

## REPORT

### Article 22 of the Constitution of the ILO

Report for the period 1 June 2011 to 31 May 2016, made by the **Government of Finland**,

on the

### **TERMINATION OF EMPLOYMENT CONVENTION, 1982,**

**No. 158**

(ratification registered on 30 June 1992)

#### **Direct Request, 2011**

*Parts IV and V of the report form. Practical information on the application of the Convention. The Committee invites the Government to continue to provide information on subsidized employment.*

See the answer for pay subsidies in Section I.

Pay subsidy statistics are available in Section V.

*The Committee invites the Government to include data in its next report on the activities of the bodies of appeal and to provide information on the legislative developments resulting from tripartite consultations on the matters covered by the Convention.*

See the amendment to the Employment Contracts Act in Section I. Otherwise there is nothing new to report on the matter.

*Article 2(3) of the Convention. Adequate safeguards against recourse to fixed-term employment contracts. The Committee invites the Government to continue providing information on the maximum length of use of fixed-term contracts in such instances, and their impact. It also invites the Government to include in its next report copies of the decisions rendered applying section 3(2) and (3) of the Employment Contracts Act.*

Finland has reported in its previous reports on the prerequisites for the use of fixed-term employment contracts. New case law, which would apply to the length of use of fixed-term employment contracts, is not available.

The table below indicates the numbers of fixed-term employment relationships in government agencies and institutions. The number and share of people with fixed-term employment relationships declined during the reporting period and in 2015, 12.5 per cent of central government personnel had fixed-term employment relationships.

The number of central government personnel has declined significantly and the share of people employed by central government is very small among all people in employment (3.1%). The figures in other sectors should also be included in the report.

	2011		2013		2015	
	number of employees	share, %	number of employees	share, %	number of employees	share, %
Fixed-term <sup>(1)</sup>	11,855	13.9	11,051	13.6	9,245	12.5
Permanent	73,217	86.1	70,159	86.4	64,431	87.5
Total	85,072	100	81,210	100	73,676	100

1) Employees with fixed-term employment relationships are persons who do not have a background post or position in central government.

*Article 13. Consultation of workers' representatives concerning terminations of employment for economic, technological, structural or similar reasons. **The Committee invites the Government to continue to provide in its next report information on the operation of the consultation mechanisms with workers' representatives on terminations of employment for economic, technological, structural or similar reasons.***

A tripartite working group has deliberated on problems in interpretation connected with the application of the Act on Co-operation Within Undertakings on 2014. The problems in question were raised in a proposal presented by the Co-operation Ombudsman to the Ministry of Employment and the Economy and in a statement made by the Labour Council. In addition, the group has assessed, with regard to these elements, requirements for amendments to the legislation.

During the course of its work, the working group did not review the points mentioned in the question.

An amendment to the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006) is before Parliament. This amendment would stipulate that neglecting to provide the employer's notice on the justification for termination of an employment relationship (TSL 9:5) be considered an improvement notice matter that can lead to a binding decision. This will enter into force in 2017.

## I LEGISLATION AND REGULATIONS

The Act on the temporary amendment and amendment of the Act on Public Employment and Business Services (1366/2014), entry into force on 1 January 2015.

<http://finlex.fi/fi/laki/kaannokset/2012/en20120916?search%5Btype%5D=pika&search%5Bpika%5D=Laki%20julkisesta%20ty%C3%B6voima->

The Act on the amendment of Chapter 2, Section 4 of the Employment Contracts Act (873/2012), entry into force on 1 January 2013.

<http://finlex.fi/fi/laki/kaannokset/2001/en20010055?search%5Btype%5D=pika&search%5Bpika%5D=ty%C3%B6sopimuslaki>

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

<http://finlex.fi/fi/laki/kaannokset/2006/en20061233?search%5Btype%5D=pika&search%5Bpika%5D=Laki%20tilaajan>

- For amendments on Act, please see report on C 94.

### *Act on public employment and business service*

The wage subsidy system was reformed from 1 January 2015 (Act 1366/2014). The amount of the wage subsidy is higher and the maximum duration longer, the longer the person to be employed on the subsidy has been unemployed. If the subsidy is granted because of the disability or illness, it can be permanent in practice.

