

18.1.2017

I. Legal notice – disclaimer

This sheet aims to provide a general overview of the main substantive rules concerning the terms and conditions of employment to be met by legislation transposing Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997) and Directive 2014/67/EU concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').

By its very nature, such a sheet can only summarise and does not necessarily contain all the relevant information in this context. In no way can it replace legislative, regulatory or administrative texts, or applicable collective agreements. The information below has been provided by the authorities of the Member States, which have made every effort to ensure its accuracy. Neither the Commission nor the Member States concerned can, however, guarantee that the information provided is always precise, complete, accurate and up to date. Furthermore, publication on the portal of the European Commission does not imply in any way that the latter or its DGs and Services consider the rules presented in this way to be in conformity with Community law.

II. Instrument transposing Directives 96/71/EC and 2014/67/EU

The new Posted Workers Act (447/2016) entered into force on 18th June 2016. The new law repealed the old Posted Workers Act (1146/1999).

The obligations of the repealed Act are applied to posted workers who were posted to Finland at the time the new Posted Workers Act entered into force. This means that if the service contract between the posting employer and the recipient of services has been concluded before the 18th June 2016, the obligations of the repealed Act are still applied to these posted workers covered by the contract. These posted workers and their employers are only subject to the provisions of Chapters 5 (Authorities' duties and right to information) and 6 (Cross-border administrative cooperation) of this new Act. Otherwise they are subject to the provisions effective at the time of the entry into force of this new Act.

In addition, the entry into force of section 7 (Notification of the posting of a worker) and section 35(1)(1) (Negligence fee) of this Act is laid down separately by law. (See XVI. Procedural and administrative requirements)

Posted Workers Act (1146/1999)

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

The Act in Finnish:

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

The Act in Swedish:

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

The unofficial translation of the Act in English:

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

The Act on Posting of Workers (447/2016)

Official publication: The Statutes of Finland, Act on Posting of Workers (447/2016)

The Act in Finnish:

<http://www.finlex.fi/fi/laki/alkup/2016/20160447>

The Act in Swedish:

<http://www.finlex.fi/sv/laki/alkup/2016/20160447>

The unofficial translation in English:

<http://www.finlex.fi/fi/laki/kaannokset/2016/en20160447.pdf>

Please be aware of the fact that the unofficial translation of the Act in English is not always fully up-to-date.

III. Information on legislation applicable in accordance with the Directive

Among other things, the following issues are regulated by the Posted Workers Act:

- The definitions of situations constituting a posting
- The definition of a posted worker
- How the law applicable to the employment contract of a posted worker is determined
- The provisions of Finnish law which shall apply to the employment contract of a posted worker in so far as they are more favourable to the posted worker than the law that would be applicable otherwise
- The provisions of Finnish universally applicable (= generally binding) collective agreements which shall apply to the employment contract of a posted worker in so far as they are more favourable to the posted worker than the law that would be applicable otherwise
- The obligation of a posting employer to make a posting notification and to select a representative
- The obligation of a posting employer to keep available in Finland certain information prescribed in the Act for supervision purposes
- The obligations of a contractor
- Supervision of compliance with the Posted Workers Act
- Negligence fees in cases of infringements
- The court with competent jurisdiction
- The penalties for violations of the Posted Workers Act and Finnish labour legislation

Information on the Posted Workers Act, the relevant Finnish legislation referred to in the Posted Workers Act and universally applicable (= generally binding) collective agreements can be obtained at:

The Regional State Administrative Agency for Southwestern Finland, Division of Occupational Safety and Health is the Finnish liaison office on posting. The liaison office gives general information on posting and advises posting employers and posted workers where to get more detailed information, for example, on the Posted Workers Act, the other Finnish labour legislation, occupational safety and health legislation, universally applicable (= generally binding) collective agreements, social security (A1 forms), taxation, work permits, legal aid etc.

The Liaison Office on Posting

The Regional State Administrative Agency for Southwestern Finland/ Division of Occupational Safety and Health

P.O. Box 22 FI-20801 Turku FINLAND

Tel. +358 295 018 000 (main office)

Official e-mail of the Agency: tyosuojelu.lounais@avi.fi (agency's registry)

Official web page of the Agency: <http://www.tyosuojelu.fi/web/en>

<http://www.tyosuojelu.fi/web/en/about-us/contact>

The web page of the Liaison Office:

<http://www.tyosuojelu.fi/web/en/employmentrelationship/foreign-employee/posted-worker>

Contact persons in the Liaison Office: Ms. Anu Ikonen

Questions to the Liaison Office on posting may be sent primarily to the e-mail address:

postedworkersfin@avi.fi

- *The Regional State Administrative Agencies / Divisions of Occupational Safety and Health (labour inspectorates)* are responsible for the enforcement of labour legislation (also the Posted Workers Act), occupational safety and health legislation and universally applicable (= generally binding) collective agreements. The Regional State Administrative Agencies / Divisions of Occupational Safety and Health give detailed and personal advice to posting employers and posted workers.

The Regional State Administrative Agencies / Divisions of Occupational Safety and Health (labour inspectorates)

Regional State Administrative Agency for Southern Finland

Division of Occupational Safety and Health

Ratapihantie 9

PO Box 110, FI-00521 HELSINKI, FINLAND

Tel +358 295 016 000

Fax +358 9 730 798

E-mail: tyosuojelu.etela@avi.fi

Regional State Administrative Agency for Eastern Finland
Division of Occupational Safety and Health
Hallituskatu 12 -14
PO Box 1741, FI-70101 KUOPIO, FINLAND
Tel +358 295 016 800
Fax +358 17 580 8690
E-mail: tyosuojelu.ita@avi.fi

Regional State Administrative Agency for Southwestern Finland
Division of Occupational Safety and Health
Itsenäisyydenaukio 2
PO Box 22, FI-20801 TURKU, FINLAND
Tel +358 295 018 000
Fax +358 2 254 7751
E-mail: tyosuojelu.lounais@avi.fi

Regional State Administrative Agency for Western and Inland Finland
Division of Occupational Safety and Health
Uimalankatu 1
PO Box 272, FI-33101 TAMPERE, FINLAND
Tel +358 295 018 450
Fax +358 3 364 1372
E-mail: tyosuojelu.lansi@avi.fi

Regional State Administrative Agency for Northern Finland
Division of Occupational Safety and Health
Viestikatu 1, building K8
PO Box 229, FI-90101 OULU, FINLAND
Tel +358 295 017 500
Fax +358 8 315 9599
E-mail tyosuojelu.pohjoinen@avi.fi

The common Internet pages of Regional State Administrative Agencies are <http://www.avi.fi/>

Information about the Regional State Administrative Agencies / Divisions of Occupational Safety and Health can be found on their Internet pages: www.tyosuojelu.fi

Information for posted workers working in Finland:

<http://www.tyosuojelu.fi/web/en/employment-relationship/posted-worker>

<http://www.tyosuojelu.fi/web/en/employment-relationship/foreign-employee>

- **The Ombudsman for Equality and the Equality Board** are responsible for the supervision of the provisions of the Act on Equality between Women and Men (609/1986) referred to in the Posted Workers Act. The Ombudsman for Equality gives advice and counseling on issues relating to the Equality Act <https://www.tasa-arvo.fi/web/EN/>

- The Posted Workers Act and other ***Finnish legislation*** are available in Finnish and in Swedish in the official database of legislation <http://www.finlex.fi/en/>. Unofficial English translations of some of the Finnish acts may be found at the same address. Unfortunately, all the unofficial English translations are not up-to-date.

Unofficial English translations of Finnish labour legislation can be found also on the web page of the Ministry of Economic Affairs and Employment. The Ministry of Economic Affairs and Employment has produced also brochures on labour legislation: <http://tem.fi/en/labour-legislation>

- ***Universally applicable (= generally binding) collective agreements*** are available in Finnish and unofficial translations are available in Swedish: <http://www.finlex.fi/fi/viranomaiset/tyoehto/>

Labour market organisations may have some universally applicable (= generally binding) collective agreements translated partly or totally to other languages too. Most common translations are usually English, Estonian, Russian and Polish.

The contents of the universally applicable (= generally binding) collective agreements may be requested from the Regional State Administrative Agencies / Divisions of Occupational Safety and Health (labour inspectorates) as well as from the labour market organisations.

- ***A joint guide*** of the Confederation of Finnish Construction Industries, the Construction Trade Union and Trade Union Pro on foreigners working in Finland:
In English:
<http://www.rakennusteollisuus.fi/English/Guide-to-employment-of-foreigners-in-Finland/>
- ***FIEC- the European Construction Industry Federation***
In English the guide on Posting of Workers in the Construction Industry
<http://www.posting-workers.eu/countries/finland.aspx>
- ***Central labour market organisations*** give information, for example, on Finnish labour market system, different labour market organisations and the contact details of their member labour market organisations which have concluded universally applicable (= generally binding) collective agreements.

Confederation of Finnish Industries
<http://www.ek.fi/ek/en/index.php>

The Central Organisation of Finnish Trade Unions
<http://www.sak.fi/english>

The Finnish Confederation of Salaried Employees
<http://www.sttk.fi/en/>

Confederation of Unions for Professional and Managerial Staff in Finland
<http://www.akava.fi/en/>

The Federation of Finnish Enterprises
<https://www.yrittajat.fi/en/frontpage>

- **Sectoral labour market organisations** give information, for example, on Finnish labour market system and universally applicable (= generally binding) collective agreements which they have concluded on their sector.

In Finland different sectoral labour market organisations have concluded over 160 universally applicable (= generally binding) collective agreements.

Here are the webpages of the sectoral labour market organisations which have concluded universally applicable (= generally binding) collective agreements especially for the sectors where posted workers usually work in Finland.

