

# Employment Contracts Act

The position of employers and employees under the Employment Contracts Act



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# 1 Structure and Scope of Application of the Act

The Employment Contracts Act lays down fundamental legal provisions concerning working life in Finland. It applies to the majority of employment relationships, regardless of the nature of the work in question. If the constituent elements defining an employment relationship, as laid down in the Employment Contracts Act are satisfied, other labour legislation also becomes applicable. Provisions on young people's employment relationships are laid down in the Young Workers' Act.

## Structure

The Employment Contracts Act contains provisions on

- how to draw up an employment contract
- the obligations of employers and employees
- determination of the minimum terms of an employment relationship
- the employee's right to family leave
- lay-offs of employees
- termination of an employment contract (including notice periods, grounds for notice and cancellation, and the procedure for terminating an employment contract)
- liability
- invalid and unreasonable contract terms
- employment contracts of an international nature and
- the status of employee representatives.

## Peremptory Nature of the Act

The Act is basically of a peremptory, i.e. obligatory, nature. In an employment contract, the employer and the employee can agree otherwise only on provisions which include specific mention of a right to conclude a contract. In addition, national employer and employee organisations may, in collective agreements, agree to deviate from the Act in some issues. On the basis of the Act's provisions on the general applicability of collective agreements and the Collective Agreements Act, the regulations set out in collective agreements must be observed by those employers who are bound by the collective agreement.

## Scope of Application

The Act applies to the legal relationship between an employer and an employee if the work is performed for an employer under the employer's direction and supervision and in return for pay or other compensation.

The Act's provisions apply to *employment relationships*. The constituent elements of an employment relationship are:

### ● the contract element

Work is performed on the basis of a specific contract jointly entered into by an employer and an employee, or at least on the mutual understanding that an employee works for an employer. The employee is bound by the employment contract to perform the work *personally*.

### ● the work element

An employment contract can be made in regard to any kind of work, except for criminal activities or activities which violate fair employment practices. In an employment relationship, work is performed *for gain*.

### ● the remuneration element

Remuneration for work can be paid in, for example, money, goods, fringe benefits or gaining of experience, and it has to have financial value. The Employment Contracts Act contains provisions on the payment of remuneration for work. *Minimum pay* is, in practice, determined by the collective agreement of the branch in question.

### ● the element of direction and supervision

In an employment relationship, an employee agrees to work under the direction and supervision of an employer and to follow the orders which the employer, within his competence, gives for the work. On the basis of the right to direct and supervise, the employer may determine how, when and where the work is performed. The employer also has the right to supervise both the performance of the work and the quality of the result. In an employment relationship, the employee is *dependent* on the employer.

Application of the Employment Contracts Act and other labour legislation requires that all the above-mentioned elements are present simultaneously.

In determining whether this is so, *overall discretion* is applied, taking into account the purpose of the contracting parties, the title of the contract, the terms agreed on in the employment contract and the actual working conditions.

The Act's provisions on employment relationships are of a *peremptory nature*. If a working relationship contains the constituent elements of an employment relationship, neither the parties to the employment contract or the collective agreement parties can validly agree not to apply the Employment Contracts Act.

The Employment Contracts Act does *not apply* to:

1. those employment relationships or service obligations that are subject to public law (e.g. central and local government posts)
2. ordinary voluntary non-vocational activities, for example in sports clubs, youth associations, parishes and patient associations,
3. contracts for work to be performed that are governed by separate provisions in the law. For example, the Act does not apply to seamen, family carers referred to in the Family Carers Act, or informal carers referred to in the Act on Support for Informal Care. In addition, the Act on the Public Employment Service and the Unemployment Security Act contain provisions on traineeships, which are not employment relationships, and on coaching for working life. Neither is work done under work experience programmes in an employment relationship.

## 2 Drawing up an Employment Contract

### Form of Contract

The employment contract is a legal act which is *not subject to formal requirements*. It may be oral, written or electronic. It can also arise tacitly, when an employer allows an employee to work for him.

### Information on the Terms of Employment

Besides its provisions on the form of the employment contract, the Act also states that the employer must present the employee with *written information* on the principal terms of employment applied to the employment relationship. The information must be presented without a specific request from the employee in all

- employment relationships intended to be valid for a minimum of one month, and
- indefinitely valid employment relationships, and
- fixed-term employment contracts of less than one month which have been concluded repeatedly with the same basic terms of employment, (e.g. repeated short-term employment relationships of hired employees).

Temporary agency workers are entitled to receive, upon their request, a written information even when their employment relationship continues for less than a month.

The employer must provide the information by the end of the first pay period, or at the latest within one month from the beginning of the first employment relationship. The employer may fulfil the obligation to present information by giving the employee one or more relevant documents, or by referring to the Act or collective agreement applicable to the contractual relationship. Information on those terms of employment, which have already been agreed on in a written employment contract need not be presented again.

### Information to be Presented

The information must include at least the following principle terms of employment:

- the date of commencement of the work,
- the duration of the employment contract and the justification for a fixed-term employment relationship,
- the trial period,
- the place where the work is to be performed,
- the employee's principle duties,
- the grounds for the determination of pay or other remuneration, and the pay period,
- the regular working hours,
- the manner of determining annual holiday and the period of notice, and
- the collective agreement applicable to the work.

In addition, the Act includes a special provision concerning the information to be presented in the case of work, which is performed abroad and lasts for a minimum of one month.

If the terms of employment change during the employment relationship, the employer must present information on these changes by the end of the following pay period.

If an employer or its representative intentionally or through negligence commits a breach of the obligation to provide an employee with written information on the principal terms of work a fine shall be imposed on the employer for violation of the Employment Contracts Act.

## Duration

The employment contract can be either *fixed-term* or *valid indefinitely*. The agreed duration becomes significant especially at the end of the employment relationship. A fixed-term contract is terminated at the end of an agreed working period or after an agreed, specific piece of work has been concluded. No special legal act of termination is needed. By contrast, an indefinitely valid employment contract can be terminated only on legal grounds and through a legal procedure. If a fixed-term contract states that it is to be subject to termination by either party, it can be cancelled or notice of termination given in the manner provided by the Act. This may be done on the initiative of either of the contracting parties before the agreed contract period ends. In such cases the employer must observe the provisions on the grounds for notice.

### Justification for a Fixed-Term Contract

Employment contracts are usually valid indefinitely. Contracts can be made fixed-term on the initiative of the employer only for a *justified reason*. The provision does not prevent the contracting parties from making a fixed-term contract in cases referred to in the Act if working life needs so require. Fixed-term employment contracts cannot, however, be used to evade the provisions on protection against unilateral termination.

The employment contract can be made fixed-term on the basis of the nature of the work, the fact that the employee works as a substitute or trainee, or for another comparable reason. It can also be made fixed-term for some other

reason related to the work or the operation of the enterprise. The reason may be, for example, that the *work* or work entity which has been done is separately *specified* and done only once during the operation of the enterprise, or requires special skills. A valid reason can also be that a specific order is being prepared or delivered, or that the work was required to cope with some other kind of peak period. These grounds are valid only if the employer is not able to have the work done by permanent employees. A fixed-term employment contract can also be drawn up for *seasonal work*. However, if an employer successfully hires an employee to perform a specific job, and the employment lasts for e.g. nine or ten months a year, there is no justification for the employer drawing up fixed-term employment contracts.

A fixed-term employment contract may be made with a *substitute* employee for the period of absence of a permanent employee. The duties of the substitute must be specified. However, the duties of the temporarily absent employee do not have to be performed by the substitute but can instead be redistributed by making different internal arrangements.

### Prohibition to use consecutive fixed-term contracts and restrictions on consecutive fixed-term contracts

Fixed-term contracts one on another are illegal when drawn up for the same job repeatedly and consecutively between the same parties without the justified reason referred to in legislation. *Each* fixed-term employment contract has to be drawn up for a justified reason. The employer may not try to evade the protection provided by indefinitely valid employment contracts by using consecutive fixed-term contracts. If the employer's need for labour is considered to be permanent, there is no justification for consecutive fixed-term contracts for the same work.

Employers are not allowed to conclude consecutive fixed-term contracts with different employees if the job requires permanent labour. The assessment of whether or not fixed-term contracts are appropriate for the job takes into account not only each fixed-term contract individually but also the employer's use of labour for the job in general. If the number of repeated fixed-term contracts, signed either consecutively or frequently, or the combined length of the fixed-term contracts implies that the labour requirement for a job has become permanent, the use of fixed-term contracts for the job is no longer allowed.

Consecutive fixed-term contracts which are concluded *without a justified reason* are considered to be valid indefinitely. If unjustified consecutive fixed-term employment contracts are made, the contractual relationship is considered to be valid for an indefinite period starting from the first time the contract lacked the justified reason.

If a dispute arises over the duration of a contract, *the burden of proof* lies with the party appealing to the fixed-term nature of the contract, in practice, this is generally the employer. In such a case, the party must prove that the contracting parties have made a fixed-term contract and that there is justified reason for it.

## Trial Period

### Purpose

The purpose of a trial period is to give both parties to the employment contract a chance to see whether the contract meets all the preconditions set for it. The trial period starts the moment the work is begun and allows the employer to find out whether the employee has the professional skills needed and is suitable for the work and the working community. The employee, on the other hand, gets a chance to assess whether the duties and the working conditions match the contract. If the employer or the employee decides that the employment contract does not meet his/her expectations, the contract may be cancelled on the basis of the trial period. The consequences are immediate and no grounds for cancellation or termination are needed.

### Agreement

The trial period has to be agreed on *specifically* in an employment contract or a collective agreement. The trial period provision of a collective agreement can be applied to an individual employment relationship only if the employer informs the employee of the application of this provision at the time the contract is made. The burden of proof lies with the contracting party wishing to terminate the contract on the basis of the trial period.

### Period of Time

As a rule, the trial period must be at the *beginning of the employment relationship*. If the same contracting parties enter into several consecutive employment contracts for the same or almost the same work, the trial period

cannot be repeated after the first contract. The trial period can apply to consecutive contracts only if there is an actual need for doing so because of a change in the duties or status of the employee, or in the personal situation of either of the contracting parties.

