

FORMULA

Free movement, labour market regulation and
multilevel governance in the enlarged EU/EEA
– a Nordic and comparative perspective

UNIVERSITY of OSLO
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Finland with appendixes

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FORMULA

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Finland

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1. Starting Points – the General Picture

The general applicability of collective agreements. A system of generally applicable collective agreements (erga omnes effect) was introduced in Finland with the Employment Contracts Act 1970. (Concerning the emergence of generally applicable collective agreements in Finnish international Labour Law, see U. Liukkonen 2004, 77-92)

The system of generally applicable collective agreement was maintained and modified in 2001 (Employment Contracts Act (ECA), Chapter 2 Section 7). The legal concept of a generally applicable collective agreement is construed by several requirements.

Requirements for general applicability of a collective agreement. (ECA Chapter 2, Section 7). The point of departure is a collective agreement as defined in the Collective Agreements Act (436/1946; Sections 1-2). (On collective agreements in Finland see N. Bruun ‘Labour Law and Non-Discrimination Law’ in J. Pöyhönen (ed.) *An Introduction to Finnish Law* 2002, pp. 193-200).

A generally applicable collective agreement shall in addition fulfil the following requirements

- The collective agreement shall be nation wide and cover the work a branch for the whole country. This implies for instance that an agreement with a company or a group of companies as employer party or made for a certain region cannot be generally applicable.
- The collective agreement concerns the kind of work the employee in question performs or nearest comparable work.
- *Representative in its branch.* The collective agreement shall be *representative* in its branch (field of application). There are many aspects to consider when evaluating the condition for a collective agreement being representative. It is fair to say that the most important requirement is the scope of the agreement as measured by applicability to employees. The point of departure is namely how many employees the collective agreement is to be applied to according to the provisions of the Act on Collective Agreements. There is a thumb rule (developed in jurisprudence and underpinned by travaux préparatoires) that the status representative is acquired if a collective agreement is to be applied to about half of the employees in the branch in question.

There are also additional criterions, which may be used in case the thumb rule does not provide a clear result or up to a certain extent they can compensate a non-fulfilment of the thumb rule. This aspect is not described further in this report.

The transition from the system of generally applicable collective agreements in ECA 1970 to the present one in ECA 2001 meant a change of how the agreement gets effective. In the

former system the erga omnes effect followed automatically from the existence of such an agreement i.e. from the day decided by the parties to the agreement.

ECA 2001 introduced a *specific procedure* for deciding on the requirement *representative in its branch*, Chapter 2 Sections 7-8 and the Act on Confirmation of the General Applicability of Collective Agreements (56/2001). Whether a collective agreement is generally applicable or not is examined by a Commission designated especially for that purpose.

Concerning applicability and the aspect of time the main rule in practice is that in “confirming the general applicability of a collective agreement, the Commission must specify that the agreement shall be applied as of the date on which it enters into force.” (Section 5 Paragraph 1; for an exception see paragraph 2). It is to be underlined that no collective agreement can have the legally binding effect of a generally applicable collective agreement without the confirmation of the Commission.

A decision by the Commission can be contested by means of written appeal to the Labour Court (Section 9).

In practice the most important effect of generally applicable agreements concerns the definition of pay. A generally applicable collective agreement has a direct and mandatory effect (see answer to question 6; ECA Chapter 2 Section 7 Paragraph 2). There is also a secondary rule for the case that there for a certain employee / job is no “normal” collective agreement or generally applicable agreement. If the parties to the employment relation have not agreed upon pay, then the pay shall be a “reasonable normal remuneration for the work performed” (ECA Chapter 2 Section 7).

Minimum terms and conditions. In Finnish Labour Law the general effect of generally applicable collective agreements is that they ensure *a mandatory minimum content* of the employment conditions (ECA Chapter 2, Section 7). The agreements confer duties only on employers and there is no peace obligation attached to the generally binding collective agreements.

In this report the more crucial aspect is, as will be shown more in detail below, that this generally applicability of collective agreements has an important role in ensuring minimum conditions for workers posted to Finland. The importance is not only due to the legislation but also to the actual structure of the Finnish labour market and the collective agreements. For most branches, both industrial production and production of services, there are nation wide trade unions and employer unions. These unions conclude nation wide agreements and they are mostly generally applicable. Thus it is very rare to find a segment on the labour market where there is no generally applicable collective agreement.

Let us suppose that there is a generally binding collective agreement applicable to the work a posted worker performs. When a worker, foreign or Finnish, is posted to Finland, the PWA (Posting of Workers Act 1999 (1146/1999)) is normally applicable. According to the PWA certain minimum rules *i.a.* from the generally applicable collective agreement is to be applied. If there is such a collective agreement, then it is the duty of the posting employer to apply those terms. The *effect is direct* in the sense that if a generally applicable collective

agreement exists, then no further decision is needed in order to create the obligations. In national labour law one uses the concept *automatic* to describe this effect.

It is unlikely to end up in court if a posting employer claims that the agreement was not generally applicable. If there would be a case before a court and if the court considers the agreement generally applicable, the posting employer would be responsible to fulfil his duties retrospectively.

The parts of a generally applicable collective agreement, which have been made applicable to a posted worker, are *mandatory* in the following sense. When the PWA defines a generally applicable collective agreement as minimum rules, the posting employer cannot legally go below this binding standard. For instance a provision in an employment contract or the policy of the employer cannot put the generally applicable collective agreement aside to the detriment of the worker.

If the posting employer has a duty from another legal norm to provide better employment conditions, the employer must do so. If the employer on a voluntary basis is willing to give better conditions, the employer can do so.

2. The History

The Finnish “*erga omnes*” system that was introduced in 1970, meant an obligation for employers to observe at least the provisions of a national collective agreement considered representative in the sector in question (generally applicable collective agreement) on the terms and working conditions of the employment relationship that concern the work the employee performs or nearest comparable work (ECA 2:7). It is an extensive obligation that covers generally “terms and working conditions” in the collective agreement.

Finland had also ratified the ILO Convention on Social Clauses in Public Contracts (ILO 94) already 1951.

In 1988 the Finnish Employment Contract Act from 1970 was complemented with a special chapter on labour contracts of an international character, which had a rather liberal approach and made it possible to agree on the “applicable law” as far as the mandatory legislation in the state where the work is performed is applied.

In 1995, the same year as Finland joined the European Community, the central labour market organizations and the government agreed on the introduction on a specific regulation aiming at securing situations of posting. The specific new stipulation were linked to the “*erga-omnes* system” and it stated that with the exception for short time installation work and similar situations foreign serviceproviders have to apply generally binding Finnish collective agreements in accordance with the Finnish legislation. This obligation was then partly linked to the 1988 legislative reform in the sense that these provisions were seen as mandatory national rules which apply regardless of any individual or collective contracts between a posted worker and his/her employer.

The background for this reform was clearly the Rush Portuguesa case and the debate on the draft Directive on posting of workers (COM 91/230 final SYN 346, that was redrafted in

93/225). The promise to regulate the issue of social dumping was clearly one of the measures taken in order to secure a favourable attitude from the trade unions towards EU-membership and the referendum on membership.

In 2001 when the new Employment Contracts Act was adopted the PW-Directive had already been adopted in 1996 and implemented in 1999. At that stage the rules contained in the Employment Contracts Act (the older one) had already been replaced by a reference to the Finnish PWA 1999. The detailed stipulations on the international private law effects of Employment Contracts were deleted in the new act and replaced with a reference to the Rome Convention of 1980 in order to avoid the risk of noncompliance with the Convention.

Finland implemented the PWD by the Posting of Workers Act 1999. The definitions of a posted worker very closely follows the PWD, but the question of which terms and conditions of work that shall be applied is more specifically Finnish (se Section 2):

The law applicable to the employment contract of a posted worker is determined under the Convention on the law applicable to contractual obligations (Finnish Treaty Series 30/1999).

Even if it were found that the law applicable to the employment contract of a posted worker would be the law of another country, the following provisions of Finnish law shall apply, in so far as they are more favourable to the worker than the legal provisions that would otherwise be applicable:

- 1) as regards compensation and higher rates of pay on the grounds of working hours, sections 22-25 and section 33, paragraphs 2 and 3, of the Working Hours Act (605/1996) and section 5 of the Work in Bakeries Act (302/1961),
- 2) as regards compliance with the prescribed work and rest periods, sections 6-14, 16-21, 26-32, and section 33, paragraph 1, of the Working Hours Act,
- 3) as regards the specification of annual holidays, annual holiday pay and holiday compensation, sections 5-19 of the Annual Holidays Act (162/2005),

- 4) as regards the specification of pay and employee housing, chapter 2, sections 11 and 12, and chapter 13, section 5, of the Employment Contracts Act, and
- 5) as regards provisions concerning family leaves, chapter 4, sections 2, 8 and 9 of the Employment Contracts Act.

On conditions referred to in paragraph 2, the provisions of universally applicable collective agreements as referred to in section chapter 2, section 7, of the Employment Contracts Act concerning annual holiday, working hours and occupational safety shall apply to posted workers' employment relationships. Posted workers shall be paid a minimum rate of pay, which shall be considered to refer to remuneration specified on the basis of a collective agreement as referred to in chapter 2, section 7, of the Employment Contracts Act. In case this collective agreement is not applicable to the employment relationship, the usual and reasonable wage should be paid to the worker, if the remuneration agreed between the employer and the worker is essentially lower than this. (1198/2005)

Notwithstanding paragraph 2, chapter 1, section 9, chapter 2, section 2, and chapter 13, sections 1 and 2, of the Employment Contracts Act, sections 6, 7, 8, 8 a, 8 d, 9 and 9 a of the Act on Equality between Women and Men (609/1986), hereinafter referred to as the Equality Act, the Occupational Safety and Health Act (738/2002), the Occupational Health Care Act (1383/2001), and the Young Workers' Act (998/1993) and provisions and stipulations

The applicability of the provisions referred to below on a posted worker is requiring a comparison of favourability. Even if the law applicable to a worker posted to Finland would be the law of another country, the following provisions shall apply, in so far as they are more favourable to the worker than the legal provisions that would otherwise be applicable (PWA Section 2 Paragraph 2).

- Working hours Act (605/1996) Sections 22-25, Section 33 Paragraph 2 and 3 of the concerning remuneration and higher rates of pay due to work time,
- Working hours Act Sections 6-14, 16-21, 26-32 and 33 Paragraph 1 regarding compliance with the prescribed work and rest periods
- Work in Bakeries' Act (302/1961) Section 5 as regards higher rates of pay on the grounds of night work,
- Annual holidays Act (162/2005) Sections 5-19 as regards the specification of annual holidays, annual holiday pay and holiday compensation.
- ECA Chapter 2 Sections 11-12 and Chapter 13 Section 5 regarding the specification of pay and employee housing
- ECA Chapter 4 Sections 8-9 regarding family leaves.

Generally binding collective agreement going further. On the condition of *favourability*, as above, the provisions of a generally applicable collective agreement (ECA 2:7) on annual holiday, working hours and occupational safety shall apply to posted workers employment relationships (PWA Section 2 Paragraph 3). So for these issues employer duties superseding the duties derived from statutory can occur. (PWA Section Paragraph 3) Here the reasoning follows an *e contrario* pattern. If a foreign legal order is to be applied on the posted workers employment relationship when posted to Finland, then a generally applicable collective agreement is binding only as far the referred provisions of the PWA prescribes.

