

The Federation of Professional and Managerial Staff YTN

# Employment Relationship Guide



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# 1. Introduction

The Federation of Professional and Managerial Staff (YTN) is Akava's collective bargaining organization for the private sector responsible of the contracts and negotiation activities of senior salaried employees working in the industrial and service sectors.

The number of YTN's members has grown steadily throughout its existence. At the same time, its weight and influence in the labour market have risen. Our members' awareness of the employment relationship questions concerning senior salaried employees and their special characteristics has increased.

YTN's membership consists mainly of people with a higher degree of education and experts and managers of various sectors possessing equal know-how and skills. The different professions represented by YTN include, for example, lawyers, engineers, economists and business administrators.

This employment relationship guide discusses a wide range of legislation that regulates working life, paying special attention to the characteristics special to the employment relationships of senior salaried employees. The guide is meant for senior salaried employees and their representatives, to provide help and support for the various developments and changes that occur in working life.

A senior salaried employee works in specialist, supervisor, management and executive positions. The tasks of a senior salaried employee are characterized by a relatively high degree of independence and responsibility. The work tasks of senior salaried employees require high education or knowledge and skills brought by work experience.

In addition to a print version, this guide is available on the websites of YTN affiliates. The online guide is updated regularly and the print version is published every few years. The guide has been drawn up by the lawyers and ombudsmen of YTN affiliates, and the editorial work has been carried out by YTN's legal team.

We hope you will find the guide interesting and informative,  
YTN Legal Team

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# 2. The Basics of Labour Law

Labour law concerns matters involving the most important resource of business enterprises and other employers, i.e. their employees. Labour law covers norms that regulate the position of an employee and the party that has the work done (the employer).

Collective Agreements Act (436/1946), Employment Contracts Act (55/2001)

## 2.1. Employment relationship and employment contract

**THE LEGAL** relationship between an employee and an employer is the basis for all labour laws. This legal relationship can be specified further in terms of an employment contract relationship and an employment relationship. An employment contract relationship is created when the employee and employer enter into an employment contract. An employment relationship is created when the employee begins the work specified in the employment contract. Only at this point does the legal relationship become subject to all laws that fall within the scope of labour legislation. In other words, an employment contract relationship often begins before the actual employment relationship.

An employment contract is created when an employee or employees together make a personal commitment to work for an employer under that employer's management and supervision against a salary or some other remuneration. Even if remuneration was not agreed upon, the contract constitutes an employment contract provided that the facts indicate that the work was not meant to be performed without remuneration. In certain borderline cases, it is unclear whether an employment contract exists. Such cases include what are referred to as commission and freelance contracts which often involve entrepreneurship. Work performed under a scholarship constitute another problematic group. In unclear cases, the existence of an employment relationship must always be investigated on a case-by-case basis.

### **2.1.1. Distinguishing features of an employment contract**

For a contract to constitute an employment contract, the following characteristics must be met:

- The contract pertains to the employee's duty to perform the work personally
- The work is performed for the contracting party that is the employer.
- The employee works under the management and supervision of the employer (the right of direction).
- The work is carried out against a salary or some other remuneration.

The most problematic of these features is the employer's right of direction, or right to supervise work. This is because the employer does not, in fact, have to manage and supervise the work. Rather, it is sufficient that the employer is entitled to exercise the right to supervise work, whenever necessary. This feature is also usually met in situations where the employee works from home or in another workplace of his or her choice. Insofar as this is concerned, the nature of the legal relationship in borderline cases must be decided by means of an overall assessment concerning the employee's position and its dependence or independence. Regarding the requirement of remuneration, it should be noted that the remuneration must have financial value. On the other hand, a mere

possibility to earn remuneration usually fulfils the elements necessary for this feature.

According to legal praxis, the managing director of a limited liability company does not work under an employment relationship as referred to in the Employment Contracts Act. Rather, he or she is an organ of the company as referred to in the Limited Liability Companies Act. Correspondingly, the managing director of a cooperative society has been found to be an organ of the cooperative society and not in an employment relationship with the cooperative society. In the event that the parties wish to follow the provisions of labour legislation also in terms of a managing director, this must be agreed upon separately in the director's service contract. This guide does not discuss the service relationship of a managing director. YTN has a separate guide dealing with managing directors' service contracts. On a separate note, it is worth mentioning that the executive directors and managers of associations do fall under the scope of the Employment Contracts Act. A person managing a foundation may be a CEO who is not subject to the Employment Contracts Act, or an employee in an employment relationship, who is subject to the Employment Contracts Act.

## 2.2. Collective agreements

**A PART** of the conditions governing an employment relationship are agreed on collectively, with collective agreements. They complement and expand on the provisions of labour legislation in many respects. The law specifies which matters can be agreed upon in collective agreements. In the Collective Agreements Act, a collective (bargaining) agreement is defined as an agreement "concluded by one or more employers or registered associations of employers and one or more registered associations of employees, concerning the conditions to be complied with in contracts of employment or in employment generally". In principle, the greatest difference between a collective agreement and an employment contract is that when making a collective agreement, associations agree

on the conditions of employment relationships on behalf of their members, whereas the conditions of an employment relationship when entering into an employment contract are agreed upon by the employer and employee. Naturally, all employers must adhere to the collective agreements they have made. In addition, organised employers must adhere to any collective agreements that their employers' organisation or association has made. The situation is different for unorganised employers. They only need to comply with the generally binding collective agreements of their respective industries.

A collective agreement is considered generally binding if it can be considered a national collective agreement representative of the industry in question. This requirement is fulfilled when the scope of the collective agreement in question covers roughly half of the employees in its industry and when its regional scope covers the entire country. The "industry in question" referred to in law is determined according to the collective agreement's provision concerning the scope of application. Thus it is not decisive whether the employee is a member of an employees' organisation or association. In practice, these regulations lead to a situation where a single company needs to comply with various collective agreements in terms of different personnel groups. The generally binding nature of a collective agreement is confirmed by the committee for confirming the general applicability of collective agreements. Decisions concerning the generally binding nature (general applicability) of collective agreements are available (in Finnish) online at [www.finlex.fi/normit](http://www.finlex.fi/normit). Advice on the general applicability of collective agreements is available at YTN affiliates and at occupational health and safety districts.

The legal effects of a collective agreement also include what is referred to as the commitment to labour peace during the validity of the collective agreement. This means that each of the parties to the collective agreement must avoid industrial action pertaining to the collective agreement or an individual provision thereof. The contracting parties are also obligated to ensure that the associations, employers and

employees under them refrain from illegal industrial action.

### **2.3. Determination of the employment relationship's conditions**

**THE CONDITIONS** of an employment relationship are regulated by laws, collective agreements, the employment contract, established practices, the employer's rules, etc. Laws include both mandatory and optional provisions. Mandatory legislation does not allow for agreements deviating from it. Optional provisions, on the other hand, may be derogated from with an agreement to that end. When confronted with a decision related to an individual case on which norm to follow, one can employ the following order of priority:

1. **Mandatory legislation** (which cannot be deviated from)
2. **The provisions of the collective agreements**
3. **The terms and conditions of the employment contract**
4. **Optional legislation** (which may be derogated from with an agreement)
5. **Accepted method or an established procedure of the industry**
6. **Rules imposed by the employer pursuant to its right to supervise work, i.e. right of direction.**

Companies often have various sets of codes or policies which include orders on working hours, fringe benefits, pensions, travel reimbursement, per diem allowances and social benefits. Such a code becomes a part of an employment contract if compliance with it has been agreed upon in the contract in question or if it has, through long-term application, become so established that it must be considered as constituting a condition of the employment

contract. In such cases, the employer may not change the code unilaterally. In other cases, codes can be considered as orders given by the employer by virtue of its right of direction and furthermore a code the contents of which may be changed by the employer unilaterally. An individual fringe benefit may also become a condition of the employment relationship even if it was not explicitly agreed upon in the employment contract, should it have been in use for a long period of time and has relevance for the employee.

The determination of an employment contract's terms and conditions is furthermore subject to what is generally referred to as the principle of favourability, according to which the order of priority between codes and norms may be deviated from in favour of the employee. Due to this, a collective agreement may provide employees with better benefits than what is required in mandatory legislation. The provisions of collective agreements are likewise minimum provisions, meaning that employers must, at a minimum, adhere to the salary and other conditions set in those agreements. A non-mandatory legal provision and a non-mandatory provision of a collective agreement can usually be identified from the fact that it contains the phrase "unless otherwise agreed".

The determination of the conditions of senior salaried employees' employment relationships includes its own special feature attributable to the fact that senior salaried employees do not have collective agreements in all sectors and industries. In sectors where upper senior salaried employees have a valid collective agreement, the conditions of their employment relationships are determined as described above. If such a valid collective agreement does not exist, the situation is different. With such situations in mind, the Federation of Professional and Managerial Staff YTN has made a Basic Agreement with the Confederation of Finnish Industries (EK). According to this Basic Agreement, the general conditions of employment applied to an industry's salaried employees must also be valid for senior salaried employees, as applicable. However, these general





conditions do not apply to salaries. The Basic Agreement determines the general conditions of employment that should be applied to senior salaried employees. The Basic Agreement is nonetheless not a collective agreement, but a recommendation only. In the event that an industry does not have a generally applicable collective agreement and the employer is not

a member of an affiliate of a central employers' organisation or association, the employer is not obligated to apply any collective agreement whatsoever to an senior salaried employee. The collective agreements made by the Federation of Professional and Managerial Staff YTN are available at [www.ytn.fi](http://www.ytn.fi).

# 3. Employment Contract

An employment contract is a basic contract of working life. The format of an employment contract is informal and it is created when an employee and employer agree on the performance of work and the salary to be paid for it as well as on the other benefits and conditions to be applied. It is advisable to draw up employment contracts carefully and, if necessary, to have their content checked by a union/employees' association specialist.

Employment Contracts Act (55/2001)

## 3.1. Format and content of an employment contract

AN EMPLOYMENT contract need not follow a prescribed form. Because of this, it can be made orally, in writing or electronically. Tacitly made employment contracts are also valid. Such employment contracts are mainly created in situations where a fixed-term employment contract ends, but the employee continues to work in spite of this. Although an oral contract is as valid as a contract made in writing, it is nonetheless advisable to always make employment contracts in writing. It is preferable due to its clarity and, above all, verifiability. A dispute over the content of a particular condition may arise during the employment relationship. An attempt to prove an orally agreed matter in such situations is very difficult, if not impossible. Provided that an employment contract has been made in writing, a copy must be provided to each contracting party upon request. Employment contract forms (templates) are available on the websites of YTN affiliates. YTN recommends to always make an employment contract and any changes to its terms in writing.

If an employment contract is valid until further notice or for a fixed term of more than a month, the employer must give the employee a written account of the key conditions of working. This account must be given no later than by the end of the first pay period, if said conditions do not become apparent from a written employment contract. Regarding work performed abroad, the account must be given well in advance of the employee travelling to the desti-

nation. A written account must also be given of any amendment to a condition of work as soon as possible and, in any case, no later than by the end of the pay period following the amendment, unless the amendment is the result of a legislative amendment or a change to a collective agreement. In practice, employers prefer written employment contracts over giving accounts in writing. This is why written accounts of the key conditions of work are fairly rare.

The following points must be indicated in a written account of the key conditions of work. Correspondingly, any written employment contract must include at least the following facts:

- **parties to the employment contract**
- **the employer's place of business and the employee's place of residence**
- **the time when the performance of work begins**
- **the duration of fixed-term employment relationship and the grounds for the fixed-term employment**
- **the trial period, if one has been agreed upon**
- **the workplace** (i.e. the place where the work is performed) or, if the employee does not have a primary fixed workplace, an account of the principles according to which the employee works in various locations or sites

- the employee's primary tasks
- the collective agreement applicable to the job
- the grounds for determining the salary and/or other remuneration as well as the pay period
- the working time; for variable working time agreed upon at the employer's initiative, it is required that the employer provides a statement on the situations and extent of their need for labour
- the determination of an annual holiday
- the period of notice or the grounds for determining it
- in an assignment abroad that lasts for at least a month, the length of the assignment, the currency in which the salary in money is paid, any compensation in money to be paid abroad and fringe benefits, as well as the conditions for the employee's repatriation.

In addition, it is a good idea to include an indication of the following:

- holiday bonus/end-of-holiday pay
- sick pay
- training organised by the company
- salary development
- travel and other expense allowances.

In particular, it is worth noting that one need not agree on a trial period or a non-competition or non-disclosure clause when entering into an employment contract.

### 3.2. Binding nature of an employment contract prior to its beginning

**AN EMPLOYMENT** contract is usually signed well in advance of the job's beginning. If the employee, for one reason or another, wishes to withdraw from the employment contract prior to the beginning of work, it is only possible by following the period of notice which would apply to the employment relationship in any case. If the period of notice is not complied with and the employee does not begin working as agreed, the employer may request that the employee pay a sum corresponding to the salary of the period of notice as compensation.

➤ **Chapter 23.3.3. contains further information on giving notice prior to beginning work.**

Naturally, an employment contract is also binding on the employer even before the work begins. Because of this, the employer may not terminate an employment contract at this point unless there are legal grounds for doing so. If no such grounds exist, the employer must pay compensation for the unlawful termination of the employment relationship. Should the employer not comply with the period of notice, it must pay the employee full salary for a period corresponding to the period of notice as compensation.

A fixed-term employment contract may not be terminated, unless such a possibility has been expressly agreed upon. This also applies to the time prior to the beginning of work.

An employment contract cannot be cancelled prior to the beginning of the work on the basis of any possible trial period agreed on by the parties. This should be kept in mind in situations where an employee receives a new and more attractive job offer after signing an employment contract for another job.

### **3.3. Duration of employment contract**

**AN EMPLOYMENT** contract may be valid for a fixed period of time or until further notice. In the event that there is no clear agreement on this, an employment contract is always considered valid until further notice. Fixed-term employment contracts are allowed only if there are justified grounds for them or if such a contract is based on the employee's own initiative or if it applies to work performed subsequent to the retirement age. The retirement age is 68 years for those born in 1957 or earlier; 69 years for those born in the period 1958–1961; and 70 years for those born in 1962 or after. Indefinitely (until further notice) valid employment contracts are always allowed.

#### **3.3.1. Justified grounds required for fixed-term employment contracts**

The most important reason that justifies the making of a fixed-term employment contract is the nature of the work concerned. This means hiring a person to perform a particular task only, for example. The seasonal nature of a job may also be cause for concluding a fixed-term employment contract. A fixed-term employment contract may also be concluded when the case involves a substitution or internship or when the employer has some other justified reason related to the company's activities or the work to be performed.

A fixed-term contract is furthermore permissible when the employer's justified grounds concern the unestablished nature of service demand. If no such justified grounds for concluding a fixed-term contract exist, the contract is considered valid until further notice. The law does not impose a maximum number or duration applicable to fixed-term employment contracts, but several consecutive fixed-term employment contracts or their combined duration may indicate that the need for workforce is permanent. Each fixed-term employment contract must also have separate legal grounds. The

use of recurring fixed-term employment contracts is not permitted when the number of those employment contracts or their combined duration or the aggregate they constitute proves the employer's need for workforce to be permanent.

In other words, the use of fixed-term contracts is allowed when the case involves the performance of a particular job or compilation of tasks or a particular short-term work that the employer does not have done continuously. The acceptability of the use of a fixed-term contract is dependent on two factors. The use must be justified in terms of the employer's operations and the work it is having done and the reason may not be an attempt to circumvent provisions concerning an employee's protection against termination.

In terms of its duration, a fixed-term employment contract may be tied to calendar time or a particular work performance. A contract in which the duration of the employment relationship is indicated in some other way – such as when hiring an employee to substitute for another employee – is also considered a fixed-term employment contract. In the event that a fixed-term employment contract is concluded for a fixed term that exceeds five years, both parties are entitled to terminate the agreement after five years as if the contract were a contract valid until further notice. In other cases, a fixed-term contract cannot, in principle, be terminated at all, unless such a possibility has been agreed upon separately. It is because of this that it is always worth careful examination whether the parties should agree on the option of termination when entering into a fixed-term contract.

If an employer allows an employee to continue working in a fixed-term employment relationship beyond the agreed term, the employment contract has changed into one that is valid until further notice. Such cases involve what is generally referred to as a tacit extension of the employment relationship.

Making a fixed-term employment contract does not require a justified reason when the employee to be hired has been unemployed for a long time, i.e. when the employee has been

registered as unemployed job seeker continuously for the past 12 months. An employment relationship of two weeks does not discontinue the continuity of unemployment. A fixed-term employment contract can also be made in the event that the employer's need for workforce is permanent. A fixed-term employment contract can have the maximum duration of one year, and it can be renewed twice so that the total duration of the contracts does not exceed two years.

### 3.4. Trial period

**A PART** of the validity period of an employment contract may consist of a trial period, during which time the employment contract may be cancelled bilaterally without a period of notice. A trial period may be applied to both a fixed-term employment contract and one which is valid until further notice. An employment relationship does not include a trial period if one has not been separately agreed upon in the employment contract. Thus an employer may not unilaterally decide on a trial period. A trial period's entry into force may not, primarily, be agreed upon once working has commenced. However, a trial period may be agreed on during the employment relationship if the tasks and the employee's position within the company's organisation undergo material changes. This is nevertheless exceptional, and in such cases the trial period applies solely to the new tasks. Should the trial period lead to a rescission, the employee would therefore have the right to return to his or her former tasks.

The purpose of a trial period is to give the parties to the employment relationship a period to consider continuing the employment relationship. This is why an employment relationship may be cancelled without a period of notice and grounds for termination during a trial period. This right to cancel the employment contract lies with both contracting parties. Nonetheless, an employment contract may not be cancelled during a trial period due to what is generally referred to as wrongful grounds. Such grounds include the employee's

gender, age, health, national or ethnic origin, sexual orientation, language, religion, opinions, family relations, trade union activity, political activity and other comparable reasons. An employee's pregnancy is likewise a wrongful ground. A shop steward's special protection is not in force during a trial period, due to which his or her employment contract may be cancelled in the same manner as any other employee's. An employment relationship may not be cancelled during a trial period before the work has begun. Nor may an employee cancel an employment relationship during its trial period, should the grounds be wrongful. In an employee's case, the grounds are wrongful when, for example, the employee indicates that he or she has received a better job offer from elsewhere.

The length of a trial period is a matter of agreement. However, the trial period should not exceed six months. If, during the trial period, the employee has been absent from work due to incapacity for work or family leave, the employer may extend the trial period by one month for every 30-day period of incapacity or family leave. The employer must inform the employee of the extended trial period before the end of the trial period. In the case of fixed-term employment, the trial period and its extensions may not exceed 50% of the duration of the employment or last more than six months.

Legal praxis has adopted the view that the trial period provision is not permitted when the employee returns to a job similar to his or her former job in the service of the same employer within a short period of time and when no special reason for the trial period can be indicated. In such situations, the trial period provision may be considered an evasion of protection against termination.

### 3.5. Effects of a transfer of business on employment relationships

**A TRANSFER** of the employer's business means transferring the company, business, corporation or foundation or an operational part thereof

to another employer if the business practised as a primary or secondary occupation remains as is or similar after the transfer.

Legal praxis has found situations in which the following requirements are met to constitute a transfer of business:

- there is a contractual relationship between the transferor and transferee
- the object transferred in a business or a part thereof that forms an operational entity
- operations continue more or less unchanged
- operations continue without delay (i.e. without a longer period of suspension).

An acquisition of the entire share capital of a limited liability company does not constitute a transfer of business, since in such cases the employer does not change. Only the owner of the company changes. Nor is a change in a company's form of incorporation or merger seen as a transfer of business.

When a transfer of business takes place, the rights and obligations of the employer transfer to the new owner or holder immediately. Following the change in ownership, then, the new owner is responsible for salaries, annual holidays, holiday bonuses, etc. The transferor and transferee are jointly and severally liable for any salary arrears outstanding prior to the transfer of business. However, in such cases the transferor is liable for them with regard to the transferee, unless otherwise agreed. In the transfer of a bankruptcy estate, the transferee is not liable for any salary arrears or other receivables due in relation to an employment relationship that have fallen due before the transfer, except in cases where the same people exercise or have exercised control in the company declared bankrupt and transferee company through ownership, an agreement or some other arrangement.

In a transfer of business, employees transfer into the service of the new employer as "old employees". The employment relationship conti-

nues without interruption, which is also why the term of service that accumulated prior to the transfer is also taken into account when calculating the length of the employment relationship. This also means that the terms and conditions of the employment relationship or the employee's benefits will not be subject to any changes. The applicable collective agreement, on the other hand, may change if the new employer is organised differently than the transferor-employer. The change may take effect only after the term of the collective agreement has come to an end.

The employer (transferee) may change the conditions of an employment relationship unilaterally only if it has the proper and weighty reason required for a termination of the employment contract. In such cases, the change may be effected only in line with the period of notice. If the employment contract is terminated because the employee's terms of employment deteriorate to a material extent due to the transfer of business, the employer is considered liable for the end of the employment relationship.

➤ **Chapters 21.2. and 21.9 contain further information on the employer's co-operation obligation in connection with a transfer of business.**

### 3.6. Employee's general obligations

**AN EMPLOYEE** must perform the work assigned to him or her carefully and comply with the rules given by the employer within the framework of its authority on the way the work is to be performed, its quality and scope and on the working hours and workplace. An employee must also avoid everything that is in conflict with the actions that can be required of an employee in his or her position within reason. The requirements of this loyalty obligation may also extend to the employee's free time. The employee may not publicly criticise his or her employer during free time, for example. These requirements imposed by law are proportionate to the emplo-

employee's position within the company in such a way that the obligations of employees who work in managerial positions are more extensive than those of other employees.

➤ **Chapter 12.3 contains more information about an employee's occupational health and safety obligations.**

### 3.7. Business and trade secrets

**ACCORDING TO** the Employment Contracts Act, an employee may not, during his or her employment contract, exploit or express to others the employer's business and trade secrets. This prohibition applies to all business and trade secrets the employee has been entrusted with or of which he or she has otherwise become aware. If the employee has obtained such information unlawfully, the prohibition will continue even after the employment relationship ends.

According to the Criminal Code, a violation of a business or trade secret is prohibited during an employment relationship and for a two-year period following its termination. However, the prohibition referred to in the Criminal Code only concerns situations in which a person discloses the information (secret) to gain financial benefit for himself or herself or another person, or when the secret is divulged with the intention of causing harm to someone.

An employee who violates business or trade secrecy may have to compensate for the damage or loss caused. Business and trade secrets means both financial secrets – such as information pertaining to a company's organisation, agreements, marketing and price policies – and technical secrets, such as information concerning structures and material compounds.

A business secret is characterised by the fact that its secrecy carries significance for the business activities of the company in whose possession the business secret is.

### 3.8. Non-disclosure agreement

**THE RESTRICTIONS** concerning business and trade secrets provided in the Employment Contracts Act are valid only for the term of an employment relationship. An employee's non-disclosure obligation may be extended to the time following the end of the employment relationship only with a separate non-disclosure agreement. At times, securing the interests of a particular employer even necessitates such an agreement. Non-disclosure agreements may, however, turn out to be detrimental to the employee. This is why it is not advisable to draw up non-disclosure agreements with too broad a scope and too many restrictions. Such agreements must always detail which matters are to be kept secret and how long the period of confidentiality is.

### 3.9. Prohibition concerning competing activity

**THE EMPLOYEE** may not perform work for others or participate in activities which, considering the nature of his or her work and position, may cause manifest harm to the employee's employer as a competing activity contrary to fair employment practices. Nor may an employee, during the employment relationship, undertake any measures to prepare for competing activity that may be considered unacceptable in light of the aforementioned. This kind of competing work may nevertheless be performed at the employer's consent.

The same applies if the employer is aware of the competing activity when entering into the employment contract and it is not, at the time, expressly agreed that the competing activity must be discontinued.

If the secondary occupation involves a different industry and no competition arises, the work in question may naturally be performed. However, such a permissible secondary occupation may not take so much time that it has adverse effects on the performance of the primary occupation.

The prohibition concerning competing activity takes effect from the moment the employment contract is concluded, even if the work had not yet started. Competing activities are also prohibited during a period of notice, regardless of an obligation to work, and during annual holidays. A new employment contract may nevertheless be signed while still working at the old workplace. In such cases, work in the service of the competitor may not be commenced prior to the end of the employment relationship. Business activity that competes with the employer's business performed in the name of one's own company while the employment relationship lasts may also be considered prohibited competing activity.

The consequences for a breach of this provision may be quite harsh. Material breaches usually result in a cancellation of the employment relationship. Damages may also be claimed from the employee.

### **3.10. Non-competition agreement**

A **NON-COMPETITION** agreement may be concluded only for a particularly weighty reason related to the employer's operations or the employment relationship. An agreement such as this restricts the employee's right to enter into an employment contract with the employer's competitor after the employment relationship has ended. A non-competition agreement may also restrict the employee's right to engage in such activity using his or her own name. The purpose of a non-competition agreement is to secure certain interests of the employer. For an employee, this kind of an agreement is always harmful to a greater or lesser extent. Because of this, non-competition agreements should not be entered into without thorough consideration.

Should it nevertheless be necessary to enter into a non-competition agreement, its restrictions should be defined in as much detail as possible. In such cases, it is good idea to name the companies and products the employee may not get or be involved with, for example, as well

as the geographical area in which the employee may not operate.

According to the law, a non-competition agreement may not be concluded at all unless there is a particularly weighty reason for doing so. When assessing the existence of such a reason, the factors accounted for include the quality of the employer's activities and a need for protection attributable to the protection of a business secret or special training arranged for the employee by the employer. The assessment must also take into account the employee's position and duties. Non-competition agreements may not be made with employees who, in truth, do not possess know-how that is of material importance to the company's operations. Non-competition agreements may not be made in tasks which do not involve the employer's genuine need to restrict competition.

Non-competition agreements may be considered permissible in cases where the employee's tasks involve product development, research or other comparable operations and when the employer possesses knowledge and competence not in the general use of competitors. The conclusion of non-competition agreements is more permissible in tasks in which the rapid rate of new information and technological advances are factors with material relevance for production operations. A particularly weighty reason attributable to an employment relationship may be at hand when customers are strongly committed to a company through an employee engaged in sales work. In such cases, the grounds for the non-competition agreement is the interest to retain the customers. Special training paid for by the employer may also function as grounds for a non-competition agreement. In such cases, factors such as the costs of the training and any paid leave or scholarship granted by the employer for the purposes of the training may be taken into consideration. Conventional advanced or further training provided by the employer cannot be cited as grounds for a non-competition agreement. Nor can any training acquired and paid for by the employee himself or herself usually serve as grounds for a non-competition agreement.



A non-competition agreement may restrict an employee's right to enter into a new employment contract or practise his or her profession for a maximum period of six months following the end of the employment relationship. In exceptional cases, a non-competition agreement may be in effect for up to a year, provided that the employee receives reasonable compensation for the damage or loss caused by the commitment.

A non-competition agreement may include an agreement on a contractual penalty which will fall due if the agreement is breached. Such a contractual penalty may not exceed the salary paid to the employee during the six months preceding the termination of the employment relationship. If a contractual penalty has not been agreed on, the employee is obligated to compensate for the damage caused to the employer by the breach of the non-competition agreement in accordance with the provisions of the Tort Liability Act. YTN recommends not agreeing on a separate contractual penalty.

Employees who, by virtue of their duties and position are considered to perform a managerial task of a company, corporation or foundation or an independent part thereof, or to be in a directly comparable independent position, are in a special position in terms of making non-competition agreements. This is namely because they are not subject to the aforementioned restrictions concerning the duration of a non-competition agreement or a possible contractual penalty.

A non-competition agreement is not binding on an employee if the employment relationship has ended due to a reason attributable to the employer. Thus it makes no difference which party terminates the employment contract. The decisive factor is the reason for the termination. It should furthermore be noted that a non-competition agreement is invalid insofar as it has been concluded contrary to the provisions of the Employment Contracts Act.

### **3.11. Employer's general obligations**

**AN EMPLOYER** must in all respects develop its relations with its employees as well as its employees' mutual relations. The employer must ensure that an employee can perform his or her work also when the company's operations, the work to be performed or working methods change or are being developed. The employer must endeavour to advance employees' possibilities to develop according to their abilities during their careers.

The employer is obligated to treat its employees equally, so that no-one is unjustifiably placed in a position different from that of others due to age, health, national or ethnic origin, sexual orientation, language, religion, opinion, family relations, union activities, political activity or some other comparable reason. This requirement of an employee's equal treatment must also be adhered to in recruitment. According to the Act on Equality between Women and Men, gender discrimination is also prohibited. More on these in chapters 13 and 14.

Fixed-term and temporary employees may not be subject to terms and conditions of employment that are less favourable than those in other employment relationships merely due to the duration of the contract or the length of working hours, unless there are proper and acceptable reasons for doing so. In all other respects as well, the employer must treat employees equally, unless there is an acceptable reason for deviating from this principle.

An employer must offer work for part-time employees if the employer needs more employees in tasks suitable for the part-time employees. To meet this obligation, the employer is obligated to provide part-time employees with training that can be reasonably arranged taking into account the employer's suitability. To ensure that part-time and fixed-term employees have the possibility to apply for positions about to become vacant, the employer must announce such positions according to the company's established method for doing so.

An employer's obligations also include arranging the necessary breaks and tools for its employees.

➤ **Chapter 12.2 contains more information about the employer's occupational health and safety obligations.**

### 3.12. Salaries

**THE OBLIGATION** to pay salaries is the employer's most important obligation. Salaries must primarily be paid in the legal tender of the country in question. However, the employer and employee may agree that the salary or part thereof be paid in the form of other remuneration having monetary value, such as in the form of fringe benefits. The prerequisite for this is that the other agreed remuneration has monetary value. If a salary consists of a salary in money and fringe benefits, the hourly and daily salary is calculated from the total salary. Any possible general pay increases must also be calculated on the basis of the total salary.

The employer and employee are free to agree on the grounds for the salary. Because of this, performance-based pay (such as commissions, bonuses, share of profits) can be applied in addition to a basic salary or in lieu of it. Performance-based pay must be determined only according to performance factors that the employee himself or herself can influence. The principles for calculating payment by results must always be agreed on in detail and in writing, in terms of both profit and expense factors. In the case of payment by results, one must always also agree on how it is paid at the end of an employment relationship. Regarding salesmen, the Act on Commercial Representatives and Salesmen provides for the right to a subsequent commission. Because of this, salesmen are entitled to receive a commission for an agreement created after their employment relationship has ended if the agreement can primarily be considered to have been arrived at with the salesman's contribution during the validity of his or her emp-

loyment contract and if the agreement is made within a reasonable period of time following the termination of the employment contract.

The maximum pay period for a primary occupation is one month. The salary must be paid no later than on the final day of the pay period. Parties often agree on the payment of salary earlier during the pay period. However, in cases involving hourly or daily wages, salaries must, as an exception to the above, be paid at least twice a month. If part of the salary is determined as a share of profits, commission or some other comparable basis, the payment period may be longer than the aforementioned one, but nonetheless no longer than 12 months.

The salary must be paid to the employee in cash or, if agreed, to the financial institution indicated by the employee. If the salary is paid to a financial institution, the employer is responsible for the resultant costs. The salary must be paid or be available for withdrawal on its due date. In the event that banks and post offices are closed on the due date, the salary must be at the employee's disposal on the preceding working day. When paying a salary, the employer must provide the employee with a payslip that indicates the amount of the salary and basis for its determination.

➤ **23.18 contains information on the right to pay during pregnancy.**

If an employment relationship is not subject to any collective agreement, the salary is determined according to the employment contract between the employer and employee. If no agreement has been made on the remuneration to be paid in the employment relationship, the employee must be paid normal and reasonable wages for the work performed.

The employer is entitled to set off any clear and undisputed receivables from the employee's salary. However, the maximum amount that can be claimed equals the sum that could be attached, i.e. a third of the net salary. Naturally, the employer may not set off any disputed receivable from the employee's salary.

### 3.12.1. Payment of salary when performance of work is prevented

**UNLESS OTHERWISE** agreed, the employer is obligated to pay an employee a full salary if the employee has been at the employer's disposal in accordance with the employment contract, but prevented from doing the work in question due to a reason attributable to the employer.

However, the situation is different if working is prevented due to a fire or an exceptional natural event that affects the workplace or some other comparable reason independent of the employer and employee. In such cases, the employee is entitled to receive pay for the time of the prevention, but only for a maximum period of 14 days. After this, the employer may suspend the payment of salaries. If the reason independent of the parties to the employment contract that prevents work is the industrial action of other employees that is not interdependent with the employee's terms of employment or working conditions, the employee is entitled to receive his or her salary only for a maximum period of seven days. An employer may deduct from the wages paid to an employee the amount saved due to the employee

being prevented from working and the amount the employee has earned with other work or willfully not earned.

### 3.12.2. Sick pay

According to the Employment Contracts Act, an employee who is prevented from working due to sickness or injury is entitled to sick pay. If the employment relationship has continued for at least a month, the employee is entitled to receive full pay for the time of prevention until the end of the ninth working day following the day the employee fell ill and at most until the time as the employee's right to a daily allowance pursuant to the Health Insurance Act commences. In employment relationships that have continued for less than a month, the employee is correspondingly entitled to receive 50 per cent of his or her salary.

However, the incapacity for work may not be caused by the employee's willful or gross negligence. Most collective agreements, however, agree on employees' entitlement to receive sick pay for a considerably longer period of time. Sick pay has often been agreed on as follows:

**Table 3A**

Sick pay

The employment relationship has continued without interruption	Sick pay
1 month - less than 1 year	for 4 weeks
1 year - less than 5 years	for 5 weeks
5 years or longer	for 3 months

The employer is entitled to deduct from an employee's sick pay any daily health insurance allowances and other comparable compensation paid to the employee simultaneously. Sick pay is usually calculated from the basic salary, not taking into account overtime pay and other increments. Some collective agreements have, however, departed from this main rule. If an employee's incapacity for work is not due to illness or an injury, the employee is not entitled to sick pay (cosmetic surgery performed at the employee's own wish, for example). The employee must present a reliable account of the incapacity for work to the employer upon request. Many companies are in the habit of asking for a doctor's certificate or some other equivalent account only if the incapacity for work continues for more than three days. Despite this practice, the employer always has the right to request an account for an even shorter period of absence.

### **3.13. Changing the conditions of an employment relationship**

**IN THE** event that an employment relationship becomes a lengthy one, the need to change the conditions of the employment contract usually arises at some point. Employment contracts may, of course, always be changed by mutual agreement of the parties. If a particular condition of an employment contract is changed with an agreement, all other conditions in the contract will primarily remain in force as such. An employment contract should nevertheless always be re-written when material changes are made.

The employer may not change the conditions of an employment contract unilaterally. The sole exception to this rule is a situation where the employer has justified grounds to terminate the entire employment contract. In such cases, the employer may change the conditions of the employment contract unilaterally and the changes take effect once the period of notice comes to an end. In other words, the employer terminates an employment contract while

offering a new employment contract in return. Should the employee refuse to accept such a change to the employment contract and should there be no grounds for termination required by law for the change, the employee may stop working once the period of notice has ended and claim damages for wrongful termination. The employee may also continue working and contest the grounds for the employer's action. In any case, an evidentiary complaint should be made immediately, because otherwise the employee's action may be construed as a tacit approval of the changes.

It is also worth noting that an employer's right to reduce wages as an alternative to termination is restricted by Supreme Court decisions (KKO 1997:83 and 1996:89). According to one of the aforementioned decisions, a reduction of wages must, along with other restructuring measures, be necessary to secure the company's conditions for operating due to the company's loss-making operations. According to the other decision mentioned, the reduction of wages must be, together with other restructuring measures, necessary to secure the company's operating conditions.

The employer has the right to unilaterally change an employment relationship into part-time employment by way of a period of notice only if there are financial and production-related grounds for termination. If the employer has unilaterally changed an employee's employment relationship into a part-time one, the employer must primarily offer additional work for the employee in a part-time job when the employer is seeking new workforce for a similar part-time or full-time job. In the event that the new work requires training that the employer can within reason arrange, the employee must be provided with such training.

By virtue of its right to supervise work, the employer is entitled to make only temporary and short-term or minor changes to an employee's tasks. The broader the job description in an employee's employment contract is, the greater the employer's possibility to determine the employee's tasks within the framework of its right to supervise work.

# 4. Working Hours

Working hours are governed by the Working Hours Act. In addition to employees in the private sector, the Act applies to public sector employees and civil servants. Nearly all senior salaried employees belong within the scope of the Working Hours Act and are thus entitled to, for instance, overtime compensation.

A contract that reduces the benefits conferred on an employee pursuant to the Working Hours Act is invalid. Thus, any agreement included in an employment contract on the performance of overtime and no compensation for such overtime is not valid.

Working Hours Act (605/1996)

## 4.1. The Working Hours Act's scope of application and executive management

**THE APPLICABILITY** of the Working Hours Act on any particular employment relationship determines whether the employee is entitled to compensation (for example a weekly rest period and overtime compensation) under said Act. In principle, all senior salaried employees belong within the scope of the Working Hours Act.

According to a provision for derogation included in the Act, the Working Hours Act does not apply to work that, on the basis of the tasks it involves or otherwise due to the employee's position, must be seen as management of a company or an independent part thereof or an independent duty directly comparable to management. In practice, the provision for derogation means that only a company's executive management remains beyond the Act's scope of application.

For any particular case to constitute the management tasks of an independent part of a company as referred to in the Working Hours Act, the part managed must be operatively independent and substantial in terms of its size. The size of independent part may be measured by net sales or the number of employees, for example. A typical example of the manager of a company's independent part is a factory manager, but the manager of a major regional office may also be considered a manager of a company's independent part. In contrast, a separate

unit that belongs to a company's organisation does not meet the criteria set for a company's independent part.

Nor is the Working Hours Act applied to employees whose tasks are equal to the management duties of a company's independent part. In such cases, the position and duties of the person who is in charge of the tasks must be independent and he or she must exercise decision-making powers equal to management. The person must possess special know-how and be able to decide on his or her working hours. Furthermore, the terms and conditions of such a person's employment relationship must be equal to the terms and conditions applied to those who take part in management tasks and clearly better than the terms and conditions of the employment relationships of those who work under the person. In practice, this means that the person's position is at least above that of middle management.

However, the employee's formal position within the organisation is not decisive as such, even if it is of key importance. When assessing whether a senior salaried employee is covered by the scope of the Working Hours Act, attention focuses on the true nature of the tasks and position. What is decisive is the employee's authority to participate in the company's actual management. In a simple organisation, any administrative, commercial and technical directors or managers working in the immediate supervision of executive management – i.e. in practice, the company's management team – remain outside the Act's scope of application. On the other hand, middle management falls within the Act's scope of application, even though their

tasks may often be demanding management and planning tasks.

The employer's size matters when assessing the scope of application of the Working Hours Act. The smaller the company involved is, the fewer the number of senior salaried employees who remain beyond the scope of application of the Working Hours Act. The Act's restrictions, however, cannot be evaded by splitting the company up into smaller independent profit centres, for example.

## 4.2. The Working Hours Act's application to telecommuting and sales work

**TELECOMMUTING REFERS** to a flexible way of organising work based on optionality. The work is performed where it is most efficient and expedient from the point of view of the employee, employer and the work to be performed. Telecommuting is performed outside the workplace, such as from home, a holiday home or in the form of mobile work when traveling.

The Working Hours Act only applies to work in which the employee's use of time can be monitored by the employer. This requirement is not usually met with regard to telecommuting, due to which the applicability of the Working Hours Act on telecommuting must be agreed to separately with the employer.

Nor is the Working Hours Act applied to work that an employee performs outside his or her fixed workplace, if the employee is at liberty to decide when the work is performed without the employer's monitoring. The provision applies to the work of, among others, a commercial representative or a salesman. In such jobs, the employee is free to decide when, where and who he or she meets for business, due to which "field work" does not fall within the scope of the Working Hours Act. Even in the case of sales and commercial representatives, any work performed at an office under the management and supervision of the employer does fall within the scope of the Working Hours Act.

## 4.3. Regular working hours

**REGULAR WORKING** hours mean the working hours agreed upon in the employment contract or the collective agreement.

According to the Working Hours Act, regular working hours may not exceed 8 hours a day or 40 hours a week. Regular weekly working hours may, according to a working hour arrangement drafted in advance, also be organised as an average of 40 hours a week for a maximum period of 52 weeks.

Nowadays, the most common regular working hours of employees is 7.5 hours a day or 37.5 hours a week. However, the provisions in the Working Hours Act that concern overtime only become applicable when 8 hours a day or 40 hours a week has been reached.

### **4.3.1. Local agreement on working hours based on a collective agreement or a generally applicable collective agreement**

A local agreement means that national labour market organisations have transferred the possibility to agree on working hours in derogation of the Working Hours Act to workplaces with the collective agreement. A local agreement on regular working hours may be based on a collective (bargaining) agreement, a generally applicable collective agreement or the law.

An employer or a national employers' association may agree with a national employees' association on regular working hours that derogate from the law with a collective agreement. Regular working hours based on a collective agreement may not exceed an average of 40 hours a week within a 52-week reference period.

The Federation of Professional and Managerial Staff (YTN) has agreed on the possibility to make local agreements concerning working hours with a collective agreement entered into with the Federation of Finnish Technology Industries, Finnish Energy Industries, Service Sector Employers PALTA, the Chemical Industry

Federation of Finland and the Finnish Association of Consulting Firms SKOL.

An unorganised employer may also make a local agreement on working hours with its personnel based on the generally applicable collective agreement (see chapter 2.2. for more details on collective agreements) and within its framework. Such a local agreement can be concluded with a shop steward or an employee representative or, if such a person has not been elected, some other representative authorised by the personnel. If there is no personnel representative, the agreement can be concluded with the personnel or a personnel group. A local agreement must be made in writing, unless the parties consider this unnecessary. However, a local agreement must always be made in writing if it is valid for more than two weeks.

The agreement may be valid for a fixed period of time or until further notice. An agreement that is valid until further notice can be terminated when the reference period for the working hours comes to an end. The period of notice is two weeks, unless otherwise agreed. A fixed-term local agreement that is valid for more than a year can be terminated after four months in the same manner as an agreement that is valid until further notice. A local agreement concluded by a personnel representative must be made known to the employees no later than a week prior to the commencement of its application. The agreement is binding on all employees that the personnel representative who made the agreement can be considered to represent. However, an individual employee has the right to comply with his or her earlier working hours, provided that the employee informs the employer of this no later than two days prior to the application of the new system commencing.

#### **4.3.2. Local agreement on working hours based on law**

The Working Hours Act gives an employer and an employee the possibility to agree on the extension of daily (24-hour) working hours by a

maximum of one hour. An agreement such as this is possible whenever it is not prohibited by a collective agreement. In other words, an agreement that extends working hours by an hour can also be made in a situation where there is no collective agreement at all. The extension is subject to the restriction that the regular working hours must average out to the normal 40 hours a week during a maximum period of four weeks. In addition, the weekly working hours may not exceed 45 hours even during the extension period. The recommendation is to also make any agreements such as these in writing.

#### **4.4. Definition of working hours**

**WORKING HOURS** include the time spent on work at the workplace as well as the time that the employee is obligated to be present and at the disposal of the employer at the workplace. In addition, working hours include work that the employer assigns to an employee to perform outside the workplace.

Training incorporated and arranged in connection with working hours is clearly part of working hours. Training sessions are also included in working hours when the training is ordered by the employer and necessary for the employee to be able to perform his or her job (such as the introduction of a new IT system).

Participation in optional training is not considered as part of working hours, unless it has been specifically agreed upon with the employer. A corresponding principle is also applied to what are generally referred to as business entertainment events. If an employer orders an employee to take part in such an event, the time spent is included in working hours. If participation is optional, it takes place on the employee's own time.

A rest period is not included in working hours if the employee may leave the workplace during it (e.g. lunch breaks). Time spent in medical check-ups is not included in working hours, unless it has been agreed upon separately or unless otherwise agreed in a collective agreement.

#### 4.4.1. Travel time

In the case of senior senior salaried employees, time spent on travel within the framework of regular working hours is not usually included in working hours. However, the salary of an employee receiving a monthly salary is not reduced, even if part of the working day was spent on traveling. Drawing the line between working hours/travel time has significance in terms of counting overtime.

Travel time is seen to be included in working hours only when the travel is simultaneously a work performance. The question of when travel becomes a work performance is decided on a case-by-case basis. Tasks where the performance is equivalent to travel are considered as work performance (e.g. transporting gravel as a work assignment). Performing work with a laptop computer during travel does not make the travel a work performance when looked at from the perspective of the Working Hours Act. It is advisable to agree on travel completed during regular working hours and its inclusion within working hours with the employer, to ensure any possible compensation for overtime.

According to the Working Hours Act, travel outside regular working hours is considered an employee's free time, for which the employer is not obligated to pay separate compensation. Compensation for travel time is paid on the basis of the collective agreements applicable in various industries or on the basis of workplace-specific agreements. It is also possible to agree on compensation for travel during free time within the scope of an employment contract. YTN recommends that a senior salaried employee be compensated for travel during free time according to the principle of an hour for an hour.

#### 4.5. Stand-by time

**AN EMPLOYER** and employee may agree on a stand-by time in the framework of which the employee is obligated to remain available to be called in to work when necessary. This kind of stand-by time is not counted in as working hours.

The stand-by time can be agreed in such a way that the employee must stay at home or remain otherwise available (by the phone, for example) for the duration of the stand-by time. However, the length and recurrence of the stand-by time may not place unreasonable strain on the employee's use of his or her free time.

According to the Working Hours Act, stand-by time spent at home is subject to a minimum compensation of 50 per cent of the employee's salary or a corresponding number of hours as free time during regular working hours. Compensation for remaining available on a mobile phone must be agreed on separately, as it is not mentioned in the law.

If an employee is called in to work during stand-by time, the time spent at work is considered working hours and compensated for in accordance with the Working Hours Act. In most cases, such time is considered overtime.