If the duties and/or the status of the employee change significantly during the employment relationship, the employer and the employee can also agree to have a trial period *during the employment relationship*. In such a case, however, the trial period applies only to the changed terms of the employment contract, not the contract as a whole. An employment contract may not be terminated on the basis of such a trial-period condition. For the employer to invoke the trial-period clause, the employer must offer to the employee his/her previous duties instead.

### Duration

The *maximum duration* of the trial period is usually four months. If a fixed-term employment relationship is shorter than eight months, the trial period may not exceed 50 per cent of the duration of the employment period. If an employer provides an employee specific, work-related training that includes theory and practical skills, is more demanding than regular orientation, and lasts for a continuous period of over four months, the trial period cannot exceed six months. If the contracting parties have agreed on a trial period which exceeds the maximum duration, this contract clause is void in so far as the period exceeding the maximum duration is concerned. If a person is hired for a user enterprise for the same or similar duties after the temporary agency work ends, the time during which the employee was assigned for that enterprise's use will be deducted from the maximum trial period for that employer.

### Termination of a Contract on the Basis of the Trial Period

During the trial period, both the employer and the employee have the right to cancel the employment contract without having to satisfy the prescribed grounds for termination otherwise applied to the termination of an employment contract. The employment contract may be cancelled with effect from the end of the working day or shift during which the cancellation notice is brought to the attention of the other contracting party.

The cancellation of an employment contract on the basis of the trial period may not be based on *discriminatory* grounds, or on grounds which are



*otherwise irrelevant* with regard to the purpose of the trial period. The employer may cancel an employment contract only for a reason concerning the employee or his/her performance, on the basis of which the employer deems that the employment contract does not meet his requirements.

## 3 Employer's Obligations

### General Obligation

The employer must, in all respects, work to *improve* employer/employee relations and relations among the employees. The employer must take all necessary steps to create a good and confidential working environment and smoothly functioning cooperation among the entire working community. Cooperation and job satisfaction in a working community will succeed only if all employees are *treated equally*.

The employer must make sure that the employees are able to *perform their work* even when changes are made to the operations, the work to be carried out or the working methods of the enterprise. In order to maintain and improve employee competence, the employer is expected to make sure that employees are provided with all the guidance necessary for them to perform their duties.

In addition, the employer has an obligation to *strive to further the development opportunities of employees* so that they can advance in their careers according to their abilities. In order to do so, the employer must, on the one hand, aim to make sure that employees have the skills needed for the work, and, on the other, try to provide employees with opportunities to advance in their careers in accordance with their skills and abilities in a way that will also enable them to perform more demanding work with more responsibility.

The Act's provisions on the general obligation of the employer are presented as objectives. They are an expression of the employee's loyalty obligation to be applied in employment relationships. The provisions also mean that the interests of the employee must be taken into account. Violation of the general obligation does not by itself cause the employer liability but it does become

significant when the nature and fulfilment of the employer's other obligations are assessed.

### Occupational Safety and Health Obligation

An employer must ensure safety and health in the workplace in order to protect employees from accidents and health hazards, as provided by the Occupational Safety and Health Act and the provisions issued under it. When the employer has work carried out, it is required that he pay close attention to everything that is reasonably necessary, taking into account the nature and conditions of the work and the age, sex, occupational skill and other qualifications of the employee, to protect the employee from industrial accidents and diseases arising from the work. The employer must also ensure employees' *mental health* in the workplace when making decisions on working conditions or the organisation of the work. The employer also has an obligation to try to *improve working conditions* with the aim of achieving a higher standard of occupational safety and health.

### Special Protection of Pregnant Employees

The employer has a special obligation to ensure the safety and health of pregnant employees in the workplace. If the duties or working conditions of the employee endanger the development of the foetus or the health of the employee, the employer must try to eliminate this hazard from the work environment. If this is not possible, consideration must be given to transferring the employee to other duties. If the employer can offer the employee other duties suitable for her in terms of her working capacity and skills, the employee must be transferred to these duties for the remaining period of the pregnancy. If, taking due account of the health of the employee, the employer cannot offer her a transfer to other duties, the employee is entitled to special maternity leave until her right to maternity allowance begins, as provided by the Sickness Insurance Act. During the special maternity leave, the employee is entitled to the daily allowance referred to in the Sickness Insurance Act.

### Contractual Liability

The occupational safety and health obligation based on the Employment Contracts Act is a contractual obligation. Violation or omission of the obligation will lead to *liability* for loss and damage, as provided by the Employment Contracts Act.

# Equal Treatment and the Prohibition of Discrimination

## Prohibited Grounds for Discrimination

An employer may not discriminate against an employee, unless there is a justified, lawful reason. Prohibited grounds for discrimination include:

- age,
- health and disability,
- national or ethnic origin; race, colour or social origin,
- nationality,
- sexual preference,
- language,
- religion,
- opinion or conviction,
- family ties,
- trade union activity and political activity
- or some other comparable matter.

Provisions on the prohibition of gender-based discrimination are laid down in the Act on Equality between Women and Men. In addition, the Non-Discrimination Act includes provisions on prohibited grounds for discrimination compensation for the suffering caused by discrimination or victimization and the division of the burden of proof when a discrimination case is heard by the authorities.

## Scope of Application of the Prohibition of Discrimination

Recruitment is subject to the legal provisions on prohibition of discrimination. The prohibition is also significant when decisions are made on the distribution of employees' duties, arrangement of training, granting benefits based on the employment relationship, and the termination of an employment relationship. Prohibited discrimination under the Employment Contracts Act occurs when an employer, in making a decision concerning employees, knowingly puts an employee in a different position from other employees on prohibited discriminatory grounds.

## Acceptable dissimilar treatment

Dissimilar treatment of employees is possible when the grounds are justified. The acceptability of dissimilar treatment is assessed on the basis of the

genuine requirements related to the job and those imposed on the employee by the job. The nature of the employer's operations can also be taken into account in the assessment.

If certain employees or employee groups receive *positive special treatment* because they are considered to be in need of special protection, for example because of their age, work disablement, family responsibilities or social status, this cannot be deemed prohibited discrimination. The purpose of positive special treatment is to ensure the factual equality of a particular group.

## Requirement of Equal Treatment

The requirement of equal treatment complements the prohibition of discrimination. It obliges the employer to give equal treatment to employees who are in the same position or in a similar situation, and to ignore other differences between them. The requirement of equal treatment becomes significant when employees are granted benefits based on the employment relationship, and are assigned duties. The requirement obliges the employer to take actions which are logical and to make logical decisions as regards employees.

An employer may deviate from the requirement of equal treatment only for a *justified reason*, having taken into consideration the duties and positions of the employees. The requirement of non-discrimination allows, for example, the use of incentive pay when that payment is not determined on discriminatory or unfair grounds.

## Existence of Grounds for Discrimination

If an employee is of the opinion that an employer has violated the prohibition of discrimination or acted contrary to the requirement of equal treatment, the employee must present probable evidence or reasons that the employer has discriminated against him/her. After the employee has proved that the employer acted on discriminatory grounds, the employer must prove that no such discrimination has taken place or that there has been a justified reason for dissimilar treatment.

An employer who discriminates against employees while applying terms of employment, organising work or work methods, or terminating employment contracts can be obliged to *compensate for the losses* caused by the



discrimination. Under the Non-Discrimination Act, an employer may become obliged to pay compensation of up to EUR 17 800 (latest index increase 2013) to an employee who has been discriminated against.

Discriminating terms in an employment contract can be declared *invalid* without affecting the other terms of the contract. Instead of seeking this declaration, the employee may give notice of termination of the employment contract with immediate effect, provided that the grounds for the invalidity are still applicable. It is also possible to modify the discriminating terms.

### Fixed-Term and Part-Time Contractual Relations

Besides the general requirement of equal treatment, the employer is also obliged to treat all employees equally regardless of whether they are in an indefinitely valid or a fixed-term employment relationship, or whether they are part-time or full-time employees. Less favourable employment terms than those applicable to permanent employees *cannot be* applied to employees in fixed-term employment relationships *merely on the grounds that the relationship is fixed-term*. Fixed-term and permanent employees can, however, be treated unequally if there is objective reason. The justification for unequal treatment must be assessed case by case.

Similarly, an employer *may not* apply less favourable employment terms to an employee just because the employee works *part-time*, unless there is proper reason for doing so. The principle of *pro rata temporis* (i.e. being in proportion to the length of time involved) can be applied to granting benefits based on the employment relationship in fixed-term and part-time employment relationships. This means that the benefits (or responsibilities) are proportioned to the working time whenever possible and appropriate in regard to the nature of the benefit.

The provisions on the prohibition of discrimination and the requirement of equal treatment are *peremptory*. Any collective agreement provisions which apply less favourable terms to part-time or fixed-term employees than to permanent and full-time employees without a proper reason referred to in the Act are void. The principle of equal treatment also extends to employment relationship benefits which are granted unilaterally by the employer.

An employer may not grant such benefits only to permanent or full-time employees, unless the decision can be properly justified.

### Benefits Related to the Duration of the Employment Relationship

If the employer and the employee have concluded a number of consecutive fixed-term employment contracts under which the employment relationship has continued without interruption or with only short interruptions, the employment relationship must be regarded as having been valid continuously as regards the accrual of benefits based on the employment relationship. For example, annual holiday and earnings benefits related to the duration of the employment relationship (e.g. sick pay, length-of-service increments) are determined in the same way as for indefinitely valid contractual relationships, even though the contracts otherwise remain fixed-term (provided that the requirement of justified cause is met).

### Obligation to Offer Work to Part-Time Employees

If an employer requires additional employees for duties which are suitable for those who already work part-time for him, the employer must offer such employment to these part-time employees. The obligation to offer work to part-time employees also involves an obligation to arrange for all the training necessary for the employee to be able to accept the work, provided that the employer can reasonably arrange such training in view of the abilities of the employee. Part-time employees already working for an employer have priority over the employer's former employees who fall within the scope of the obligation to rehire.

### Equality in Providing Information about Vacancies

The employer has to provide information on vacancies in a way which ensures that part-time and fixed-term employees have the same opportunity to apply for these jobs as the permanent and full-time employees. This does not, however, mean that the employer is expected to provide information internally on all vacant jobs, but where information on vacancies is given it must be done in a non-discriminatory way and must reach all employee groups alike. The user enterprise must apply similar means to notify all of the temporary agency workers when positions become vacant.

