Labour & Employment 2021

Contributing editors
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LEXOLOGY®
Getting The Deal Through

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Morgan, Lewis & Bockius LLP

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Labour & Employment*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Austria, Hong Kong, Hungary, Mauritius, Romania, Singapore and Taiwan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

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Getting The Deal Through

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For further information please contact editorial@gettingthedealthrough.com

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Finland

Pekka Kiviniemi and Tuuli Willgren
Kalliolaw Asianajotoimisto Oy

LEGISLATION AND AGENCIES

Primary and secondary legislation

1 What are the main statutes and regulations relating to employment?

The main statutes are the:

- Employment Contracts Act (55/2001);
- Working Hours Act (872/2019);
- Collective Agreements Act (436/1946);
- Act on Co-operation within Undertakings (334/2007);
- Occupational Safety and Health Act (738/2002);
- Occupational Health Care Act (1383/2001);
- Act on the Occupational Safety Personnel Register (1039/2001);
- Act on the Protection of Privacy in Working Life (759/2004);
- Annual Holidays Act (162/2005);
- Workers' Compensation Act (459/2015);
- Trade Secrets Act (595/2018);
- Security Clearance Act (726/2014);
- Non-discrimination Act (1325/2014);
- Act on Posting Workers (447/2016);
- Aliens Act (301/2004); and
- Young Workers' Act (998/1993).

Protected employee categories

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

According to the Constitution of Finland, no one shall, without an acceptable reason, be treated differently from other persons on the grounds of sex, age, origin, language, religion, conviction, opinion, health, disability or for any other reason that concerns his or her person.

According to the Employment Contracts Act, an employer must treat all employees equally, unless deviating from this is justified given the duties and position of the employees. Without proper and justified reason, less favourable employment terms than those applicable to other employment relationships must not be applied to fixed-term or part-time employment relationships merely because of the duration of the employment contract or working hours.

Provisions on equality and the prohibition of discrimination are laid down in the Non-discrimination Act. Provisions on equality and the prohibition of discrimination based on gender are laid down in the Act on Equality between Women and Men.

The Non-discrimination Act states that an employer shall assess the realisation of equality in the workplace, and develop the working conditions, as well as the methods complied within the selection of personnel and in making decisions concerning personnel. An employer who regularly employs at least 30 people must have a plan for the necessary measures for the promotion of equality. These measures and their effectiveness must be discussed with personnel or their representatives. No one may be discriminated against based on age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics.

Enforcement agencies

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Occupational Health and Safety Administration operates in five divisions at Regional State Administrative Agencies. They perform control checks at workplaces on occupational health and safety issues, investigate employment-related offences and grant exemptions to certain stipulations. They must also be notified of certain types of dangerous work. General courts (district courts, courts of appeal and the Supreme Court), and the Labour Court for collective agreement disputes, pass judgments and grant coercive measures. The parties in the labour market conduct negotiations when the dispute concerns an employer and an employee who are members of the unions that are signatories to the applicable collective agreement.

WORKER REPRESENTATION

Legal basis

4 Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

If there is more than one employee in an employee group, a representative may be elected. If the employees are unionised, the representative will be a shop steward. The employees are guaranteed by mandatory law a right to hold meetings at the workplace outside work hours to deal with employment issues and matters forming part of the function of trade unions. The employer must provide a meeting room for their use, free of charge.

If the employer employs more than 10 employees, the employer must also ensure that the employees elect an occupational safety representative. The employer is required by the Act on the Occupational Safety Personnel Register to enter certain mandatory information on the persons appointed and elected for occupational health and safety cooperation tasks in the workplace in the official occupational safety personnel register created by the Ministry of Social Affairs and Health and maintained by the Centre for Occupational Safety.

According to the Act on Personnel Representation in the Company Administration, in companies that regularly employ at least 150 people in Finland, employees have a right to participate in decision-making in

executive, supervisory or advisory bodies of the company when they are handling matters of importance to the business operations, finances and employees' positions in the company.

Collective agreements contain additional stipulations on representation rights.

Powers of representatives

5 | What are their powers?

The mandatory law and collective agreements contain provisions on the employee representatives' rights to certain information on the employer's business, non-discrimination matters and information regarding the work environment and issues that affect the safety and health of the employees.