#### 4.6. Additional work

**ADDITIONAL WORK** is work performed in addition to the agreed regular working hours, but not exceeding the maximum amount of regular working hours as provided in the Working Hours Act. For example, if the employer and employee have agreed on regular working hours equal to 7.5 hours per day, the nature of any work performed until the eight-hour limit is additional. Additional work is accordingly the case if the employee works on his or her regular day off in such a way that the daily (24-hour) working hours do not exceed the limit of 8 hours and the weekly working hours do not exceed the limit of 40 hours.

Additional work may primarily be ordered only with the consent of the employee, meaning that an employee may refuse to perform additional work. The employee may give his or her consent to additional work as early as when concluding the employment contract, but additional work can also be agreed to on a case-by-case basis. On the other hand, the employee does not have the right to perform



additional work without the employer's request or consent.

Additional work is primarily compensated for according to simple hourly wages or exceptionally, as agreed in some collective agreements, according to increased hourly wages.

## 4.7. Overtime

**OVERTIME IS** work performed in addition to the maximum length of regular working hours provided in law (i.e. more than 8 hours a day or 40 hours a week). Overtime requires, first and foremost, the consent of the employee, separately for each instance of overtime. Thus the consent to overtime cannot be given in an employment contract, for example. In other words, the employee, as a rule, has a right to refuse to work overtime.

Secondly, overtime requires the request or consent of the employer. This being the case, the employee is not entitled to overtime compensation for any extra work done, unless the overtime in question has been specifically agreed upon with the employer.

In some cases, the employer may be considered to have given tacit approval for the overtime. This can be the case when the overtime has been necessary to bring a particular task to conclusion and the employer has been aware of the situation. An example of the tacit approval of overtime is a situation in which the employer has required a task to be completed while being aware of this not being possible within the framework of agreed working hours.

Even for employees who primarily remain beyond the scope of application of the Working Hours Act (such as salesmen and commercial representatives), a part of working hours may be considered as subject to compensation according to provisions concerning working hours. In the event that the employer determines where a sales representative operates or that overtime is to be done at the employer's office, the employment relationship is subject to the Working Hours Act in this respect, and the sales representative is entitled to overtime

compensation when the regular working hours are exceeded. In such situations, the employee remains beyond the scope of the provisions of the Working Hours Act only insofar as the employer is not able to monitor the time spent working.

Cases in which the employer can monitor the use of working hours can also be considered equal to the employer's order. Being present at a trade fair, for example, is included in working hours, because it allows the employer to easily monitor how the time is spent.

### 4.7.1. Daily overtime

Work performed on a regular workday beyond the statutory maximum of regular working hours (8 h/day) accounts as daily overtime.

Daily overtime is subject to compensation equal to a 50 per cent increase on the regular wage for the first two hours and a 100 per cent increase on the regular wage for any subsequent hours.

### 4.7.2. Weekly overtime

Work performed outside the framework of a normal work week accounts as weekly overtime. If, for example, work is usually performed for a total of 40 hours from Monday to Friday, work performed during the weekend accounts as weekly overtime. If the employee has not completed 40 working hours during the regular work week, work performed until the 40-hour limit accounts as additional work. In other words, if the employee has put in 37.5 hours of work within the regular working hours from Monday to Friday and works for another 8 hours on Saturday, 2.5 hours of the work performed on Saturday accounts as additional work.

Weekly overtime is subject to a compensation equal to a 50 per cent increase on the regular wage.

### 4.7.3. Calculating the hourly wage for the purposes of overtime compensation

For the purpose of overtime compensation, the hourly wage of an employee is usually calculated according to the collective agreement practice, by dividing the monthly salary by 158, when the work week equals 37.5 hours. If, on the other hand, the work week equals 40 hours, the monthly salary is divided by 160 to calculate the hourly wage. The divisor of the monthly salary should nevertheless always be checked from the collective agreement applicable to the employment relationship in question. Monthly salary refers to the total salary, due to which the calculation must also account for fringe benefits.

### 4.7.4. Compensating for overtime

An employee is entitled to receive the overtime compensation pursuant to the increases in money.

The compensation may, however, also take the form of free time, provided that this is agreed upon with the employee. In this case, too, the compensation must be given according to the increases, instead of according to the principle of an hour for an hour. Unless otherwise agreed, the free time must be given and exercised within six months of the overtime in question. The time of the free time given as compensation for overtime must be discussed with the employee, but the employer has the ultimate right to decide the time. If the time decided by the employer is not suitable for the employee, he or she may still at this point change the compensation given as free time into a monetary compensation.

The employer and employee may agree on combining the free time given as compensation for the performance of additional work and overtime with a carried-over holiday as referred to in the Annual Holidays Act. In such cases, free time is governed by the provisions of the Annual Holidays Act concerning carried-over holidays

➤ For further information on the carrying over of annual holidays, see chapter 5.11

### 4.7.5. Overtime compensation as a separate monthly remuneration

Compensation for overtime is primarily paid according to the hours of overtime performed, including the applicable increases pursuant to the Working Hours Act. An employee in a managerial position and an employee whose principal task is to directly manage or supervise work and who does not participate in or participates only temporarily in the work of those he or she manages or supervises may nevertheless agree that a fixed overtime compensation be paid for additional work, overtime and Sunday work, in addition to the normal monthly salary.

Collective agreements have broadened the right to agree on a fixed overtime compensation so that it also applies to employees other than those in a managerial position. The collective agreement for senior salaried employees in Technology Industries, for example, allows for an agreement on a fixed overtime compensation with a senior salaried employee.

The agreement should indicate which part of the senior salaried employee's monthly salary is remuneration for regular working hours and which is compensation for overtime. In other words, according to the law, the agreement may not be such that the amount of the overtime compensation cannot be distinguished from the normal monthly salary (e.g. "The monthly salary of a senior salaried employee is €5,000 including overtime compensation").

The fixed overtime compensation must be, on average, as great as the salary calculated according to the hours for which increase would be payable. When agreeing on the compensation of additional work, overtime and Sunday work with a fixed monthly remuneration, it would also be advisable to agree on the estimated amount of overtime on which the compensation is based, the amount of the remuneration and the agreement's period of notice at the same time.

The number of realised overtime hours must

be monitored, and the lump sum remuneration agreement should be adjusted regularly (e.g. every year) so that it accords with the actual overtime situation. Since the number of actual additional work, overtime and Sunday work hours varies from one person to the next, the monthly remuneration should not be the same for all senior salaried employees.

YTN does not recommend agreeing on a fixed monthly remuneration because of the numerous shortcomings observed in such agreements and because they have often led to an outcome that is inferior in comparison to percentage-based overtime compensation in terms of senior salaried employees.

#### 4.7.6. Maximum amounts of overtime

An employee can, with his or her consent, be asked to work overtime for a maximum of 138 hours during a four-month period and no more than 250 hours during a calendar year. An employer and a personnel representative or personnel group may agree on a maximum of 80 additional overtime hours to be performed per year, but in such a way that the aforementioned 138 hours during a four-month period is not

exceeded. Daily and weekly overtime are not considered separately when calculating the maximum amounts of overtime.

#### 4.8. Sunday work

**SUNDAY WORK** means work performed on a Sunday or some other religious holiday. Employers may have Sunday work done only if the work is, due to its nature, regularly performed on a Sunday or a religious holiday or if such work has been agreed to in the employment contract or if the employee separately consents to such work.

Sunday work is subject to 100 per cent increase on the regular wage. Sunday work often also qualifies as additional work or overtime. In this case, the work is subject to the payment of compensation for additional work or overtime in addition to the remuneration paid for Sunday work.

#### 4.9. Example of the calculation of additional work, overtime and Sunday work

**Table 4.9. A**

Example of the calculation of additional work, overtime and Sunday work

	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Total
Regular working hours	7,5	7,5	7,5	7,5	7,5	-	-	37,5
Performed	7,5	8	9	10	12	4	4	54,5
Overtime 50 %	-	-	1	2	2	-	-	5
Overtime 100 %	-	-	-	-	2	-	-	2

Hours put in - (daily overtime + 40 h) = Weekly overtime  $54.5 - (7 + 40) = 7.5$

Hours put in - (all overtime + regular working hours) = Additional work  $54.5 - (14.5 + 37.5) = 2.5$

Sunday work 4 hours

**THE WORKING** hours in the example refer to the 7.5 hour day and 37.5 hour week common among senior salaried employees. The actual working hours are shown in the second row. In this example, the daily overtime subject to a 100 per cent increase on the regular wage – i.e. the overtime for more than 10 hours of work performed – has been calculated first. The next figure shown is the daily overtime subject to a 50 per cent increase on the regular wage, or the overtime performed between 8–10 hours. After this, one can calculate the weekly overtime and additional work by following the formulas included in the example. Finally, one should check for the 100 per cent increase on regular wage payable for Sunday work.

Work performed on a Sunday may entitle the employee to compensation for Sunday work as well as to compensation for overtime.

## 4.10. Rest periods

**STATUTORY REST** periods include lunch breaks, daily rest periods and weekly free time.

The practice of coffee breaks common in many workplaces is not based on the law. Provisions and rules concerning coffee breaks and various other rest periods can be found either in the collective agreement or the workplace's internal rules and policies.

### 4.10.1. Lunch break

When an employee's daily working hours amount to more than six hours and the employee's presence at the workplace is not necessary for the work to continue, the employee must be given a rest period that is at least an hour long. In such cases, the employee may freely leave the workplace.

The employer and employee may agree on a shorter rest period, the minimum length of which must nonetheless be 30 minutes.

### 4.10.2. Daily rest period

An employee must primarily be provided with, at least, an 11-hour uninterrupted period of rest during every 24-hour period that follows the beginning of each work shift. If the functional organisation of work so requires, the employer and a personnel representative may agree on the temporary shortening of the daily rest period, with the employee's consent. In such cases, the daily rest period must nevertheless be at least seven hours. Likewise, the daily rest period can be shortened to seven hours in a system of flexible working hours when the employee himself or herself decides the times at which he or she arrives at and leaves work.

The provisions concerning daily rest periods may be derogated from for a weighty reason for a maximum of three consecutive daily rest periods. Even in such cases, the daily rest period must be at least five hours long. Daily rest periods may be deviated from in work that is, for instance, of a seasonal nature to level out an unexpected peak period, in connection with an accident or the risk of an accident or in work that is necessary to ensure the continuity of operations. If a daily rest period is shortened in the aforementioned way, the employee must be given the rest periods that make up for the daily rest period no later than within a month of the shortening.

### 4.10.3. Weekly free time

An employee must be provided with a continuous period of free time at least 35 hours in length for a Sunday or, if that is not possible, during some other time of the week. Weekly free time can be organised into an average of 35 hours during a 14-day period. Even in such cases, the free time must amount to at least 24 hours a week.

Weekly free time is most often situated in connection with a weekend. An employee may be ordered to work during the weekly free time provided that the employee has given advance consent to it. The lost free time is primarily

compensated for by giving the employee a corresponding period of time as free time within the next three months, unless otherwise agreed. With the employee's consent, the compensation may also be given as money. The amount of the monetary remuneration equals that of the simple basic salary paid for the free time spent on the work.

If an employee works for the whole weekend in addition to having completed a normal work week, the remuneration for the Sunday includes, in addition to the basic salary, the compensation for Sunday work, a compensation for losing the weekly rest period and a compensation for possible weekly or daily overtime.

#### 4.11. Emergency work

**REGULAR WORKING** hours can be extended if working is interrupted due to a natural event, accident or other unforeseeable reason or if such an event poses a serious threat to the continuity of operations or people's life, health or property. Ordering employees to emergency work does not require the employees' consent. An employee may also be called in to do emergency work during their free time.

Emergency work is subject to a remuneration in line with overtime compensation and, if the emergency work is performed during a religious holiday or a Sunday, also to a Sunday compensation. However, emergency work is not included in the maximum amounts of overtime, meaning that having employees perform emergency work does not restrict an employer's right to have employees perform overtime after emergency work.

Employers can have emergency work done for a maximum period of two weeks per each occasion of emergency work. In practice, emergency work situations usually last only for a few days, and employers may never have emergency work done for any time longer than is necessary. Employers must inform occupational health and safety authorities of emergency work in writing.

#### 4.12. Flexible working hours

**FLEXIBLE WORKING** hours refer to a working hours arrangement in which employees may, within defined limits, determine the daily time at which they begin and stop work. In other words, an employer may not order an employee to use flexible working hours.

The implementation of flexible working hours requires an agreement between the employer and employee. In such cases, the parties must agree on the workplace's fixed working hours, i.e. on the hours when all employees must be present. Another point to be agreed on is the daily limit of flexibility, or how much the employee is allowed to shorten or extend his or her workday. The maximum length of a daily flexibility limit is three hours from the beginning and end of a workday.

The parties must also agree on the timing of rest periods and the maximum accumulation of exceeding or falling short of regular working hours. According to the Working Hours Act, the maximum amount by which regular working hours may be exceeded or fallen short of is 40 hours (i.e. the flexibility balance may be at most +40 or -40 hours). The flexibility limit may, however, also be agreed on with a generally binding collective agreement. The collective agreement for the senior salaried employees in technology industries, for example, allows for agreeing on a 120-hour flexibility balance with a local agreement.

The employer and employee may agree that the accumulation of excess working hours is reduced by free time granted to the employee.

In a flexible working hours system, overtime must be compensated for in accordance with the Working Hours Act. Work performed at the employer's order in addition to regular working hours is considered additional work or overtime.

According to the prevailing view adopted in legal praxis, work performed at the employer's initiative becomes daily overtime only with regard to time exceeding eight hours, even if the employee had originally decided to do a six-hour workday on the day in question. In such situations, however, the employer needs the

employee's consent for the seventh and eighth hour of work. In spite of this, the work is not considered overtime, but rather the use of flexible working hours.

#### 4.13. Reducing working hours (“pekkas” days)

**THE SYSTEM** generally referred to in Finnish as pekkasvapaat (or “pekkas” days) was created by labour market organisations to shorten working hours in some industries following a 40-hour work week. Its purpose is to balance the weekly working hours to correspond to the 37.5-hour working hours common in office work. More detailed provisions can be found in the collective agreements of each industry.

#### 4.14. Working hours bank system

**A WORKING** hours bank is an optional arrangement in which working hours, earned holidays or monetary benefits changed into free time can be saved or borrowed by agreement. The objective is to promote the productivity and competitiveness of companies and work communities and to account for the individual working hour needs of the personnel.

The introduction and conditions of a working hours bank is subject to a company- or workplace-specific working hours bank agreement. A particular personnel group's shop steward or representative may sign the agreement on behalf of the employees.

A working hours bank agreement defines who belong within the agreement's scope, which items can be transferred to the bank, when the free times can be spent and how they are to be reported, the maximum amounts of hours to be saved and taken as free time, any possible accumulation and reference periods, an employee's inclusion into and separation from the working hours bank system and on the procedure of discontinuing the working hours bank system.

#### 4.15. Period of claims and penalties relating to the Working Hours Act

**THE RIGHT** to compensation in accordance with the Working Hours Act expires if the claim is not filed within two years of the end of the calendar year during which the right to the receivable was created. If the employment relationship has ended, the claim must be filed within two years of the employment relationship's termination. The statutory obligations are sanctioned with a fine.

#### 4.16. Contracts involving variable working time

**CONTRACTS WITH** variable working time do not specify the exact working hours; instead, the contract specifies the minimum and maximum working hours between which the hours may vary. The variable working time condition also refers to a working time arrangement in which the employee commits to work for the employer on an on-call basis. Therefore, the regulation of variable working hours apply to the “zero-hour contracts” and employees who are called to work when needed.

Variable working time may only be agreed upon if the employer's need for labour genuinely varies. Variable working time cannot be agreed at the employer's initiative if the employer has a fixed need for labour they are covering with the contract. The lower limit of the variable working time must not be lower than the employer's actual need for labour. For example, the minimum working time may not be agreed at the employer's initiative to be 0 hours per week if the need for labour varies between 20 and 37.5 hours.

If the actual working hours of the past six months show that the agreed minimum hours do not reflect the employer's actual need for labour, the employer must negotiate to change the condition to meet the actual need at the request of the employee. If no agreement is reached on new minimum working hours, the employer must present in writing relevant

grounds justifying how the valid working hours clause still corresponds to the actual labour need.

Employees working variable hours are normally entitled to sick pay if he or she would have been working when fit for work. The employer is required to pay the employee for the sick days if their shift has been marked in the shift schedule or otherwise agreed, or if, under the circumstances, it can otherwise be taken for granted that the employee would have been at work when fit for work.

If the amount of work offered by the emp-

loyer during the period of notice is less than the average amount offered in the last 12 weeks preceding the last work shift, the employer must compensate for the loss in income caused by the smaller amount of work. There is no obligation for compensation when the employment has lasted for less than one month. The salary for a period of notice is determined correspondingly when an employee has agreed to fixed working hours but has on average been offered at least four times the agreed number of hours in overtime in the six months prior to the resignation.



# 5. Annual Holiday

The Annual Holidays Act applies to work performed in an employment relationship or civil service relationship. An agreement that reduces benefits conferred on an employee by the Annual Holidays Act is invalid. In other words, an employee cannot waive his or her annual holiday benefits even by his or her own consent.

The payment of a holiday bonus or end-of-holiday pay is not statutory. Rather, their payment is based on the conditions of employment and civil service relationships, workplace-specific agreements or an employee's own employment contract. It is advisable to check the matter from the applicable collective agreement or from the employer when entering into the employment relationship.

Annual Holidays Act (162/2005)

## 5.1. Basic concepts

**THE ANNUAL** Holidays Act is based on the idea of the earnings principle. In other words, the starting point is that an employee earns a particular holiday benefit for each calendar month.

**The holiday year** is the calendar year during which the holiday in question is taken.

**A holiday credit** year begins on 1 April and ends on 31 March. The holiday credit year is the period of time during which the holidays of a particular holiday year are earned.

**A full holiday credit month** is a calendar month of the holiday credit year during which the employee accumulates a minimum of 14 days at work or the equivalent of days at work. The definition of days at work encompasses all workdays, regardless of their length. If an employee, in accordance with his or her employment contract, spends so few days at work that they do not accumulate a single holiday credit month including 14 days to him or her, or that only a part of the calendar months involved include 14 days, a calendar month during which the employee has accumulated a minimum of 35 working hours or the equivalent of 35 working hours is considered a full holiday credit month.

The periods equivalent to time at work have been specified in the Annual Holidays Act. Such periods are considered time at work when counting the number of full holiday credit months. Absences due the following reasons are included in the list of periods equivalent to time at work:

- an employee's own annual holiday
- 156 special maternity, maternity, paternity or parental leave days
- a sickness or accident, nevertheless not exceeding 75 workdays during the holiday credit year
- some medical examinations
- lay-off, nevertheless not exceeding 30 workdays at a time
- shortened work weeks equivalent to lay-offs, nevertheless not exceeding six months at a time
- a study leave, nevertheless not exceeding 30 workdays during the holiday credit year and only if the employee has returned to work immediately after the study leave
- reservist training
- public duty
- some other reasons, provided that the employer is obligated, according to law, to pay a salary to the employee for the day in question despite the absence.



For an employee falling within the scope of the 35-hour earnings rule, the aforementioned 75-day period equals 105 calendar days and a 30-day period 42 calendar days.

The holiday season begins on 2 May and ends on 30 September. A summer holiday is primarily taken during the holiday season.

**Holiday pay** is salary paid for the holiday period.

**Holiday compensation** usually refers to a compensation paid in lieu of holiday pay for the earned annual holidays that cannot be taken as an actual holiday. In addition, holiday compensation refers to the compensation paid in lieu of an annual holiday to employees who are at work for such a short period of time (less than 14 days a month or less than 35 hours a month) that they do not earn annual holidays at all.

**A holiday bonus** is a special bonus based on collective agreements and paid in addition to holiday pay and, in some cases, in addition to a holiday compensation.

**An end-of-holiday pay** is a bonus similar to a holiday bonus and also based on collective agreements. The payment of an end-of-holiday pay primarily requires, contrary to the payment of a holiday bonus, the employee's return to work.

**A holiday bonus** and end-of-holiday pay both may also be based on a workplace-specific agreement or an employee's own employment contract.

## 5.2. Length of holiday

**THE LENGTH** of annual holiday is determined according to full holiday credit months. In principle, employees earn two weekdays of holiday per each full holiday credit month. This means that employees accumulate 24 holiday days during a holiday credit year. If an employment relationship has continued without interruption for at least a year by 31 March, the employee has earned 2.5 weekdays for each full holiday credit month. In this case, employees accumulate 30 days of annual holidays during a holiday credit year. In such cases, the portion that

exceeds 24 holidays is winter holiday. When calculating the length of a holiday, a part of a day is rounded up to a full holiday.

This principle of interpretation concerning the length of an annual holiday is also applied in a situation where an employment relationship is coming to an end. In other words, if the employee's employment relationship has continued for at least a year when it ends, the employee earns 2.5 weekdays worth of holidays for the new holiday credit year.

The earned annual holidays are not workdays but weekdays. Saturday is primarily a weekday. This is why any one week of holiday usually spends six earned annual holidays. This rule of holiday calculation applies to all employees, regardless of the days of the week during which any particular employee actually works.

In the context of the Annual Holidays Act, a weekday refers to any other day of the week except Sunday, religious holidays, Independence Day, Christmas Eve, Midsummer Eve, Easter Saturday and May Day. If such a day considered as something other than a weekday is included in an annual holiday, the employee need not use an earned day of the annual holiday for it. The Annual Holidays Act does not contain regulations on a holiday including any minimum number of Saturdays.

Those employees who do not belong within the scope of the 14-day or 35-hour earnings rule do not earn annual holidays. However, if they so wish, they do have the right to get two days off per each calendar month during which they have been in the employment relationship in question. For such days off, they are paid a holiday compensation.

### 5.2.1. The time priority principle

When there is more than one simultaneous justification for an employee's absence, the justification considered the reason for the absence when calculating the earning of annual holidays is the one that occurs first. This is called the time priority principle. If, for example, a sickness and lay-off occur at the same time,

the reason for the absence is determined according to which of these occurred first. The Labour Council has also adopted the view that when an accident occurs during a strike, the period of disability is not considered time equivalent to days at work. However, if an employee is on an annual holiday when a strike begins, the days of annual holiday coinciding with the strike period must be considered time equivalent to days at work.

### **5.3. Accumulation of annual holiday during a lay-off**

**ANNUAL HOLIDAYS** are also accumulated, to a limited extent, during lay-offs. A maximum of 30 workdays at a time are accounted for as time equivalent to days at work with regard to lay-off days. In the case of several lay-off periods, this means that a maximum of 30 days worth of time equivalent to days at work are accumulated for each period of lay-off.

If the lay-offs have been implemented by a shortening of the work week or some other temporary working hours arrangement, a maximum of six months at a time are considered as time equivalent to days at work. If a working hours arrangement such as this continues without interruption after the end of a holiday credit year, the count concerning the new six-month period starts from the change of the holiday credit year.

### **5.4. Granting holidays**

**AN EMPLOYEE'S** holiday is granted during the holiday season at a time determined by the employer. If the employee has earned more than 24 days during the holiday credit year, the portion exceeding 24 hours are granted as a winter holiday at a time between 1 October and 30 April specified by the employer.

A summer holiday may be granted outside the holiday season only at the employee's consent. In such cases, the holiday must nonetheless be given during the same calendar year or the following year, before the start of the next holi-

day season. The winter holiday may also, at the employee's consent and as an exception to the aforementioned, be given at some other point during the calendar year during which the holiday credit year in question ends.

However, the employer and employee may furthermore agree that a part of a holiday that exceeds 12 weekdays is taken within a year of the holiday season's end. In other words, the portion of the holiday that is in excess of 12 weekdays can be postponed so that it is taken during the following summer.

An employer may determine the time of annual holiday within the framework of the holiday season unilaterally. It must, however, first give the employee or the employee's representative a chance to be heard about the time of the holiday. The employer is nevertheless not bound by an employee's wishes or preferences. In addition, the employer is obligated to give employees or their representative an explanation/clarification of the general principles applicable to the granting of annual holidays in the workplace.

Summer and winter holidays alike should primarily be given within a single contiguous period. At the employee's consent, or when the continuity of work so requires, the employer has the right to give separately, with one or more period, the part of a summer holiday that exceeds 12 weekdays. A winter holiday may be split up only with the employee's consent.

An employer may not, without the employee's consent, determine a part of a holiday that equals the length of three or less days in such a way that a holiday would coincide with the employee's day off. Nor may the employer, without the employee's consent, determine a holiday to begin on the employee's day off, if this leads to a reduction in the number of the employee's workdays.

When the dates of a holiday are determined by the employer, it must inform the employee of them no later than a month prior to the holiday's beginning. If this is not possible, the holiday's dates may be communicated at a later date. However, the information must be delivered no later than two weeks prior to the holiday's beginning. Once the information has been given, it is bin-

ding on the employer. Because of this, the employer is obligated to compensate for any damage or loss caused should it unilaterally subsequently change the information. Damage or loss can be caused merely by the employee having to cancel plane tickets already reserved. In practice, the employer's obligation to inform the employee is fulfilled when it puts the holiday lists it has approved on display. From this moment onward, the time of a holiday is considered binding.

An employer and employee may, at the employee's initiative, agree on the employee taking the portion of an annual holiday that is in excess of 24 days as shortened working hours. The agreement must be made in writing. In such cases, the parties must agree on the amount and timing of the shortened working hours and the amount of annual holidays to be spent in such a way.

### **5.5. Impact of sickness on annual holiday**

**IF THE** employee is not fit for work at the beginning of his or her annual holiday or a part of it due to illness, accident or the birth of a child, the employee may request to move the holiday to a later date. The employee has a corresponding right to delay his or her holiday if, before the beginning of the holiday, they know that they will have to undergo hospital treatment at some point during the holiday.

If the employee's incapacity to work due to illness, accident or the birth of a child begins during the annual holiday or its part, the employee may request to postpone their holiday after six personal contribution days. The personal contribution days may not reduce the employee's right to a four-week holiday.

The employee may not postpone his or her holiday when he or she has caused his or her incapacity for work intentionally or through gross negligence. The employee must request the postponement of his or her holiday from the employer without delay. The employee must also present, at the employer's request, a reliable account of his or her incapacity.

If it is necessary to postpone the holiday, the postponed summer holiday must be granted during the summer holiday season, while winter holidays must be granted before the beginning of the next summer holiday season. If it is not possible to arrange the holiday in this way, the holiday must be granted during the holiday season of the calendar year following the holiday season, but at latest by the end of the aforementioned calendar year. If the holiday arrangements referred to above are not possible due to the continuation of the employee's incapacity for work, the employee is entitled to a holiday compensation for the holidays not granted. The employer must notify the employee of the date of the postponed holiday two weeks or, if this is not possible, at least one week before the beginning of the holiday.

### **5.6 Additional supplementary leave days**

**THE EMPLOYEE** has the right to additional leave days to supplement their annual holiday if the annual holiday they have accrued for a full holiday credit year is less than 24 days due to absence from work caused by illness or medical rehabilitation. However, the entitlement to additional leave will cease after 12 months of uninterrupted absence. The period of absence is interrupted by work days or hours that take place between periods of absence and entitle the employee to a full holiday credit month.

The employee shall be entitled to a remuneration corresponding to their regular or average wage for the additional leave days. This remuneration is not considered annual holiday pay, nor is it normally subject to a holiday bonus or end-of-holiday pay as referred to in the collective agreement.

### **5.7. Holiday pay**

**AN EMPLOYEE'S** holiday pay is primarily equal in amount to the pay he or she would earn at work. In other words, the amount of holiday

pay is determined according to the salary the employee receives at the beginning of the holiday. The holiday pay must always be paid before the holiday begins, and the employer must provide an account of the amount of the pay and the basis for its calculation. If the holiday is given in parts, the employer must pay the share of the holiday pay corresponding to each part before the part in question begins.

However, for a holiday period at most six days long, the holiday pay may be paid on the pay day normally complied with in the employment relationship in question.

### 5.7.1. Employees with weekly or monthly salaries

Employees who are paid weekly or monthly salaries are entitled to their agreed pay also during the time of their annual holiday. In the event that an employee who is paid a weekly or monthly salary takes his or her holiday in parts, the holiday pay for each holiday period is calculated in proportion to the holiday and work periods so that it equals the salary paid to the employee otherwise for a corresponding period of time. In other words, the employee's earnings may not decline due to the annual holiday.

If an employee's working hours and, accordingly, salary have changed during the holiday credit year (due to a partial parental leave or part-time retirement or a return to full-time work), the holiday pay is calculated according to a percentage-based formula.

In such cases, the holiday pay is 9 per cent of the earnings of the holiday credit year in employment relationships that have continued for less than a year, and 11.5 per cent after that. If the changes take place only after the end of the holiday credit year or the beginning of a part thereof, the holiday pay is calculated according to the weekly or monthly salary determined on the basis of the working hours during the holiday credit year.

### 5.7.2. Employees with salaries other than weekly or monthly salaries

The annual holiday pay of hourly-paid employees who work for a minimum of 14 days a calendar month is arrived at by multiplying the average daily salary with the multiplier determined on the basis of the number of statutory holidays (see the table below). This method of calculation also applies to those paid on the basis of a commission. In these cases, the average daily salary is arrived at by dividing the commissions paid or to be payable during the holiday credit year by the number of workdays completed during the holiday credit year.

If an employee receives commission on top of a fixed monthly salary, the holiday pay must be calculated separately for both parts. In such cases, the holiday pay concerning the monthly salary is calculated in the same fashion as for other employees paid a monthly salary and the holiday pay concerning the commission is calculated in the same fashion as for hourly-paid employees.

If the commission has been defined in such a way that results entitling the employee to the commission are also generated during the employee's annual holiday, the holiday pay is calculated solely on the basis of the fixed monthly salary.

If the number of holidays is greater than 30, the multiplier is increased by 0.9 per holiday. Part-time employees who, according to their employment contract, work on so few days that their full holiday credit months must be calculated according to the 35-hour rule instead of the 14-day rule and whose salary has not been agreed upon with regard to a week or a period longer than that are subject to a separate rule for calculating holiday pay. These employees receive as holiday pay 9 per cent of the salary they have earned during the holiday credit year or, if the employment relationship has continued without interruption for more than a year by the end of the holiday credit year, 11.5 per cent of the salary they have earned during the holiday credit year. In such cases, however, the salary will not include any increase paid on the regular wage due to emergency work or overtime.

**Table 5.6. A**

The annual holiday pay of hourly-paid employees

Number of holidays	Multiplier	Number of holidays	Multiplier
2	1,8	17	15,5
3	2,7	18	16,4
4	3,6	19	17,4
5	4,5	20	18,3
6	5,4	21	19,3
7	6,3	22	20,3
8	7,2	23	21,3
9	8,1	24	22,2
10	9,0	25	23,2
11	9,9	26	24,1
12	10,8	27	25,0
13	11,8	28	25,9
14	12,7	29	26,9
15	13,6	30	27,8
16	14,5		

### 5.7.3. The salary employed in the calculation of holiday pay

Holiday pay is calculated primarily from the salary in money. Thus fringe benefits are not usually accounted for when calculating holiday pay. This is because any fringe benefits included in the salary must be given in full during an annual holiday. This is why a company car, for example, or a company flat remains in the employee's use during an annual holiday. If an employee does not use a fringe benefit during his or her holiday, it is not compensated for in money. A meal benefit is the sole fringe benefit that must be compensated for also during a holiday, if it is not used. A meal benefit is considered a fringe benefit when it is not subject to the payment of the taxable value determined by the Tax Administration. In such cases, the benefit can be given in the form of a meal

voucher for the period of the holiday, in which case a withholding tax is paid on the nominal value. Alternatively, it can be compensated for in money equal to the taxable value determined by the Tax Administration. When an employee pays the taxable value for a meal voucher, vouchers do not need to be given for the period of the holiday. If they nevertheless are given, the difference between the voucher's nominal value and taxable value is considered the employee's taxable income.

### 5.8. Holiday compensation

**HOLIDAY COMPENSATION** usually refers to a compensation paid in lieu of holiday pay for the earned annual holidays that cannot be taken as an actual holiday. In addition to this, holiday compensation means the compensation paid

in lieu of an annual holiday to employees who work for such a short period of time that they do not earn any annual holiday at all.

### **5.8.1. Holiday compensation when the employment relationship continues**

An employee who does not belong within the scope of the 14-day or the 35-hour earnings rule is entitled to receive 9 per cent of the salary paid or to be payable to him or her for work completed during the holiday credit year as holiday compensation. This percentage is 11.5 if the employment relationship has continued for at least a year by the end of the holiday credit year preceding the holiday season. In such cases, however, the salary does not include any increases paid for emergency work or overtime. If the employee has been prevented from working due to a maternity, special maternity, paternity or parental leave, the salary lost during this period of absence is added to the salary functioning as the basis for the holiday compensation. In principle, paying for a holiday in money is allowed in the aforementioned cases.

### **5.8.2. Holiday compensation when the employment relationship ends**

When an employment relationship ends, the employee is entitled to receive, instead of annual holiday, a holiday compensation for the time for which he or she has not yet received a holiday or holiday compensation. In such cases, the amount of the holiday compensation is calculated according to the basis of the calculation applied to a holiday pay, as applicable. In the event that the employee's employment relationship has continued for such a short period of time that he or she has not yet received a single holiday or holiday compensation, the employee's days at work for the calendar months during which the employment relationship began and ended can be combined. If the sum arrived at in this manner is at least 14 days or 35 hours, this time is considered a single full

holiday credit month when determining the holiday compensation.

Should the employer and employee agree on a new employment relationship to begin at a later date before the employment relationship in question ends, they can also agree to transfer the annual holiday benefits accumulated prior to the end of the employment relationship to the following employment relationship. Such an agreement must be made in writing.

## **5.9. Holiday bonus and end-of-holiday pay**

**THE LAW** does not contain provisions on holiday bonuses or end-of-holiday pay. Provisions concerning these benefits are usually found in collective agreements. However, there are numerous collective agreements whose contents may vary considerably. Because of this, provisions concerning holiday bonuses and end-of-holiday pay can be discussed here only in general.

The amount of a holiday bonus or end-of-holiday pay is usually 50 per cent of the holiday pay paid in money. End-of-holiday pay is not usually paid if the employee fails to return to work after an annual holiday. A holiday bonus is not subject to such a requirement of returning to work. Instead, it is usually paid whenever an annual holiday is taken during the relevant employment relationship. In certain rare cases, a holiday bonus and end-of-holiday pay are also paid in connection with a holiday compensation. It is always advisable to check the details concerning holiday bonuses and end-of-holiday pay from the collective agreement applicable to the employment relationship in question.

Not all senior senior salaried employees fall within the scope of collective agreements. Such individuals should always agree on a holiday bonus or an end-of-holiday pay in their employment contract. YTN recommends the payment of a holiday bonus or an end-of-holiday pay also in connection with a holiday compensation when the employment relationship ends.



### **5.10. Working during a holiday**

**AN EMPLOYER** may not keep an employee at work during an annual holiday. In other words, no part of an actual annual holiday may be given in money.

### **5.11. Annual holiday and the termination of an employment relationship**

**AN EMPLOYEE'S** annual holiday is not an impediment to the termination of the employment relationship. However, there is a special provision that applies to the delivery of a notice of termination during an annual holiday. More specifically, this applies to a situation where the employer terminates an employee's employment relationship during his or her annual holiday with a notice sent by mail. Such a notice of termination is considered as having been

delivered at earliest during the day following the last day of the holiday. This provision only applies to notices sent by mail, not notices of termination delivered personally, for example.

The employer may order the employee to take an annual holiday during the period of notice, provided that the employer complies with the provisions of the Annual Holidays Act pertaining to the determination of a holiday. In such cases, the employer may order that the annual holiday be taken only during the holiday season to which the annual holiday belongs. In addition, the employer must announce the time of the annual holiday in compliance with the time frame for such an announcement specified in the Annual Holidays Act. If the employer has already determined the time for the annual holiday in question at an earlier date, the annual holiday's time may not be changed without the employee's consent.

## 5.12. Saving an annual holiday

**AN EMPLOYEE** has the opportunity to save a part of his or her annual holiday and take it at a later date. The employer and employee may agree on the portion of annual holiday in excess of 18 days to be transferred to a carried-over holiday. If there is no agreement on saving a holiday, the employee nevertheless has the right to save the part in excess of 24 days of his or her holiday, provided that it does not cause serious adverse effects on the production and service operations of the workplace. In practical terms, this usually means that a maximum of six days of what is generally referred to as a full annual holiday (30 days) can be saved per year at the employee's decision and, if there is an agreement with the employer, a maximum of 12 days. However, if the employee has better annual holiday benefits than what the Annual Holidays Act requires, the number of saved days can be higher. The combined amount of saved annual holidays is not limited, due to which an employee can save holidays every year he or she wishes to do so. In addition to annual holidays, the employer and employee may also agree on incorporating any free time given as compensation for additional work or overtime to carried-over holidays. Employees are free to use carried-over holidays for whatever purpose they choose.

The employer and employee must negotiate on the saving of an annual holiday and the number of holidays saved no later than when discussing the time of a holiday. The employer may not prohibit the saving of a holiday with regard to the six days subject to an employee's decision, unless there is a weighty reason against saving

the holiday. Such a weighty reason may be the case only if the saving causes serious adverse effects to the workplace's production and service operations. The factors accounted for when assessing the amount of these adverse effects include the nature of the employee's tasks and the requirements it imposes on the organisation of work as well as the nature of the employer's activities and the way in which they have been organised. The employer and employee should try to come to an agreement on the time when the carried-over holiday is taken.

If the parties fail to reach an agreement, the carried-over holiday must be given to the employee at a time determined by the employee, but nonetheless at earliest during the following holiday season. In such cases, the employee must inform the employer of his or her intention to take the carried-over holiday no later than four months prior to the holiday's commencement. The employee is paid normal holiday pay during the carried-over holiday. This pay is determined according to the salary the employee is receiving when the carried-over holiday is taken.

## 5.13. Expiration of annual holiday receivables

**AN EMPLOYEE'S** right to annual holiday pay or holiday compensation expires within two years of the end of the calendar year during which the annual holiday should have been given or the holiday compensation paid. The employee's right to a holiday bonus or end-of-holiday pay expires in the same period of time as the annual holiday pay on the basis of which the holiday bonus or end-of-holiday pay is paid.





# 6. Family Leave

An employee has a right to family leave. Maternity, special maternity, paternity and parental leave are tied to maternity, special maternity, paternity and parental leave benefit periods. Child-care leave may be obtained for the purposes of child care until the child turns three. Family leave also includes partial and temporary child-care leave.

An employer does not have a statutory obligation to pay salary for periods of family leave. Many collective agreements, however, have made agreements on the payment of a full salary for the first three months of maternity leave and for the first three days of temporary child-care leave.

Employment Contracts Act (55/2001, Chapter 4)

Health Insurance Act (1224/2004, sections 21-23 and section 23g)

## 6.1. Right to maternity, special maternity, paternity and parental leave

A **MATERNITY** benefit is paid for 105 weekdays, or some four months. The maternity benefit period begins, according to choice, at earliest 50 and at latest 30 weekdays before the expected time of birth.

Special maternity benefit is paid to a woman engaged in particularly risk-prone work, provided that the employer is unable to find a risk-free position for her for the period of pregnancy.

A parental benefit is paid for at most a total of 158 weekdays immediately after the payment of the maternity benefit has ended.

Provisions concerning paternity leave were reformed on 1 January 2013. A father is entitled to a paternity benefit paid for a maximum of 54 weekdays. A father may take a maximum of 18 weekdays off at the same time during which the mother receives a maternity or parental benefit. A father's leave is no longer affected by whether the father uses 12 weekdays of the parental leave. Nor do paternity benefits reduce the parental benefit days. An adoptive parent and a party to a registered relationship who has adopted the child of the other party has an equivalent right to paternity leave.

The change applies to families whose right to the first benefit to be paid for a child has started after 1 January 2013.

## 6.2. Notifications concerning leave

**THE USE** of the leave requires the employee to inform the employer of the leave within the prescribed period of time. The employer must be informed of maternity and paternity leave at least two months prior to the beginning of the leave. However, with regard to family leave that lasts for a maximum period of 12 days, a one-month period of notification is sufficient. A one-month period of notification is also possible when informing the employer about parental leave in situations where informing the employer of the leave two months in advance is not possible due to a spouse going to work and the resultant need to arrange for a child's care. In such cases, however, relying on a month's period of notification always requires that the employer's production and service operations are not met with serious adverse effects as a result.

An employee has the right to take maternity leave earlier than intended and change the time of paternity leave to be taken in connection with childbirth, provided this is necessary due to the child's birth or the health of the child, mother or father. The employer must be informed of such changes as soon as possible. In other cases, the employee may change the time of the leave of which he or she has informed the employer according to the one-month period of notifica-

tion, but only for a justified reason. Such reasons include unforeseeable and material changes in the requirements for the child's care which the employee cannot have taken into account when informing the employer of the leave. Examples include a serious injury, long-term illness or death of the child or the other parent, the parents' divorce or some other change that has taken place in the requirements for the child's care.

Parental leave may be taken in at most two parts which should be at least 12 weekdays long. The employer must be notified of the employee's intention to take leave and of the leave's duration no later than two months before the start of the leave. The time of the leave may be changed for a justified reason with a notification given at least a month in advance. Leave taken for the purpose of caring for an adoptive child must be notified to the employer, if possible, two months prior to the start of the leave. An adoptive parent may, for a justified reason, change the time of the leave prior to its beginning, as long as he or she informs the employer of this as soon as possible.

### **6.3. Working during a maternity and parental benefit period**

**AN EMPLOYEE** may, at the employer's consent, perform work during the maternity benefit period that does not put the safety of the employee, the foetus or the born child at risk. This kind of work may not be performed within two weeks of the expected time of childbirth or for two weeks subsequent to the childbirth. The employer and employee may interrupt the work at any time whatsoever during the maternity benefit period.

The employer and employee may agree on part-time work to be performed during the parental benefit period. In such cases, the employee is entitled to a partial parental benefit in accordance with the Health Insurance Act.

The interruption of the part-time work and any amendments to its terms and conditions are to be agreed upon. If the parties fail to reach an agreement, the employee may, for a justified

reason, interrupt the part-time work and return to the parental leave full time or revert to complying with the earlier working hours.

## **6.4. Child-care leave**

### **6.4.1. Child-care leave**

**AN EMPLOYEE** has a right to take child-care leave for the purpose of caring for his or her child or some other child living permanently in his or her household until the child turns three. An adoptive parent has a right to take child-care leave until such time as two years have passed since the adoption. However, an adoptive parent's right to child-care leave has been restricted in such a way that the adoptive parent can no longer take child-care leave when the child has started school.

A maximum of two periods at least a month long can be taken as child-care leave. The employer and employee may agree on periods more than two or shorter than a month. Child-care leave is given to only one parent or guardian at a time. However, one parent or guardian may take one period of child-care leave during the other parent's maternity or parental leave.

The employee must inform the employer of the child-care leave and its length at least two months prior to its beginning. The employee may, for a justified reason, change the time and duration of the child-care leave, as long as the employer is informed of the matter at least a month before the change. The definition of 'justified reason' is discussed above in the section concerning maternity, special maternity, paternity and parental leave. Justified reasons for the interruption of child-care leave also include the taking of new maternity leave.

### **6.4.2. Partial child-care leave**

**AN EMPLOYEE** who has worked for the same employer for a total of at least six of the past 12 months is entitled to partial child-care leave. Partial child-care leave may be taken until the

end of the second school year of a child in basic education. If the child belongs within the scope of extended compulsory school attendance, partial child-care leave may be taken until the end of the third school year. The parent of a disabled child or a child suffering from a long-term illness who needs special care and support may take partial child-care leave until the child turns 18.

Both parents or guardians may take partial child-care leave during the same calendar period, but not simultaneously. It is, for example, possible for one parent to take care of the child during the morning and the other for the afternoon.

The proposal concerning partial child-care leave must be submitted at least two months before the commencement of the leave. The employer and employee agree on the leave and the arrangements thereof. The employer may refuse to agree on the leave only if it has serious adverse effects on production and service operations that cannot be avoided by means of reasonable work organisation. The employer must provide the employee with an explanation of the grounds for its refusal.

If an employee is entitled to partial child-care leave, but the parties fail to reach an agreement on the details of the arrangement, the employee must be provided with one period of leave during a calendar year. In such cases, the length and time of the leave are determined according to what is proposed by the employee and in such a way that daily working hours are shortened to six hours.

The interruption of partial child-care leave must be agreed upon. If an agreement is not reached, the employee may interrupt the leave for a justified reason by notifying the employer thereof at least a month in advance.

➤ **The definition of 'justified reason' is discussed above in chapter 6.2.**

### 6.4.3. Temporary child-care leave

**WHEN AN** employee's child or another child who is less than 10 years old and permanently living in the employee's household is suddenly

taken ill, the employee is entitled to a temporary child-care leave to arrange for the child's care or to take care of the child. The maximum length of such leave is four workdays at a time. The same right belongs to a child's parent who does not live in the same household as the child. Both parents or guardians may not take a temporary child-care leave at the same time.

The employee must inform the employer of a temporary child-care leave and its estimated duration as soon as possible. Should the employer so require, the employee must present a reliable account of the basis for the leave.

## 6.5. Absence due to compelling family reasons

**AN EMPLOYEE** is entitled to a temporary absence from work if his or her presence at home or somewhere else is necessary due to an unforeseeable and compelling reason attributable to an illness or accident that has met his or her family.

The employer must be notified of the absence and the reason for it as soon as possible. Should the employer so request, the employee must present a reliable account of the grounds for the absence.

## 6.6. Absence for taking care of a family member or someone close to the employee

**IF AN** employee's absence is necessary because a family member or someone else close to the employee needs special care, the employer must try to organise work in such a way as to give the employee a chance to be absent from work for a determined period of time. The employer and employee agree on the duration and other arrangements of such leave.

The interruption of the leave must be agreed to between the employer and employee. If an interruption cannot be agreed on, the employee may interrupt the leave for a justified reason by informing the employer of this no later than a

month prior to the return to work. The employee must present an account of the grounds for the leave and its interruption, should the employer so require.

