

No. 181**REPORT**

for the period 1 June 2015 to 31 May 2021, made by the **Government of Finland**, in accordance with article 22 of the Constitution of the International Labour Organisation, on the measures taken to give effect to the provisions of the

Private Employment Agencies Convention, 1997, No. 181
ratification of which was registered on 25 May 1999.

I LEGISLATION AND REGULATIONS**Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006)**

Act on the amendment of the Act on Contractor's Obligations and Liability when Work is Contracted Out (678/2015), entry into force on 1 September 2015

Act on the amendment of the Act on Contractor's Obligations and Liability when Work is Contracted Out (450/2016), entry into force on 18 June 2016

Act on Posting Workers (447/2016)

Act on the amendment of the Act on Posting Workers (743/2020), entry into force on 1 December 2020

Act on the amendment of the Act on Posting Workers (919/2017), entry into force on 1 January 2018

Act on the Contractor's Obligations and Liability when Work is Contracted Out

In 2015, the Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006) was reformed. The purpose of the reform was to clarify the application of legislation and make it easier for contractors to observe their obligations. The provisions were standardised to apply to all industries. New provisions include specifications to e.g. the contractor's checking obligations and negligence fines. There are specifications to e.g. the contractor's checking obligations and negligence fines. The contractor's obligation to check was expanded to occupational healthcare. In addition, the pension security required for workers posted from abroad was defined in detail.

The contractor can also use the public tax debt register in looking for necessary tax payment information concerning the contracting party. In addition, if a foreign company as a business ID in Finland, besides procuring accounts from the company's domicile, the contractor shall ensure that the company in question is registered in tax-related registers in Finland. In addition, the contractor shall review the company's tax debt details.

As regards pension insurance information, provisions concerning workers posted from abroad were added to the Act. The contracting party shall provide the contractor with an account on the determination of social security before commencing work. The contractor, in turn, shall ensure that the contracting party submits the required information. As regards construction, a provision would be laid down in the act, stipulating that the contractor is perpetually obliged to ensure that the workers posted by the contracting party have valid certificates on the determination of their social security. A fine for negligence can be imposed on the contractor for neglecting this responsibility.

Consequences of a failure to perform the checks were also amended.

Both the standard and higher fines for negligence were increased and the higher fine is applied to all contracts under the contractor's liability act. If the checks required under the act are not performed, the contractor must pay a negligence fee, which is between 2,000 and 20,000 euros.

The raised negligence fee may be imposed if the contractor concludes a contract for work by a trader who has been barred from conducting business. It may also be imposed if, in spite of fulfilling its obligation to check, the contractor shows a clear disregard for the fact that the contracting partner has no intention of complying with its employer or other obligations. In that case the negligence fee is between 20,000 and 65,000 euros. The gravity of the negligence, among other factors, will be considered in determining the size of the sanctions. The decision on the payment is made by the Regional State Administrative Agency under whose jurisdiction the occupational health and safety authority supervising compliance with the act falls.

Translation on Act on the Contractor's Obligations and Liability When Work Is Contracted Out (amendments up to 70/2017 included), link: <https://www.finlex.fi/fi/laki/kaannokset/2006/en20061233.pdf>

Act on Posting Workers

In 2016, the legislation on posting workers to Finland was reformed as the EU Directive (2014/67/EU) was implemented. The new Act on Posting Workers (447/2016) entered into force on 18 June 2016. The aim was to improve supervision and to ensure that companies posting workers comply better with Finland's terms of employment. The new Act on Posting Workers contains provisions on, for example, the minimum terms of employment of posted workers in Finland, the obligations of the posting undertaking and the contractor and the penalties for breaches of the Act. The Act (447/2016) replaced the previous Act (1146/1999), which entered into force in 1999.

Posted worker means a worker who normally carries out his or her work in a State other than Finland and whom an employer undertaking that is established and performing activities in another State posts to Finland for a limited period to perform temporary work in the course of a contractual employment relationship within the framework of providing cross-border services as subcontracted work, as an internal transfer within a group of undertakings or as temporary agency work.

The terms of employment of posted workers remained unchanged. Unlike before, however, the new Act is applied also to public procurement. Under the Act (447/2016), certain provisions should be continued to apply to the employment contract of an employee posted to Finland if they are better for the employee. These include the Occupational Safety Act, the Occupational Health Care Act and some provisions of the Employment Contracts Act.

Under the Act (447/2016), all undertakings posting workers to Finland are required to notify the authority of the posting of workers. The notification is submitted to the OSH authority.

The consequences of breaches of the law were altered. Under the Act (447/2016), the posting employer or the subcontractor can receive a negligence fee for the violation of the Act on Posting Workers. The negligence fee is at least EUR 1,000 and not more than EUR 10,000, taking into consideration the type, extent and recurrence of the negligence.

The OSH authority could impose a fee, for example, if the posting undertaking has not notified the posting of the worker or if it has not appointed a representative in Finland. A fee could be imposed on the contractor if the contractor had not assisted the authority in reaching the representative.

Negligence fees were also implemented in other EU countries. In other words, the fee received in Finland could also be collected from the employer in other EU country. This improves compliance with and enforcement of the terms and conditions of employment.

Amendment (743/2020)

In 2020, the Act on Posting Workers (447/2016) was amended to implement the amendments made to EU legislation. The amendments concerned:

- more detailed guidelines on pay provisions applicable to posted workers;
- restrictions to the employer's right to set off receivables against an employee's salary;
- a new provision for making pay comparisons according to which any payments made by the employer of an uncertain nature would be regarded as compensation for expenses and not as wage or salary;
- extension of applicable collective agreements in transfers within a subcontracting or corporate group;
- application of the same accommodation quality requirements to posted and local workers;
- additional employment conditions to be applied in long postings of more than 12 months; and
- the employer's obligation to compensate the posted worker's travel, accommodation and meal expenses incurred during travel from the worker's regular workplace in Finland during the posting.