Which criteria are decisive when more than one collective agreement exists? According to the PWA certain minimum conditions and terms from the relevant generally applicable collective agreements are to be applied on a posted worker's employment relation. If the PWA is applicable this rule is absolute.

If the posting employer in the home country of this employer is bound by a collective agreement applicable on the posted worker, conditions and terms from that agreement can be applied as far as they supersede or in another way do not interfere with the minimum rules that are to be applied according to the PWA.

Penal provisions PWA Section 9 a (1198/2005). In case an employer or representative or a selected representative (Section 4 a above) intentionally or through negligence violate the provisions on possession of information and reports or duty to report intended in Section 4 b (above), or neglect to give the information intended in Section 8 a (above) to a staff representative, they shall be sentenced to a fine for the violation of the PWA (PWA Section 9 a Paragraph 1).

The party for whom the work is performed or its representative, who intentionally or through negligence neglect the duty of care provided in section 4 a (above), shall be convicted of a violation of the PWA, the representative of the party having the work performed, however, only in consideration of the instructions and procedures issued at the workplace. (PWA Section 9 a, Paragraph 2).

Supervision of compliance with the PWA is the responsibility of the occupational safety and health authorities, except for the provisions of the Equality Act (referred to in PWA Section 2 paragraph 5). In this latter case supervision of compliance is the responsibility of the Equality Ombudsman and the Equality Board.

As specified in law the occupational safety and health authorities have rights to get information from the employer, rights to visit undertakings, rights to interview the employees. The authorities can give directives to amend conditions not in order. The requirements can also be enhanced by administrative economic sanctions.

Employers, or their representatives (as defined in Section 4a) must on request provide the occupational safety and health authorities with the information and reports referred to in Section 4.b.1 and 5.2

3. The Enlargement

The issue of posting was not much felt on the Finnish Labour market during the first years after the adoption of the PWA. It was only with the Enlargement of the European Union that the issue of posting became in focus. After some pressure from the trade union movement the Finnish government decided on transitional measures in order to avoid that people in the Baltic state would use the right to that workers have to free movement within the EU and in masses move to Finland after work. The result was instead that the movement of labour took the form of posting. Finnish entrepreneurs founded different companies (temporary work agencies, construction firms etc) in Estonia and the other Baltic states and the employees came to Finland to perform work. They were often posted workers.

Since it is very easy to commute from Tallinn to Helsinki even on a daily bases there was a large misuse of labour working as so called grey workforce without officially being in Finland. The Building Workers Union actively campaigned against some grave cases of

misuse and very soon the trade unions also agreed that there was good reason to abolish the transitional restrictions of free movement and they were lifted after one year in 2005. It was, however agreed that stricter control should be introduced on posting and in late 2005 the following provisions were introduced:

Section 4 a (1198/2005)

Selecting a representative

In case the employer of a posted worker intended in Section 1 (the company posting the worker) does not have a business location in Finland, they shall have a representative in this country, who is authorised to act for the company posting the worker in a court of law and to receive on behalf of this company writs of summons and other documents issued by the authorities. The representative shall be selected no later than at the date when the posted worker starts working, and the authorisation shall be valid for a minimum of 12 months after the date at which the posted worker ceases working in Finland. The party for which the work is performed shall through their contracts with the company posting the worker or by other means at their disposal ensure that the company posting the worker selects the representative intended herein.

A representative need not be selected in case the posting of the worker is no more than 14 days in duration. In case several consecutive employment contracts concerning the posting without interruption or with short-term interruptions only have been concluded between the posted worker and his/her employer, the posting shall be regarded as having been continuous.

Section 4 b (1198/2005)

Liability to keep records of posted workers

As the posted worker starts working, the employer or, if the employer does not have a business location in Finland, the employer's representative intended in Section 4 a, shall have in their possession the following information in writing:

- 1) the identifying details of the company posting the worker and information on the responsible persons in the country in which the company posting the worker is located;
- 2) identifying details of the posted worker,
- 3) written information pursuant to Chapter 2 Section 4 of the Employment Contracts Act on the working conditions applicable to the employment contract of the posted worker; and
- 4) information on the basis of the employment rights of the posted worker.

In case the company posting a worker is not obliged to select a representative pursuant to Section 4 a, the company shall also be in possession of the information intended in Paragraph 1 when it does not have a business location in Finland.

In order to safeguard the minimum working conditions applicable to the employment relationship of a posted worker, the company posting the worker shall, before the work performed in Finland is initiated, let the party for whom the work is performed know who is in possession of the information intended in Paragraph 1 during the worker's posting. This information shall be kept on file for two years after the posted worker has ceased working in Finland.

Section 5 (163/2005)

Documentation of working hours, records of annual holidays and payment details (1198/2005)

The provisions of sections 36, 37 and 37a of the Working Hours Act concerning documentation of working hours and section 29 of the Annual Holidays Act concerning records to be kept on annual holidays apply to work carried out by posted workers. Employers shall also comply with the provisions of section 34 and 35 of the Employment Contracts Act or other procedures that ensure the same standard of protection for workers. In case the posting of a worker lasts for more than eight days, the employer or, if the employer does not have a business location in Finland, the representative intended in Section 4 a, shall have in their possession in Finland documentation on the working hours concerning work performed in Finland and records of the wages paid to the posted worker. (1198/2005)

The new legislation that was introduced in 2005 has been controversial in the sense that the European Commission clearly has regarded it as being on the border line. Still the European Commission has not so far to my knowledge done anything else than asked for information and studied the Finnish new legislation.

A further step in order to keep control and surveillance over posting situations was taken when the *Act on the Contractor's Obligations and Liability when Work is Contracted Out* (1233/2006) was adopted. The Act shall apply to those who in Finland uses temporary agency workers; or at whose premises or work site in Finland an employee is working, who is in the service of an employer having a subcontract with the contractor, and whose tasks relate to the tasks normally performed in the course of the contractor's operations or to transportation relating to the contractor's normal operations.

In building, and in repair, servicing and maintenance relating to building, the Act is applied to construction contractors using subcontractors and to all those contractors in the contractual chain contracting out part of the work at a shared workplace as referred to in the Act on Occupational Safety and Health.

According to the Act a Contractor has an obligation to check certain data concerning the subcontractor that the contractor uses. The negligence to check these facts might result in a negligence fee that is prescribed to no less than 1.500 euros and no more than 15.000 euros.

In determining the amount of the negligence fee, the factors taken into account are the degree, type and extent of the negligence, and the value of the contract between the contractor and the contracting partner. Factors to be considered for lowering the negligence fee are the contractor's effort to prevent or eliminate the effects of the negligence, and factors for raising the fee are the fact that the contractor's negligence has been repeated or systematic, and other circumstances.

The information that the contractor has to request from the subcontractor is:

1) an account of whether the enterprise is entered in the Prepayment Register in compliance with the Act on Prepayment of Tax (1118/1996) and the Employer Register, and is registered as VAT-liable in the Value Added Tax Register in compliance with the

Value Added Tax Act (1501/1993);

2) an extract from the Trade Register;

3) a certificate of tax payment or of tax debt, or an account that a payment plan has been made regarding a tax debt;

4) certificates of pension insurances taken out and of pension insurance premiums paid, or an account that a payment agreement on outstanding pension insurance premiums has been made; and

5) an account of the collective agreement or the principal terms of employment applicable to the work.

If the employer of the temporary agency worker or the contracting partner to a subcontract is a foreign enterprise, the enterprise shall provide the contractor with information corresponding to that referred to in Section 1 above, by presenting an extract from a register or an equivalent certificate complying with the legislation of the country where the enterprise is domiciled, or in some other generally accepted way.

4. The Aftermath of Viking, Laval, Rüffert and Luxemburg

The Viking case concerns Finnish conditions, and just like the Laval case, there are specific national concerns here as well. Viking Line which operated a ferry between Tallin (Estonia) and Helsinki (Finland) under Finnish flag had for a long time tried lower their wage costs by reflagging to Estonia. Viking Line eventually brought legal proceedings against the ITF and the FSU in the English Commercial Court, the English courts being an option because the ITF is based in London, although Finnish law was applied to the case.

The Viking case was settled and no reactions or demands for legal changes have been made in Finland.

Since Finland has an *erga omnes*-system for declaring collective agreements generally applicable the Laval case has not drawn so much attention in Finland. Although there has been much debate around the judgments it has been underlined that they only apply in crossborder situations. The general impression is that it might have lead to an increase willingness on the side of the courts to issue interim injunctions in labour law cases.

The Finnish Employers see the maritime sector as very special. Lodging the Viking case do not appear to have been part of a concerted offensive usage of EC law to diminish general trade union power in Finland, but rather as a legal measure to further the employer interest in a specific issue in the maritime sector.

In Finland the National Labour Court has recently decided a case concerning posting of employees in a special situation regarding the cabin crews that had been posted to Finland in order to fly the route Helsinki-Phuket-Helsinki.¹ The context of the case was that the Finnish airline Finnair made a so called WET-LEASE-agreement with a Spanish airline company Air Europe. According to the agreement Air Europe leased an airplane with a full crew to

¹ See Labour Court (TT) 2009:90, issued 9.10.2009, N:o R 126/08.

Finnair. Finnair used this plane during the winter season 2008-2009 for flying its own routes between Helsinki and Thailand. The crew on board this plane was employed by its Spanish employer and Air Europe and Spanish legislation and collective agreements were applied to them.

The Finnish union for the cabin crew (airhostesses and stewarts) took legal action in the Finnish Labour Court and claimed that Finnair was in breach of the clause in the Finnish Collective Agreement, which stated that in cases of temporary agency work or outsourcing a condition is included in the contract between the user and the provider of the manpower according to which the user company undertakes a commitment to apply this collective agreement and the labour and social law that is in force. The plaintiff argued that Finnair was in breach of this undertaking in the collective agreement since Spanish conditions were applied to the employees performing work for Finnair.

The Labour Court came to the conclusion that a WET-LEASE-agreement could be regarded as a situation covered by article 2 in the collective agreement. Furthermore the Labour Court regarded that this article, when implemented, would have the effect of applying terms and conditions of employment that goes far beyond what can be required in accordance with the Directive on Posting of Workers and the Act that implements it in Finland. Therefore the full application of this Article in the collective agreement would, when taking into account the practice of the ECJ, fulfil the criteria for restricting the free movement of services in the EU in a way which is contrary to Article 49 EC. Therefore the non-inclusion of this requirement in the agreement between Finnair and Air Europe could not be regarded as a breach of the collective agreement. Finnair had neither an obligation to sort out what kind of less strict requirements could have been possible.

The judges representing the trade union side issued a dissenting opinion to the judgment and argued that the judgment should have recognized at least the obligation to apply minimum terms concerning wages, working time and annual holidays. Furthermore these minority judges argued that the interpretation restricted the right freedom of association since the parties could not implement such a clause that was agreed upon in order to protect the interest of the workers.²

² See further the dissenting opinion written by Salonen and Ahokas.

