until further notice and replace "Memorandum regarding the right of teachers and other employees to incidental employment, duty to report etc." Ref no LiU 1505/01-30.

*In the following, italicized text appearing in a box constitutes specific local regulations at LiU*

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Linköping, 21 June 2011

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These guidelines have been updated during the autumn of 2015 by Legal Advisor Jenny Wäsström of the LiU Legal Office after consultation with Chief Legal Advisor, Christina Helmér.

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# 1 General information about incidental employment at LiU

The regulations regarding incidental employment – regulations stated in laws and ordinances as well as in collective agreements – apply to all employees of government authorities.

For LiU as an employer, the most basic condition is that, first and foremost, all employees devote their working hours to LiU activities. However, the established position of LiU with regard to the exchange of experience with trade and industry and the community at large, is that this is often beneficial to these activities. LiU has stated in its business policy from 2000 that it "has a positive attitude towards, and wishes to encourage, incidental employment that leads to the development of both employee and LiU and which does not harm the regular activities or has negative consequences for LiU's under-takings in terms of education and research." This does, of course, presuppose that all incidental employment is compatible with law and contractual agreements.

## 1.1 Background for the 2011 review

LiU has conducted three major surveys over the last ten years into the incidental employment of teachers. The latest one was carried out 2013 – 2014 and the final report was produced in September 2014. Meanwhile, the forms to account for incidental employment have changed and today constitute a specific function within the personnel management system Primula.

On 25 June 2014, 1,305 persons, most of them teachers, had registered in the university's electronic system for incidental employment. Among these, 431 persons had reported one or more incidental employments, which had been approved by the relevant head of department or manager. A total of 567 different incidental employments had been registered within the framework of commissions, comprising cooperation with more than 460 companies, authorities and organisations. At the same time, 874 employees had reported not having any incidental employment. The total number of employees with incidental employment is thus one third of the employees concerned, which agrees with the results of previous surveys (the latest of which was conducted in 2006-2007).

The changes in the forms for reporting incidental employment shall be seen in the light of the University Board's decision in 2011:

- In order to facilitate and streamline the administrative processing of notifications of incidental employment, the reporting shall be done electronically, directly in an LiU database.
- The University shall request information on teachers' incidental employment on a yearly basis.
- The different formats for reporting incidental employment for employees included in the managerial agreement shall be clarified.
- Evaluations shall be made of all notifications of incidental employment.
- It is also possible that other employees pursue prohibited incidental employment and they should therefore be included in the regular discussion that takes place in connection with employee evaluation talks.
- The results of the reporting and evaluation of incidental employment shall be compiled by department and referred back to the University Leadership.

## **1.2 LiU's experience in questions regarding incidental employment**

In addition to the requirements of transparency that primarily apply to the reporting of the incidental employment of managers and teachers, all such matters touch upon two basic questions with respect to LiU. Is the incidental employment as such compatible with the individual's employment at LiU? Does the incidental employment entail a conflict of interest, thus hindering functional decision making at LiU or rendering it more difficult? The following provides more detailed information concerning the regulations and conditions that LiU must take into consideration.

Not infrequently, actual issues of application arise as part of a larger set of problems in the working environment. In other cases, difficulties arise when teachers become involved in the commercialization of research results, and at the same time act as mentors and examiners for students or doctoral students involved in the business venture.

If a solution cannot be reached within the time frames in the so-called rule of thumb (hypothetically no more than 400 working hours/year) - incompatibilities in terms of how many working hours a teacher can spend on incidental employment without obstructing the regular work at LiU can often be solved by LiU granting a certain leave of absence.

It is always the circumstances in each individual case that finally determine whether the incidental employment can be approved or not. It must also be pointed out that there are, for teachers in particular, a number of activities that are not primarily considered as incidental employment, but are seen as the natural outflow of an academic position, such as serving as an expert in

matters of recruitment and appointment at another university or by joint employment with the Östergötland County Council. A decision regarding incidental employment cannot, however, lead to LiU permitting an employee unilaterally to opt out of the obligation to fulfil the employment agreement.