The amendment introduced a protection provision concerning travel and accommodation costs arising from the person's posting to Finland. The provision applies in situations where the posted worker is not entitled to protection on the basis of the law, standard practice or employment contract of the country of origin, or the protection would be substantially below what is considered normal and reasonable for the work in question in Finland. The amendment reconciles the level of protection in the country of origin, protection agreed in the employment contract, and protection in the country of employment.

In addition, the amendment expanded the duty to provide information. Companies are required to make an advance notification of all posted workers. The terms of employment of posted workers continued to be determined by law and generally binding collective agreements.

II Direct Request, 2015

Articles 11 and 12 of the Convention. Rights of workers employed by a private employment agency. Allocation of responsibilities between private employment agencies and user enterprises.

Nothing new to report on articles 11 and 12. Private employment agencies have the same responsibilities as other employers in terms of contributing to pay security and paying social security benefits, as well as a responsibility to provide workers with accident insurance in case of occupational diseases and accidents.

The Committee requests the Government to continue to provide practical information on the application of these provisions of the Convention.

Occupational health and safety inspections in private employment services in the period from 1 June 2016 to 31 May 2021

Sector	Inspections	Guidelines issued during inspections	Requests issued during inspections
781 Labour recruitment services	14	21	7
782 Provision of agency and interim labour	795	1,329	207
783 Other personnel acquisition services	65	144	19
Total	874	1,494	233

In connection with the control of the use of temporary agency labour, the *EU project 2018 Occupational Safety in Temporary Agency work* was implemented in Finland in 2018 (inspections are included in the figures presented in the table). The project was based on a temporary agency labour monitoring campaign launched by the Committee of Senior Labour Inspectors (SLIC) in the territory of the EU Member States. The project was aimed at the occupational safety of temporary agency workers. The objective of the supervision was to ensure the level of occupational safety management of the staffing companies subject to supervision. In addition, user

companies were monitored for the implementation of occupational safety responsibilities and the necessary exchange of information between the temporary employer and the user companies for temporary agency workers. A total of 220 inspections were carried out on the project. Of the inspections, 76 were targeted at temporary employment agencies and 144 at companies using temporary agency labour. A total of 303 guidelines and 5 requests were issued during the inspections.

In addition to the project implemented in 2018, the use of temporary labour will be monitored in Finland in 2020–2021 in the *Temporary Work Agencies as Employers 2020–2021* project and in the *User Companies 2020–2021* project (inspections are included in the figures presented in the table). Supervision is targeted at both temporary agencies and user companies throughout the country. The project follows the same operating model as the previous SLIC project, but there are also employment relationship issues on the agenda. A total of 63 inspections have been carried out on the projects by 31 May 2021. A total of 127 guidelines and 10 requests have been issued during the inspections.

The Committee requests the Government to continue to provide information on the manner in which efficient cooperation between the public employment service and private employment agencies is promoted and reviewed periodically.

Contracted-out services/Performance-based employment services in Finland

In Finland, contracted-out services with focus on payment by results have been introduced in the 2010s, but especially the government programme of Prime Minister Juha Sipilä (2015-2019) strengthened the role of the private sector in procurement of the employment services. The government decided in the budget session in autumn 2016 to increase the effectiveness of the public employment services and to increase the use of private service providers in the Finnish PES.

Pilots were carried out during 2019-2021 in order to increase the use of private service providers. The original aim of the pilots was to prepare for the huge regional government reform of Sipilä's government, which in the end of the government term failed as the government resigned. As part of the regional government reform, the public employment services were supposed to be gathered into growth services. Therefore, the pilots were called *growth service pilots*, but at later stage they were called *partnership pilots*.

The effectiveness study of the performance-based procurement of services for young people describes the performance-based pilots targeted to young people, which were also introduced during Sipilä's government term. The aim was to support the employability and entrepreneurship of young people and to support the build-up of the growth service market.

Performance-based procurement services have also been used quite widely in the Finnish PES. The ELY Centres and PES (TE) Offices procure employment services according to different criteria, including performance-based models.

In the ELY Centre of Central Finland, these services have been developed in an ESF project called Marke. The project has recently published a handbook to performance-based procurement services. The handbook includes basic information on the performance-based procurement services. The project has received funding for a new development project, in which new pilots will be carried out.

The handbook on the performance-based procurement services has been published on the following website (unfortunately only in Finnish): https://www.ely-keskus.fi/documents/10191/43284965/Asiakas-muutos+k%C3%A4sikirja+TE_hankintoihin.pdf/064bfa9a-cbcc-9f53-ff07-ed5902164fbf?t=1616479783635

The Committee requests the Government to continue to provide information relevant to the practical effect given to the Convention, including extracts from reports of the inspection services and information on the number of workers covered by the Convention.

Please see the answer above. It is not possible to obtain very accurate information on the number of employees working in the field of private employment from the control information system of the Occupational Safety and Health Administration. According to Statistics Finland's Labour Force Survey 2019¹, there were an average of 46,000 temporary workers in Finland.

III APPLICATION OF THE ARTICLES IN FINLAND

Please see the answers in the sections I and II.

IV

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

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 (SY)

Statements of the labour market organisations:

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¹ Official Statistics of Finland (OSF): Labour force [online publication].ISSN = 1798-7830. Employment and unemployment in 2019. Helsinki: Statistics Finland.