Unofficial translation
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Posted Workers Act (1146/1999)
(as amended by several acts, including No. 1198/2005)

Section 1
Scope

This act applies to work carried out under an employment contract as referred to in chapter 1, section 1, of the Employment Contracts Act (55/2001) by a worker posted to Finland. (74/2001)

For the purposes of this Act, 'posted worker' means a worker who normally carries out his or her work in a country other than Finland and whom an employer undertaking established in another country posts to Finland for a limited period within the framework of the transnational provision of services, if

- 1) the worker is posted to perform work under the direction and on behalf of the undertaking under a contract concluded between the employer and the user of the services operating in Finland,
- 2) the worker is posted to work for an establishment or undertaking owned by the group of undertakings concerned, or
- 3) the worker is hired out to a user undertaking and the employer is a temporary employment undertaking or placement agency.

This Act does not apply to the seagoing personnel of merchant navy undertakings. Except for the provisions of section 9 concerning jurisdiction, other provisions of this Act shall not apply to work performed under a procurement contract concluded by a public central government authority.

Section 2 (74/2001)

Provisions and stipulations governing terms and conditions of employment

The law applicable to the employment contract of a posted worker is determined under the Convention on the law applicable to contractual obligations (Finnish Treaty Series 30/1999).

Even if it were found that the law applicable to the employment contract of a posted worker would be the law of another country, the following provisions of Finnish law shall apply, in so far as they are more favourable to the worker than the legal provisions that would otherwise be applicable:

- 1) as regards compensation and higher rates of pay on the grounds of working hours, sections 22-25 and section 33, paragraphs 2 and 3, of the Working Hours Act (605/1996) and section 5 of the Work in Bakeries Act (302/1961),
- 2) as regards compliance with the prescribed work and rest periods, sections 6-14, 16-21, 26-32, and section 33, paragraph 1, of the Working Hours Act,
- 3) as regards the specification of annual holidays, annual holiday pay and holiday compensation, sections 5-19 of the Annual Holidays Act (162/2005),

- 4) as regards the specification of pay and employee housing, chapter 2, sections 11 and 12, and chapter 13, section 5, of the Employment Contracts Act, and
- 5) as regards provisions concerning family leaves, chapter 4, sections 2, 8 and 9 of the Employment Contracts Act.

On conditions referred to in paragraph 2, the provisions of universally applicable collective agreements as referred to in section chapter 2, section 7, of the Employment Contracts Act concerning annual holiday, working hours and occupational safety shall apply to posted workers' employment relationships.

Posted workers shall be paid a minimum rate of pay, which shall be considered to refer to remuneration specified on the basis of a collective agreement as referred to in chapter 2, section 7, of the Employment Contracts Act. In case this collective agreement is not applicable to the employment relationship, the usual and reasonable wage should be paid to the worker, if the remuneration agreed between the employer and the worker is essentially lower than this. (1198/2005)

Notwithstanding paragraph 2, chapter 1, section 9, chapter 2, section 2, and chapter 13, sections 1 and 2, of the Employment Contracts Act, sections 6, 7, 8, 8 a, 8 d, 9 and 9 a of the Act on Equality between Women and Men (609/1986), hereinafter referred to as *the Equality Act*, the Occupational Safety and Health Act (738/2002), the Occupational Health Care Act (1383/2001), and the Young Workers' Act (998/1993) and provisions and stipulations issued under them shall apply to work performed by posted workers. (1198/2005)

A party claiming in legal proceedings that the law of another country should be applicable to the employment contract of a posted worker shall show proof of the contents of the applicable law. (1198/2005)

Section 3

Special allowances considered part of pay

When it is considered whether a posted worker's pay meets the requirements laid down in section 2, paragraphs 2 and 4, special allowances paid due to the worker's posting, unless they are paid in reimbursement for actual costs incurred because of the posting, shall be considered part of the worker's pay.

Section 4

Threshold period applicable to certain types of work

The provisions of section 2, paragraph 2, subparagraphs 1, 3 and 4, and paragraphs 3 and 4, concerning minimum paid annual holiday and holiday pay do not apply to initial assembly or first installation of goods carried out by a skilled or specialist worker where this is an integral part of a contract for the supply of goods and necessary for taking the goods supplied into use, if the period of the posting does not exceed eight days.

What is provided in paragraph 1 does not apply to building work related to the construction, repair, upkeep, alteration or demolition of buildings. Such work is also

considered to include excavation, earthworks, assembly and dismantling of prefabricated elements, fitting out and installation work, alterations, dismantling, maintenance, upkeep, painting and cleaning work, and improvements.

When the duration of a worker's posting as referred to in paragraph 1 is calculated, all periods within the last 12 months during which such work has been carried out by a worker posted by the same employer shall be taken into account.

Section 4 a (1198/2005)
Selecting a representative

In case the employer of a posted worker intended in Section 1 (*the company posting the worker*) does not have a business location in Finland, they shall have a representative in this country, who is authorised to act for the company posting the worker in a court of law and to receive on behalf of this company writs of summons and other documents issued by the authorities. The representative shall be selected no later than at the date when the posted worker starts working, and the authorisation shall be valid for a minimum of 12 months after the date at which the posted worker ceases working in Finland. The party for which the work is performed shall through their contracts with the company posting the worker or by other means at their disposal ensure that the company posting the worker selects the representative intended herein.

A representative need not be selected in case the posting of the worker is no more than 14 days in duration. In case several consecutive employment contracts concerning the posting without interruption or with short-term interruptions only have been concluded between the posted worker and his/her employer, the posting shall be regarded as having been continuous.

Section 4 b (1198/2005)
Liability to keep records of posted workers

As the posted worker starts working, the employer or, if the employer does not have a business location in Finland, the employer's representative intended in Section 4 a, shall have in their possession the following information in writing:

- 1) the identifying details of the company posting the worker and information on the responsible persons in the country in which the company posting the worker is located;
- 2) identifying details of the posted worker,
- 3) written information pursuant to Chapter 2 Section 4 of the Employment Contracts Act on the working conditions applicable to the employment contract of the posted worker; and
- 4) information on the basis of the employment rights of the posted worker.

In case the company posting a worker is not obliged to select a representative pursuant to Section 4 a, the company shall also be in possession of the information intended in Paragraph 1 when it does not have a business location in Finland.

In order to safeguard the minimum working conditions applicable to the employment relationship of a posted worker, the company posting the worker shall, before the work performed in Finland is initiated, let the party for whom the work is performed know who is in possession of the information intended in Paragraph 1 during the worker's posting. This information shall be kept on file for two years after the posted worker has ceased working in Finland.

Section 5 (163/2005)

Documentation of working hours, records of annual holidays and payment details (1198/2005)

The provisions of sections 36, 37 and 37a of the Working Hours Act concerning documentation of working hours and section 29 of the Annual Holidays Act concerning records to be kept on annual holidays apply to work carried out by posted workers. Employers shall also comply with the provisions of section 34 and 35 of the Employment Contracts Act or other procedures that ensure the same standard of protection for workers.

In case the posting of a worker lasts for more than eight days, the employer or, if the employer does not have a business location in Finland, the representative intended in Section 4 a, shall have in their possession in Finland documentation on the working hours concerning work performed in Finland and records of the wages paid to the posted worker. (1198/2005)

Section 6

Provisions applicable to employers' liability to pay compensation

When the Employment Contracts Act is applied to an employment relationship under this Act, the employer's liability to pay damages is determined according to chapter 12, section 1 of the Employment Contracts Act. (74/2001)

As regards employers' liability to pay compensation on the grounds of discrimination as specified in section 8 of the Equality Act, section 10, paragraphs 1-3 and 5, section 11 and, as appropriate, section 10, paragraph 4, of the said Act shall apply.

Section 7

Claims for remuneration and compensation

In order to claim remuneration under provisions referred to in section 2, paragraph 2, subparagraph 1, legal action must be brought within the time limit referred to in section 38 of the Working Hours Act. In order to claim remuneration under provisions referred to in section 2, paragraph 2, subparagraph 3, legal action must be brought within the time limit referred to in section 34 of the Annual Holidays Act. (163/2005)

Concerning claims for compensation and other recompense on the grounds of discrimination as specified in section 8 of the Equality Act, section 12, paragraphs 2 and 3, and section 13 of the said Act shall apply.

Section 8 *Supervision*

Supervision of compliance with this Act is the responsibility of the occupational safety and health authorities, except for the provisions of the Equality Act referred to in section 2, paragraph 5, in which case supervision of compliance is the responsibility of the Equality Ombudsman and the Equality Board.

Employers or, if the employer does not have a business location in Finland, the representative intended in Section 4 a, must on request provide the occupational safety and health authorities with the information and reports referred to in Sections 4 b.1 and 5.2. (1198/2005)

Section 8 a (1198/2005) *Providing information to staff representatives*

In case the posting of a posted worker is more than eight days in duration, the employer or the representative intended in Section 4 a shall, subject to authorisation by the posted worker, give the shop steward elected by the staff group in question or the delegate intended in Chapter 13 Section 3 of the Employment Contracts Act the information pursuant to Section 4 b.1, subparagraph 3 of this Act on the terms and conditions of work applicable to the employment contract of the worker.

Section 9 *Jurisdiction*

Notwithstanding provisions on jurisdiction elsewhere in the law or in international conventions binding on Finland, action based on rights or duties referred to in this Act can also be brought before a Finnish district court within whose jurisdiction posted workers carry or carried out work as referred to in this Act.

Section 9 a (1198/2006) *Penal provisions*

In case an employer or their representative or a representative selected pursuant to Section 4 a intentionally or through negligence violate the provisions on possession of information and reports or duty to report intended in Section 4 b, or neglect to give the information intended in Section 8 a to a staff representative, they shall be sentenced to a fine for *the violation of the Posted Workers Act*.

The party for whom the work is performed or their representative, who intentionally or through negligence neglect the duty of care provided in Section 4 a, shall also be convicted of *a violation of the Posted Workers Act*, the representative of the party having the work performed, however, only in consideration of the instructions and procedures issued at the workplace.

The penalty for violations of the labour legislation is imposed in Chapter 47 of the Penal Code (39/1889).

Section 10
Implementation

The ministry in charge of occupational safety and health and its supervision is responsible for the implementation of this Act, the provision of related information, and cooperation with the authorities of other Member States, and the said ministry shall, as necessary, collaborate with the ministry responsible for law-drafting concerning employment relationships and working hours in matters concerning implementation.

Section 11
Entry into force

This Act enters into force on December 16, 1999.

Measures needed for the implementation of this Act can be taken before it enters into force.

The amendment No 74/2001 came into force on 1 st June 2001.

The amendment No 749/2002 came into force on 1 st January 2003.

The amendment No 163/2005 came into force on 1 st April 2005.

The amendment No 1198/2005 came into force on 1 st January 2006.

Unofficial Translation

Ministry of Labour, Finland
March 2007

Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006)

In accordance with the decision of Parliament, the following is enacted:

Section 1

Objectives of the Act

The objectives of this Act are to promote equal competition between enterprises, to ensure observance of the terms of employment and to create the conditions in which enterprises and organisations governed by public law can ensure that enterprises concluding contracts with them on temporary agency work or subcontracted labour discharge their statutory obligations as contracting parties and employers.