## Obligation to Pay the Employee

### Remuneration

The obligation to pay is the main obligation of the employer. There are no provisions on the form of remuneration, but in practice, remuneration is usually paid as wages.

Wages can be paid on the basis of the time spent working, the result of the work, or both of these. The employer and the employee can also agree that the remuneration be paid on the basis of something else, for example partly or wholly in goods, or for example as reciprocal work by the other contracting party. It can also be paid in the form of training, or as a right to a percentage of service charges received from the public.

In addition to pay, an employee may also receive compensation for expenses incurred, for example in the use of the employee's own tools or equipment. Likewise, an employee may be reimbursed for travel expenses. An employee who works away from home may receive a daily allowance to cover higher than usual living expenses. The employer and employee may also agree that instead of separate reimbursement for expenses, the employee's pay will cover the expenses incurred in the work.

### Pay Period and Pay Day

Pay is normally paid on the last day of the pay period. It is also possible to agree in an employment contract or a collective agreement that the employee's pay is paid on some other day. If the pay is to be paid after the pay period, an agreement to this effect must always be drawn up.

Pay shall be paid to the employee's bank account. It shall be paid in cash only because of compelling reasons. When using payment in cash the employer shall have a substantiation verifying of the payment and his obligation is to attach it to the bookkeeping.

If the employee's pay falls due on a Sunday, a religious holiday, Independence Day, May Day, Christmas or Midsummer Eve or a Saturday that is not a holiday, it is deemed to fall due on the preceding working day. In these cases, the pay must be available to the employee *before* the above-mentioned occasions.

If the employer fails to pay the employee by the due date, the employee is entitled to the *penalty interest* referred to in the Interest Act from the due date, i.e. the pay day, onwards.

### Delay of Payment on Termination of the Employment Relationship

When the employment relationship ends, this also marks the end of the pay period. The employer must then pay all debts arising from the employment relationship. If the payment of a debt or part of a debt, no matter how small, is delayed, the employee is entitled to *full pay for the days spent waiting*, up to a maximum of *six calendar days*, in addition to penalty interest.

In addition to the actual pay, the payments falling due may include remuneration for additional, overtime and Sunday working, holiday compensation in lieu of annual holiday, fringe benefits, daily allowances and reimbursement for expenses incurred in working, such as for using one's own tools and equipment, travel expenses and daily allowances. Pay for the notice period will also fall due at the end of the employment relationship. The obligation to pay the employee for days spent waiting is not, in itself, dependent on the particular grounds for the delay.

The employee's right to receive pay for the above-mentioned waiting time is, however, limited in cases where overdue remuneration arising from the employment relationship is not *clear and uncontested*. This may be the case, for example, if a collective agreement provision is open to interpretation, or because some detail of the case needs clarification. However, lack of knowledge of a provision applicable to the employment relationship, or of its interpretation, does not release the employer from the obligation to pay the employee pay for the waiting time.

If the remuneration arising from the employment relationship is not clear and uncontested or if the delay in the payment of a debt arising from the employment relationship is due to the employer's *calculation error* or other similar *error*, the employee, in order to have the right to receive pay for the waiting time, must notify the employer of the delay in payment within one month of the termination of the employment relationship. The employer must make the payment within *three working days* of the date of the notification. If

the payment is further delayed, the employee is entitled to receive pay for the next six calendar days after the three days, unless the employer makes the payment during this time.

### Obligation to Present a Pay Slip

In connection with payment, the employer must present the employee with a pay slip showing the amount of the pay and the manner in which it has been determined. The slip must be presented in connection with every payment. It must show how much the employee has earned during the given pay period and must also indicate the grounds for determination of the pay so that its validity can be checked. The penalty laid down for not presenting a pay slip is a fine.

## Obligation to Pay the Employee during Illness

### Full-time absence due to illness

Employees who are prevented from performing their work by an illness or accident are entitled to receive pay during this absence for up to nine days following the date of falling ill. After that, the employee is entitled to national sickness allowance under the Sickness Insurance Act. If the same illness recurs during the 30 days following the last day on which the employee received national sickness allowance, the employee is entitled to the national sickness allowance from the day following the date of falling ill, i.e. the employer is obliged to pay the employee only for the day of falling ill.

Employees are entitled to full pay for the period of illness if their employment relationship has continued for at least one month. In employment relationships which have lasted for less than one month, employees are entitled to 50 per cent of their pay; this will remain the case for the entire period of illness even if the length of the employment relationship exceeds one month during the sick leave.

Pay during illness is paid on the grounds of the employee's *illness or accident*. This obligation does not apply to employers if the employee is disabled for a reason other than illness (for example because of cosmetic surgery). Likewise, the employer does not have to pay the employee during illness if the accident or illness has been caused wilfully or by gross negligence.

### Part-time absence due to illness

After the waiting period for national sickness allowance, the employee can do his or her own work on a part-time basis and, in addition to pay, is entitled to receive a partial sickness allowance paid by Kela – The Social Insurance Institution of Finland. If the employer pays the employee wages corresponding to full pay during the period of illness, for the duration of the employee's part-time absence the partial sickness allowance will be paid to the employer.

Part-time absence due to illness requires that the employee has concluded a part-time work contract with the employer. Returning to work must not endanger the employee's health and recovery and is always subject to a medical assessment of the employee's state of health.

When the part-time employment contract ends, the employee is entitled to reinstate the terms and conditions of his or her preceding full-time contract.

Any changes to a part-time employment contract during the contract period must have been agreed upon by both parties. However, early termination of a fixed-term contract is permitted if illness renders the employee unable to perform his or her part-time duties.

The purpose of part-time absence due to illness is to support employees in extending their working careers and their return to full-time work. In some circumstances, part-time work during an absence due to illness may promote the employee's rehabilitation and expedite the recovery of his or her functional ability. The aim is to promote the recovery of working capacity, wellbeing at work and to extend working careers.

### Account of the basis for absence due to illness

On request, the employee must present the employer with a *reliable account* of the disability. The Act does not state that this has to be a medical certificate; any other account is sufficient if it reliably proves that the employee has an illness which renders him/her unable to work.

Pay during illness has been widely agreed on in *collective agreements*. These agreements include decisions on longer obligations of payment during illness. Agreements have stated that employees must supply a medical certificate with a

diagnosis to prove that they have an illness that renders them unable to work if they wish to receive pay during their illness. In cases of epidemics, a certificate written by a nurse is usually sufficient proof of the employee's disability.

Data on the state of health and illnesses of an employee is classified as *sensitive data* under the Personal Data Act and the Act on the Protection of Privacy in Working Life. It can be processed only where the employee has given express consent and where it is necessary for payment of sick pay or equivalent benefits, or for checking the acceptability of the reason for sick leave.

## The Employee's Right to Receive Pay in the Event of Impediment to Work

### Impediment Caused by the Employer

Employees are entitled to full pay if they have been available to the employer but have been prevented from working by circumstances for which the employer is responsible. These circumstances include reasons directly due to the employer and the employer's actions, such as reasons resulting from deficiencies in the organisation of the work (e.g. shortage of raw materials and supplies). The obligation to pay the employee can be agreed on otherwise in the employment contract.

### Impediment beyond the Control of the Employer and the Employee

If work is prevented by circumstances affecting the workplace which are beyond the control of the employer and the employees, such as a fire, an exceptional natural event, or another similar event, the employees are entitled to receive pay for 14 days.

### Industrial Action by Other Employees

If employees are prevented from working by the industrial action of other employees whose work is independent (no common interest) of their employment terms and working conditions, they are entitled to receive payment for the period of impediment, though not for more than seven days. If the employees are prevented from working for a longer period than seven days, they will be entitled to unemployment benefit immediately after the employer's obligation to pay in the event of impediment of work is no longer valid.

For the period of the obligation to pay, the employer may deduct from the employees' pay any sums that the employee has been spared from paying because of being prevented from working, and the amounts the employee has earned doing other work or chosen intentionally not to earn. However, in making the deduction, the employer has to observe the provisions concerning the limitation of the employer's right of set-off.

## 4 Employees' Obligations

### General Obligation

Employees are to perform their work carefully and observe all instructions given by the employer within his authority concerning the performance, quality and amount of work, and the time and place for performing the work. The employer's authority in these matters is determined by the labour legislation, collective agreements and the terms of the employment contract.

Employees have a *general obligation of loyalty* towards their employer. In their activities, employees must avoid everything that conflicts with the actions reasonably required of employees in their position. This obligation begins when the contract is made, and it also extends in some degree to the employee's free time. The employee may not, for example, act during his/her free time in a way which could harm the employer's business.

### Occupational Safety and Health Obligation

Employees have to observe the care and caution required by their work duties and apply all available means to ensure their own safety as well as the safety of other employees at the workplace. In order to fulfil this occupational safety and health obligation, employees must perform their work in accordance with the guidance, instructions and regulations given to them. Employees must use the protective equipment provided to them for protection against accidents and health hazards. They are also obliged to notify their employer of any faults or deficiencies they may detect in the structures, machinery, equipment, tools and protective equipment at the workplace which could present a risk of accident or illness.

More detail on the occupational safety and health obligation is provided in the Occupational Safety and Health Act and in other provisions issued under it.

## Prohibition on Engaging in Competing Activity

Employees are not allowed to work for another employer or engage in an activity that would, taking into account the nature of the work and the employee's position, cause manifest harm to the employer as a competing activity contrary to fair employment practices. Preparing to engage in competing activity is also prohibited if it would cause manifest harm to the employer.

The provision on competing activity does not prevent employees from doing work which corresponds to their profession during their free time in another employment relationship or on their own behalf if the work does not cause manifest harm to their employer. This kind of work must not, however, prevent employees from performing their "principal work". The nature of the work and the employee's position in the employer's organisation must be taken into account in the assessment of the legality of the employee's actions. Employees in high positions can be set more extensive loyalty obligations, and so their right to perform the competing activity can be more restricted. The extent of the employer's business must also be taken into account.

If, when making the employment contract, or later during the employment relationship, the employer has been aware that the employee was also performing work which corresponds to his/her profession in another employment relationship or on his/her own behalf, and has accepted it, the work cannot be considered as prohibited competing activity.