## 2 What constitutes incidental employment

The concept of incidental employment includes all employment or activity – temporary or permanent – that an employee undertakes in addition to his or her primary employment and that is not related to the private life of the employee. Private life means, for example, conducting a hobby or tending to family matters.

All other employment, commissions or commitment that employees have or fulfil either with a different employer or principal, or through self-employment, is thus to be considered as incidental employment.

It does not matter whether the incidental employment is gainful or not and there are no conditions regarding its extent. Neither does it matter if the employees perform the incidental employment as an employee, commission, for their own company or for that of someone closely related to them.

### 3 Why is incidental employment regulated and where are the regulations found?

The foremost reasons for having regulations regarding the right of government employees to have incidental employment are the following:

- The public interest in terms of objectivity and impartiality in public activities, so that confidence in the individual employee, alternatively in LiU is upheld.
- The direct interest of the employer that employees perform the work that they are paid to do and that the employer shall not have to compete with its own employees.

The regulations regarding incidental employment have a negative regulatory character, i.e., they state limits to the right to incidental employment. When it comes to teachers at universities, this characteristic has an exception which extends their right to incidental employment compared to that of other public employees, please refer to point 6 below. Regulations on incidental employment are to be found in:

- The Public Employment Act (1994:260) (LOA)
- The Higher Education Act (1992:1434) (HL)
- The Higher Education Ordinance (1993:100) (HF)
- The collective agreements Villkorsavtal/Villkorsavtal T (General Agreement on Salaries and Benefits) and Chefsavtalet (the Managerial Agreement) for employees of public authorities.

The 1986 Administrative Procedure Act (1986:223) also constitutes a basis for the application of some of the aforementioned statutes.



## 4 Permissible incidental employment

Examples of incidental employment that will normally be allowed are given below.

### **Examples for all employees**

- Governmental and municipal commissions
- Political commissions of trust
- Commissions in scientific societies
- Commissions in trade unions
- Commissions of trust in other non-profit associations and societies that are not connected to the employment (e.g. sports or housing associations)
- Temporary involvement in newspapers, radio and television
- Jobs of a more simple nature (e.g., proofreading, real estate administration).

Activities that typically belong to one's private life, such as a hobby or tending to family matters, are not to be considered incidental employment.

### **Further examples for teachers<sup>1</sup>**

- Employment or assignments concerning research or development within the scope of the employment, if the teacher does not damage the common confidence for the university (so-called R&D incidental employment). Incidental employment must be clearly separated from the teacher's ordinary employment. Read more about R&D incidental employment in **Section 6**.
- Teacher's combined or joint employment (e.g., within the Faculty of Health Sciences or the Faculty of Educational Sciences) with the other employer (County Council or municipality).
- Adjunct teacher's primary employment.
- Teachers who, within the framework of their employment and during working hours, participate in different forms of academic activities and commissions attracting a fee, such as expert faculty examiner or member of an examining committee; less extensive assignments for research councils and scientific journals; and participation in steering groups for research projects.

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<sup>1</sup> The categories of employee that constitute teachers are defined in the LiU Regulations for Appointments, Page 1 (Ref. No. LiU-2012-01933).

Situations in which an employee is required to report incidental employment are given in **Section 8**.

## 5 Prohibited incidental employment

### 5.1 Three categories

There are three types of limitations of the right to incidental employment:

- Incidental employment that may adversely affect confidence (regulated by law)
- Incidental employment that may prevent the performance of duty (regulated by contractual agreement)
- Competing incidental employment (regulated by contractual agreement)

It is possible for one and the same case of incidental employment to fit all three categories.

### 5.2 Incidental employment that may adversely affect confidence

The regulations for this type of incidental employment are to be found in the Public Employment Act (LOA).

The purpose of prohibiting state employees to have incidental employment that may adversely affect confidence is to maintain full public confidence in the public administration, which is a cornerstone of Swedish democratic society that is stated in one of our constitutional laws: The Instrument of Government.

The Instrument of Government states that all those performing public administration functions shall observe the equality of all before the law, i.e., cases of the same nature shall be treated in the same way; and shall observe the principle of objectivity, i.e., the individual employee must not be affected by extraneous considerations.