➤ **The definition of 'justified reason' is discussed above in chapter 6.2**

### **6.7. Obligation to pay salary for periods of family leave**

**ACCORDING TO** the Employment Contracts Act, an employer is not obligated to pay salary for the period of family leave.

However, the employer must compensate a pregnant employee for a loss of earnings attributable to prenatal medical examinations if the examinations cannot be performed outside working hours.

The obligation to pay salary during maternity leave and temporary child-care leave have generally been agreed to with a collective agreement or as part of the employment contract.

According to collective agreements, it is

the convention to pay full salary for the first three months of maternity leave. Temporary child-care leave is, according to collective agreements, usually paid [leave] in terms of the first three days. However, an industry-specific collective agreement may allow for longer paid leave.

It is also common to agree on the aforementioned salary practices as part of one's employment contract.

### **6.8. Right to return to work after the end of family leave**

**ONCE THE** family leave comes to an end, an employee has a right to return primarily to the job he or she held before. If this is not possible, the employee must be offered work in accordance with the employment contract and corresponding to the earlier work. If this is not possible either, the employee must be offered other work in accordance with the employment contract.



# 7. Study Leave

Study leave refers to a period of time during which an employee is freed from the performance of tasks included in the employment relationship for the purposes of training or studies. As a rule, mainly programmes subject to official oversight may entitle employees to study leave. Study leave does not require the training in question to be related to the employee's occupation or tasks at work.

Study Leave Act (273/1979)

## 7.1. Individuals entitled to apply for study leave

**EVERY EMPLOYEE** has a right to study leave once their primary employment relationship with the same employer has lasted at least a year, either in a single or several periods. In such cases, the maximum amount of study leave that can be granted during a five-year period is two years, either in one single period or split over several periods.

An employee has the right to a study leave of a maximum of five days if the employment relationship with the same employer has lasted for a minimum of three months in one or more periods. Study leave can only be granted from a job which constitutes the employee's primary source of income.

## 7.2. Applying for and granting study leave

**STUDY LEAVE** that lasts for longer than five days must be applied for in writing from the employer at least 45 days before the studies are to commence. If an employee applies for study leave for a maximum period of five workdays, the application must be made to the employer verbally or in writing at least 15 days prior to the commencement of the intended study leave. The employer and employee may also agree on some other kind of arrangement.

A study leave application must indicate:

- the start and end date of the studies and the applied-for study leave

- the form and objective of the applied-for training or studying
- whether the case involves the completion of a training or study module started during a previous study leave
- the educational institution or other organiser of training or education with whom the employee is enrolled or which organises and supervises the degree
- When the study leave is applied for in order to complete a degree: a transcript proving the employee has signed up for the degree in question, and
- in the case of full-time independent studies, a curriculum approved jointly by the supervising teacher/instructor and the student that indicates either the name of the intended degree or the final project/thesis and the studying time it requires.

If granting the study leave at the requested time were to cause manifest inconvenience to the employer's operations, the employer may postpone the starting date of the study leave for a maximum period of six months at a time. If the case in question involves training that recurs less frequently than every six months, the employer may postpone the study leave at most until such time when the next corresponding training session is arranged. Employers employing at least five employees may postpone a study leave no more than twice in a row. The employer does not have the right to refuse study leave altogether.

The employer must inform the applicant of the granting or postponement of the study leave. The relevant notification must be given

- in writing no less than 15 days prior to the commencement of the training or studying, if the study leave lasts for more than five workdays
- no less than seven days prior to the commencement of the training or studying, if the study leave lasts for a maximum of five days.

Upon the employer's request, the employee must provide documentation showing the study leave has been used in the intended manner.

Compliance with the Study Leave Act is supervised by occupational health and safety, educational and employment authorities.

### 7.3. Employment relationships continue during study leave

**AN EMPLOYMENT** relationship continues during study leave. An employee's employment cannot be terminated due to study leave. However, study leave does not prevent termination based on acceptable legal grounds, i.e. for reasons other than the study leave. Given that the performance of the employee's duties has been suspended for the duration of the study leave, the employee is not entitled to a salary, unless otherwise agreed with the employer. Study leave days are considered equal to days at work when calculating annual holidays, but this only applies to a maximum of 30 days during any particular holiday accrual year.

### 7.4. Employee's right to postpone or interrupt study leave

**A STUDY** leave granted for more than five days may be postponed by the employee for at most a year, provided that this does not cause mani-

fest inconvenience to the employer. An employee's application concerning the cancellation or postponement of a granted study leave must always be made in writing and given to the employer no later than two weeks prior to the start of the intended study leave.

An employee has the right to interrupt study leave granted for more than 50 workdays. The employer must be informed of the interruption in writing no later than four weeks before the employee returns to work. In the event that the employer has hired a fixed-term substitute for the employee on study leave, the employer is not obliged to permit the employee on study leave to return to work during such time as the fixed-term contract of the substitute remains in force (either based on the law or an applicable collective agreement). The employer must, without delay and in writing, inform the employee of its decision regarding the employee's request for interruption.

If an employee on study leave becomes incapacitated for work due to sickness, childbirth or an accident, and this incapacity for work lasts for more than seven days, the time in excess of these seven days is not counted in the study leave, provided that the employee so requests from the employer without delay. The employee may use study leave interrupted for such reason later.

### 7.5. Entitlement to benefits during study leave

**AN EMPLOYEE** on unpaid study leave may be entitled to an adult education allowance. This allowance is payable for a continuous period of no less than two months and no more than 15 months, provided that the employment or civil service relationship remains in force for the duration of the training and has been the employee's main occupation with the same employer for at least a year by the time the training or studying commences.

A prerequisite for the allowance is that the applicant has been in an employment or civil service relationship or worked as an entrepreneur



for a total of at least eight years by the time the allowance month begins. Certain absences may be comparable with employment. However, this only applies to a maximum of two years of the entirety of the employee's employment history.

The adult education allowance for employees and civil servants consists of a fixed portion and an earnings-related portion. Entrepreneurs are only entitled to the fixed portion of the allowance. For an employee engaged in part-time studies, the adult education allowance may be

granted with adjustments. The allowance is subject to taxation.

Studies and training that entitle an employee to an adult education allowance are subject to similar requirements as the granting of study leave. Adult education allowance is granted by the Employment Fund. Advice and information on adult education allowance can be obtained from the Employment Fund. For information on other forms of support related to study leave, please contact Kela.

# 8. Job Alternation Leave

Job alternation leave offers an employee the chance for a longer period of leave which the employee may use according to his or her choice, for example, in studying, training, rehabilitation, child care, hobbies or rest. The employee is paid a job alternation leave allowance for the duration of the leave. The option of job alternation leave is open to employees and both municipal and state civil servants. For an employer, job alternation leave offers the opportunity to obtain flexibility and new competence in the work community. The temporary position of a job alternation leave substitute gives an unemployed person the chance to maintain and develop his or her skills and to improve his or her opportunities to find a place in the job market.

Act on Job Alternation Leave (1305/2002)

## 8.1. Employment relationships remain in force during job alternation leaves

**DURING A** job alternation leave, the employee's employment relationship is in a "state of rest". The terms of an employment relationship cannot be changed or terminated due to a job alternation leave. However, a job alternation leave does not provide an employee with any special protection against termination.

## 8.2. Agreeing on job alternation leave

**JOB ALTERNATION** leave is an arrangement in which the employee, in accordance with the job alternation agreement made with the employer, is relieved for a fixed period of time from the performance of the tasks pertaining to the employment relationship, and in which the employer simultaneously commits to hiring a person registered as unemployed with the TE Office.

Job alternation leave is a voluntary arrangement. An employee does not have an absolute right to job alternation leave. Taking such leave requires agreeing on it with the employer. A job alternation agreement must be made in writing. Agreement templates are available online at [www.te-palvelut.fi](http://www.te-palvelut.fi).

## 8.3. Requirements for job alternation leave

**JOB ALTERNATION** leave can be taken by full-time employees, employees in permanent employment relationships, and employees whose working hours equal more than 75 per cent of the working hours of a full-time employee. In order to be eligible for leave, the employment of such employees must have continued uninterrupted for at least 13 months immediately prior to the commencement of the job alternation leave. In this period may at most be included 30 calendar days of unpaid leave. In this period may at most be included 30 calendar days of unpaid leave. Only absences due to illness or an accident are comparable to days at work when calculating the time spent at work during this 13-month period. Also fixed-term employees may agree to job alternation leave, provided that the fixed-term contract is long enough for the work to continue after the job alternation leave.

In addition, in order to be eligible for job alternation leave, employees are required to have been employed for at least twenty years as referred to in the Employees Pensions Act (395/2006). When evaluating this 20-year criteria, all previous work is counted, regardless of whether it has been performed in employment or civil service relationships or as an entrepreneur. Family leave and periods of military ser-



vice are also considered comparable to being employed. At maximum, a fourth of the period of employment may be time comparable to time at work. Job alternation leave cannot be taken immediately after maternity or parental leave. Employees can ask their unemployment fund to check whether the employment history condition is met.

If an individual wishes to take a new job alternation leave, he or she is required to have accumulated five years' worth of new employment history after the previous job alternation leave.

#### **8.4. Duration of job alternation leave**

**THE DURATION** of a job alternation leave is at least 100 and at most 180 calendar days. An extension of the job alternation leave may also be agreed to during the leave, but the relevant agreement must be made no later than two months prior to the end of the original job alternation leave.

#### **8.5. Hiring an unemployed person for the duration of the leave**

**THE ALTERNATOR'S** substitute for the duration of the leave must be a person who is registered as an unemployed jobseeker with an Employment and Economic Development Office (TE Office), and who has been an unemployed jobseeker for at least 90 days—either in one continuous stretch or in several parts counted together—during a 14-month period preceding the commencement of the job alternation leave. The person hired as a substitute must be registered as an unemployed job seeker immediately prior to the commencement of the job alternation leave. The hired substitute can also be a person under 30 years of age who is registered as an unemployed job seeker with an Employment and Economic Development Office, and who has completed his or her vocational or tertiary education no more than a year before,

or an unemployed job seeker who is under 25 or more than 55 years of age when the job alternation leave begins. A person considered a full-time student under Chapter 2, section 10 of the Unemployment Security Act may not be hired as a substitute.

The working hours of an employee hired for the duration of job alternation leave must be at least equal in length to the regular working hours of the person taking the leave, but the substitute need not be hired to perform the same tasks as the person on leave. If a part-time employee in the service of the employer is registered as an unemployed person looking for a full-time job with the TE Office, he or she can be hired as a substitute for the job alteration leave, enabling the employer to then hire another person registered as unemployed with the TE Office for the position vacated by the part-time employee.

The unemployed person hired for the duration of the job alteration leave is subject to the laws and regulations applicable to fixed-term employment relationships. The fixed-term employment relationship terminates at the end of the term without separate termination.

If, for one reason or another, the employment relationship of the employee hired for the duration of the job alternation leave ends prior to the end of the leave, the job alternation leave continues unaffected. In this case, the employer must without delay, and at latest within two months, hire another unemployed person for the remainder of the job alternation leave.

#### **8.6. Job alteration leave allowance**

**THE ALLOWANCE** paid for the duration of job alternation leave equals 70 per cent of the daily unemployment benefit which the employee would be entitled to in the case of unemployment. The amount of the job alternation leave allowance is determined primarily on the basis of the earned income preceding the leave.

When determining the salary to be considered established, the earned income will not in-

clude any fringe benefits the employee will continue to receive during the job alternation leave.

Child increases are not accounted for when calculating a job alternation leave allowance. The allowance is taxable income. To get an estimate of the amount of your alternation leave allowance, you can use the allowance calculator at [www.tyj.fi](http://www.tyj.fi).

The continuance of fringe benefits during a job alternation leave can be agreed with the employer. The amount of the job alternation leave allowance is not affected by any compensation earned prior to and paid during the job alternation leave against which the alternator will not be provided with a corresponding period of free time, or by fringe benefits not considered as part of earned income and which the employee will continue to receive during the leave as per the job alternation agreement.

Statutory benefits that reduce unemployment benefits (such as children's home care allowance) also reduce job alternation leave allowance, since it is calculated based on the unemployment benefit.

### **8.7. Applying for job alteration leave allowance**

**PRIOR TO** the commencement of job alternation leave, the employer must deliver to the TE Office a copy of the job alternation agreement and a reliable account of hiring an unemployed person for the duration of the leave, preferably a copy of the relevant employment contract. A corresponding account must be delivered to the TE Office also in case the job alternation leave is extended.

Prior to the beginning of the leave, the employee taking the leave (the alternator) must deliver his or her personal information and an account of meeting the requirements for the leave to the TE Office. The alternator may be given a statement of qualification only as of the date when the job alteration agreement and the account of hiring a substitute have been delivered to the TE Office.

The job alteration leave allowance may be paid only after the statement concerning the

qualification has been given. The allowance is applied for from the person's own unemployment fund or Kela. The application form is available at TE Offices and a person's own unemployment fund and needs to be accompanied with a salary certificate covering a minimum period of 52 weeks prior to the beginning of the leave as well as a copy of the job alteration agreement. The job alternation leave allowance may be provided retroactively for a period of three months.

N.B. It is advisable for the employee to find out well in advance of the leave the specifics regarding whether he or she is entitled to job alternation leave allowance and to what extent. The relevant inquiries can be addressed to the employee's own unemployment fund or Kela.

### **8.8. Special issues**

- Job alteration leave may be interrupted only by an agreement with the employer.
- Job alternation leave ends when a maternity, special maternity, paternity or parental leave begins.
- Job alternation leave allowance is not paid for a period during which the person receives a daily sickness allowance.
- The alternator has the right to return primarily to his or her previous duties when the job alternation leave ends. If this is not possible, the alternator must be offered other work that corresponds with the previous work in accordance with the employment contract or employment relationship or, should this also be impossible, other work in accordance with the employment contract.
- It is advisable for a person intending to take job alternation leave to check, well in advance and from the relevant pension institution, how the leave affects his or her pension.
- The leave's impact on taxation should be checked with the tax authorities.

- The managing director of a limited liability company or a cooperative society is not in an employment relationship, given that the managing director is considered a statutory organ of the company.
- The substitute can be hired for the purposes of orientation usually no more than two weeks prior to the beginning of the job alternation leave. This is subject to a separate agreement.
- Should the alternator temporarily return to work for their own employer during the job alternation leave, the leave nonetheless keeps running.
- The period of job alteration leave does not accumulate annual holidays.
- If the employment relationship ends, so will the job alteration leave allowance.
- Employees participating in reservist training are entitled to job alternation leave allowance.
- Any holiday bonus or various performance-based bonuses paid during job alteration leave do not have an effect on the amount of the job alteration leave allowance.
- The employee may appeal the decision of an unemployment fund or Kela to the social security appeal board (Sosiaaliturvan muutoksenhakulautakunta) and the decision of the board furthermore to the Insurance Court. In both cases, the period for lodging the appeal is 30 days from the time of receipt of the decision.
- There is a maximum age limit for taking job alternation leave. Job alternation leave must be started no later than three years before the lowest age of the employee's old-age retirement in accordance with the Employees Pensions Act. This maximum age limit does not apply to those born before 1957.



# 9. Intellectual Property Rights in an Employment Relationship

The purpose of intellectual property rights is to prevent others from exploiting the products of the creative work of a company or individual in a commercial manner. This guide discusses intellectual property rights that have relevance for senior salaried employees in an employment relationship, i.e. employment invention rights and copyright.

Copyright confers protection on an original literary or artistic work created as a result of creative work. An employee invention, on the other hand, must be a concrete invention with industrial applications that is the result of creative activity and has been achieved by way of a new idea. It should furthermore be new compared to what has been known prior to the date on which the patent application was filed. The invention should also be concrete and have an industrial application.

Act on the Right in Employee Inventions (656/1967)

Act on the Right to Inventions in Institutes of Higher Education (369/2006)

Copyright Act (404/1961)

Act on the Exclusive Right in the Layout-Design (Topography) of an Integrated Circuit (32/1991, section 3)

## 9.1. Employee inventions

**IN MANY** cases where an employee or civil servant has made an invention that is patentable, the employer has a right to the invention. This issue is provided for in the Act on the Right in Employee Inventions. The invention need not necessarily be patented. The fact that the invention is patentable is a sufficient basis for applying the law.

### **9.1.1. Invention's patentability**

For the invention to be patented, it must be new in comparison to what has been known prior to the date on which the patent application is filed. The invention must be concrete and it must have an industrial application. In addition to industry, the invention may also be used in other commercial activities. Naturally, the invention must be inventive: an invention is the result of creative activities and achieved through a new idea.

The invention must furthermore have what is generally referred to as technical effect: a device must function as promised. The Patents Act lists several examples of inventions not considered as patentable inventions. Patents are not granted to, for instance, scientific theories, mathematical methods, business plans or surgical, therapeutic and diagnostic methods.

A patent cannot be granted for an invention that has already been made public. In this respect, the time when the patent application is filed is decisive. Premature disclosure must be prevented by all means necessary. This is because the invention will, naturally, be disclosed as a result of the patent and competitors may seek products which remain outside the patent but which nevertheless touch upon it. Indeed, a patent is not always applied for, instead of which there is an attempt to keep the invention in strict secrecy. In some industries, advances are made so quickly that patents are rarely applied for due to the pace alone.

### 9.1.2. Rights to exploit an employee invention

Usually, the person who makes an invention gains full rights to the invention he or she made. However, employee inventions differ from other inventions in such a way that the employer is entitled to secure at least a part of the rights related to the invention. On the other hand, the employer is obligated to pay a special compensation to the employee who made the invention to which the employer secures a right. The employer is also considered to include any companies that belong to the same group of companies as the employer.

The employer is entitled to secure the rights to an invention in the following situations:

- If the invention is the result of a task given to the employee earlier, the employer is entitled to secure full or partial rights to the invention.
- If the invention is the result of activities carried out by the employee to fulfil his or her obligations or by making use of achievements made at the workplace in a material way, the employer may secure rights to the invention, if the invention's exploitation is within the scope of the employer's industry.
- If an invention falling within the scope of the employer's industry was created in some other connection related to the employment relationship, the employer is entitled to obtain a right of exploitation to the invention. The employer also has a priority right to negotiate on any other rights with the employee.
- If the invention made by an employee was created without a connection to the employment relationship, but its exploitation nevertheless falls within the scope of the employer's industry, the employer has a right of priority to negotiate about the right to the invention with the employee.

In the event that a patent has been filed for in a situation described above within the six months of the end of the employment relationship, the invention will be considered as having been made in the employment relationship, unless its inventor presents probable reasons for it having been created subsequent to the employment relationship. The aforementioned period of time may be extended to a year with an agreement to that effect. If the employer does not secure rights to invention, the rights will remain with the employee.

### 9.1.3. Procedure

An employee must inform the employer of an invention he or she has made without delay and, at the same time, provide information about the invention's content that allows the employer to understand it. At the employer's request, the employee must furthermore provide his or her opinion on the nature of the connection to the employment relationship in which the invention was created.

If the employer secures the rights to the invention, the employee must be notified of this in writing within four months. Prior to receiving such notification, the employee may not claim control over the invention or disclose anything about it in a manner that may result in the invention becoming public and being exploited by a third party.

The employee may nevertheless apply for a patent for his or her invention in Finland. In such cases, the employee may not file an application with the patent authority before a month has passed since the employee provided the employer with a written notification concerning his or her intention to file for a patent for the invention.

### 9.1.4. Invention compensation

If the employer secures a right to the invention, the employee is entitled to a reasonable compensation. An assessment of the compensation

accounts for the financial value of the invention, its state of readiness, the extent of the rights secured by the employer, the conditions of the employment contract and other factors related to the employment relationship that have relevance for the invention's creation. These factors include the employee's tasks and position in the company as well as the connection that the solution (invention) in question has to the employee's employment relationship. The amount of the remuneration for an invention is often one or some thousands of euros; however, the amount may be up to several thousands of euros or more for significant inventions. The initiative, invention and other such fees employed by many companies may be wholly inadequate in the case of significant inventions.

In addition to the Market Court, disputes involving employee inventions may be processed by the Employee Invention Committee which is, in addition to specialists appointed by the employee and employer, composed of unbiased members who specialise in invention issues. The Committee's opinions are not binding. In practice, they are nevertheless complied with quite often, since the Committee's expertise is held in high regard.

The right to a reasonable compensation for an invention expires ten years after the employer has announced its intention to secure the rights for the invention. In the event that a patent has been granted for the invention, the claim can nevertheless be filed within a year of the patent being granted.

### 9.1.5. Agreements

Many companies have drawn up internal regulations on employee inventions. The employer and employee may agree on compliance with these regulations in their mutual relationship. However, such agreements may not derogate from some of the central principles provided in the Act on the Right in Employee Inventions, such as the employee's right to receive a reasonable compensation. This means that the inventor may, according to law, claim a reason-

able compensation at a later date, too, even if otherwise agreed or even if an invention fee pursuant to the company's regulations on employee inventions had already been paid.

## 9.2. Inventions made in institutions of higher education

AS OF 1 January 2007, inventions made in various institutions of higher education (universities, institutes of technology, etc.) have been subject to the Act on the Right to Inventions in Institutes of Higher Education. The Act applies to the inventions made by individuals employed by Finnish institutes of higher education in their employment relationship that can be protected by a patent in Finland as well as to the inventions made by the research fellows of the Academy of Finland in Finnish institutes of higher education that can be protected by a patent in Finland.

Prior to the aforementioned Act's entry into force, inventions made in institutes of higher education remained outside the scope of law. The Act that took effect on 1 January 2007 clarified the procedure applied to inventions made in institutes of higher education to a considerable extent. The research activities occurring in institutes of higher education and the like, and the inventions derived from such activities, are divided into open research and contract(ed) research.

In contract research, the institute of higher education largely manages the rights to inventions created in research projects based on agreements made with external partners or on other external funding. In such situations, the institute in question is entitled to secure the rights to an invention. In contrast, open research primarily allows the inventor to retain the rights to an invention he or she has made.

### 9.2.1. Definition of institute of higher education

In the Act on the Right to Inventions in Institutes of Higher Education, the term 'institute

of higher education' refers to the universities mentioned in the Universities Act (558/2009), the National Defence University mentioned in the Act on the Finnish National Defence University (1121/2008), the universities of applied sciences referred to in the Universities of Applied Sciences Act (932/2014) as well as separate institutes subordinate or common to institutes of higher education.

### 9.2.2. Open research

Open research means research that:

- is carried out in an employment relationship to fulfil the research duties of institutes of higher education without external funding and without the involvement of external partners;
- is carried out with the help of external funding, but that does not include provisions other than those concerning the publication of results; and
- would meet the criteria for contract research had the institute and research partner not expressly agreed prior to the commencement of the research that the research is open research.

### 9.2.3. Contract research

Contract research means

- research that constitutes chargeable (service) operations as referred to in the Act on Criteria for Charges Payable to the State (150/1992); and
- research other than open research or the research referred to in the previous clause that involves at least one party external to institutes of higher education as a party that conducts a part of the research, financier or other participant and that

involves obligations related to the results of the research or the method in which it is implemented.

### 9.2.4. Invention notifications

The inventor must immediately file an invention notification with the institute of higher education when he or she has made an invention belonging within the scope of the Act on the Right to Inventions in Institutes of Higher Education. The invention notification must be made in writing and include the inventor's opinion on whether the invention was created in open research, contract research or in some other situation. If there is more than one inventor, the inventors must file a joint invention notification.

The invention notification must include details of the invention – sufficient enough to allow the institute of higher education to assess it – as well as of all the inventors involved. The inventor(s) must furthermore provide the institute of higher education with other necessary information about the invention upon request.

The institute of higher education must provide the inventor with a written report of the measures the institute may effect according to the aforementioned Act without undue delay and no later than within two months of the institute of higher education having received an invention notification that contains all the information required. The report must also indicate whether the institute of higher education shares the inventor's opinion as to whether the invention was created in open research, contract research or some other situation. If the invention notification filed by the inventor does not meet the requirements described above, the institute of higher education must immediately inform the inventor of this fact in writing.

### 9.2.5. Right to invention in open research

An institute of higher education may secure the rights to an invention created in open research

if the inventor has not, within six months of the invention notification filed by the inventor, published the invention or announced his or her intention to exploit the invention. The notification concerning the securing of the rights must be made in writing and the institute of higher education must, prior to giving the notification, inquire from the inventor whether he or she intends to exploit the invention.

If the institute of higher education fails to give a notification concerning its intention to secure the rights to the invention within the prescribed period of time, it must be considered to have waived its right to the invention.

### **9.2.6. Right to invention in contract research**

The institute of higher education is entitled to secure the rights to inventions created in contract research within six months of the invention notification filed by the inventor. The notification concerning the securing of the rights must be made in writing.

If the institute of higher education fails to give a notification concerning its intention to secure the rights to the invention within the prescribed period of time, it must be considered to have waived its right to the invention.

When an institute of higher education has secured the rights to an invention created in contract research, the inventor must, at the request of the institute, sign the transfer deed concerning the invention as well as any other necessary documents without delay.

### **9.2.7. Inventor's right to compensation**

When the institute of higher education has secured the rights to the invention, the inventor is entitled to receive reasonable compensation for the invention. A contractual term drawn up prior to the invention's creation with which the inventor waives his or her right to a reasonable compensation is invalid.

When calculating the amount of the compensation, one must account for the conditions that contributed to the creation of the invention and the proceeds the institute of higher education stands to gain from it. The institute of higher education must provide the inventor with the information necessary to determine the compensation.

### **9.2.8. Expiration**

An inventor's right to a compensation for the invention expires within 10 years of the institute of higher education having announced its intention to secure the rights to the invention. The inventor may interrupt the period of limitation by filing a compensation claim within 10 years of the institute of higher education having announced its intention to secure the rights to the invention. If a patent application for the invention has been filed, the claim may nevertheless be lodged within a year of the patent being granted.

### **9.2.9. Dispute resolution**

The Employee Invention Committee referred to in the Act on the Right in Employee Inventions is competent to issue opinions on matters falling within the scope of the Act on the Right to Inventions in Institutes of Higher Education in courts. If the parties fail to reach an agreement on the amount of the compensation to be paid to the inventor, for example, the Employee Invention Committee may be requested to give an opinion on the matter.

The competent court in disputes related to the scope of application of the Act on the Right to Inventions in Institutes of Higher Education is the Market Court.





### 9.3. Copyright

**COPYRIGHT PROTECTS** an original literary or artistic work created as a result of creative work. According to the law, copyright is created automatically and not, therefore, through registration, for example. Internationally, copyright protection is based on several international treaties.

Copyright confers both economic and moral rights on the author of a work. Economic rights include the right to decide on the reproduction of the work and on making the work available for the public through various means. Thus the author has the right to prohibit others from using the work.

Regarding moral rights, the most important ones are the right to attribution and the right to integrity. According to the right to attribution, the author's name must be mentioned when using the work in accordance with good practice. Good practice varies according to the industry. The right to integrity means that the work may not be altered in a way that is preju-

dicial to the author's literary or artistic reputation and that the work may not be displayed in a context that is prejudicial to the author.

Copyright primarily remains in force throughout the author's lifetime and for a period of 70 years following the year of his or her death.

The Copyright Act includes a list of the most common types of works: fictional or descriptive representation in writing or speech, a musical or dramatic work, a cinematographic work, a photographic work or other work of fine art, a product of architecture, artistic handicraft and industrial art.

In addition, the Copyright Act mentions that literary works also include maps and other descriptive drawings, graphically or three-dimensionally executed works and computer programs. The special mention regarding computer programs could be considered unnecessary, since the concept of a literary work as defined in the Copyright Act is broad to begin with and would therefore cover computer programs even without the special mention.

### 9.3.1. Threshold of work

When assessing whether a particular product meets the criteria for a work such as referred to in the Copyright Act, attention is paid to the product's independence and originality. A fairly common assessment criterion is based on the assumption that no one else embarking on a similar task would not have made an entirely identical work. On the other hand, with regard to the threshold of a work, the work's artistic quality or purpose has no significance. It is indeed quite a common misconception to think of the threshold as higher than it really is. The aforementioned descriptive drawings and graphically executed works, for example, include diagrams and statistical curves. Likewise, the category of literary representations include slide shows, as long as they contain some originality.

Copyright only provides protection for a concrete work and does not, therefore, protect the work's theme, content or motive. The ideas behind the work as well as the thoughts, the results of research, statements and information expressed by it remain outside the scope of the protection.

Nor is protection according to the Copyright Act provided to inventions, scientific theories or mathematical methods. The operating logic or purpose of a computer program are not protected. Thus a program executing the same outcome does not necessarily infringe the copyright of the first program's author, as long as the execution is not essentially similar in form and does not clearly prove the second program to be an imitation. Ultimately, it is the court which assesses originality with regard to a computer program or any other work, by comparing the overall impression given by the work to other existing works.

### 9.3.2. Copyright in an employment relationship

The starting point of the Copyright Act is that the right to a work lies with its author. On the

other hand, labour law starts from the premise that the results of work belong to the employer.

With the exception of works such as computer programs and the layout-designs of integrated circuits, Finnish law does not contain provisions on copyright in employment relationships, but according to the commonly accepted and adopted view, the employer does have the exploitation right required by its normal operations to the works created by an employee in an employment relationship even without an agreement to that end.

The extent of this right varies according to the industry in question. The general rule described above has not been tested in higher court instances, due to which it cannot, in actual fact, be considered an official rule. Nonetheless, this model has gained very wide support due to its generality. On the other hand, it is exactly because of its general nature that the model does not provide concrete answers to questions involving the extent to which rights are transferred.

The transfer of copyright may also be agreed on freely in employment contracts. In the event that copyrights have not been agreed on in the context of an employment contract or separately, the rights – with the exception of rights to computer programs and databases – remain with the employee.

On the other hand, the employee's possibility to independently exploit his or her rights especially during the employment relationship are limited in practice. An employee may not engage in competing activities with the employer during the employment relationship. The relevant prohibition is provided in the Employment Contracts Act. An agreement between the parties may have extended this prohibition on competition to include time subsequent to the end of the employment relationship.

The prohibition concerning competing activity may prevent the employee from exploiting his or her copyright. In addition, the employer's right to exploit a work within the framework of its normal operations has generally been considered an exclusive right, meaning that neither may the author compete with this right.

It is also possible that an employee's work protected by copyright contains material seen as the employer's business and trade secrets, in which case the work's exploitation is also restricted by the employee's non-disclosure obligation.

### 9.3.3. Computer programs

In legislation, the conflicts described above have only been resolved in terms of computer programs by providing that the copyright to a computer program created when performing tasks attributable to an employment or civil service relationship, and to any work directly associated with it, is transferred to the employer. The same provision also applies to a database created when performing tasks attributable to an employment or civil service relationship. However, this provision does not apply to authors who operate independently in the teaching or research work of institutes of higher education.

### 9.3.4. Layout-design of an integrated circuit

A separate act provides for exclusive rights in the layout-design of an integrated circuit. A layout-design created in an employment relationship is subject to the same principles as a computer program. The employer is entitled to exclusive rights in the layout-design if the layout-design was created when performing tasks attributable to an employment relationship. The parties are, however, free to agree otherwise.

### 9.3.5. Agreeing on copyright

An author is at liberty to transfer his or her economic rights in part or in full to another party by way of agreement. The transfer may provide the transferee with an exclusive right to the work or a mere exploitation right. The transfer of copyright does not necessarily in-

clude a right to alter the work or transfer it to another party, unless otherwise expressly mentioned in the transfer agreement.

There are no special formal requirements regarding an agreement concerning the transfer of copyright. It is indeed a rather common view that the rights may even transfer with a tacit agreement. In such situations, the parties have not expressly agreed on the matter, but the behaviour of the parties reveals the purpose to have been a transfer of rights.

If there is no agreement on the matter, one needs to examine the purpose of the employment relationship, the industry's prevailing practice and other conditions that impact the parties' activities when resolving to whom the right to the work belongs. An agreement in writing is, of course, the best and most unambiguous alternative also with regard to copyrights. It is furthermore worth noting that, in some industries, the transfer of copyright in an employment relationship has been agreed on collectively, by way of collective agreements.

Legislation does not require an employer to compensate an employee for an employee's work to which the employer secures rights according to what has been explained above. According to YTN's recommendation, the employer should always pay a separate compensation to secure a right more extensive than a conventional exploitation right to an employee's work.



# 10. Data Protection in Working Life

In many situations, it is important for employers to collect on employees personal data the nature of which may pertain to the protection of privacy. The reconciliation between this need to collect data and the protection of privacy is provided for in the Data Protection Act and the Act on the Protection of Privacy in Working Life. The latter also includes provisions on, for instance, camera surveillance in the workplace, the protection of an e-mail message as well as on personality and aptitude assessments and drug tests. In addition, insofar as national legislation contains no provisions on the processing of employees' personal data, the EU General Data Protection Regulation is applied.

Data Protection Act (1050/2018)

Act on the Protection of Privacy in Working Life (759/2004)

Act on Electronic Communications Services (917/2014)

Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (generally referred to as the General Data Protection Regulation)

## 10.1. Collection and processing of personal data

**IN MANY** situations, employers collect personal data of their employees. The collection of all data, however, is not permitted. In fact, the employer may only process personal data directly necessary for the employee's employment relationship, which is connected with managing the parties' rights and obligations or with the benefits the employer offers to employees or which arises from the special nature of the work concerned. This necessity requirement may not be deviated from even with the consent of the employee or a job applicant.

The necessity of the personal data must be evaluated on a case-by-case basis according to the tasks involved and the employer's line of business. Necessary data includes information related to the performance of tasks, the selection of an employee, working conditions and compliance with the conditions of collective agreements.

The data that may be collected in a recruitment situation mainly includes information necessary to evaluate the candidate's qualifications

and aptitude which may also include information pertaining to the person's aptitude in terms of health.

The EU's General Data Protection Regulation sets requirements for the lawful collection and processing of data. According to GDPR, processing is lawful, for example, when it is necessary to ensure the controller's compliance with a legal obligation. Such legal obligations may also be included in employment legislation.

The employer must primarily collect the personal data on an employee from the employee himself or herself. If the employer collects data from sources other than the employee, it must obtain the employee's consent for collecting such data. However, the consent is not necessary when an authority discloses information to the employer for the purpose of the employer fulfilling its statutory obligations or when the employer obtains personal credit information or criminal record information in order to establish the employee's reliability. The employee's criminal records may only be accessed on the basis of grounds specified in the law. Applying for a security clearance is subject to the Security Clearance Act.

The employer must inform the employee in advance of its intention to obtain data for the purpose of establishing reliability. If information concerning an employee has been collected from sources other than the employee himself or herself, the employer must inform the employee of the information it has obtained before it is used in decision-making pertaining to the employee.

An employer must inform its employees about the kind of personal data on the employees it has recorded. Each employee has the right to check his or her own personal data. If the employee notices mistakes in the data, the mistakes must be corrected at the employee's request. The employer may not store or process erroneous, incomplete, obsolete or otherwise unnecessary personal data under any circumstances. Personal data may be used or processed only in a way that is compatible with the purpose of its collection. At the workplace, employees' personal data may only be processed by a person who needs said data in his or her work.

## **10.2. Processing information concerning health**

**AN EMPLOYER** has the right to process information concerning an employee's health if the information has been collected from the employee or from other sources with the employee's written consent and provided that such processing is necessary to remit a sick pay or other benefits related to health and comparable to sick pay. In addition, such information can be used to find out whether there is justified reason for absence from work or if the employee specifically wishes the information to be examined to clarify his or her capacity for work. The data must be removed from the employer's register immediately after the above-mentioned reason for processing the data has ceased to apply.

The employer must store any information concerning an employee's health separate from the other personal data collected by the employer. Information pertaining to health may

only be processed by individuals who, on the basis of such information, prepare or make decisions concerning the employment relationship or execute such decisions. The employer must designate these individuals or determine the tasks which involve the processing of health-related information. The individuals who process such information may not disclose it to outsiders during or after the employment relationship.

However, a doctor's certificate pertaining to the employee's capacity for work disclosed by the employee to the employer may be handed over to an occupational health care service provider for the purpose of carrying out the tasks of occupational health care specified in the Occupational Health Care Act, unless the employee has forbidden such handover.

## **10.3. Drug tests**

**AN EMPLOYER** may require an employee or a job applicant to take a drug test only in certain situations specified in the law. The requirements are different for those seeking a job and those already employed by the employer. The starting point in both situations is that the person tested delivers the certificate concerning the drug test to the employer.

Given that the issue also involves information concerning health, it is subject to the provisions listed in chapter 10.2.

According to the law, the employer is responsible for the costs arising from acquiring the certificate. If the employer does not bear the costs, it may not request or demand such a certificate from the employee and the lack of such a certificate may not have any effect whatsoever.

If job applicants and employees are meant to undergo drug tests, the employer must have a written action programme on substance prevention. Before the programme is approved, the tasks for which a drug test certificate is requested or required must be discussed in a co-operation procedure.

### 10.3.1. Drug tests of job applicants

An employer may request a drug test certificate during a job application phase only from the person selected for the job. The employer may receive and process the information entered in the certificate with the consent of the job applicant only if the job applicant is intended to work in tasks that require precision, reliability, independent judgment or quick reactions.

A further requirement is that the performance of the relevant tasks under the influence of drugs or while addicted to drugs could:

- endanger the life, health or occupational safety of the employee or other persons;
- endanger national defence or state security;
- endanger traffic safety;
- increase the risk of significant environmental damage;
- endanger the protection, usability, integrity and quality of information received while working and thus cause harm or damage to public interests protected by confidentiality provisions or endanger the protection of privacy or the rights of data subjects; or
- endanger business or professional secrecy or cause more than a minor level of financial loss to the employer or a customer of the employer, provided that this could not be prevented by other means.

In addition to the aforementioned situations, the employer may also process the information entered in a certificate, with the consent of the job applicant, when the job applicant is meant to carry out tasks

- in which special trust is required, in which work will be performed elsewhere than in the premises supervised by the employer and in which the performance of duty while under the influence of drugs or while

addicted to drugs may cause significant financial loss to a customer of the employer or endanger the customer's personal safety;

- which, on a permanent basis and to a material degree, include raising, teaching, caring for or otherwise looking after a minor, or other work involving personal interaction with a minor and no other person is involved; or
- in which there is independent and uncontrolled access to drugs or a more than minor quantity of medicines that could be used for the purposes of intoxication.

If the job applicant refuses to take the test or fails to submit an acceptable certificate to the employer, he or she may be rejected for the job in question.

These provisions applicable to a job applicant are also applied if an employee's tasks undergo such changes during the employment relationship that they meet the criteria referred to above. The employer must always inform the job applicant or employee – even before the conclusion of an employment contract or before making changes to the terms of employment – that the case involves a task that requires the applicant to take a drug test.

### 10.3.2. Drug tests during an employment relationship

During an employment relationship, the employee may be obligated to submit a drug test certificate if the employer has a justified reason to suspect that the employee is working while under the influence of drugs, or that the employee is addicted to drugs and testing is necessary to investigate their fitness for work and capacity to function, and the employee works in tasks that require particular precision, reliability, independent judgment or quick reactions and in which the performance of tasks under the influence of drugs or while addicted to drugs could:

- seriously endanger the life, health or occupational safety of the employee or other persons;
- seriously endanger national defence or state security;
- seriously endanger traffic safety;
- materially increase the risk of significant environmental damage;
- seriously endanger the protection, usability, integrity and quality of information received while working and thus cause harm or damage to public interests protected by confidentiality provisions or endanger the protection of privacy or the rights of data subjects;
- endanger business or professional secrecy or cause more than a minor level of financial loss to the employer or a customer of the employer, provided that this could not be prevented by other means; or
- may materially increase the risk of the illegal trade and spreading of substances in the employer's possession referred to in section 3(1)(5) of the Narcotics Act.

The employer or a representative of the employer who wilfully or through gross negligence violates the provisions concerning drug tests may be sentenced to a fine for violating the Act on Protection of Privacy in Working Life.

#### **10.4. Personality and aptitude assessments**

**PERSONALITY AND** aptitude assessments are the employer's way of trying to establish an employee's qualifications for taking care of a particular task or the employee's training or other professional development needs. Assessments such as these may only be performed to the extent required by the employment relationship

and carrying out work tasks. The employer must ensure that reliable assessment methods are used and that the persons who perform them possess the required expertise. The employer must furthermore ensure that the information received from the assessments is free from errors. This means that special attention should be paid to the assessment method employed and the nature thereof.

The assessments always require the consent of the person being assessed. Employees may not be placed under any obligation to take part in such assessments. Despite this, the employer may reject a job applicant if the applicant has refused to participate in this assessment considered necessary by the employer. If an employee working for the employer has refused to participate in the assessment, the employer may not undertake any measures concerning the employment relationship due to this refusal alone.

At the request of the person being assessed, the employer or the party performing the assessment must provide the person with a written statement drawn up on the assessment free of charge. If the statement has been submitted to the employer orally, the employee must be provided with an account of the statement's content.

#### **10.5. Using the healthcare services and genetic testing**

**ANY EXAMINATIONS** and tests concerning employees' health and any samples must be performed and taken by health care professionals, by persons with relevant laboratory training and by health care services as provided in health care legislation. This also applies to alcohol and drug tests. An alcohol test may nevertheless be performed in the form of a breathalyser test. Health and medical examinations may only be performed by professionals with a right to do so, since it is important that the examinations are safe and that the results are correct. This allows for ensuring that a person using certain medication on a doctor's orders, for example, is not categorised as a drug user.

An employer may not require an employee to undergo genetic testing when hiring the person or during the employment relationship, and the employer does not have the right to know whether the employee has undergone genetic testing.

## 10.6. Camera surveillance

**CAMERA SURVEILLANCE** refers to surveillance based on the use of a technical device that continuously transmits or records images. This guide discusses only camera surveillance carried out in the workplace.

An employer may carry out camera surveillance in its premises to ensure the personal safety of employees and other people on the premises, to protect its property and to supervise the proper operation of production processes. Camera surveillance is also allowed when the case involves the prevention or investigation of situations that have endangered safety, property or the production process.

Camera surveillance may not be used to monitor a particular employee or employees in the workplace. Nor may there be camera surveillance in lavatories, changing rooms or other similar places, in other staff facilities or in work rooms designated for the personal use of employees.

As an exception to the main rule, the employer may nonetheless direct the camera surveillance at a particular work location in which employees are at work if the surveillance is essential for:

- preventing an apparent threat of violence related to the work of the employee or an apparent harm or danger to the employee's safety or health;
- preventing and investigating property crimes if an essential part of the employee's work is to handle property of high value or quality, such as money, securities or valuables; or
- safeguarding the employee's interests and rights, where the camera surveillance is

based on the request of the employee who is to be the subject of the surveillance.

- The rights protected by the GDPR must also be guaranteed when using camera surveillance.

### 10.6.1. Using an image recording

**WHEN PLANNING** and carrying out camera surveillance, the employer must ensure that before camera surveillance is implemented, the possibility of utilising means that are less intrusive for employee privacy. The privacy of employees must not be invaded any more than is absolutely necessary to achieve the purpose of the measures. Recordings captured through camera surveillance may be used only for the purposes for which the surveillance has been carried out. Because of this, the recordings may not be used to evaluate an employee's performance, for example.

However, the employer has the right to use the recordings for:

- substantiating the grounds for termination of an employment relationship;
- investigating or substantiating harassment or molestation as referred to in the Act on Equality between Women and Men or harassment and inappropriate behaviour as referred to in the Occupational Safety and Health Act, provided that the employer has a justified reason to suspect that the employee is guilty of harassment, molestation or inappropriate behaviour; or
- investigating an occupational accident or some other situation causing a danger or threat referred to in the Occupational Safety and Health Act.

Before the employer makes a decision on camera surveillance, the purpose and introduction of and the methods used in the technical surveillance directed at the personnel must be discussed in a co-operation procedure. If the case



concerns a workplace not included within the scope of co-operation procedures (less than 20 employees), the employer must reserve for the employees or their representatives a chance to be heard on the matter. The employer must inform its employees about the commencement and implementation of the camera surveillance and about how and in which situations the possible recordings are used.

An employer or the employer's representative who wilfully or through gross negligence violates the provisions concerning camera surveillance may be sentenced to a fine for violating the law.

## **10.7. Protection of an e-mail message**

An employer has the right to decide the purposes for which the workplace e-mail is used. An employer may even forbid private e-mail messaging during working hours. Primarily, however, employers allow the use of e-mail for personal communication.

It is particularly worthwhile to remember that external people may send personal e-mail messages to an employee despite any denials of the employer.

The confidentiality of an employee's e-mail messages is protected by law. The provisions aim to ensure that the secrecy of an employee's confidential e-mail messages is not endangered and that messages that belong to the employer and that are necessary for the continuity of operations may be made available to the employer when the employee is prevented from performing his or her duties.

The starting point for the provisions is that opening messages that belong to the employer organisation is based on the employee's consent. The employer may retrieve and open an employee's e-mail messages only on certain conditions and by means of specific procedures.

### **10.7.1. Employer's obligations regarding necessary arrangements**

The employer may not retrieve and open an employee's e-mail messages if the employer has failed to ensure in advance that:

- the employee can, with the aid of the electronic mail system's automatic reply function, send notification to a message sender about his or her absence, and information about the person who is to take care of the tasks of the absent employee; or
- the employee can direct messages to another person approved by the employer for this task or to another employer-approved address of the employee; or
- the employee can give his or her consent to an arrangement whereby in his or her absence another person of his or her choosing and approved by the employer for the task can receive messages sent to the employee, with the aim of establishing whether the employee has been sent a message that is clearly intended for the employer for the purpose of managing the work and on which it is essential for the employer to have information on account of its operations or the appropriate organisation of work.

### **10.7.2. Retrieval of e-mail messages that belong to the employer**

The retrieval of e-mail messages belonging to the employer always occurs with the help of a person using the authority of an information system administrator. In such situations, the employer is entitled to examine information concerning the sender, recipient and title (subject) of the message.