## Prohibition on Divulging Confidential Business and Trade Information

During the employment relationship, the employee may not utilize or divulge to others the employer's confidential trade or business information. Confidential business and trade information includes information on working methods, computer programs, output, formulas and customer registers. In determining the confidentiality of such information, the essential criterion

is that the employer needs to keep the information confidential and that divulging it would cause harm to the enterprise.

The prohibition on divulging confidential business and trade information applies throughout the employment relationship. In so far as information received lawfully is concerned, the prohibition no longer applies after the end of the employment relationship, unless the employer and the employee make a *non-disclosure agreement* for the time after termination of the employment relationship. However, if the employee, during the course of the employment relationship, has acquired or received confidential business and trade information unlawfully, the prohibition on divulging or utilizing such information remains valid even after the employment relationship ends, and will continue in force until the information can no longer be objectively regarded as confidential business and trade information from the point of view of the employer.

## Agreement on Non-Competition

### Definition

A restraint of trade agreement is an agreement which limits an employee's right after an employment relationship has been terminated to

- enter into an employment contract with an employer (enterprise) engaged in activity which competes with that of the employee's former employer, with which the employee has made a restraint of trade agreement, and/or
- engage in competing activity for his/her own benefit.

An agreement on non-competition can be made only for *particularly weighty reasons*. In assessing the particular weight of the reason, the benefits of both the employer and the employees must be taken into account. The purpose of an agreement on non-competition, even for a fixed period of time after the termination of an employment relationship, is to protect business and trade information of the employer that is real and justifiable and is significant for business but cannot be protected by having it granted or assigned patent or utility model rights. On the other hand, the right of employees to earn a livelihood through work corresponding to their profession and their freedom to choose their workplace must be taken into account. The particularly weighty reasons required in order for the restraint of trade agreement to be valid must still be valid at the time the employer appeals to the agreement.

In assessing the particularly weighty reasons, the status of the employee in the organisation and the nature of the employee's work are especially significant. The more intensely the employee participates in tasks that require special protection, or the more detailed the information he/she has on the employer's other business or professional secrets to be protected, the more likely it is that the criteria for reasons of special weight will be met.

### Period of Non-Competition and Violation of the Agreement

The restraint of trade after the termination of an employment relationship may last for a maximum period of six months. If the employer and the employee have agreed in the agreement that the employee will be paid reasonable compensation for the period of restraint of trade, the agreement may last a maximum of one year. An employee who violates the restraint of trade agreement can be ordered to pay his/her former employer *compensation for losses* referred to in the Employment Contracts Act, or, if so agreed on in the restraint of trade agreement, a *contractual penalty*. The amount of the penalty may not exceed the amount of pay received by the employee for the last six months of the employment relationship.

### Validity of an Agreement on Non-Competition

An agreement on non-competition made without a particular weighty reason is invalid in its entirety. If the agreement on non-competition includes provisions on longer periods of non-competition than is provided in the Act, the agreed period is invalid only in respect of the period exceeding the above-mentioned restriction periods of six months or one year. In the same way, any provision on a contractual penalty in the agreement is invalid only in respect of the part exceeding the amount equal to six months pay.

An agreement on non-competition does not bind the employee if the employment relationship has been terminated for a reason deriving from the employer. The agreement on non-competition does, however, bind the employee if the employer has given the employee notice on the grounds of a sufficiently weighty reason deriving from the employee.

## 5 Minimum Terms of Employment

The terms of employment applying to an employment relationship are determined on the basis of various provisions, including labour legislation, collective agreements, terms of employment contracts and orders given by an employer within his authority.

The peremptory provisions of labour legislation determine the minimum standard of the terms of employment. Collective agreement parties can agree otherwise in collective agreements on some of the provisions of the legislation. Collective agreement provisions made on this basis may be applied to all employment relationships covered by the collective agreement.

The Employment Contracts Act provides in full on all the issues which can be otherwise agreed on in collective agreements. These issues include:

- benefits related to the duration of the employment relationship,
- the employer's obligation to offer work first to part-time employees,
- pay during illness,
- pay day and pay period,
- grounds for fixed-term lay-offs with certain limitations,
- certain lay-off procedures,
- rehiring an employee who has been given notice,
- regional scope of the obligation to offer work related to the grounds for notice, and
- procedure for terminating an employment relationship.

In practice, most terms of employment are determined on the basis of a collective agreement. The terms of employment agreed upon in collective agreements are applied to employees whose employer is organised in accordance with the Collective Agreements Act. The provisions of *generally applicable collective agreements* must also be applied as minimum terms of employment to employees of employers that have not joined an employers' organisation.

If there are no applicable collective agreements in the sector in which the employer operates, the employee's pay is determined on the basis of the employment contract. If the employer and the employee have not agreed on the



amount of pay in the employment contract, the employee must be paid *normal and reasonable pay* for the work performed, as laid down in the Act. The other terms of employment are determined on the basis of labour legislation and agreements made under that legislation.

## Generally Applicable Collective Agreement Determining the Minimum Terms of Employment

### Preconditions for General Applicability

A collective agreement can be confirmed as generally applicable if it has *national* coverage and is considered *representative* of the branch to which it applies. The representativeness of the collective agreement is assessed within the particular sector specified under the scope of application provision of the collective agreement in question.

A collective agreement applicable only to a particular enterprise cannot – even if it is a national agreement – be a generally applicable collective agreement. In order to be generally applicable, a collective agreement needs to be representative of the branch to which it applies. This is assessed on the basis of relevant statistics and on the basis of how established contractual activity is in the sector and how organised the contracting parties are. The aim of widely securing minimum terms of employment is also taken into consideration.

### Confirmation

A confirmation board working under the Ministry of Social Affairs and Health confirms the general applicability of collective agreements. In this official capacity, the board examines the general applicability of all national collective agreements.

The decision of the board may be *appealed* to the Labour Court. The appeal can be made by any employer or employee organisation that is party to the collective agreement or by any employer or employee whose rights are affected by the decision. The appeal must be made within 30 days of the publication of the decision in Finland's Official Gazette.

The decision on the general applicability of a collective agreement is *valid until further notice*. If the general applicability of a collective agreement changes

after the decision has been made, the board may reconsider the case itself or on the basis of a petition. Legally valid decisions on the general applicability of collective agreements are published in the collection of regulations of the Ministry of Justice. The board is responsible for publishing a list of generally applicable collective agreements on the Internet ([www.finlex.fi](http://www.finlex.fi)).

### Obligation to Observe

The obligation to observe generally applicable collective agreements applies mostly to employers that do not belong to an employer organisation where an employer is bound by a collective agreement under the Collective Agreements Act and the other party is a national employee organisation, the employer is not obliged to apply the generally applicable collective agreement of the sector in question.

The collective agreement provisions which have to be observed on the basis of general applicability are those which concern the terms (working norms) and working conditions (working condition norms) of the employment relationship. By contrast, provisions concerning the implementation of a collective agreement, such as provisions on the negotiations system and the right of a shop steward to receive information, are not generally applicable.

## 6 Employee's Right to Family Leave

Family leave is granted only for the purpose of caring for a child, with the exception of the right to absence due to a compelling family-related reason and of leave of absence, based on an agreement, to take care of a family member or another person close to the employee. Parents living with a child in the same household are entitled to family leave. Employees may take family leave to care for their biological or adopted child, a child that lives with them permanently in the same household (such as their marriage or cohabiting partner's child), a child placed in foster care, or a dependant child. A parent who does not live in the same household as the child affected is also entitled to temporary child-care leave.

The employee's right to be absent for a compelling family reason is not, however, restricted to child care. Employees may also be absent if their near relatives in ascending or descending line for a sudden and unexpected reason require care or treatment or need their affairs taking care of. In addition, the employer and employee may agree on a fixed-term absence in order for the employee to be able to take care of a family member or another person close to the employee.

During pregnancy, an employee has the right to attend prenatal medical examinations during working hours without loss of pay if it is necessary for the examinations to be carried out during working hours. Periods of maternity, paternity and parental leave also accrue annual holiday.

## Full-Time Family Leave

### Leave Based on Daily Allowance Periods

Employees are entitled to take leave from work for the periods they receive maternity, special maternity, paternity and parental benefits as referred to in the Sickness Insurance Act. *The maternity allowance term* begins at the earliest 50, and at the latest 30, weekdays before the expected time of birth. Maternity allowance period is for a maximum 105 working days.

If the duties or working conditions of a pregnant employee are a risk to her health or to the foetus, and other suitable work (taking into account the employee's health) cannot be arranged for her, the employee is entitled to *special maternity allowance* until the birth.

*Compulsory maternity leave* comprises the two weeks before the expected time of birth and the two weeks after giving birth. During this time, the employee is not allowed to work.

A child's biological or adoptive father who participates in the care of his child and at the same time does not work is entitled to *paternity allowance* for 54 weekdays. Paternity allowance shall be paid for 18 weekdays during the maternity or parental allowance term. During the maternity or parental allowance term the paternity allowance term may be divided to four periods and at another time to two periods. These periods have no minimum duration. The first period may be taken in connection with the birth of the child.

Entitlement to paternity allowance ends when the child is two years old or two years after the adoption of the adopted child. If the new baby is born before the father has spent his paternity leave based on his earlier child, the paternity leave taken during the maternity or parental allowance term can be for a maximum 42 days (for a maximum 24 working days of these can be based on the earlier child and for a maximum 18 working days on the new child). In this case the paternity allowance days based on the earlier child must be held in one period.

Full-time or partial *parental allowance* is paid either to the mother or the father of the child from the end of the maternity allowance term until 263 weekdays have passed from the date of the first payment of maternity allowance. When adopting a child under 7, the parent caring for the child is entitled to parental allowance. The period for drawing this allowance is 234 weekdays from the birth of the child, and the minimum period is 200 weekdays.

The right to parental allowance is extended by 60 weekdays for each child born or adopted after the first one, and these extension days may already be taken during the maternity and parental allowance term. Both parents are entitled to parental allowance. The parents may divide up the parental allowance term in such a way that they each take a maximum of two periods, each of which must be at least 12 weekdays.