The prohibition of having incidental employment that may adversely affect confidence also includes a prohibition, stated in the principle of objectivity, of undertaking incidental employment which entails a risk of a conflict of interest on the part of the employee.

The regulations regarding conflicts of interest are in force to guarantee objectivity in decisions of various kinds. The regulations apply to all administration of matters and to anyone who in some way can affect the outcome of such matters. Conflicts of interest can arise when an employee has an interest in a matter that could call his or her impartiality into question. It may, for example, be the case that the employee is related to or on good or bad terms with someone who is a party or otherwise

interested in a matter; that the employee has a financial interest in whether the outcome is favourable or unfavourable to the parties concerned; or if the employee in some other manner is involved in the matter in such a way as to cause suspicion that conditions for impartial judgement might be wanting.

A few examples of everyday situations at LiU that should be challenged:

- A LiU employee who has commitments to a private company that is involved in a research project together with LiU or that delivers goods or services to LiU.
- A doctoral student has a commission at a company in which the student's supervisor has an influence on decisions.
- A doctoral student is employed by a company that provides research funding to the student's supervisor.

There are no clearly defined limits for when a conflict of interest arises. An assessment must be made in each individual case. In this grey area of different relationships and conflicts of interest between individual officials and parties in a matter, the circumstances may be such as to damage the credibility of LiU, even where there is no conflict of interest in the eyes of the law.

For more information on incidental employment that may adversely affect confidence, please refer to **Section 5.5**.

#### 5.2.1 Assessment of incidental employment that may adversely affect confidence

When an issue comes up regarding incidental employment that may adversely affect confidence, LiU shall make an overall assessment in each individual case of the circumstances that may be of importance for maintaining public trust in the impartiality in LiU's administration of matters. Information from LiU as well as the individual employee shall be considered.

Incidental employment that is carried out under the auspices of the Swedish government may be incompatible with the provisions regarding incidental employment. Such incidental employment, however, is generally to be considered acceptable.<sup>2</sup>

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<sup>2</sup> Swedish Agency for Government Employers, *Incidental Employment*, 2012.

The following considerations, for example, shall be made in the assessment of whether incidental employment has an adverse effect on confidence:

- The extent of the incidental employment
- Connection to LiU's field of activity
- Level of the duties within the incidental employment (simple or more advanced)
- Level of remuneration for the incidental employment
- The position of the employee within the activities of the incidental employment
- The position of the employee within LiU (e.g., rector, dean or head of department or whether the employee is involved in procurement)
- The position of the employee within LiU regarding the exercise of public authority (e.g. examining teacher)
- The total number of employees involved in the incidental employment (if a considerable number of teachers at a department have a joint economical commitment in the form of incidental employment, it could possibly give rise to suspicions of this commitment affecting the direction of the activities at the department).

In order for an incidental employment to be considered prohibited as defined by LOA, it is not necessary for public confidence to actually be undermined. Nor is it required that anything in particular has taken place to jeopardize public trust. If an employee of LiU knows of any circumstance that could lead to a conflict of interest, this shall be reported to his or her immediate superior. Should there be any doubt, the matter shall be raised for discussion. Note that a conflict of interest does not need to be established. It is sufficient that a risk of a conflict of interest exists, i.e., that those around a person might have cause to question the objectivity of that person. A person in a conflict of interest may not serve as administrator for this particular matter. A person who participates in the administration of a matter even when there is a conflict of interest, runs the risk of delaying the matter since a decision on the matter could be appealed due to a conflict of interest.

### **5.3 Incidental employment that may prevent the performance of duty**

The prohibition on having incidental employment that may adversely affect confidence applies to the relationship between LiU and the public, whereas the question of incidental employment that may prevent the performance of duty has to do with the relationship between employer and employee.

The rule regarding incidental employment that may prevent the performance of duty is stipulated in the general agreement on salaries and benefits, Villkorsavtal/Villkorsavtal T. The rule applies to all employees affiliated with the collective agreement Villkorsavtal/Villkorsavtal T (General Agreement on Salaries and Benefits). The prohibition of having incidental employment that may prevent the performance of duty means that the incidental employment may not be so extensive or take place at such a time as to prevent the employee from performing duties at LiU (including re-requested overtime).