On the basis of this information, the employer must infer whether messages belonging to the employer have been sent to the employee

during his or her absence or whether the employee has, immediately before his or her absence, sent or received messages of which the employer must be aware in order to conclude negotiations, serve customers or secure its operations.

However, the retrieval of an employee's e-mail messages always requires that:

- the employee manages tasks independently on behalf of the employer and the employer does not operate a system with which the matters attended to by the employee and the processing stages involved are recorded or are otherwise ascertained;
- it is evident on account of the employee's tasks and matters pending, that messages belonging to the employer have been sent or received;
- the employee is temporarily prevented from performing his or her duties, and messages intended for the employer cannot be obtained for its use despite the fact that the employer has seen to its obligations referred to above; and
- the employee's consent cannot be obtained within a reasonable time and the investigation of the matter cannot be delayed.

Unless the retrieval of a message results in its opening, a report of the retrieval, signed by the persons who participated in it, must be drawn up. The report must indicate why, when and by whom the message was retrieved. The report must be delivered to the employee without delay. Information concerning the message's sender, recipient and title may not be processed to any extent larger than what is required for the purpose of retrieving the message, and the persons who process the information may not disclose the information to third parties during or after the employment relationship.

### 10.7.3. Opening e-mail messages belonging to the employer

If it is apparent, on the basis of information concerning the sender, recipient or title of an e-mail message, that an e-mail message clearly belonging to the employer and of which the employer needs to be aware to conclude negotiations related to its operations, serve customers or secure its operations has been sent to or by the employee, the message in question may be opened. This may only be done under the condition that the sender or recipient of the message cannot be reached to find out the contents of the message or to send it to an address specified by the employer. In such cases, the message is always opened by a person using the authority of an information system administrator in the presence of another person.

A report on the opening of the message signed by the persons who participated in it must be drawn up. The report must indicate which message was opened and why, when and by whom, as well as who was informed about the content of the opened message. The report must be delivered to the employee without delay. The opened message must be stored and its content may not be processed in any extent broader than is necessary. The persons who process the information may not disclose the content of the message to third parties during or after the employment relationship.

An employer or the employer's representative who wilfully or through gross negligence retrieves or opens a message sent to or by an employee against the law may be sentenced to a fine for breaking the law.

## 10.8. Act on Electronic Communications Services

**IN THE** Act on Electronic Communications Services, a corporate or association subscriber refers to an undertaking or organisation which subscribes to a communications service or an added value service and which processes users' messages, traffic data or location data in its communications network.

Traffic data refers to information associated with a legal or natural person used to transmit a message and information on the call sign of a radio station, on the type of radio transmitter or the user of the radio transmitter, and on the starting time, duration or transmission site of a radio transmission.

Companies may offer, for example, e-mail and telecommunications services for their employees' use. The corporate or association subscribers are obliged to ensure the data protection of their users when processing their traffic data.

A corporate or association subscriber has the right to process traffic data to prevent or investigate unauthorised use of information society services or communications network or service, or to prevent and investigate the disclosure of business secrets referred to in Chapter 30(11) of the Criminal Code.

Unauthorised use of a communications network or service may include installation of a device, software or service in the communications network of a corporate or association subscriber, unlawfully providing a third party with access to the communications network or service of a corporate or association subscriber, or any other comparable use of a communications network or service.

### 10.8.1. Duty to exercise care

Before starting the processing of identification data and to prevent the misuse of an information society service, communications network or communications service subject to a charge, a corporate or association subscriber must:

- restrict access to its communications network and service and to their use and take other steps to protect the use of its communications network and service with the help of appropriate information security measures;
- define the type of messages that may be transmitted and retrieved through its communications network and how its

communications network and service may be used in other respects and the addresses to which no messages may be communicated.

Before starting the processing of identification data to prevent the disclosure of business secrets, a corporate or association subscriber must:

- restrict access to business secrets and take other steps to protect the use and data of its communications network and service with the help of appropriate information security measures;
- define the way in which business secrets may be transferred, delivered or otherwise handled in the communications network and the types of addresses to which people entitled to handle business secrets may not send messages.

To prevent misuse, a corporate or association subscriber must give written instructions to the users of the communications network or communications service.

### 10.8.2. Duty of planning and co-operation

A corporate or association subscriber must, before it starts to process traffic data, designate the persons whose tasks include the processing of traffic data or define the tasks in question. Traffic data may only be processed by the individuals who take care of the maintenance and information security and safety of the communications network and service of the corporate or association subscriber.

If the corporate or association subscriber is an employer that belongs within the scope of co-operation legislation, the subscriber must:

- discuss the grounds for and standards to be used in the processing of identification data in a co-operation procedure;

- inform the employees or their representatives of any decisions it makes in relation to the processing of identification data in the manner provided in section 21(2) of the Act on the Protection of Privacy in Working Life.

If the corporate or association subscriber is an employer that does not belong within the scope of co-operation legislation, it must hear the employees and inform them of the aforementioned points in the manner provided in subsections 1 and 2 of section 21 of the Act on the Protection of Privacy in Working Life.

### 10.8.3. Data processing to prevent misuse

A corporate or association subscriber may process traffic data with the help of an automatic search function that may be based on the size, aggregate size, type, number, connection mode or target addresses of the messages. A corporate or association subscriber may process traffic data manually, if there are reasonable grounds to suspect that a communications network, communications service or an information society service subject to a fee is used against the instructions.

An automatic search shall not be targeted and traffic data shall not be searched or manually processed for finding out data referred to in Chapter 17(24)(2) and (3) of the Code of Judicial Procedure.

In order to investigate the disclosure of business secrets, a corporate or association subscriber that is an employer may only process the traffic data of users to whom the corporate or association subscriber has provided access to business secrets or of users who through some other means accepted by the corporate or association subscriber have access to business secrets.





#### **10.8.4. Obligations to provide information to individual under investigation and representative of personnel**

A corporate or association subscriber shall draw up a report of the referred manual processing of traffic data, indicating:

1. the grounds for the processing, and the time and duration of the processing;
2. the reason for using manual processing of traffic data;
3. names of the processors involved;
4. name of the individual who has made the processing decision.

Individuals involved in the processing shall sign the report. The report shall be kept for at least two years from the end of the processing.

A report shall be delivered to the user of the communications network or service involved as soon as it is possible without endangering

the purpose of the processing itself. No report needs to be delivered, however, to users whose traffic data have been processed as mass data so that the processor did not gain knowledge of the traffic data. Notwithstanding confidentiality requirements, the user has the right to submit the report and the related data for the purpose of managing matters related to the user's interests or rights.

If the corporate or association subscriber is an employer, it shall draw up an annual report to the employees' representative of manual processing of traffic data, showing the grounds for and the number of times of traffic data processing during the year.

Employee representatives shall treat any business secret infringements and suspected business secret infringements brought to their attention as confidential throughout their employment relationship. The provisions laid down in the Act on the Openness of Government Activities and elsewhere in law shall apply to secrecy obligation of public servants. Notwithstanding the provisions above, information may be disclosed to the supervision authorities.

# 11. Occupational Health Care

The Occupational Health Care Act provides for the occupational health care that an employer must arrange. Occupational health care forms a part of basic health care and occupational health and safety. The employer's obligations cover the measures of preventive occupational health care, and do not therefore pertain to medical treatment.

Occupational Health Care Act (1383/2001)

## 11.1. Aim and scope

**THE PURPOSE** of occupational health care is to prevent work-related sicknesses and accidents and to promote the health and safety of work and the working environment as well as the functioning of the workplace community. The aim is to promote employees' health and work and functional capacity at different stages of their careers. The objective is to make a career last until the retirement age.

The employer is responsible for arranging occupational healthcare services, but the activities must be carried out as cooperation of the employer, employees and occupational healthcare. The occupational healthcare professionals must be professionally independent of employers, employees and their representatives.

The Occupational Health Care Act applies to work in which the employer is obligated to comply with the Occupational Safety and Health Act. The obligation to arrange occupational healthcare applies to all employment and service relationships. Naturally, the need for arrangements may vary according to the workplace.

## 11.2. Employer's obligations

The employer must arrange occupational healthcare at its expense to the extent required by the work, working arrangements, personnel and the workplace conditions and any changes thereto. "Working arrangements" also includes any health risks and problems related to contract work, part-time work and fixed-term employment relationships. The expression also covers the arrangement of working hours and

rest periods attributable to night work or overtime, for example.

A failure to comply with the occupational healthcare obligation is subject to a fine.

The employer and occupational healthcare service provider must make a written agreement of the service. The agreement specified the general arrangements of occupational healthcare as well as the content and extent of the services. The agreement must be reviewed if conditions undergo material changes.

If the employer arranges occupational healthcare services itself, it must indicate the aforementioned matters in a separate description or as part of the action plan for occupational healthcare or the action programme for occupational health and safety.

The employer must inform occupational healthcare of changes concerning an employee's capacity for work. To assess an employee's capacity for work and possibilities to continue at work, the employer must inform occupational healthcare of the employee's sick leave no later than when the absence has continued for a month.

When the employer prepares decisions to implement occupational healthcare, it must do so in cooperation with employees and their representatives. This obligation is sanctioned with a fine. Among other things, cooperation refers to the employees having an opportunity to make proposals for the development of occupational healthcare and to receive information, at an early enough point, about workloads or other factors with an impact on health.

Before the employer makes a decision concerning the content of healthcare services or changes thereto or some other matter with material relevance for the arrangement of occupa-

tional healthcare, the matter must be discussed in an occupational health and safety committee or in the context of some other comparable co-operation procedure or together with an occupational health and safety representative. In workplaces with less than ten employees which, according to the law, are not obligated to select an occupational health and safety representative, it suffices that the personnel is reserved a genuine chance to participate in the handling of the matters.

### **11.3. Implementation of occupational health care**

**THE EMPLOYER** must have a written action plan for occupational health care. It can be a part of the action plan for occupational health and safety or some other development programme or plan drawn up by the employer. The action plan must contain the general objectives of occupational healthcare as well as requirements based on workplace conditions and any measures resulting from them. If the employer intends to request employees or job applicants to take drug tests, it must have an action programme on the prevention of substance abuse. The programme should include the practices observed to prevent substance abuse and for referring individuals with substance abuse problems to treatment.

The tasks that fall within the scope of the action programme must be discussed in a co-operation procedure prior to the programme's approval.

Occupational healthcare is based on a workplace investigation. The investigation examines exposure to physical, chemical and biological substances as well as the level of physical and psychological stress posed by work, the functionality of the workplace community, the risk of accidents and violence, working arrangements and any particular health risk arising from the working environment and employees' characteristics. The aforementioned factors and the workplace-specific needs serve as the basis for a determination of further occupational healthcare measures.

The employer's occupational healthcare includes the following activities/measures:

- An investigation of the healthiness and safety of the work and the working conditions through repeated workplace visits and using other occupational health care methods.
- Assessments of employees' health and capacity for work through medical examinations, for example. An employee may not, without a justified reason, refuse to participate in a medical examination as referred to in the Occupational Health Care Act.
- Suggestions for action and a follow-up of their implementation. The actions pertain to the improvement of occupational health and safety, adjusting work to an employee's requirements and the promotion of working capacity.
- The provision of information and advice and guidance. For a justified reason, the employee must be provided with a report of his or her workload, for example.
- Monitoring how an employee with a disability copes at work and referring him or her to rehabilitation.
- Drawing up a statement on an employee's capacity for work and possibilities to continue working after the employee has received sick pay for a period of 90 weekdays.
- Co-operation with the necessary parties.
- Participation in the organisation of first aid as referred to in the Occupational Safety and Health Act.
- Planning and implementing measures that maintain and promote capacity for work and investigating the need for rehabilitation when necessary.

- Assessing and monitoring occupational health care.

In addition to the services required by the Occupational Health Care Act, the employer may arrange medical treatment and other healthcare services, such as GP and/or specialist-level healthcare, for its employees. When offering such services, employees must be treated equally, regardless of whether they are in a permanent, fixed-term or part-time employment relationship.

#### 11.4. Processing data in occupational health care

**THE EMPLOYER** is obligated to provide information to the parties that take care of occupational healthcare. The information to be provided includes information on work, working arrangements, occupational diseases, industrial accidents, the personnel as well as the conditions of the workplace and any changes thereto.

When requested to do so, an employee must give occupational healthcare information about any risk factors in the workplace.

Occupational healthcare must provide employees and the employer with required information about the health risks of the work and on the means by which to prevent such risks. Employees must be provided with information amongst other things on any medical examinations performed and their results.

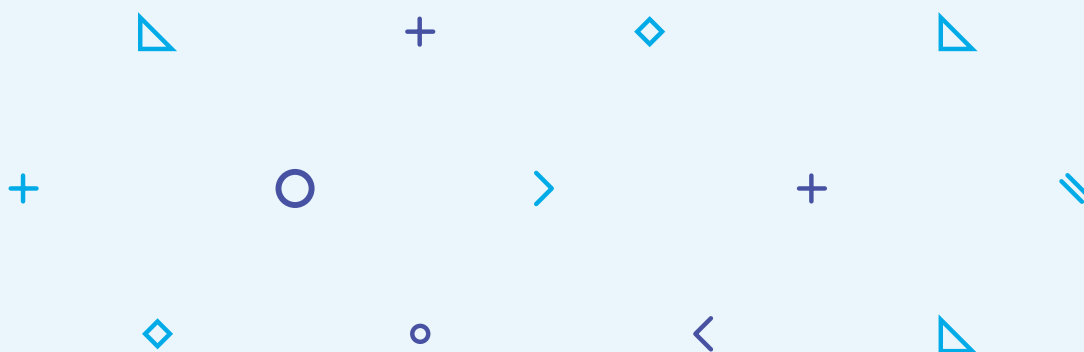
The employer, occupational health and safety committee and occupational health and safety representative have the right to obtain information with significance for the health of employees from occupational healthcare, and information on how to develop the healthiness of the workplace conditions.

The starting point of the Occupational Health Care Act is that information governed by secrecy provisions may not be disclosed without the written consent of the individual in question.

This non-disclosure obligation may be derogated from when the case involves a job that carries a special risk of illness. In such cases, an occupational health physician may give the employer and occupational health and safety authorities provided a written statement on the conclusions drawn in a medical examination. In each such case, the physician assesses the employee's health-related suitability for a particular task.

In a recruitment situation, the job applicant himself or herself should be provided with the conclusions of the medical examination first.

A positive test result obtained from a job applicant or employee's drug test must be verified in a laboratory. The person tested always has the right to receive the test result in writing. The contents of a drug test certificate are provided for in the Act on the Protection of Privacy in Working Life. The certificate is to be given to the person tested, who will deliver it to the employer.





# 12. Occupational Health and Safety

The purpose of the Occupational Safety and Health Act is to improve working environments and working conditions. The Act's objective is to maintain an employee's physical and mental health and capacity for work throughout the employee's career. The goal is for the employee to retire in good health. In addition, the Act aims to prevent industrial accidents, occupational diseases and health problems caused by a working environment. Indeed, the Act's starting point is the comprehensive management of workplace safety. Chapter 16.4 contains information about the tasks and selection of occupational health and safety representatives.

Occupational Safety and Health Act (738/2002)

## 12.1 What does the Act apply to?

**THE ACT** applies to all paid work performed in the employment of another. Ordinary hobby activities remain outside the scope of the Act, as do professional sports.

The Occupational Safety and Health Act puts mental health on par with physical health. It is therefore protected in the same manner as physical health. One aspect falling within the scope of mental health and now prohibited by law is the harassment or other inappropriate treatment of an employee in the workplace that may risk or cause problems to the employee's health. In other words, what is prohibited is workplace bullying, but the prohibition also applies to other forms of harassment, such as sexual harassment, and other inappropriate treatment.

The Act does not provide for the allocation of responsibility with regard to occupational health and safety in team work. The management of occupational health and safety in teams and other forms of self-regulating work performance requires, among other things, independent observation. Compliance with the Act is supervised by occupational health and safety authorities.

### **12.1.1. Contract work**

The Act also applies to contract work (hired labour). The party employing contract work is

obligated to comply with the provisions of the Occupational Safety and Health Act that concern employers.

Before contract work begins, the professional qualifications required by the contract work and any special features of the work must be defined in sufficient detail. The party that contracts the work must inform the relevant employee's employer of these details. The relevant employer must ensure that the employee possesses the professional skills, experience and suitability required by the work. For its part, the party that contracts the work must see to the employee's orientation.

### **12.1.2. Other work within the scope of application**

The Occupational Safety and Health Act applies to the work performed by a pupil or student in relation to training. This refers to practical training, practical teaching comparable to work, on-the-job learning periods, internships and getting acquainted with working life. The Act also applies to the work of a person participating in an employment measure.

The Occupational Safety and Health Act furthermore applies to work performed at home and to telecommuting performed, as per agreement, in the employee or employer's home, for example.

## 12.2. Employer's occupational health and safety obligations

The Act contains a provision pertaining to an employer's general duty to exercise care. The employer is obligated to take care of the safety and health of its employees while they are at work by taking the necessary measures. Factors that must be taken into account include those related to the work, working conditions and the working environment as well as those related to an employee's personal qualifications. Factors related to an individual employee include professional skills, work experience, age and gender.

The duty to exercise care does not extend to unusual and unforeseeable circumstances and events which the employer has no control over despite all necessary precautions.

The employer must plan and implement the measures required to improve working conditions. In this respect, the employee should adhere to the principle of

- preventing the creation of hazards and risk factors;
- eliminating hazards and risk factors or, if this is not possible, replacing them with a less hazardous or risky alternative;
- adopting safety measures which have a general impact before the adoption of individual measures;
- accounting for technological developments and other available means.

The employer must continuously monitor the working environment, the state of the entire working community and work practices. The employer must likewise monitor the effect that any implemented measures have on the safety and healthiness of work. These obligations must be taken into account with respect to both the physical and mental aspect of occupational health and safety.

The monitoring obligation also extends to the working community's social functionality.

The employer is expected to monitor the working community so as to detect any possible harassment or other inappropriate treatment early enough to interfere effectively and without delay with any unacceptable behaviour.

What is essential is a systematic and continuous focus on the improvement of working conditions. The employer must be aware of the hazards and risk factors of the workplace and the operations engaged in, be they mental, physical or social in nature. The employer is expected to take the action necessary to eliminate a shortcoming as soon as it has become aware of it.

The employer may appoint a person as its substitute in managing tasks specified as the employer's obligation in the Occupational Safety and Health Act. The tasks of such a substitute must be defined in sufficient detail. The employer must ensure that the substitute has the appropriate resources and capabilities to manage the tasks referred to in the law.

### 12.2.1. Occupational health and safety policy

The employer must draw up an occupational health and safety policy. The policy must cover the development needs of the workplace's working conditions and the effects of factors related to the working environment. The policy's objectives in terms of safety, healthiness and working capacity must be taken into account in the workplace's development and planning. The objectives must be discussed with employees and their representatives.

### 12.2.2. Investigating and assessing work-related hazards

The employer must systematically investigate and identify hazard and risk factors caused by the work, working hours, working environment and the working conditions, and assess their significance in terms of occupational health and safety. This investigation and assessment must be in the employer's possession. Whenever

conditions undergo material changes, the investigation must be brought up to date.

The investigation must account for work commitment and workload-related factors, such as those caused by working hours, which must be understood broadly. Work commitment refers, among other things, to travel or an obligation to take calls or answer to e-mail outside working hours. Working hours refer to overtime, night work, shift work and sufficient rest periods. Other workload-related factors include information loads, poor ergonomics, the threat of violence and problems, such as harassment and bullying, caused by a dysfunctional work community.

The employer may prepare the investigation with the help of the expertise available in occupational healthcare.

### **12.2.3. Work that causes particular risk**

If the assessment concerning the risks of a work indicates that the work may cause a particular accident or illness risk, the work in question may be performed only by an employee with the suitable qualifications and personal attributes, or another person working in the immediate supervision of the aforementioned employee. Other people's access to the hazardous area must be restricted.

If the work or the working conditions pose a particular risk to a pregnant employee or a foetus and if the risk factor cannot be eliminated, the employer must make an effort to transfer the employee to more suitable tasks for the duration of the pregnancy.

### **12.2.4. Planning of working environment and work**

When planning the structures of the working environment, production methods and the use of machinery or substances hazardous to health, the employer must account for the effect that they have on employees' health and safety.

The planning and designing (proportioning)

of work must take into account employees' physical and mental capabilities. The goal is to avoid harmful workload factors.

The aim of the provision is for the examination of the relationship between a work's requirements and employees' mental and physical capabilities to take place as early as during the work's planning stage. The relationship must be balanced.

Workload factors vary between different tasks. Examples of harmful workload factors include poor ergonomics/work postures, an excess of physical and mental stress and information overloads. Unreasonable time pressures at work and exceptionally frequent work-related travel that takes place outside working hours may become harmful stress factors for the employee.

### **12.2.5. Teaching and guidance**

An employer must provide an employee with sufficient information about the workplace's hazard and risk factors and give the employee adequate orientation to the work, working conditions, work and production methods, the use of tools and safe work practices.

### **12.2.6. Cooperation**

Occupational safety is a matter to be managed in cooperation by the employer and the employees. Employees have the right to make suggestions in matters concerning the safety and healthiness of the workplace to the employer. The employer must respond to such suggestions.

### **12.2.7. Occupational health and safety committee**

A workplace in which at least 20 people work on a regular basis must establish an occupational health and safety committee (section 38 of the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Health and Safety at Workplaces). An

occupational health and safety committee is the employer's and employees' joint body on occupational health and safety matters, and its task is to promote the safety and healthiness of work at the workplace. An occupational health and safety committee may also be established in a smaller workplace and the establishment of more than one occupational health and safety committee in the same workplace is also possible if the number of employers or employees, the nature of the work or the working conditions give reasons for doing so and if it is agreed to at the workplace.

An occupational health and safety committee is selected for two years at a time and will include representatives selected by the employer, employees and white-collar employees. An occupational health and safety committee is composed of four, eight or twelve members, unless otherwise agreed. Likewise unless otherwise agreed, a quarter of the representatives will be the employer's representatives and three quarters of the representatives will be the personnel's representatives. A half of the representatives will be selected from among the employees in the event that they outnumber the white-collar employees, and vice versa. A quarter of the representatives will be selected from among the smaller personnel group.

The matters to be dealt with in the context of occupational health and safety co-operation are specified in section 26 of the aforementioned Act. Such matters include

- any matters with an immediate effect on the safety and health of employees and any changes thereto;
- the principles and manner of investigating risks and hazards at the workplace and any matters that come up in the aforementioned investigation and workplace survey carried out by occupational healthcare that have a general effect on the safety and health of employees;
- development targets and programmes

connected to measures aiming to maintain a capacity to work or that support the continuance of work and other measures connected to the health and safety of employees;

- matters related to the organisation of work and workloads that have an effect on the health, safety and working capacity of employees and any material changes thereto;
- the need and arrangements for training, guidance and induction to be given to employees pursuant to Acts enforced by the occupational safety and health authorities;
- statistics and other follow-up information relating to the work, work environment and the state of the work community and describing safety and health at work;
- follow-up of how the aforementioned matters have been carried out, and follow-up of their effects.
- The matters should be discussed in good time with regard to the objectives of the co-operation, taking into account their preparation and implementation schedule.

### **12.3. Employee's occupational health and safety obligations and rights**

**THE OCCUPATIONAL** Safety and Health Act imposes obligations on the employee, too. An employee must comply with the instructions and rules given by the employer. In all other respects as well, the employee must adhere to orderliness, cleanliness, carefulness and caution to maintain safety and healthiness. The employee must also, by the means available to him or her, take care of his or her own safety and health and the safety and health of other employees.

The employee must avoid the harassment and other inappropriate treatment of other employees that is harmful for their safety or health.

### 12.3.1. Elimination of shortcomings and reporting them

An employee must, without delay, inform the employer and an occupational health and safety representative of any shortcomings or defects in, for instance, working conditions, methods and tools, if they have the potential to risk employees' safety. The employee must also, insofar as possible, eliminate any shortcomings he or she detects that pose an obvious risk. Such cases also warrant a report.

For its part, the employer must inform the employee who made the report and the occupational health and safety representative of the measures undertaken or intended to undertake in the case in question.

### 12.3.2. Right to refrain from work

If the work poses a serious risk to an employee's own or other employees' life or health, the employee has a right to refrain from the work in question. This must be reported to the employer. The right not to perform the work in question continues until the employer has eliminated or removed the risk factors or otherwise seen to safe working.

Refraining from work may limit working only to the extent necessary for the safety and health of work.

### 12.4. Avoiding the stress factors of work

**IF AN** employee is found to be stressed in work up to a point that risks his or her health, the employer must, when it becomes aware of the matter, take action to investigate the stress factors and avoid the risk with the means available to the employer. Stress factors may include erroneously dimensioned tools, work premises and tasks. Such factors may also include continuously stressful work or some other reasons attributable to the work's content, or shortcomings in the management of work, working

hours or the organisation of work. Any harassment or other inappropriate treatment directed at an employee and harming or risking his or her health also constitutes a stress factor. If the work demands uninterrupted presence or is continuously stressful, a possibility for breaks that enable the employee to leave the workstation for short periods of time must be arranged.

### 12.5. Workstation ergonomics and work involving display screens

**THE STRUCTURES** of workstations and the tools used must be selected, dimensioned and placed ergonomically. Insofar as possible, they must be adjustable and, in terms of their operating characteristics, be of the kind that does not cause harmful loads or stress.

Harmful loading factors caused by work performed with display screens must be reduced up to a point where the work in question is as safe as possible. A workstation must be organised in the appropriate manner from an ergonomic point of view. In addition, one must take into account possible risks caused to eyesight and any harmful loads and stress, be it mental or physical in nature.

More detailed provisions on the organisation of work performed with the help of display screens and on requirements set for the workstations, technical equipment, auxiliary equipment and software used in display screen work may be issued by Government Decree.

### 12.6. Threat of violence and harassment

**IN WORK** that entails an evident threat of violence, working conditions must be arranged in such a manner that, insofar as possible, any incidents of violence are prevented in advance. The workplace must have the security arrangements and devices necessary to prevent violence and a possibility to summon help.

The employer must draw up procedural instructions for work and a workplace such as this. The procedural instructions pay attention to the management of threatening situations and on practices that enable the prevention or restriction of a violent incident's effects on occupational safety. The functionality of the security arrangements and devices must be checked whenever necessary.

According to the Occupational Safety and Health Act, the employer is primarily accountable for the work community being free of harassment or other inappropriate treatment that risks an employee's health. In addition, the Occupational Safety and Health Act obligates employees themselves to avoid any kind of harassment or other inappropriate treatment directed at other employees. Thus both parties respectively are responsible for the conditions of the workplace.

The Act does not define the concept of harassment or inappropriate treatment. Harassment may mean pressure, insults, exclusion, name-calling or sexual harassment directed at an individual. Harassment may also be physical. Extreme cases involve offences sanctioned in the Criminal Code such as assault, sex offences, defamation and work discrimination. The subject of harassment in a work community may be an employee or a person in a supervising position.

A supervisor's work-related orders or decisions made within the framework of his or her right of direction do not constitute inappropriate treatment. Nor are any disputes or disagreements concerning interpretations related to work usually harassment as referred to in law.

The employer has a statutory obligation to monitor the state of the work community and make observations about it. When observing harassment, the employer must immediately take action to prevent the behaviour.

If, for example, an employee treats another employee inappropriately, the latter must first himself or herself clearly indicate to the employee that his or her behaviour is unacceptable. If the situation is not remedied as a result, the matter must be reported to the closest supervisor. In practice, 'employer' means the closest super-

visor in the work community in question. The victim of inappropriate treatment or harassment may also report the matter to HR management, an occupational health and safety representative or a shop steward. The employer may also receive the relevant report through occupational healthcare. Taking action is nevertheless always the employer's responsibility. The matter and course of events must be investigated impartially, after which the remedial measures are determined. The supervisor must remember to treat employees equally in all situations. The workplace having pre-confirmed rules and procedures for harassment situations of which everyone is aware clarifies harassment incidents and makes intervention easier.

When the bully or harasser is a customer or some other outsider, the employer's opportunities to get involved are more limited. In spite of this, it is the employer's duty to discuss the matter within the work community and to seek a solution on how to put a stop to the harassment by giving instructions on what to do in similar situations in the future.

## **12.7. Lone working and night work**

**AN EMPLOYER** must ensure that a hazard or risk caused by lone working is avoided or that it remains as minor as possible. The employer must arrange an opportunity for necessary communications between the employee and the employer's representative or other employees. The employer must also ensure that the lone worker can summon help when necessary.

A risk assessment may indicate that lone working cannot be considered acceptable in certain tasks. This may be the case if the workplace has been subject to numerous robberies within a short period of time, for instance.

An employee who works nights must, when necessary, be given the opportunity to change his or her tasks or to perform daytime work, should this be necessary to prevent the risk that the nature of the work in question causes to the employee's health

## **12.8. Provisions concerning the structures of the workplace and working environment**

### **Ventilation and volume of workroom**

The workplace must have a sufficient volume of breathable air.

The workplace's ventilation must be adequately efficient and functional.

The volume and area of the workroom must be sufficient. The room must also contain enough space for the performance of work and any mobility required by the work.

### **Lighting**

The workplace must be furnished with suitable and sufficiently effective lighting. Employees' ageing is one of the factors that must be accounted for when arranging lighting. The lighting may not cause a disturbing glare. Insofar as possible, enough natural light must be let into the workplace.

### **Airborne impurities**

If airborne impurities such as dust, smoke, gas or vapour occur in the workplace to a degree which is injurious or disturbing to the employees, their spread should be prevented, as far as possible, by isolating the source of the impurity or by placing it in a closed space or equipment. The airborne impurities should be collected and removed to a sufficient degree by means of ventilation.

### **Chemical, physical and biological hazards**

An employee's exposure to chemical agents that cause risk or hazard must be limited. It is particularly important to ensure protective measures necessary for the prevention of poisoning, oxygen deficiency or other serious risk. This also applies to exposure to physical and biological agents.

### **Staff facilities**

Adequate and appropriately furnished facilities for washing, dressing and the keeping of clothes as well as dining, break and toilet facilities and other personnel facilities must be located

within the workplace premises or in its immediate vicinity. When assessing the adequacy of the premises, one must take into account the nature and duration of the work as well as the number of employees.

## **12.9. Special situations of organising work**

### **Shared workplace**

If one employer exercises the main authority at a workplace and if more employers than one or more self-employed workers than one operate there simultaneously or successively, the employers and self-employed workers must, taking the nature of the work and activities into consideration, each for their part and together ensure that their activities do not endanger the employees' safety and health.

The employer exercising the main authority must ensure that an external employer is provided with the necessary information and instructions concerning the workplace's hazards and risk factors and policies relating to occupational health and safety. The external employer must inform the other employers of any hazard and risk factors that its operations may cause in the shared workplace.

### **Obligations of the employer exercising main authority**

The employer exercising the main authority in a shared workplace must see to:

- the coordination of work performed by the employers and self-employed workers in the workplace;
- the organisation of the workplace's traffic and access arrangements;
- the workplace's general orderliness and cleanliness;
- the general planning of the workplace;
- the general safety and healthiness of the work conditions and work environment.

# 13. Equal Treatment in Working Life

An employer's obligation to treat all of its employees and job applicants equally is provided for in both the Employment Contracts Act and the Non-Discrimination Act. Gender equality in working life is discussed in chapter 14.

The Non-Discrimination Act applies to both public and private activities. The case may involve the conditions for access to self-employment or means of livelihood, recruitment conditions, terms of employment and working conditions, personnel training and promotion, access to training or membership or involvement in an organisation of workers or employers.

Employment Contracts Act (55/2001)

Non-Discrimination Act (21/2004)

## 13.1. Definition of discrimination

**ACCORDING TO** the Employment Contracts Act, an employer may not, without justifiable grounds, place employees in an unequal position on the basis of age, health, national or ethnic origin, sexual orientation, language, religion, opinion, family relations, trade union activity, political activity or some other comparable reason. However, this list included in the Act is not exhaustive and some other comparable factor may also be discriminatory. According to a Government Bill, such other prohibited bases for discrimination include race, skin colour, disability, social background and belief/conviction. Place of residence, wealth or social status may furthermore constitute prohibited bases for discrimination.

A case involves discrimination as referred to in the Employment Contracts Act only when the employer knowingly places an employee in an unequal position on the basis of a reason mentioned in the Act. In other words, some degree of causality between the employer's awareness and the implemented measure must exist.

Terms of employment less favourable than in other employment relationships may not be applied in fixed-term and part-time employment relationships solely due to the duration

of the employment relationship or the length of working hours, unless this is justifiable due to appropriate grounds.

The employer must treat its employees equally in all other respects as well, unless deviating from this is justifiable when considering the employees' tasks and position. This requires the employer to exercise a certain degree of consistency in its activities and decisions concerning employees. However, at times it may be acceptable and appropriate, due to the nature of the work or working conditions, to place an employee in a unequal (different) position. It should be noted that the requirement of equal treatment does not prevent the use of incentive remuneration schemes, provided that the schemes do not include discriminatory or otherwise inappropriate determination grounds.

Employers must also adhere to the prohibition of discrimination of the Employment Contracts Act when recruiting employees.

The Non-Discrimination Act also applies to recruitment conditions, working conditions, benefits and career advancement. The Non-Discrimination prohibits both direct and indirect discrimination. Harassment and instructions or an order to discriminate are also defined as prohibited discrimination.



### 13.2. What is discrimination?

ACCORDING TO the Non-Discrimination Act, discrimination means:

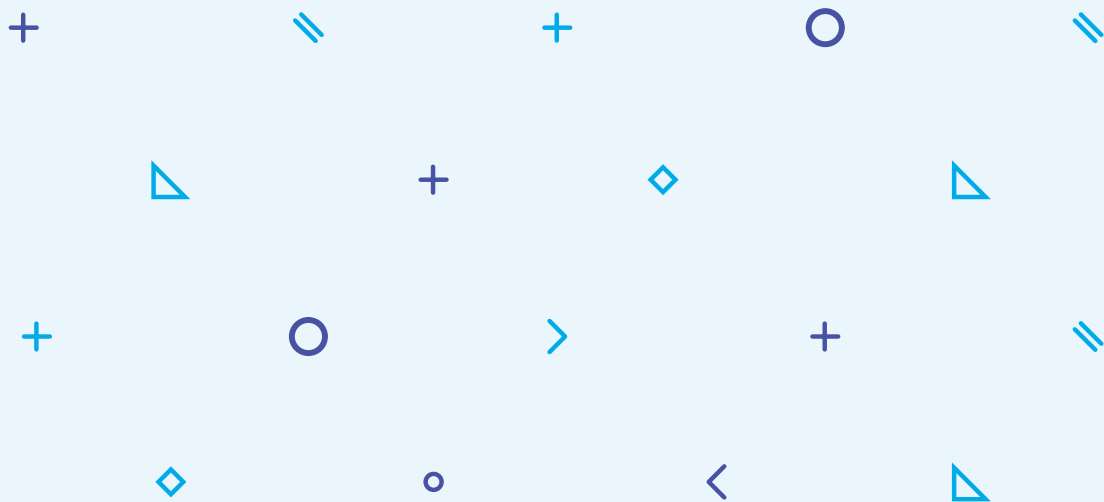
- the treatment of a person less favourably than another person is treated, has been treated or would be treated in a comparable situation;
- that an apparently neutral provision, criterion or practice puts a person or group at a particular disadvantage in comparison to others, unless said provision, criterion or practice has an acceptable aim and the means used are appropriate and necessary for achieving this aim;
- the deliberate or de facto infringement of the dignity and integrity of a person or a group of people by the creation of an intimidating, hostile, degrading, humiliating or offensive environment; or
- an instruction or order to discriminate.

No one may be subjected to negative consequences because he or she has complained about or taken measures to ensure equality.

### 13.3. What does not constitute discrimination?

A PROCEDURE based on an equality plan and intended to implement the intention of the Non-Discrimination Act in practice is not discrimination. Nor is justified different treatment that is founded on a genuine and decisive requirement relating to a specific type of occupational activity and the performance of said activity discrimination. Different treatment based on age may be permissible when it has a justified purpose that is objectively and appropriately founded and derives from employment policy, labour market or vocational training or some other comparable justified objective. Different treatment may also be permissible when it arises from age limits adopted in qualification for retirement or invalidity benefits within the social security system.

The Act does not prohibit what is generally referred to as positive discrimination. This means placing certain groups at an advantage compared to other groups so as to prevent the disadvantages caused by discrimination, but only if other people are not discriminated against as a result. The nature of such specific measures must be temporary and proportionate to the objectives.



### 13.4. Period for instituting proceedings and consequences

**AN EMPLOYER** that has violated the prohibition on discrimination in the Non-Discrimination Act is obligated to pay compensation to the injured party. Depending on the severity of the infringement, the maximum amount of compensation is €17,800, but this can be exceeded for a special reason. The compensation is exempt from taxes if it has been awarded by a court of law or if the court of law has confirmed a settlement concerning it. The claim for compensation must be filed within two years of the infringement or, if the infringement has been continuous, within two years of its cessation.

However, in recruitment situations the action must be instituted within a year of the job applicant discriminated against having received notification of the recruitment decision.

The compensation will be claimed in a district court. An award of compensation does not prevent the institution of action for damages to be paid for an unlawful termination. A

court may also, in a case it is processing, change or ignore contractual terms that are contrary to the Non-Discrimination Act. A commitment relating to the size of a remuneration is also such a contractual term. A court may decide to change a discriminatory term of remuneration ex post facto. If the nature of the contract is such that its validity is not reasonable due to the change or disregard of a contractual term, the contract may also be changed in other respects or ordered to become void.

An employer that has violated the prohibition on discrimination in the Employment Contracts Act must compensate the employee for the damage thus caused. The claim for damages must be filed within two years of the infringement.

The consequences for discrimination in working life may also include a fine pursuant to the Criminal Code or a term of imprisonment not exceeding six months. The occupational health and safety authority is responsible for supervising equality in working life and for providing advice related to equality issues.



# 14. Equality Between Women and Men in Working Life

The purpose of the Act on Equality between Women and Men is to prevent gender-based discrimination and to promote equality between women and men and thus to improve women's status, particularly in working life. Chapter 13 contains information on an employer's duty to treat all its employees equally.

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

## 14.1. Scope of application

**IN ADDITION** to employment and civil service relationships, the scope of the Act also covers other legal relationships comparable to employment and civil service relationships and contract work.

The Act on Equality between Women and Men is applied to independent workers, practitioners and freelancers when the individual in question derives income mainly through his or her skills alone. A further criterion requires work to be performed in conditions similar to those in employment relationships.

The scope of the Act also encompasses the managing directors of limited liability companies and cooperative societies, as long as they are not the company's owners at the same time. In such cases, the clients or principals of the aforementioned persons are subject to the provisions of the Act on Equality between Women and Men concerning employers.

The Act's employer provisions also apply to a company that hires labour from another employer (user enterprise) when the company exercises the authority of an employer. The user enterprise is obligated to prevent harassment and to intervene in any harassment of which it becomes aware. It is obligated to distribute tasks in such a way that individuals are not placed in unequal positions on the basis of gender. However, the user enterprise is not responsible for the decisions that the company that hires out the labour makes in its capacity as an employer. If, for example, the employment relationship of a pregnant employee of the company that hires out labour is terminated, the party responsible for this is the company that hires out labour.

## 14.2. Authorities' duty to promote gender equality

**IN ALL** their activities, authorities must promote equality between women and men purposefully and systematically. They must create and consolidate administrative and operating practices that ensure the advancement of equality between women and men in the preparatory work undertaken on different matters and in decision-making. In particular, circumstances that prevent the attainment of gender equality must be changed.

The promotion of equality between women and men must be taken into account in the availability and supply of services. This refers to the services provided by an authority or a private entity which the authority offers as public services. Examples include social, educational, cultural, employment, traffic and leisure time services, whether they are statutory or discretionary. The promotion of equality in the supply of services refers, for example, to an equal consideration of the needs, appreciations and interests of women and men.

## 14.3. Employer's duty to promote gender equality

**EVERY EMPLOYER** must promote equality between women and men within working life in a purposeful and systematic manner.

In order to promote gender equality in working life, the employer must, with due regard to the resources available and any other relevant factors:

- act in such a way that job vacancies attract applications from both women and men;
- promote the equitable recruitment of women and men in the various jobs and create for them equal opportunities for career advancement; and
- promote equality between women and men in the terms of employment, especially in pay.

On the basis of the salary statistics included in the pay survey explained in more detail below, the employer is obligated to operate in a way that allows for the review and adjustment of the possible wage discrimination situations revealed by the statistics.

- The employer must develop working conditions to ensure they are suitable for both women and men.
- The employer must facilitate the reconciliation of working life and family life for women and men by paying attention especially to working arrangements.

In practice, the two aforementioned points refer particularly to working hour and annual holiday arrangements as well as to the granting of family and job alternation leave.

The employer must, insofar as possible, take into account the needs related to employees' family situations. The provision does nevertheless not interfere with the employer's right to supervise work.

- The employer has a duty to act in a manner that prevents the occurrence of discrimination based on gender. This also applies to sexual harassment. The employer must nevertheless operate in a preventive manner in relation to discrimination of another kind, too.

## 14.4. Gender equality plan

**IF AN** employer regularly has a personnel of more than 30 employees, it must draw up a gender equality plan annually. The plan must include measures concerning particularly pay and other terms of employment that promote gender equality. The gender equality plan may be incorporated into a personnel and training plan or an occupational safety and health action plan. The plan aims to instil the equality perspective and mindset into all planning, preparation and decision-making concerning the personnel and the working environment.

The gender equality plan must be drawn up in cooperation with personnel representatives. Its preparation is subject to the Act on Co-operation within Undertakings.

### 14.4.1. Content of gender equality plan

- An assessment of the gender equality situation in the workplace, including details of the employment of women and men in different jobs and a survey of the grades of jobs performed by women and men, the pay for those jobs and the differences in pay.

The gender equality situation can be investigated by, for instance, studying recruitment practices and the principles of recruitment as well as statistics on pensions, training days, family leave, industrial accidents and absences due to illness. The gender equality situation may also be gauged with the help of a workplace climate survey. This allows the employer to investigate attitudes towards gender equality, the occurrence of harassment and problems related to the reconciliation of family and working life.

The investigation can function as a basis for the joint decisions of the employer and personnel representatives on measures to promote gender equality and on how to implement such measures. However, the employer is nevertheless responsible for the gender equality plan

meeting the requirements of law and for the plan to contain an analysis of the employment of women and men in different jobs and a pay survey.

The pay survey must cover all of the employer's employees across the borders of personnel groups. Its scope must also encompass part-time and fixed-term employees. The survey is drawn up in such a way that it does not indicate the salaries of individual employees. A pay survey does not require an assessment of the degree of difficulty of various tasks. The pay survey will enable the employer-specific processing of pay data between different industries.

It will provide shop stewards with up-to-date information about women and men in various job categories and job groups across the range of collective agreements. The information will also allow the effective initiation of measures aiming to remedy individual pay discrimination situations.

- Planned measures for promoting gender equality and achieving equality in pay.

The purpose of the measures is to improve the equal career development opportunities of women and men and to implement equality in on-the-job training, working conditions, pay and the equitable use of family leave. The measures may also influence attitudes towards gender equality and harassment. In addition to the measures, it is important to agree on goals, means and schedules.

Even though the gender equality plan is drawn up annually, it can include both short-term and long-term goals. Short-term goals may include the improvement of working conditions, for example. Long-term goals may consist of increasing the number of women in management positions or the elimination of unfounded differences in pay.

- A review of the extent to which measures previously included in the gender equality plan have been implemented and of the results achieved.

The review is employed in monitoring the

realisation of the plan, but also a basis for the next year's plan.

The employer and employees may agree that an investigation of the gender equality situation and a pay survey be conducted at least once every three years instead of the annual review.

## **14.5. Direct and indirect discrimination on the basis of gender**

**BOTH DIRECT** and indirect discrimination based on gender is prohibited.

Direct discrimination means treating women and men differently on the basis of gender or for reasons of pregnancy or childbirth.

If an employer does not intervene in harassment of which it has become aware, for example, the case involves prohibited discrimination, i.e. different treatment on the basis of gender.

When the reason for the discrimination is pregnancy, the person is being treated less favourably than some other person on the basis of gender. The comparison requires a comparable situation between the persons, and it can be done in relation to a previously prevalent or purely hypothetical treatment.

In indirect discrimination, the reason may, at first glance, seem gender neutral. Indirect discrimination nevertheless takes place if such action actually puts persons at a disadvantage on the basis of gender.

The expression "based on gender/on the basis of gender" also covers grounds with an indirect link to gender, such as family responsibilities and parenthood. In such cases, the comparison is not directed at persons of the opposite sex, but at persons to whom the grounds in question does not apply.

The Act on Equality between Women and Men includes a special legal justification applicable to both situations involving direct and situations involving indirect discrimination. The actions found discriminatory above do not constitute discrimination if they aim at an acceptable goal and if the means chosen are appropriate and necessary in relation to that goal.

## 14.6. Gender discrimination in working life

**THE PROHIBITION** of discrimination in the Act on Equality between Women and Men is complemented with a provision concerning discrimination in working life. The actions of an employer constitute discrimination prohibited under the Act on Equality between Women and Men in, for example, the following cases.

- Upon employing a person or selecting someone for a particular task or training, the employer bypasses a more qualified person of the opposite sex in favour of the person chosen.

This is not, however, considered discrimination if the employer's action is attributable to some other acceptable reason and not due to gender, or if the action is based on weighty and acceptable grounds related to the nature of the job or the task.

The wording "other acceptable reason and not due to gender" refers primarily to a difference in the personal suitability of the selected person and the person who was not selected.

"Weighty and acceptable grounds related to the nature of the job or the task" must have a close and appropriate connection to the work or task to be performed. Given that this involves an exception to a right conferred on an individual, the legal justification must be interpreted narrowly: only grounds acceptable according to common standards can justify a departure from the equality requirement in selection situations.