### Child-Care Leave

The employee is entitled to child-care leave in order to take care of his/her own child, or a child who lives permanently in the same household, until the child turns three years old. For the parent of an adopted child, this entitlement to child-care leave continues for a minimum of two years after the adoption, but at the most until the child starts school.

Both parents are entitled to child-care leave but not at the same time. Child-care leave can be divided into a maximum of two periods per parent. The minimum duration of the child-care leave is one month. However, the employer and the employee can agree that the employee may take more than two child-care leave periods of less than a month each.

The child-care leave is usually taken after the daily allowance periods referred to above. An employee may, however, take one child-care leave period at the same time as the other parent is on maternity or parental leave. The father of

the child may take one child-care leave period of a minimum of one month when the mother returns from the hospital with the baby. Similarly, one of the parents can take child-care leave at the same time as the other is on parental leave.

### Notification of Leave

The employer must be notified of the employee's intention to take maternity, paternity or parental leave or child-care leave no later than two months before the start of the intended leave. For leaves of no longer than 12 working days in duration, however, the notification period is one month. Additionally, if observing the notification period of two months is not possible because his/her spouse is starting to work, an employee is entitled to take parental leave after a notification period of one month, in case this does not result in a serious inconvenience to production or service operations of the workplace.

The obligation to notify applies to both the time when the leave is to be taken and the duration of the leave or leave period.

The notification given by an employee to the employer concerning the time when the leave is to be taken is binding on the employee. The employee can only change the notified time of the leave by unilateral notification if there is a *justified reason*. A justified reason is considered to be an unexpected and significant change in the child care circumstances which the employee was not able to take into account when notifying the employer of the leave. Such reasons include the serious and protracted illness or death of a child or parent, separation or divorce of the parents, or some other significant change in the child-care circumstance. Mothers taking child-care leave are entitled to discontinue that leave in order to begin new maternity leave.

Since it is not possible to interrupt leave and transfer it to the other parent without a justified reason unless an agreement is made between the parents and their employers, the parents should *try to anticipate* the various issues concerning family leave and how it is divided up before they notify their employers.

Exceptions to the notification obligation are when the mother antedates the maternity leave or the father changes the date of the paternity leave period to the date when the child is born in situations where these changes are necessary

because of changes in the state of health of the pregnant employee, because of the birth of the child, or because of changes in the health of the child, mother or father. Employees must notify their employer of these circumstances at the earliest opportunity, including the times of absence to care for an adopted child and any changes to the times agreed upon earlier.

### Partial Family Leave

Partial parental leave and partial child-care leave are both forms of partial family leave intended for care of a child. Partial parental and child-care leave are taken in the form of shortened daily or weekly hours. Partial parental and child-care leave require an agreement between the employer and the employee.

During partial parental and child-care leave, the child may be cared for by only one of the parents or guardians at a time. It is, however, possible that one of the parents takes care of the child in the mornings and the other in the afternoons, or that the parents take care of the child on alternate days or weeks.

### Partial Parental Leave

Partial parental leave may be taken during the parental allowance term so that each of the parents agrees with their own employer on an equal shortening of their working hours (by 40-60 per cent) for the same period, and on a corresponding reduction in pay. The minimum period for partial parental leave is two months.

### Partial Child-Care Leave

Employees are entitled to take partial child-care leave after the end of the parental allowance term if they have worked for the same employer continuously or repeatedly for altogether six months during the past 12 months. Employees are entitled to take partial child-care leave in order to care for a child of their own or some other child living permanently in the same household, until the end of the second school year (i.e the end of July) of basic teaching or, if the child is covered by extended compulsory schooling, until the end of the third school year. The entitlement to partial child-care leave of a parent whose child is handicapped or affected by a long-term illness and in need of particular care and support continues until the child is 18 years of age.

The use of partial child-care leave must be based on an agreement between the employer and the employee. The employee must submit a proposal on partial child-care leave to the employer no less than two months before the intended leave begins. The employer and the employee must reach *agreement* on the detailed arrangements for the partial child-care leave, including the manner in which working hours are reduced, the daily or weekly timing of the leave, and the duration of the leave.

If granting partial child-care leave would cause serious inconvenience to production or the operations of the workplace, and the damage cannot be avoided through reasonable rearrangement of the work, the employer may *refuse to make an agreement* on partial child-care leave. If the employer invokes the right to refuse to grant partial child-care leave, the employer must provide the employee with an account of the grounds for refusal.

If the employer and the employee cannot reach an agreement on the implementation of partial child-care leave and the employer does not have a justified reason for refusing to grant partial child-care leave, the employee is entitled to one period of partial child-care leave in a calendar year. The duration of the period and the timing of the leave will in this case be determined in accordance with a proposal submitted by the employee. The partial child-care leave must be arranged by reducing regular daily working hours to six hours and by taking the leave either at the beginning or the end of the working day. If regular working hours have been arranged on the basis of an average, the average must be reduced to 30 hours per week. In such cases, working hours may also be reduced by giving full working days off.

### Interruption of Leave

Interruption of partial parental and child-care leave must be agreed on. If the employer and the employee cannot reach an agreement, the employee has the right to interrupt this partial family leave for a justified reason concerning child-care circumstances. No notification period has been provided for the interruption of partial parental leave. Interruption of partial child-care leave and the grounds for the interruption must be notified one month beforehand.

## Absence from Work for a Temporary Reason

### Temporary Child-Care Leave

Employees are entitled to temporary child-care leave in order to arrange care or to take care of their own child or another child under ten years old living permanently with them in the same household, who suddenly falls ill. This entitlement also applies to a parent not living in the same household with the child.

The right to be absent has been restricted to a maximum of four workdays per illness. Parents may divide the temporary child-care leave between them as they wish, e.g. by taking care of the child on alternate days, or so that one of the parents takes care of the child in the morning, the other in the afternoon. They may take care of the child only one at a time. If one of the parents is at home and can take care of the child, the other parent is not entitled to temporary child-care leave.

The employee must notify the employer of temporary child-care leave as soon as the need to be absent arises. In addition, the employee must give the employer an estimate of the duration of the absence so that the employer can make the necessary work arrangements at the workplace. If any changes in the illness situation and the need for care arise, the employee must notify the employer as soon as possible. If the employer so requests, the employee must provide a reliable *account* of the grounds for temporary child-care leave.

### Absence for a Compelling Family Reason

Employees are entitled to temporary absence from work if their immediate presence is necessary because of an unforeseeable and compelling family reason due to an illness or an accident.

'Family' refers to persons living in the same household in family-like conditions. The provision also applies in cases where a near relative of the employee or of the employee's partner in ascending or descending line has had an accident, and the immediate presence of the employee is required in taking care of the situation.

The provision on absence from work for compelling family reasons also applies to accidents which have happened to or are threatening the family's home.

Such compelling reasons can include water damage or a fire in the home of the employee.

The employee must *notify* the employer of the absence and the reason for it as soon as possible. If the employer so requests, the employee must present a reasonable *account* of the grounds for the absence.

### Agreement-based leave of absence to care for a family member or another person close to the employee

If the employee's absence is necessary for taking care of a family member or another person close to the employee, the employer must seek to organise the work in such a manner that the employee is able to take temporary leave from work. Agreement-based family leave is intended for situations wherein a family member, or another person close to the employee, is dependent on the employee's care and needs help to manage his or her daily routines.

Absence from work is based on a fixed-term agreement between the employer and the employee. When an employee requests a leave of absence, the employer is obliged to seek measures to allow the employee to take the leave; the provision refers to the employer's obligation to go beyond what is required under the normal contract terms for seeking alternatives in organisation of the employee's work.

The employer and employee must agree on the discontinuation of the agreed absence. If the return to work cannot be agreed on, the employee can, for a justified reason, discontinue the absence by informing the employer of this, no later than one month before the intended return to work. On the employer's request, the employee must deliver a report on the grounds for the absence and its discontinuation.

### Obligation to Pay the Employee During Leave

Under the Employment Contracts Act, employers are not obliged to pay employees during maternity, paternity, parental or child-care leave, or for absence for a compelling family reason. However, according to the collective agreements in some sectors, the employer is obliged to pay the employee during maternity leave or part of it and during temporary child-care leave.

## Right to Return to Work after Leave

After taking any of the above-mentioned forms of family leave, the employee is entitled to return to work, in the first instance to his/her former job. If the employer cannot offer the employee his/her former duties after returning from family leave, he has an obligation to offer the employee equivalent work that accords with the employee's employment contract. If even this is not possible, the employer must offer the employee some other work in accordance with the employee's employment contract. If no such work is available either, the employer must establish whether lay-off or termination can be avoided by offering the employee other work which he/she is able to perform, given his/her experience and qualifications. The obligation to offer other work also includes an obligation to arrange for the training necessary for the employee to be able to accept the work offered, provided that the arrangement of such training can be considered reasonable from the point of view of the employer.

Protection against unilateral termination of the contracts of employees who have taken family leave is dealt with in section 8.

## 7 Lay-Offs

A lay-off is a temporary interruption of work and pay on the decision of the employer, without affecting the employment relationship in other respects. The employer may lay off an employee only if the amount of work or the employer's potential to offer work has diminished for financial or production-related reasons.

The lay-off can be based on a unilateral decision by the employer or on mutual agreement between the employer and the employee. In cases where the lay-off is based on an agreement, the need for the lay-off must be based on changed business circumstances or a change in the potential to offer work.

The lay-off may be valid until further notice or may be for a fixed period. Depending on the need for lay-offs, the employer may lay off the employee either entirely or by reducing the regular weekly or daily working hours in accordance with the Act or the employee's employment contract.

## Grounds for Lay-Off

If the work offered by the employer has, for financial or production-related reasons or because of the rearrangement of business, diminished *essentially and permanently*, and the employer cannot offer the employee other work or training, the employee can be laid off until further notice. However, if the reduction in work is thought to be temporary, the employer is only entitled to lay off employees for the estimated period of the diminished work. Work can be considered to have diminished temporarily if the estimated lay-off period is no more than about 90 days, in which case the employer may unilaterally lay off employees for up to approximately 90 days. If the employer is able to offer the employee other work for this period, there are no grounds for a lay-off.