#### 5.3.1 Assessment of incidental employment that may prevent the performance of duty

The assessment of incidental employment that may prevent the performance of duty is largely based on the extent of the incidental employment. Employees at LiU are not allowed to conduct work or take on commissions besides their work at LiU to such an extent that it has an adverse effect on their ability to perform duties at LiU. Incidental employment of a greater extent or of a more advanced nature may also run the risk of being assessed as incidental employment that may adversely affect confidence. Circumstances that could imply that the incidental employment is preventing the employee from performing duties are extensive absence, unsatisfactory work performance etc.

*Employees with incidental employment shall keep these clearly separated from their activities at LiU. This means that LiU resources, such as staff, premises, consumable supplies etc. may not be used in connection with the conducting of incidental employment, unless a specific agreement to this end has been signed. Nor may the incidental employment be performed during working hours or prevent such overtime as may be assigned to the employee. Even if incidental employment consists of a few hours a year it can be regarded as preventing the performance of duties, depending on the general circumstances.*

#### 5.4 Competing incidental employment

Competing incidental employment is also connected to the relationship between employer and employee and is regulated in the collective agreement Villkorsavtal/ Villkorsavtal T (General Agreement on Salaries and Benefits).

The prohibition of competing incidental employment applies to employees affiliated with Villkorsavtal/ Villkorsavtal T (General Agreement on Salaries and Benefits). It means that employees at LiU may not have an employment or commission with a company in the same field as that of LiU's commissioned activities (note however that teachers have extended rights to

incidental employment in research and development, point 6). Neither are employees allowed to own shares in, or by themselves or together with others run such a company, unless LiU has expressly agreed to it. LiU conducts commissioned work in the form of commissioned research and education.

#### 5.4.1 Assessment of competing incidental employment

Having competing incidental employment can lead to the risk of an adverse effect on confidence. Even if the incidental employment may be approved in terms of confidence, it may still be prohibited if it is deemed to compete with the collective agreement Villkorsavtal/ Villkorsavtal T (General Agreement on Salaries and Benefits)..

An example of competing incidental employment:

A teacher conducts an educational activity as incidental employment even though LiU provides the same type of education on commission.

*An employee at LiU may not start or run, or do so through another person, a company that competes with LiU's commissioned activities or in any other way perform activities arranged for gain within the same field.*

*An employee at LiU may not conduct educational activities arranged for gain outside of LiU if these activities normally can, and should, be conducted within LiU. Consequentially, in starting up various commissioned activities, LiU may create situations where a previously permissible incidental employment becomes prohibited.*

*Certain incidental employment may be of such a nature that they can change format and be taken up by LiU's activities as commissioned work and thus be performed by the teacher in question (and possibly by other employees) within the framework of the employment. If there is a deficit in teachers at the department and there are difficulties recruiting more teachers, it might be preferable that the duties in question be performed as incidental employment and thus do not reduce the working hours at the disposal of LiU for other duties. In the opposite situation, it might be in the interest of LiU and the employees of the department, and even for the teacher concerned, to take advantage of the possibility of commissioned activities.*

## 5.5 Prohibition of confusing incidental employment and activities within LiU

In addition to that which is included in the three categories mentioned above, incidental employment may be prohibited due to the manner in which it is performed or other circumstances that cause it to be deemed prohibited.

Examples of confusing incidental employment and activities within LiU would be if an employee:

- Uses university resources (telephone, computers, consumable supplies etc.) when performing the incidental employment.
- Divides an activity in a "supply part", commissioned to the department, and an "activity part", commissioned to the employee personally or to the employee's company.
- Devotes time to the incidental employment at the work place or during working hours by taking orders, providing consultation, conducting investigations, constructions or repairs etc.
- Uses LiU's graphical profile in advertising or marketing for a product, service or educational material, thus giving the impression that LiU is involved in the activity or guarantees the contents thereof.
- Markets a product, service, educational material or other activity via LiU's website.