Elected employee representatives may represent employees in cooperation proceedings with the employer and enter into binding local agreements on certain derogations from the mandatory law or applicable collective agreement.

Occupational safety representatives have a right to participate in health and safety inspections and they have a right to interrupt work that poses an immediate and serious risk to an employee's life or health.

The Act on Co-operation within Undertakings promotes employees' possibilities to influence decision-making by including the employee representatives in the proceedings; for example, when the employer plans reductions of the workforce. In certain situations, the employee representatives may demand that cooperation proceedings are entered into.

BACKGROUND INFORMATION ON APPLICANTS

Background checks

6 | Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Regular background checks on employees are regulated by the Act on the Protection of Privacy in Working Life. Employers shall mainly collect personal data only from the employee or candidate themselves. If the employer wants to collect information from other sources, the employer must have consent from the employee. Consent is not required when the employer acquires personal credit data or criminal record information to establish the employee's reliability, and the law regulates the situations in which such data may be collected.

The Security Clearance Act contains provisions on procedures to be applied to verify the reliability of applicants for work related to the maintenance of the infrastructure critical for the functioning of society. An employer may apply for a security clearance check to be performed on the applicant by the Finnish Security Intelligence Service in the situations listed in the Act. Consent of the applicant is required for the clearance.

According to the Act on Checking the Criminal Background of Persons Working with Children, the employer has to check the criminal records of an employee who will work alone with underage children.

The employer may hire a third party on a written agreement, but the same stipulations apply and only the legally regulated checks may be performed and only in the situations listed in the law.

Medical examinations

7 | Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

An employer has a right to require that an employee attend a medical examination before the employment begins, to establish that the employee is suitable for the work at hand. The employer shall organise this type of health check with a professional healthcare service provider, and the examination shall be paid by the employer.

Drug and alcohol testing

8 | Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are strict regulations as to drug and alcohol testing and when they may be performed.

The employer may only require drug testing of the applicant who has been chosen for a certain position and shall be hired if he or she passes the test. Testing is possible in the situations listed in the law, as a rule, when the work requires precision, reliability, independent judgement or quick reactions, and if performing the work while under the influence of drugs or while addicted to drugs could endanger the safety of others.

Alcohol testing of applicants and employees depends on the company's drug and alcohol abuse prevention plan. If, according to the plan, an employee seems to have an alcohol abuse problem, the employee can be sent to a check-up performed by a professional healthcare service provider.

This type of personal data belongs to the special categories of personal data listed in the EU General Data Protection Regulation (Regulation (EU) No. 2016/679) and should be processed accordingly.

HIRING OF EMPLOYEES

Preference and discrimination

9 | Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

According to the Non-discrimination Act, an employer may not state in a job advertisement that applicants must have particular qualities or personal characteristics that are unnecessary for the work at hand; for example, certain language skills that are not required for the work. Different treatment in employment relationships and during employment is justified if the treatment is founded on genuine and determining requirements concerning the type of occupational tasks and their performance, and the treatment is proportionate to achieving the legitimate objective.

10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

No. An employment agreement may be oral, written or electronic. It may even be entered into tacitly. However, the employee must always be given the following essential terms in writing:

- the domicile or business location of the employer and the employee;
- the date of commencement of the work;
- the date or estimated date of termination of a fixed-term contract and the justification for specifying a fixed term, or notification that the contract is a fixed-term employment contract with a long-term unemployed person;
- the trial period;
- the place where the work is to be performed or, if the employee has no primary fixed workplace, an explanation of the principles according to which the employee will work in various work locations;
- the employee's principal duties;
- the collective agreement applicable to the work;

- the grounds for the determination of pay and other remuneration, and the pay period;
- the working hours to be observed;
- for variable working hours agreed at the employer's initiative, documentation must also be submitted indicating the circumstances in which, and the extent to which, the employer will require labour;
- the manner of determining annual holiday, and the period of notice or the grounds for determining it; and
- in the case of work performed abroad for a minimum period of one month, the duration of the work, the currency in which the monetary payment is to be paid, the monetary remunerations and fringe benefits applicable abroad, and the terms for the repatriation of the employee.