A wage subsidy may only be granted if the employment and economic development office determines that the productivity of the person to be employed on the subsidy would be lower in the task offered because of deficiencies in vocational skills. The wage subsidy may, however, be granted even if there are no deficiencies in the vocational skills of the person to be employed on the subsidy if the person in question is over 60 years of age and has been unemployed for a continuous period of at least 12 months immediately before the granting of the wage subsidy. A wage subsidy may only be granted on the basis of a disability or illness if the employment and economic development office determines that the disability or illness substantially and permanently or in a permanent manner lowers the productivity of the unemployed jobseeker in the task offered.

The wage subsidy amounts to the following percentage of the employment costs incurred by the employer as a result of the person to be employed on the wage subsidy:

- 1) 30 per cent for a maximum of six months if the person to be employed on the subsidy has been unemployed for less than 12 months immediately preceding the granting of the wage subsidy; 40 per cent for a maximum of 12 months if the person to be employed on the subsidy has been unemployed for at least 12 months during the 14 months immediately preceding the granting of the wage subsidy;
- 2) 50 per cent for a maximum of 12 months and after that 30 per cent for a maximum of 12 months if the person to be employed on the subsidy has been unemployed for at least 24 months during the 28 months immediately preceding the granting of the wage subsidy; if the wage subsidy is granted to an employer engaged in business activities as aid compatible with the General Block Exemption Regulation it is also required that the person to be employed on the subsidy has not been in an employment relationship valid until further notice during the 24 months immediately preceding the granting of the wage subsidy;
- 3) 50 per cent for the whole duration of the employment relationship, however, not more than for 24 months at a time, if the disability or illness of the person to be employed on the subsidy substantially and permanently or in a permanent manner lowers the productivity in the task offered.

For associations or foundations that employ a person who has been an unemployed jobseeker for at least 24 months during previous 28 months in tasks not involving business activities, the wage subsidy for the first 12 months is 100 per cent of the employment costs arising from the person to be employed on the subsidy that correspond to at least 65 per cent of the maximum regular working hours in the sector; the working hours may not, however, exceed the maximum laid down in the State budget. In 2015 – 2016 the maximum laid down in the State budget is 2 000 euro per month.

A municipality is entitled to a wage subsidy covering 50 per cent of the employment costs arising from the person to be employed on the subsidy when the municipality employs an unemployed jobseeker on the basis of the employment obligation. An unemployed jobseeker is secured an opportunity for rehabilitation or labour market training that improves his/her employability if his/her right to a daily unemployment allowance as a wage-earner expires after a maximum period upon his/her turning 57 but before he/she turns 60.

The wage subsidy may be granted:

- 1) for a maximum of 24 months at a time when the person to be employed on the subsidy is over 60 years of age and has been unemployed for a continuous period of at least 12 months immediately before the granting of the wage subsidy;
- 2) for a maximum of 24 months at a time if a municipality, a joint municipal authority, an association or a foundation employs a person on the subsidy in tasks not involving business activities in which the person in question plans and organizes work and training for the unemployed and other services promoting employment;
- 3) for apprenticeship training for the whole duration of the training.

In the situations referred to in the subsections 1-3 above, the amount of wage subsidy after the first 12 months is 30 per cent of the employment costs incurred by the employer as a result of the person to be employed on the subsidy.

In 2015 – 2016, the wage subsidy for the employment of a person under 30 years of age may be granted for a maximum of 10 months even though the person has been unemployed less than 12 months.

After a person has been employed in wage-subsidized work for the maximum period at one or more employers, a wage subsidy may no longer be granted before the person has been an unemployed jobseeker for at least 10 months during the 12 months preceding the granting of the wage subsidy. The calculation of the maximum duration is, however, always started from the beginning when 24 months have elapsed from the end of the last wage subsidy period. The 10-month unemployment is not required if it is the question of the granting of a wage subsidy on the basis on disability or illness, or if the wage subsidy has been granted for a person who is over 60 years of age and has been unemployed for a continuous period of over at least one year, or if the subsidy has been granted for apprenticeship training.

#### *Amendment to the Employment Contracts Act*

Provisions in Chapter 2, Section 4 of the Employment Contracts Act (55/2001) on information on the principal terms of work were amended so that employees in fixed-term employment relationships must be provided information on the date of termination of the contract, or its estimated date of termination.