*It is not permissible for an employee to give the impression, when performing incidental employment, that LiU is involved in this activity, authorizes it or in any way guarantees the contents of the incidental employment activity. LiU's graphical profile may not be used in connection with incidental employment. Neither is the employee allowed to be involved in the marketing of, for example, educational materials, in such a way as to make it appear as if LiU supports or recommends this. The marketing of incidental employment via the LiU website is not permitted.*

*Economic transactions, regarding purchases of goods as well as services, between the University and an employee or someone closely related to the same, shall be performed with a great deal of restriction since such transactions may be viewed as being in violation of collective agreement regulations and as constituting a breach of tax or procurement legislation. This applies irrespective of whether the employee/close relative owns the company or occupies some other position in it. However, written permission can be given by the Rector in individual cases.*



## 6 Extended rights to incidental employment in research and development for university teachers

### 6.1 The Higher Education Act allows for an exception to the regulations in LOA

There is an important exception to the regulation on incidental employment that may adversely affect confidence and competing incidental employment, namely the right given in the Higher Education Act to teachers at universities to have an employment or commission outside their work at the university which pertains to research or development work within the field of their employment, as long as the teacher's participation in this activity does not harm public confidence in the university. This incidental employment must also be kept separate from the teacher's regular employment.

The purpose of the extended right to incidental employment for teachers is to make the best use of the societal resource constituted by the highly advanced and specialized expertise possessed by university teachers. In this way, teachers are encouraged to take part in the transfer of knowledge for the good of society, which will also benefit the activities within the university.

In accordance with the Higher Education Act, each university shall decide which categories of teachers to hire in addition to professors and lecturers, as well as which qualification requirements and grounds for evaluation should apply when hiring such teachers. Doctoral students, research engineers, medical laboratory scientists, engineers etc. are not however included in the extended right, but are under the same rules as other employees (technical and administrative staff).

LiU is responsible for informing its teachers about which incidental employment is not compatible with the extended right to have incidental employment in R&D. LiU shall furthermore give advice in the assessment of whether a certain incidental employment is compatible with this extended right. At the request of a teacher, LiU shall supply a written notification in the matter.

LiU is also obligated by law to document information regarding the teachers' rights to have incidental employment in R&D. This documentation shall be organized so that it is possible to monitor the incidental employment of each teacher.

## 6.2 Particular information regarding doctoral students

As research students, doctoral students are not affected by the rules regarding incidental employment – in the same way that other students are not affected by them. Doctoral students employed somewhere other than LiU – e.g., another university, company or county council – must act in accordance with the terms for each individual employment.

Doctoral students employed by LiU shall comply with the same general rules on incidental employment as other employees without teacher status or a managerial position/commission. When applying these rules, and in particular when assessing whether work is obstructed, all that is regulated between the doctoral student and LiU through the individual study plan should be kept in mind. Incidental employment which is too extensive might call into question the research studies.

The fact that a doctoral student is or becomes an employee in a company where the student's supervisor at LiU has an influence on decisions or incidental employment commission may cause a conflict of interest – please refer to **section 5.2** above.

## 6.3 Assessment of incidental employment in R&D

As has been mentioned, the teachers' right to incidental employment in R&D is set apart in relation to other public employees.

The right to incidental employment in R&D constitutes an exception in the regulations on incidental employment in LOA. A teacher is thus allowed, in accordance with the Higher Education Act, to have incidental employment in research and development that competes with the activities of LiU as long as public confidence in LiU as a university is maintained.

Teaching and education are however not included in this extended right and shall be assessed in accordance with LOA. As a consequence, a teacher may not have a teaching incidental employment should it compete with LiU's educational commissioned activities. Note however that none of the teachers' incidental employments, regardless of nature, may entail an obstruction to work in such a way as to negatively influence the teacher's ability to perform duties at LiU.

*One or more incidental employments that together take up no more than 300-400 hours per year may be considered an acceptable volume of work outside of the employment as a teacher, provided that the LiU working*

*hours are not reduced or unilaterally scheduled at such times as to cause the incidental employment to become a hindrance to LiU's activities.*

A few examples of subject-related incidental employment in R&D (though not automatically permissible):

- Consultation in scientific issues or other comparable consultancy work within the teacher's subject area (e.g., specialist or expert commissioned by the medical industry or other business activity).
- Own production (e.g., through ownership or part ownership of a company or economic association in which the teacher is a member) which is based on the teacher's own inventions, production methods developed by the teacher or services within the framework of the teacher's subject area.
- Board membership in a company whose activities relate to the teacher's subject area.
- Ownership in which the teacher has influence over an activity related to the teacher's subject area.