If the employer and the employee make *an agreement* regarding the lay-off, the employer is entitled to lay the employee off only for a fixed term, and only when the lay-off is necessary because of the business or the financial situation of the employer. Lay-offs and the implementation of lay-offs can only be agreed on case-by-case, not while drawing up an employment contract.

A *fixed-term employment contract* is binding on both contracting parties for the fixed term, and so laying off a fixed-term employee on the initiative of the employer is possible only in exceptional circumstances. However, because the employer has an obligation to treat every employee equally, the employer is justified to lay off a fixed-term employee who works as a substitute for a permanent employee. In such a case, the precondition is that the employer would be entitled to lay off the permanent employee if he/she were at work.

The employer is entitled to lay off an *employee representative* only on the grounds on which the employment contract of the representative can be terminated. The basic principle is that shop stewards and elected representatives should be the last to be laid off, provided that they are able to take care of the remaining duties in view of their skills and experience.

## Notification of Lay-Off

The employer must present the employees with an account of the lay-offs as soon as the need for lay-offs arises (*advance explanation*). In addition, the employer must give the employees a *lay-off notice* in person at the latest 14 days before the lay-off begins. If this is not possible, the notice may also be delivered by post or e-mail. The lay-off notice must include the grounds for

the lay-off, the date it will begin and its duration or estimated duration. The duration of a fixed-term lay-off must be specified precisely. The representative of the employees to be laid off must also be informed of the notice.

## Termination of an Employment Contract During Lay-Off

A laid-off *employee* is entitled to terminate the employment contract without notice during the lay-off but not, however, during its last seven days. If the employee wishes to terminate the employment contract during the last seven days of the lay-off, he/she must observe the notice period otherwise applicable to the employment relationship.

If *the employer terminates* the employment contract during the lay-off, the employer is obliged to pay the employee pay for the notice period. If the lay-off notice period observed in the employment relationship by law or according to the contract is longer than 14 days, the employer may deduct the amount of 14 days pay from the pay for the notice period.

If the lay-off has lasted continuously for over 200 days, the *laid-off employees* may terminate their employment contract as the lay-off period continues without having to lose their pay for the notice period. In such cases, the laid-off employee may terminate the employment contract with immediate effect.

# 8 Termination of an Employment Contract

Fixed-term contracts are terminated without notice at the end of the period in question. Indefinitely valid employment relationships end either through a unilateral act of termination (notice or cancellation) by a contracting party or mutual agreement on termination.

The Employment Contracts Act also includes provisions on *retirement age* based on pensionable age. An employee's employment relationship ends automatically without notice or notice period at the end of the calendar month during which the employee becomes 68 years of age unless the employer and the employee agree on continuing the employment relationship.



Under the Employee Pensions Act, employees have the opportunity to choose their retirement age flexibly between 63 and 68 years of age. Employees deciding to retire before the age of 68 must declare their intention to do so (give notice) in order to terminate the employment relationship. If an employer wishes to terminate an employment relationship before the employee reaches retirement age, grounds for giving notice or cancellation must exist as laid down in the Employment Contracts Act.

## Termination of a Fixed-Term Employment Contract

The contracting parties to a fixed-term employment contract are bound by the contract for the duration of the agreement period. Fixed-term employment contracts are terminated without an express declaration of intent at the end of the agreement period or after the agreed, specifically defined work has been concluded. If the duration of a fixed-term employment contract is linked to the absence of another employee, the contract of the substitute is terminated when the permanent employee returns to work. If the employer knows the termination date of the employment contract, the employee must be informed of this immediately. However, a fixed-term employment contract will still be terminated at the end of the agreed term even if the employer neglects the obligation to notify. The employer can, however, become liable for loss or damage caused to the employee because of the negligence.

A fixed-term employment contract may, on the initiative of either contracting party, be cancelled before the end of the agreement period if the grounds provided by the Act are fulfilled. However, a fixed-term contract may not be cancelled during the agreement period if it has no termination clause (except in the case of the employer's bankruptcy, death or a reorganisation procedure). If a fixed-term employment contract has no clause allowing termination, the employer may not terminate the contractual relationship for production-related or financial reasons.

## Termination of an Indefinitely Valid Employment Contract

Indefinitely valid employment contracts are terminated by *giving notice*. Thus, the employment relationship ends on the last day of the notice period, which begins after a notice of termination has been presented.

## Grounds for the Termination of an Employment Contract

### Grounds Related to the Employee

The employer may give notice to the employee for reasons concerning the employee himself/herself only if the reasons are *'proper and weighty'*. A proper and weighty reason related to the employee refers to serious violation or negligence of the obligations provided by the employment contract or the Act in a way which essentially affects the position of the contractual parties in the contractual relationship. These reasons include negligence of the obligation to work and obvious carelessness in duties, refusal to work, disobeying orders, dishonesty and lack of trust resulting from it, and unbusinesslike behaviour. In addition, termination also requires that the employee's actions seriously violate the obligations incumbent on him/her under the contract and under the Act. Likewise, the grounds for giving notice may be related to the employee's ability to work if there has been a significant change in this ability that no longer allows the employee to cope with his/her duties.

As laid down in the Act, *prohibited grounds for giving notice* are:

1. illness, disability or accident of the employee, unless his/her working capacity has declined substantially and on such a long term basis that it would be unreasonable to require the employer to continue the contractual relationship,
2. the employee's participation in industrial action arranged by an employee organisation or in accordance with the Collective Agreements Act,
3. the employee's political, religious or other opinions or participation in civil activities or in the activities of any association, and
4. the employee resorting to means of legal protection available to employees.

## Obligation to Caution Employees

Employees who have neglected or violated their obligations under the employment relationship cannot be given notice before the employer has given them a chance to correct their actions by cautioning them. The obligation to caution applies to any violation of obligations arising from employment relationships. The only exceptions to this are cases where the reason for giving notice is such a serious violation of the employment relationship that it cannot be considered reasonable for the employer to continue the contractual relationship.

## Obligation to Offer Other Work

When assessing the grounds for giving notice for reasons concerning the employee himself/herself, the employer must find out whether it is possible to avoid terminating the employment contract by giving the employee other work. The obligation to offer other work does not, however, apply when the employee has violated his/her obligations so seriously that it cannot be considered reasonable for the employer to continue the employment relationship.

## Production-Related and Financial Grounds for Giving Notice

In addition to grounds related to the employee, the employer may terminate an employment contract on production-related or financial grounds. For these grounds to be 'proper and weighty', the work offered by the employer must have diminished *both essentially and permanently* for financial or production-related reasons or because of a reorganisation of the employer's business.

The financial or production-related grounds for termination are not proper and weighty if, before or soon after terminating an employment contract, the employer has hired a new employee for duties similar to those of the terminated employee even though the employer's operating circumstances have not changed during the corresponding period. Similarly, the employer does not have grounds for termination if there has been a reorganisation of work but this has not led to a significant reduction in the work.

In addition to the duration and amount of the reduction in work, the validity of the grounds for termination should also be assessed on the basis of whether the employer can offer the employee *other work* instead of terminating the employment contract. The employer has an obligation to look for other work from the entire employer enterprise or community for employees who are under threat of being given notice. If an employer exercising authority

in personnel matters in another enterprise or community on the basis of ownership, agreement or some other arrangement cannot offer the employees other work, he must clarify whether he can fulfil his obligation to offer work or training by offering the employees work in other enterprises or communities under his authority. The obligation to offer other work is valid until the end of the employment relationship. If an employee is offered work which is not in accordance with his/her employment contract, the terms of the employment relationship will be determined on the basis of the work offered.

The obligation to offer other work also involves *an obligation to provide training*. The employer has to provide all the training necessary in order for the employee to be able to accept the other work. The condition is, however, that the training must be suitable and reasonable in regard to the employer's needs.

Unless it has been otherwise agreed, employees given notice on production-related and financial grounds are entitled to paid leave (*re-employment leave*) during the period of notice in order to find a new job or to participate in measures promoting re-employment. Finding a new job involves independent jobseeking or jobseeking initiated by the authorities, as well as job interviews and outplacement counselling. Actions promoting re-employment include drawing up an employment programme, relevant labour education, practical training and learning on the job.

The duration of the leave depends on the length of the notice period of the person given notice, as follows:

The employee's notice period	maximum leave (work days)
maximum 1 month	5
more than 1 month, up to 4 months	10
more than 4 months	20

Leave can also be taken as partial work days. Before taking leave, the employee must notify the employer of it and the grounds for taking it and, on request, must present an explanation of the grounds. Taking leave must not cause significant harm to the employer.

## Enhanced Protection against Unilateral Termination in the case of Pregnancy and Family Leave

The employer is not entitled to terminate an employment contract on the basis of the employee's pregnancy or because the employee exercises his/her right to take family leave. If the employer terminates the employment contract of a pregnant employee or an employee who is on family leave, the termination is deemed to have taken place on the basis of the employee's pregnancy or family leave, unless the employer proves that the termination was due to some other reason.

The employer may terminate the employment contract of a pregnant employee or an employee on family leave on grounds due to the employee only if the reason for termination is not related to the employee's pregnancy or family leave. For example, if a dishonest action of the employee is discovered only after the employee has taken family leave, the employer may – if the grounds are proper and weighty as required – give notice to the employee who is on family leave. The employment contract of an employee on family leave can be terminated for production-related or financial reasons only if the employer's operations end completely. These rules do not apply to an agreement-based leave of absence for the employee to take care of a family member or a person close to him or her.

## Protection against Unilateral Termination in the Case of Employee Representatives

The employer may terminate the employment contract of an employee representative on grounds due to the employee only for a proper and weighty reason, and when the majority of the employees whom the shop steward or the elected representative represents give their consent. A shop steward or an elected representative may be given notice for production-related or financial reasons only if the representative's work ends completely and the employer is not able to arrange work for the representative that corresponds to his/her professional skills or is otherwise suitable, or to train the person for some other work.

## Overall Discretion Regarding Grounds for Termination

The adequacy of the grounds for termination is always assessed on the basis of overall discretion, which takes into consideration all the factors influencing each individual case. They may include the duties and position of the employee in the employer's organisation, the nature of the operations of the employer, the seriousness of the employee's actions, and the employee's attitude towards

his/her actions. When assessing the adequacy of grounds related to the employee, it must also be considered whether the termination can be deemed a reasonable consequence of the employee's actions violating the contract.