Subsection 2 of the Section lays down the provisions on the minimum amount of information provided on the principal terms of work. Subsection 2(3) was amended so that the information provided on fixed-term employment relationships must show the basis for the fixed-term nature of the work as well as the date of termination of the contract, if this is known at the time the contract is signed, or the estimated date of termination, if it is connected to the completion of the work, the termination of the substitution or some other objective reason.

An objective reason means such an event that would be connected to the work specified in the employee's employment contract and its termination date. This sort of event would have to be known in advance and its realisation should also be observable.

The provision concerns all fixed-term employment relationships and it supplements the provisions on the termination of fixed-term employment contracts presented in Chapter 6, Section 1 of the Act. A fixed-term employment relationship terminates at the end of the agreed period or after the agreed work task has been completed. If the date of the termination of the employment contract is known only by the employer, the employer shall inform the employee of the termination of the employment contract without delay as soon as it learns the date concerned.

A more detailed termination date estimation clarifies the legislation related to the duration and termination of fixed-term employment contracts. The employer must define in more detail when the fixed-term employment relationship ends if it is not tied to a certain date.

Subsection 4 of the Section lays down the provisions on providing information on the principal terms of work in temporary agency work. According to the provision, the information must be provided upon the temporary agency employee's request even if the contract has been made for a fixed period of less than one month. The paragraph was supplemented so that when a fixed-term temporary agency worker's contract is used at the employer's initiative, the information provided by the temporary work agency must include details on the reason for and duration or estimated duration of the user enterprise's order. This obligation aims to provide temporary agency workers with the possibility of determining, based on the duration and reason of the customer order behind the temporary agency employment contract, whether there are legal justifications for signing a fixed-term temporary agency worker's contract. The provision on the information obligation for temporary work agencies still does not take any position on the user enterprise's justifications for the use of temporary agency work or on the conditions for signing a fixed-term contract.

On the basis of Chapter 1, Section 7(3) of the Employment Contracts Act, the user enterprise must provide the temporary agency with any and all information necessary for the fulfilment of its responsibilities as an employer. Necessary information means all such information that the temporary agency needs to fulfil the employer responsibilities that belong to it under Finnish law. The suggested provision for Chapter 2, Section 4(4) of the Employment Contracts Act would be such an obligation for temporary agencies, and fulfilling the obligation would require that the user enterprise submits the necessary information to the temporary agency.

In addition, the temporary agency would have to append to this information an estimate of the other work that is similar to the work agreed upon in the temporary agency worker's employment contract at the time when the contract is made. The estimate is made at the when the employment contract is drafted, but it also concerns the situation after the date of termination of the fixed-term contract. The purpose of the provision is to improve the temporary agency workers' possibility of evaluating the basis for the fixed-term nature of their employment contract. The amendment also increases the temporary agency workers' awareness of other similar work that is available in the temporary agency, and, through this, their employment opportunities after the temporary agency work in question has ended.

The provision would obligate employers to provide their employees with the information related to the duration of the employment relationship that forms the basis for the fixed-term nature of the employment contract.

See also the Supreme Court ruling described in Section IV.

## II – III

Nothing new to report.

## IV

Supreme Court ruling 2012:10.

The company providing temporary employees (temporary agency) had signed a fixed-term employment contract with an employee, and according to the contract's terms, the fixed-term employment relationship would be terminated when the customer company's (user enterprise) assignment for the employee ended. On the basis of the justifications stemming from the ruling of the Supreme Court, it was stated that the employment contract should be regarded as permanent. (Voted)

The report is available in Finnish at:

<http://www.finlex.fi/fi/oiikeus/kko/kko/2012/20120010?search%5Btype%5D=pika&search%5Bpika%5D=vuokraty%C3%B6>

The ruling has been noted in the 2013 amendment to the Employment Contracts Act.