A few examples of incidental employment which cannot be considered as subject-related incidental employment in R&D and should therefore be assessed in accordance with the main regulations for incidental employment:

- Commissions given to the teacher due to general expertise as opposed to subject-specific expertise (e.g., commissions of trust in the church, organizational activities or other boards).
- Pure teaching commissions, whether in the teacher's subject area or not.
- Employment as a teacher or other involvement in educational or other activities with another responsible authority (e.g., university, primary or incidental school, folk high school, study association, consultancy firm etc.).

## 7 The employer's obligation to provide and document information

It is primarily the responsibility of the employee to make an assessment of whether the incidental employment is permissible or not. In order for the employee to fulfil this responsibility, the legislation places requirements on employers to provide information in an appropriate manner on which incidental employment is normally permitted or prohibited.

For the teachers' incidental employment in R&D, LiU is furthermore obligated to facilitate public insight regarding incidental employment through such organization as to make it possible to monitor the incidental employment of each individual teacher.

## 8 The employee's obligation to provide information

### 8.1 Teachers

A teacher is legally obligated to report all subject-related incidental employment. The report shall be made without any specific request from LiU. This applies whether the incidental employment is concerned with research, development or other activities, such as teaching, and regardless of its extent and duration.

Note that it is not necessary to report the following incidental employment:

1. For teachers with combined or joint employment (e.g., within the Faculty of Health Sciences or the Faculty of Educational Sciences), the employment with the other employer (County Council or municipality).
2. For adjunct teachers, the primary employment.
3. Teachers who, within the framework of their employment and during working hours participate in different forms of academic activities and commissions attracting a fee, such as expert faculty examiner or member of an examining committee; less extensive assignments for research councils and scientific journals; and participation in steering groups for research projects, shall not report these activities as incidental employment.

With respect to teachers' other incidental employment that is not subject-related and that may prevent the performance of duty or adversely affect confidence, the provisions of **Section 8.3** for other employees apply.

## **8.2 Managers in accordance with Chefsavtalet (the Managerial Agreement)**

The persons affiliated with the Managerial Agreement<sup>3</sup> are also obligated to report incidental employment. They shall report their incidental employment in writing regardless of its extent or nature.

## **8.3 Other employees**

For all other employees, LiU has the right to request information on incidental employment as needed to give LiU an opportunity to make a more detailed assessment of whether the employee's incidental employment is permissible or not. This rule is primarily targeted at preventing LiU employees from having any incidental employment that may adversely affect confidence.

As for incidental employment that may prevent the performance of duty LiU may only request information on the incidental employment if LiU can find reason to do so based on the manner in which duties are performed by the employee.

## **8.4 Integrity and objectivity**

When exercising the aforementioned right to request information on incidental employment, it is important that LiU observes the principle of integrity. The decision must be based on facts and may not encompass more information than is needed to make the assessment.

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<sup>3</sup> The following positions at LiU are subject to the provision of the Chefsavtal (the Managerial Agreement): deputy vice-chancellors, deans, heads of department, director of higher education, library director, heads of faculty office, head of the Centre for Biomedical Resources, director of administration, chief legal adviser, chief financial officer, director of research, director of human resources, director of international affairs, director of communications, chief information officer, director of collaboration, university architect, senior advisers, director of higher education.

The right of LiU as a public employer, to request further information on incidental employment is a prerequisite for LiU to have sufficient basis to fulfil its obligation in an adequate and non-arbitrary manner, when considering whether to prohibit incidental employment.

## 9 Measures and consequences of prohibited incidental employment

### 9.1 Decision that an employee must refrain from or terminate incidental employment

LiU has an *obligation* as employer to prohibit all incidental employment that may **adversely affect confidence**. It is however primarily up to the employee to make the decision to terminate the incidental employment.