Section 2

Scope of application

This Act shall apply to a contractor :

- 1) who in Finland uses temporary agency workers; or
- 2) at whose premises or work site in Finland an employee is working, who is in the service of an employer having a subcontract with the contractor, and whose tasks relate to the tasks normally performed in the course of the contractor's operations or to transportation relating to the contractor's normal operations.

In building, and in repair, servicing and maintenance relating to building, the Act is applied:

- 1) to construction contractors using subcontractors;
- 2) to all those contractors in the contractual chain contracting out part of the work at a shared workplace as referred to in the Act on Occupational Safety and Health (738/2002) Section 49.

This Act shall not apply when the vessel of an enterprise engaged in merchant shipping is outside the borders of Finland. On board a Finnish vessel, however, this Act shall be applied to work falling within the scope of the Seamen's Act (423/1978), even when the vessel is outside the borders of Finland.

Section 3

Definitions

In this Act:

- 1) *the contractor* shall mean a trader as referred to in Section 3 of the Trade Registers Act (129/1979), who is under an obligation to submit the basic notification referred to in the section in question, and a state, a municipality, a joint municipal authority, the Region of Åland, a municipality or joint municipal authority in Åland, a parish, a parish union, another religious community and other legal person governed by public law and an equivalent enterprise operating abroad;
- 2) *a temporary agency worker* shall mean an employee who has concluded an employment contract with an employer operating in Finland or abroad that has assigned the employee with his or her consent for use of another employer;
- 3) *a subcontract* shall mean a contract made between the contractor and his or her contracting partner to produce a certain work outcome against compensation.

Section 4

Derogations from the scope of the Act

This Act is not applied if:

- 1) the duration of the work by the temporary agency worker or workers does not exceed a total of 10 days; or
- 2) the value of the compensation referred to in Section 2, subsection 1, paragraph 2 is less than 7 500 euros without value added tax.

When calculating the limit values referred to in the above subsection 1, the work is considered to have continued without interruption if the work or work outcome performed for the contractor is based on successive, uninterrupted contracts or with only short breaks between them.

Section 5

The contractor's obligations to check

Before the <contractor> concludes a contract on the use of a temporary agency worker or on work based on a subcontract, the contractor shall require from the contracting partner, and he or she shall provide the contractor with:

- 1) an account of whether the enterprise is entered in the Prepayment Register in compliance with the Act on Prepayment of Tax (1118/1996) and the Employer Register, and is registered as VAT-liable in the Value Added Tax Register in compliance with the Value Added Tax Act (1501/1993);
- 2) an extract from the Trade Register;
- 3) a certificate of tax payment or of tax debt, or an account that a payment plan has been made regarding a tax debt;
- 4) certificates of pension insurances taken out and of pension insurance premiums paid, or an account that a payment agreement on outstanding pension insurance premiums has been made; and
- 5) an account of the collective agreement or the principal terms of employment applicable to the work.

If the employer of the temporary agency worker or the contracting partner to a subcontract is a foreign enterprise, the enterprise shall provide the contractor with information corresponding to that referred to in Section 1 above, by presenting an extract from a register or an equivalent certificate complying with the legislation of the country where the enterprise is domiciled, or in some other generally accepted way.

«The contractor» may also him- or herself procure the information referred to in subsection 1, paragraphs 1 and 2, and in subsection 2. The contractor has the right to accept an account other than an account or certificate provided by an authority as referred to in subsections 1 or 2, provided that it has been given by another party generally held to be reliable that is responsible for evaluating or maintaining information.

The contractor need not request the accounts and certificates referred to in subsections 1, 2 and 5 if he or she has good reason to trust that the contracting partner will discharge their statutory obligations on the grounds that:

- 1) the contracting partner is a state, a municipality, a joint municipal authority, the Region of Åland, a municipality or joint municipal authority in Åland, a parish, a parish union, the Social Insurance Institution or the Bank of Finland, a public limited company as referred to in the Companies Act (624/2006), a state enterprise, a company subject to private law wholly owned by a municipality, or an equivalent foreign organisation or enterprise;
- 2) the operations of the contracting partner are established;
- 3) the contractual relationship between the contractor and the contracting partner can be held to be established on the basis of earlier contractual relationships; or
- 4) there is a reason for trust comparable to what is provided above in paragraphs 1—3 .

If a contract as referred to in this Act is in force for more than 12 months, the contractor's contracting partner must provide the contractor, at 12 month intervals during the contractual relationship, with certificates as referred to in subsection 1, paragraphs 3 and 4, or with information equivalent to that referred to in subsection 2.

The accounts and certificates referred to in subsections 1 and 2 above must be kept for no less than two years from the date on which the work relating to the contract has been completed.

Section 6

Providing information to a representative of personnel

The contractor shall on request notify a shop steward elected on the basis of a collective agreement, or if no such representative has been elected, an occupational safety and health representative and an elected representative as referred to in the Employment Contracts Act (55/2001) Chapter 13, Section 3, of any contract concerning temporary agency work or subcontracted labour as referred to in this Act. When providing this information, the number of employees engaged, the identifying details of the enterprise concerned, the work site, the tasks, the duration of the contract and the applicable collective agreement or principal terms of employment are to be made clear.

Section 7

Validity of information

The information, certificates and accounts presented by virtue of this Act shall not be more than three months old.

If «the contractor» concludes a new contract with the same contracting partner before 12 months has elapsed since he or she has discharged the obligation to check referred to in section 5 on concluding the contract for the first time, the contractor is not subject to a new obligation to check, unless he or she has reason to believe that changes requiring review have taken place in the contracting partner's circumstances.

Section 8

Confidentiality

«The contractor » or a person in his or her service shall not disclose any information as referred to in Section 5, received while performing the tasks provided in this Act, regarding the payment of tax or a tax debt or taking out or payment of pension insurance or outstanding pension premiums, unless the contracting partner him- or herself or an authority by virtue of law has made it public, or an employment pension institution by virtue of law has disclosed it for entry in a credit information register. Information falling within the scope of the confidentiality obligation may not be disclosed to outsiders, even after the person no longer performs the task in the course of which he or she has received the information in question.

As regards the non-disclosure obligation of a civil servant or person acting in an official capacity, what is provided in the Act on the Openness of Government Activities (621/1999) and elsewhere in the law is applicable.

Section 9

Negligence fee

«The contractor» shall be obliged to pay a negligence fee if «the contractor» has:

- 1) neglected the obligation to check referred to in Section 5;
- 2) concluded a contract on work referred to in this Act with a trader who has been barred from conducting business under the Act on Business Injunctions (1059/1985) or with an enterprise in which a partner, a member of the Board of Directors, the Managing Director, or another person in a comparable position has been barred from conducting business; or
- 3) has concluded a contract as referred to in paragraph 2, despite the fact that he or she must have known that the other contracting partner had no intention of discharging their statutory obligations as a contracting partner and as an employer.

The amount of the negligence fee is prescribed as no less than 1,500 euros and no more than 15,000 euros.

In determining the amount of the negligence fee, the factors taken into account are the degree, type and extent of the negligence, and the value of the contract between the contractor and the contracting partner. Factors to be considered for lowering the negligence fee are the contractor's effort to prevent or eliminate the effects of the negligence, and factors for raising the fee are the fact that the contractor's negligence has been repeated or systematic, and other circumstances.

It is possible that a negligence fee will not be prescribed, or a lower sum may be prescribed than the minimum amount, if the negligence can be considered minor and it can be considered reasonable to refrain from prescribing a negligence fee or to lower the negligence fee in consideration of the circumstances.

Section 10

Ordering the negligence fee

By its decision, the local office of the Occupational Safety and Health Inspectorate shall order the contractor to pay the negligence fee by the date stipulated in the decision. The right to give a decision on a negligence fee expires if the matter concerning the ordering of the fee has not been taken up within two years from the date on which the work relating to the contract as referred to in this Act has been completed.

«The contractor» may apply for amendment of the decision given by the local office of the Occupational Safety and Health Inspectorate by appealing to an administrative court as provided in the Administrative Judicial Procedure Act (586/1996).

The negligence fee is payable to the state, and the Act on the Collection of Taxes and Payments by Distraint (367/1961) is applied to its collection. The Act on Surtax and Penalty Interest (1556/1995) is applied to negligence fees.

Section 11

Penalty provision

The penalty for a confidentiality offence or violation as provided in Section 8 is prescribed according to the Penal Code (39/1889) Chapter 38 Section 1 or 2, unless the act is punishable under Chapter 40 Section 5 of the Penal Code, or a more severe penalty is provided elsewhere in the law.

Section 12

Supervision

The Occupational Safety and Health authorities supervise compliance with this Act as provided in the Act on the Supervision of Occupational Safety and Health and Cooperation on Occupational Safety and Health at the Workplace (44/2006), unless otherwise ensuing from this Act.

The Occupational Safety and Health authorities have the right to receive from the contractor on request the documents relating to the obligation to check and to take copies of them if necessary. Should the inspector notice that the conditions for prescribing a negligence fee exist, he or she must immediately bring the matter to the local office of the Occupational Safety and Health Inspectorate for consideration. If the Occupational Safety and Health authority has received notification of suspicion that the obligation to check has been breached, the local office of the Occupational Safety and Health Inspectorate shall deal with the matter urgently.

Section 13

Entry into force

This Act shall enter into force on the 1st day of January 2007.

Measures relating to the implementation of the Act may be undertaken before its entry into force.

[HE 114/2006](#)

TyVM 10/2006

EV 187/2006

Helsinki, December 22, 2006

President of the Republic of Finland

TARJA HALONEN

Minister of Labour

Tarja Filatov

FINLAND

I. Legal notice - disclaimer

This sheet aims to provide a general overview of the main substantive rules concerning the terms and conditions of employment to be met by legislation transposing Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997). By its very nature, such a sheet can only summarise and does not necessarily contain all the relevant information in this context. In no way can it replace legislative, regulatory or administrative texts, or applicable collective agreements. The information below has been provided by the authorities of the Member States, which have made every effort to ensure its accuracy. Neither the Commission nor the Member States concerned can, however, guarantee that the information provided is always precise, complete, accurate and up to date. Furthermore, publication on the portal of the European Commission does not imply in any way that the latter or its DGs and Services consider the rules presented in this way to be in conformity with Community law.

II. Instrument transposing Directive 96/71/EC

Posted Workers Act (1146/1999)

Official publication: The Statutes of Finland, Posted Workers Act (1146/1999)

Internet link: Posted Workers Act (1146/1999) in Finnish, Swedish and English:

<http://www.finlex.fi/fi/laki/ajantasa/1999/19991146>

<http://www.finlex.fi/sv/laki/ajantasa/1999/19991146>

<http://www.finlex.fi/en/laki/kaannokset/1999/en19991146>

III. Information on legislation applicable in accordance with the Directive

Information on legislation applicable to undertakings which, for a limited period of time, post workers to the territory of another Member State can be obtained at the following address:

Occupational safety and health:

Occupational safety and health authorities are mainly responsible for the enforcement of labour law. *The Ministry of Social Affairs and Health* www.stm.fi is responsible for the enforcement of occupational safety and health at national level. At local level the officials (inspectors) of the eight Occupational Safety and Health Inspectorates are in charge of occupational safety and health inspections www.tyosuojelu.fi. The Inspectorates give advice to employers and employees on questions concerning legislation on employment contracts and generally applicable collective agreements.