- The employer, upon employing a person or selecting someone for a particular training or determining the terms of an employment relationship, acts in such a way that the person finds himself or herself in a less favourable position on the basis of pregnancy or childbirth or for some other gender-related reason.

It is worth noting, in this respect, that the prohibition of discrimination is also applied when

making decisions concerning the employment relationship's pay and other terms of employment.

- The employer applies the pay and other terms of employment in such a way that, due to his or her gender, the employee finds his- or herself in a less favourable position than another employee in the employer's service performing the same work or work of equal value.

The comparison may also involve a hypothetical employee, provided that the employer's treatment of this person can be shown.

For example, the terms of employment of employees who have taken family leave may not be weakened when they return to work (from the family leave). The employee who returns to work must be provided with all improvements to the terms of employment implemented during the absence.

- The employer manages the work, distributes tasks or otherwise arranges the working conditions in such a way that one or more employees find themselves in a less favourable position than other employees on the basis of gender.

The Employment Contracts Act provides for the right of the employee who returns from family leave to return to work.

- The employer gives notice on, cancels or otherwise discontinues an employment relationship, or transfers or lays off one or more employees on the basis of gender.

The employer is not considered to have violated the discrimination prohibition referred to in subsections 2–5 of the Act if the purpose of the action is to achieve an acceptable goal and if the means chosen are acceptable and necessary in relation to this goal.

## 14.7. Sexual and gender-based harassment

**SEXUAL HARASSMENT** and harassment based on gender, as well as an order or instructions to engage in gender-based discrimination constitute discrimination as referred to in the Act on Equality between Women and Men.

Sexual harassment, which means harassment and abuse of sexual nature, is prohibited discrimination. Harassment based on gender, i.e. unwanted behaviour that is based on gender but not sexual in nature, is also prohibited. Such cases may involve degrading speech targeting the opposite sex and other degrading or demeaning of the opposite sex. When workplace bullying is based on the gender of the bullied person, the case constitutes prohibited harassment based on gender.

An order or instructions to engage in gender-based discrimination also constitutes discrimination. The person guilty of discrimination is the person in a position of authority who gives the order, regardless of whether this order leads to a discriminatory action or not.

### 14.7.1. Harassment in workplaces

**THE EMPLOYER** must intervene in sexual or gender-based harassment of which it has become aware. Should the employer fail to take action to eliminate or remove the harassment, its failure constitutes discrimination prohibited under the Act on Equality between Women and Men. The employer's obligation applies to the harassment met by an employee at work. Situations outside work and working conditions remain beyond the scope of this obligation.

The harasser holds primary responsibility for the harassment. The responsibility for the elimination of the harassment transfers to the employer when it has been made aware of the harassment. The employer may confront the harasser over the behaviour and prevent him or her from continuing the harassment.

The harasser may sometimes be the emplo-



yer, such as a managing director or a member of the board of directors. In such cases, the person harassed need not make a separate report about the harassment to another representative of the employer for the action to be considered prohibited discrimination. In such cases, the harassed person does have an obligation to express to the harasser how offensive and unpleasant such behaviour is, unless there are special reasons for not doing so. In the event that the employer neglects its duty to eliminate sexual harassment or molestation, the case constitutes prohibited discrimination that falls within the scope of a compensatory consequence.

### **14.8. Employer's countermeasures**

**THE ACTION** of an employer also constitutes discrimination prohibited under the Act on Equality between Women and Men if a person is given notice or otherwise treated less favourably after she or he has appealed to a right or obligation laid down in said Act or taken part in investigating a matter concerning gender discrimination.

Any witnesses and persons who provided assistance in the matter are also protected against countermeasures. The protection against countermeasures also concerns the time subsequent to an employment relationship. The employer's countermeasure targeted at a former employee constitutes discrimination resulting in a compensatory consequence also when it occurs once the employment relationship has already ended. It is also prohibited to target countermeasures at a job applicant who has applied for a job with the employer earlier and appealed to the Act on Equality between Women and Men at the time. Due to the countermeasures, the compensatory consequence (penalty) may only be sentenced as payable by the employer.

### **14.9. Actions that do not constitute discrimination as referred to in the Act on Equality between Women and Men**

**THE SPECIAL** protection of women because of pregnancy or childbirth does not constitute discrimination based on gender as referred to in the Act on Equality between Women and Men. The special treatment of women is allowed only on the grounds of protection. Even in such cases, the need for special protection may not lead to discrimination. The different treatment of women and men due to biological differences is allowed only when the reason for it is the protection of the woman or foetus because of reasons related to health or safety.

Nor does an action based on a plan aiming to implement the Act on Equality between Women and Men constitute gender-based discrimination.

### **14.10. Burden of proof**

**WHEN A** matter in which a person claims to have been discriminated against on the basis of gender is considered in a court of law or by another competent authority, the defendant must prove that equality between women and men has not been violated, but that the action has been based on some other acceptable reason and is not due to gender. The provision does not apply to a criminal matter, in which the burden of proof lies solely with the injured party.

The principal rule in matters concerning the Act on Equality between Women and Men is the principle of the allocation of burden of proof. The plaintiff's burden of proof is reduced with regard to facts in terms of which conventional requirements of evidence endanger the effective implementation of discrimination prohibitions and which are known to or may be decided upon by the defendant, in which case the defendant is in a better position to prove them than the plaintiff.

The burden of proof on the employee who is



the plaintiff has been reduced in such a manner that if, in a matter concerning pay discrimination for example, a female employee proves, in terms of comparatively many employees, that the average pay of female employees is lower than that of male employees, it is for the employer to prove that its salary payment practice is not discriminatory.

### **14.11. Employer's obligation to report on its action**

**AN EMPLOYER** must, upon request and without delay, provide anyone who considers that she or he has been discriminated against in, for example, recruitment, a written report on its actions.

A shop steward or some other representative of the employees has an independent right to information related to an individual employee's pay and terms of employment at the employee's consent, when there is reason to suspect pay discrimination based on gender. The shop steward or other employee representative has the right, in cases involving suspected pay discrimination, to gain access to information concerning an employee group without the employees' consent. The information pertains to the group's average wages. The employee representatives may not disclose information pertaining to pay and terms of employment to others. Chapter 14.14 addresses the disclosure of information to equality authorities in more detail.

The report may not include information about health or any other information concerning personal conditions without the consent of the person in question.

### **14.12. Compensation according to the Act on Equality between Women and Men**

**THE VIOLATION** of prohibitions concerning, among other things, discrimination in working life, an employer's countermeasures and harassment in workplaces result in an obligation to

pay compensation to the injured party under the Act on Equality between Women and Men. The compensation is exempt from tax. However, if such compensation is agreed on without a settlement confirmed by a court of law, the compensation is taxable income.

The minimum amount of such compensation is €3,240. The sum may be reduced or it may not be collected at all if the violator's financial standing is poor and if the violator has made a genuine effort to prevent the discrimination. The compensation may be reduced in, for example, cases where the employer has drawn up a gender equality plan and the discrimination has become apparent when assessing the gender equality situation.

No maximum amount has been determined for the compensation, with the exception of a recruitment situation, in which case the maximum compensation to be paid is €16,210.

A determination of compensation must account for the severity of the discrimination as well as for its extent and duration. If the same action has already resulted in pecuniary consequences by virtue of some other act, this should also be taken into account.

The compensation does not constitute damages. Awarding it does not require the violator's intent or negligence, which may have significance when considering the amount of the compensation. The payment of the compensation does not prevent the injured party from also claiming damages for financial loss under the Tort Liability Act or some other Act, such as the Employment Contracts Act.

#### **14.12.1. Claim for compensation**

Compensation must be claimed by legal action brought at the district court within whose judicial district the employer has its domicile.

The action must be brought within two years of the discrimination prohibition being violated. In cases concerning recruitment, the period for claims is shorter: the action must be brought within a year of the violation of the discrimination prohibition.

All claims for compensation pertaining to the same action must be dealt with in the same proceedings as far as possible.

### **14.13. Prohibition of discriminatory vacancy announcements**

**ANNOUNCEMENTS OF** job vacancies or education or training places may not invite exclusively applications from either women or men, unless there is a weighty and acceptable reason for doing so related to the nature of the job or task, or unless it is based on a plan aiming to implement the Act on Equality between Women and Men.

### **14.14. Provision of information to gender equality authorities**

**THE OMBUDSMAN** for Equality has the right to receive all information necessary for the supervision of compliance with the Act on Equality Between Women and Men from everyone. The Ombudsman must receive the information within a reasonable period of time specified by the Ombudsman. As a means of enforcing this obligation, the Ombudsman for Equality may impose a penalty payment, the payment of which will be ordered by the Equality Board (tasa-arvolautakunta).

Upon the request of an employee who suspects that pay discrimination has occurred, the shop steward or other employee representative has the right to obtain information on the pay and terms of employment of an individual employee. This information is received from the Ombudsman for Equality when the individual employee has not given his or her consent to the disclosure of pay information. The Ombudsman for Equality will request the information from the employer. At the same time, the employer is given a chance to present its opinion on the suspected discrimination. The Ombudsman for Equality delivers the information to the shop steward or other representative without delay

and in no case later than within two months of receiving the request. The prerequisite for such disclosure is the Ombudsman's assessment that there is reason for suspicion. If the Ombudsman for Equality refuses to give the requested information, the employee representative may bring the matter before the Equality Board.

The Ombudsman for Equality has the right to conduct a necessary inspection at the workplace if there is reason to suspect that actions contrary to the Act on Equality between Women and Men have been taken there.

### **14.15. Guidance and advice provided by gender equality authorities**

**ANYONE WHO** suspects that she or he has become the victim of discrimination as referred to in the Act on Equality between Women and Men may request guidance and advice on the matter from the Ombudsman for Equality. The guidance and advice should aim to prevent a continuation or recurrence of the unlawful practice.

Upon finding that an employer or educational institution is neglecting its obligation to draw up a gender equality plan despite the guidance and advice, the Ombudsman may impose a reasonable time limit within which the obligation must be met.

The Equality Board may prohibit the continuation of the action under threat of penalty, if necessary, when the case concerns a violation of the discrimination prohibition, the prohibition of discrimination in working life, the prohibition of harassment occurring in workplaces and the prohibition of discriminatory vacancy announcements.

At the request of the Ombudsman for Equality, an employer may be imposed with an obligation to draw up a gender equality plan. If necessary, this obligation may be enforced with a penalty payment.

# 15. Freedom of Association and Freedom of Assembly

The Constitution of Finland contains general provisions on the freedom of association. Alongside the Constitution of Finland, Chapter 13, section 1 of the Employment Contracts Act provides for occupational freedom of association. In addition, the right is recognised in YTN's collective agreements. The Constitution also guarantees everyone the right of assembly, or the right to organise meetings and the right to participate in them.

The Constitution of Finland (731/1999)  
Employment Contracts Act (55/2001)

## 15.1. Freedom of association

**FREEDOM OF** association secures for both employees and employers the right to establish a lawful association, to belong and be active in such an association and, on the other hand, a right not to belong to an association.

Freedom of association also entails that the exercise of the freedom may not have harmful effects. This is provided for in, for instance, Chapter 2, section 2 of the Employment Contracts Act, according to which an employer may not, without a justified reason, treat employees differently due to membership in a trade union, and in Chapter 7, section 2 of said Act which concerns grounds for termination and according to which participation in the activities of an association or an industrial action pursuant to the Collective Agreements Act or executed by the association does not constitute acceptable grounds for termination.

Thus participation in trade union activities or not participating in them do not constitute justified grounds for dismissal, not being selected for a job or for different treatment in working life.

An agreement that restricts freedom of association – and therefore reduces the statutory rights of employees or the employer – is invalid by virtue of the Employment Contracts Act and does not have a binding effect.

In addition, any action contrary to the principle of freedom of association may lead to liability for damages and punishment. In addition, an employer that acts contrary to the discrimination prohibition may be obligated to pay a compen-

sation the amount of which should be equitable in relation to the seriousness of the action, as referred to in the Equality Act. The seriousness of the action is assessed by accounting for the nature, scope and duration of the infringement.

## 15.2. Freedom of assembly

**ON THE** basis of the aforementioned, employees, in addition to and alongside the freedom of association, have the right to organise meetings related to trade union activities without a permission given by their employer or some other party and a right to participate in such meetings.

The employer is, under the Employment Contracts Act, obligated to allow employees and their occupational organisations to use the employees premises free of charge for the purpose of managing occupational matters and matters related to employment relationships and workplace conditions as well as organisational activities during lunch and other breaks and outside working hours, provided that the employer has premises suitable for such activities in the first place and that the exercise of freedom of assembly does not cause inconvenience or harm to the employer's operations.

The employer's obligation to allow its premises to be used for the aforementioned purpose is independent of the number of employees and their degree of unionisation, due to which the employer must allow its premises to be used also by employees who do not belong in trade unions and form a minority of the workplace's personnel.

# 16. Personnel Representatives

Personnel representatives include shop stewards, employee representatives, contact persons, occupational health and safety representatives, personnel representatives in administration (see chapter 17), representative bodies in European Companies (see chapter 20) and cooperation representatives (see chapter 21). This chapter discusses the concept, (s)election and protection of a shop steward, employee representative, contact person and occupational health and safety representative.

Shop stewards and contact persons are personnel representatives based on collective agreements and may be selected only on the basis of a collective agreement. The position and selection of employee representatives and occupational health and safety representatives, on the other hand, are based on law.

Employment Contracts Act (55/2001)

Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006)

## 16.1. Shop steward

**SHOP STEWARD** usually means a representative selected by employees from among themselves on the basis of a collective agreement, whose task is to act as the representative of employees subject to a collective agreement – including, in other words, employees who are not organised or who belong to an employees association other than one which has made the collective agreement. Depending on the collective agreement in question, a shop steward can also be called an employee representative or contact person. Regarding YTN's bargaining sectors, a shop steward for senior salaried employees may be selected in the technology industry and in the design, consulting, energy, financing, information, chemical, data communications industries and in private sector laboratories.

A shop steward's primary task is to represent individual employees and employee collectives in matters concerning the application of labour legislation and collective agreements. In addition, the shop steward's tasks include the promotion of relations between the employer and the employees. The shop steward should also maintain the negotiation and cooperation activities between the company and its per-

sonnel. The shop steward must be present in discussions concerning the company's development.

The shop steward furthermore has some tasks provided for in labour legislation, such as representing employees in preparatory investigations, hearings and negotiations based on the Act on Co-operation within Undertakings leading up to lay-offs or terminations due to the scarcity of work as well as acting as an adviser to an individual employee in a hearing preceding the cancellation of an employment relationship and a notice attributable to the employee.

The shop steward also has the right, within the framework of the law and the collective agreement, to make local agreements that are binding on the senior salaried employees he or she represents. Such agreements may concern the arrangement of regular working hours, the employer's right to have additional overtime done and the temporary shortening of daily rest periods. In addition to collective (bargaining) agreements, the Act on Co-operation within Undertakings and the Working Hours Act, provisions on the tasks of shop stewards are included in many other Acts related to labour laws, such as in the Employment Contracts Act and the Annual Holidays act.

## 16.2. Employee representative

**IN THE** event that the employees of a particular personnel group in the employer company do not have a shop steward selected on the basis of a collective agreement due to the absence of a collective agreement or some other reason, these employees may, by virtue of the Employment Contracts Act, select an employee representative from amongst themselves.

The employee representative is tasked with taking care of the tasks of an employee representative provided in labour legislation. In addition, the employees may, with a separate majority decision, authorise the employee representative to represent them in matters pertaining to employment relationships and working conditions, defined in the decision in question. The relevant decision may be made as early as when selecting the employee representative.

An employee representative is secondary with regard to a shop steward selected on the basis of the collective agreement and the representative's field of duties is, as a rule, more limited than that of a shop steward. The tasks of an employee representative do not include the supervision of compliance with a collective agreement. Nor can the representative make a valid local agreement on the reduction of employees' benefits deriving from mandatory legislation on the basis of a provision in a generally applicable collective agreement.

## 16.3. Contact person

**FOR INDUSTRIES** that do not have a valid collective agreement between YTN and an employer's association/federation, senior salaried employees may choose from among themselves a contact person in accordance with the basic agreement between YTN and the Federation of Finnish Technology Industries adhered to by YTN and the Confederation of Finnish Industries (EK). The contact person acts as the representative of the senior salaried employees in employment relationship matters that concern the employees collectively and as the

representative of a personnel group referred to in the Act on Co-operation within Undertakings in matters pertaining to co-operation. A contact person selected on the basis of the basic agreement may represent senior salaried employees in issues related to individual employment relationships as well as in the making of a local agreement only pursuant to a separate authorisation.

Nor is the contact person qualified to manage the aforementioned tasks of an employee representative provided in law, unless he or she has also been selected to act as an employee representative by way of a separate procedure. A contact person is not protected against termination.

## 16.4. Occupational health and safety representative

**THE EMPLOYEES** of a workplace which regularly employs at least ten people must select from among their number an occupational health and safety representative and two deputy representatives for two calendar years at a time to represent the employees in co-operation related to occupational health and safety and in their relations with occupational health and safety authorities. The workplace's salaried employees have the right to choose from among their number their own occupational health and safety representative and two deputy representatives.

If employees working for different employers work in the same workplace, they have the right to elect a common occupational health and safety representative to represent them. If the workplace has a shop steward or contact person elected on the basis of a collective agreement or an employee representative as per the Employment Contracts Act, the occupational health and safety representative represents the employees solely in matters concerning the safety and healthiness of work, unless he or she has been elected to take care of both tasks.

The employer must ensure that the occupational health and safety representative and

deputy representatives are provided with the opportunity to receive suitable training on provisions and instructions pertaining to occupational health and safety and on other issues related to the management of the relevant tasks.

The planning and arrangement of the representative's training must be discussed in the appropriate manner and at an early enough stage between the employer and the employees or their representative. The training must take place during working hours, unless otherwise agreed in the collective agreement. The training may not incur costs to the occupational health and safety representative or the deputy representatives.

The occupational health and safety representative is entitled, for the purposes of carrying out his or her tasks, to review documents and lists which the employer must, according to occupational health and safety provisions, maintain. He or she also has the right to study opinions and research data concerning the safety and healthiness of work and to receive copies of all of the aforementioned documents. This also applies to the agreement on occupational healthcare made between the employer and the occupational healthcare service provider or a description drawn up by the employer on the occupational healthcare it organises as well as to the action plan for occupational healthcare.

The occupational health and safety representative may not neglect his or her obligations arising from the employment relationship due to the representative's tasks. The employer may not, without a valid reason, refuse to relieve the occupational health and safety representative from his or her regular work for such a reasonable period of time as is necessary for the representative to take of the representative's tasks. The employer must compensate the occupational health and safety representative for any loss of income attributable to the occupational health and safety tasks he or she has carried out during working hours.

The employer must pay a reasonable compensation for any necessary occupational health and safety-related tasks taken care of outside working hours and reported to the employer or its representative by the occupational health

and safety representative. The occupational health and safety representative is similarly protected against termination as a shop steward and employee representative is.

If work causes an immediate and serious threat to an employee's life or health, the occupational health and safety representative has the right, barring some limitations, to suspend the work with regard to the employees he or she represents. When possible, taking into account the nature of the risk and other conditions, the occupational health and safety representative must inform the employer or its representative of the suspension of work in advance and, in any case, as soon as this can be done in a safe way. The employer may order the work to continue after making sure that there is no risk. The employer must immediately inform the relevant occupational health and safety authority in writing of its actions and the grounds thereto.

## 16.5. Selection of personnel representatives

**BARRING** A few exceptions, YTN's collective bargaining agreements do not contain provisions on the selection method for shop stewards but, in principle, a shop steward can be selected with a vote or with a unanimous decision from among the candidates who have consented to the task and meet the criteria specified in the collective agreement.

Given that the vote can be executed in a number of different ways, it is advisable to choose the method best suited for the conditions of the workplace in question, such as an election meeting, a mail or e-mail vote or a ballot. However, when deciding the election method, one must make sure that the selected method guarantees all eligible senior salaried employees a chance to take part in the shop steward election.

Following the election, the employer, one's own association and YTN must be notified of the elected shop steward in writing. In the case of YTN, the notification is submitted via the e-services.

### 16.5.1. The technology industry and the consulting sector

In accordance with the collective agreement for senior salaried employees working in the technology industry, the shop steward's sphere of activities must be discussed in cooperation with the employer company's management before a shop steward and deputy shop steward is elected for the company or workplace for the first time. This is also the occasion for specifying the practical arrangement related to the election procedure.

The collective agreement for senior salaried employees in the consulting sector requires the need for a shop steward to be discussed when electing the shop steward and deputy shop steward for the first time. Such first-time elections also require an investigation of whether the company's or workplace's senior salaried employees support the election of a shop steward, since the election of a shop steward for a workplace requires the support of a substantial part of the senior salaried employees. YTN's other bargaining sectors do not have agreements on the aforementioned procedures, due to which they need not be complied with either.

Since an employer does not have the right to prevent the election of a shop steward, said election does not require the employer's consent or approval, even in the technology industry or the consulting sector, despite the fact that the need for a shop steward must be discussed with the employer. Nor does the aforementioned discussion need to be repeated on the occasion of subsequent shop steward elections.

In the technology industry and consulting sector, the shop steward for senior salaried employees is elected from among those senior salaried employees of the workplace who fall within the scope of the collective agreement and belong to the association bound by the agreement and familiar with the workplace's conditions. Thus the person elected as shop steward must belong to the personnel group of senior salaried employees and, furthermore, be a member of an YTN affiliate.

However, the election must be open to all senior salaried employees of the workplace, regardless of which association they have aligned with or whether they are organised at all. This being the case, senior salaried employees belonging to some association other than an YTN affiliate as well as unorganised senior salaried employees shall be given an equal chance to participate in the election of a shop steward in the technology industry and consulting sector.

In contrast, only senior salaried employees aligned with YTN affiliates are, in principle, eligible to take part in the election of a shop steward in the ICT, financing and private laboratory sectors.

### 16.5.2. Information technology service industry

In the information technology service sector, employees aligned with the employee associations (or the member associations thereof) that fall within the scope of the collective agreement elect a shop steward from among their numbers. This means that only employees that belong to the Association of IT Sector Employees or an affiliate of YTN may take part in the election of a shop steward. Employees aligned with other associations and unorganised employees cannot be elected shop steward or participate in the election of the shop steward.

An office-specific shop steward may be elected for an independent unit that has an employer representative who determines the terms of employment relationships and may hire and fire employees. The matter is reviewed with the employer prior to the election. However, the employer's consent is not a prerequisite for the election of an office-specific shop steward. A local agreement may allow for the election of more than one shop steward for the independent regional and operative units of a major or regionally decentralised company. The election of a chief shop steward is possible in a company with several shop stewards.

### 16.5.3. Election of employee representative

The employee representative is secondary in relation to the shop steward referred to in the collective agreement. An employee representative cannot be elected if the personnel group in question has a shop steward elected on the basis of a collective agreement binding on the employer by virtue of the Collective Agreements Act. The fact that any particular personnel group in the workplace has a shop steward elected on the basis of a collective agreement does not, primarily, prevent other personnel groups in the company from electing an employee representative for themselves. The company's senior salaried employees, for example, can usually elect themselves an employee representative, even if the other personnel groups would have shop stewards elected on the basis of a collective agreement.

An exception to this rule is a case where senior salaried employees cannot, for one reason or another, be clearly distinguished as their own personnel group and in which a shop steward pursuant to the collective agreement that is binding on the employer by virtue of the Collective Agreements Act has been elected from among the members of personnel. In such cases, senior salaried employees cannot elect an employee representative, even in the case that they would also have been ineligible with regard to the election of the shop steward according to the aforementioned collective agreement.

Legislation does not contain provisions on the election methods applicable to employee representatives. Rather, this has been left for the employees themselves to decide. However, an employee representative may only be elected from among the employees of the company in question and the employer must be notified of the election of the representative, because the provisions of the Employment Contracts Act that concern employee representatives and obligate the employer only become applicable as of the date on which the employer was notified of

the election or became otherwise aware of it. In addition to the employer, one's own association and YTN should also be notified of the election of an employee representative.

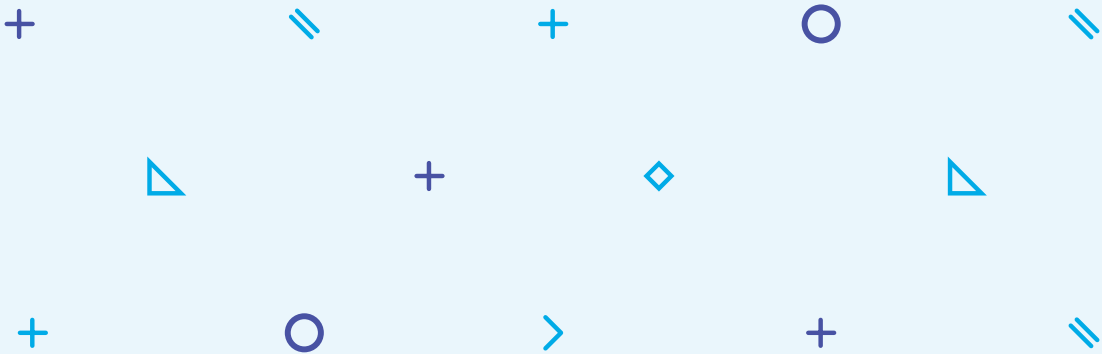
According to the basic agreement between YTN and the Federation of Finnish Technology Industries, before a contact person is elected for the first time, the need for one is subject to the same kind of discussions between company management and senior salaried employees as when electing a shop steward for the first time on the basis of the collective agreements for the technology industry and the consulting sector.

In addition, the election of a contact person for a workplace requires, as in the case of a shop steward, the support of a substantial part of senior salaried employees. In accordance with the basic agreement, a contact person is elected for a term of office no less than a year from among senior salaried employees familiar with the conditions of the workplace, and the employer must notified of the election.

It is advisable to also elect the contact person as the employee representative, so as to provide him or her with shop steward protection and the authority to negotiate and make agreements. Correspondingly, the person elected as employee representative should also be elected as contact person per the basic agreement to secure as broad a scope of authority as possible.

According to the collective agreements, such as those of senior salaried employees working in the technology and energy industries as well as the basic agreement between YTN and the Federation of Finnish Technology Industries, a shop steward and contact person's term of office must be at least a year long. Some collective agreements do not define the minimum length of a shop steward's term of office. The Employment Contracts Act does not contain provisions on an employee representative's term of office either. YTN nonetheless recommends that a shop steward, contact person and employee representative be elected for a two-year term of office always in the autumn of an odd-numbered year.





## 16.6. Ensuring the operating conditions of personnel representatives

**SHOP STEWARDS** elected on the basis of YTN's collective agreements must be provided with the information and operating conditions necessary to take care of the tasks. Shop stewards usually also have the right to use, in a manner agreed to in more detail locally, the company's normal office and other such equipment as well as IT devices, software and internet connections included, in carrying out their tasks. A shop steward must furthermore be given reasonable relief of work for the purpose of carrying out the tasks of a shop steward. He or she must also be provided with opportunities for career development comparable to those of other employees and the possibility to participate in training necessary for taking care of a shop steward's tasks in the manner usually defined in more detail in collective agreements.

### 16.6.1. Shop steward

The special job security created in the context of the Employment Contracts Act forms a material aspect of securing the operating conditions of a shop steward. A shop steward's employment contract may only be terminated – even in cases where sufficient grounds

for termination are met – if the majority of the employees he or she represents consent to the termination. In addition, the employment contract of a shop steward can only be terminated or the shop steward laid off if work in the company ceases entirely and he or she cannot be provided with other work that corresponds with his or her professional skills or is otherwise suitable for him or her, or if the shop steward cannot be trained for other work.

Depending on the collective agreement, the job security described above may have been extended to shop steward candidates and to people whose term as shop steward has come to an end. In such cases, a collective agreement's provisions pertaining to job security are also applied to the shop steward candidates defined therein as of the time the employer has been informed of this in writing, but at earliest three months prior to the beginning of the term of office of a shop steward candidate and up until the results of the election have been confirmed. The security that extends beyond a shop steward's term is valid for a period of six months after the term of office has ended.

➤ **Chapter 23.12 contains more information on protection against termination**

### 16.6.2. Employee representative

The Employment Contracts Act provides an employee representative with the same kind

of right as shop stewards to obtain from the employer the information necessary for the employee representative to carry out his or her tasks. The employee representative is furthermore entitled to enough free time from his or her own work to carry out the tasks of an employee representative and to be compensated for any possible resulting loss of income. However, relief from work for the purpose of taking care of non-statutory duties and the compensation for the resulting loss of income must be agreed to separately between the employer and the employee representative.

For his or her term of office, an employee representative is covered by the same kind of protection against termination and lay-off as a shop steward elected on the basis of a collective agreement, meaning that an employee representative elected by senior salaried employees working in an industry with no collective agreement is also covered by the scope of shop stewards' protection against termination.

However, pursuant to the Employment Contracts Act, an employee representative is not covered by a job security that extends beyond his or her term of office. Nor does the Employment Contracts Act provide those seeking the position of employee representative with a candidacy protection equivalent to that provided to shop steward candidates by collective agreements.

In addition to what is mentioned above on a shop steward and employee representative's special protection against termination and lay-off, it must be noted that the termination, dismissal or lay-off of a shop steward or employee representative contrary to the Employment Contracts Act is a punishable act for which the employer or its representative guilty of questionable action may be sentenced to a fine.

**> Chapter 23.12 contains more information on protection against termination**

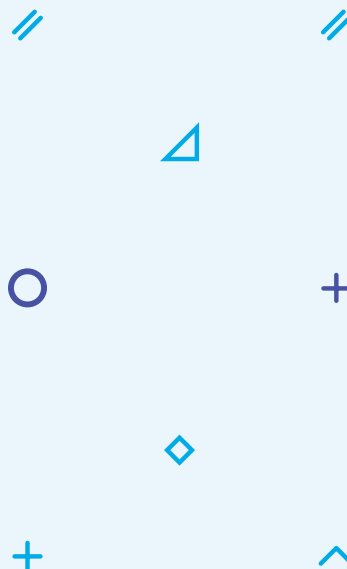
### 16.6.3. Contact person

According to the basic agreement between

YTN and the Federation of Finnish Technology Industries, a contact person of senior salaried employees is, in terms of his or her operating conditions, comparable to the representatives of other personnel groups. The employer must provide the contact person with the information necessary to handle local co-operation or any other task the contact person is responsible for at any given time according to the same principles as apply to the representatives of other personnel groups.

A contact person and a shop steward for senior salaried employees elected on the basis of a collective agreement must furthermore be provided once a year, at his or her request, with information on the first and last names, employment relationship commencement dates and department or equivalent of the senior salaried employees working in his or her sphere of activities and, when separately requested, information on any new senior salaried employees.

A contact person elected on the basis of the basic agreement does not have special job security, as do shop stewards and employee representatives. It is therefore of primary importance to the contact person's operating conditions to elect him or her as employee representative on the same occasion.



# 17. Representation in the Administration of Undertakings

The purpose of personnel representation in the administration of undertakings is to develop a company's (undertaking's) operations, improve the cooperation between the company and its personnel and increase the personnel's possibilities to exert influence. Because of this, the personnel has the right to participate in the discussion of important issues related to the company's business operations, finances and the personnel's status in the company's decision-making, executive, supervisory or advisory bodies.

The relevant Act applies to a Finnish company that regularly employs at least 150 people in Finland. The personnel representation can be organised in two different ways. The principal way is to arrange the representation by agreeing on the forms of representation between the personnel and the company's management. If agreement over representation is not reached, the personnel has the right to request that the representation be implemented as provided in the Act.

Act on Personnel Representation in the Administration of Undertakings (725/1990)

## 17.1. Personnel representation based on agreement

**THE AGREEMENT** on personnel representation in the administration is made between the personnel and the employer in compliance with the procedure specified in the Act on Co-operation within Undertakings. However, the agreement's conclusion requires at least two personnel groups who together represent the majority of employees to accept it.

Personnel representation may be implemented fairly freely at the agreement phase. The agreement may nevertheless not deviate from what is laid down with regard to a personnel representative's protection against termination, qualifications, non-disclosure and penalties. Nor may the agreement deviate from the provisions of other Acts, such as regulations concerning the members of a limited liability company's board of directors. If the company has a personnel fund that has invested funds in the company's shares, this kind of representation achieved through ownership fulfils the personnel representation referred to in law, provided that this is agreed to in co-operation proceedings.

➤ **Chapter 18 contains a more detailed description of personnel funds.**

## 17.2. Personnel representation in company administration based on law

**THE ACT** on Personnel Representation in the Company Administration applies to Finnish private companies that have at least 150 employees. The act was passed in 1990 and has not been updated since.

According to the act, personnel representation in company administration is primarily a matter of agreement. If the matter cannot be agreed on, the personnel has the right to nominate its representatives and their personal deputies to the company's supervisory board, the board of directors or management groups or similar bodies that together cover the profit units of the company. The company carries out the appointment for the different positions. This right to appointment exists when it is requested by at least two personnel groups together representing the majority of personnel. Whether

proceeding in accordance with the act or an agreement, the administrative body indicated by the company must have real, instead of merely apparent, decision-making power.

If agreed upon, representatives may be appointed to bodies beyond the company's supervisory board, board of directors or a management group that covers all of the company's profit units, as the act does not include a fallback provision. Thus, the agreement should be treated carefully and it is advisable to proceed in accordance with the law if the intention is to transfer the position to a body established only to ensure compliance with the act (e.g. a personnel management group or other corresponding artificial system). When following an agreement, the body should have actual decision-making power instead of merely apparent.

The personnel representatives are appointed in addition to the members of the administrative body in question, selected by the company. According to the law, the personnel representatives may make up a fourth of the number of the administrative bodies' other members, but nevertheless in such a way that there is always at least one and at most four representatives. When proceeding according to the law, the company decides the number of representative positions, but when following an agreement, the number can be specified as higher than stipulated by the law. The personnel representatives' term of office is equal to that of the members of the administrative body in question. If the maximum length of a term of office has not been determined or agreed, it lasts for three years. The personnel representation must be implemented within a year of the time when the criteria for the Act's application were met and the request for representation was made.

#### ➤ **Act on Personnel Representation in the Company Administration (725/1990)**

### **17.3. Personnel representatives and their rights, obligations and responsibility**

**A PERSONNEL** representative must be a legally competent person in an employment relationship with the company and not bankrupt or banned from business operations. If a representative fails to fulfil this criteria, he or she must resign. If personnel groups fail to reach an agreement on the selection of representatives, the various groups set their own candidates, from whom the representatives are then elected according to the same principle as is used in the election of an occupational health and safety representative. The relevant provisions are included in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces and in the Decree on the Supervision of Occupational Safety and Health.

The personnel representatives and the members of the administrative body in question selected by the company have equal right and obligations. What is provided for elsewhere with regard to the administrative body also concerns an administrative body supplemented by personnel representatives, as applicable. Indeed, it is advisable for the personnel representatives selected to a company's board of directors to familiarise themselves with the Limited Liability Companies Act, financial matters and related works to clarify and verify their own liability status. Sufficient training on the matter should be requested. The personnel representatives and their deputies have the right to review the material concerning a matter under discussion to the same extent as other members of the administrative body.

However, personnel representatives do not have the right to participate in discussions concerning the selection and dismissal of company management, the terms of the management's contracts, the personnel's terms of employment or industrial action. A personnel representative's voting right may be limited by agreement. If only one personnel representative is nominated to the company's board of directors, the deputy

representative also has the right to attend meetings and exercise his or her right to be heard. A personnel representative and his or her deputy are protected against termination in a manner equivalent to the protection against termination provided for a shop steward and employee representative in the Employment Contracts Act.

### 17.3.1. Release from work

The company must grant a personnel representative a release from statutory work for the time the representative needs for representation duties and directly related preparation work carried out in cooperation with other personnel representatives. The employer must also compensate for the resulting loss of income.

Any other time off and compensation for loss of income must be agreed upon on a case-by-case basis between the company and the personnel representative in question. If a personnel representative participates in the meeting of an administrative body outside his or her working hours, the company is obligated to compensate the representative for the relevant expenses and pay him or her a fee for attending the meeting.

### 17.3.2. Confidentiality

Unless otherwise separately provided for in the confidentiality obligation of the members and deputy members of an administrative body, information indicated by the company as business secrets, the spread of which is likely to harm the company or a contractual partner of it, may be discussed only among the employees, salaried employees and personnel representatives whom the case concerns. Even in these cases, the information may not be disclosed to others. The confidentiality also applies to information pertaining to the financial standing, health or some other personal matter of a private person, unless the person in question has given his or her consent to the disclosure of said information.

In general, provisions on confidentiality must be taken seriously and any discussion on matters heard in an administrative body should be avoided.

## 17.4. Consequences for breaking the law

**COMPLIANCE WITH** personnel representation in the administration of undertakings is supervised by the co-operation ombudsman. A court of law may, upon application, obligate a company (undertaking) to fulfill its duties in relation to personnel representation under the threat of a fine. The application may be filed jointly by the representatives of at least two personnel groups that together represent the majority of personnel. The imposition of a fine may also be applied for by the co-operation ombudsman.

If a company violates the enhanced protection against termination of a personnel representative by terminating the representative's employment relationship, the company's representative may be held accountable in accordance with the Criminal Code. In practice, this translates into a fine. In addition, a sum equal to the salary of 3–30 months may be awarded as damages to a personnel representative for unlawful termination. If the action in question can be construed as "work discrimination", the consequence may be up to six months of imprisonment. A breach of the confidentiality obligation may also result in a fine.

## 17.5 Companies created as a result of cross-border mergers

The Act on Personnel Representation in the Company Administration includes provisions for companies involved in cross-border mergers and the organisation of personnel representation in the new companies formed through such arrangements.

If at least one company taking part in cross-border merger, has an employee involvement system in place that is in accordance with

section 3, paragraph 12, of the Act on Employee Involvement in European Companies (SE) and European Social Cooperatives (SCE) (758/2004), the special negotiating body defined in section 4, subsection 2, of the said Act shall hold talks with decision-making bodies in the participating companies on the employee involvement systems. In this case, that which is defined in section 2, subsection 1 (scope of application), sections 4–12 (actions by the participating companies and the creation of a special negotiating body, the allocation of seats on the negotiation group among the member states, the allocation of additional seats in a merger situation, the allocation of seats among Finnish companies, the election of members of special negotiation bodies in Finland, the objective of negotiations, the special negotiation body's right to information, the special negotiating body's decision-taking rules, commencement and duration of negotiations) and 14 (experts), section 16, subsection 1, paragraphs 1 (the scope of the agreement) and 7–9 (the arrangements for participation, detailed rules of appointment and the date of entry into force and duration of the agreement), section 16, subsection 2 (which provisions do not apply to the agreement) section 18, subsection 1 (dates of application of the agreement), section 19 (choosing the form of employee participation), section 28, subsections 2 and 3 (employees' participation rights) and sections 29 (allocation of seats among members representing employees) and 30 (the rights and obligations of members representing employees), of the said Act shall be applied to the involvement of the employees.

However, companies participating in cross-border mergers can decide, without holding talks with employees, that they will apply the secondary provisions on employee involvement outlined in sections 28–30 of the Act on Employee Involvement in European Companies (SE) and European Social Cooperatives (SCE) immediately upon registering the company. If at least one of the companies participating in the merger has an employee involvement system in place and if the company that comes to be as a result of the cross-border merger has such a

system in accordance with the above-mentioned provisions, the company in question must adopt a corporate form that enables its employees' rights of involvement.

### 17.5.1 Protection of employee involvement rights

**IF, AS** a result of a cross-border merger, a Finnish company merges with another Finnish company, the employees' rights of involvement shall not weaken the enactment of the cross-border merger for a period of three years following the merger.

### 17.5.2 Cross-border division

**THAT WHICH** is stated previously on employee involvement in cross-border mergers, shall also apply, where applicable to cross-border divisions.



# 18. Personnel Funds

A personnel fund aims to promote the cooperation between a company's personnel and the company and to increase the personnel's opportunities for economic participation. A personnel fund is a fund owned and controlled by a company's personnel. Its assets derive from the performance bonus and profit bonus items paid to it by the company. In addition to the personnel fund contribution paid to fund members in accordance with the performance and profit bonus system, a supplement to a personnel fund contribution may be paid by a separate decision in the fund's bylaws.

The reformed Act on Personnel Funds took effect on 1 January 2011. Funds established during the validity of the former Act are obligated to change the fund's bylaws to accord with the reformed Act within the transitional period, i.e. no later than in the third fund meeting following the Act's entry into force.

Act on Personnel Funds (934/2010)

## 18.1. Establishment of personnel fund

**THE ESTABLISHMENT** of a personnel fund is optional. It can be established in a company, profit unit, a foreign subsidiary, government agency or municipality or the profit unit thereof operating in Finland. A fund can be established when a company or its profit unit employs at least ten employees. In addition, the company's net sales or comparable revenue must be at least €200,000 when establishing the fund.

A joint personnel fund may be established in two or more companies, if the companies belong to the same group of companies. The personnel of a foreign company's branch registered in Finland and the personnel of a foreign subsidiary, provided that the parent company is Finnish, may also belong to a group personnel fund. The Act on Personnel Funds is furthermore applicable to two or more government agencies and departments or municipalities and federations of municipalities and the personnel funds established by their staffs.

The establishment of a personnel fund and the performance or profit bonus systems that accrue the personnel fund contributions as well as the principles according to which they are determined must be negotiated between the

company and its personnel in a cooperation procedure or in some other way agreed to with the personnel. The company decides on the performance or profit bonus system that accrues the personnel fund contributions or the application thereof as well as on a supplement to a personnel fund contribution.

Representatives of the various personnel groups draw up a proposal on the establishment of a personnel fund and on the fund's bylaws. The representatives also convene the personnel fund's constituent meeting with a written invitation or some other verifiable manner. The invitation to the constituent meeting is delivered to the future members or the representatives of their choice no later than a week before the meeting. The meeting must approve the bylaws applicable to the personnel fund before making the decision to establish the fund. The decision concerning the fund's bylaws and the establishment of the fund may be approved if it has been supported by at least two-thirds of the votes cast. The constituent meeting also appoints the personnel fund's board of directors and auditors. The Act on Personnel Funds lays down some minimum requirements for the fund's bylaws. The report to register the personnel fund (i.e. registration report) must be submitted in writing to the cooperation ombudsman

who also performs a preliminary review of the bylaws. An income statement and balance sheet must also be delivered to the cooperation ombudsman within four months of the end of each financial year.

## 18.2. Personnel fund's capital and fund units

A **PERSONNEL** fund's equity consists of the members' capital and other fund capital. The members' capital includes capital added to the members' fund units and any value adjustments made to the investments of this capital. The capital accrues from the personnel fund contributions received and their supplements, value adjustments included. Other fund capital includes the fund's joint capital and any donations to the fund. The fund may also have current liabilities as provided for in more detail in the Act on Personnel Funds.

The personnel fund receives personnel fund contributions that are included in members' fund units in accordance with the fund's bylaws. If the personnel fund contribution or its supplement pursuant to the performance or profit bonus system decided by the company is made up of personal units, these are included as such in the fund units of each member. If the company pays personnel fund contributions or their supplements to the fund more than once during a financial year and the applicable bylaws do not provide otherwise, the payments received by the fund during each financial year will remain either in a separate single item or separate member-specific units, depending on the performance or profit bonus system accruing personnel fund contributions and their supplements, until the valuation day specified in the Act. If the fund contribution forms a single total sum, it is divided in the manner provided in the fund bylaws into members' shares which are added to each member's fund unit after the evaluation day. In this case, the personal shares are added, as such, to a member's fund unit. Only the capital that has accrued from person-

nel fund contributions and their supplements, fund profits and investment revaluations may be added to the members' fund units.

## 18.3. Members of personnel funds

**IN PRINCIPLE**, the personnel fund comprises the company's entire personnel. The company's management can nevertheless be excluded from the fund in the bylaws. When establishing the fund, membership begins immediately for those determined qualified in the bylaws. The membership of those employed by the company subsequently starts from the beginning of the employment relationship, unless otherwise mentioned in the bylaws. The membership must nevertheless begin no later than within six months of the beginning of the employment relationship. Membership ends when a member's employment relationship has ended and the personnel fund units have been paid to him or her in full.

Prior to the new Act's entry into force, a fund's bylaws could include a possibility for the employees of companies belonging to a group to seek membership in some personnel fund within the group other than the personnel fund of their employer company. While the new Act on Personnel Funds does not include a corresponding provision, employees who joined a particular personnel fund during the validity of the former Act nevertheless retain their membership. According to the current Act, group companies may establish respective company-specific personnel funds, a joint personnel fund with some other company/companies or a group personnel fund.

## 18.4. Withdrawal of a fund unit

**THE FUND** unit of each member is divided into a restricted portion and a withdrawable portion. A member is entitled to the withdrawable portion in cash without delay after the evaluation day as provided in the fund's bylaws. The





portion of transferable capital is provided in the personnel fund bylaws and can be a maximum of 15 per cent of the restricted portion.

Immediately after the evaluation day each personnel fund member must be given a written statement of the share of the personnel fund contribution and its surplus added to his or her unit, including the grounds for them, and the value of his or her unit and its division into restricted and withdrawable portions. According to Section 65 of the Income Tax Act, 80 per cent of the fund-unit and its surpluses from a personnel fund are subject to income tax. Otherwise the funds are free of tax. Fund units transferred to and withdrawn from the personnel fund do not accumulate a member's social security.

A personnel fund member is also entitled, with certain conditions, to withdraw his or her share of the personnel fund contribution or its surplus in cash, provided that a regulation to that end exists in the performance or profit bonus system adopted by the company. Person-

nel fund units withdrawn in cash and surpluses determined on the basis of the performance or profit bonus system constitute taxable income and are considered as pay. They are also subject to social security contributions.

#### **18.4.1. Payment of fund unit after termination of employment relationship**

Regardless of what is provided in the bylaws with regard to the withdrawal of fund units, a fund unit must be paid in full within four months of the next evaluation day determined in the Act on Personnel Funds after a member's employment relationship ends. If a member's employment relationship has been terminated due to financial and production-related reasons, or the member has given notice once a lay-off has lasted for at least 90 days or if the member retires, the member is entitled to

withdraw his or her fund unit in items the amount of which the member is free to decide on no more than four annual fund unit payment days following the end of the employment relationship.