## Termination of an Employment Contract by the Employee

The employee does not need to have grounds for terminating the employment contract. However, employees must also observe the notice period procedures and the procedures for giving notice when terminating the employment contract.

## Notice Period

An employment contract concluded for an indefinite period of time can be terminated by bringing a notice of termination to the attention of the other contracting party in compliance with the notice period provided by the Act or the employment contract.

The prescribed periods of notice vary according to the uninterrupted duration of the employment relationship. An employment relationship is considered to continue uninterrupted even during, for example, lay-offs and family leave, study leave and job alternation leave, i.e. these periods of absence are also taken into consideration when the duration of the employment relationship is calculated.

The following are the general notice periods that must be observed by employers:

Uninterrupted duration of the employment relationship	Notice period
1 year or less	14 days
More than 1 year but no more than 4 years	1 month
More than 4 years but no more than 8 years	2 months
More than 8 years but no more than 12 years	4 months
More than 12 years	6 months

The following are the notice periods that must be observed by employees:

Uninterrupted duration of the employment relationship	Notice period
5 years or less	14 days
More than 5 years	1 month

The employment relationship is terminated at the end of the notice period. If the notice period has been determined as a certain number of days, the date of delivery of the notice of termination is not included in this notice period. If, on the other hand, the notice period is in weeks or months, the employment relationship is terminated on a day of the week or month in question that corresponds (in name or date) to the date of giving notice. If the month in which the notice period ends does not have the same date, the employment relationship ends on the last day of that month.

## Cancellation of an Employment Contract

Cancellation of an employment contract is another way to end an employment relationship. The cancellation of an employment contract is effective immediately. Either of the contracting parties may cancel the employment contract, and the same conditions apply in either case. The contract may not be cancelled without a change in the circumstances of one of the contracting parties that presents a risk or liability and makes it unreasonable to expect that the employer should continue the contractual relationship even for the duration of a period of notice. The grounds for cancellation must always be weightier than the grounds for termination.

The employment contract may be cancelled if the employee or, correspondingly, the employer seriously violates obligations under the employment contract or the Act which have a significant effect on the employment relationship. Because the precondition for the cancellation of an employment contract is that the other party has acted contrary to the contract, the employer is not entitled to cancel the employment contract on production-related or financial grounds.

Similarly, changes in the employee's circumstances do not entitle the employee to cancel the employment contract. In such cases, the employment relationship can be terminated only by giving notice.

If the employee or, correspondingly, the employer has been absent from work or the workplace for a minimum of seven days without giving the other contracting party a valid reason for the absence, the other party may *deem the employment contract cancelled*. Contrary to giving notice or cancellation, deeming the employment contract cancelled does not require that the other party's views have to be heard and that a notice of termination has to be delivered to the other party before the employment relationship is terminated. However, when an employer deems an employment contract cancelled, he must deliver the employee's tax deduction card and confirmation that the employment has ended to the address of the employee.

## Procedure for Terminating an Employment Contract

### Existence of Grounds for Termination

In the case of termination on grounds due to the employee, the employer must effect the termination of the employment contract *within reasonable time* after being informed of the existence of the grounds for termination. Cancellation must be made within 14 days of the date on which the contracting party was informed of the existence of the grounds for cancellation.

### Hearing the Views of the Employee when Notice is Given on Individual Grounds

When the employer terminates the employment contract on grounds related to the employee, the employer must provide the employee with *an opportunity to present his/her views* concerning the grounds for termination before effecting the termination.

### Hearing the Views of the Employer when Cancelling Employment Contract

Before the employee cancels an employment contract, the employer must provide the employer with an opportunity to be heard concerning the grounds for cancellation.

## Employer's Duty to Explain when Notice is Given on Production-Related and Financial Grounds

Before terminating an employment contract on production-related and financial grounds, or in connection with a reorganization procedure, the employer must, as soon as possible, explain to the employee the grounds for and the alternatives to being given notice and the employment services available. The employment authorities will identify the employment services available in cooperation with the employer and with the employee representatives in order to facilitate re-employment of the employee.

When an employer gives notice on production-related or financial grounds to at least 10 employees, the employer must notify the employment and economic development office of the notice given to the employees without delay. The employer must append to the notification information on the employee's profession or job descriptions and the date when their employment contracts ends.

A separate brochure (Change Security) gives details of the scheme designed to facilitate re-employment of certain employees who are in danger of losing their jobs or have been given notice.

## Presentation of the Notice of Termination

The notice of termination of the employment contract must be given to the employee *in person*. If this is not possible, the notice may be delivered by letter or electronically. Notice given by letter or electronically is deemed to have been received by the recipient at the latest on the seventh day after the notice was sent.

On the employee's request, the employer must notify the employee *in writing* of the date of the termination of the employment contract and of the information he has concerning the notice or cancellation grounds leading to termination of the contract.

## Re-Employment Obligation

When seeking new employees, the employer is obliged, in certain cases, to offer work to a former employee. The employer's re-employment obligation requires that

1. the employer has given notice to the employee on grounds other than those concerning the employee himself/herself, and less than nine months have passed since the termination of the employment relationship,
2. the employer needs additional labour for the same or similar tasks as those performed by the employee during the employment relationship, and
3. an employee covered by the re-employment obligation still seeks work through the employment and economic development office.

In order to fulfil the re-employment obligation, the employer must ask the local employment and economic development office whether there are any former employees who were given notice by the employer among those seeking work through the employment and economic development office.

## Certificate of Employment

At the termination of the employment relationship, the employer is obliged to give the employee a certificate of employment, if the employee so requests. The certificate must include the duration of the employment relationship and the nature of the employee's duties (a short certificate of employment). At the express request of the employee, the employer must also add the grounds for the termination of the employment relationship and an assessment of the employee's working skills and behaviour (a comprehensive certificate of employment).

To receive a certificate of employment, the employee must submit the request within 10 years of the termination of the employment relationship. However, a comprehensive certificate of employment must be requested within five years of the termination of employment relationship. If more than 10 years have elapsed from the termination of the employment relationship, a short certificate of employment may be given only if this causes the employer no undue inconvenience. Similarly, the employer is obliged to replace a lost or damaged certificate of employment only if this does not cause the employer undue inconvenience. Refusal to supply a certificate of employment will lead to a fine.

## Consequences of Groundless Termination of an Employment Relationship

The compensation arrangements for groundless termination of employment relationships are the same in all cases. The amount of compensation is decided

on the same basis regardless of whether the employment contract was terminated on inadequate individual or collective grounds, or on the basis of a trial period or general cancellation grounds.

### Amount of Compensation

The employer can be made to pay a lump sum compensation equivalent to 3 to 24 month's pay. The maximum amount of compensation for shop stewards and elected representatives, however, can be the equivalent of up to 30 month's pay. The provision on minimum compensation cannot be applied to termination due exclusively to changes in the employer's operating conditions (production-related or financial reasons, or termination in connection with a reorganization procedure), or in cases where the employment contract has been cancelled on the basis of the trial period or with inadequate cancellation grounds while nevertheless fulfilling the grounds for termination.

The amount of compensation is determined on the basis of overall discretion, in which the following factors must be taken into account:

- estimated time without employment, and loss of earnings,
- the remaining period of a fixed-term employment contract,
- duration of the employment relationship,
- the employee's age and prospects for finding work corresponding to his/her profession, or education and training,
- the employer's termination procedure,
- reason for terminating the employment contract due to the employee himself/herself,
- the employee's and the employer's circumstances in general, and
- other comparable factors.

### Coordinating the Compensation with Daily Unemployment Allowance

Various factors are taken into account when deciding on the compensation, such as loss of income due to unemployment. The employer's obligation to pay compensation remains the same even if the employee has received earnings-related unemployment allowance, basic daily allowance or labour market support. However, in so far as the daily unemployment allowance or the labour market support can be deemed to have already compensated for the damage caused by the termination of the employment relationship, the employee is not entitled to receive compensation from the employer. A court may order the

employer to pay a share of the compensation to an unemployment insurance fund or the Social Insurance Institution.

## 9 General Liability

### Employer

An employer who intentionally or through negligence violates or neglects obligations arising from the employment relationship or the Employment Contracts Act is liable to the employee for the losses thus caused. The employer's liability is *based on negligence*.

In addition to violating obligations provided by the Employment Contracts Act, the employer can also be held liable for violating obligations agreed in the employment contract or collective agreement or provided in other labour legislation, such as the Working Hours Act or the Annual Holidays Act. The employer has *full liability*, which means that he must compensate for all losses caused to the employee by the employer's actions.

### Employee

If the employee intentionally or through negligence violates or neglects obligations arising from the employment contract or the Employment Contracts Act, or causes losses to the employer through his/her work, the employee will be liable to the employer for the losses in accordance with the grounds laid down in the Damages Act.

The liability of the employee arises only if the violation of obligations was through *negligence* and causes losses to the employer. Employees who are responsible only for slight negligence are not liable for the losses thus caused to the employer. The extent of the employee's liability can be reduced.

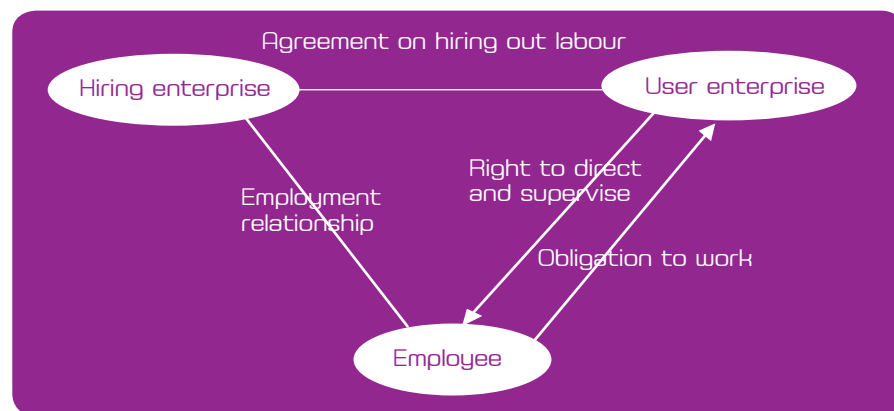


## 10 Hiring Out Labour

### The Concept of Hiring Out Labour

'Hiring out labour' refers to an agreement-based arrangement whereby the hiring enterprise transfers employees for the use of a customer enterprise (user enterprise) in return for remuneration and the work is directed and supervised by the user enterprise.