The information shall be presented by the end of the first pay period at the latest to an employee whose employment relationship is valid indefinitely or for a term exceeding one month unless the terms are laid down in a written employment contract.

If an employee repeatedly concludes fixed-term employment relationships of less than one month with the same employer on the same terms and conditions, the employer must provide information on the principal terms of work within a maximum of one month of the beginning of the first employment relationship.

In the case of dispute, the employer has the burden of proof regarding the terms and conditions of employment, which is why written employment agreements are highly recommended.

11 To what extent are fixed-term employment contracts permissible?

Fixed-term contracts are an exception that always require justified, acceptable grounds. Contracts made for a fixed term on the employer's initiative without a justified reason are considered valid indefinitely. The law contains a prohibition to use consecutive fixed-term contracts when the amount or total duration of fixed-term contracts or the totality of such contracts indicates a permanent need for labour.

If the Employment and Economic Development Office confirm that the candidate has been an unemployed jobseeker during the preceding 12 months without interruption, the employer may enter into a fixed-term agreement with the person without presenting justified reasons for the fixed term, and the employer's permanent labour need does not prevent the employer from concluding a fixed-term contract. In these cases, the maximum duration of the fixed-term contract, or the combined total duration of the contracts, may not exceed one year.

Probationary period

12 What is the maximum probationary period permitted by law?

The main rule is that the maximum probationary period shall be six months. If the employment contract is made for a fixed term, the probationary period may be half of this fixed term and at the most, six months.

If the employee is away from work during the probationary period owing to incapacity for work or family leave, the employer is entitled to extend the trial period by one month for every 30 calendar days of sick leave or family leave.

Collective agreements may contain a shorter probationary period.

Classification as contractor or employee

13 What are the primary factors that distinguish an independent contractor from an employee?

In Finland, there is no separate category of independent contractors. Agreements in which the parties agree on the performance of work tasks are either employment agreements or subcontracting agreements. It is very exceptional that compensation for work paid to a natural person would not be treated as salary and constitute employment.

The actual circumstances determine the nature of the relationship. The primary factor is the agreement between the company and the person working for the company.

Other important factors include:

- business type and corporate registration;
- arranging for mandatory social security insurance (normally provided by the employer for employees);
- inclusion in the preliminary tax withholding register;
- independence of the work engagement (substitution rights);
- lack of control and work direction from the customer;
- own tools, equipment and material;
- working hours that are not mandated or followed;
- whether the remuneration is based on the result, not time;
- termination clauses; and
- the right to work for other contracting parties.

Temporary agency staffing

14 Is there any legislation governing temporary staffing through recruitment agencies?

Collective agreements often contain provisions on the use of hired labour. For example, companies may be required to terminate contracts with staffing agencies before making their own employees redundant.

Temporary agency workers have the right to access the services and common facilities for employees on the same terms and conditions under which the employer offers these to its own employees unless different treatment is justified for objective reasons. Fringe benefits offered by the employer do not need to be extended to temporary agency workers.

If the employer regularly employs more than 20 employees, the employer shall also inform employee representatives of the use of hired labour according to the provisions of the Act on Co-operation Within Undertakings. If the work duration exceeds 10 days, the employer shall also require from the contracting partner certain documents listed in the Act on the Contractor's Obligations and Liability when Work is Contracted Out.

FOREIGN WORKERS

Visas

15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

In most cases, a person coming from outside the European Union must have a residence permit for work, even if the work lasts less than 90 days. The right to work depends on the type of residence permit that the person has been granted. There are certain exceptions for short-term work as a teacher, research worker or artist, among others, where a person is not required to have a residence permit and may work with a short-term visa. The scope of these exceptions should be carefully checked each time.

There is a special residence permit for employees who are transferring within a company or group of companies as a manager, specialist or trainee employee.

Spouses

16 | Are spouses of authorised workers entitled to work?

A spouse whose husband or wife, registered same-sex partner or cohabiting partner has a Finnish residence permit must also apply for a residence permit before entering Finland. The residence permit may be applied for based on the family ties. Once the residence permit on family ties is granted, the spouse is authorised to enter Finland and start working.

General rules

17 | What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

The employer has to check that the applicant has a valid residence permit with a working right for the work in question. It is, for example, possible that the applicant has a working right only for a certain position or sector.