Ministry of Social Affairs and Health.

PO Box 33

00023 Government.

Tel. +358 - 9 - 16001.

Fax +358 - 9 - 160 74126.

kirjaamo.stm@stm.fi

OCCUPATIONAL SAFETY AND HEALTH INSPECTORATES

Internet home pages: www.tyosuojelu.fi

e-mail: firstname.lastname@tsp.stm.fi

Occupational Safety and Health Inspectorate of Uusimaa
Paasivuorenkatu 3, 5. krs
PO Box 46
FI-00531 HELSINKI
FINLAND
Tel: +358 9 774 711
Fax: +358 9 730 798 and 719 837
e-mail: helsinki.tsp@tsp.stm.fi

Occupational Safety and Health Inspectorate of Turku and Pori
Eerikinkatu 40-42
FI-20100 TURKU
FINLAND
Tel: +358 2 271 5777
Fax: +358 2 271 5778
e-mail: turku.tsp@tsp.stm.fi

Occupational Safety and Health Inspectorate of Häme
Uimalankatu 1
PO Box 272
FI-33101 TAMPERE
FINLAND
Tel: +358 3 260 8800
Fax: +358 3 260 8899
e-mail: tampere.tsp@tsp.stm.fi

Occupational Safety and Health Inspectorate of South-East Finland
Raatimiehenkatu 19
PO Box 145
FI-53101 LAPPEENRANTA
FINLAND
Tel: +358 207 470 500
Fax: +358 207 470 529
e-mail: lappeenranta.tsp@tsp.stm.fi

Occupational Safety and Health Inspectorate of Vaasa
Kauppapuistikko 20 B
PO Box 172
FI-65101 VAASA
FINLAND
Tel: +358 20 123 6200
Fax: +358 20 123 6229
e-mail: vaasa.tsp@tsp.stm.fi

Occupational Safety and Health Inspectorate of Central Finland
Ailakinkatu 17
PO Box 119
FI-40101 JYVÄSKYLÄ
FINLAND
Tel: +358 103 974 000

Fax: +358 103 974 005
e-mail: jyvaskyla.tsp@tsp.stm.fi

Occupational Safety and Health Inspectorate of East Finland
Vuorikatu 26 A
FI-70700 KUOPIO
FINLAND
Tel: +358 17 201 401
Fax: +358 17 201 410
e-mail: ita-suomi.tsp@tsp.stm.fi

Occupational Safety and Health Inspectorate of North Finland
Albertinkatu 8
PO Box 229
FI-90101 OULU
FINLAND
Tel: +358 8 315 9511
Fax: +358 8 315 9599
e-mail: oulu.tsp@tsp.stm.fi

Information can also be obtained at:

Legislation:

The Posted Workers Act and other legislation can be found in the official database of legislation in Finnish and Swedish www.finlex.fi (choose: Lainsäädäntö- Ajantasainen lainsäädäntö – vuosinumero – lain numero). English translations of the acts may be found at the same address (choose: Legislation – Translations of Finnish acts and decrees – Year number – Act number).

English translations of Finnish labour law can also be found on the homepage of the Ministry of Labour. The Ministry of Labour has produced brochures on labour law. In addition to Finnish and Swedish, both the brochures and labour law are available in English on the homepage of the Ministry of Labour www.mol.fi.

Ministry of Labour

P.O. Box 34
FIN-00023 Government
Tel. +358 10 60 4001
(from Finland 010 60 4001)
Fax +358 10 60 48990
(from Finland 010 60 48990)
www.mol.fi
www.mol.fi/finnwork

Generally applicable collective agreements:

Generally applicable collective agreements, which form the basis of the minimum conditions of employment contracts, can be found at the following address: www.finlex.fi/fi/viranomaiset/ (choose – Työehtosopimukset). Generally applicable collective agreements are available only in Finnish. Some are also in Swedish, but their contents can also be requested in English from labour market organisations and from the Occupational Safety and Health Inspectorates.

Taxes:

The homepage of the tax administration provides information on both the E 101 certificate for posted workers and on obligations of foreign companies in Finland in respect of social security and income tax: www.vero.fi. (choose – Kansainväliset asiat – Ulkomaalaisen yrityksen työnantajavelvollisuudet, Verohallituksen julkaisu 281.04.5.2004)

Social security:

Information on the social security of posted workers is available from the Ministry of Social Affairs and Health: www.stm.fi (choose – Sosiaalivakuutus – Kansainvälinen sosiaalivakuutus)

Central labour market organisations:

Confederation of Finnish Industries, EK
P.O. Box 30,
FI-00131 Helsinki, Finland
(Eteläranta 10, 00130 Helsinki, Finland)
Tel. +358 9 42020
Fax +358 9 4202 2299
ek@ek.fi
www.ek.fi

The Central Organisation of Finnish Trade Unions (SAK)
Hakaniemenranta 1
PL 157, 00531 Helsinki
Tel. +358 20 774 00
(from Finland 020 774 00)
Fax +358 20 774 0225
(from Finland 020 774 0225)
sak@sak.fi
www.sak.fi

The Finnish Confederation of Salaried Employees, STTK
Address: PL 248, 00171 HELSINKI
Visiting address: Pohjoisranta 4A, 3 rd floor / P.O. Box 248
Tel: +358 9 131 521
(09 131 521 in Finland)
Fax: +358 9 652 367
e-mail: firstname.lastname@sttk.fi
www.sttk.fi

Confederation of Unions for Academic Professionals in Finland – AKAVA
Address: Rautatieläisenkatu 6, 00520 Helsinki
Tel. +358 02 7489 400
(020 7489 400 in Finland)
Fax +358 9 142 595 (switchboard)
(09 142 595 in Finland)
e-mail: firstname.lastname@akava.fi
www.akava.fi

Other useful links:

Federation of Finnish Enterprises (Suomen Yrittäjät)

Mannerheimintie 76 A

FIN - 00101 Helsinki

Finland

Tel. +358 9 229 221

Fax +358 9 2292 2999

E-mail: toimisto@suomen.yrittajat.fi

www.yrittajat.fi

A joint guide of the Confederation of Finnish Construction Industries (Rakennusteollisuus RT) and the Construction Trade Union (Rakennusliitto) on foreigners working in Finland (pdf-file), "Vastuullista rakentamista laajentuvassa EU:ssa" (Sustainable construction in an expanding EU) http://www.rakennusteollisuus.fi/tilastot_julkaisut/sahkoiset_julk/etusivu

IV. Failure to comply with the prescribed terms and conditions of employment

Cases of failure to comply with the prescribed terms and conditions of employment in Finland and possible cases of illegal transnational activities can be reported to the following address:

See III and XVII Criminal investigation

OCCUPATIONAL SAFETY AND HEALTH INSPECTORATES

e-mail: firstname.lastname@tsp.stm.fi

Internet home pages: www.tyosuojelu.fi

www.poliisi.fi

<http://www.poliisi.fi/poliisi/home.nsf/MainDocuments/c2a28cbf82f6b857c2256df90029ed92?OpenDocument>

V. Situations constituting a posting [Article 1 of the Directive]

The Posting of Workers Act applies to the following situations:

1. the worker is posted to perform work under the direction and on behalf of the undertaking under a contract concluded between the employer and the user of the services operating in Finland, [*section 1, paragraph 2, point 1 of the Posted Workers Act*]
2. the worker is posted to work for an establishment or undertaking owned by the group of undertakings concerned, or [*section 1, paragraph 2, point 2 of the Posted Workers Act*]
3. the worker is hired out to a user undertaking and the employer is a temporary employment undertaking or placement agency. [*section 1, paragraph 2, point 3 of the Posted Workers Act*]

A posted worker means a worker who normally carries out his or her work in a country other than Finland and whom an employer undertaking established in another country posts to Finland within the framework of the transnational provision of services. Whether the employer is established in another EU country or outside the EU is not significant when it comes to the application of the law. In addition, the posting has to be for a limited period.

VI. Posted workers [Article 2 of the Directive]

Directive 96/71/EC applies to workers who, for a limited period of time, carry out their work on the territory of a Member State other than the State in which they normally work.

In section 1, paragraph 1 of the Posted Workers Act there is a reference to the definition of a worker given in the Employment Contracts Act. In Finland the definition of a worker is given in the Employment Contracts Act (55/2001). This definition applies irrespective of that person's title in the country of origin.

The Employment Contracts Act defines the scope of application of the Act, i.e. the criteria for work under contract. The Employment Contracts Act applies to contracts (employment contract) entered into by an employee agreeing personally to perform work for an employer under the employer's direction and supervision in return for pay or some other remuneration. If these criteria for employment contracts are fulfilled, the Employment Contracts Act and other labour laws are applicable to the employment contract whatever the contract is called. Ultimately it is up to a court to decide whether these criteria are fulfilled in each individual case.

According to the case law of the Court of Justice of the European Communities, the temporary nature of an activity carried out on the territory of a Member State in the context of free provision of services cannot be determined abstractly, but should be judged on a case-by-case basis, depending on the duration, frequency and periodicity or continuity.

It should be noted that if an occupational activity in Finland can no longer be considered as being exercised temporarily, taking account of the above mentioned criteria, but is stable and continuous, all the binding rules and regulations in force in Finland apply.

Internet link:

Employment Contracts Act (55/2001) in Finnish, Swedish and English

<http://www.finlex.fi/fi/laki/ajantasa/2001/20010055>

<http://www.finlex.fi/sv/laki/ajantasa/2001/20010055>

<http://www.finlex.fi/fi/laki/kaannokset/2001/en20010055>

VII. Work periods and rest periods [Article 3(1)(a) of the Directive]

The maximum working hours and minimum rest periods of posted workers are based on the provisions of the Finnish Working Hours Act (605/1996) and the Work in Bakeries Act (302/1961). Section 2, paragraph 2 of the Posted Workers Act there refers to the following provisions:

For working hours and rest periods the following provisions are applicable:

- regular working hours (sections 6–14 of the Working Hours Act)
- definition of day and week (section 16 of the Working Hours Act)
- exceeding regular working hours (sections 17–21 of the Working Hours Act)
- night work (section 26 of the Working Hours Act)
- shift work and night shifts in period-based work (section 27 of the Working Hours Act)
- rest periods (sections 28–32 of the Working Hours Act) and

- requirements for Sunday work (section 33, paragraph 1 of the Working Hours Act).

Through collective agreements, it is possible to agree otherwise on, for example:

- the time included in working hours,
- stand-by time,
- flexibility and maximum accumulation of flexible working hours,
- compensation payable for additional work and overtime,
- night work in jobs other than those listed under the night work provisions in the Act, and night shifts in period-based work,
- daily rest periods,
- weekly free time and derogations to it,
- Sunday work and the associated wage increments payable for it,
- working hours adjustment system and work schedules.