### **18.5. Personnel fund administration**

**THE DECISION-MAKING** power in a fund belongs to its members. The members exercise their decision-making powers in the personnel fund meeting, to be held at a time provided in the bylaws. In principle, every member has one vote, but the bylaws may provide that the number of votes depends on the size of the fund unit. The bylaws may also provide that a meeting may be participated in by mail or with the help of technical tool, provided that verification of the right to participate and the validity of the vote count is possible using procedures comparable to those used for a regular fund meeting. Among other things, a fund meeting decides on any amendments to the fund's bylaws, voting and election regulations and the members of the board of directors. The meeting also adopts financial statements and grants discharge from liability and decides on any measures necessitated by profit or loss and on the dissolution of the fund. A personnel fund must have a board of directors composed of at least three members. The board represents the fund and manages its operations.

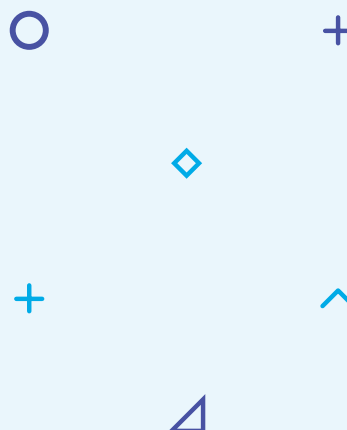
### **18.6. Corporate restructuring and the dissolution of a personnel fund**

**THE TRANSFER** of personnel fund units is possible in a situation where an employee's employment relationship with the company or profit unit in which the personnel fund is transferred due to corporate restructuring, so as to be carried out in another company with a personnel fund or in which negotiations on the establishment of a personnel fund have been held and decisions on a performance or profit bonus system have

been made within a year of the transfer of operations. The same principles may also be applied if a company belonging to a group ceases to be a part of the group and the group has a joint personnel fund for more than two companies and if a company with a personnel fund becomes a part of the group.

The transfer of personnel fund units requires the representative of the transferring employees and the receiving fund to submit a proposal on the terms of the transfer and on the rights of the transferring persons in the fund. The transferring employees must accept the proposal with an at least 2/3 qualifying majority, in addition to which the proposal must also be approved by the fund meeting. The Act on Personnel Funds contains more detailed provisions on the transfer of fund units within a group. In such cases, there is no need to organise a vote among fund members on the transfer of fund units, and the transferring persons do not have the right to withdraw their fund unit.

A personnel fund may be dissolved at any time with the fund's decision arrived at with a 2/3 qualifying majority of the votes cast. The company may also decide to permanently discontinue the performance or profit bonus system accruing personnel fund units, in which case the fund loses the basis for its operation. The situations in which the dissolution of a personnel fund is mandatory are provided in more detail in the Act of Personnel Funds. Before a company makes such a decision, the matter must be discussed in a cooperation procedure.



# 19. Co-operation within Groups

The Act on Co-operation within Finnish and Community-wide Groups of Undertakings provides for both national co-operation as well as co-operation that a Finnish but, should certain criteria be met, also a company operating in other EU or EEC countries should comply with (EWC activities). Both forms of co-operation aim to promote interaction between group management and personnel as well as the joint interaction of personnel.

Fundamentally, the operation involves a company notifying selected representatives of possible future changes, particularly ones which concern the position of personnel. The representatives in question then have the chance to express their opinions prior to actual decisions being made (notification and hearing). The relevant Finnish Act was enacted in 2007 and amended in 2011.

In this context, 'group' refers to a group in the meaning which it used in legislation concerning limited liability companies, banks and insurance companies which defines a group as being composed of a parent company and a subsidiary. A limited liability company that holds so many of the shares of another limited liability company that it also holds more than half of all votes conferred by the shares is considered a parent company. In the event that the parent company or subsidiary operates in some form other than that of a limited liability company, they will constitute a group only if there is a control relationship such as the one described above between the companies.

Act on Co-operation within Finnish and Community-wide Groups of Undertakings 30.3.2007/335

## 19.1. Realisation of the group co-operation obligation

**THE DOMESTIC** group co-operation obligation applies to a Finnish group which, on a regular basis, employs at least 500 people in Finland. Within such a group, group co-operation must be implemented in companies and independent operating units in Finland that employ at least 20 people on a regular basis.

The European Works Council (EWC) is based on an EU directive. The relevant legislation is applied in Finnish (head office or largest number of employees in Finland), community-wide groups with a total of at least 1,000 employees in the European Economic Area (EU/EEA states) and a company in at least two member states with at least 150 employees each.

However, the implementation of local

co-operation still complies with the Act on Co-operation within Undertakings, because the handling of local matters has been excluded from EWC activities.

## 19.2. Domestic group co-operation

**WHEN IT** involves various operating units located in different localities across Finland, domestic group co-operation is primarily organised by way of an agreement between group management and personnel representatives. Agreements allow group co-operation to be implemented freely, according to the parties' preferences.

However, if group co-operation has not, for one reason or another, been agreed upon within a year of the time when the criteria concerning the

size of the undertaking were met, the co-operation must be implemented according to the minimum requirements provided in law. Thus the obligation to implement domestic group co-operation does not require an initiative of personnel representatives.

YTN recommends that, when a group meets the criteria concerning the size of the undertaking, personnel representatives among themselves agree on the procedure with which to initiate negotiations with group management to produce a group co-operation agreement. The exact date on which the initiative was submitted should be marked on the initiative to keep track of the year's time mentioned above.

If group co-operation, in lieu of an agreement, is implemented according to the Act on Co-operation within Finnish and Community-wide Groups, the personnel of each domestic company that belongs to the group is entitled to elect from among their number at least one representative for the purposes of group co-operation. These personnel representatives must be selected in such a way that all personnel groups within the group are represented. If the company operates in several locations, it is sufficient for a person to represent the personnel of each location that belongs to a particular regional or operational whole.

### **19.3. International group co-operation**

**THE IMPLEMENTATION** of international group co-operation complies with the legislation of the country in which the group has its headquarters/head office. Therefore, a Finnish group complies the provisions of the Act on Co-operation within Finnish and Community-wide Undertakings in all other respects except representatives, which are selected according to the national law or practice of the respective countries. Similarly, the employment protection of the representative is also specified by national law. In the case of a foreign group, the provisions of the aforementioned Act are, for the most part, only complied with in

issues involving the selection and employment protection of a Finnish personnel representative.

The objective of international group co-operation is to ensure that companies which have operations in several member states of the European Economic Area are obligated to implement the information and consultation procedure so as to improve employees opportunities to receive information and exert influence in these companies. The operations of the internal market involve the consolidation of companies, cross-border mergers, corporate takeovers and the establishment of joint ventures. To ensure the favourable development of economic operations, it is therefore necessary for companies and groups that operate in several member states to inform and consult with the representatives of the employees whom decisions concern.

#### **19.3.1. Contractual international group co-operation**

International group co-operation can be implemented either with an agreement between group management and personnel or according to the standard rules provided in the relevant Act. International group co-operation is primarily agreed upon with an agreement.

The initiative on the establishment of a European Works Council or the introduction of some other procedure can be made either by central management or a minimum of 100 employees and their representatives who operate in at least two companies and member states of the European Economic Area. The numbers may vary so that the initiative is made by 55 employees in one country and 145 employees in another country, for example. The initiative is submitted in the form of a written request to establish a special negotiating body for the purpose of establishing the European Works Council. The exact date on which the initiative is submitted should be marked on the initiative to keep track of the negotiation times.

YTN recommends that, when a group meets the criteria concerning the size of the undertaking, personnel representatives agree among

themselves on a procedure by which to bring about the written negotiation initiative. At the same time, YTN requests that it be informed of an intended initiative procedure as soon as possible. The notification can be addressed to any representative of an YTN affiliate. Together with the trade unions they represent, Finnish personnel representatives request the personnel representatives of the other country required for the initiative to submit a corresponding initiative in writing to group management.

The special negotiating group will be composed of one representative chosen by the personnel from each such member state of the European Economic Area in which the group has a company (undertaking) or branch office. Additional members are furthermore elected in proportion to the number of employees in each respective country. The group's employee representatives in Finland and group management together confirm the number of additional members as follows: one additional member chosen from a member state in which a minimum of 25–49 per cent of the group personnel are employed, two additional members from a member state in which 50–74 per cent of group personnel are employed and three additional members from a member state in which a minimum of 75 per cent of group personnel are employed.

Finnish and European trade unions have drawn up instructions on the negotiation process and the content of the agreement. YTN recommends following these instructions.

YTN has its own YTN-EWC <https://ytn.fi/en/tes-and-contract-work/ewc-operation-and-practices/>, and its website contains related materials. The YTN-EWC organises training for EWC representatives and other interested parties twice per year.

➤ **For more information on the training, see the YTN training calendar.**

### 19.3.2. Statutory international group co-operation

If international group co-operation has not been agreed upon within three years of the

presentation of the negotiation initiative or if group management has not launched negotiations within six months of the negotiation initiative, the international group co-operation must be implemented according to the minimum provisions of law.

In such cases, a European Works Council composed of at least three and at most 30 members must be established. One representative chosen by personnel from among their number is selected for the European Works Council from each such member state of the European Economic Area in which the group has a company (undertaking) or branch office. Additional members are furthermore elected in proportion to the number of employees in each respective country in accordance with the negotiation group calculation formula presented above. The members may also set up a working committee composed of at most five members selected from among their number. The purpose of the committee is to take care of the daily affairs of the EWC. The working committee normally convenes around five times per year in addition to the usual meetings.

In accordance with the law, the Works Council convenes with group management once a year, when the employee representatives are provided with at least the items mentioned in chapter 19.4. The working committee (and, when requested, the whole Works Council) is furthermore entitled to assemble and receive information in legally exceptional situations that have or might have a considerable impact on employees or their position.

## 19.4. Content of group co-operation

**THE KEY** aspects of group co-operation are the information obligation of group management and the interaction between management and employees, or consultation.

Unless otherwise agreed, the personnel employed by the group must be provided with at least the following information:

- An annual standard financial report including the consolidated financial statements or, if one does not exist, a comparable report that is available. In addition, information about the outlook for the group's production, employment, profitability and cost structure and an assessment of expected changes to the number or quality of personnel.
- Information about decisions made by group management concerning the material expansion, contraction or winding down of a group company.
- Information about decisions made by group management concerning a change in the product range, service operations or a comparable production factor of a group company that has an effect on the employees.

The information must be delivered to employee representatives at a point in time and in a format that allows them to form a joint well-founded opinion on the information they have received. If the employer is unable to take the opinion into account in its decision-making, the employee representatives must be provided with a reasonable response. This must furthermore occur before the company makes a final decision on the matter.

In domestic group co-operation, the information concerning changes (points 2 and 3 listed above) must be provided to everyone the changes concern and in such a way that the statutory negotiations can be held. The negotiations included in the procedure concern only the effects that the decision announced is expected to have in a subsidiary. It does not substitute for actual co-operation negotiations to be held in the subsidiary.

In international group co-operation, information concerning changes must be given to the European Works Council or its working committee whenever the information concerns at least two undertakings or branch offices located in different member states or, since the

2011 amendment, also information that concerns only a single member state, if the decision may be expected to have substantial personnel effects in another member state as well (e.g. the decision to close down a factory in one member state is made in another member state).

In these situations, employee representatives must therefore also be informed and consulted in the aforementioned exceptional situations. The Works Council members representing the undertakings or branch offices that the measures in question directly involve may also attend the meeting.

## 19.5. Confidentiality

**IF COMPANY** employees or employee representatives, in the context of group co-operation, receive information about the employer's business and trade secrets the spreading of which would be likely to harm the company or its partner, the information in question may be discussed and handled only among the employees and employee representatives whom the information concerns and may not be disclosed to others.

When indicating the confidential nature of the information it provides, the company must furthermore, on each separate occasion, explain and, if so requested, justify the reason for the confidentiality. Not all information provided by the company can be automatically confidential and EWC representatives may not, indeed, even be presented with an advance and all-encompassing request for confidentiality.

Given that group co-operation also aims to develop interaction among employees, employee representatives must keep the personnel informed about the group co-operation. However, if the employer has indicated any particular piece of information as confidential, the employee representative, when communicating the matter to the employees whom it concerns, must carefully consider his or her procedures and underscore the information's confidentiality.

The confidentiality also applies to information pertaining to the financial standing, health

or some other personal matter of a private person, unless the person in question has given his or her consent to the disclosure of said information.

## 19.6. Miscellaneous provisions

**THE COSTS** of group co-operation are borne by the employer. Employee representatives have the right to be relieved of regular work for the purpose of participating in group co-operation. In addition, the employer compensates representatives for the loss of income and other costs resulting from the group co-operation.

What is provided in Chapter 7, section 10 of the Employment Contracts Act on the termination of a shop steward and employee

representative's employment contract is correspondingly valid with regard to a personnel representative chosen for international group co-operation and his or her deputy's protection against termination.

Compliance with laws applicable to group co-operation is supervised by the co-operation ombudsman and the employer associations and employee associations which have concluded the collective agreements to be complied with in the employment relationships of the company (undertaking) in question.

An employer belonging to group management or its representative that wilfully or negligently fails to comply with the co-operation obligation may be sentenced to a fine specified in the Act on Co-operation within Undertakings for the violation.



# 20. Employee Involvement in European Companies (SE)

A European company is a European limited liability company form that entered into force in October 2004. By registering as a European company, a company may operate in all EU and EEA countries with a single organisation. The minimum capital of European company is €120,000. This company form is governed by an EU regulation, a Directive of the European Council and the Act on Employee Involvement in European Companies (758/2004). The abbreviation for a European company is SE (Societas Europaea) in all countries

Act on Employee Involvement in European Companies (758/2004)

## 20.1. Provisions concerning employee involvement

**THE COMPANY** form has been seen as bringing administrative and organisational benefits for companies that have operations in several EU or EEA countries. For now, the company form does not carry any significant fiscal benefits as its taxation is still subject to national law.

'Employee involvement' means, on the one hand, an information and consultation procedure and, on the other hand, the personnel's right to participate in a company's administration. Employee involvement is governed by the Act on Employee Involvement in European Companies and an EU directive.

The implementation of employee involvement in a European company complies with the legislation of the company's country of registration. The provisions of the Act on Employee Involvement in European Companies applies to a Finnish group in all other respects but the selection of representatives, who are selected according to the national practice. Furthermore, the representative's protection against termination is also regulated by national law.

In the case of a European company registered in some other country, the provisions of the aforementioned Finnish Act are primarily adhered to only with respect to issues related to the selection of Finnish employees' representatives.

## 20.2. Negotiations on employee involvement

**THE REGISTRATION** of a European company requires negotiations for the implementation of a participation system for personnel. The chief goal is to agree on employee involvement with the European personnel. The initiative for the establishment of a special negotiating body and for the commencement of negotiations comes from the company's management.

The negotiations aiming for an agreement must be held within six months. The parties may also agree on a six-month extension period.

YTN recommends that, once a company announces its intention to register as a European company, employees' representatives agree among themselves on a procedure with which to commence negotiations. In addition, YTN requests that a YTN affiliate be contacted in relation to the matter as soon as possible.

Together with the trade unions they represent, Finnish employees' representatives ensure the selection of the employees' representatives of other countries and their participation in the negotiations.

## 20.3. Content of employee involvement

**THE INFORMATION** and consultation procedure is, in principle, implemented in the form of a



dialogue between a representative body composed of employees' representatives and company management. The dialogue requires the company management to regularly communicate information about the company's operations and material changes to the company or plans (= information).

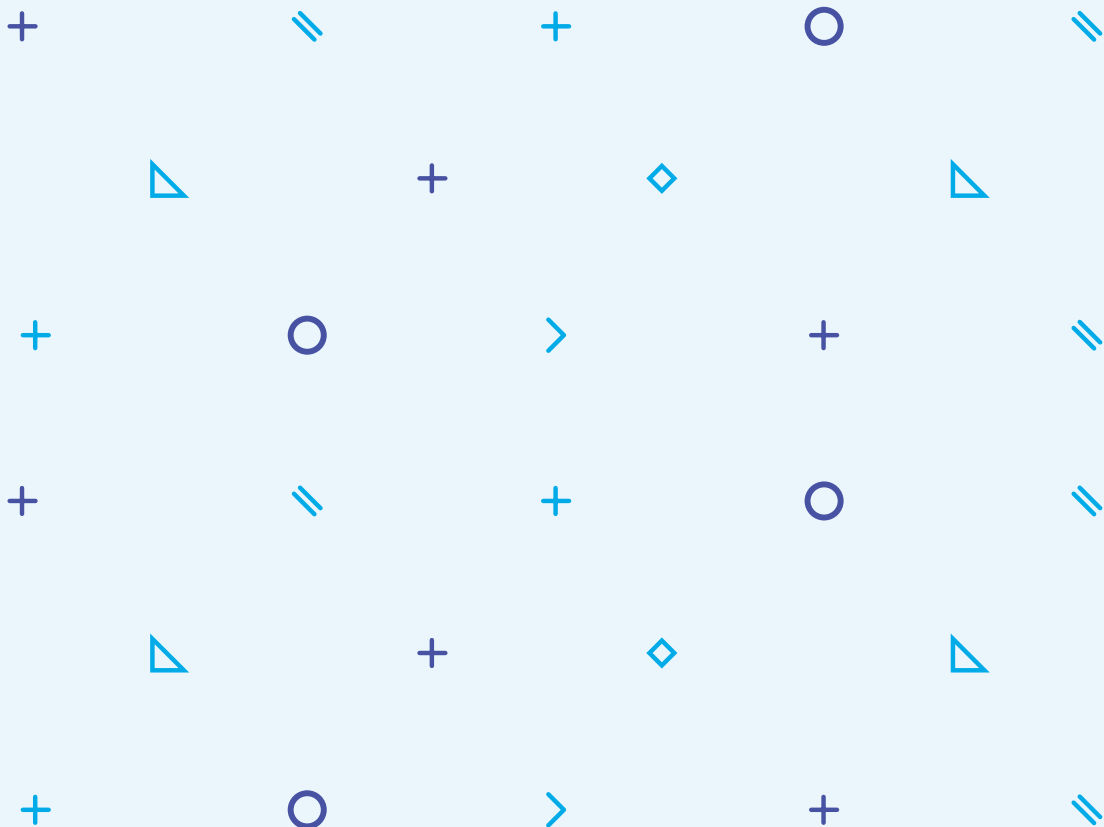
The representative body composed of employees' representatives must be able to express its opinion on the matters of which it has been informed (= consultation). When exceptional circumstances have a significant impact on employees' benefits, and the company management decides not to act according to the employees' opinion, employees' representatives have the right to convene again with the management of the European company so as to reach an understanding ("mini negotiation obligation").

The participation of the employees' representatives in the company's administration is

realised either in the supervisory board, the board of directors or in management teams that together encompass all of the company's profit units. The representative body is entitled to select, to the administration of a European company, the number of members that corresponds with the greatest share of employee participation prior to the registration of the European company. Thus the personnel's participation rights may not be reduced in connection with the registration of a European company.

Employee involvement in European companies is multinational. Negotiating and agreeing on involvement and the functioning of employee involvement requires active cooperation between the employees' representatives and trade unions of different countries.

It is particularly important to immediately get in touch with the specialist of one's own trade union when the employer company's intends to register as a European company.



# 21. Co-operation Procedures

The Act on Co-operation within Undertakings aims to promote the interactional co-operation procedures between a company (undertaking) and its personnel based on timely sufficient information to the personnel on the undertaking's state and plans. The objective is to collectively develop the undertaking's operations and employees' opportunities to influence decisions made in the undertaking that concern their work, working conditions and position in the undertaking. In addition, the Act aims to intensify the co-operation between the employer, personnel and the employment and economy authorities to improve the status of employees and to support their employment in connection with the undertaking's operational changes.

Act on Co-operation within Undertakings 30.3.2007/334

## 21.1. Act's scope of application

**THE ACT** on Co-operation within Undertakings is applied in undertakings that employ at least 20 people on a regular basis. In the exceptional cases explained in more detail below, the application of the Act on Co-operation within Undertakings nevertheless requires at least 30 employees.

In the context of the Act on Co-operation within Undertakings, 'undertaking' refers to all corporations, foundations or natural persons engaged in financial operations, regardless of whether the operations are intended to be profitable. The number of employees is considered on an undertaking-specific basis, meaning that each undertaking is considered separately, regardless of possible group relations. The Act on Co-operation within Undertakings is not applied in undertakings that employ fewer than 20 people on a regular basis. In addition, the Act on Co-operation within Undertakings is not applied in government or municipal agencies and services, which are subject to the Act on Co-operation within Government Agencies and Public Services. The Act on Co-operation within Undertakings is, however, applied in state-owned companies.

## 21.2. Co-operation representatives

**THE PARTIES** to the co-operation are the employer and the personnel of the undertaking which

the issue being negotiated concerns. The personnel of the undertaking consists of three personnel groups: workers, employees and senior salaries employees. Each personnel group can be represented by, for example, a shop steward elected according to the collective agreement, an employee representative elected according to the Employment Contracts Act or a special co-operation representative elected for a two-year term of office according to the Act on Co-operation within Undertakings. In matters pertaining to occupational health and safety and the personnel's health, the personnel can also be represented by an occupational health and safety representative. If the personnel has not elected any representative at all from among its number, the employer must hold the co-operation negotiations together with all those employees whom the matter being discussed in the co-operation procedure concerns.

## 21.3. Information to be provided to personnel groups

**LISTED COMPANIES** must provide employee representatives with the company's financial statements or revenue accounts immediately after their release. In companies other than listed companies, the personnel must be provided with the financial statements no later than after their adoption. In addition to the financial statements, an employer is obligated to provi-

de the employees' representatives with a report on the undertaking's financial standing at least twice during a financial year. This report must indicate, at a minimum, the outlook for the undertaking's production, service or other operations, employment, profitability and cost structure.

In addition to information related to the company's financial standing, the employer must at least once a year provide the representative of each personnel group with statistics on the salaries paid to the employees of the personnel group he or she represents. The employer must furthermore, upon request, once every quarter, provide the representatives of the personnel groups with information about the number of employees in a fixed-term or part-time employment relationship with the undertaking as well as on the undertaking's principles with regard to the use of external labour.

## **21.4. Matters that fall under the scope of the co-operation procedure**

### **21.4.1. Undertaking's general plans, principles and goals**

**THE EMPLOYER** is obligated to negotiate with the personnel on certain issues with an impact on the personnel's position. Firstly, this obligation to negotiate concerns the principles and practices complied with in recruitment. These refer to the general operating models which the undertaking routinely uses in its recruitment process. In this context, recruitment refers, in addition to the hiring of new employees, to the transfer of the undertaking's existing employees to other duties within the undertaking.

Secondly, the employer is obligated to annually negotiate with the personnel about its personnel plan and training objectives. These aim to maintain and advance employees' professional competence. When drawing up a personnel plan and training objectives, one must take into account any foreseeable changes in the undertaking's operations that may hold signifi-

cance for the structure, number or professional skills of the personnel.

The employer must also discuss the principles of using contract work (temporary agency workers) with the personnel. The exception to this rule is undertakings with fewer than 30 employees, which are exempt from the continued negotiation procedure in this respect. When an employer is considering the use of contract work, it must make this known to the representatives of the personnel groups on whose employees' work the work performed by the contract workers would have an effect. The information provided to the representatives of the personnel groups is to include the number of temporary agency workers engaged, their duties and work site, the duration of the contract and the periods when the said work force will be used.

The representative of a personnel group in undertakings with more than 30 employees may, within two days of the employer's notification concerning its intention to use contract work, request the employer to consider discussing the contract in co-operation negotiations (continued negotiation procedure). The negotiations must be held within a week.

In addition to the aforementioned, co-operation negotiations must include discussions about the undertaking's principles and practices in terms of internal communications. Issues that belong within the scope of co-operation negotiations include the ways and means related to the undertaking's internal communications. However, the Act on Co-operation within Undertakings does not impose an obligation to organise an undertaking's internal communication operations in any particular way.

Finally, the scope of the co-operation procedure covers the discussion of plans and practices based on other legislation. The scope of the co-operation procedure includes issues such as the gender equality plan referred to in the Act on Equality between Women and Men, if the plan in question is intended to be included in the personnel plan.

The co-operation procedures must also discuss the tasks in which an employee or worker

may be requested to take a drug test, camera surveillance at the workplace, access control and other surveillance to be carried out with technical devices as well as basic issues related to personnel funds and profit bonus systems.

The employer is responsible for taking the initiative for the aforementioned co-operation negotiations. The initiative must furthermore be taken well in advance of the negotiations' commencement. In connection with the initiative, the employer must provide the representatives of the personnel groups with all information necessary for the issue to be discussed. Specific negotiation times have not been provided, but matters should be negotiated in the spirit of co-operation to achieve unanimity. The employer must also communicate the negotiations' results to all those concerned.

#### **21.4.2. Agreement and decisions by personnel**

The principal rule of the Act on Co-operation within Undertakings is for the employer to make decisions on the matters discussed in the co-operation negotiations once the negotiations have concluded. However, the Act on Co-operation within Undertakings does contain provisions on matters that require an express agreement between the employer and the personnel or over which the representative of a personnel group holds the decision-making power should the parties fail to reach an agreement.

The employer or the representative of a personnel group may present an initiative for negotiations to annually negotiate and agree on the number and content of co-operation training and the allocation of training per personnel group within the framework of the funds earmarked for this purpose by the employer. Co-operation training refers solely to the workplace's training that promotes co-operation, but the right to such training has not been limited to personnel representatives alone.

An initiative for negotiations may also pertain to working rules complied with in the un-

dertaking or a part thereof and the changes to be made to such rules. Working rules refer primarily to instructions which define and specify the procedures and ground rules of the workplace. However, working rules are not merely instructions of the general kind, but norms binding on both parties of an employment contract, since they are complied with as part of individual employment contracts.

If an undertaking wishes to adopt a regular suggestion scheme or make changes to the rules of an existing suggestion scheme, the matter should be dealt with in the co-operation procedure. The suggestion scheme aims to get the entire personnel involved in the development of the company and traditionally includes the collection, assessment and rewarding of improvement suggestions made by personnel.

An initiative for negotiations may likewise be given on the principles to be followed in the allocation of company flats, the determination of shares per personnel group and the division of flats. Flats meant for the management of the undertaking remain outside the negotiations' scope.

According to Act on Co-operation within Undertakings, the scope of co-operation procedures covers the planning and use of staff facilities and comparable premises as well as the arrangement of childcare and catering at the workplace. However, the aforementioned must be arranged within the funds earmarked for the purpose by the employer, due to which the employer is not under a general obligation to cover the costs of the daycare of employees' children, for example.

In addition, agreements on the contributions earmarked by the employer for the purpose of the personnel's hobby, recreational and holiday activities should be made in the co-operation negotiations.

The initiative for negotiations must go through the main points of the matter to be dealt with in the negotiations and the grounds for the initiative for negotiations. Having presented or received an initiative for negotiations, the employer must give the relevant representatives of a personnel group the information necessary for dealing with the matter. In the

event that the employer considers the negotiations referred to in an initiative presented by the representative of a personnel group unnecessary, it must inform the relevant personnel group representatives of this and the grounds for it without delay.

Co-operation negotiations should be held in the spirit of co-operation, with the aim of achieving an agreement on the matters discussed. An agreement achieved in co-operation negotiations must be made in writing and can remain valid for a fixed period of time or until further notice. The parties have the right to terminate an agreement valid until further notice with a six-month period of notice, unless they have agreed on some other period of notice. Everyone covered by the scope of the agreement must be informed about the agreement's content and, unless otherwise agreed, the agreement will enter into force a month later.

An agreement on working rules and the rules of a suggestion scheme and any changes thereto is binding on the employer and those employees belonging within the agreement's scope of application whose personnel group representative has made the agreement. However, such an agreement does not supersede an express provision in an individual employee's employment contract that is more favourable for the employee.

If an agreement cannot be reached over the content and personnel group-specific allocation of co-operation training, the allocation of company flats or services or the recreational activities to be offered with the employer's funds, the decision-making power in the matters mentioned lies with the representatives of the relevant personnel groups.

If the parties, on the other hand, fail to reach an agreement on working rules and the rules of the suggestion scheme or changes thereto or on matters related to the division of company flats, the ultimate decision-making power lies with the employer, within the limits of its authority. However, the employer does not have the right to unilaterally confirm the working rules to be complied with in the undertaking or changes to be made thereto.

### **21.4.3. Changes in business operations affecting the personnel and arrangement of work**

Various changes that might have an effect on the position of personnel may be made to business operations. According to the Act on Co-operation within Undertakings, an employer must also negotiate with the personnel on any personnel effects and arrangement of work attributable to changes in business operations that do not lead to the termination of employment contracts, lay-offs or employment contracts' reductions into a part-time employment contracts. Should the planned changes result in terminations, lay-offs or reductions to part-time employment contracts, the employer must hold the negotiations anew, starting from the very beginning, in accordance with the provisions concerning reductions in workforce (see chapter 21.4.5).

The employer must negotiate with the employees on personnel effects caused by the closure of the undertaking or a part of it, the undertaking's relocation to another locality or the expansion or contraction of its operations. Similarly, personnel effects caused by acquisitions of machinery and equipment, the arrangement of work or the use of external labour belong within the scope of the co-operation procedure. Changes to service production or product ranges and other comparable changes to business operations must also be negotiated with personnel, if they have personnel effects.

Material changes to tasks, work methods, the arrangement of work and work premises as well as transfers from one task to another attributable to the aforementioned measures that fall within the scope of the employer's right to supervise work and have an effect on employees' position must be dealt with in co-operation negotiations.

The co-operation procedure must also cover negotiations on the arrangement of regular working hours, any planned changes to them and the planned changes' effects on the beginning and end of regular working hours and on the timing of rest periods and meal breaks,

unless otherwise provided in a collective agreement binding on the employer.

It should be noted that, besides the arrangement of tasks, the arrangement of work refers to the content and organisation of work in general and that such arrangements cause material changes to employees' position. The assessment should focus, in particular, on the duration and extent of the change. If the change is not material, the negotiations need not be held at all.

Co-operation negotiations should be held before the employer decides on changes to business operations or other arrangement of work which have a material effect on the employees' position. The negotiations must deal with the essential grounds for, effects and alternatives to the possible changes caused by the employer's plans in relation to the personnel's position. In the spirit of co-operation, the parties should attempt to reach a consensus, but if this not achieved, the employer has the right to decide on the matter. If the matter concerns only a few individuals, the negotiations are held between the employer and the persons whom the matter concerns. In this case, the employees who belong in the scope of the negotiations nonetheless have the right to ask a personnel representative to attend the negotiations.

The employer is obligated to make an initiative on co-operation negotiations. The initiative must indicate the time and place of the negotiations' commencement. The initiative should be made as early as possible. In addition, the employer must, prior to the commencement of the negotiations, provide the relevant employees or representatives of personnel groups with all information necessary with regard to the matter to be discussed and in the employer's possession at the time. The employee or representative of a personnel group must have a sufficient amount of time before the commencement of the negotiations to study and examine the matter both independently and together with other employees or personnel representatives. The information should be attached to the initiative for negotiations.

The representative of a personnel group also has the right to request the commence-

ment of co-operation negotiations. Should the employer find the negotiations unnecessary, it must immediately give a written explanation of its grounds for finding the co-operation negotiations unnecessary. If no such grounds exist, the employer must make an initiative to commence the negotiations as soon as possible after it has received the request submitted by the representative.

#### **21.4.4. Co-operation procedure in connection with a transfer of business**

The transfer of business means the transfer of an undertaking, business, corporation, foundation or an operative part thereof to another employer, provided that the business or its part engaged in as either full-time or part-time business remains the same or similar after the transfer. Legal praxis has found situations in which the following requirements are met to constitute a transfer of business:

- there is a contractual relationship between the transferor and transferee;
- the object transferred in a business or a part thereof that forms an operational entity
- operations continue largely unchanged; and
- operations continue forthwith, without a longer period of interruption.

It must be noted that disposing of the entire share capital of a limited liability company does not constitute a transfer of business because, in that case, the employer does not change. Nor is a change of the company form considered a transfer of business.

The employer is not obligated to hold actual negotiations on the transfer of business with the personnel, but both transferor and transferee must inform the representatives of personnel groups of matters related to the transfer of business. The matters to be communicated

are the time or scheduled time of the transfer, the reasons for the transfer, the legal, social and economic consequences of the transfer and any planned measures concerning employees. The transferor must give the information well in advance of the transfer and the transferee no later than within a week of the transfer. If the transfer of business results in personnel effects, it is subject to negotiations according to Chapter 6 (see 21.4.3.) or Chapter 8 (see 21.4.5.) of the Act on Co-operation within Undertakings.

#### 21.4.5. Co-operation procedure when reducing the use of labour

The most well-known provisions of the Act on Co-ordination within Undertakings concern the employer's obligation to negotiate with the personnel before it can terminate or lay-off employees or reduce employment contracts to part-time contracts on financial and production-related grounds. The obligation to negotiate concerns the termination of both one or more employment contracts, if the employer is subject to an obligation to negotiate based on the number of employees. The employer may not make decisions on the reduction of workforce before the co-operation negotiations have been held in the appropriate way. The employer is not obligated to negotiate if the undertaking has been declared bankrupt, is placed in liquidation or when the physical person who acted as the employer dies and his or her estate decides not to continue the operations or transfer the undertaking to a new employer.

The employer must give a written negotiation proposal for the commencement of negotiations and employment measures no later than five days prior to the negotiations' commencement. During this time – which is not counted in the actual negotiation period – the personnel representatives have the opportunity to prepare for the negotiations.

The negotiation proposal should indicate, at the very least, the time the negotiations begin and the place in which they are held as well as a summary of the issues to be negotiated. Should

the employer give an incomplete negotiation proposal, or indeed fail to give one altogether, it may be liable to an indemnification explained in more detail below (see 21.11.). If the employer is considering terminating the employment relationships of at least ten employees, laying them off for more than 90 days or reducing their employment contracts to part-time contracts, it must also provide the representatives of the relevant employees with the following information:

- information on the grounds for the intended measures;
- a preliminary estimate on the amount of terminations, lay-offs and full-time contracts reduced to part-time contracts;
- a report of the principles according to which the employees whom the terminations, lay-offs and reductions to part-time contracts concern are selected; and
- an estimate of the time during which the measures are carried out.

The grounds for the intended measures refer chiefly to the undertaking's financial standing, descriptions of orders on hand and customer, production and output volumes as well as accounts of the cost structure, competition situation, profitability or the undertaking's strategic future alternatives. In other respects, the information must be provided in writing and attached to the negotiation proposal. If a particular piece or part of information cannot be supplied at this point, it can be given later. If the negotiations concern fewer than ten people, an employee or personnel representative must request the information separately, but even in this case, the employer is obligated to provide the information.

The employer must also submit the negotiation proposal or the information indicated therein in writing to the TE Office no later than when the negotiations begin. This duty to notify applies to all employers, despite the size of the undertaking and the number of employees to be reduced.

If the need to downsize the workforce concerns at least ten employees, the employer must provide the representatives of personnel groups with a plan of action to promote employment at the beginning of the co-operation negotiations. When preparing the action plan, the employer must without delay clarify the public employment services that support employment with the authorities responsible for employment and the economy. The action plan must indicate the schedule for the co-operation negotiation, the procedures to be followed in the negotiations and the envisioned action plans for using public employment services and promote the search for work and training to be complied with during the period of notice.

If the terminations considered by the employer concern fewer than ten employees, the employer must, at the beginning of the co-operation negotiations, present the measures according to which employees' independent search for other jobs or training/education or their employment through public employment services is supported during the period of notice.

Issues pertaining to the reduction of workforce must likewise be dealt with in the spirit of co-operation to achieve consensus, and the personnel must have a genuine opportunity to influence the solutions. Points such as the grounds for and effects of the measures planned by the employer, the principles or plan of action, alternatives for limiting the number of employees subject to the reduction measures and for mitigating the effects on employees must be discussed in the co-operation negotiations.

According to the Act on Co-operation within Undertaking, the duration of the negotiations depends on the nature of the measures considered by the employer and on how many people the undertaking employs. If the termination of employment relationships, lay-offs or reductions of full-time contracts to part-time contracts considered by the employer concern fewer than ten employees or if the lay-offs will not last more than 90 days, the employer has fulfilled its negotiation obligation when negotiations have been held for 14 calendar days. If, on the other hand, the employer is considering termi-

nations, lay-offs that last more than 90 days or reductions of full-time contracts to part-time contracts that concern at least ten employees, the negotiation obligation lasts for six weeks.

The exception to this are companies with 20–29 employees, for which the negotiation time is always 14 days. The same 14-day negotiation obligation also concerns restructuring situations. An employer and employees or their representatives may also agree differently with regard to the negotiation times provided in the Act on Co-operation within Undertakings.

Once the negotiation period has come to an end, the employer must, within a reasonable period of time, give the representatives of personnel groups a general report on the decisions to be considered on the basis of the negotiations.

In practice, the report should be given within a few weeks of the negotiations' conclusion and should indicate at least the number of the employees who will be given notice to, laid off or whose contracts will be reduced from full-time to part-time contracts per personnel group, the duration of lay-offs and the time during which the employer plans to execute its decision to downsize the workforce. The individuals whose employment contracts will be terminated, however, need not be named at this point.

## **21.5. Registering the outcome of the co-operation negotiations**

**UPON REQUEST**, the employer must ensure that minutes are drawn up on the co-operation negotiations. The minutes should include details on at least the times during which the negotiations were held, the people present in the negotiations and the outcomes of the negotiations or the participants' dissenting opinions. All of the employer and personnel group representatives present in the negotiations review the minutes and verify them with their signature. The minutes are of material significance for subsequent assessments of whether the negotiations were held in accordance with the Act on Co-operation within Undertakings or whether something was agreed on during them. Because of this, the



minutes should be signed only after they have been carefully reviewed and any possible errors have been addressed, by correcting them either in the minutes or in a separate appendix.

### 21.6. Right to use experts

**PERSONNEL GROUP** representatives have the right to consult and request information from the experts of the relevant operational unit and, insofar as possible, from other experts and specialists in the undertaking when they are preparing for the co-operation procedure. The expert(s) in question may also be used in the actual co-operation negotiations, when necessary for the issue under discussion. Consulting a financial expert in terms of the undertaking's financial standing, for example, would be natural. The use of external experts may be agreed on with the employer separately.

### 21.7. Release from work and compensation

**FOR THE** representatives of personnel groups to be able to take care of the resultant responsibilities in the appropriate manner, they have a right to obtain a sufficient release from their work. The release covers participation in meetings related to the co-operation which a representative of the employer also attends. The release also covers the time which the personnel group representative needs to prepare for the negotiations to be held with the employer together with the representatives of other personnel groups, for example. The employer must compensate for any loss of income resulting from the release from work.

If the representative of a personnel group participates in a co-operation negotiation outside his or her working hours or performs some other task agreed to with the employer, the employer must pay compensate him or her for the time spent on the task in the amount corresponding to the representative's salary for regular working hours.

### 21.8. Confidentiality

**THE EMPLOYER** must inform the employees or the representatives of personnel groups as well as the aforementioned experts which issues discussed and addressed in the co-operation negotiations are subject to non-disclosure. Only when a particular issue or case concerns the health or financial standing of a private individual is there no need to make separate mention of its confidentiality. It is advisable to record the issues and subject matters subject to non-disclosure in the minutes, the grounds for the confidentiality included.

The employees, personnel group representatives and aforementioned expert(s) must keep any business and trade secrets of the employer they become aware of during the co-operation procedure confidential. Likewise subject to non-disclosure is any information pertaining to the employer's financial status which is not public by virtue of legislation and the spread of which would likely be harmful to the employer or a partner of it.

The confidentiality obligation also applies to information concerning corporate security and any equivalent security arrangements, the spread of which would likely be harmful to the employer or its partner, as well as to information concerning the health, financial standing or some other information personal to a private individual, unless the person protected by the confidentiality obligation has given his or her consent to the information's disclosure.

The confidentiality obligation does not prevent an employee or the representative of a personnel group from disclosing any information – apart from information concerning the health of a private individual – to other employees or their representatives. However, prior to disclosing the information, the person disclosing it must indicate its confidential nature.

In this manner, information subject to confidentiality/non-disclosure may be disclosed to the extent necessary for the realisation of the purpose of co-operation in terms of the position of these employees.

The confidentiality obligation lasts for the

duration of the entire employment relationship and, possibly, pursuant to other legislation, even after it has ended.

### **21.9. Co-operation negotiations' relation to collective agreements' provisions concerning negotiations**

**IF A** matter to be dealt with in the co-operation negotiations should also be discussed in accordance with the collective agreement's order of negotiations binding on the employer, the co-operation negotiations may not be commenced or they must be suspended if the employer or the shop steward who represents those bound by the collective agreement requires the matter to be discussed according to the order of the collective agreement.

### **21.10. Derogations from the co-operation procedure**

**AN EMPLOYER** may derogate from its obligation to negotiate provided in the Act on Co-operation within Undertakings for particularly weight reasons causing harm to the undertaking's production or service operations or the its finances. A derogation from the obligation to negotiate furthermore requires that the aforementioned reasons could not have been foreseen.

When the grounds for derogating from the co-operation obligations referred to above no longer exist, the employer must initiate the co-operation negotiations without delay, also clarifying the grounds for the exceptional procedure therein.

### **21.11. Indemnification and period for filing claim**

**AN EMPLOYER** which has terminated an employment relationship, laid off an employee or reduced a full-time contract to a part-time

contract through a wilful or grossly negligent failure to comply with the procedure provided in the act on Co-operation within Undertakings may be ordered to pay an indemnification to the employee who has been laid off or whose employment contract has been terminated or reduced from a full-time contract to a part-time one. The maximum amount of such indemnification is €31,570.

When determining the amount of the indemnification, one must take into account the degree to which the co-operation obligation has been neglected and the employer's circumstances in general as well as the nature of the measure aimed at the employee and the duration of his or her employment relationship. If the employer's neglect can, all things considered, be seen as minor, it is possible to refrain from imposing liability for indemnification.

The employer may be ordered to pay the indemnification regardless of whether it had legal grounds for the termination, lay-off or reduction from a full-time to part-time contract. Thus the indemnification is a sanction solely for neglecting the co-operation procedure the employer has a statutory obligation to comply with. If there are no legal grounds for the termination, lay-off or the reduction of a full-time contract to a part-time one as required by the Employment Contracts Act, the employer may be ordered to pay damages for an unlawful termination in addition to the aforementioned indemnification.

The employee's right to the indemnification expires if the claim during an ongoing employment relationship is not filed within two years of the calendar year during which the right to the indemnification was created. Thus the right to claim indemnification for a violation of the Act on Co-operation within Undertakings that occurred in 2013 expired on 31 December 2015. The right to indemnification expires once the employment relationship ends, unless the relevant claim is filed within two years of the termination of the employment relationship.



## 21.12. Coercive measures

**IF AN** employer neglects its obligation to provide information laid down in the Act on Co-operation within Undertakings, a personnel group may request, in a court of law, that the employer be obligated, within the time prescribed by the court and under the threat of a fine, to provide the personnel with:

- information on the undertaking's financial standing;
- pay information;
- information on the undertaking's employment relationships; and
- an account of the principles on the use of external workforce applied in the undertaking.

If the employer neglects its obligation to draw up a personnel plan and/or training goals, the Ministry of Employment and the Economy may, at the request of the representative of a per-

sonnel group, request that a court of law impose a conditional fine on the employer. This means that the employer must draw up the personnel plan and the training goals under the threat of a fine.

## 21.13. Availability and penalties

**THE ACT** on Co-operation within Undertakings must be on display for everyone to see at the workplace.

An employer who wilfully or negligently fails to comply with the negotiation procedure specified in the Act on Co-operation within Undertakings may, in addition to indemnification, be sentenced to a fine for a violation of the Act. Responsibility for the violation of the co-operation obligation is borne by the representative of the employer whose duties the obligation falls under.

An employee, the representative of such or the aforementioned expert who breaches the confidentiality obligation may, on the other hand, be held accountable under the Criminal Code.

## 22. Lay-offs

A lay-off means a temporary interruption of work and salary payment taking place at the employer's initiative while the other terms of employment remain in force. A lay-off may remain in force until further notice or for fixed period of time. In any case, it is a temporary solution. It can be implemented by a complete suspension of work or by shortening an employee's working hours (part-time lay-off). If the reason for a lay-off is the temporary diminishment of work, the maximum period for a lay-off can usually be 90 days.

Employment Contracts Act (55/2001; Chapter 5)

### 22.1. Grounds for a lay-off

**AN EMPLOYER** may lay off an employee if it has financial or production-related grounds for terminating the employment relationship. In other words, an employee can be laid off if the work available has materially and permanently diminished due to financial and production-related reasons or due to reasons related to a restructuring of the employer's operations, and the employee cannot be reassigned or retrained with reasonable effort.

The criteria for lay-offs may also be met when the diminishment of work is temporary in nature and is estimated to last a maximum of 90 days. Even in this case, the prerequisite is that the employee cannot be reassigned to or retrained for a new job. The 90-day limit for a fixed-term lay-off is nevertheless not absolute. Rather, according to the legislative drafts of the Employment Contracts Act, it is a kind of flexible line between a fixed-term lay-off and one that is in force until further notice. According to the Employment Contracts Act, an employee may not be laid off based on grounds that would entitle the employer to terminate the employment for reasons attributable to the employee. Neither may an employee be laid off based on grounds that would entitle the employer to rescind the employment.

As a rule, employees with contracts valid until further notice may be laid off. Fixed-term employees can be laid off only if they are working as substitutes for a permanent employee and the employer would have the right to lay

off the permanent employee, if he or she were working.

In addition, during the employment, the employer and employee may agree on a temporary lay-off when it is necessary for the employer's operations or financial situation. In such cases, it is important to take into account any factors that might lessen the employee's right to unemployment benefits.