An employer or an employer representative who hires a person who is in the country illegally or otherwise lacks the right to work may be sanctioned to a fine. In some cases, the employer can also be sanctioned to pay the costs of returning the person to their country of residence.

An employer is required to maintain records of foreign employees and of their right to work at the workplace in such a manner that they can be easily verified in an inspection. The information shall be available at the workplace for four years after the end of the employment relationship with the foreign employee.

Resident labour market test

18 | Is a labour market test required as a precursor to a short or long-term visa?

A labour market test is required when applying for a residence permit for an employed person. Certain categories of residence permit, such as residence permits for top and middle management or highly skilled experts, are granted without a labour market test.

TERMS OF EMPLOYMENT

Working hours

19 | Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

There are very few exceptions, all listed in the Working Hours Act, to the requirement to record working hours and pay for overtime. In most cases, only top management may be excluded from the scope of the Working Hours Act. Limiting working hours is an occupational health and safety issue and, therefore, employees may not opt out of such protection.

An employee's total working hours, including overtime, may not exceed 48 hours per week on average during a reference period of four months. Collective agreements may contain different reference periods.

There are mandatory limitations on regular daily and weekly working hours in both legislation and collective agreements.

Should no collective agreement be applicable, the maximum regular working hours are eight hours per day. The maximum regular working hours per week are 40 hours, but they may also be arranged so that the maximum weekly working hours are 40 during a 52-week period. However, the daily working hours shall be eight hours even then. Certain sectors listed in the law may derogate from the aforementioned. Within the limits set by the Working Hours Act and the applicable collective agreement, the parties may also agree on a longer workday.

The Working Hours Act also gives the employer and employee various optional ways in which working hours can also be arranged, if the parties reach an agreement. For example, the Act contains flexible working-hour arrangements that give the employee considerable freedom to choose when to work. In 2020, a new flexible working time arrangement was introduced. It is meant for senior roles where the employee has considerable independence over their own work schedule. In this arrangement, the parties agree that the employee can decide the timing and working place for at least half of his or her working hours freely. The employee's maximum working hours will be 40 hours per week on average over four months. Only mandatory rest periods as stipulated by the Working Hours Act limit the working hours per day, and if agreed by the parties, the employee may even take whole days off.

Collective agreements contain additional categories of working hours (eg, evening work and night-time work) that are compensated differently depending on the applicable collective agreement.

Overtime pay

20 | What categories of workers are entitled to overtime pay and how is it calculated?

All employees that are under the scope of the Working Hours Act are entitled to overtime pay.

How overtime and overtime pay are calculated depends on the working-hours arrangement applicable to the employee. If the employee has considerable freedom to arrange their working hours, the employee is not automatically entitled to overtime pay for long workdays. In these situations, the employer and employee have to separately agree on overtime work.

In most working-hour arrangements, overtime is time worked over eight hours per day and 40 hours per week. For the first two hours of overtime above the daily regular working hours, the regular wage plus 50 per cent is paid, and for additional hours, the regular wage plus 100 per cent is paid. The regular wage plus 50 per cent is payable on hours exceeding the regular weekly working hours.

The Working Hours Act lists certain sectors in which regular working hours may be organised into periods of two or three weeks and in which the employer may derogate from the otherwise mandatory daily and weekly working hours. In period work, overtime is time worked more than 80 hours in two weeks or 120 hours in three weeks. In the case of period-based work that has continued for an entire two- or three-week period, the wage payable on the first 12 or 18 hours over regular working hours, including preparation and completion work, shall be the regular wage plus 50 per cent, and that payable on any further hours is the regular wage plus 100 per cent.

Overtime compensation can be agreed to be completely converted into corresponding free time during regular working hours. In particular, in situations listed in the Working Hours Act, the employer and the employee may also agree on a fixed monthly compensation for overtime.

21 | Can employees contractually waive the right to overtime pay?

Employees may agree that overtime pay is converted into corresponding free time. The parties can also agree that free time is transferred to a working-hours bank or added to the employee's annual holiday. In specific situations listed in the Working Hours Act, the employer and employee may also agree on a fixed monthly compensation for overtime.

Employees cannot validly waive the right to overtime compensation before or during employment.