Housing construction industry

The Confederation of Finnish Construction Industries RT
<http://www.rakennusteollisuus.fi/en/>

The Finnish Construction Trade Union
<http://rakennusliitto.fi/en/>

ECMIN European Construction Mobility Information Net
<http://ecmin.efbww.org/default.asp?issue=emwn&language=EN&CID=FIN>

Building engineering industry

Finnish Association of HPAC Technical Contractors
<http://www.lvi-tu.fi/lvi-tu/in-english/>

The Finnish Construction Trade Union
<http://rakennusliitto.fi/en/>

Metal industry

The Federation of Finnish Technology Industries
<http://www.teknologiateollisuus.fi/en/>

The Finnish Metal Workers Union
<http://www.metalliliitto.fi/web/en/welcome>

Electrical engineering industry

Finnish Energy Industries
<http://energia.fi/en>

Service Sector Employers
<https://www.palta.fi/>

Sähkötekniset työnantajat

<http://www.stta.fi/fi>

Finnish Electrical Workers' Union

http://www.sahkoliitto.fi/sahkoliitto/for_foreigners/

The Trade Union for the Public and Welfare Sectors

<http://www.jhl.fi/portal/en>

Plastics and chemical products industry

Chemical Industry Federation of Finland

<http://www.chemind.fi/en/>

Finnish Plastics Industries Federation

<http://www.plastics.fi/eng/>

Industrial Union TEAM

http://www.teamliitto.fi/in_english/

Food industry

Finnish Food and Drink Industries' Federation

<http://www.etl.fi/en/food-and-drink-industry.html>

Finnish Food Workers' Union

<http://www.selry.fi/en/>

Transport sector/ commercial drivers

Finnish Employer's Federation of Road Transport

http://www.alt.fi/fin/in_english/

Transport Workers Union AKT

<http://www.akt.fi/in-english/>

Forwarding agencies (employees of cargo terminals and ports)

Service Sector Employers

<https://www.palta.fi/>

Transport Workers Union AKT

<http://www.akt.fi/in-english/>

Forestry

Maaseudun työnantajaliitto ry

<http://www.tyonantajat.fi/>

Metsähallitus

<http://www.metsa.fi/web/en/home>

Finnish Forest Industries

<http://www.forestindustries.fi/>

Yksityismetsätalouden Työnantajat ry

http://www.yt-ry.fi/etusi_vu

The Wood and Allied Workers' Union

<http://www.puuliitto.fi/en/>

Allied rural industries

Maaseudun työnantajaliitto ry

<http://www.tyonantajat.fi/>

The Wood and Allied Workers' Union

<http://www.puuliitto.fi/en/>

Hospitality industry

The Finnish Hospitality Association (MaRa)

<http://www.mara.fi/en>

Service Union United PAM

<https://www.pam.fi/en/frontpage.html>

Facilities services sector

The Real Estate Employers (Kiinteistötyönantajat ry)

<http://www.kiinteistotyönantajat.fi/inenglish/>

Service Union United PAM

<https://www.pam.fi/en/frontpage.html>

Other useful information sources

The Tax Administration

<http://www.vero.fi/en-US>

NB: According to the new Finnish tax legislation posted workers working in Finland on construction industry need a tax number.

New tax legislation on tax number:

http://www.vero.fi/en-US/Individuals/Individual_Tax_Numbers

The Finnish Immigration Service

<http://www.migri.fi/frontpage>

KELA – The Social Insurance Institution of Finland

<http://www.kela.fi/in/internet/english.nsf>

The Finnish Centre for Pensions

<http://www.etk.fi/en/>

The joint pages of KELA and the Tax Administration: InTo Finland

<http://www.intofinland.fi/en>

The Police

<http://www.poliisi.fi/>

http://www.poliisi.fi/crimes/reporting_an_offence_online

Information on human trafficking (forced labour) and the system for victim assistance

http://www.humantrafficking.fi/in_english

The Finnish Bar Association – Find a Lawyer

<http://www.asianajaliitto.fi/en>

http://www.asianajaliitto.fi/en/legal_services/find_a_lawyer

The Legal Aid Offices of the State

<http://www.oikeus.fi/oikeusapu/en/index.html>

General information on Finnish society

www.infopankki.fi

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

What are the rights of a posted worker?

Usually, if a posting employer has failed to comply with the terms and conditions of employment regulated by the Finnish Posted Workers Act, the posting employer owes money to the posted worker. The posted worker has ***a right to demand payment from the posting employer.***

Before bringing any legal action, it is advisable to negotiate with the posting employer and claim the payment unofficially. If legal actions are necessary, those can be done in Finland in a district court by bringing a suit against the posting employer. Alternatively, it may be possible to bring a suit against the posting employer in the posted worker's home country.

If ***the posted worker has suffered damage*** because of the posting employer's failure to comply with the terms and conditions of employment regulated by the Finnish Posted Workers Act, the posted worker may have ***a right to claim a posting employer to pay damages too.*** This depends on the nature of the case.

If the posting employer has failed to comply with the provisions of the Act on Equality between Women and Men (609/1986) referred to in the Finnish Posted Workers Act and discriminated against a posted worker in working life on the basis of gender, the posted worker has ***a right to demand compensation from the posting employer.***

If the posting employer has failed to comply with the provisions of the Non-Discrimination Act (1325/2014) referred to in the Finnish Posted Workers Act and discriminated against a posted worker, the posted worker has ***a right to demand compensation from the posting employer according to the Non-Discrimination Act section 26. (See chapter 5.)***

It is possible that the posting employer's failure to comply with the terms and conditions of employment *constitute a crime in Finland*. In the worst case it may be even a question of human trafficking (forced labour). The Finnish police investigate offences and district courts have jurisdiction to punish for crimes. The posted worker or anyone else has a right to report a suspected crime/ offence to the Finnish police. The police are required to receive the report. The report can be made at nearest police station, by telephone, by fax, using an online form or by informing a police patrol. The online form:

http://www.poliisi.fi/crimes/reporting_an_offence_online

Information on human trafficking (forced labour) and the system for victim assistance

http://www.humantrafficking.fi/in_english

<http://www.humantrafficking.fi/help/english>

Where can a posted worker ask advice?

If the posting employer fails to comply with the terms and conditions of employment of the posted worker regulated by the Posted Workers Act - also the provisions of the Non-Discrimination Act, the posted worker can ask advice from the Regional State Administrative Agencies / Divisions of Occupational Safety and Health (labour inspectorates). (Contact details above.)

If the posted worker is a member of a Finnish trade union, he/she can turn to the trade union for help too. Even if the posted worker is not a member of a Finnish trade union, it is always advisable to contact the trade union of the sector/industry. (Some contact details above.)

The posted worker can ask advice also from a Finnish lawyer or a public legal aid office.

<http://www.asianajaliitto.fi/en>

<http://www.oikeus.fi/oikeusapu/en/index.html>

If the posting employer fails to comply with the provisions of the Act on Equality between Women and Men (609/1986) referred to in the Posted Workers Act, the posted worker can ask advice from The Ombudsman for Equality.

<https://www.tasa-arvo.fi/web/EN/>

Information on human trafficking (forced labour) and the system for victim assistance

http://www.humantrafficking.fi/in_english

<http://www.humantrafficking.fi/help/english>

If the work in Finland has finished and the posted worker has already left home, it is advisable to contact the authorities (labour inspectorate) of the posted worker's home country. The authorities (labour inspectorates) of the Member States of the European Union are able to cooperate cross-borders when they investigate cases of posted workers.

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

The Posting of Workers Act applies to the following situations:

1. the worker is posted to perform work under the direction and on behalf of the undertaking under a contract concluded between the employer and the user of the services operating in Finland, [*The Posted Workers Act 1146/1999: Section 1, paragraph 2, point 1 and The Act on Posting of Workers (447/2016) Section 1*]
2. the worker is posted to work for an establishment or undertaking owned by the group of undertakings concerned, or [*Section 1, paragraph 2, point 2 of the Posted Workers Act and The Act on Posting of Workers (447/2016) Section 1*]
3. the worker is hired out to a user undertaking and the employer is a temporary employment undertaking or placement agency. [*Section 1, paragraph 2, point 3 of the Posted Workers Act and The Act on Posting of Workers (447/2016) Section 1*]

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

VI. Posted workers [Article 2 of the Directive]

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

In Section 1, paragraph 1 of the Posted Workers Act (1146/1999) and in section 1 of The Act on Posting of Workers (447/2016) there is a reference to the definition of a worker given in the Employment Contracts Act. In Finland the decision whether a person is a worker or not (for example, a self-employed) is made according to the definition of a worker given in the Employment Contracts Act (55/2001). This definition applies irrespective of that person's title or status in the country of origin.

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

According to the case law of the Court of Justice of the European Union, the temporary nature of an activity carried out by a posting employer on the territory of a Member State in the context of free provision of services cannot be determined abstractly. In other words, there are not a maximum time limit for allowed cross border service provision and posting of workers in Finnish labour legislation. Whether the provision of service and posting of workers is only temporary by nature, should be judged on a case-by-case basis, depending on the duration, frequency and periodicity or continuity of a service provided by a posting employer.

It should be noted that if an occupational activity of a posting employer in Finland can no longer be considered as being exercised temporarily, taking account of the above mentioned criteria, but is stable and continuous, the workers are not posted workers.