## V

### Decisions to grant wage subsidy or to hire employees in 2011 – 2015

	<b>TOTAL</b>	<b>MUNICI- PALITY</b>	<b>STATE</b>	<b>PRIVATE</b>	
<b>NUMBER OF PERSONS</b>					<b>FIXED TERM, %</b>
<b>2,011</b>	59,466	20,043	2,053	37,997	77
<b>2,012</b>	52,409	17,529	1,689	33,666	78
<b>2,013</b>	58,456	17,695	1,618	39,690	73
<b>2,014</b>	69,647	19,596	1,581	49,167	69
<b>2,015</b>	28,291	10,582	1,202	16,614	80
	<b>TOTAL</b>	<b>MUNICI- PALITY</b>	<b>STATE</b>	<b>PRIVATE</b>	
<b>%</b>					
<b>2,011</b>	101.1	33.7	3.5	63.9	
<b>2,012</b>	100.9	33.4	3.2	64.2	
<b>2,013</b>	100.9	30.3	2.8	67.9	

<b>2,014</b>	101.0	28.1	2.3	70.6
<b>2,015</b>	100.4	37.4	4.2	58.7

## VI

A copy of this report has been sent to the following labour market organisations:

1. The Confederation of Finnish Industries (EK)
2. The Central Organization of Finnish Trade Unions (SAK)
3. The Finnish Confederation of Salaried Employees (STTK)
4. The Confederation of Unions for Academic Professionals in Finland (Akava)
5. The Commission for Local Authority Employers (KT)
6. The State Employer's Office (VTML)
7. The Federation of Finnish Enterprises
8. The Commission for Church Employers

### Statements of the labour market organisations

*The Central Organization of Finnish Trade Unions (SAK),  
The Confederation of Unions for Professional and Managerial Staff in Finland (Akava) and  
The Finnish Confederation of Professionals (STTK):*

After the previous statement in 2011, there have been some small improvements for temporary agency work. The Employment Contracts Act was amended at the beginning of 2013. The purpose was to clarify the legislation related to fixed-term employment contracts and to increase the amount of information provided to employees, so that the grounds for the fixed-term nature of the employment can be evaluated and the position of temporary agency workers can be improved. The provisions in the Employment Contracts Act on the principal terms of work were amended so that

- the information provided in fixed-term employment relationships should show the basis for the fixed-term nature of the work as well as the date of termination of the fixed-term contract or the estimated date of termination. This amendment is connected to all fixed-term employment relationships. In addition, the special provision on temporary agency work was supplemented with a provision that is meant to increase the amount of information provided to temporary agency workers and
- to improve the possibilities of temporary agency workers for evaluating the grounds for the fixed-term nature of their employment contract as well as their future employment opportunities.

In addition, the Act on the Contractor's Obligations and Liability when Work is Contracted Out was amended so that contractors would have to provide information upon request to personnel representatives on the grounds for using temporary agency work.

However, it must be stated that even though the legislative situation has improved, no wider studies have been carried out after the reform on whether the change in question has removed the previous problems in practice.

In 2015, Statistics Finland investigated the number of employees with an employment contract in which they have agreed that they are called to work when needed. The number of such employees totalled 83,000. Because these employees only work when needed by the employer, this in effect means that such employees do not have, for example, a period of notice. Employment contracts

requiring to work when needed by the employer are used in temporary agency work, but also increasingly in other employment relationships.

*The Confederation of Finnish Industries (EK):*

The Committee of Experts asks the Finnish Government for more information on the maximum duration of the utilisation of fixed-term employment contracts and their effects. The basic premise of Section 3, Article 2 of the Convention is that governments must utilise adequate measures to stop the use of such fixed-term contracts whose intention is to circumvent the Convention's protection that is attached to the termination of an employment relationship.

EK states that the Convention does not forbid the use of fixed-term employment relationships and it does not define the maximum duration for their use. The Committee of Experts' own recommendations have set some limits to the use fixed-term employment relationships, but these are only recommendations that do not bind any nations.

It is the EK's opinion that the actions of the current Government of Finland for lowering the threshold for employment by e.g. making it easier to sign fixed-term employment contracts and extending trial periods are very welcome. Although it must be noted that in the reform planned by the Government, the facilitation of fixed-term employment relationships will remain a fairly limited opportunity when compared to the objectives that were included in the Government Programme.

The Government's Employment Contracts Act reforms are also supported by e.g. the entrepreneur survey, published by EK in April 2016, that included 761 entrepreneurs. According to the survey, the Government proposals on e.g. extending trial periods, facilitating the use of fixed-term employment contracts (specifically the thoughts included in the Government Programme on facilitating the use of fixed-term employment contracts) would significantly increase the recruitment intentions of entrepreneurs. According to the entrepreneurs, facilitating the use of fixed-term employment contracts would have the greatest effect on their recruitment intentions.