Vacation and holidays

22 | Is there any legislation establishing the right to annual vacation and holidays?

The right to an annual holiday is established in either the applicable collective agreement or, if no collective agreement is applicable, in the Annual Holidays Act.

An employee accumulates days of annual holiday during the holiday credit year from 1 April to 31 March inclusive. Two-and-a-half days of holiday are credited for each month during which the employee works 'a full holiday credit month'. Thus, employees normally have 30 days of holiday each year. Saturdays are calculated into the 30 days, meaning that the employee has five weeks of holiday.

The entitlement is two weekdays of holiday for each full holiday credit month if, by the end of the holiday credit year, the duration of the employment relationship has been an uninterrupted period of less than one year. The annual holiday for these employees is 24 days, forming four weeks of annual holiday. When the number of days of holiday is calculated, any fraction of a day is rounded up to constitute one full day of holiday.

A full holiday credit month depends on what is agreed in the employment contract as to how much the employee shall work. If the employee is away for a reason other than those listed in section 7 of the Annual Holidays Act, the employee might not earn holiday during that month.

The holiday season, during which the holidays are mainly taken, means the period from 2 May to 30 September inclusive. It is normal for employees to take four weeks of accumulated holiday during this period and the remaining one week of holiday in the winter.

The employer and employee may also agree on the different timing and distribution of holidays. Mandatory law, however, stipulates that the employee shall have an uninterrupted holiday period of 12 days (two weeks) each year.

Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

The employee has a right to sick leave if he or she is not fit to perform his or her duties under the employment agreement. If the employee is only partly unable to work, the employer may show the employee other types of work that the employee is capable of doing without harming his or her health.

The right to a salary during sick leave depends on the applicable collective agreement. If no collective agreement is applicable, the employer shall pay the employee his or her salary for a maximum period of 10 working days. After this, the employee has to apply for a daily sickness allowance from the social security institution.

During sick leave, the employee is entitled to his or her full pay. If the employment relationship has lasted less than a month, the employee is entitled to 50 per cent of his or her pay.

The employee is not entitled to sick pay if he or she has caused his or her sickness wilfully or by gross negligence.

Leave of absence

24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Employees have a right to temporary absence if their immediate presence elsewhere is necessary because of an unforeseeable and compelling reason owing to an illness or accident suffered by their family. If an employee must be absent to provide special care for a family member or someone else close to him or her, the employer must try to arrange the work so that the employee may be absent from work for a fixed period. The employer and the employee shall agree on the duration of such leave and other arrangements.

The employee does not have a statutory right to be paid during the absences described above. Collective agreements may contain an obligation for the employer to pay the salary for certain compelling absences.

Employees are also entitled to take leave from work during maternity, special maternity, paternity and parental benefit periods. The employer is not obliged to pay the salary during these periods unless otherwise stipulated in the applicable collective agreement.

Collective agreements also stipulate other types of shorter leave. Also, mandatory law contains other rights to leaves of absence; for example, for study leave and to attend compulsory military service.

Mandatory employee benefits

25 | What employee benefits are prescribed by law?

There are no mandatory fringe benefits, such as lunch or mobile phone benefits. It is, however, mandatory to pay social security contributions, pension insurance, worker's compensation insurance, and unemployment insurance for all employees, as well as to provide a minimum level of occupational health care. Employees also have the right to sick leave. The aforementioned payments and rights are not labelled as benefits in Finland.

The most common optional in-kind benefits include a mobile phone benefit, lunch benefit, sports and culture vouchers, a home internet connection, a limited or unlimited car benefit, housing benefit and public transport vouchers. All in-kind benefits have a taxable value that must be included in an employee's payroll.

Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

Without a proper and justified reason, less favourable employment terms than those applicable to other employment relationships must not be applied to fixed-term or part-time employment relationships merely because of the duration of the employment contract or working hours.

Regarding part-time contracts, there are special rules about offering work. If the employer requires more employees for duties suitable for employees who are already doing part-time work for the employer, the employer shall offer such employment to these part-time employees. The employer shall provide part-time employees with reasonable training for them to qualify for the work.

There are also special rules on the right to enter into part-time contracts where the amount of work varies, as well as rules on how the amount of work for each period shall be determined.