Internet link:

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

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

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

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

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

The maximum working hours and minimum rest periods of posted workers are based on the provisions of the Finnish Working Hours Act (605/1996) and the Work in Bakeries Act (302/1961). Section 2, paragraph 2 of the Posted Workers Act (1146/1999) and section 4 of The Act on Posting of Workers (447/2016) refers to the following provisions:

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

- working hours and stand by-time (Section 4 -5 of the Working Hours Act)
- regular working hours (Sections 6–14 of the Working Hours Act)
- definition of day and week (Section 16 of the Working Hours Act)
- exceeding regular working hours (Sections 17–21 of the Working Hours Act)
- night work (Section 26 of the Working Hours Act)
- shift work and night shifts in period-based work (Section 27 of the Working Hours Act)
- rest periods (Sections 28–32 of the Working Hours Act) and
- requirements for Sunday work (Section 33, paragraph 1 of the Working Hours Act).

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

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

The Working Hours Act contains a general definition of the time included in working hours. *Working hours* consist primarily of only the time which the employee uses to perform the contractual tasks or the time during which the employee is obliged to be at the place of work or available to the employer in some other place determined by the employer. Participation in

training can be considered to fulfil the working obligation when the participation in training is made compulsory by the employer's order and when the performance of the employee's tasks necessarily requires participation in training.

Time taken by medical examinations is not included in working hours. Time used by personnel representatives — e.g. a shop steward or an industrial safety delegate — for carrying out their elected duties, during which they are off-duty on the basis of law or employment contract, is not included in working hours.

The daily rest period is not included in the working hours if the employee is free to leave the workplace during the time. Travel time is not included in working hours if it does not constitute work performance, such as short distances travelled by a fitter or housekeeper when moving from one workplace to another, perhaps several times a day.

The Working Hours Act also contains stand-by provisions, indicating the employee's contractual obligation to remain at home or otherwise be available to be called in to work when necessary. Stand-by time is not included in working hours.

Stand-by obligation is a matter which must always be agreed on by the employer and the employee. Consent to a stand-by obligation can be given in the employment contract. The employee must be remunerated for stand-by time, and the restrictions imposed by stand-by on the employee's use of free time must be taken into consideration in the amount of the remuneration. If the employee and the employer have contracted that, during the stand-by time, the employee must stay at home, at least half of the time the employee spends on stand-by at home must be remunerated either in pay or by corresponding free time during regular working hours. 4

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

Working hours in period-based work

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

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

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

Additional work is work which is performed at the employer's initiative and with the employee's consent and which exceeds the contractual regular working hours but does not

exceed the statutory regular working hours. Working hours less than the statutory regular working hours may be based on either an employment contract or a collective agreement.

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

Remuneration payable on additional work and overtime

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

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

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

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

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

- in period-based work;
- in work which has been divided into three or more shifts;
- in work which has been divided into two shifts, but only until 01.00;
- in the maintenance and cleaning of public roads, streets and airfields;
- in pharmacies;

- at newspapers and magazines, news and photographic agencies and in other media work, and in the delivery of newspapers;
- in service and repair work which is necessary to allow work to proceed regularly in undertakings, corporations or foundations, or in work which cannot be carried out simultaneously with the regular work of the workplace concerned;
- at peat sites during the peat extraction season;
- at sawmill drying houses;
- in heating work at greenhouses and drying plants;
- with the employee's consent, in urgent sowing and harvesting, in work directly related to parturient farm animals or to the treatment of ill farm animals and in other such farm work which cannot be postponed due to its nature;
- in work which is carried out almost completely at night due to its nature.

Sunday work

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

Rest periods

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

Daily rest period

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

Weekly free time

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

period. In uninterrupted shift work, free time can be organised to average 35 hours within a maximum of 12 weeks. Weekly free time must, however, be at least 24 hours in both cases.

In addition, under Section 2, paragraph 3 of the Posted Workers Act (1146/1999) and under Section 4 of The Act on Posting of Workers (447/2016), the provisions of universally applicable (=generally binding) collective agreements concerning working hours apply to posted workers' employment relationships. Universally applicable (= generally binding) collective agreements can be found at the following address: <http://www.finlex.fi/fi/viranomaiset/tyoehto/>

In June 2016 there were over 160 universally applicable (= generally binding)_collective agreements in force.

Internet link:

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

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

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

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

Working Hours Act Brochure 2014 in Finnish, Swedish and English (Brochure 2005) where the above-mentioned provisions are described more detailed:

http://tem.fi/documents/1410877/2106637/tyoaikalaki_fi_25112014.pdf/d13bb304-48e1-48ba-a293-f86f2c7b026e

http://tem.fi/documents/1410877/2106637/tyoaikalaki_sv_25112014.pdf/ec73165f-5bbb-4ed7-931a-5652f4abb5fe

http://tem.fi/documents/1410877/2106637/working_hours_act_brochure2005.pdf/2562db36-f408-4d0b-bbab-cd6c7cb2b360

<http://tem.fi/en/working-hours-and-annual-holiday>

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

In Finland posted workers' annual holidays, annual holiday pay and holiday compensation are specified in Sections 5-19 of the Annual Holidays Act (162/2005). Section 2, paragraph 2, point 3 of the Posted Workers Act (1146/1999) and Section 4 of The Act on Posting of Workers (447/2016) contains a reference to the above-mentioned provisions of the Annual Holidays Act.

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

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

- the holiday season,
- the calculation and payment of holiday pay and holiday compensation,
- making winter holiday part of other arrangements concerning shortened working hours which they have agreed on,

- dividing the portion of annual holiday exceeding 12 week days in such a way that it can be taken in one or more instalments and on the period equivalent to time at work as laid down, provided that the duration of employees' annual holidays is equal to that laid down in the Annual Holidays Act.

Holiday earnings

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

Full holiday credit month

The length of the annual holiday depends on the amount of full holiday credit months. For employees covered by the 14-day regulation, a full holiday credit month is a calendar month during which they have had at least 14 days at work, or the equivalent of days at work. For employees covered by the 35-hour regulation, a full holiday credit month is a calendar month during which they have had at least 35 hours at work, or the equivalent of hours at work. When determining whether a calendar month is a full holiday credit month or not, the periods of absence from work especially mentioned in the Act are regarded as periods equivalent to days or hours at work. These cases of absence from work include periods of annual holidays, illness, maternity, paternity or parental leave, study leave and lay-offs, within the restrictions laid down in the Act. The provisions regarding time equivalent to time at work are applied as such to employees covered by the 14-day regulation and the 35-hour regulation.

Leave system

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

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

Holiday pay and holiday compensation

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

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

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

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

In addition, under Section 2, paragraph 3 of the Posted Workers Act (1146/1999) and under Section 4 of The Act on Posting of Workers (447/2016), the provisions of universally applicable (=generally binding) collective agreements concerning annual holidays apply to posted workers' employment relationships. Universally applicable (= generally binding) collective agreements can be found at the following address:
<http://www.finlex.fi/fi/viranomaiset/tyoehto/>

In June 2016 there were over 160 universally applicable (= generally binding)_collective agreements in force.

Internet link:

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

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

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

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

The Annual Holidays Act Brochure 2014 in Finnish, Swedish and English where the abovementioned provisions are described more detailed:

http://tem.fi/documents/1410877/2106637/TEM_esite_2_2016_vuosilomalaki_01042016_web.pdf/b7e96a1a-8a1d-4ca4-b210-336fa3b8b5c5

http://tem.fi/documents/1410877/2106637/TEM_esite_03_2016_vuosilomalaki_sv_01042016_web.pdf/5d195982-c152-4cd8-9194-4d152cb34ac4

http://tem.fi/documents/1410877/2106637/TEM_esite_04_2016_vuosilomalaki_en_01042016_web.pdf/a9791918-693a-47f2-93af-28fac9a4a674

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

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

Pay in subcontracting situation and postings within the group to the establishment or undertaking (Posting situations 1 and 2 mentioned in chapter V)

Section 2, paragraph 4 of the Posted Workers Act (1146/1999) and Section 5 of the Act on Posting of Workers (447/2016) provides for a minimum rate of pay for posted workers.

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

In cases where a universally applicable (= generally binding) collective agreement is not applied to the work, a usual and reasonable wage is to be paid to the worker, if the remuneration agreed between the employer and the worker is essentially lower than this.

Pay in temporary agency work (Posting situation 3 mentioned in chapter V)

Section 2a of the Posted Workers Act (1146/1999) and Section 5 of The Act on Posting of Workers (447/2016) provides for a minimum rate of pay for the posted temporary agency workers.

The minimum rate of pay for a temporary agency worker are determined according to the collective agreement of the temporary-work agency or, if such an agreement does not exist, the collective agreement binding the user company. In the latter case, the same collective agreement applies to temporary agency workers and to user company employees. In practice, this means that the working hours, pay, rest periods, various pay supplements, paid sick leave and other benefits based on the collective agreement are determined in the same manner for both the user company's own employees and for temporary agency workers.

The collective agreement mentioned above can be either "normally binding" collective agreement or universally applicable (= generally binding) collective agreement.

If none of the aforementioned collective agreements apply to the temporary agency worker's employment contract, the terms applicable to the temporary agency worker's pay, working hours and annual holidays shall, at a minimum, comply with the agreements or practices binding on the user company and generally applicable within the company.

In cases where a collective agreement, other agreement or practices are not applied to the work, a usual and reasonable wage is to be paid to the worker, if the remuneration agreed between the employer and the worker is essentially lower than this.

Remuneration for overtime in all posting situations

As regards remuneration for overtime work, Section 2, paragraph 2, point 1 of the Posted Workers Act (1146/1999) makes reference to Sections 22–25 and Section 33, paragraphs 2 and 3, of the Working Hours Act, and Section 5 of the Work in Bakeries Act (*see Section VII on maximum working hours and minimum rest periods in the Working Hours Act 2005 Brochure*).

As regards remuneration for overtime work, Section 4 of the Act on Posting of Workers (447/2016) makes reference to Sections 16–33 of the Working Hours Act, and Section 5 of the Work in Bakeries Act.