In accordance with the Managerial Agreement and Villkorsavtal/ Villkorsavtal T (General Agreement on Salaries and Benefits), the employer may decide that an employee shall completely or partially terminate incidental employment or refrain from such undertaking incidental employment (**preventive of performing** duties as well as **competing**). At LiU, this decision must also be provided in writing in order to make sure that there is a sufficient basis for LiU to demonstrate that it has fulfilled its legal obligation in an adequate and non-arbitrary manner.

The decision cannot be appealed within LiU but may be tried in a Court (usually the Labour Court) in accordance with the Labour Disputes (Judicial Procedure) Act (1974:371).

*It is the individual responsibility of each employee not to undertake a prohibited incidental employment. However, an employee at LiU has the opportunity to receive a written decision on whether or not the incidental employment is prohibited.*

*Should it become clear that an employee has a prohibited incidental employment, the matter shall primarily be resolved through consultation and dialogue between the employer and manager. The manager shall always make an overall assessment of the circumstances that may be of importance. The manager can always refer the issue of approval or relinquishment of incidental employment to the rector, or a person appointed by the same, along with a personal statement.*

*Such a decision by LiU for an employee to terminate incidental employment shall be in writing and include reasons.*

## 9.2 Other measures; reassignment, disciplinary measures, etc.

Regarding incidental employment that may **adversely affect confidence** or **prevent the performance** of duty, the employee who continues his or her incidental employment despite a decision urging termination, may risk reassignment or some other change of principal duties. Disciplinary action (warning, salary deduction) for neglect of duty may also be carried out. Should the employee, thereafter, still not relinquish the incidental employment, he or she may be given notice or be dismissed from the employment at LiU. These decisions are made by LiU's Staff Disciplinary Board or the National Disciplinary Offence Board.

In cases of **competing** incidental employment, the employee is obligated to terminate this as soon as the incidental employment is prohibited. A refusal to do so will have the same consequences as those that apply for incidental employment that may adversely affect confidence or prevent the performance of duty.

The choice of disciplinary measure for prohibited incidental employment is influenced by whether the employer has or has not been clear in providing information regarding the rules that apply for incidental employment. If the immediate superior has had knowledge of the existence and extent of the incidental employment but has failed to take the necessary measures, the prohibited incidental employment may result in disciplinary measures for the manager as well.



## 10 Information and consultation

Individual consultation and information in matters regarding incidental employment can be provided by the Legal Office.

## Appendix 1 – Extracts from statutes

### **Incidental employment that may adversely affect confidence (section 5.2)**

The prohibition against having incidental employment that may adversely affect confidence is to be found in the Public Employment Act (1994:260), LOA.

LOA Section 7: *“An employee may not have any employment or any assignment or exercise any activities that may adversely affect confidence in his or any other employee’s impartiality in the work or that may harm the reputation of the authority.”*

The basis for this regulation is in one of our constitutional laws: the Instrument of Government (1974:152), RF.

RF Chapter 1, Section 9: *“Courts of law, administrative authorities and others performing public administration functions shall pay regard in their work to the equality of all before the law and shall observe objectivity and impartiality.”*

The regulations regarding conflicts of interest apply when assessing incidental employment that may adversely affect confidence. These regulations are decreed in the 1986 Administrative Procedure Act (1986:223), FL.

FL Section 11: *The person charged with handling a matter is disqualified:*

- 1. if the matter concerns himself or his spouse, parents, children, brothers or sisters or someone else who is closely related to him, or if he or someone closely related to him can expect extraordinary advantage or detriment from the outcome of the matter,*
- 2. if he, or anyone closely related to him is the legal representative of someone that the matter concerns or of anyone that can expect extraordinary advantage or detriment from the outcome of the matter,*
- 3. if the matter has been brought before the authority by an appeal against or the subordination of the decision of another authority or by reason of the supervision of another authority and he had taken part earlier under the auspices of the subordinate authority in the final handling of a matter concerning the same material issue,*
- 4. if he as regards the material issue has served someone as a representative or has assisted him for payment, or*
- 5. if there is some other special circumstance that is likely to undermine confidence in his impartiality in the matter.*

*Disqualification shall be disregarded where the question of impartiality is obviously of no importance.”*

LOA contains regulations regarding the employer's and the employee's respective obligations to inform, document and submit information regarding incidental employment that may adversely affect confidence.