Public disclosures

27 | Must employers publish information on pay or other details about employees or the general workforce?

The employer does not need to publish this information, but if it regularly employs more than 20 employees, it shall inform the employee representatives of the salaries in each employee group, of the amount of part-time or fixed-term employees, and the use of work that is contracted out.

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

28 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

All these covenants are treated as non-compete clauses, and they are strictly regulated by the Employment Contracts Act. The use of such covenants requires particularly weighty reasons related to the operations of the employer. Consideration shall be given to the nature of the employer's operations, any need for protection related to trade secrets and the employee's status and duties.

The maximum length of the restriction is six months. If the employee is deemed to receive reasonable compensation for the restriction, the period can be lengthened to one year at most. The length of the restriction shall always be assessed regarding the purpose of the restriction, and the maximum length in each situation must be assessed on a case-by-case basis. For example, in some sectors, the protected information becomes old faster than in other sectors.

Post-employment payments

29 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

At present, a covenant of six months post-employment can be imposed without additional compensation. A restriction period that extends over a maximum of one year can be imposed if the employee receives reasonable compensation.

The amount of compensation shall be assessed on a case-by-case basis, but the main rule is that it should amount to at least the size of the loss of earnings of the employee. Changes to this legislation are expected in 2021. According to a recent government proposal, an employer would have to pay monthly compensation for post-employment restrictions. The proposed compensation would be 40 to 60 per cent of the employee's salary for the restriction period.

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

30 In which circumstances may an employer be held liable for the acts or conduct of its employees?

The employer is always liable for any loss to a third party caused by an employee. The employee is then liable for damages towards the employer to an amount deemed reasonable. If the employee's negligence in causing the injury or damage was merely slight, the employee is not liable to the employer for damages.

TAXATION OF EMPLOYEES

Applicable taxes

31 What employment-related taxes are prescribed by law?

The Tax Administration collects income tax and the employer's health insurance contribution. Also, the employer shall take out mandatory social security insurances, such as pension insurance, workers' compensation insurance and unemployment coverage.

EMPLOYEE-CREATED IP

Ownership rights

32 Is there any legislation addressing the parties' rights with respect to employee inventions?

The main legislation relating to employee inventions is the Act on the Right in Employee Inventions (656/1976).

Copyright is regulated by the Copyright Act (404/1961).

Trade secrets and confidential information

33 Is there any legislation protecting trade secrets and other confidential business information?

The Trade Secrets Act sets the framework for the protection of trade secrets and other confidential business information. The Employment Contracts Act contains a general provision forbidding employees to disclose or take advantage of their employer's trade secrets during the employment relationship. The Criminal Code contains penal sanctions for the misuse of trade secrets.

DATA PROTECTION

Rules and obligations

34 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The EU's General Data Protection Regulation (GDPR) is applicable in Finland and is complemented by the Data Protection Act (1050/2018). Also, employee data is regulated in more detail in the Act on the Protection of Privacy in Working Life.

Several obligations are imposed on employers; for example, employers shall only process the personal data of employees to the extent necessary for the fulfilment of the parties' obligations in the employment relationship. The employee cannot consent to a derogation of this protection.

35 Do employers need to provide privacy notices or similar information notices to employees and candidates?

Both employees and candidates must be informed about the processing of their personal data as stipulated by the GDPR.

36 What data privacy rights can employees exercise against employers?

All rights under the GDPR apply to an employment relationship and can be exercised against an employer. However, an employee's right to demand restriction or erasure of data is, in practice, limited by the fact that the employer may already only process data that is necessary for the fulfilment of the parties' obligations in the employment relationship. Therefore, if the employer follows this principle, there should not be excess data to erase during the employment relationship. Employers cannot erase data that has to be retained according to mandatory law, such as data that forms a part of accounting material or that is necessary to retain to answer employment-related claims.

BUSINESS TRANSFERS

Employee protections

37 | Is there any legislation to protect employees in the event of a business transfer?

Council Directive 2001/23/EC relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses has been implemented by the Employment Contracts Act and the Act on Co-operation within Undertakings. The transfer of an undertaking, business or part of an undertaking or business shall not in itself constitute grounds for dismissal by the transferor or the transferee. Both the transferor and the transferee are required to inform employee representatives of the transfer.