Pay during an illness in all posting situations

The Posted Workers Act's (1146/1999) Section 2, paragraph 2, subparagraph 4 and Section 5, paragraph 3 of the Act on Posting of Workers (447/2016) contains a reference to the Employment Contracts Act and its Chapter 2, Section 11, on pay during an illness. According to this provision, an employee who is rendered unable to work by an illness or an accident at work is entitled to a paid sick leave. Wages are paid for the day when the illness started (if it would have been a working day for the employee) and for the working days included in the following nine weekdays. If the employment relationship at the start of a term of disability has been in place for at least one month, the employee will be paid full wages for said period. If the employment relationship has lasted less than one month, half of the wages will be paid for the same term of disability. 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 was caused wilfully or by gross negligence.

Commission confirming the general applicability of collective agreements

A Commission appointed by the government confirms whether a national collective agreement can be considered universally applicable (= generally binding). The decision of this Commission may be appealed against in the Labour Court. The decision regarding the general validity of a collective agreement will be published in the Regulations Collection maintained by the authorities. Collective agreements confirmed as universally applicable (= generally binding) are available free of charge on the Internet at <http://www.finlex.fi/fi/viranomaiset/tyoehto/>

The Commission operates in connection with the Ministry of Social Affairs and Health. The Commission acts independently in its tasks.

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

Prohibition of charges for employment exchange

Act on public employment and business service (916/2012) contains provisions on *prohibition of charges for employment exchange in Chapter 12 and Section 5*. Providers of private employment services must not charge fees (*prohibition of charges for employment exchange*) from individual clients for services provided that correspond to employment exchange services referred to in Chapter 3, section 2, distribution of information and giving advice on vacant jobs and job-seeking, referred to in Chapter 4, section 1, or registration as a jobseeker referred to in Chapter 2, section 1.

No charge may be collected from a temporary agency worker who, after the termination of an assignment, transfers to the employment of a user enterprise, referred to in Chapter 1, section 1, of the Employment Contracts Act.

Sanctions for violating the prohibition against charges are laid down in Chapter 47, section 6, of the Criminal Code.

In the chapter 12 section 4 there is a definition of *private employment services*. In this Act, ‘private employment services’ are employment services provided by a private or legal person, independent of employment and economic development authorities, and other services related to job-seeking, as well as labour force leasing (temporary agency work).

Providers of private employment services must comply with provisions on equality, referred to in Chapter 1, section 7, and they must not supply under-age labour force for work for which employing under-age labour force is prohibited under the Young Workers Act (998/1993).

For the purpose of monitoring private employment services, the Ministry of Economic Affairs and Employment has the right to gain information on private employment services from corporations providing private employment services or representing them. Further provisions on the information to be provided, and on processing information and other forms of cooperation, are given by Government decree.

At the beginning of 2013 a **government decree on public employment and business service** (1073/2012) entered into force. In Chapter 12 and Section 36 there is a provision on **duty to submit information concerning private employment services**. Under this decree, private employment service enterprises (including foreign service providers) are obliged, at the request of the Ministry of Economic Affairs and Employment, to submit information on their operations concerning the following matters:

- the number of persons exchanged to work by occupational group and the number of persons exchanged on the basis of hiring out of labour (temporary agency work)
- the number of hired persons (temporary agency workers) and the average duration of hired employment relationships
- the number of customers hiring labour (using temporary agency workers) or using other employment exchange services
- other services provided for their clients related to job-seeking.

Internet link:

Act on public employment and business service (916/2012) in Finnish, in Swedish and the unofficial English translation

<http://www.finlex.fi/fi/laki/ajantasa/2012/20120916>

<http://www.finlex.fi/sv/laki/ajantasa/2012/20120916>

<http://www.finlex.fi/fi/laki/kaannokset/2012/en20120916.pdf>

Discharge of employer's obligations in temporary agency work

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

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

According to the Posted Workers Act (1146/1999), Section 2, paragraph 5 and according to the Act on Posting of Workers (447/2016), Section 3, the Finnish Occupational Safety and Health Act (738/2002) and the Finnish Occupational Health Care Act (1383/2001) shall apply to work performed by posted workers. Also the lower-level Finnish decrees issued under the Occupational Safety and Health Act (738/2002) and the Occupational Health Care Act (1383/2001) shall apply to posted workers.

In addition, according to the Posted Workers Act (1146/1999), Section 2, paragraph 3 and Section 2 a, paragraph 2 and according to the Act on Posting of Workers (447/2016), Section 4, the posting employer has to follow the provisions of the universally applicable (= generally binding) collective agreement of the sector/industry concerning occupational safety and health, if those exist.

Occupational Safety and Health

In Finland the Occupational Safety and Health Act (738/2002) is a general law in the field of occupational safety and health. In addition to the general law, the specific occupational safety and health matters are regulated by several Finnish decrees issued under the Occupational Safety and Health Act (738/2002). Therefore the provisions of the other applicable

statutes/decrees regarding occupational safety and health in certain kinds of work activities shall be observed.

The Occupational Safety and Health Act applies to work carried out under the terms of an employment contract and to work carried out in an employment relationship in the public sector or in comparable service relation subject to public law. The scope of application of the act is wide, so it is applicable to other forms of work too, such as a pupil's or student's work during practical training or a work done by persons involved in employment policy measures.

The purpose of the Occupational Safety and Health Act is to improve the work environment and conditions to protect and maintain the employees' ability to work. Its purpose is also to prevent and hinder accidents at work, occupational diseases and other hazards caused by work or the work environment to the employees' physical and mental health.

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

The occupational health care provider and the Regional State Administrative Agencies / Divisions of Occupational Safety and Health (labour inspectorates) support workplaces in ensuring and increasing occupational safety and health at the workplace.

Occupational Health Care

The Occupational Health Care Act applies to all employment for which the employer is bound by the Occupational Safety and Health Act. According to the Posted Workers Act, the Occupational Health Care Act (1838/2001) shall apply also to work performed by posted workers.

The purpose of occupational health care is to ensure a safe working environment, to prevent work-related diseases and accidents and to support the working and functional capacity of employees.

It is the employer's duty to arrange employees' occupational health care at the employer's expense. Employers are responsible for arranging *preventive* health care for their employees. If necessary, employers may also arrange for medical treatment and other health care services.

Municipal health centres are responsible for selling occupational health care services to employers who request them. Employers may also organize occupational health care services themselves or through a private supplier.

The act and the decrees complementing the act include provisions regarding the content and implementation of occupational health care, as well as how the employer, employees and the

occupational health care provider cooperate on the prevention of work-related diseases and accidents, the health and safety of work and the work environment, the operation of the work community and the employees' health and ability to work and function at different stages of their careers.

It is important that the occupational health care contract between the posting employer and the occupational health care provider is not just a paper in the posting employer's file but the posting employer arranges occupational health care for the posted employees also in practice and the occupational health care provider becomes a partner to the posting employer for occupational safety and health at the workplace.

Occupational Safety and Health Act (738/2002)

In Finnish:

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

In Swedish:

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

The unofficial translation of the Act in English:

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

Occupational Health Care Act (1383/2001) In

Finnish:

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

In Swedish:

<http://www.finlex.fi/sv/laki/ajantasa/2001/2001138>

The unofficial translation of the Act in English:

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

The brochure of the Ministry of Social Affairs and Health 2010:2

“Occupational Safety and Health in Finland”:

<https://www.julkari.fi/handle/10024/112036>

Some information on working conditions, harm factors and hazard factors can be found here in Finnish: <http://www.tyosuojelu.fi/web/en/working-conditions>

European Agency of Safety and Health at Work:

<https://osha.europa.eu/en>

XII. Rules concerning the terms and conditions of employment of pregnant women and women who have recently given birth

[Article 3(1) (f) of the Directive]

The provisions of the Occupational Safety and Health Act (738/2002) concerning the protection of pregnant employees and the provisions of Chapter 4, paragraphs 2, 8 and 9, of the Employment Contracts Act (55/2001) concerning family leave apply to posted workers. Section 2, paragraph 2, point 5 of the Posted Workers Act (1146/1999) and the Act on Posting of Workers (447/2016), Section 4, makes reference to provisions concerning family leave

arrangements. Section 2, paragraph 5 of the Posted Workers Act (1146/1999) and Section 3 of the Act on Posting of Workers (447/2016) makes reference to the Occupational Safety and Health Act.

Provisions of the Employment Contracts Act:

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

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

The Young Workers' Act (998/1993) applies to posted workers. Section 2, paragraph 5 of the Posted Workers Act (1146/1999) and Section 3 of the Act on Posting of Workers (447/2016) makes reference to this act.

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

In addition the following apply:

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

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

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

Internet link:

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

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

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

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

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

The framework of regulations to be applied to employment relationships regarding nondiscrimination, equality and the prohibition of discrimination is based on three acts: the Non-Discrimination Act (1325/2014), the Act on Equality between Women and Men (609/1986) (referred to as the Equality Act), and the Employment Contracts Act (55/2001). The Posted Workers Act's (1146/1999) Section 2, paragraph 5 and the Act on Posting of Workers (447/2016) Section 3 specifically contains a reference to certain provisions of these Acts.

The Non-Discrimination Act lays down provisions regarding non-discrimination and the prohibition of discrimination, whereas provisions on the prohibition of gender-based discrimination and the promotion of equality are laid down separately in **the Equality Act**.

The Non-Discrimination Act and the Equality Act are by nature general acts, which are applied to all areas of life with the exception of religious practice, relationships between family members or other relationships in private life and the activities associated with them. The requirement of equal treatment is a general obligation outlined in **the Employment Contracts Act**, which supplements the prohibition of discrimination.