When labour is hired out, the relationship between the hiring enterprise, the employee and the user enterprise is 'tripartite'. The relationship between the hiring enterprise and the user enterprise is a contractual relationship of legal obligations between two traders. The relationship between the hiring enterprise and the employee, on the other hand, is an employment relationship; there is no contractual relationship between the employee and the user enterprise. The employee's obligation to work for the user enterprise is based on an employment contract made by the employee and the hiring enterprise and, in connection with this, the agreement of the employee to work for the user enterprise.



### Distribution of Employer's Obligations

When labour is hired out, the employer's obligations with respect to the hired employee become the responsibility of both the hiring enterprise (as the

employer) and the user enterprise, in accordance with the express provisions of the Employment Contracts Act and the Occupational Safety and Health Act. The hiring enterprise is responsible for the obligations provided by labour legislation and employment contracts, whereas the employer's obligations, which directly concern the right to direct and supervise, are the responsibility of the user enterprise.

*The user enterprise* has to ensure that the conditions for work are in order so that the hired employees will be able to perform their work as safely as the other employees of the workplace. During each work period, the user enterprise, in exercising its right to direct and supervise, is responsible for the legality of the working hours applied to the employment relationships of the hired employees. The working hour arrangements must, for example, comply with the obligations concerning rest periods. The user enterprise is also responsible for making sure that the hired employee's working hour documents are properly completed. The user enterprise must provide the hiring enterprise with the information it requires for meeting its employer's obligations.

The most important responsibility of *the hiring enterprise* is the obligation to pay the employees. The enterprise is obliged to pay the employees in accordance with the employment contract or collective agreement, including all annual holiday compensation and additional benefits provided by law or under the employment contract. The hiring employer is also responsible for paying all taxes and payments prescribed to employers and for granting annual holiday. In addition, the employer obligations of the hiring enterprise include providing occupational health care and fulfilling the obligations provided in the Act on Cooperation within Undertakings.

### Minimum Terms of Employment of a Hired Employee

The Employment Contracts Act contains provisions on the minimum terms of employment applicable to the employment relationship of a hired employee. The minimum terms of employment of a hired employee are primarily determined on the basis of the normally applicable collective agreement which is binding on the *hiring enterprise* by virtue of the Collective Agreements Act, or the generally applicable collective agreement applied to the sector of the hiring enterprise. If there is no such collective agreement, the terms of employment of the hired employee are determined either on the basis of

the collective agreement applicable to the *user enterprise* as provided in the Collective Agreements Act, or secondarily, on the basis of a generally binding collective agreement applied to the sector of the user enterprise. In such cases, the user enterprise must always apply a collective agreement of the sector in which the employee is currently working.

If the temporary work agency or the user enterprise is not bound by the collective bargaining agreements, the provisions pertaining to the employee's salary, working hours, and annual leave must, at minimum, comply with the agreements or practices binding on, and generally applied by, the user enterprise.

### The temporary agency worker's right to access the user enterprise's services

Temporary agency workers are entitled to access the user enterprise's employee services and common facilities on the terms and conditions under which that enterprise offers these to its own employees, unless different treatment is justified on objective grounds. However, the user enterprise is not obliged to provide financial support for the temporary agency worker's use of such services and facilities.

## 11 Assignment of an Enterprise

### Definition

Assignment of an enterprise refers to assignment of an enterprise, business, corporate body, foundation or an operational part thereof to another employer if the enterprise or part thereof to be assigned, irrespective of whether it is a central or ancillary activity, remains the same or similar after the assignment. Assignment of an enterprise means assignment of a financial unit that will keep its identity. The provision applies to all private and public enterprises engaged in economic activity, regardless of whether or not they seek profit. Reorganisation of administrative authorities or reassignment of administrative duties from one administrative authority to another is not considered assignment of an enterprise.

In the legal praxis of both Finland and the European Court of Justice, it has been deemed that the assigner and the assignee need not be in a contractual relationship. The assignment may also be implemented in two phases with the help of an external mediator.

A decisive factor in assessing the fulfilment of the criteria for assignment is whether a business entity is assigned in connection with a change of ownership. The following questions need to be asked in the overall discretion applied to this: What kind of an enterprise or business does the assignment concern? Have buildings, movable property or other similar material business property been assigned? How much was the immaterial property worth at the time of the assignment? Have the majority of staff been hired by the new employer? Has the clientele transferred with the business? How similar is the business done after the assignment to the business done before it, and for how long was the business interrupted, if at all? The weighting attached to the different assessment grounds varies according to the nature of the business.

### Impact of the Assignment of an Enterprise on Employment Relationships

When the employer assigns an enterprise, the employer's rights and obligations on the basis of employment relationships valid at the time of the assignment are transferred to the new owner or proprietor of the enterprise. Employees are transferred from the service of the assigner to the service of the assignee, and their terms of employment remain the same despite the assignment of the enterprise. If only a part of an enterprise is assigned, only the employees of the assigned part are transferred.

Employees are not entitled to refuse the transfer unilaterally and remain at the service of the assigner. Employees who do not wish to be transferred to the service of the assignee may terminate their employment contracts (observing the shortened notice period provided for by the Act) from the date of transfer. The assignee may terminate an employment contract only on general grounds arising from the employee or on production-related or financial grounds.

The rights and obligations concerning the employment relationships of those employees whose employment relationships are no longer valid at the time of the assignment are not transferred to the assignee. As an exception to this, the

assignee's obligation to rehire also applies to employees to whom the assigner has given notice on production-related or financial grounds. The obligation lasts nine months from the date of the termination of the employment contract.

### Liability Distribution between the Assigner and the Assignee

The liability to pay employees wages or salaries and other receivables due as a result of the employment relationship passes from the assigner to the assignee at the moment of the assignment. The extent to which the assignee assumes liability will depend on the due dates of the payments in question. The assigner and the assignee are jointly and severally liable for payments which fall due before the assignment, unless the parties have agreed otherwise. The assignee is solely liable for payments which fall due after the assignment.

In the assignment of an estate in bankruptcy, the assignee is not liable for pay or other receivables arising from the employment relationship which have fallen due before the assignment, unless the same persons have or have had authority through ownership, agreement or some other arrangement in the assignee's enterprise and the enterprise which has been declared bankrupt.

## 12 The employer's responsibility when illegal foreign labour is contracted

Chapter 11 a of the Employment Contracts Act lays down provisions on the joint responsibility of employers in contracting employees who are residing illegally in Finland. The purpose of the regulation is to make illegal immigration and unreported employment less attractive and protect illegal immigrants against exploitation.

The provisions of the above-mentioned chapter apply to employers who contract persons arriving from third countries without a valid Finnish

residence permit. These employers are responsible not only for the normal employment obligations but also for the costs of deporting the employee to his or her country of origin. Employers are also responsible for paying the cost of sending the employee's wages to the country of origin after the employee has been deported. Any wage claims shall cover the previous three months unless the parties can demonstrate that the employee had been contracted for some other term of employment.

The Finnish Immigration Service may order the employer to pay a fine of up to 30,000 euros for contracting a person residing illegally in Finland.

The commissioning party within an employer who has contracted illegal labour may also be liable for paying the fine and the cost of deportation. However, the commissioner is obliged to pay the deportation costs only if he or she has facilitated an illegal employee's arrival or stay in Finland.

## 13 Availability and Enforcement of the Act

### Availability

All employers must make the provisions of the Employment Contracts Act freely available at the workplace. Employers bound by a collective agreement on the basis of the Collective Agreements Act are obliged to make the collective agreement available at the workplaces to which the agreement is applicable. Employers who, on the basis of the provision on generally applicable collective agreements of the Employment Contracts Act, must observe the provisions of the generally applicable collective agreement applied to the sector in question as the minimum terms of employment relationships, must make this generally applicable collective agreement available at the workplace.

The employer may fulfil the obligation concerning availability by posting the legal texts and collective agreement provisions on a notice board. The

obligation may also be fulfilled by making the Act and the collective agreement available to the employees through the internal network (intranet) of the enterprise, for example by posting it on an electronic bulletin board or on the Internet. The Act and the agreement provisions are considered available only if all employees have free access to a computer, the necessary connections, user rights, authorisation and the necessary skills needed to search for electronic information.

### Supervision

Supervision of compliance with this Act is the responsibility of the occupational safety and health authorities working under the Ministry of Social Affairs and Health. When supervising compliance with generally applicable collective agreements, the authorities must act in close cooperation with those labour market organisations which have concluded the collective agreement in question. The employer and employee organisations which have entered into a collective agreement have an important role in interpreting the contents of its individual provisions.

### Additional Information

Legal texts, Government bills, generally binding collective agreements, law translations: [www.finlex.fi](http://www.finlex.fi)

- Employment Contracts Act 55/2001
- Act on Confirmation of the General Applicability of Collective Agreements 56/2001
- Non-Discrimination Act 21/2004
- Act on Equality between Women and Men 609/1986
- Young Workers' Act 998/1993
- Act on the Protection of Privacy in Working Life 759/2004
- Personal Data Act 523/1999
- Collective Agreements Act 436/1946
- Act on Co-operation within Undertakings 334/2007
- Occupational Safety and Health Act 738/2002
- Posted Workers Act 1146/1999
- Act on the Contractor's Obligations and Liability when Work is Contracted out 1233/2006
- Sickness Insurance Act 1224/2004
- Damages Act 412/1974

On means of support during family leave: [www.kela.fi](http://www.kela.fi)

Explanatory pamphlets [tem.fi](http://tem.fi), [te-services.fi](http://te-services.fi)

- Data protection in working life
- For equality, against discrimination
- Guidebook for Temporary Agency Work
- Change Security

Supervision of compliance with labour legislation:  
Occupational Safety and Health Authorities, [www.tyosuojelu.fi](http://www.tyosuojelu.fi)

## Contact information

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Labour and Trade Department  
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