TERMINATION OF EMPLOYMENT

Grounds for termination

38 | May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

According to the Employment Contracts Act, an indefinitely valid employment contract cannot be terminated without proper and weighty reason. These grounds are divided into financial and production-related grounds and grounds relating to the employee's person.

Grounds relating to the employee's person are described in the Act as serious breaches or neglects of obligations arising from the employment contract or the law that have an essential impact on the employment relationship as well as essential changes in the conditions necessary for work related to the employee's person that render the employee unable to cope with their work duties.

The Employment Contracts Act also lists certain causes that cannot be regarded as proper and weighty reasons. For example, the employee's political, religious or other opinions or participation in social activity or associations cannot be a cause for termination.

In most cases, an employee may not be given notice for grounds related to his or her person before he or she has been warned and given a chance to amend his or her conduct.

Notice

39 | Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

A notice of termination must be given, and the parties must observe a notice period. The employer may remove the employee's obligation to work during the notice period but must pay the salary, regardless. The employment relationship will end after the notice period.

40 | In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Both parties may cancel the employment contract during the trial period as long as the grounds are not discriminatory or otherwise inappropriate. Outside the trial period, an employment contract may be cancelled upon an extremely weighty cause. Such cause may be deemed to exist if the employee neglects his or her duties in a manner that has an essential impact on the employment relationship and in such a serious manner that it renders it unreasonable to expect the employer to continue the employment relationship even for the period of notice. It is very exceptional that a situation like this would occur.

Severance pay

41 | Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

No, the employee only has a right to their salary during the notice period, unless otherwise expressly agreed between the parties.

Procedure

42 | Are there any procedural requirements for dismissing an employee?

The procedural requirements depend on whether the dismissal is based on grounds related to the employee or the employer.

If the employer wishes to terminate an employment relationship owing to grounds related to the employee's person, the employer shall provide the employee with an opportunity to be heard concerning the grounds for termination. Having heard the employee, the employer shall find out whether it is possible to avoid giving notice by placing the employee in other work. The notice of termination shall, if possible, be given to the employee in person. If this is not possible, the notice may be delivered by letter or electronically. If the employee requests, the employer shall inform the employee without delay in writing of the date of termination and the grounds for termination.

When the employer employs more than 20 employees, it shall carefully follow the procedure set down in the Act on Co-operation within Undertakings before dismissing employees for grounds related to the employer. The Act provides a negotiation procedure that lasts from two to six weeks, depending on the number of contemplated terminations. The negotiation procedure must be completely terminated before the employer makes any decisions on possible terminations.

Employee protections

43 | In what circumstances are employees protected from dismissal?

Protection is awarded to employee representatives, as well as employees who are pregnant or use their right to parental leave. Collective agreements may extend the protection of employee representatives to many months preceding their election and following the termination of their position as an employee representative. Special protection is also awarded to employees on study leave or undergoing military service.

Mass terminations and collective dismissals

44 | Are there special rules for mass terminations or collective dismissals?

If the employer regularly employs more than 20 employees, it shall follow the cooperation negotiation procedure set down in the Act on Co-operation within Undertakings. The negotiation procedure is strictly regulated, and any breach of the obligations may lead to severe indemnity payments for each affected employee.

The cooperation procedure starts with an invitation that shall be sent to the employees concerned, or their representative, at least five calendar days before the first negotiation meeting. The employer shall also inform employment officials of possible terminations. The negotiations shall be conducted in meetings with either the employees or the employee representatives for each employee group. The Act contains stipulations on what needs to be discussed. The duration of the proceedings depends on the number of employees in total employed by the company and the number of contemplated terminations. After the negotiation phase, the employer shall give a report stating the contemplated measures.

Class and collective actions

45 | Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Only individual employees may assert their claims.

Mandatory retirement age

46 | Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

The employee's employment relationship is terminated without notice at the end of the calendar month during which the employee reaches the age of retirement stipulated by law. The retirement age depends on the employee's year of birth and ranges from 68 to 70. The parties may agree to prolong the employment relationship even after this point. The law also stipulates a minimum retirement age after which the employee may retire of his or her own initiative.

DISPUTE RESOLUTION

Arbitration

47 | May the parties agree to private arbitration of employment disputes?