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

- Chapter 1, section 9 concerning the employer's representative
- Chapter 2, section 2, subsections 1 and 2 concerning prohibition of discrimination and equal treatment apply to posted workers
- Chapter 2, section 3, subsection 2 concerning occupational safety and health.

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

1. Section 6 - employer's duty to promote equality
2. Section 7 - prohibition of discrimination
3. Section 8 - discrimination in working life
4. Section 8a - counter measures by the employer
5. Section 8d - harassment in the workplace
6. Section 9 - procedure not deemed to constitute discrimination and
7. Section 9a - burden of proof.

The following provisions of the Non-Discrimination Act are applied to posted workers:

1. Section 7, paragraph 1 - Employer's duty to promote equality
2. Section 8 - Prohibition of discrimination
3. Section 9 - Positive action
4. Section 10 - Direct discrimination
5. Section 12 - Justifications for different treatment at work and in employing personnel
6. Sections 13 - Indirect discrimination
7. Section 14 - Harassment
8. Section 15 - Reasonable accommodation to realise equality of persons with disabilities
9. Section 16 - Prohibition of victimisation and
10. Section 28 - Burden of proof

The Requirement of Equal Treatment in the Employment Contracts Act (55/2001)

The requirement of equal treatment is a general obligation outlined in the Employment Contracts Act, which supplements the prohibition of discrimination. It obliges the employer to treat in the same manner employees who are in the same position or in similar situations without paying attention to the differences between them. The requirement of equal treatment must be taken into consideration when employees are granted benefits based on their employment relationship and when obligations are imposed on them. The obligation requires of the employer consistent actions and solutions in their relationships with their employees.

Exceptions to the requirement of equal treatment are only permitted if there are justified reasons for doing so on the basis of the duties and position 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.

The general requirement of equal treatment is also supplemented by the employer's responsibility to treat employees equally regardless of whether they are in a fixed-term employment relationship or one which is valid until further notice, and also regardless of whether they are part-time or full-time employees.

An employer who violates the requirement of equal treatment may be obliged to compensate the employee for the resulting loss.

Prohibition of Discrimination

The Non-Discrimination Act and the Equality Act contain provisions on the prohibited bases for discrimination, the definition of discrimination, the consequences of prohibited discrimination and the division of the burden of proof during official handling of discrimination matters.

The prohibition of discrimination is applied when hiring employees. The prohibition of discrimination is also applicable when making decisions on matters such as the division of work tasks between employees, giving direction regarding further training, the allocation of work-related benefits and the termination of employment contracts. A matter is treated as prohibited discrimination if an employer, when making decisions affecting their employees, knowingly treats someone differently for prohibited discriminatory reasons without a justifiable reason for doing so.

The Non-Discrimination Act and the Equality Act prohibit both direct and indirect discrimination. Discrimination is prohibited regardless of whether it is based on a fact or assumption about the person themselves or another individual.

In the Non-Discrimination Act, the following reasons for discrimination are prohibited:

- age
- origin
- nationality
- language

- religion
- conviction
- opinion
- political activity
- trade union activity
- family ties
- health condition
- disability
- sexual preference
- other personal characteristics.

The Non-Discrimination Act also prohibits harassment, denial of disability-based reasonable accommodation and instructions and orders to discriminate. Moreover, no one may be treated unfavourably or suffer adverse consequences after having taken measures to ensure non-discrimination or after having participated in such measures.

Compensation for prohibited discrimination according to the Non-Discrimination Act

An employee who has been discriminated has a right to demand compensation from the employer. According to the Posted Workers Act, section 7, in order to claim compensation, the posted worker can take the matter to a district court.

Compensation under the Non-Discrimination Act:

- no upper limit
- the compensation must be in reasonable proportion to the seriousness of the offence
- when the seriousness of the offence is assessed, consideration is given to its type, extent and duration
- the amount of the compensation depends on the compensation imposed for the same offence under other laws

Equality of treatment between men and women

According to the Posted Workers Act (1146/1999) and the Act on Posting of Workers (447/2016), certain provisions of the Act on Equality between Women and Men (609/1986), hereinafter referred to as the Equality Act, shall apply to work performed by posted workers.

The aim of the Equality Act is to prevent discrimination on the basis of gender and to promote equality between women and men, and, for this purpose, to improve the status of women, particularly in working life.

The Ombudsman for Equality gives advice and counselling on issues relating to the Equality Act <https://www.tasa-arvo.fi/web/EN/>

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

11. Section 6 - employer's duty to promote equality
12. Section 7 - prohibition of discrimination

13. Section 8 - discrimination in working life
14. Section 8a - counter measures by the employer
15. Section 8d - harassment in the workplace
16. Section 9 - procedure not deemed to constitute discrimination and
17. Section 9a - burden of proof.

According to Section 6, paragraph 2 of the Posted Workers Act (1146/1999) and according to the section 32 of the Act on Posting of Workers (447/2016), as regards employers' liability to pay compensation on the grounds of discrimination as specified in Sections 8, 8 a, 8 d and 10-11 of the Equality Act shall apply.

According to Section 7, paragraph 2 of the Posted Workers Act and according to the section 33 of the Act on Posting of Workers (447/2016), concerning claims for compensation and other recompense on the grounds of discrimination as specified in Sections 8, 8 a or 8 d of the Equality Act, Section 12, paragraphs 2 and 3 of the Equality Act shall apply.

Every employer has a general obligation to promote gender equality in a purposeful and systematic manner. The employer must promote equality between women and men the following ways:

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

The Equality Act defines and prohibits both direct and indirect discrimination based on gender. Direct discrimination means that women and men are treated differently on the basis of gender, i.e. simply because they are women or men. Treating women differently for reasons of pregnancy or childbirth is also direct discrimination. Indirect discrimination is deemed to occur if employees are treated differently on the basis of a provision, justification, or practice that appears to be gender-neutral but as a result of which those involved may actually find themselves in a less favourable position because of their gender. Discrimination on the basis of parenthood or family responsibilities is indirect discrimination.

The Ombudsman for equality has stated that the prohibitions concerning discrimination must be interpreted in such way that they also apply to discrimination against gender minorities.

Under the Equality Act, discrimination in working life may occur in connection with the following:

1. employee recruitment;
2. selection of employees for particular jobs or training;
3. determination of working conditions, pay and other employment terms;
4. failure to adhere to the obligation to eliminate sexual and gender-based harassment;

5. weakening of working conditions and employment terms after the employee has appealed to her/his rights under the Equality Act;
6. giving notice and lay-offs.

In the cases of employing or selecting someone for a particular task or training is not considered discrimination if the employers' action was for an acceptable reason and not due to gender or the action was based on weighty and acceptable grounds related to the nature of the job or the task. The Equality Act also refers to a “justification principle” in regard to indirect discrimination. Under this principle, an action is not deemed to constitute discrimination if it is aimed at achieving an acceptable objective, and the methods used are only applied on a temporary basis and must be deemed appropriate and necessary for achieving the objective.

Discrimination on the basis of pregnancy

Treating employees differently because of pregnancy or childbirth or on the basis of parenthood or family responsibilities is considered gender-based discrimination. When recruiting employees or selecting personnel for training, the employer may not discriminate against an employee on the basis of pregnancy, childbirth or family leaves. Likewise, employees may not be given notice or otherwise have the duration or continuity of their employment relationship limited for these reasons. In practice, these provisions are of particular importance for fixed-term employees. For example the duration of a fixed-term relationship may not be restricted in such a way that it ends at the start of a period of maternity leave if the contract would otherwise continue.

Compensation for discrimination

According to the Equality Act an employee who has been discriminated against in working life on the basis of gender has a right to demand compensation from the employer. According to the Posted Workers Act (1146/1999) and the Act of Posting of Workers (447/2016), in order to claim compensation, the posted worker can take the matter to a district court in Finland.

The Non-Discrimination Act (1325/2014)

In Finnish:

<https://www.finlex.fi/fi/laki/ajantasa/2014/20141325>

In Swedish:

<https://www.finlex.fi/sv/laki/ajantasa/2014/20141325>

The unofficial translation of the Act in English:

<https://www.finlex.fi/fi/laki/kaannokset/2014/en20141325.pdf>

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

In Finnish:

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

In Swedish:

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

The unofficial translation of the Act in English:

<https://www.finlex.fi/fi/laki/kaannokset/1986/en19860609.pdf>

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

Finland has used the option mentioned in Article 3 (10), first indent, i.e. were other terms and conditions of employment than the so called hard core provisions laid down in Article 3 (1) are imposed on foreign undertakings. The following provisions apply on the basis of this possibility:

- the provisions of the Working Hours Act on night work and shift work and the conditions of Sunday work
- the provisions of the Employment Contract Act on the employee's right to pay in case of an impediment and the freedom of association and right of assembly

In addition the Occupational Health Care Act and provisions issued under it are applied also to the posted workers under this option.

Finland has also used the option mentioned in Article 3 (10), second indent, i.e. were the terms and conditions of employment laid down in collective agreements or arbitration awards within the meaning of Article 3 (8) extended to other activities than those referred to in the Annex. Finland has made full use of this option. Universally applicable (= generally binding) collective agreements apply regardless of the sector. The Posted Workers Act (1146/1999) section 2, paragraph 3 and Section 2 a, paragraph 2 stipulates this matter.