Statutory *regular working hours* must not exceed eight hours a day and 40 hours a week. The regular weekly working hours can also be arranged in such a way that the average is 40 hours over a period of no more than 52 weeks, which allows six-day working weeks. The daily limit of eight hours may not be exceeded, and, because free time must be given each week, the working week cannot be longer than 48 hours.

Working hours in period-based work

The Working Hours Act does not restrict the duration of regular daily or weekly working hours in period-based work, where the regular hours can be arranged so that they do not exceed 120 hours during a three-week period or 80 hours during a two-week period. The employer is permitted to apply period-based working hours only in companies, shops, institutions and jobs listed in the Act.

The Working Hours Act prescribes the possibility to agree on employees' regular working hours by collective agreements. The provision sets out to give the parties of collective bargaining an opportunity to take sector-specific requirements into consideration in solutions related to regular working hours.

'Day' refers to a calendar day and 'week' refer to a calendar week unless otherwise agreed.

Additional work is work which is performed at the employer's initiative and with the employee's consent and which exceeds the contractual regular working hours but does not exceed the statutory regular working hours. Working hours less than the statutory regular working hours may be based on either an employment contract or a collective agreement.

Overtime is work which is performed at the employer's initiative in addition to the statutory regular working hours. If the working hours arrangement is one where working hours are averaged over a reference period, all work that is performed in addition to the regular working hours given in the work schedule is considered to be overtime. In period-based work, overtime is calculated for each reference period. The maximum amount of overtime during a four-month period is 138 hours. The amount of overtime is also restricted to a maximum of 250 hours per calendar year. However, it is possible to enter into contract locally on additional overtime beyond the above to a maximum of 80 hours per calendar year.

Remuneration payable on additional work and overtime

The remuneration paid on additional work must be at least as much as the wage paid for the agreed working hours. For daily overtime, the employee must be paid a wage increment of 50 percent for the first two hours and a wage increment of 100 percent for hours beyond that. For weekly overtime, a wage increment of 50 percent must be paid.

For a worker paid by the hour, the hourly wage forms the basis for overtime remuneration. If the employee's wages are determined on the basis of a time longer than an hour, the hourly wage is calculated by dividing the contractual wages by the number of regular working hours. For an employee with a monthly salary, the monthly salary forms the basis of calculation. For work performed with incentive wage, the hourly wage is calculated by dividing the incentive wage by the number of hours taken to do the work. The number of hours used as the divisor in this case is the actual number of hours worked, which may consist of either regular working hours or overtime. When the basic amount of remuneration for additional work or overtime is calculated, fringe benefits included in the wages must be taken into consideration, as items increasing the basic amount.

Preparation and completion work refers to: work which is necessary to enable other employees in the same workplace to work throughout their normal working hours; work carried out by a managerial employee immediately prior to the commencement or after the end of his subordinates' working hours; or work which is necessary in shift work to allow information to be exchanged at the change of shifts. Preparation and completion work requires the employee's consent, which can be given in the employment contract. Employees can be required to do up to five hours of such work per week; this is not taken into account with regard to maximum overtime.

Emergency work is work performed outside the regular working hours because of unforeseeable reasons in exceptional circumstances.

Night work can only be assigned in the cases listed in the Act. Work carried out between 23.00 and 06.00 is considered night work. Night work is allowed:

- in period-based work;
- in work which has been divided into three or more shifts;
- in work which has been divided into two shifts, but only until 01.00;
- in the maintenance and cleaning of public roads, streets and airfields;
- in pharmacies;
- at newspapers and magazines, news and photographic agencies and in other media work, and in the delivery of newspapers;
- in service and repair work which is necessary to allow work to proceed regularly in undertakings, corporations or foundations, or in work which cannot be carried out simultaneously with the regular work of the workplace concerned;
- at peat sites during the peat extraction season;
- at sawmill drying houses;
- in heating work at greenhouses and drying plants;
- with the employee's consent, in urgent sowing and harvesting, in work directly related to parturient farm animals or to the treatment of ill farm animals and in other such farm work which cannot be postponed due to its nature;
- in work which is carried out almost completely at night due to its nature.

Sunday work

Sunday work is work performed on a Sunday or other church holiday. It is permissible to assign Sunday work both for reasons arising from the nature of the work and with the employee's consent. Without the employee's specific consent, the employer can nevertheless assign work on a Sunday or other church holiday if the work is, because of its nature, regularly performed on the said days. The wage payable for Sunday work is twice the regular wage. The compensation for Sunday work does not have an effect on the amount of compensation for extra overtime or emergency work that may be payable to the employee. Compensation for Sunday work cannot be converted into free time.

Rest periods

If daily working hours exceed six, the employee must be granted a regular rest period of at least one hour during which she/he is free to leave the workplace (lunch hour). In this case, the rest period is not included in working hours. In shift work and period-based work, as an exception to the general provision, the employee must be given a rest period of at least half an hour or an opportunity to eat during the work shift. An employer and employee can agree on a shorter rest period, but this may not be less than half an hour. The rest period cannot be taken immediately at the beginning or end of a work shift. Additionally, if she/he desires, the employee is entitled to have an extra rest period if the working hours exceed ten hours per day.

Daily rest period

As a general rule, an employee is entitled to an uninterrupted rest time of at least 11 hours within 24 hours from the beginning of each work shift. In period-based work, the employee must be given an uninterrupted rest period of at least nine hours. The provision on daily rest period is not applied to work performed by an employee on stand-by.

Weekly free time

An employee is entitled to at least 35 hours of uninterrupted free time each week, preferably around a Sunday. The employer is not obliged to determine in advance which of the free times in the work schedule drawn up in advance constitutes the free time referred to in the provision. Annual leave, mid-week holiday, working hours balancing leave or any other single period of free time lasting at least 35 hours fulfils the criteria set for weekly leisure time. The weekly free time can be arranged so that it averages 35 hours within a 14-day period. In uninterrupted shift work, free time can be organised to average 35 hours within a maximum of 12 weeks. Weekly free time must, however, be at least 24 hours in both cases.

In addition, under Section 2, paragraph 3 of the Posted Workers Act, the provisions of generally applicable collective agreements concerning working hours apply to posted workers' employment relationships. Generally applicable collective agreements can be found at the following address: www.finlex.fi/fi/viranomaiset/ (choose – Työehtosopimukset)

In June 2006 there were 160 generally applicable collective agreements in force.

Internet link:

Working Hours Act (605/1996) in Finnish, Swedish and English

<http://www.finlex.fi/fi/laki/ajantasa/1996/19960605>

<http://www.finlex.fi/sv/laki/ajantasa/1996/19960605>

<http://www.finlex.fi/fi/laki/kaannokset/1996/en19960605>

Working Hours Act Brochure 2005 in Finnish, Swedish and English where the above-mentioned provisions are described more detailed:

http://www.mol.fi/mol/fi/02_tyosuhteet_ja_lait/01_tyosuhteet/04_tyoaika/index.jsp
http://www.mol.fi/mol/se/02_anstallningsfragor_lagar/01_anstallningsfragor/04_arbetstid/index.jsp
http://www.mol.fi/mol/en/03_labourlegislation/04_workinghours/index.jsp

VIII. Paid annual holidays [Article 3(1)(b) of the Directive]

In Finland posted workers' annual holidays, annual holiday pay and holiday compensation are specified in Sections 5-19 of the Annual Holidays Act (162/2005). Section 2, paragraph 2, point 3 of the Posted Workers Act contains a reference to the above-mentioned provisions of the Annual Holidays Act.

The provisions on the length of the annual holiday, holiday pay and holiday compensation are applied to posted workers. The new Annual Holidays Act entered into force on 1 April 2005. The Act applies both to contract employees and to civil service employees.

Through collective agreements, it is possible to agree otherwise on:

- the holiday season,
- the calculation and payment of holiday pay and holiday compensation,
- making winter holiday part of other arrangements concerning shortened working hours which they have agreed on,
- dividing the portion of annual holiday exceeding 12 weekdays in such a way that it can be taken in one or more instalments and on the period equivalent to time at work as laid down, provided that the duration of employees' annual holidays is equal to that laid down in the Annual Holidays Act.

Holiday earnings

Holiday is earned by working during the holiday credit year (from 1 April to 31 March). The right to holiday accrues either based on the *regulation of 14 days, or on the regulation of 35 hours*. Anyone not fulfilling these earnings regulations is entitled to paid leave corresponding to annual holiday (the so-called new leave system). The 14-day regulation covers those who according to their contracts work at least 14 days every month. The 35-hour regulation covers those who according to their contracts work less than 14 days a month, but at least 35 hours for at least one month. The employee earns 2 or 2.5 weekdays of annual holiday for each full holiday credit month, depending on the duration of his employment relationship. When the employment relationship has lasted a year, the maximum length of the annual holiday is 30 weekdays.

Full holiday credit month

The length of the annual holiday depends on the amount of full holiday credit months. For employees covered by the 14-day regulation, a full holiday credit month is a calendar month during which they have had at least 14 days at work, or the equivalent of days at work. For employees covered by the 35-hour regulation, a full holiday credit month is a calendar month during which they have had at least 35 hours at work, or the equivalent of hours at work. When determining whether a calendar month is a full holiday credit month or not, the periods of absence from work especially mentioned in the Act are regarded as periods equivalent to

days or hours at work. These cases of absence from work include periods of annual holidays, illness, maternity, paternity or parental leave, study leave and lay-offs, within the restrictions laid down in the Act. The provisions regarding time equivalent to time at work are applied as such to employees covered by the 14-day regulation and the 35-hour regulation.

New leave system

Employees not covered by the earnings regulations (14 days or 35 hours), who according to their contracts work less than 35 hours every month, are entitled to paid leave corresponding to annual holiday. The employee can be granted 2 weekdays of leave for each month the employment contract is valid. An employment relationship that has lasted a year entitles employees to four weeks of leave, during which holiday compensation is paid. This leave system is also applied to employees working at home and to an employer's family members when there are no other employees working for the employer. Also, employees who have worked for the same employer under repeated fixed-term employment contracts, with only short-term interruptions, are entitled to take paid leave. In these cases the maximum length of the leave depends on the duration of the employment relationship, similar to determining the length of the annual holiday.

Employees are, if they so desire, entitled to take leave. If the employee does not take leave, the holiday compensation paid according to the working time is paid at the end of the holiday season, at the latest.

Holiday pay and holiday compensation

Employees covered by the 14-day regulation, together with employees receiving weekly or monthly pay who according to their contracts work at least 35 hours every month, are paid their normal pay during their annual holidays.

The holiday pay of employees covered by the 14-day regulation who receive hourly or incentive pay is calculated by multiplying their average daily pay by the number of days holiday.

The holiday pay of employees covered by the 35-hour regulation who receive hourly or incentive pay, and of employees who receive weekly or monthly pay but do not work 35 hours every month, is percentage-based. Depending on the duration of the employment relationship, the holiday pay is either 9 or 11.5 percent of pay in the holiday credit year. If the employee has not been able to attend work during the holiday credit year, for instance due to family leave, illness, rehabilitation or lay-off, as referred to in the Annual Holidays Act, the calculated amount of unreceived pay for the period of absence is added to the pay used as a basis for calculating the holiday pay.