It is not recommended to agree on arbitration in an employment context as the employer is often made to pay for the costs of litigation for both parties, regardless of the outcome of the litigation. The agreement may also be regarded as void if there have been no special circumstances to justify dispute resolution in arbitration.

Employee waiver of rights

48 | May an employee agree to waive statutory and contractual rights to potential employment claims?

An employee may not waive any claims in advance. The only possibility to achieve a binding waiver is to enter into an agreement on termination of employment that contains sufficient compensation from the employer.

Limitation period

49 | What are the limitation periods for bringing employment claims?

The general rule is five years during employment and two years after the termination of employment. During employment, claims related to working hours and annual holiday can be brought for two years after the calendar year during which the working hours were performed, annual holiday should have been given or annual holiday compensation should have been paid.

Claims related to equal opportunities can be brought for two years after the event (eg, a promotion decision). In the event of a job application, equal opportunity-related claims can be brought for one year after a denied hiring. In the case of personal damage caused to an employee at work, the claim can be brought up to 10 years after the incident. An employee has a right to request a certificate of employment detailing his or her name, position and period of employment for 10 years after the termination of the employment relationship.

UPDATE AND TRENDS

Key developments of the past year

50 | Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

In 2021, the government is expected to propose a new Act on Co-operation Within Undertakings that would replace the current Act. This piece of legislation is extremely important for all companies that employ 20 employees or more, as the Act includes stipulations on the mandatory, continuous exchange of information between the employer and employee representatives. Also, the Act contains a mandatory negotiation procedure that has to be respected, if the company plans changes to its operations or contemplates terminations of employment on financial or production-related grounds.

The Finnish parliament is currently contemplating an amendment to the stipulations of the Employment Contracts Act on post-employment non-competition clauses. At present, most employees do not receive additional payment for non-competition restrictions and employers face criticism for having used post-employment restrictions too freely. If the legal amendment enters into force as proposed, employers will have to pay compensation even for non-competition agreements entered into before the amendment enters into force. A transition period of one year, during which contracts can be checked for unnecessary restrictions, has been proposed.

Parental leave is also under reform. The length of parental leave allocated to each parent is under consideration and the government has indicated that it may be willing to propose new legislation that would give both parents equal rights to leave. At present, mothers use most of the parental leave periods available.

Also, there is an ongoing discussion on whether it is necessary to separate micro-entrepreneurs from employees in certain situations and whether the use of micro-entrepreneurs in lieu of employees should be accepted. It is seen as a threat to employee protection and taxation to allow companies to contract work out to individuals who are not then covered by the protection offered by employment law.

Coronavirus

51 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In 2020, the covid-19 pandemic led to temporary amendments of employment legislation. The most important of these included shortening notice periods for layoffs and the minimum negotiation time for cooperation negotiations in cases where the employer planned layoffs. During this time, compensation to employees was also slightly better. All of the temporary amendments to employment laws terminated at the end of 2020. At the time of writing, there are no exceptions to labour laws in force owing to the pandemic.

The government continues to recommend working from home in all sectors where it is deemed possible by the employer. It is therefore up to the employer to decide whether or not it requires a physical presence in the workplace. Changes to an employee's agreed place of work can only be made in agreement with the employee. Once the pandemic is over, for companies of 20 employees or more, the employer must remember to negotiate changes to working-from-home policies and the ensuing return to the workplace with employee representatives. The negotiations shall follow the stipulations of the Co-operation Act.

Travel restrictions continue to affect many employers. The government has implemented border-control restrictions that are under continuous change. Employers who plan on sending employees or representatives to Finland are advised to monitor the restrictions closely, as they may change very quickly. The guidelines for border traffic, which are in occasional force, are posted on the Finnish Border Guard website. Employers should also prepare for a quarantine period, even if their employee is allowed to enter Finland. The Ministry of Social Affairs and Health and the Finnish Institute for Health and Welfare maintain the FINENTRY website, where the current restrictions are posted and where an employee may check whether a coronavirus test or quarantine is required to enter the country.

The Finnish Institute for Occupational Health has also prepared guidelines for employers and employees to address health and safety issues in the workplace during the pandemic. The guidelines are posted on the Institute's website.

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