Fixed-term employment contracts may include terms according to which the contract may be mutually terminated in the same manner as a contract that is valid until further notice. However, as a rule, fixed-term employees with these kinds of contract terms are not eligible for lay-offs. An employer may not lay off an employee after the employee's employment relationship has been terminated at the employer's initiative. In other words, the employer cannot in this way free itself from its obligation to pay the employee their salary for the period of notice.

### 22.2. Lay-offs of shop stewards, employee representatives or occupational health and safety representatives

**THE EMPLOYMENT** Contracts Act provides special protection for shop stewards and employee representatives. Shop stewards or employee representatives may be laid off only if their work ends completely and they cannot be offered other work corresponding to their professional skills or work otherwise suitable, or be trained

for another job. Shop stewards and employee representatives are therefore the last to be laid off, provided that their professional skills and experience allow them to handle the jobs that remain.

Similar rules apply regarding laying off occupational health and safety representatives.

### **22.3. Advance explanation, lay-off hearings and notices**

**PRIOR TO** giving notice of lay-offs, the employer must give the employees or the employees' representative an advance explanation of the grounds for the lay-off and an estimate of its scope, implementation, start date and duration. Following the advance explanation, but prior to the lay-off notice, the employer must provide the employees or their representative a chance to be heard on the explanation given. However, the advance explanation need not be given if the employer is required to hold co-operation negotiations with the staff. In such cases, the financial and production-related grounds for the lay-offs as well as the effects of and possible alternatives to the lay-off will be discussed in the co-operation proceedings.

Lay-off notices must be delivered to employees in person, in compliance with a minimum notice period of 14 days. Collective agreements may contain terms on lay-off notice periods that differ from the law, and many of them do indeed provide for longer notice periods for lay-offs. For example, according to the collective agreement applicable to senior salaried employees working in the technology industries, the notice period for a lay-off notice is one month when the employment relationship has lasted for more than a year.

If the notice cannot be given to the employee in person, it may be sent by mail or electronically. The lay-off notice must indicate the grounds for the lay-off, its time of commencement as well as its duration or estimated duration. The lay-off notices must also be delivered to the representative of the employees laid off.

At the employee's request, the employer

must provide him or her with a written certificate of the lay-off. This certificate must specify at least the reason for the lay-off, its time of commencement and its duration or estimated duration. In practice, it is advisable to always ask for such a certificate, because it is required when taking care of affairs with employment authorities, among others.

### **22.4. Postponement, interruption and end of a lay-off**

**THE EMPLOYMENT** Contracts Act does not provide a method by which a lay-off might be postponed. Because of this, an employer may not unilaterally postpone a lay-off, unless such a right has been agreed in the collective agreement or with the employee separately. According to the Employment Contracts Act, the only way to change the time at which a lay-off begins is to cancel the lay-off and give a new lay-off notice in compliance with the appropriate notice periods.

As mentioned above, collective agreements often contain more detailed provisions on the postponement and interruption of lay-offs. According to some collective agreements, the time of a lay-off may be postponed on certain grounds in such a way that the original lay-off notice is cancelled and the employee is provided with a new lay-off notice.

The Employment Contracts Act does not provide a method by which a lay-off might be interrupted. Because of this, an employer may not unilaterally order an employee to work temporarily during a lay-off in such a way that the lay-off would continue after this temporary return to work. An interruption of a lay-off is possible only if the employer and employee agree to an interruption.

According to the Employment Contracts Act, the employer's only way of unilaterally commanding an employee to return to work is to end the lay-off. In such cases, a new lay-off is naturally permitted to begin after a new lay-off notice and the appropriate notice period.

A fixed-term lay-off ends at the end of the

indicated or agreed period of time. An employee laid off until further notice must be informed about the return to work no less than seven days in advance, unless otherwise agreed.

### 22.5. Agreeing to a lay-off

**YTN DOES** not recommend agreeing to lay-offs. Such agreements may carry risks with regard to obtaining daily unemployment allowance for the duration of the lay-off. When contemplating whether to agree to a lay-off, it is advisable to first seek advice from the institution granting the unemployment benefits in question.

### 22.6. Other work during a lay-off

**THE EMPLOYMENT** Contracts Act does not prevent an employee from taking on another job for the duration of a lay-off. An employee who has accepted another job during a lay-off may terminate the employment contract (i.e. with the other, new employer) with a five-day period of notice, regardless of the period of notice to be complied with otherwise. An employee may thus continue working within their profession or utilising their professional skills for the duration of a lay-off. However, even during lay-offs employees must refrain from engaging in competition with the employer's



operations, since this obligation remains in force also during the lay-off. Employees must also refrain from divulging the employer's business or trade secrets during a lay-off.

## **22.7. Fringe benefits during a lay-off**

**SHOULD AN** employer have provided an employee with housing as a part of that employee's wages or on the basis of an employment-related rental agreement, the employee remains entitled to the housing also during a lay-off. However, the employer is entitled to payment from the employee for the use of the housing during a lay-off. Such payment may be collected at earliest at the beginning of the second full calendar month following the cessation of the employer's obligation to pay the employee their salary. The employee must be informed of the obligation to make these payments no later than a month before the payments are due. Under exceptional circumstances, the employer may be entitled to assign the employee other appropriate housing. The employer must have significant reasons for doing so and must then pay the employee's relocation costs.

The right to use other fringe benefits, such as a company car or phone as well as meal benefits, are interrupted for the duration of the lay-off. In other words, the general rule is that fringe benefits are treated similarly as the employee's salary. In practice, an employer sometimes permits employees to keep using fringe benefits during a lay-off. This has an effect on unemployment benefits, since the employee is then considered to receive a part of his or her salary.

> **Chapter 26.7 contains more information on adjusted daily allowance.**

## **22.8. Termination of a laid-off employee's employment**

**AN EMPLOYEE** who has been laid off may terminate his or her employment to end immediately, without a period of notice, regardless of whether the employment contract is valid for a fixed period of time or until further notice. However, this right ceases for the final seven days leading up to end of the lay-off. A termination during these final seven days will be subject to the normal period of notice.

If full-time lay-offs have lasted continuously for more than 200 calendar days and the laid-off employee terminates their employment, the employee is entitled to receive their notice period salary in accordance with the notice period the employer would have had to observe when terminating the employment in question. This 200-day period is not interrupted by annual holidays or short-term stints of work meant to circumvent the law.

Should an employer terminate a laid-off employee's employment, the laid-off employee must be paid their notice period salary. If the notice period for the lay-off was longer than 14 days pursuant to the law or a collective agreement, the employer may deduct 14 days' worth of salary from the notice period salary.

> **Chapter 5.3 contains information on how lay-offs affect the accumulation of annual holidays.**



## 23. Termination of an Employment Contract

An employment relationship may end in a number of ways. An employee himself or herself may terminate or cancel the employment contract. The employer may terminate the employment relationship either for reasons attributable to the employee or for financial and production-related reasons, or, in serious cases, even cancel the employee's employment contract. An employment relationship may also end in cancellation during a trial period at the initiative of either the employee or employer. A fixed-term employment contract, on the other hand, normally expires at the end of its term without any particular measures taken—for example, after the work has been completed.

An employee does not need to give a reason for terminating his or her employment. An employer, on the other hand, may only terminate an employment based on legal grounds. For cancellation, both parties must have appropriate legal grounds.

### 23.1. End of a fixed-term employment contract

A **FIXED-TERM** employment contract expires when its term comes to an end or when the agreed work has been completed. A fixed-term contract need not be terminated and there is no period of notice. If the duration of fixed-term employment has not been set in time, but rather is such that its expiry depends on circumstances known only to the employer, the employer must inform the employee well in advance about the estimated expiry of the employment.

As a rule, neither party may terminate a fixed-term employment contract. However, if the parties have explicitly agreed that a fixed-term contract may be terminated, the contract may be terminated even before it is set to expire. Even so, should the initiative to terminate the contract come from the employer, the employer must have legal grounds for the termination.

Should the parties not have specified in the employment contract that a fixed-term employment can be terminated, they can nonetheless together agree to end the employment relationship before the end of its term. Such an agreement may affect the employee's right to unemployment benefits.

Fixed-term employment contracts made for a period of more than five years are another exception. Once five years have passed since such a contract was made, it may be terminated in the manner of a contract valid until further notice, both as regards the ground for termination and the proceedings to be observed.

Also fixed-term contract may be cancelled in the manner specified by the Employment Contracts Act.

➤ **Please see also the chapters on trial periods (3.4.), cancellation of employment relationships (23.15.), debt restructuring proceedings (23.10.), termination in connection with a transfer of business (23.8.) and the bankruptcy or death of the employer (23.9.).**

### 23.2. Termination of an employment contract valid until further notice

**AS A** rule, an employment contract valid until further notice ends through termination by either party. The employment then ends after the period of notice has expired. In addition, when the termination occurs on the employer's ini-



tiative, the employer must have legal grounds for the termination. An employee may terminate his or her employment without any particular reason.

### 23.3. Period of notice

**WITHIN THE** limits determined by law, the parties may agree what period of notice will be observed in the employment relationship. Also collective agreements may determine the terms of a notice period. The maximum length for a period of notice is nevertheless six months.

It is permissible for the employer to be obliged to observe a longer notice period than the employee. However, should the notice period agreed for the employer be shorter than the employee's notice period, the employee may observe the employer's notice period instead of his or her own.

The parties may agree that termination of

the employment requires no notice period at all. Such an agreement can also be made once the parties are contemplating termination. In such cases, the employment is considered to expire at the end of the workday or shift in question.

Should the employee agree to waive their right to a notice period, the employee will not receive unemployment benefit for a corresponding period. Statutory periods of notice are observed in cases where no agreement has been made as to the notice period.

#### 23.3.1. Statutory periods of notice

The following periods of notice are observed if no other agreement has been made (see table 23.3. A).

When the period of notice is counted in months, the day on which the employment ends corresponds with the date of giving notice to terminate. For example, when complying

**Table 23.3. A**

Statutory periods of notice

Duration of employment relationship	Employer's period of notice
At most 1 year	14 days
More than 1 year-4 years	1 month
More than 4 years-8 years	2 months
More than 8 years-12 years	4 months
More than 12 years	6 months

Duration of employment relationship	Employee's period of notice
At most 5 years	14 days
More than 5 years	1 month

Different rules on notice periods apply in cases of transfers of business, bankruptcies or debt restructuring proceedings.

with a one-month period of notice, if notice of termination is given on 6 July, the final day of work is 6 August. When complying with a two-week period of notice, employment that is terminated on Monday, 6 July, ends with the final day of work on Monday, 20 July.

### 23.3.2. Non-compliance with a period of notice

If an employer fails to comply with the period of notice when terminating an employment contract, it must pay the employee's salary for the entire period of notice, including holiday compensation. If it is the employee who fails to comply with the period of notice, he or she must pay the employer a lump-sum compensation equal to the amount of the notice period salary. Although the employer is still required to observe the rules provided for set-offs against the employee's salary, the employer may deduct this lump-sum compensation payment from any salary payments due the employee. As a rule, the employer may set off a maximum of one-third of an employee's net pay. Furthermore, legislation determines what protected amounts in euros must, at minimum, remain at the employee's disposal.

If the failure of either party to observe the notice period is partial, i.e. a part of the notice period has been complied with, the aforementioned payment obligations are those too only partial, i.e. apply only to the amount corresponding to the part of the notice period not observed.

### 23.3.3. Termination prior to the start of work

An employment contract can be terminated even before the employment relationship (the performance of work) begins. In the event that the period of notice to be complied with is longer than the time remaining until the employment relationship begins, i.e. the start of the employment comes before the notice period

has expired in full, the employer's obligation to pay salary and the employee's obligation to start work both commence at the beginning of the employment. If the employee fails to fulfill his or her obligation to work, he or she is in breach of the employment contract and will be liable for the damage thus caused the employer. In practice, however, in these situations, the parties often agree on the termination of the employment contract without an obligation to work.

➤ **See chapter 3.2 for further information**

### 23.3.4. Obligation to work during the period of notice

In general, the terms applied throughout the employment relationship remain in force also during the period of notice. Thus, the notice period constitutes a part of the employment relationship, and both parties are still required to fulfil their contractual obligations pursuant to the employment contract. In other words, the employee still needs to carry out his or her tasks as per the employment contract. An employee may also be on annual holiday, sick leave, paternity leave, etc., during the period of notice. As is the case throughout the employment relationship, the employer determines the timing of any holidays – this holds true for the notice period as well. The employee may merely suggest that he or she be allowed to take any remaining holidays during the period of notice.

➤ **Chapter 5.10 includes more information on taking annual holidays during a period of notice.**

The employer and employee may agree that the employee is not obliged to work during the period of notice. The employer may also unilaterally release the employee from the obligation to work during the period of notice.

In order for there not to be a claim that the employee has neglected their duties, it is always advisable to obtain any release from work in

writing. Even when releasing the employee from the obligation to work, the employer must nonetheless pay the notice period salary in full.

## 23.4. Resigning

**AN EMPLOYEE** need not give a reason for terminating his or her employment. When resigning, an employee must comply with the period of notice specified in the employment contract or, if no period of notice has been agreed, the aforementioned periods of notice according to the Employment Contracts Act.

Should the employee give more than the agreed notice, .e.g. give two months' notice in a case where the employee is required to observe only one month's notice, there is a risk that the employer will consider the employment ended in accordance with the original period of notice.

It is advisable to prepare two written copies of a notice of termination, one for the employer and one for the employee as evidence. While there are no requirements as such as to the form of the notice, it should include the names of the parties, the date when the notice of termination is given as well as the date on which the employment will end. If the employee is resigning to take up employment elsewhere, it is advisable to not tender the resignation until the new employment contract has been signed.

An employee is entitled to resign even after the employer has given notice of termination. In such a case, the parties observe the employee's period of notice, if it is shorter than the time remaining of the employer's period of notice.

### 23.4.1. Consequences of resigning

The time during the notice period is no different than any other time during the employment. The employee's obligation to work continues until the end of the period of notice, unless the parties agree otherwise or the employer informs the employee that they have been released from their obligation to work. The period of notice may overlap in part or in full with

e.g. annual holidays, sick leave or family leave.

When resigning, the employee should consider that if he or she does not already have new employment waiting, the termination of the current employment relationship at the employee's initiative usually leads to a qualifying period for unemployment security. If the employee is not considered to have a valid reason for terminating the employment, the labour commission will impose a 90-day period during which he or she is not entitled to unemployment benefits.

Reasons that would be considered valid for resigning include situations where the employee is entitled to cancel their contract as specified in the Employment Contracts Act or where the work would not be deemed suitable in relation to the employee's capacity for work. Under certain conditions, an employee may also have a valid reason to resign when his or her family is relocating because of the work of the employee's spouse. However, according to case law, reasons relating to child-care arrangements, difficulties travelling or problems caused by the length of the working day have not been considered valid reasons.

The employer may sometimes suggest to the employee that he or she resign instead of the employer terminating the employment. The employer may also suggest coming to a mutual agreement on terminating the employment. Such agreements are discussed in more detail under chapter 23.20 on exit agreements. Employees should approach suggestion like this with care. Before agreeing to what the employer suggests, the employee should thoroughly examine what effects such an arrangement may have. Expert legal advice can be had from union or employee association lawyers. Resigning or making an exit agreement on the termination of the employment results in the employee losing the right to later contest the ending of the employment.

Should the employee resign in a situation where the grounds for termination would otherwise be a financial or production-related reason attributable to the employer, the employee loses the right to the increased portion of the earnings-related unemployment benefits.

In other words, an employee who resigns gets a shorter period of notice and less salary than he or she would were the termination initiated by the employer. Often the duration of the employment and the work history will also be shorter.

### **23.5. Grounds for termination attributable to the employee**

**ACCORDING TO** the Employment Contracts Act, an employer may terminate an employment contract valid until further notice only for a well-founded and significant reason. Such well-founded and significant grounds attributable to the employee, or related to his or her person, include a serious breach or neglect of such of the employee's duties (based either on law or the employment contract) that have a material impact on the employment relationship. In addition, as these kinds of grounds attributable to the employee, are also considered such material changes in the employee's ability to work that leave the employee no longer able to cope with his or her tasks. When assessing the sufficiency of the grounds given, one should account for the total number of people employed by the employer, as well as the circumstances of the employer and employee as a whole.

At least the following are not regarded as well-founded and significant grounds in the manner intended by the Employment Contracts Act:

- an illness, disability or accident affecting the employee, unless his or her working capacity is substantially reduced thereby for such a long period of time as to render it unreasonable to require the employer to continue the employment relationship;
- the employee's participation in industrial action arranged by an employees' association or in accordance with the Collective Agreements Act;

- the employee's political, religious or other opinions or his or her participation in social activity or associations;
- resorting to means of legal protection available to employees.

Given the brevity of the Employment Contracts Act, it is nearly impossible to determine, by way of any general rules or examples, when the well-founded and significant grounds referred to in the Act exist. This is why the adequacy of the grounds for termination must always be assessed on a case-by-case basis according to established legal praxis.

The assessment of whether there are well-founded and significant grounds for termination must therefore always be carried out as an overall assessment in such a way that all factors and circumstances with an impact on the case are taken into consideration. Termination on such grounds should only occur when an employer acting in good faith cannot reasonably be expected to act in any other way.

Typical grounds for termination for reasons attributable to the employee include a failure to carry out tasks, non-compliance with instructions given by the employer within the framework of its right to supervise work, a breach of administrative rules, unjustified absences and evident negligence in work.

On the other hand, prior to termination, the employer must also find out whether the termination could be avoided by reassigning the employee. If the grounds for termination constitute such a serious breach related to the employment relationship that the employer cannot reasonably be expected to continue the employment, the employer is not required to first give the employee a warning or to investigate the possibility to reassign the employee.

#### **23.5.1. Warning**

Employees who have failed to fulfil or who have breached their contractual obligations arising from the employment relationship may not

be given notice of termination until they have been warned and given a chance to amend their conduct.

The warning can be given verbally or in writing. The warning must be based on actual events and specified in such a way that the employee understands what the issue concerns. The employee must be given a genuine opportunity to amend his or her conduct or behaviour.

The law contains no provisions as to the number of warnings that should be given or for how long a time they are to be valid. A warning can be considered to remain valid for roughly a year, but each case must be considered individually. An employer's policy with regard to warnings should be consistent and equal.

If an employee is not guilty of any breach or neglect, the warning is without grounds and the employer may not appeal to it as a basis for termination. If an employee feels he or she has received a warning for no reason, he or she may object to the warning by providing the employer with a written statement on the employee's understanding of the events. The statement must address the reasons for why the employee considers the warning unwarranted. If the employer nonetheless later terminates the employment and refers to the previously issued warning as the basis for termination, the employee's statement and objections may be enough to prove that the warning was unwarranted. An employee cannot contest an unwarranted warning while the employment relationship continues. Instead, the appropriateness of the warning will only be investigated once the employment relationship has ended.

## **23.6. Financial and production-related grounds for termination**

**AN EMPLOYER** may terminate an employment contract when the work offered has diminished significantly and permanently due to financial or production-related grounds or a restructuring of the employer's operations. The law therefore requires the work to have been diminis-

hed both significantly and permanently, at the same time. If this is not the case, termination of employment contracts is not an option.

When assessing the diminishment of work, the situation must be considered separately in the case of each employee. If the diminishment is merely temporary, the employer does not have the right to give notice to the employee. In such cases, the employer may only consider a lay-off. The diminishment of work is considered temporary if the period of time for which work has diminished does not exceed 90 days.

The diminishment of work may be the result of a number of reasons. Possible reasons include a decline in demand, tougher competition, the undertaking's products becoming outdated, a transition to subcontracting, the employer's rationalisation measures and the contraction or refocusing of operations.

Situations in which work has not diminished per se, but in which the undertaking is making a loss and is terminating employment contracts to achieve cost savings are particularly challenging. In such cases, the situation must be considered as a whole and one should attempt to investigate whether the cost savings to be gained by reducing the workforce truly are essential for the continuity of the undertaking's operations.

➤ **Changes to the material terms of employment relationships, such as a reduction of wages, are discussed in more detail in chapter 3.13.**

### **23.6.1. Obligation to offer other work**

The material diminishment of work alone does not provide adequate grounds for termination if the employee can be reassigned to another job. In such cases, the employee must primarily be offered work that corresponds to the tasks defined in his or her employment contract. If such work is not available, the employee must be offered other work suitable for the employee based on their training, professional skills or experience.

When assessing the possibilities for such reassignment, it should also be investigated whether the employee might become suitable through training for the task in question. In such cases, the employer must arrange for the employee such necessary training as can be considered suitable and reasonable from the perspective of both parties.

If the employer reasonably could reassign or train the employee for a new task, the employer does not have the right to terminate the employment. However, the employer is only obligated to arrange training that serves the employer's needs and the employee's professional development. In other words, the employer cannot be required to arrange training that would deviate from the nature of its line of business or the level considered conventional with regard to the size of the workplace.

The Labour Court's decision TT 2005:77, which concerned a matter involving a member of YTN, focused on the employer's obligation to offer work as an alternative to termination.

While work had clearly diminished in the unit of the employee whose employment was terminated, the employer was a sizeable company and had had several vacancies available to which new external employees had been recruited. Some of the tasks in question were unsuitable for the employee, while other tasks were of the kind for which she or he, based on experience, could likely have been hired after a fairly short period of training and orientation. The employer offered the employee in question only one other job in a completely different locality, to which the employee was unable to relocate due to personal reasons.

Although the company used an internal electronic system to report available vacancies and had emphasised the need for the employee to apply for jobs at their own initiative, the Labour Court's decision underscored that the duty to examine whether an employee can be reassigned lies with the employer. In other words, according to the court, it is for the employer, at its own initiative, to investigate what work is available and whether the employee in question is suitable for that work. The Labour Court

found the employer to have failed to fulfil its obligation to offer work and training. Instead, the employment contract had been terminated without due cause. The employer was therefore obligated to pay damages to the employee.

If an employee refuses the new tasks offered to him or her, this is not interpreted as the employee resigning. However, such refusal may lessen the possible damages payable to the employee, should the employer be found to have terminated the employment without cause.

If an employer exercises control in personnel matters in some other undertaking or corporation, either through ownership, agreements or other arrangements, and the employer cannot offer an employee an aforementioned reassignment, the employer must investigate whether it can fulfil its obligation to offer work or training by offering the employee work in the undertakings or corporations under its control. The obligation to offer work extends only from a parent company towards subsidiaries, not from a subsidiary towards another subsidiary or the parent company.

### **23.6.2. When are there no financial or production-related grounds for termination?**

The Employment Contracts Act includes a list of examples of what grounds are insufficient for terminating an employment contract due to financial or production-related reasons.

According to the provisions in question, such grounds do not exist at least in the following situations:

- The employer has prior to the termination or subsequently hired new personnel for similar tasks, even though the operating conditions of the employer have not changed during the time in question.
- The reorganisation of work has not led to an actual diminishment of work.

### 23.7. Terminating the employment of an employee who is pregnant or on family leave

**THE EMPLOYMENT** contract of an employee who is on maternity, special maternity, paternity, parental or child care leave may be terminated due to financial and production-related grounds only if the employer's operations cease altogether.

The employer may not terminate an employment contract due to pregnancy or on the grounds that the employee exercises his or her statutory right to such family leave as is provided for in the Employment Contracts Act. This protection begins from the moment the employer becomes aware of the pregnancy. The employee is obligated to present proof of the pregnancy if the employer so requests. If an employer terminates the employment of an employee who is pregnant or on family leave, the termination is considered to be attributable to the employee's pregnancy or family leave, unless the employer is able to prove otherwise.

### 23.8. Termination in connection with a transfer of business

**WHEN IT** comes to transfers of business, a new owner may not terminate employment contracts merely on the basis of the transfer. The employer may therefore terminate employment contracts only if there are financial or production-related grounds or well-founded and significant grounds attributable to the employee – both in the manner required in the Employment Contracts Act. In such cases, the period of notice is equal to any other case of termination. In transfers of business, employees may terminate their employment contract to end on the date of the transfer, provided that they have been informed of the transfer by the employer or the company's new proprietor no later than a month prior to the date of the transfer. This, regardless of the period of notice to be otherwise

complied with in the employment relationship. If the employees are informed of the transfer at a later date, they may terminate their employment contracts to end as of the date of the transfer or thereafter, but in any case no later than within a month of having been informed of the transfer of business. This right to terminate one's contract due to a transfer of business also belongs to employees on fixed-term contracts.

➤ **Chapter 3.5 contains further information on how transfers of business affect employment relationships.**

### 23.9. Termination due to the bankruptcy or death of the employer

**WHEN AN** employer is declared bankrupt, either party may terminate an employment contract (regardless of its duration) with a 14-day period of notice. This applies even if the parties have agreed on a longer period of notice, and also applies to fixed-term employment contracts. This special 14-day period of notice may, however, only be used after the bankruptcy has commenced. Not even the certainty of a company's imminent bankruptcy entitles the parties to use this shortened period of notice before the bankruptcy occurs. This is the case even when the bankruptcy occurs immediately after the termination.

When an employer is driven into bankruptcy, the bankruptcy estate has the right to re-terminate any employment contracts already terminated with a 14-day period of notice, thereby shortening any ongoing periods of notice. The salary for the bankruptcy period is paid by the bankruptcy estate.

When an employer dies, both a party to the estate and the employee have the right to terminate the employment contract, regardless of its duration, with a 14-day period of notice. This also applies to fixed-term employment contracts. This special right to terminate an employment contract must be exercised within three months of the employer's death.

### 23.10. Termination in connection with debt restructuring proceedings

**IF THE** employer is subject to corporate debt restructuring proceedings, it may terminate an employee's employment if the grounds for termination are:

- an arrangement or measure carried out during the restructuring proceedings that is necessary to avoid bankruptcy and due to which the available work ceases or diminishes significantly and permanently; or
- a measure based on the confirmed debt restructuring programme due to which work ceases or diminishes significantly and permanently; or
- an arrangement, based on and in line with the debt restructuring programme, that is due to financial reasons and that requires downsizing the workforce.

However, the aforementioned right to terminate employment contracts does not apply if the employee can reasonably, in terms of his or her professional skills and capacity, be reassigned or trained for another job. In the event that the right to terminate employment contracts is exercised, the terminations may be carried out in accordance with a two-month period of notice, even if longer periods of notice have been agreed. This period of notice also applies to fixed-term employment contracts. As a rule, employees must observe a 14-day notice period when tendering their resignation due to the employer's debt restructuring proceedings.

### 23.11. Termination during a lay-off

**AN EMPLOYER** may terminate an employee's employment contract during a lay-off if the diminishment of work proves to be permanent. In such situations, the employer must pay the

employee the notice period salary. The employer may deduct salary for 14 days from this notice period salary if the employee has been laid off according to a longer lay-off notice period than the statutory or contractual 14-day notice period.

➤ **Chapter 22.8, concerning lay-offs, discusses an employee's right to terminate his or her employment contract during a lay-off.**

### 23.12. Terminating the employment contract of a shop steward, employee representative or occupational health and safety representative

**THE EMPLOYMENT** Contracts Act provides special protection against termination for shop stewards and employee representatives. For an employer to terminate the contract of a shop steward or employee representative for a reason related to the person of the aforementioned, the majority of the employees the shop steward or employee representative in question represents must give their consent to the termination, in addition to the requirement concerning adequate grounds for termination.

However, the employment contracts of shop stewards and employee representatives may be terminated if their work ceases completely and they neither can be assigned other work that corresponds to their professional skills or is otherwise suitable for them, nor be trained for other work.

What is explained above with regard to terminating the employment contracts of shop stewards and employee representatives applies correspondingly to the termination of an occupational health and safety representative's employment contract.



## **23.13. The employer's obligation to offer leave and services in financial or production-related terminations**

### **23.13.1 Employment leave**

When an employment contract has been terminated due to financial and production-related reasons or in connection with a restructuring procedure, the employee is entitled to a paid employment leave during the period of notice. The employee may use the leave to prepare an employment plan, or for labour market training or practical training, on-the-job learning, searching for a new job, job interviews or reassignment coaching. Following the termination, the employer and employee may also agree on the employee not exercising his or her right to this leave.

The leave can also be taken as only a part of a working day. Prior to taking an employment leave or a part thereof, the employee must inform the employer of the leave and the grounds for it as early as possible. Should the employer so request, the employee must present a reliable report on the grounds for the leave. Exercising the leave must not cause significant inconvenience for the employer.

Unemployed jobseekers and jobseekers who fall under the scope of change security are entitled to an employment plan. At the latest, the plan is prepared at the jobseeker interview that is to be arranged no later than within two weeks of being registered as a jobseeker. The employment plan is based on the jobseeker's own objectives concerning work and education, as well as on his or her estimated need for services.

### **23.13.2 The employee's right to occupational healthcare services after the termination of employment**

If an employee's employment is terminated due to financial and production-related reasons and the employer regularly employs at least 30 persons, the employer must offer the employee occupational healthcare services for six months after the employee's obligation to work has ended. This duty of the employer's applies to employees whose employment has lasted at least five years.

The employer's obligation to arrange occupational healthcare ceases when the employee in question retains other permanent work or is employed on a fixed-term contract of at least six months, and thus falls under the occupational

**Table 23.13 A**

The duration of the employment leave is determined according to a particular employee's period of notice as follows:

Duration of employment leave	Length of period of notice
1. a maximum of 5 workdays	no more than 1 month
2. a maximum of 10 workdays	more than 1 month, no more than 4 months
3. a maximum of 20 workdays	more than 4 months

healthcare services provided by that other employer. The employee must inform the employer of finding employment elsewhere and being entitled to the occupational healthcare services arranged by the new employer.

### 23.13.3 Coaching and training to promote employment

If an employee's employment relationship is terminated due to financial and production-related reasons and the employer regularly employs at least 30 persons, the employer is obligated to offer the employee an opportunity to participate in employment-promoting coaching or training at the employer's expense. The obligation applies to employees whose employment relationship has lasted at least five years.

The value of the coaching or training must correspond at minimum to either the employee's average monthly salary or the average monthly salary of all personnel working at the same workplace, depending on which is higher. The coaching or training must normally be carried out within two months after the period of notice has ended.

### 23.14. Re-employment of an employee whose employment contract has been terminated

**AN EMPLOYER** must offer to re-employ an employee whose contract the employer has terminated due to financial and production-related grounds or in connection with a restructuring procedure. This, if the employer requires labour for the same or similar tasks performed by the employee in question once the employment has ended. This obligation remains in force for a period of four months following the end of the employee's period of notice. However, if, by the time it is terminated, the employment relationship has continued uninterrupted for at least 12 years, the re-employment period is six months. An employee who falls within the

scope of this re-employment obligation must be given priority even over more qualified external candidates, as long as he or she meets the requirements necessary for the task.

However, the obligation to offer work only applies if the employee has registered as a job seeker with the TE Office and the job search is still in effect. In practice, the obligation to re-employ functions in such a way that the employer must inquire from the local employment authorities whether former employees are seeking jobs through the authorities in question. Should the employer find out that this is the case, the employer must offer work primarily to these job seekers. This obligation also applies to the transferee in a transfer of business when the transferor has terminated an employee's employment contract to end prior to the moment of transfer.

### 23.15. Cancellation of employment contracts

**CANCELLATION IS** a very exceptional way to end an employment contract. The cancellation of an employment contract mainly comes into play when the case involves an exceptionally serious breach of contract by one contracting party. The cancellation of an employment contract requires a particularly significant reason. If an employment contract is cancelled, it ends without a period of notice. The employment relationship nevertheless continues until the end of the shift or day in question. Because of this, the employee is entitled to his or her full pay for the day, even if the employer would order the employee to leave the workplace immediately.

The assessment of the grounds for cancellation is not always easy. If an employer has cancelled an employee's employment contract when the employer at most had grounds for termination, the employee is entitled to receive the salary for the period of notice she or he has lost. In the event that even grounds for a termination are not met, the employee may be awarded damages for the unlawful cancellation of the employment contract, if the employer has

wilfully or negligently failed to comply with the provisions concerning cancellation in the Employment Contracts Act.

### 23.15.1. Grounds for cancellation

The particularly significant reasons that entitle an employer to cancel an employee's employment include an employee seriously breaching or neglecting such of their duties (as they are either based on law or the contract) as have a material effect on the employment relationship. Further, it is required that the employer cannot reasonably be expected to continue the contractual relationship even for the duration of a period of notice.

Correspondingly, an employee has the right to cancel an employment contract with immediate effect if the employer breaches or neglects such of its duties (as they are either based on law or the contract) as have a material effect on the employment relationship. Also here it is required that the employer's breach is such that the employee cannot reasonably be expected to continue the contractual relationship even for the duration of a period of notice.

An employer furthermore has the right to consider an employment contract cancelled if the employee is absent from the workplace for at least seven days without notifying the employer of a valid reason for his or her absence. In such cases, the employment contract is considered cancelled as of the start of the absence. If the employer has not been notified of the absence due to an acceptable reason such as the employee being hospitalised, the cancellation of the employment contract is rescinded. The employee is entitled to an equivalent right if the employer is similarly absent for a week and has no substitute at the workplace.

### 23.15.2. Examples of grounds for cancellation

The employer may cancel an employment contract in, for example, the following cases:

- the employee has materially misled the employer when entering into the employment contract;
- the employee recklessly endangers health and safety at the workplace, or the employee is present while intoxicated or uses intoxicating substances on the premises contrary to workplace regulations;
- the employee grossly slanders the character of the employer or a co-worker, or the employer's family member or substitute, or is violent towards such persons;
- the employee to an aggravated degree exploits to his or her own advantage or discloses to a third party the employer's business or trade secrets or enters into a competing employment contract;
- the employee wilfully or negligently fails to carry out his or her duties and continues to do so despite a warning.

The employee may cancel an employment contract in, for example, the following cases:

- the employer has materially misled the employee when entering into the employment contract;
- the employee's reputation or morality is endangered due to the employment relationship;
- the employer or the employer's substitute grossly slanders the character of the employee or the employee's family member or is violent towards them;
- the employer or the employer's substitute recklessly endangers health and safety at the workplace;
- the employee is not given enough work;
- the salary is not paid as agreed.

The lists above serve as mere examples and are applicable only when the circumstances do not give reasons for other considerations. When assessing the grounds for cancellation, one must always remember to review each case separately, taking into account the big picture.

### 23.15.3. Exercising the right to cancel

In terms of time, a right to cancel an employment relationship is fairly limited. The cancellation right expires if the employment contract has not been cancelled within 14 days of when a party to the employment contract has become aware of the grounds for cancellation being met. If the grounds for cancellation are on-going, the employment contract must be cancelled within 14 days of the time when the employer/employee has become aware of a cessation of the grounds. Only in exceptional cases, when the cancellation is hindered due to a valid reason, may it be carried out later. In such cases, the employment contract must be cancelled within 14 days of the end of the hindrance. If the cancellation is not carried out within the prescribed period of time, the right to cancel the employment relationship expires. Even in such cases, it may be possible to terminate the employment relationship on the same grounds.

### 23.16. Housing benefits at the end of employment

**WHEN AN** employment relationship ends, the employee's right to use housing provided by the employer as emolument, depends on the duration of the employment relationship. If the employment relationship has lasted for at least a year, the employer is required to give notice regarding company housing at least six months in advance. If the employment relationship has lasted less than a year, the employer must give notice regarding company housing at least three months in advance.

If the employer cancels the employment relationship for a reason other than the employ-

ee's illness, the period of notice is three months, if the employment relationship has lasted for at least a year. If the employment relationship has been shorter than this, the period of notice is one month. These periods of notice also apply when the employee cancels his or her employment contract without legal grounds for doing so or resigns.

If the agreed work requires the employee to reside in particular housing or on a particular property and this is expressly mentioned in writing in the employment contract or lease agreement, the right to use the housing ends within a month of the end of the employment relationship, regardless of the duration of the employment.

The notice periods for company housing are counted as full calendar months.

The employee may be provided with other suitable housing to use for the time after the end of the employment, if the employer has important reasons for this. In such cases, the relocation costs are borne by the employer. The employee must pay rent for the housing for any period following the end of the employment. The amount of the rent may not exceed the reasonable monthly housing expense per square metre for the locality in question as determined by the Act on General Housing Allowance. The employee must be informed of the amount of the rent. The rent may be collected from the beginning of the month immediately following a 14-day period after the notification.

The legal provisions concerning company housing are mandatory. The rights they confer on an employee may not be restricted in an employment contract, for example.

### 23.17. Procedure for terminating an employment contract

**THE EMPLOYER** must give the employee notice on termination in person. Likewise, when resigning, the employee must give notice to the employer or the employer's representative. If giving notice in this manner is not possible, the notice may be delivered by mail or electroni-

cally. The recipient is considered to have received the notice no later than on the seventh day following its dispatch. If the employee at the time is on annual holiday or at minimum a two-week leave due to an averaging out of working hours, the notice of termination sent by mail or electronically is considered to have been delivered at earliest on the day following the last day of the holiday or leave. If the employee nevertheless verifiably receives the notice of termination earlier, the termination is considered to occur at that moment, and the special provisions concerning the mailing of the notice do not apply.

Another exception to these provisions concerning the timing of a notice are situations in which the employment relationship is cancelled on the basis of a trial period or for some other particularly significant reason. In such cases, it suffices that the notice has been mailed or sent electronically within the prescribed period of time.

Employers quite often request that employees in writing confirm the receipt of a notice of termination. Before signing, it is advisable to carefully read any documents presented for the employee's signature. The notice may contain entries according to which the employee has accepted or agreed to the termination. If the employee has reason to believe that he or she may damage his or her situation by signing the notice, it is advisable to refrain from signing.

The law does not prescribe a specific form for the notice of termination or cancellation of an employment contract. Because of this, an employment contract may be terminated either verbally or in writing. To give notice in writing is more common and also recommended. If the employee has not received a written notice of termination or cancellation, he or she may request one from the employer. In such cases, the employer is obligated to immediately notify the employee of the main points of the grounds for termination or cancellation and the date on which the employment contract ends. The employee will need these documents when registering with the TE Office.

### **23.17.1. Termination attributable to the employee**

In matters where there are grounds for termination attributable to the employee, the employer must give notice of termination within a reasonable time. Before the employer terminates for reasons attributable to the employee, the employee must be given a chance to be heard on the grounds for the termination. The same procedure applies if the employer intends to cancel an employee's employment contract. The employee is entitled to have a representative of their own choosing present with them at the hearing. In the event that the employee intends to cancel the employment contract, he or she must give the employer a chance to be heard before doing so.

### **23.17.2. Termination for other reasons**

Before employment is terminated due to financial and production-related grounds or in connection with a restructuring procedure, the employer must explain the grounds for and alternatives to the termination to the employee. The employee must likewise be informed of the services available at the TE Office as soon as possible.

If the employment contract is terminated due to the employer's death or bankruptcy, the employee must be informed of the grounds for the termination as soon as possible. If the employment contracts of several employees are being terminated at once, the explanation may be given to the employees or their representatives as a group. If the grounds for termination are being negotiated with the employees in accordance with the Act on Co-operation within Undertakings or a binding collective agreement, the employer need not give the separate explanation referred to herein.

## **23.18. Compensation for delayed salary**

**WHEN AN** employment relationship ends, all receivables arising from the employment re-

relationship must be paid on the last day of the employment, unless otherwise agreed. If this payment by the employer is delayed, the employee is entitled, in addition to the interest on late payments referred to in the Interest Act, to receive a salary for the days of waiting, though only for a maximum of six days.

If the employee's receivables are unclear or disputed, or if the delay in payment is attributable to a miscalculation or some other comparable error by the employer, the employee is entitled to a salary for the waiting period only if he or she reminds the employer of the delay within a month of the end of employment. Following the reminder, the employer has three weekdays to pay the remaining receivables. The right to a salary for the waiting period will, in such cases, take effect after the three weekdays reserved for the employer's payment have passed.

### **23.19. Liability for damages**

**IF THE** employer wilfully or negligently fails to fulfil its contractual obligations arising from the Employment Contracts Act or an employment contract, it must compensate the employee for the damage caused thereby.

The employee is also subject to a liability for damages based on equivalent grounds. The liability for damage caused by the employee through mistake or neglect depends on the degree of guilt to be considered the employee's fault. A wilful act is largely subject to a full liability for damages, whereas in the case of minor negligence, the employee is free of liability. In other situations involving negligence, the liability is adjusted to be reasonable when accounting for the magnitude of the damage, the severity of the act, the position of the damaging party, the need of the injured party and other circumstances.

#### **23.19.1. Compensation for the termination of an employment relationship**

An employer that has terminated an employee's

employment contract contrary to the grounds provided in the Employment Contracts Act, may be ordered to compensate the employee for the unfounded termination of the employment relationship. Such compensation equals three months' salary at minimum and 24 months' salary at maximum. The maximum amount of compensation payable to a shop steward or an employee representative elected on the basis of a collective agreement, however, may equal up to 30 months' salary.

If the case involves termination due to financial and production-related grounds or an unfounded termination in connection with a restructuring procedure, an unlawful cancellation during a trial period or a cancellation contrary to the grounds for cancellation provided in the Employment Contracts Act, the compensation may be set at less than three months' salary.

Depending on the reasons for the termination of the employment relationship, the amount of compensation is influenced by, for example, the estimated duration of the time the employee will remain without work, the estimated loss of income, the remaining term of an interrupted fixed-term employment contract, the duration of the employment relationship, the employee's age and possibility to find work that corresponds to his or her occupation and education, the employer's procedure when terminating the employment relationship, a cause for termination attributable to an employee himself or herself, the employer and employee's general circumstances and other comparable factors.

#### **23.19.2. The effect on damages by daily unemployment allowance and the payment of compensation**

The unemployment benefits paid to an employee usually affect the amount of damages and compensation payable to an employee for unlawful termination.

When the employee is to be compensated for wages and similar benefits lost due to unemployment, the following deductions should first be made from the compensation to be paid:

- 75 per cent of the earnings-adjusted daily allowances paid to the employee during the period in question;
- 80 per cent of the basic daily allowances paid to the employee during the period in question; and
- the labour market subsidy, in full, paid to the employee during the period in question.

A court of law may adjust the deduction so as to make it fair and reasonable. The court might also order that no deduction be made.

If it is agreed between the employer and employee, or between employer and employee associations, that the employer will pay the employee compensation, the agreement must specify what the full sum of the compensation is and to what extent the compensation contains damages for wages lost before the signing of the agreement. In addition, part of the compensation may be designated as compensation for intangible damage due to the insult or injury suffered by the employee due to the employer's actions. The aforementioned deductions related to daily unemployment allowance are directed only towards the part of the compensation dealing with loss of wages, not the part constituting intangible damages. Also in an agreement between the parties, the deductions can be adjusted based on what is considered fair and reasonable. The next chapter contains more information on the termination of an employment relationship by mutual agreement.

The employer is responsible for making sure that the deducted amounts are forwarded to the proper recipients. The employee is responsible for delivering a copy of the agreement to their unemployment fund, if the employee is unemployed and receives unemployment benefits from the fund.

### **[23.20. Terminating an employment relationship by mutual agreement](#)**

Employers and employees sometimes enter a mutual agreement on the ending of employment as an alternative to conventional termination. There are no particular provisions on the form or terms of such mutual agreements. It is, however, advisable that the agreement always be made in writing. In addition, at the very latest, before the agreement is signed, the contract terms as well as the consequences of entering into the agreement (for example, as pertains to unemployment benefits) should be reviewed together with a lawyer. One should exercise great care when making such agreements.

#### **23.20.1. On the validity and reasonableness of an agreement**

The parties' free will to enter into agreements is an important starting point for an agreement's validity. An agreement must not be entered into under circumstances of coercion directed towards either party, fraudulent misrepresentation or by taking advantage of the other party's lack of judgment or their dependent position. A party claiming that an agreement is invalid or unreasonable, must be able to prove his or her claim. If an employee feels they are being coerced into concluding an agreement with the employer, he or she should contact a union lawyer immediately, and always before signing the proffered agreement.

#### **23.20.2. Parties to and background of an agreement**

The parties to an agreement – the employer and employee – should be listed at the beginning of the document. It is especially important to name the employer with regard to a group of companies and in case the employee has worked for more than one employer.

The section on the background for an agreement usually includes a summary of the circumstances that led to the agreement, such as an organisational change implemented in the com-

pany and the related significant diminishment of the work of the employee in question (financial and production-related grounds) or the parties' attempt to solve their dispute or conflict amicably (termination grounds attributable to the employee). In the event that the agreement is made only after the employment relationship has been terminated, the background section usually also indicates the date on which the notice of termination was given and the grounds for termination mentioned therein.

If the agreement contains no mention of the employment relationship having ended specifically due to financial and production-related grounds, the employee is, in general, always subject to a 90-day period of qualification (i.e. a time during which the employee's right to unemployment benefits will be suspended) imposed by the labour authorities.

Background information furthermore usually includes the date on which the employee started working for the employer and his or her most recent duties.

### **23.20.3. End date of the employment; obligation to work**

The date on which the employment relationship ends should be specified precisely. Usually the employment relationship ends after a period of notice, but it can also be agreed that it ends immediately, and that the salary for the period of notice, holiday compensation included, be paid as a lump sum.

In practice, it is fairly common to agree that the employee will not be obligated to work, at least for the entire period of notice. It is advisable for the parties to agree mutual ground rules on how, on the one hand, to carry out the winding down of the employee's tasks or their transfer to other employees, and, on the other hand, how to take into consideration the situation's effects on the employee, i.e. issues involving motivation and information security. For the sake of clarity, it is also recommended to expressly agree on whether the employee uses annual holiday days during the notice period or

whether he or she is merely released from the obligation to work, in which case untaken holiday days are compensated for in money.

### **23.20.4. Employment relationship receivables and holiday compensation**

The mutual agreement on the termination of an employment relationship should specify what the employee's payoff contains and on which day it will be paid. The most common employment relationship receivables, in addition to the salary for the period of notice, consist of overtime compensation, reimbursements for costs such as travel expenses and various performance payments (e.g. commissions – both such commission already earned and commission possibly falling due after the end of employment, bonuses, and options).