At the end of an employment relationship, the holiday compensation regarding holiday not taken is calculated according to the regulations regarding holiday pay, as mentioned above.

In addition, under Section 2, paragraph 3 of the Posted Workers Act, the provisions of generally applicable collective agreements concerning annual holidays apply to posted workers' employment relationships. Generally applicable collective agreements can be found at the following address: www.finlex.fi/fi/viranomaiset/ (valitse – Työehtosopimukset)

In June 2006 there were 160 generally applicable collective agreements in force.

Internet link:

Annual Holidays Act (162/2005) in Finnish, Swedish and English

<http://www.finlex.fi/fi/laki/ajantasa/2005/20050162>

<http://www.finlex.fi/sv/laki/ajantasa/2005/20050162>

<http://www.finlex.fi/pdf/saadkaan/E0050162.PDF>

See also homepages of Ministry of Labour

http://www.mol.fi/mol/en/03_labourlegislation/04_workinghours/index.jsp

IX. Pay [Article 3(1)(c) of the Directive]

Section 2, paragraph 4 of the Posted Workers Act provides for a minimum rate of pay for posted workers.

Posted workers must be paid a minimum rate of pay, as specified on the basis of a collective agreement as referred to in Chapter 2, Section 7, of the Employment Contracts Act. The employer must comply at least with the provisions of a national collective agreement considered representative in the sector in question (*generally applicable collective agreement*) on the terms and working conditions of the employment relationship that concern the work the employee performs or nearest comparable work. Any term of an employment contract that is in conflict with an equivalent term in the generally applicable collective agreement is void, and the equivalent provision in the generally applicable collective agreement must be observed instead.

The provision on the minimum pay of workers posted from abroad has been amended from the beginning of January 2006 in cases where a generally binding collective agreement is not applied to the work. In this case, a usual and reasonable wage is to be paid to the worker, if the remuneration agreed between the employer and the worker is essentially lower than this.

The Board of generally applicable collective agreements in connection with the Ministry of Social Affairs and Health establishes the general applicability of collective agreements. The Board examines the general applicability of all national collective agreements. It is responsible for the publication in full of generally applicable collective agreements on the internet.

As regards remuneration for overtime work, Section 2, paragraph 2, point 1 of the Posted Workers Act makes reference to Sections 22–25 and Section 33, paragraphs 2 and 3, of the Working Hours Act, and Section 5 of the Work in Bakeries Act (*see Section VII on maximum working hours and minimum rest periods in the Working Hours Act 2005 Brochure*).

The above-mentioned provisions apply to a posted worker in so far as they are more favourable to the worker than the legal provisions of another country that would otherwise be applicable.

X. Rules concerning hiring-out of workers and the terms and conditions applying to temporary workers [Article 3(1)(d) and (9) of the Directive]

Chapter 4 of the Employment Services Act (1295/2002) contains provisions on the liability of services to charges. Under the Act, both public and private employment services, including hiring of labour, must be free of charge to personal clients.

At the beginning of 2000, a decree on the duty to submit information concerning private employment services (1360/1999) entered into force. Under this decree, private employment service enterprises (including foreign service providers) are obliged, at the request of the labour authority, to submit information on their operations concerning the following matters:

- the number of persons exchanged to work by occupational group and the number of persons exchanged on the basis of hiring out of labour
- the number of hired persons and the average duration of hired employment relationships
- the number of customers hiring labour by using employment exchange services.

Discharge of Employer's Obligations in temporary agency work

The user enterprise has to ensure that the conditions for work are such that hired employees will be able to perform their work as safely as other employees at the workplace. The user enterprise, which uses the right to direct and supervise, is, during each work period, responsible for the legality of the working hours applied to the employment relationships of hired employees. The working hour arrangements have to fulfil, for example, the obligations concerning rest periods. The user enterprise also has the responsibility to make sure that the hired employee's working hour documents are properly filled in.

XI. Health, safety and hygiene at work [Article 3(1)(e) of the Directive]

The Occupational Safety and Health Act (738/2002) and the Occupational Health Care Act (1838/2001) apply to posted workers. Section 2, paragraph 5 of the Posted Workers Act refers to the above-mentioned acts.

Occupational Safety and Health

The Occupational Safety and Health Act (738/2002) is a basic law in the field of occupational safety and health. It applies to work performed under employment contract or under public service or position of public law comparable to public service. The act is also applicable to a pupil's or student's work during practical training, a labour political measure, rehabilitation or work closely connected to rehabilitation, as well as to military and civil service and work performed by a person serving a sentence in a penal institution. The purpose of the law is to improve the work environment and conditions to protect and maintain the employees' ability to work. Its purpose is also to prevent and hinder accidents at work, occupational diseases and other hazards caused by work or the work environment to the employees' physical and mental health.

The Occupational Safety and Health Act obliges the employer, when evaluating, planning and implementing measures concerning the workplace, to take into consideration all aspects relating to the work, working conditions and qualities that are within the bounds of moderation necessary to protect employees from accidents or work-related health hazards. The employer must ensure that the employee is given the necessary instructions and guidance. Similarly, the employee must for his or her part ensure that the instructions given are followed. The employer and the employee must cooperate to increase occupational safety and health at the workplace.

Occupational Health Care

It is the employer's duty to arrange employees' occupational health care at the employer's expense. The purpose of occupational health care is to ensure a safe working environment, to prevent work-related diseases and accidents and to support the working and functional capacity of employees. Employers are responsible for arranging *preventive health care* for their employees. If necessary, employers may also arrange for medical treatment and other health care services. Municipal health centres are responsible for selling occupational health services to employers who request them. Employers may also organise occupational health services themselves or through a private supplier.

The act and the decrees complementing the act include provisions regarding the content and implementation of occupational health care, as well as how the employer, employees and the occupational health care provider cooperate on the prevention of work-related diseases and accidents, the health and safety of work and the work environment, the operation of the work community and the employees' health and ability to work and function at different stages of their careers.

Internet link:

Occupational Safety and Health Act (738/2002) in Finnish, Swedish and English

<http://www.finlex.fi/fi/laki/ajantasa/2002/20020738>

<http://www.finlex.fi/sv/laki/ajantasa/2002/20020738>

<http://www.finlex.fi/en/laki/kaannokset/2002/en20020738>

Occupational Health Care Act (1383/2001) in Finnish, Swedish and English

<http://www.finlex.fi/fi/laki/ajantasa/2001/20011383>

<http://www.finlex.fi/sv/laki/ajantasa/2001/20011383>

<http://www.finlex.fi/en/laki/kaannokset/2001/en20011383>

More information on occupational health and safety can be found at www.tyosuojelu.fi, www.fi.osha.eu.int, www.stm.fi and www.kela.fi

XII. Rules concerning the terms and conditions of employment of pregnant women and women who have recently given birth [Article 3(1)(f) of the Directive]

The provisions of the Occupational Safety and Health Act (738/2002) concerning the protection of pregnant employees and the provisions of Chapter 4, paragraphs 2, 8 and 9, of the Employment Contracts Act (55/2001) concerning family leave apply to posted workers. Section 2, paragraph 2, point 5 of the Posted Workers Act makes reference to provisions concerning family leave arrangements, and Section 2, paragraph 5 of the same act makes reference to the Occupational Safety Act.

Provisions of the Employment Contracts Act:

- work during maternity or parental allowance terms (Chapter 4, Section 2, of the Employment Contracts Act)
- obligation to pay remuneration (Chapter 4, Section 8, of the Employment Contracts Act)
- return to work (Chapter 4, Section 9, of the Employment Contracts Act)

XIII. Rules concerning the terms and conditions of employment of children and young people [Article 3(1)(f) of the Directive]

The Young Workers' Act (998/1993) applies to posted workers. Section 2, paragraph 5 of the Posted Workers Act makes reference to this act.

Special provisions concerning young workers, i.e. the Young Workers' Act and the Decree on the Protection of Young Workers, are applied to young people, i.e. *workers under 18 years of age* working under a civil servant's relationship or an employment relationship.

In addition the following apply:

- Decision of the Ministry of Labour concerning light work suitable for young persons
- Decree of the Ministry of Social Affairs and Health on a Non-Exhaustive List of Work Tasks Dangerous for Young Workers
- The provisions concerning health and safety of work referred to in the Young Workers' Act

General acts under labour law are also applied in employment relationships of young people, unless a derogation from the general provisions has been made exclusively for young people in the above-mentioned special act or decree. Among the most important acts to be observed in employment relationships are the Employment Contracts Act, the Working Time Act, the Annual Holidays Act, the Act on Co-determination within Undertakings, and the acts on work safety.

In addition to laws and provisions of a lower level, collective agreement regulations of the competent branch are also applied in the employment relationships of young persons.

Internet link:

Young Workers' Act (998/1993) in Finnish, Swedish and English

<http://www.finlex.fi/fi/laki/ajantasa/1993/19930998>

<http://www.finlex.fi/sv/laki/ajantasa/1993/19930998>

<http://www.finlex.fi/en/laki/kaannokset/1993/en19930998>

Brochure: Young people and labour legislation

http://www.mol.fi/mol/en/03_labourlegislation/01_employment_contracts/index.jsp

XIV. Equality and non-discrimination [Article 3(1)(g) of the Directive]

The following provisions of the Act on Equality between Women and Men (609/1986) are applied to posted workers:

- Section 6 - employer's duty to promote equality
- Section 7 - prohibition of discrimination
- Section 8 - discrimination in working life
- Section 8a - countermeasures by the employer
- Section 8d - harassment in the workplace
- Section 9 - procedure not deemed to constitute discrimination and
- Section 9a - burden of proof

The following provisions of the Employment Contracts Act are applied to posted workers:

- Section 1, paragraph 9 concerning the employer's representative
- Section 2, paragraph 2 concerning prohibition of discrimination and equal treatment apply to posted workers.

Section 2, paragraph 5 of the Posted Workers Act makes reference to the above-mentioned provisions.

The Employment Contracts Act

In addition to the equality requirement, Chapter 2, Section 2 of the Employment Contracts Act includes a prohibition of discrimination. The employer may not exercise any unjustified discrimination against employees on the basis of:

- age,
- health,
- national or ethnic origin,
- sexual preference,
- language,
- religion,
- opinion,
- family ties,
- trade union activity,
- political activity, or
- any other circumstance comparable to these.

Placing employees in a different position is allowed, if there is an objectively acceptable reason for it, which may relate, for example, to the nature of the work or to the working conditions. The obligation of equal treatment and the prohibition of discrimination also apply to recruitment.

Act on Equality between Women and Men (609/1986)

The aim of the Act is to prevent discrimination on the basis of sex and to promote equality between women and men, and, for this purpose, to improve the status of women, particularly in working life. The employer's duty to promote equality is supplemented by the prohibition to discriminate in working life, a provision which extends all the way from engaging a person to terminating the employment relationship.

The employer must promote equality the following ways:

- (1) enable both women and men to apply for vacancies;
- (2) promote equitable recruitment of women and men in the various jobs and create equal opportunities for promotion;
- (3) develop working conditions that are suitable for both women and men, and help reconcile working life and family life for women and men; and
- (4) ensure, as far as possible, that an employee is not subjected to sexual harassment.