XVI. Procedural and administrative requirements

When posting workers to Finland an employer has to observe certain procedural and administrative requirements according to the Posted Workers Act (1146/1999) and the Act on Posting of Workers (447/2016). These are following:

- The obligation of a posting employer to make a posting notification (will come into force in 2017. The specific effective date will be decided probably in the beginning of 2017.)
- Requirement of a representative and its' duties
- Requirements to document working hours and records on annual holidays and the wages paid
- Employer's other obligations to give information
 - Rules concerning employer's responsibility to provide details of the supervisory authority to the posted worker
 - Rules concerning employer's responsibility to provide information to the party that has ordered the work (information on social security)

Procedural and administrative requirements according to other Finnish legislation than the Posted Workers Act

- The Act on the Contractor's Obligations and Liability when Work is Contracted Out
- For the construction industry: New Finnish tax legislation on tax number
- Requirement of a residence permit when working in Finland
- Requirement of social security from the posting country (A1-document)

The obligation of a posting employer to make a posting notification

We have in our new Act on Posting of Workers (447/2016) a section on notification, but that section is not in effect yet. Finnish parliament should enact the specific effective date for that Section.

According to the Act on Posting of Workers (447/2016):

Section 7

Notification of the posting of a worker

(1) Before work is commenced, the posting undertaking shall notify the occupational safety and health authority about the posting of workers to Finland under an agreement on cross-border service provision.

(2) Notification of the posting a worker is not required if the undertaking is posting workers to Finland in an internal transfer within a group of undertakings for no more than five working days. When calculating the duration of the posting of workers, the period of the posting in question and all other periods in the four months preceding the end of the posting during which a worker transferred internally by the same group of undertakings was working in Finland are taken into account. In the case of building work, however, notification is always a requirement for performing the work.

(3) The notification shall include:

- 1) the posting undertaking's identification details, contact information, foreign tax identification number and information on the responsible persons in the State in which the posting undertaking is established;
- 2) the identification details and contact information of the contractor;
- 3) the identification details and contact information of the builder and the general contractor in the case of building work;
- 4) the anticipated number of posted workers;
- 5) the identification details and contact information in Finland of the representative of the posting undertaking referred to in section 8 or information about the grounds under which no representative need be appointed;
- 6) the starting date of the workers' posting and the anticipated duration of the posting;
- 7) the location where the work will be performed;
- 8) the sector in which the posted worker will work.

(4) If the information referred to in subsection 3 changes significantly, a requirement for the work to continue is that the posting undertaking submits a supplementary notification immediately the changes occur.

(5) In the case of building work, submission of the notification referred to in subsections 3–4 to the builder and the general contractor is also a requirement for performing the work.

A posting undertaking is liable to pay a negligence fee if it has neglected its obligation to submit the notification on posting workers referred to in section 7. The negligence fee for negligence is at least EUR 1,000 and not more than EUR 10,000, taking into consideration the type, extent and recurrence of the negligence.

If the act can be considered minor and waiving the penalty or imposing a penalty that is less than the minimum amount can be considered reasonable in view of the type and recurrence of the negligence and its deliberateness and other conditions, the negligence fee may be waived or a penalty that is less than the minimum amount may be imposed. If a negligence fee were to be imposed on two or more acts of negligence at the same time, a joint amount is imposed on these negligence acts, which may not exceed EUR 10,000

Requirement of a representative and its' duties

It is important that Finnish authorities can contact posting employers. Usually, the responsible persons of a posting company are not in Finland, so Finnish authorities need some contact person to the posting company.

According to the Posted Workers Act (1146/1999) Section 4 a, a posting employer, which is situated abroad and doesn't have a business location in Finland, shall have a representative in Finland. According to the Act on Posting of Workers (447/2016) Section 8, a sending company shall have a representative in Finland (even if it has a business location in Finland).

The role of the representative is to function as a link between the posting employer and the Finnish authorities. The representative shall be authorized to act for the posting employer in a court of law and to receive on behalf of the posting employer writs of summons and other documents issued by the Finnish authorities.

According to the Posted Workers Act (1146/1999) the representative shall also have in his/her possession and forward to the Finnish authorities certain information and documents. However, according to the Act on Posting of Workers (447/2016) the posting employer self has an obligation to keep available certain information and documents in Finland for the entire duration of posting. In practice, it is advisable that the posting employer gives those information and documents to the representative and the representative keeps them in his/her possession in Finland for the entire duration of posting.

Duties according to the Act on Posting of Workers (447/2016) are targeted at the posting company, the subscriber (the contractor), the client (in construction work) and at the main contractor (in construction work). So, the representative has no official, independent duties according to the new Act (447/2016). The representative functions only as a link between the posting employer and the Finnish authorities.

When a representative is not needed?

According to the Posted Workers Act (1146/1999):

- If a posting employer, which is situated abroad, does have a branch in Finland (registered to the Finnish business register as a branch) it doesn't need a representative in Finland.
- If a posting employer doesn't have a registered branch in Finland, but it has some business location in Finland, it doesn't need a representative in Finland. A business location can be, for example, business premises, where Finnish authorities are able to contact some person who is authorized to act for the posting employer.
- There is also another exception. A posting employer, which is situated abroad and doesn't have any business location in Finland, doesn't have to select a representative in Finland if the posting of a worker is no more than 14 days in duration.
- In case several consecutive employment contracts concerning the posting without interruption or with short-term interruptions only have been concluded between the posted worker and the posting employer, the posting shall be regarded as having been continuous.

According to the Act on Posting of Workers (447/2016):

- A sending company doesn't have to select a representative in Finland if the posting of a worker is no more than 10 days in duration. When calculating the duration of the posting of workers, the period of the posting in question and all other periods in the four months preceding the end of the posting during which a worker of the same undertaking was working in Finland are taken into account.

What are the duties of a representative (or a posting employer)?

Duties according to the Posted Workers Act (1146/1999, contracts made before 18.6.2016)

A representative shall have in his/hers possession the following information in writing when a posted worker starts working in Finland:

- the identifying details of a posting company and information on the responsible persons of the company in the country in which the company is situated;
- identifying details of the posted worker;
- written information pursuant to Chapter 2 Section 4 of the Finnish Employment Contracts Act on the working conditions applicable to the employment contract of the posted worker; and
- information on the grounds for the posted worker's right to work in Finland (for example, EU citizenship or work permit).

This information shall be kept on file for two years after the posted worker has ceased working in Finland. According to the Posted Workers Act, this information doesn't necessarily have to be in Finland.

In case the posting company is not obliged to select a representative pursuant to the Posted Workers Act, the posting company shall be in possession of the aforementioned information, also for two years after the posted worker has ceased working in Finland.

The posting employer or the representative must provide the aforementioned information to Finnish labour inspections on request.

Duties according to the Act on Posting of Workers (447/2016, contracts made 18.6.2016 and after)

- According to the Act on Posting of Workers (447/2016) the representative has no official, independent duties. The representative functions only as a link between the posting employer and the Finnish authorities.

According to the Act on Posting of Workers (447/2016) Section 10 the posting employer self has an obligation to keep available certain information and documents in Finland for the entire duration of posting. In practice, it is advisable that the posting employer gives those information and documents to the representative and the representative keeps them in his/her possession in Finland for the entire duration of posting.

Section 5

Requirements to document working hours and records on annual holidays and the wages paid:

In case the posting of a worker lasts for more than eight days, a representative shall have in his/her possession in Finland:

- records of working hours concerning work performed by a posted worker in Finland and
- records of the wages paid to the posted worker.

In case the posting company is not obliged to select a representative pursuant to the Posted Workers Act, the posting company shall be in possession of the aforementioned information.

The posting employer or the representative must provide the aforementioned information to Finnish labour inspections on request.

See below the information on the employer's obligation to document working hours and records on annual holidays and the wages paid.

Section 8a

A representative shall give the shop steward elected by the staff group in question or the delegate (intended in Chapter 13 Section 3 of the Finnish Employment Contracts Act) the information (pursuant to Chapter 2 Section 4 of the Finnish Employment Contracts Act) on the working conditions applicable to the employment contract of a posted worker.

The information shall be given if:

- the posting of the worker is more than eight days in duration; and
- the posted worker has given an authorization for that. A clear indication of the will of the posted worker would suffice as an authorization.

In case the posting company is not obliged to select a representative pursuant to the Posted Workers Act, the posting company shall give the aforementioned information.

Section 8b

According to Section 8b, a representative shall give the customer company (a contractor) information on posted workers social security (A1) in certain situations. For more details, see Section 8b of the Posted Workers Act.

A representative shall also keep written proof of the fulfilment of this obligation. The written proof shall be kept as long as the cross border service provision continues according to the service contract.

Section 8c

According to Section 8c, the employer shall provide the posted worker with details of the authority supervising compliance with the Posted Workers Act. Instead of the employer, the representative can give this information to the posted worker.

The information has to be given before the workers in question start their work. For more details, see Section 8c of the Posted Workers Act.

When a representative has to be appointed and how long time the authorization of the representative shall be valid?

According to the Posted Workers Act (1146/1999) a representative has to be appointed when the work of a posted worker begins, at the latest, and authorization of the representative shall be valid for a minimum of 12 months after the date on which a posted worker ceases working in Finland.

According to the Act on Posting of Workers (447/2016) a representative must be reachable the whole posting period.

Who can be appointed as a representative?

A posting employer can appoint as its' representative, for example, a Finnish customer company (a contractor), a Finnish accounting company or, if it is question of an intra-group posting, the Finnish establishment or undertaking (a customer company, a contractor) owned by the group. Also a natural person can be selected as a representative of a posting employer.

A representative has to be "in Finland". According to the government proposal, a representative doesn't need to have his/her domicile in Finland. A representative can be a foreigner who is only available in Finland. "Available in Finland" means that it shall be

possible for the Finnish authorities to contact the representative in Finland without difficulty via a Finnish postal address and also in person. (For example, a Finnish writ-server needs to meet a representative in person.) A posted worker can be appointed as a representative.

Is a representative responsible for the employer duties of a posting employer towards a posted worker?

No. A representative is not responsible for the employer duties of a posting employer towards a posted worker.

What is the role of a customer company (a contractor)?