LOA Section 7a: *"The employer shall in an appropriate way inform the employees of which kinds of circumstances can constitute incidental employment that is not allowed in accordance with [Section 7](#)."*

LOA Section 7b: *"An employee shall at the request of the employer provide the information necessary for the employer to be able to assess the employee's incidental employment."*

LOA Section 7c *"An employer shall decide that an employee who has or intends to undertake incidental employment that is not compatible with [Section 7](#) shall cease with or not undertake such incidental employment. This decision shall be in writing and include reasons"*.

### **Incidental employment that may prevent the performance of duty (section 5.3)**

Regulations regarding incidental employment that may prevent the performance of duty are stipulated in the government collective agreement Villkorsavtal/Villkorsavtal T (General Agreement on Salaries and Benefits).

In chapter 13, section 10 of Villkorsavtal/Villkorsavtal T (General Agreement on Salaries and Benefits) the following is stated with regard to incidental employment that may prevent the performance of duty: *"An employee is obligated to submit information to the employer as requested regarding the existence and extent of any incidental employment. However, the employer may only request such information if the employer can find reason to do so based on the manner in which duties are performed by the employee. The employer may require that an employee shall completely or partially terminate an incidental employment should the employer feel that it has a negative effect on the employee's ability to perform duties (incidental employment that may prevent performance of duties)."*

### **Competing incidental employment (section 5.4)**

The collective agreement Villkorsavtal/Villkorsavtal T (General Agreement on Salaries and Benefits) also contains regulations regarding competing incidental employment.

Chapter 13 section 11 Villkorsavtal/Villkorsavtal T (General Agreement on Salaries and Benefits): *"Employees of public authorities which conduct business or commissioned activities may not be employed or commissioned by a company"*

*within the field of this activity. Neither are employees allowed to own shares in, or by themselves or together with others run such a company or in any other way conduct activities arranged for gain within the same field (competing incidental employment). The statement in the first point shall not apply if the employer consents to a different arrangement. If such consent is given, it is the obligation of the employee to provide the employer with information as requested, regarding the nature and extent of the competing incidental employment."*

### **Incidental employment in R&D (section 6)**

The extended rights to incidental employment in research and development for teachers are regulated through the Higher Education Act (1992:1434), HL.

HL Chapter 3, Section 7: *"In parallel with their teaching posts, teachers at higher education institutions may undertake employment or assignments or pursue activities relating to research and development work within the subject area of their posts, if in doing so they do not undermine the confidence of the general public in the higher education institution. Such incidental occupations shall be kept clearly separate from the tasks assigned to them within their posts."*

The Higher Education Ordinance (1993:100), HF, contains regulations regarding information and documentation regarding incidental employment in R&D.

HF Chapter 4, Section 14: *"The higher education institutions shall provide appropriate information to their teachers about incidental employment or types of incidental employment that contravene [Section 7 of Chapter 3](#) of the Higher Education Act ([1992:1434](#)). A higher education institution shall provide its teachers with advice in assessing whether a certain form of incidental employment complies with the provision. If a teacher so requires, the higher education institution shall issue a written response on an issue of this nature."*

HF Chapter 4, Section 15: *"A teacher is obliged to keep the higher education institution informed of any incidental employment that he or she undertakes and that pertains to the subject area of his/her post. The higher education institution shall keep records of this information. These records shall be arranged to enable continuous monitoring of incidental employment undertaken by each teacher."*

### **Particular regulations for employees covered by the Managerial Agreement**

Section 9, point 2 of the Managerial Agreement (collective agreement for certain managerial positions within the government) states the following: *"The employee is obligated to submit to the employer information on the existence and extent of any incidental employment that the employee has or intends to undertake. The employer may require that an employee shall completely or partially terminate an*

*incidental employment or refrain from undertaking an incidental employment which has a negative effect on the employee's ability to performance duties.”*