Direct or indirect discrimination on the basis of sex is prohibited. For the purposes of this Act, discrimination on the basis of sex means:

- (1) treating men and women differently on the basis of sex;
- (2) treating women differently for reasons of pregnancy or childbirth; or
- (3) treating men and women differently on the basis of parenthood, family responsibilities or for some other reason related to sex.

Discrimination is also involved in any procedure whereby people are de facto assigned a different status in relation to each other for the above reasons, whether directly or indirectly.

The action of an employer will be deemed to constitute discrimination where the employer, on engaging a person or selecting a person for a particular job or training, bypasses a more

qualified person of the opposite sex, unless the employer can prove that the action was based on sound and acceptable grounds related to the quality of the work or job or that the action was for a reason other than sex and considered an acceptable reason.

The actions of an employer will likewise be deemed to constitute discrimination where the employer,

- (1) on engaging a person or selecting a person for a particular job or training, bypasses a person on the basis of pregnancy, childbirth or for some other reason related to sex, or on such grounds restricts the duration of the employee's employment relationship or its extension;
- (2) applies to an employee or employees, on the basis of sex, terms of payment or employment less favourable than those he or she applies to an employee or several other employees in the same workplace for work of equal value;
- (3) manages the work, distributes tasks, or otherwise arranges the working conditions so that an employee or several employees is/are assigned a clearly less favourable status than others on the basis of sex;
- (4) neglects his or her obligations under Section 6, paragraph 2, subparagraph 4 to eliminate sexual harassment;
- (5) weakens the working conditions or the terms of employment of an employee after the employee has invoked the rights and obligations stipulated in this Act; or
- (6) on the basis of sex, gives an employee or employees notice, or terminates an employment relationship, or otherwise causes it to terminate, or transfers or lays off an employee or employees.

An employer will not be deemed to have violated the prohibition on discrimination stipulated in subparagraphs 1-3 or 5-6 of paragraph 2 where he or she can prove that his or her procedure was based on grounds other than the employee's sex and those grounds were considered acceptable.

The following will not be deemed to constitute discrimination based on sex:

- (1) special protection of women because of pregnancy or childbirth;
- (2) enactment of compulsory military service for men only;
- (3) admittance of either women or men only as members of an association, if this is based on an express provision in the rules of the association; or
- (4) procedure based on a plan aimed at practical fulfilment of the aim of this Act.

Internet link:

Act on Equality between Women and Men (609/1986) in Finnish, Swedish and English

<http://www.finlex.fi/fi/laki/ajantasa/1986/19860609>

<http://www.finlex.fi/sv/laki/ajantasa/1986/19860609>

www.stm.fi/Resource.phx/tasa-arvo/english/authorities/legislation/actonequality.htx

More information on equality matters:

www.stm.fi/Resource.phx/tasa-arvo/english/publications/brochures/toolkit.htx#1

XV. Terms and conditions of employment concerning other matters [Article 3(10) of the Directive]

XVI. Procedural and administrative requirements

Posted workers and requirement of representative

Under the legislative amendment made at the beginning on January 2006, an employer

operating abroad and posting workers to Finland should have a representative in Finland to act in court and to receive documents from authorities, such as protocols and summons relating to occupational safety inspections. A representative has to be appointed when the work of the worker begins, and authorisation of the representative will be valid for a minimum of 12 months after the date on which the posted worker ceases working in Finland.

A representative need not be selected where the posting of the worker is for no more than 14 days in duration. Where several consecutive employment contracts concerning the posting have been concluded between the posted worker and his/her employer, without interruption or with short-term interruptions only, the posting will be regarded as having been continuous.

The party for whom the work is performed in Finland must, through their contracts with the company posting the worker or by other means at their disposal, ensure that the company posting the worker selects a representative as intended in these provisions. Failure to meet this obligation will lead to the threat of sanctions

The law requires more accurate provisions on information concerning the employer and terms of employment of posted workers. This must be available for the representative in Finland as soon as the employment relationship starts. If no representative is appointed, the information should be available for the employer abroad. The required information applies to the personal data and terms of employment of the employer and worker, such as the duration of the employment contract, the place of the work, the task, the applicable collective agreement, the grounds for determining pay, and the working time. There is also the need for clarification of the working rights of the posted worker, i.e. is he from an EU Member State or does he have, for example, a work permit. The information should be kept for two years.

In addition, the representative of the employer or the employer should hold both working time accounts and information on wages paid for the work in Finland if it is for more than 8 days. Failure to comply with these provisions will lead to sanctions.

The employer or the representative of the employer should also provide the shop steward or an authorised agent with a clarification of the terms of employment of workers posted to Finland. If the shop steward does not represent a posted worker, authorisation of the worker would be needed for the clarification. A clear indication of the will of the posted worker would suffice as authorisation. Failure to meet this obligation will also lead to the threat of sanctions.

Obligation to keep records of posted workers

Under Section 4b of the Posted Workers Act, the employer or the employer's representative is obliged to keep records of posted workers.

As the posted worker starts working, the employer or, if the employer does not have a business location in Finland, the employer's representative must have in their possession the following information in writing:

- 1) identifying details of the company posting the worker and information on the responsible persons in the country in which the company posting the worker is located;
- 2) identifying details of the posted worker;
- 3) written information pursuant to Chapter 2, Section 4 of the Employment Contracts Act on the working conditions applicable to the employment contract of the posted worker; and
- 4) information on the employment rights of the posted worker.

Where the company posting a worker is not obliged to select a representative pursuant to Section 4a, the company must also be in possession of the above-mentioned information when it does not have a business location in Finland.

In order to safeguard the minimum working conditions applicable to the employment relationship of a posted worker, the company posting the worker must, before the work performed in Finland is initiated, inform the party for whom the work is to be performed of who is in possession of the above-mentioned information during the worker's posting. This information must be kept on file for two years after the posted worker has ceased working in Finland.

Supervision and documentation of working hours, records of annual holidays and payment details

Under Section 8, paragraph 2, of the Posted Workers Act, the employer or, if the employer does not have a business location in Finland, the representative must on request provide the occupational safety and health authorities with the information and reports referred to in Sections 4b.1 and 5.2.

Under Chapter 2, Section 4, of the Employment Contracts Act on the employment conditions applicable to posted workers' employment relationships, such information may be given in one or more documents or by a reference to a collective agreement applicable to the employment relationship. The information must include at least:

the domicile or business location of the employer and the employee;

the date of commencement of the work;

the duration of a fixed-term employment contract and the justification for specifying a fixed term;

the trial period;

the place where the work is to be performed or, if the employee has no primary fixed workplace, an explanation of the principles under which the employee will work in various work locations;

the employee's principal duties;

the collective agreement applicable to the work;

the grounds for the determination of pay and other remuneration, and the pay period;

the regular working hours;

the manner of determining annual holiday;

the period of notice or the grounds for determining it;

in the case of work performed abroad for a minimum period of one month, the duration of the work, the currency in which the pay is to be paid, the monetary remunerations and fringe benefits applicable abroad, and the terms for repatriation of the employee.

Under section 5 of the Posted Workers Act, the provisions of sections 36–37a of the Working Hours Act concerning documentation of working hours and Section 18 of the Annual Holidays Act concerning records to be kept on annual holidays apply to work carried out by posted workers. Employers must also comply with the provisions of Sections 34 and 35 of the Employment Contracts Act or other procedures that ensure the same standard of protection for workers.

Where the posting of a worker is for more than eight days, the employer or, if the employer does not have a business location in Finland, the representative must have in their possession in Finland documentation on the working hours concerning work performed in Finland and records of the wages paid to the posted worker.

XVII. Mediation mechanisms in cases of conflict

Provisions applicable to the employer's liability to pay compensation

Section 6 of the Posted Workers Act contains provisions applicable to the employer's liability to pay compensation. Chapter 12, Section 1 of the Employment Contracts Act contains provisions on the employer's liability for damages towards the employee. As to the employer's liability for damages for discrimination under section 8 of the Equality Act, Section 10, paragraphs 1–3 and 5, and Section 11, and, where appropriate, Section 10, paragraph 4 of the Equality Act are applicable.

Claims for remuneration and compensation

Special provisions of the Equality Act, the Working Hours Act and the Annual Holidays Act concerning time limits for claiming remuneration are applicable to posted workers under Section 7 of the Posted Workers Act.

Occupational Safety and Health Authority

Occupational Safety and Health authorities enforce the Posted Workers Act but not the provisions of the Equality Act, which are enforced by the Ombudsman for Equality and the Equality Board (www.stm.fi choose: Tasa-arvo). If misuse is suspected in relation to a posted worker's employment contract, the posted worker may contact the Occupational Safety and Health Inspectorate in the district of his workplace for advice www.tyosuojelu.fi. The inspectors of the Occupational Safety and Health Inspectorate give advice to posted workers also in situations of misuse.

Criminal investigation

Everyone has the right to report an offence to the police (www.poliisi.fi). The police are required to receive the report. The report can be made at the nearest police station, by telephone, by fax, using an online form or by informing a police patrol.

XVIII. Information on judicial enforcement procedures

Information on possible judicial remedies in Finland can be obtained from the following address:

See the answer III where the contact information is given.

Occupational safety and health authorities are mainly responsible for the enforcement of labour law. At local level the officials (inspectors) of the eight Occupational Safety and Health Inspectorates are in charge of occupational safety and health inspections www.tyosuojelu.fi. The Inspectorates give advice to employers and employees on questions concerning legislation on employment contracts and generally applicable collective agreements and information on where to find legal aid concerning court proceedings in Finland. Normally, a party to court proceedings needs professional assistance, e.g. a civil plaintiff for bringing an action and a criminal defendant for representation by a defence

counsel. However, if the matter is by nature such that the applicant can deal with it himself or herself, no legal aid will be given for the court proceedings.

Finding an attorney/Court proceedings

Public Legal Aid Offices offer the services of Public Legal Aid Attorneys. Also, a private attorney may provide counsel in court proceedings. The applicant may choose between being represented by a Public Legal Aid Attorney or a private attorney. A [Public Legal Aid Attorney](#) is a lawyer who is employed by a Public Legal Aid Office. A [private attorney](#) may be either an Advocate (member of the Bar Association) or another lawyer. Normally, the person nominated by the recipient of legal aid is appointed as the attorney.

Kinds of matters for legal aid

Legal aid can be given both in court proceedings and in other matters. The nature and significance of the matter have an effect on the coverage of legal aid. Legal aid may be granted to individuals whose case is being heard in a Finnish court or whose place of residence is in Finland. Legal aid may not be granted to companies or associations. A person pursuing a business may be given legal aid in court proceedings relating to the business, but in other matters relating to the business only if there is a special reason for it. Legal aid will not be given if the matter is of little importance to the applicant, if legal aid would be clearly pointless or if pursuit of the matter would constitute an abuse of process.

For more information on legal aid:

Ministry of Justice www.om.fi

<http://www.oikeus.fi/8852.htm> (Legal Aid)

<http://www.oikeus.fi/20631.htm> (Contact information on State legal aid offices)

<http://www.om.fi/14267.htm>