Duties according to the Posted Workers Act (1146/1999, contracts made before 18.6.2016)

The party for which the work is performed (a customer company, a contractor) shall through their contracts with a posting company or by other means at their disposal ensure that the posting company selects a representative.

Before the work performed by a posted worker in Finland is initiated, the posting company shall let the party for whom the work is performed (a customer company, a contractor) know who is in possession of the information intended in Section 4 b of the Posted Workers Act (1146/1999) during the worker's posting.

The party for which the work is performed (a customer company, a contractor) shall provide the posting company in writing with details of the authority supervising compliance with the Posted Workers Act and providing advice. The information provided in writing must be verifiable throughout the duration of the work described in the contract.

Duties according to the Act on Posting of Workers (447/2016, contracts made 18.6.2016 and after)

The obligations of a customer company (a contractor) are all collected to Chapter 4 of the Act on Posting of workers (447/2016).

Requirements to document working hours and records on annual holidays and the wages paid

Duties according to Section 5 of the Posted Workers Act (1146/1999) and Section 9 of the Act on Posting of Workers (447/2016)

A posting employer shall comply with Sections 36, 37 and 37a of the Finnish Working Hours Act concerning documentation of working hours and Section 29 of the Finnish Annual Holidays Act concerning records of annual holiday.

A posting employer shall also comply with the provisions of Section 34 and 35 of the Finnish Working Hours Act or other procedures that ensure the same standard of protection for workers.

The Working Hours Act

Section 34 - an adjustment system of working hours

Section 35 - a work schedule

Section 36 - a derogation permit for not preparing a work schedule

Section 37 - records of working hours

Section 37a - the personal driver's log of a motor vehicle driver

The Annual Holidays Act

Section 29 - records of annual holidays

According to the Posted Workers Act (1146/1999) in case posting of a worker lasts for more than eight days, a representative shall have in his/her possession in Finland:

- records of working hours concerning work performed by a posted worker in Finland and
- records of the wages paid to the posted worker.

In case the posting company is not obliged to select a representative pursuant to the Posted Workers Act, the posting company shall be in possession of the aforementioned information.

According to the Posted Workers Act, this information shall be in Finland. The posting employer or the representative must provide the aforementioned information to Finnish labour inspections on request.

According to the Act on Posting of Workers (447/2016) in case posting of a worker lasts for more than ten days, the posting company shall have in possession in Finland during the whole posting:

- records of working hours concerning work performed by a posted worker in Finland and
- a calculation of wages (payslip) and
- a proof on the payment of wages from a financial institution (a bank).

According to the Act on Posting of Workers, the documents must be available after posting 2 years in Finland or in other country. The posting company must provide the aforementioned information to Finnish labour inspections on request.

Employer's other obligations to give information

Rules concerning responsibility to provide details of the supervisory authority

According to the Posted Workers Act (1146/1999, contracts made before 18.6.2016)

The employer must provide the posted worker with details of the authority supervising compliance with the Act. The information has to be given before the workers in question start their work. The details may also be provided by the representative selected by the employer.

The party that has ordered the work must provide the company posting the worker with details of the authority supervising compliance with the Act and providing advice in writing. The information provided in writing must be verifiable throughout the duration of the work described in the contract.

These rules only apply to subcontracting and temporary agency work. These rules do not apply if the compensation for the subcontract is valued below EUR 9,000 (excluding VAT) or if the total duration of the work of the temporary agency worker or workers does not exceed 10 working days. When these limits are calculated, the work is considered to have continued without interruption if the work performed for the party that has ordered the work or the results of the work are based on a number of successive contracts continuing without interruption or with only short interruptions.

The party that has ordered the work does not have the obligation to provide this information if the contractual relationship between the parties that has ordered the work and the employer can be considered to be well-established on the basis of earlier contractual relationships.

According to the Act on Posting of Workers (447/2016, contracts made 18.6.2016 and after)

According to the Act on Posting of Workers (447/2016) there are no obligations related to the responsibility of the employer or the contracting party of the posting company to provide details of the supervisory authority.

Rules concerning employer's responsibility to provide information to the party that has ordered the work (information on social security)

The employer or the representative shall provide the party that has ordered the work with a certificate stating how the social security of the workers posted after the start of the work described in the contract is determined. The certificate has to be given before the workers in question start their work. The written certificate of the meeting of the obligation shall be kept for the duration of the work described in the contract.

These rules only apply to subcontracting and temporary agency work. These rules do not apply if the compensation for the subcontract is valued below EUR 9,000 (excluding VAT) or if the total duration of the work of the temporary agency worker or workers does not exceed 10 working days. When these limits are calculated, the work is considered to have continued without interruption if the work performed for the party that has ordered the work or the results of the work are based on a number of successive contracts continuing without interruption or with only short interruptions.

Criminal sanctions according to the Posted Workers Act (1146/1999)

Section 9

Criminal sanctions of a representative

Because the role of a representative as a link between the posting employer and the Finnish authorities is very important, failure to meet some of the obligations of the representative will lead to criminal sanctions.

If a representative intentionally or through negligence violates the provisions on possession of the information and reports intended in Section 4b of the Posted Workers Act, he/she shall be sentenced to a fine for the violation of the Posted Workers Act.

If a representative intentionally or through negligence neglects to give the information intended in Section 8a to a staff representative, he/she shall be sentenced to a fine for the violation of the Posted Workers Act.

If a representative intentionally or through negligence violates the provisions on providing the party that has ordered (contracting party, contractor) the work with information laid down in section 8 b (information on social security), he/she shall be sentenced to a fine for the violation of the Posted Workers Act.

Criminal sanctions of a posting employer

The obligation of the posting employer is to follow the provisions of the Posted Workers Act and the Finnish labour legislation referred to in the Posted Workers Act. Failure to meet some of these provisions will lead to criminal sanctions according to the Posted Workers Act, the Finnish labour legislation referred to in the Posted Workers Act or the Penal Code (39/1889).

Here is information only on criminal sanctions according to Section 9a of the Posted Workers Act:

If the posting company is not obliged to select a representative, the posting company shall be responsible for the duties related to the communication between the posting employer and Finnish authorities and staff representatives.

If a posting employer or an agent of the company intentionally or through negligence violates the provisions on possession of the information and reports or duty to inform the customer company intended in Section 4b of the Posted Workers Act, the posting company or an agent shall be sentenced to a fine for the violation of the Posted Workers Act.

If a posting employer or an agent of the company intentionally or through negligence neglects to give the information intended in Section 8a to a staff representative, the posting company or an agent shall be sentenced to a fine for the violation of the Posted Workers Act.

If a posting employer or an agent of the company intentionally or through negligence violates the provisions on providing the party that has ordered (contracting party, contractor) the work with information laid down in section 8 b (information on social security) the posting company or an agent shall be sentenced to a fine for the violation of the Posted Workers Act.

If a posting employer or an agent of the company intentionally or through negligence violates the provisions on the obligation to provide information laid down in section 8 c § (to provide the posted worker with details of the authority supervising compliance with the Act). The

posting company or an agent shall be sentenced to a fine for the violation of the Posted Workers Act.

Criminal sanctions of a customer company (a contractor)

The party for whom the work is performed (a customer company, a contractor) or an agent of the customer company, who intentionally or through negligence neglects the duty to ensure that the posting company selects a representative, shall be convicted of a violation of the Posted Workers Act. However, an agent of the customer company shall be convicted of a violation of the Posted Workers Act only in consideration of the instructions and procedures issued at the workplace.

The party for whom the work is performed (a customer company, a contractor) or an agent of the customer company, who intentionally or through negligence violates the obligation to provide information laid down in section 8 c §, shall be convicted of a violation of the Posted Workers Act. However, an agent of the customer company shall be convicted of a violation of the Posted Workers Act only in consideration of the instructions and procedures issued at the workplace.

Negligence fee according to the Act on Posting of Workers (447/2016)

According to the Act on Posting of Workers (contracts made after 18.6.2016) violations of the obligations in the Posted Workers Act will result in an administrative consequence, a negligence fee. The fee imposed will be between 1 000 and 10 000 euro.

Negligence fee for the posting company

A negligence fee may be imposed on the posting company, if the posting company

- not report the posting of workers or if the notification is inadequate
- not improve the notification when there are substantial changes
- not ensure the selecting of a representative in Finland or the representative does not have the required right to act on behalf of the company or should the OSH authorities in spite of repeated attempts not reach the representative
- not keep the following information and accounts in order for the OSH authorities to inspect them:
 - the identifying details on the company and information on the responsible persons in the country in which the company posting workers is located
 - identifying details of the posted worker
 - written information on the working conditions applicable to the employment contract of the posted worker
 - written information on the basis of the employment rights of the posted worker
 - working Hours Register
 - payment receipt
 - and a receipt over the paid wages issued by a financial institution.

Negligence fee for the contractor

A negligence fee may be imposed on the contractor, if the contractor

- in spite of the requests of the OSH authorities not require information from the posting company on where and how the representative may be reached nor pass the information to the OSH authorities.

The OSH authorities requires this information from the contractor, if the authorities are able to reach the representative. If the contractor does not reach the posting company, the OSH authorities must be provided with a statement in which the contractor explains how he has tried to reach the representative.

Negligence fee for the builder and the main contractor in the construction sector

A negligence fee may be imposed on the builder and the main contractor, if the contractor or the main contractor doesn't require a clarification (a report) of the posted worker's wages from the posting company, when the posted worker points out inadequacies or, provide the posted worker the clarification (the report) or,

- on the request of the posted worker, provide the OSH authorities with this above mentioned clarification (report).

The inadequate payment concerns cases where the posted worker not has been given the minimum wages which is required in the Act of Posting of Workers.

The posted worker may address his notification to the builder or the main contractor. Should he address both the builder and the main contractor, both parties are obliged to take measures in order to settle the matter, however; they may agree on which of them will fulfil the obligation.

Criminal sanctions according to the Working Hours Act

According to the penal provisions of Working Hours Act an employer or an employer's representative who deliberately or out of carelessness violates the Working Hours Act or rules and regulations issued under it, other than those concerning duty to pay, agreement, the form of a legal act, the working hour register or display, shall be sentenced to a fine for violation of the working hours regulations.

A driver of a motor vehicle who fails to make the required entries in the driver's log or to keep the log in the vehicle while driving shall also be sentenced for violation of the working hour's regulations.

The distribution of liability between an employer and the employer's representatives shall be determined under chapter 47 section 7 of the Penal Code.

Criminal sanctions according to the Annual Holiday Act

According to the penal provisions of the Annual Holiday Act an employer or an employer's representative who deliberately or through carelessness:

- neglects to grant an employee annual holiday or keeps an employee at work during the period it has determined as annual holiday;
- neglects to give, without delay, the holiday pay statement requested by the employee; or
- neglects its obligation concerning the availability of the Act and the agreements;

shall be fined for *an annual holiday offence*.

The allocation of liability between the employer and its representatives shall be determined in accordance with the Penal Code. Under Chapter 47, section 7 of the Penal Code, persons who violate or neglect their obligations shall be punished. Due consideration is given to the position of the person concerned, the nature and extent of their duties and powers, and their role in creating and perpetuating the illegal situation.

Provisions on punishment for neglect or abuse concerning *annual holiday records* and for an annual holiday offence that has been committed despite a request, order or prohibition by occupational safety and health authorities are contained in Chapter 47, section 2 of the Penal Code (fine or a maximum of 6 months' imprisonment).

Procedural and administrative requirements according to other Finnish legislation than the Posted Workers Act (1146/1999) or Act on Posting of Workers (447/2016)

It is possible that the other Finnish legislation than labour legislation contain some other duties and/or procedural or administrative requirements to a posting employer or a representative. The authorities of different Finnish administrative branches are able to give information about the possible duties and/or procedural or administrative requirements.

Here is some examples of other legislation that exists in Finland:

The Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006) is not a part of the Finnish legislation applicable in accordance with the Posting Directive, but all posting employers should be familiar with this act.

The Act on the Contractor's Obligations and Liability when Work is Contracted Out contains certain obligations to Finnish and foreign customer companies (a contractor) who uses temporary agency workers or workers employed under a subcontract. The Act is applied when the work is done in Finland.

The Act is applicable also to customer companies (contractors) who receive above-mentioned services from posting employers. The Act is applicable to posting employers too if they function as a customer company (a contractor) in Finland.

The content of the contractor's obligations is to check before signing a contract if the company who provides the services is reliable and whether they intend to act in compliance with certain legislation. In practice this has to be done by asking the contracting party to give the contractor certain information and documents prescribed in the Act.

The contracting party has an obligation to provide the contractor these information and documents. The information and documents are related to taxation and pension insurances. Also an extract from the Trade Register must be provided and the information on the applicable Finnish collective agreement. If the customer company (a contractor) is involved in constructions operations, it shall ask the contracting party to give a certificate of statutory accident insurance too.

When concluding the contract the contractor shall require that the contracting partner provides the certificates stating how the social security of the workers posted after the start of the work described in the contract is determined before the posted workers in question start their work. If the customer company (a contractor) is involved in constructions operations, the contractor must ensure that all posted workers have valid certificates stating how the social security of the workers in question is determined before the workers in question start their work.

The Regional State Administrative Agencies / Divisions of Occupational Safety and Health (labour inspectorates) enforce the Act on the Contractor's Obligations and Liability when Work is Contracted Out.

If the customer company (a contractor) has not obeyed the act, it shall be obliged to pay a negligence fee (2 000 - 20 000 euro) or raised negligence fee (20 000 – 65 000 euro).

The Act in Finnish:

<http://www.finlex.fi/fi/laki/ajantasa/2006/20061233>

The Act in Swedish:

<http://www.finlex.fi/sv/laki/ajantasa/2006/20061233>

The unofficial translation of the Act in English:

<http://www.finlex.fi/sv/laki/kaannokset/2006/en20061233.pdf>

More information on contractor's obligations and liability:

http://tem.fi/documents/1410877/2106637/01_2016_TEM_ESITE_Tilaajavastuuta_EN_16022016_WEB.pdf/94caec2d-0433-4940-9ee9-60f97555659c

<http://tem.fi/en/contractor-s-obligations-and-liability>

For the construction industry: New Finnish tax legislation on tax number

According to the new Finnish tax legislation posted workers working in Finland on construction industry need a tax number.

http://www.vero.fi/en-US/Individuals/Individual_Tax_Numbers

Requirement of a residence permit when working in Finland

If you intend to work in Finland, you usually need a residence permit based on employment, granted by the state of Finland. If you are a citizen of the EU, Iceland, Liechtenstein, Norway or Switzerland you will not require a residence permit for Finland.

More information:

The Finnish Immigration Services

http://www.migri.fi/working_in_finland/an_employee_and_work

Social security of posted workers from EU and EEA countries and countries covered by a social security agreement

An employee posted from an EU/EEA country, Switzerland, the United States, Israel, Chile, Canada, Quebec or Australia to Finland may be covered by the insurance in the sending country, which means that insurance contributions are paid only there. In such cases, a posted employee's certificate on the application of the legislation of the sending country (for instance Certificate A1 within the EU) has to be presented.

Finnish Centre for Pensions

<http://www.etk.fi/en/>

XVII. Mediation mechanisms in cases of conflict

In cases of conflict between a posting employer and a posted worker it is usually question of the posting employer's failure to comply with the terms and conditions of employment regulated by the Finnish Posted Workers Act. Of course, also other conflicts may occur.

What if a posting employer and a posted worker have dissenting opinions on posting employer's failure to comply with the terms and conditions of employment of the posted worker?

First, before bringing any legal action, it is advisable to negotiate on the problem.

A posted worker can ask help from a Finnish trade union of the sector/industry if he/she is a member of a Finnish trade union. Even if the posted worker is not a member of a Finnish trade union, it is always advisable to contact the trade union.

It is also advisable to contact the Regional State Administrative Agencies / Divisions of Occupational Safety and Health (labour inspectorates). The labour inspectors of the Agencies can give advice without fear of favour to both the posting employer and the posted worker. The labour inspectors can investigate the case and state their opinion.

If the work in Finland has finished and the posted worker has already left home, it is advisable for the posted worker to contact the authorities (labour inspectorate) of his/hers home country. Also the posting employer can contact the authorities (labour inspectorate) of its' home country. The authorities (labour inspectorates) of the Member States of the European Union are able to cooperate cross-borders when they investigate cases of posted workers.

If the conflict relates to the posting employer's failure to comply with the provisions of the Act on Equality between Women and Men (609/1986) referred to in the Posted Workers Act, the posted worker can ask advice from The Ombudsman for Equality.

<http://www.tasa-arvo.fi/fi/etusivu>

If the posting employer and the posted worker can't solve the conflict, it is possible to bring legal action. Those can be done in Finland in a district court by bringing a suit. Alternatively, it may be possible to bring a suit in some other country, such as the posted worker's home country.

A posting employer and a posted worker can ask advice from a Finnish lawyer.

<http://www.asianajaliitto.fi/en>

http://www.asianajaliitto.fi/en/legal_services/find_a_lawyer

A posted worker can ask advice also from a public legal aid office.

<http://www.oikeus.fi/oikeusapu/en/index.html>

It is possible that a posting employer's failure to comply with the terms and conditions of employment constitute a crime in Finland. In the worst case it may be even a question of human trafficking (forced labour). The Finnish police investigate offences and district courts have jurisdiction to punish for crimes. A posted worker or anyone else has a right to report a suspected crime/ offence to the Finnish police. The police are required to receive the report. The report can be made at nearest police station, by telephone, by fax, using an online form or by informing a police patrol. The online form:

http://www.poliisi.fi/crimes/reporting_an_offence_online

Information on human trafficking (forced labour) and the system for victim assistance

http://www.humantrafficking.fi/in_english

<http://www.humantrafficking.fi/help/english>

XVIII. Information on judicial enforcement procedures

Legal actions based on the Finnish Posted Workers Act can be done in Finland. Alternatively, it may be possible to bring legal actions also in some other country, such as a posted worker's home country.

If it is question of demanding payment, compensation for damages or compensation for discrimination in working life on the basis of gender from a posting employer, the legal proceedings in Finland are by civil nature.

If a posting employer's actions or neglects constitute a crime in Finland then the legal proceedings in Finland are by criminal nature.

The time periods within, for example, the claims for unpaid remuneration or compensation for damages has to be submitted, are regulated by the Finnish labour legislation.

Normally, a party to court proceedings needs professional assistance, e.g. a civil plaintiff for bringing an action and a criminal defendant for representation by a defence counsel.

A posting employer and a posted worker can turn to a Finnish lawyer.
<http://www.asianajaliitto.fi/en>
http://www.asianajaliitto.fi/en/legal_services/find_a_lawyer

A posted worker can turn also to a Finnish public legal aid office.
<http://www.oikeus.fi/oikeusapu/en/index.html>

<http://www.oikeus.fi/oikeusapu/en/index/yhteystiedot.html> (Contact information on State legal aid offices)

In addition, the lawyers of Finnish trade unions can assist posted workers in court proceedings, especially if they are members of the trade union.

Information on possible judicial remedies, court proceedings and professional assistance in Finland can be obtained from the Ministry of Justice
<http://www.oikeusministerio.fi/en/index.html>