The right to holidays is regulated by the Annual Holidays Act. The employee should not agree on terms poorer than what he or she is statutorily entitled to even in a situation where the employment relationship is coming to an end. The agreement usually indicates the number of holiday days the employee has accrued during the previous holiday accrual year and, correspondingly, the number of holidays she or he has time to accrue by the end of the employment relationship.

➤ **Chapter 5.7 discusses holiday compensation in more detail.**

### **23.20.5. Separate compensation for the termination of an employment relationship**

The parties are free to agree on the amount of the compensation to be paid to the employee. When assessing what amount of compensation is reasonable, it is important to evaluate what the legal standing of the matter is, in other words, what the likelihood is of the grounds for termination being legal or illegal. If the compensation is paid as damages, a part of the daily



unemployment allowances paid to the employee should be deducted from it as further specified in the Employment Contracts Act.

If the compensation is paid as severance pay, or what may be referred to as a golden handshake, deductions for unemployment benefits are not made. The employee is not entitled to receive unemployment benefits during the period over which the golden handshake payment received can be divided. A six-month payment, for example, equals roughly a division over six months, for which time the employee will not receive unemployment benefits. Regardless of this, it is vitally important to remember to register one's unemployment with the TE Office no later than when the employment relationship ends.

In addition, it is worth checking with the tax administration whether the employee may apply income spreading pursuant to the Income Tax Act in order to rationalise the taxation of the lump sum as well as the rest of the payoff. It is also advisable to ask the employer whether the payment of a lump sum severance payment could be divided over two separate years, especially if the termination agreement is made at the end of the year and the severance pay is higher than the number of months left in the year.

Pension does not accrue from severance payments. This is because the compensation is not subject to pension insurance contributions, given that the employment relationship has ended.

### 23.20.6. Outplacement packages

Sometimes, as part of the mutual agreement to terminate an employment relationship, the employer pays for what is generally referred to as an outplacement package on behalf of the employee. Such packages are usually bought from external consulting companies. If the employer suggests an outplacement service, it is worth making an appointment with the consulting company and studying the content of the service before making the relevant decision.

If the employment relationship has been terminated due to financial and production-related grounds, it may be possible that the TE Office ac-

cepts the outplacement service as part of the employment plan of the change security. However, this must be expressly agreed upon in advance with the TE Office of one's own place of residence.

### 23.20.7. Employment certificates and pay certificate

It is advisable to specify in the termination agreement that on the date the employment ends, the employee will be provided with a positive certificate of employment that promotes re-employment. The employee will also need their pay certificate for the unemployment fund.

### 23.20.8. Waiving rights

The clause on the waiving of rights is one of the key, often final, provisions of a termination agreement. In these clauses the parties mutually waive all claims against each other concerning the employment relationship and its end.

For example, this means that after signing the agreement, the employee can no longer contest the grounds for the termination of his or her employment, unless he or she can prove the unreasonableness or invalidity of the agreement or some provision thereof. If the employment contract contained a non-competition clause, it is advisable to agree that the employer will not make any demands in that regard either.

## 23.21. Employment certificate

**WHEN AN** employment relationship ends, the employer must give the employee an employment certificate, if the employee so requests. The certificate must specify the duration of the employment relationship and the nature of the employee's principal duties.

In addition, should the employee specifically so request, the certificate must indicate the reason for the termination and an assessment of the employee's skills and conduct.

The employer is obligated to provide an employment certificate for a period of ten years as of the end of the employment relationship. However, a certificate on the employee's skills and behaviour must be requested within five years of the end of employment. If more than ten years have passed since the end of the employment, the employer is obligated to provide a reference letter only insofar as this does not cause unreasonable inconvenience for the employer. The same conditions apply to replacing a lost or damaged certificate with a new one.

The Employment Contracts Act does not recognise what are referred to as temporary employment certificates, which do occur in practice. Therefore, an employer is not obligated to provide an employee with a certificate while the employment relationship is ongoing.

The employer may not add any such markings to the employment certificate or give it in such a format as to transmit information about the employee other than what would be apparent based on the wording of the certificate. Violating the obligation to provide the employee with an employment certificate is a punishable act that may result in a fine.

### **23.22. End date based on the age of the employee**

**AN EMPLOYMENT** contract ends when the employee reaches the age mandated by law as the age upon which employment contracts end automatically. For those born in the year 1957 or earlier, this age is 68 years. For people born in the period 1958–1961, the age is 69 years, and for those born in 1962 or later: 70 years.

When an employee reaches this particular age, their employment ends automatically, without giving notice or a period of notice, at the end of the calendar month during which the employee reached the mandated age.

However, if they so wish, the employer and employee may agree on the continuation of the employment relationship even after the employee has reached this mandated age. The parties may then either agree on carrying on in a fixed-

term contract or one that is valid until further notice. In such cases, entering into a fixed-term contract does not require grounds for why the contract is only for a fixed term.

Employees are normally free to retire at the point they choose between the time they become eligible for old-age pension and the mandated age for the automatic ceasing of employment. If an employee wishes to retire before the automatic ceasing of the employment (i.e. retiring on the employee's initiative, not due to reaching the mandated age), he or she must terminate the employment relationship and observe the applicable period of notice.

However, employers may not terminate employment relationships on the basis of age in cases where employees have yet to reach their mandated age of the automatic ceasing of their employment. In such cases, employers may only terminate an employee's employment if the employer has sufficient legal grounds for terminations as specified in the Employment Contracts Act.

The parties may nonetheless agree that they for the employment will apply an end date tied to the employee's age that is lower than the employee's statutory mandated age. Such an agreement is binding only if the lower age at which the employment is agreed to end includes a pension benefit of a sufficient level or some other financial benefit.

# 24. Resolution of Employment Relationship Disputes

It is advisable to try to resolve any disputes and disagreements that arise between an employer and employee locally at the company level, between the employee and a representative of the employer. Assistance in resolving a possible conflict may also be had from the shop steward or employee representative, the contact person for senior salaried employees or an employee association at the workplace in question. Associations and unions provide contact information for employee representatives when necessary. If a dispute cannot be resolved through negotiations held at the workplace, the employee can turn to their association or union for further assistance. Unions and associations also provide background assistance during the local negotiations with the employer.

## 24.1. Negotiation order

**THE FEDERATION** of Professional and Managerial Staff (YTN) has agreed on a negotiation system with the Confederation of Finnish Industries (EK) to be used in the resolution of employment relationship disputes, if the dispute involves an organised employer, i.e. an employer who is a member of an employer association. Each YTN-affiliated association or union may, of course, also investigate and assist in disputes in which the employer is not a member of an employer association. The agreed and common negotiation order is basically of the following kind.

Disputes and disagreements should primarily be resolved locally, at the company level, between a representative of the employer, and the employee. In such cases, an individual senior salaried employee may negotiate on the employment relationship dispute with his or her superior or the company management. It is nevertheless always a good idea to get in touch with the shop steward or employee representative when an employment relationship dispute emerges. The employee may also authorise the representative of his or her personnel group to negotiate on the matter on his or her behalf. At this point, it is usually advisable to consult association/union lawyers if the case involves the interpretation of law, other regulations or an individual employment agreement.

In the event that the issue involves employment relationship matters common to all

senior salaried employees, it may be referred to a special local negotiation body. Such a local negotiation body is composed of representatives of both the company and the senior salaried employees.

If the local negotiations fail to reach an agreement on the matter, the dispute may be referred to be negotiated between an association/union lawyer and the employer or an association representing the employer or some other legal representative. In the case of particularly far-reaching and fundamental disputes, the matter may also be discussed between YTN and EK. If the dispute cannot be resolved through negotiations, it may be brought before a court of law.

Naturally, any negotiations regarding a dispute must be concluded before the employee's right to bring claims against the employer expires, such as the general two-year period for presenting employment-related claims. Disputes arising from the interpretation of collective agreements are resolved in the Labour Court, in which only parties to a collective agreement may bring action. Before action is brought in the Labour Court, however, negotiations aiming to resolve the dispute must be held in observance of the negotiation order.

Arbitration is an alternative to court proceedings. Arbitration is possible only if the parties have agreed on this form of dispute resolution. An agreement on arbitration may be included in an employment contract.

Arbitration differs from court proceedings mainly in that the matter is not public, the dispute may be ruled on quicker, and the decision of the arbitrators is not subject to appeal. However, YTN does not recommend selecting arbitration as the means for dispute resolution due to its high costs. Legal expense insurance may cover only a fraction of the costs or none at all.

## 24.2. Written memorandum to one's association

**BEFORE CONTACTING** one's own association or union, it is advisable to draw up a concise written memorandum on what has transpired. The memorandum will help to clarify the picture of where the disagreement lies. Such a memorandum is necessary in order for the association personnel to obtain basic information on the case.

The memorandum should contain the following information:

- **details on the memorandum's author and employer**
- **the date the employment relationship began**
- **the main content of the agreement between the parties** (e.g. any agreed special arrangements, amount and quality of pay, etc.). The employment contract should be appended to the memorandum, if the agreement is available in writing
- **the employee's position within the organisation; their job and content of work**
- **the problems that have appeared** and the employee's opinion on the reasons for them, a description of the problem and its development
- **any possible documents that may clarify the situation** such as minutes drawn up in co-operation negotiations, or personnel bulletins.

If the employees' association together with the employer or the association that represents the employer fail to find a solution to the matter, the employer and employee may seek to resolve their dispute by way of legal proceedings.

## 24.3. Investigating the legality of a termination

**IF AN** employee considers the termination of his or her employment contract to have occurred contrary to the Employment Contracts Act, and attempts to resolve the matter through negotiations as described above have failed, the employee may refer the matter to be resolved by a court of law. As a rule, the action in a dispute concerning the termination of an employment contract must be filed in the district court of the employer's registered office, and this within two years of the employment relationship's end. The termination or cancellation takes effect even if the dispute is being considered by a court of law. Therefore, even an investigation by means of legal proceedings cannot prevent the termination from taking effect. Should the termination subsequently be found unlawful, the employer may become liable for damages in accordance with the court's decision.

## 24.4. Other employment relationship disputes

**IN ADDITION** to disputes concerning termination, a variety of other legal disputes may arise in relation to employment relationships. The lawyers of YTN-affiliated associations or unions are naturally available for advice concerning all kinds of disputes arising from employment relationships. Ultimately, disputes for which a resolution has not been achieved through negotiations may be brought before a court of law.

Typical legal disputes also include cases in which an employee is claiming some kind of outstanding receivable from the employer.

Such cases may involve salary, annual holiday compensation, holiday bonuses, overtime compensation, daily allowances, travel expense reimbursements, etc. At times, an employee may be claiming damages from the employer due to the employer's wilful or negligent failure to fulfil its obligations based on the Employment Contracts Act or the employment con-

tract. An employer may also claim damages from an employee. In such cases, however, the amount of damages may be adjusted by the court so as to be reasonable.

An action concerning a dispute attributable to the termination of an employment relationship must be filed in a general court of first instance within two years of the employment relationship's end.



# 25. Pay Security

The pay security system secures the payment of an employee's claims (receivables) arising from an employment relationship in the event of the employer's bankruptcy or other insolvency situation. All claims the employer would be obligated to pay to an employee are payable in the form of pay security. Pay security is paid only for claims of an employee arising from an employment relationship. Pay security does therefore not cover, for example, the CEO of a limited liability company, given that a CEO is not considered to be in an employment relationship, but a statutory organ of the company.

All pay security-related matters in Finland are processed through the Uusi-maa Centre for Economic Development, Transport and the Environment (ELY Centre). The expected pay security application processing time is six months from the submission of the application.

Pay Security Act (866/1998), Government Decree on Pay Security (1276/2009)

## 25.1. Applying for pay security

**PRIVATE PERSONS** can apply for pay security online through the e-services. Applications for pay security are also received from the Employment and Economic Development Offices (TE Offices) and the Centres for Economic Development, Transport and the Environment (ELY Centres). When the employer is bankrupt, pay security may also be applied for by the administrator of the bankrupt's estate on behalf of the employees. The application for payment of the claim in the form of pay security must be submitted within three months of its falling due. Claims arising from an employment relationship usually fall due on the pay day. A payoff usually falls due when the employment relationship ends. If the application has not been filed within the prescribed three months, the wage claim cannot be paid in the form of pay security.

It is advisable for the employee to apply for his or her claim in the form of pay security if the employer is insolvent or if there is reason to suspect that the employer may become insolvent during any legal proceedings concerning a wage claim.

The decision in a pay security matter is made by the ELY Centre of the employer's registered office after having heard both employer and

employee. Only claims that are unambiguous and undisputed in terms of their bases and amounts can be paid as pay security. If the employer contests the wage claim applied for as pay security, and the accuracy of the claim cannot be established in the pay security procedure, the claim cannot be paid in the form of pay security before its amount and basis have been resolved in a legally valid judgment.

The employee whose application for pay security has been rejected due to the employer's contesting must, in order to retain his or her entitlement to pay security, take legal action against the employer within six months of having been informed of the pay security decision.

If the employee wins the dispute in court, the claim based on the court's decision may be paid in the form of pay security, provided that a new application is submitted within three months of the judgment becoming legally valid and that the general conditions for receiving pay security are met.

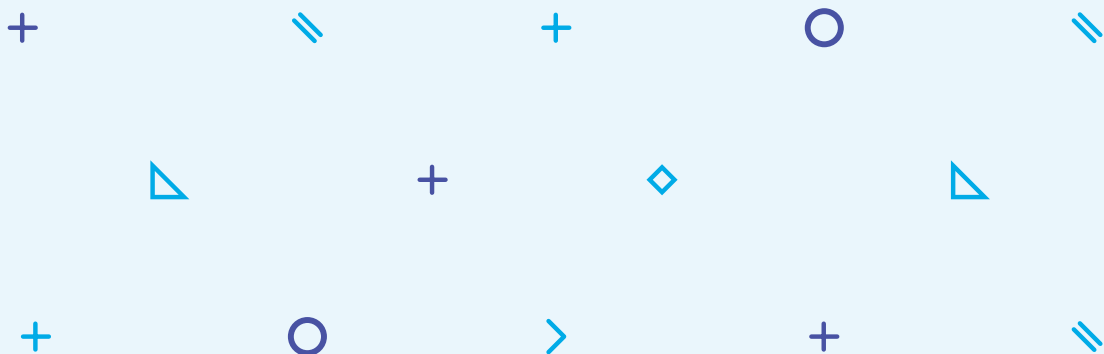
## 25.2. Claims to be paid in the form of pay security

Claims paid in the form of pay security include, for example,

- actual salary
- commissions
- holiday pay and holiday compensation
- holiday bonus and end-of-holiday pay
- compensation for shortening of working hours (“pekkas” days)
- salary for a period of notice
- salary paid during a pregnancy
- reimbursements for tools and travel expenses
- daily allowances
- damages based on the employment relationship
- any interest on late payment related to the above.

The amount of claims in the nature of damages is only established in a court of law, and they can be applied for as pay security within three months of the matter being resolved by a legally valid judgment. However, if the employer has cancelled the employment contract without grounds for doing so, the salary for the period of notice should be applied for within three months of the date of the cancellation, even if the actual legal proceedings were still in their infancy.

The maximum amount of claims to be paid in the form of pay security is €15,200 per employee. Working hours bank claims are subject to a maximum amount with regard to pay security. This maximum amount equals the employee’s salary for six months on the basis of work performed for the same employer. The claims applied for as pay security must be indicated in the application as gross amounts, i.e. in such a way that the withholding of tax is not deducted. Claims to be paid in the form of pay security are subject to the withholding of tax, which is 30 per cent until €5,000 and 50 per cent for any portion exceeding that. The state collects any claims paid in the form of pay security from the employer or the employer’s bankruptcy estate, interest included.



# 26. Unemployment Security

A person residing in Finland and registered as an unemployed jobseeker in need of full-time work at a TE Office, and who furthermore meets the employment condition, is entitled to an unemployment benefit. The employment condition stands to show that the person has been in the labour market regularly and earned his or her income through gainful employment.

Unemployment funds pay their members an earnings-related daily allowance for the period of unemployment or lay-off. This allowance consists of a basic part that equals the amount of basic daily allowance as well as an earnings part that is determined according to the earned income of the person in question. The amount of the basic daily allowance is confirmed annually in accordance with the National Pensions Index. In the event that a person is not a member of an unemployment fund and thus not entitled to an earnings-related daily allowance, the Social Insurance Institution of Finland (Kela) pays him or her the basic daily allowance.

Kela also pays a labour market subsidy to unemployed persons who do not meet the employment condition and to persons who have received either a basic unemployment allowance or earnings-related daily allowance for the maximum period.

Unemployment Security Act (1290/2002)

Act on Public Labour and Business Services (916/2012)

## 26.1. Registering at a TE Office

**TO RECEIVE** a daily unemployment allowance, a person must register at a TE Office. The registration must be done as soon as the employment relationship ends, also in cases where the employee has received different financial support packages from the employer. The unemployment is considered to have begun from the day on which the job search has taken effect in the TE Office. A registration cannot be made retroactively. Registration can be done online through the TE Office e-Services.

The TE Office gives the unemployment fund a binding statement on whether the statutory employment-related conditions concerning the payment of an earnings-related daily allowance are met in the case of the person in question. The statement serves as a basis for the unemployment fund's decision on the payment of the daily unemployment fund.

After registration, it is also important to comply with the instructions and dates given by the TE Office to maintain the validity of the job search and to ensure the earnings-related daily allowance.

## 26.2. Condition of membership and employment

**THE UNEMPLOYMENT** fund may begin paying an earnings-related daily allowance after the member's membership and employment conditions have been met.

The membership condition is met once the person has been a member of the unemployment fund, i.e. insured, for at least 26 calendar weeks.

The employment condition is met when the person has been in paid employment for at least 26 calendar weeks during his or her member-



ship period, each calendar week containing at least 18 working hours. Weeks that accrue the employment condition may be accumulated during the 28 months immediately preceding the registration as an unemployed job seeker. A further requirement is for the pay to have complied with the collective agreement. If there is no collective agreement for the industry in question, the minimum pay for full-time work must be at least €1,211 per month (in 2019).

The aforementioned 28-month period, referred to as the period of review, may be extended if the person has had an acceptable reason for being absent from the labour market. Such acceptable reasons include illness, liability for military service, job alternation leave, a scholarship period, the birth of a child and caring for a child less than three years old. The review period may be extended, at maximum, to seven years.

The validity of the employment condition ends when the person has been absent from the labour market for more than six months without an acceptable reason. In such cases, the earnings-related daily allowance can only be paid after the person meets the employment condition again. Exceptions to the accrual of the employment condition are made when the person works in an industry with exceptional working hours arrangements, such as in teaching, or when the person works in connection with a partial daily sickness allowance.

If the person has met the employment and membership condition prior to the beginning of a partial retirement or partial disability pension, the earnings-related daily allowance is determined according to the income from the full-time work prior to retirement. Accordingly, if the person has met the membership and employment condition prior to the beginning of partial child care leave, the daily allowance is determined from the income prior to the beginning of the partial child care leave. The employment condition does not include working hours transferred into the working hours bank, but it does include the time when the person has been on leave, spending the time accumulated in the working hours bank, and received corresponding pay.

### 26.3. Application

**DAILY UNEMPLOYMENT** allowance is paid only on the basis of an application. The application forms are available in TE Offices, at unemployment funds and online, at [www.tyj.fi/lomakkeet](http://www.tyj.fi/lomakkeet). It is also worth checking the possibility to take care of matters electronically (eAsiointi) with one's unemployment fund. The application is filled in and, supplemented with the documents mentioned on the form, submitted to the unemployment fund of which the person is a member. If the person is not a member of an unemployment fund or if she or he is entitled to an earnings-related daily allowance, the daily allowance is applied for from Kela.

The daily allowance is applied for retrospectively, in periods of four calendar weeks or a month. A daily allowance cannot be applied for in advance. The application for daily unemployment allowance must be submitted no later than three months from the date for which the person wishes to receive a daily allowance.

### 26.4. Period of partial benefit

**DAILY UNEMPLOYMENT** allowances are paid after the person has been registered as an unemployed job seeker in the TE Office for five full workdays during a maximum of eight consecutive calendar weeks.

The period of partial benefit is set whenever the maximum period of payment for earnings-related daily allowance begins again from the start. The period of partial benefit is nevertheless not imposed if the maximum period for daily allowance begins within a year of the beginning of the previous maximum period and if the period of partial benefit had been imposed at the beginning of the maximum period for the previous daily allowance.

Days of partial benefit do not include days when the person is not entitled for a daily allowance, such as qualification periods or the allocation/division of severance pay. However, the period of partial benefit does include the period of partial benefit related to a daily sick-

ness allowance and rehabilitation money as well as the days during which the person has been paid an unemployment benefit for services that promote employment.

## **26.5. Qualification period**

**WHEN SUBMITTING** an employment-related statement to the unemployment fund, the TE Office simultaneously determines any possible qualification period, i.e. the period during which the applicant is not entitled to an unemployment benefit. The qualification period is imposed when, for example, the person has resigned from his or her work without a valid reason (90 days) or has herself or himself caused the employment contract to end (60 days as of 1 July 2019).

## **26.6. Allocations/divisions**

**A FINANCIAL** benefit received from the employer in relation to the termination of an employment relationship, such as severance pay, golden handshake, support package, incentive – other than damages – prevents the granting of unemployment benefit for the period of time over which the financial benefit is divided according to the pay received for the latest employment relationship. It is of no consequence under which name the benefit is paid. Training arranged or paid for by the employer, however, is not allocated as a benefit.

## **26.7. Amount of earnings-related daily allowance**

**YOU CAN** calculate an estimate of the amount of your earnings-related daily allowance in the service available at [www.tyj.fi](http://www.tyj.fi).

The amount of the earnings-related daily allowance is calculated from the established earnings subject to the withholding of tax for the period preceding the unemployment at least for the time that meets the employment

condition. Holiday bonuses and holiday compensation is deducted from the earned income. In addition to these amounts, a percentage equal to the employee's pension insurance and unemployment insurance contributions as well as the contribution for daily sickness insurance allowance, or 4.24 per cent (in 2019), is deducted from the earned income.

If the daily allowance is determined according to earned income from a period earlier than what is mentioned above due to an extension of the review period concerning the accumulation of the applicant's employment condition for an acceptable reason, the earned income is increased according to the employment pension index.

An earnings-related daily allowance is composed of a basic portion, the earnings-related portion and child increases. The basic portion is equal to the amount of the basic unemployment allowance confirmed annually according to the National Pensions Index. In 2019, the basic unemployment allowance is €32.40. The earnings-related portion is 45 per cent of the difference between the person's daily salary and the aforementioned basic portion. If the monthly salary exceeds what is referred to as a culmination point which, in 2019, was €3,078.00, the amount of the earnings-related portion for the part that exceeds this is 20 per cent. Any dependent children under 18 entitle the person to a child increase. The maximum amount of a full earnings-related daily allowance, child increases included, may amount to 90 per cent of the daily salary that serves as the basis for the daily allowance.

An earnings-related daily allowance may furthermore be increased for a maximum period of 200 days, provided that the applicant participates in the service promoting employment agreed with the TE Office.

If the person finds part-time or partial employment, the earnings-related daily allowance is paid in an adjusted form. The daily allowance is adjusted based on the income earned through employment or entrepreneurial activities. A person may earn a gross income of 300 euros or less (279 euros in four weeks) without the income affecting the amount of the daily allowance. If

the monthly income exceeds 300 euros (or 279 euros in four weeks), the person's daily allowance will be adjusted. In these cases, each euro earned after the protected amount (300/279 euros) decreases the amount of the earnings-related daily allowance by 50 cents. This is the general rule for determining the amount of the adjusted earnings-related daily allowance. The adjustment period lasts for either a month or four weeks.

To be entitled to the full earnings-related daily allowance, the person is required to take on a certain amount of work or entrepreneurial activities, or to participate in activities that promote employment.

The activity of a person who is receiving earnings-related daily allowance is monitored on a monitoring period of 65 payment days. During the first 65 payment days, the earnings-related daily allowance is paid in full. After the daily allowance has been paid for 65 days, the unemployment fund will check whether the person has been sufficiently active during the monitoring period, as referred to in Section 3a of Chapter 6 of the Unemployment Security Act. If the person has not been sufficiently active during the monitoring period, his or her earnings-related daily allowance will be decreased by 4.65 per cent for the next 65 payment days.

Sufficient activity for the 65 payment days may constitute 1) paid employment for at least one week that accrues the employment condition – this usually means 18 hours of work, 2) earning at least 23 per cent of the monthly income required for entrepreneurs to meet the employment condition (in 2019: 245.64 euros); 3) participating in a service that promotes employment as agreed with the TE office for a total of five days; 4) participating in other services or activities organised by the employment authorities to improve employability for a total of five days; 5) participating for at least five days in other activities promoting recruitment organised at a workplace or in relation to employment, during which the person receives unemployment benefits; 6) engaging in part-time studies for at least five days (studies will taken into account for a maximum of six months); or 7) engaging in short-term studies with a duration of less than six months for at least five days, during which the person receives unemployment benefits.

As of 1 April 2019, the activities that count towards the activity requirement in the activation model will be expanded to include, for example, employment-promoting activities organised by trade unions.

The unemployment fund monitors whether the person meets the activity requirement. Therefore, it is essential that the person mentions any activities that count towards the activity requirement in their application for the daily allowance. Such activities include employment, studying or participating in employment-promoting activities.

If the person meets the activity requirement during the 65-day monitoring period, they will be paid the daily allowance normally without issuing a separate decision. If the person fails to meet the activity requirement, they will receive a decision on the reduced daily allowance, which can be appealed against.

More information on the effects and implementation of the activation model is available on the TE Office website. You can also contact your unemployment fund for further information. The person may also contact his or her union for information on the union's employment promotion activities that meet the activity requirement.

## 26.8. Duration of income security

**EARNINGS-RELATED DAILY** allowance is paid five days per week for a total of

- 300 unemployment days if the person has been employed for a total of three years before the commencement of their right to unemployment benefits
- 400 unemployment days if the person has been employed for more than three years before the commencement of their right to unemployment benefits
- 500 unemployment days if the person has met the employment condition after the age of 58 and he or she has been employed for at least five years during the past 20 years.

Unemployment benefit days paid in an EU/ETA

country or Switzerland are also included in the maximum period.

The calculation of the maximum period is started over once the person has met the employment condition again after the commencement of their right to unemployment benefit.

After the maximum period of earnings-based daily allowance, the person may receive additional days of the allowance until the end of the calendar month in which he or she turns 65 if his or her year of birth is

- in the period 1950–1954, and the person has turned 59 before the end of the maximum period
- in the period 1955–1956, and the person has turned 60 before the end of the maximum period
- 1957 or after, and the person has turned 61 before the end of the maximum period.

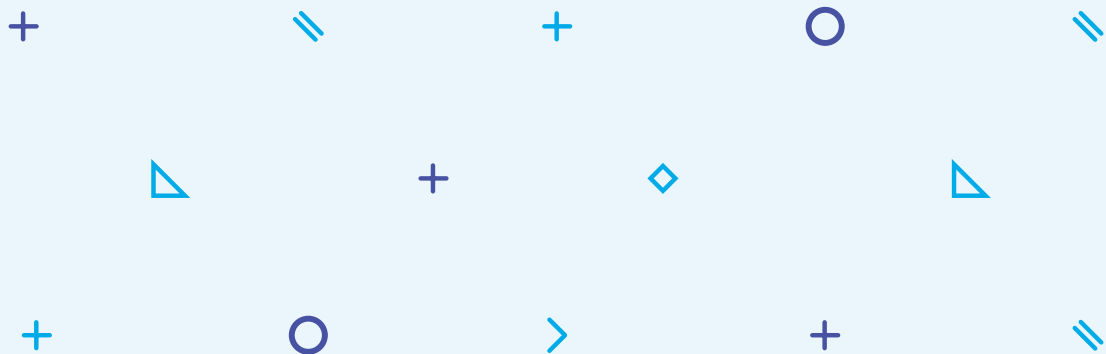
In addition, to be granted the right to additional days, the person is required to have been employed for at least five years during the past 20 years. The unemployment fund will investigate the person's right to additional days automatically when processing the application for the period during which the maximum period for earnings-based daily allowance ends.

#### Further information on unemployment benefits and unemployment funds:

- Unemployment Fund for Higher Educated Employees Erko, [www.erko.fi](http://www.erko.fi)
- KOKO, [kokokassa.fi](http://kokokassa.fi)
- Unemployment Fund for Lawyers, [www.lakimiestentk.fi](http://www.lakimiestentk.fi)
- Doctors' unemployment fund, [www.laakarientkassa.fi](http://www.laakarientkassa.fi)
- Unemployment Fund for Sales and Marketing Professionals, [www.smkj.fi](http://www.smkj.fi)
- Teachers' Unemployment Fund, [www.opetk.fi](http://www.opetk.fi)

#### On the unemployment security of entrepreneurs:

- The Unemployment Fund for Entrepreneurs and the Self-Employed (AYT), [www.ayt.fi](http://www.ayt.fi)



## 27. On Labour Offences

The Criminal Code contains a separate chapter on labour offences which includes the most serious offences related to employment relationships, particularly those for which a person may be sentenced to jail time. In addition to the provisions of the Criminal Code, many Acts regulating employment relationships include their own penal provisions. For example, the Working Hours Act includes provisions on working hour violations.

The Criminal Code uses the terms employer and employee and the representatives of the aforementioned uniformly, regardless of whether the provisions pertain to offences involving employment relationships in the private or public sector. In terms of protection under the criminal code, employees in employment and civil service relationships are in an equal position.

The person or party penalised for a procedure or measure deemed punishable under the Criminal Code is the one whose obligations the act or neglect must be seen to violate. In such cases, consideration is given to the person's position, the quality of the person's tasks and authorities and his or her involvement in the matter in all other respects.

Criminal Code (39/1889; Chapter 47)

### 27.1. Working safety offence

**AN EMPLOYER** or the representative of an employer may be sentenced to a fine or at most one year of imprisonment if the employer or representative has wilfully or negligently violated work safety regulations. A punishment may also be ordered if the employer or representative has neglected to supervise compliance with the regulations or the financial conditions for arranging operations or other conditions for occupational health and safety.

An isolated and minor violation of a work safety regulation is not considered a work safety offence, but can nevertheless constitute a minor offence according to the Occupational Safety and Health Act or the Occupational Health Care Act.

The Criminal Code provides a separate punishment for negligent homicide, negligent bodily injury and imperilment.

### 27.2. Working hours offence

**AN EMPLOYER** or the representative of an employer who wilfully or through gross negligence to the detriment of the employee neglects to keep books on working hours or annual holidays, keeps them erroneously, alters, conceals, destroys or renders them impossible to read may be sentenced to a fine or at most six months' imprisonment.

The same punishment applies to an act carried out despite an express order or prohibition by an occupational health and safety authority, which is a punishable act according to the Working Hours Act or the Annual Holidays Act.

### 27.3. Work discrimination

**AN EMPLOYER** or the representative of an employer who, when announcing a vacancy, selecting an employee or during an employment relationship places a job applicant or an employee, without a weighty and acceptable reason, at a

disadvantage due to the applicant or employee's race, national or ethnic origin, nationality, skin colour, language, gender, age, family relations, sexual orientation, heritage, disability, health, religion, social opinion, political or occupational activity or some other comparable reason may be sentenced to a fine or imprisonment for at most six months.

#### **27.4. Extortionate work discrimination**

**WHEN IN** the work discrimination the job applicant or employee is placed in a considerably inferior position by taking advantage of his or her financial or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the perpetrator can be sentenced to a fine or imprisonment for at most two years, unless a stricter punishment is provided elsewhere in the law.

#### **27.5. Violation of the rights of an employee representative**

**THE EMPLOYER** or the representative of the employer may be sentenced to a fine if they, without statutory grounds or grounds specified in a collective agreement, terminate the employment relationship, dismiss or lay-off a shop steward, employee representative, an occupational health and safety representative or a personnel or employee representative referred to in the Act on Cooperation within Undertakings or the Act on Personnel Representation in the Administration of Undertakings or change the employment relationship to a part-time one.

#### **27.6. Violation of the right to organise**

**AN EMPLOYER** or representative of the employer who prevents an employee from establishing a legal occupational or political association or prevents joining or belonging to such an asso-

ciation and activity therein may be ordered to pay a fine.

A fine may also be ordered when an employer or its representative prevents employees or their trade unions from appointing or electing a shop steward, employee representative, occupational health and safety representative or a personnel representative in administration in the workplace.

A fine may also be imposed on the person who forces an employee to join or belong to an occupational or political association.

#### **27.7. Employment agency offence**

**A PERSON** who in violation of the employment agency services payment prohibition provided in the Public Employment and Entrepreneur Agency Act charges a fee from individual customers may be ordered to pay a fine or at most sentenced to one year of imprisonment.

#### **27.8. Unauthorised use of foreign labour**

**AN EMPLOYER** or representative of the employer who hires or keeps in its employment a foreign national who does not possess a residence work permit or other permit entitling him or her to work in Finland may be ordered to pay a fine or sentenced to imprisonment for at most one year.

A contractor, subcontractor or commissioner of work or a representative thereof who neglects to ensure that the foreign employees in the contract or subcontract work that it has awarded a foreign company or the foreign employees placed at its disposal by a foreign company as contract labour have a residence work permit or other permit to work in Finland may be sanctioned for the unauthorised use of foreign labour.

# 28. Legal Expense Insurance and Liability Insurance

YTN affiliates have taken out various legal expense insurances for their members. The purpose of such insurances is to compensate for the legal expenses related to disputes concerning the member's employment or civil service relationships. YTN affiliates have also taken out various liability insurances for their members. The purpose of these insurances is to reduce a member's obligation to pay damages. The insurance terms vary according to the affiliate. It is always worth checking the insurance terms from one's own association.

## 28.1. Legal expense insurance

**THE LEGAL** expense insurances of YTN affiliates compensate for legal expenses of disputes related to a member's employment or civil service relationship. It is always advisable to get in touch with the lawyers of one's own association before filling in a legal expense insurance declaration, since the contents, deductible and compensation for the counterparty's legal expenses vary according to association. A legal expense insurance declaration should only be filed with the insurance company when the dispute cannot be resolved through negotiations with the assistance of the associations' lawyers.

Using the insurance requires that the matter is being taken care of by an attorney or other lawyer. The insurance does not apply to a matter which does not involve the insured's employment or civil service relationship, which is of minor significance to the employee, which does not involve a contested request or demand or in which the insured is accused of a wilful or intentional act or gross negligence.

## 28.2. Liability insurance

**LIABILITY INSURANCE** provides coverage for a liability for damages the insured may become subject to as a result of a property or bodily injury the insured has caused in his or her office, employment or occupation.

The valid tort legislation imposes on the employer primary liability for damages for loss or damage caused by an employee during the course of his or her work.

The employee is entirely free of liability for

damages if he or she can be considered to have caused the damage through minor negligence only. In practice, this means that the damage is the result of human error or that the action of the party that caused the damage has otherwise been only slightly reproachable.

If the employee has caused the damage by means other than minor negligence, he or she may become personally liable for damages. Once the employer has paid the damages to the injured party, the employer has the right to claim the damages paid from the employee. The damages must nevertheless be adjusted. The same principles apply to damage the employee causes directly to the employer.

YTN affiliates have also taken out liability insurances for their members. The purpose of these policies is to reduce a member's liability for damages. The liability insurance compensates, for the damage caused to another, the amount which the insured is obligated to pay to the employer according to the Tort Liability Act and the Employment Contracts Act. The maximum amounts of compensation per occurrence of property damage or bodily injury vary according to association. For further information, please contact the unions' lawyers.

Compensation may be reduced or refused altogether if the insured caused the damage or injury wilfully/intentionally or through gross negligence. The compensation may likewise be refused or its amount reduced if the insured has not taken the necessary precautions even though the occurrence of damage or injury has been evident.

The terms of the insurance vary according to association and are worth checking from one's own association.

A still life composition set against a deep purple background. In the center, a tall, clear glass vase holds several long, slender, blue-tinted leaves that curve upwards. To the left of the vase, a small hourglass with yellow sand sits on a light purple rectangular pedestal. To the right, another hourglass with dark sand sits on a similar pedestal. In the foreground, a dark, reflective rectangular block rests on a light purple pedestal, with two silver pens lying on its surface. The word "Appendices" is written in a large, white, sans-serif font across the middle of the image.

# Appendices



# Example of Employment Contract

## Federation of professional and managerial staff YTN

The employer and senior salaried employee (hereinafter the employee) identified below have agreed on the following terms of employment. In addition, this agreement is subject to the provisions of a possible collective agreement.

### The parties defined

<b>Employer</b>	
Name	_____
Address	_____
Business ID	_____
<b>Employee</b>	
Name	_____
Address	_____
Social security number	_____

### 1. Employment relationship

The start date of the employment relationship is \_\_\_\_\_

The employment relationship is valid until  further notice

The employment relationship is valid until \_\_\_\_\_

The employment relationship is valid until the tasks specified below have been carried out.

\_\_\_\_\_

The grounds for the fixed-term employment relationship are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Trial period  The employment relationship is subject to a \_\_\_\_\_-month trial period

### 2. Place of work and job title

Job title	_____
Place of work	_____
Duties	_____
	_____

### Period of notice

- The employer and employee's periods of notice comply with the Employment Contracts Act
- The employer and employee's periods of notice comply with the collective agreement
- The separately agreed periods of notice are  
\_\_\_\_\_ months when the contract is terminated by the employer  
\_\_\_\_\_ months when the employee resigns

### Wages

The monetary salary at the beginning of the employment relationship is

€ \_\_\_\_\_ /month or

€ \_\_\_\_\_ /hour

Fringe benefits in addition to monetary salary:

- Phone benefit
- Company car benefit, free
- Company car benefit, usage right
- Meal benefit
- Housing benefit
- \_\_\_\_\_

The wages are adjusted annually, taking into account the industry's general wage development, the complexity of the employee's role as well as the employee's performance in their role.

The wages are paid to \_\_\_\_\_ bank account number: \_\_\_\_\_

The payday(s) is the \_\_\_\_\_ of the month.

Performance-based pay \_\_\_\_\_

Grounds for determining the performance-based pay \_\_\_\_\_

Payment date for the performance-based pay \_\_\_\_\_

When the employment relationship ends, the performance-based pay is paid proportionally for the time of the performance-pay period that the employment has remained in force (pro rata temporis).

### 5. Working hours

- Regular working hours
- 7,5 h/day and 37,5 h/week (Mon-Fri)
  - 8 h/day and 40 h/week (Mon-Fri)
  - Flexible working hours

Part-time work at minimum \_\_\_\_\_ h/week, and workdays \_\_\_\_\_

- Compensation for time exceeding regular working hours
- will be paid or given as free time in accordance with the Working Hours Act.
  - will be paid as a separate compensation amounting to € \_\_\_\_\_ a month. The amount of actual additional work and overtime is reviewed every six months, and the amount of the separate compensation is adjusted accordingly.

### Annual holidays

The length of the annual holidays is determined according to the Annual Holidays Act. In addition to the holiday accrual pursuant to the Annual Holidays Act, the employee is entitled to \_\_\_\_\_ days of extra paid holidays to be taken during the first year/first two years of the employment relationship. A holiday bonus amounting to 50 per cent of the annual holiday pay, fringe benefits included, will be paid in connection with the annual holiday pay. The holiday bonus will also be paid for holiday compensation, e.g. is payable also upon the end of the employment.

### Sick pay

Sick pay is paid according to:

- the Employment Contracts Act (1+9 days)
- the collective agreement
- for a period of three (3) months
- Based on the duration of the employment relationship in the following manner: when the employment relationship has continued without interruption for
  - less than one (1) year: payable for four (4) weeks
  - at least one (1) year but less than five (5) years: payable for five (5) weeks
  - at least five (5) years or longer: payable for three (3) months
- some other policy as follows:  
\_\_\_\_\_

### Training

The employer provides the employee with the induction, supplemental, further and re-training necessary with regard to the employee's job. In addition, the parties have agreed as follows:  
\_\_\_\_\_  
\_\_\_\_\_

### Travel costs and travel time

Travel cost compensation is determined as follows

- the maximum tax-exempt amounts pursuant to a decision by the Tax Administration.
- by the collective agreement.
- in the following manner:  
\_\_\_\_\_  
\_\_\_\_\_

Business travel carried out outside of regular working hours is subject to

- a fixed compensation of € \_\_\_\_\_ per month
- a compensation of simple hourly wages according to "an hour for an hour" principle or an equivalent amount of free time
- a compensation as follows:  
\_\_\_\_\_  
\_\_\_\_\_

### Intellectual property rights

<b>Copyright</b>	Any copyright to works protected by copyright and arising as a result of the employee's work will remain with the employee. The employer shall for the duration of this agreement have a right of use concerning the aforementioned works within the scope required by the employer's regular operations. Any transfer of copyright for a time after the cessation of this agreement shall be agreed separately.
<b>Inventions</b>	The employer's right to an invention made by the employee is determined in accordance with what is provided in the Act on the Right in Employee Inventions.

### Collective agreement

The employment relationship is subject to the \_\_\_\_\_ industry's collective agreement between The Federation of Professional and Managerial Staff (YTN) and \_\_\_\_\_

The employment relationship is subject to the \_\_\_\_\_ industry's collective agreement between \_\_\_\_\_ and \_\_\_\_\_

### Other terms and conditions of employment

A full salary for a period of three months is paid during maternity leave.

A full salary for a period of \_\_\_\_\_ days is paid during paternity leave.

A full salary for a maximum of four (4) days is paid for any temporary child-care leave.

For periods of reservist training, the employee is paid their salary in such a manner that the amount payable by the employer taken together with the reservist pay paid by the state equals the employee's regular full salary.

The employer will take out a travel insurance policy for the employee.

The employer will take out a liability insurance policy for the employee.

The employer will take out an individual supplementary pension insurance policy for the employee. The annual premium is € \_\_\_\_\_. Once the employment relationship comes to an end, the employee will receive a paid-up policy of the pension

\_\_\_\_\_

This contract was prepared in two (2) copies, one (1) for each party.

**Place and date**

\_\_\_\_\_

**The employer's signature**

\_\_\_\_\_

**The employee's signature**

\_\_\_\_\_

# Instructions for completing the employment contract form

It is advisable to pay special attention to the following matters when filling in the employment contract form:

## 1. Employment relationship

**FILL IN** the section “the employment relationship begins on” with the date on which you have agreed to start working. If the terms of the employment relationship change, or in situations involving, for instance, a transfer of business, the aforementioned section is filled in with the original date on which your employment relationship began.

An employment contract can always be agreed to be valid until further notice. However, a fixed-term employment contract requires specific legal grounds. The grounds for a fixed-term contract must be specified in the employment contract. The duration of a fixed-term contract can be tied to, for example, a calendar period or the completion of a particular task.

Agreeing on a trial period is voluntary. In order for a trial period to be applicable in the employment relationship in question, the parties must have included terms concerning a trial period in the employment contract. The maximum length of a trial period is six (6) months. In a fixed-term employment relationship, the maximum duration of the trial period is half of the overall duration of the employment; however, it may then too not exceed six (6) months. Trial periods take place at the beginning of an employment relationship. While they last, the employment relationship may be cancelled without a period of notice.

## 2. Place of work and job title

**THE PLACE** of work agreed on is typically a particular city or a specified place of business.

The employment contract should specify the employee’s job title and the tasks which the employee will perform in their work. The broader the specification of the employee’s duties, the greater the employer’s power to decide the tasks of the employee (based on the employer’s right to direct and supervise the work).

## 3. Notice period

**ACCORDING TO** the Employment Contracts Act, an employer and employee may agree the duration of the notice period. However, a notice period may not be longer than six (6) months. The parties may agree that the employee’s notice period (i.e. the notice period the employee must observe when resigning) is shorter than the employer’s notice period. But the parties cannot agree that the employer’s notice period is shorter than the notice period the employee is obliged to observe.

Unless otherwise agreed, the employer’s notice period is determined by the Employment Contracts Act, as follows:

Duration of employment	Notice period
at most 1 year	14 days
more than one (1) year but at most four (4) years	1 month
more than four (4) years but at most eight (8) years	2 months
more than eight (8) years but at most twelve (12) years	4 months
more than 12 years	6 months

Unless otherwise agreed, the employee's notice period is determined by the Employment Contracts Act, with a 14-day notice period if the employment relationship has continued for at most five years, and a one-month notice period if the employment relationship has continued for more than five years.

#### **4. Wages**

**IT IS** advisable to agree on fringe benefits in addition to monetary wages. At the same time, the parties should agree on whether the fringe benefits are paid on top of the monetary salary or whether their taxable value is to be deducted from the monetary salary.

Should the employee be entitled to performance-based pay, it is advisable to agree on such wages in as much detail as possible. In addition, it is advisable for the parties to clearly agree on such grounds for the performance-based pay as can be measured and as will enable the employee to influence the amount accruing.

It is also a good idea to agree for what time the performance-based pay will be paid, should the employment relationship end in the middle of a performance-based pay period.

#### **5. Working hours**

**THE EMPLOYEE'S** regular daily and weekly working hours are agreed when entering into an employment contract.

When agreeing on flexible working hours, the parties must take into account the limitations provided in section 12 of the Working Hours Act. .

Overtime is compensated for with the overtime compensation specified in the Working Hours Act. If separately agreed, overtime may also be compensated for with "increased" free time in the equivalent manner. Unless otherwise agreed, overtime compensation will be made as a payment. Overtime work requires that the employer has ordered the employee to work overtime and that the employee has given their consent.

According to the Working Hours Act, the employment contract of an employee in a leadership position may include terms specifying that the salary increases for overtime and Sunday work will be paid as a separate monthly lump sum payment. The payment's amount must be specified in the contract. A senior salaried employee who works in merely an advisory or specialist role may not agree on a monthly compensation, unless the applicable collective agreement allows for it, as is the case, for example, in the technology industry.

#### **6. Annual holidays**

**EMPLOYEES ACCRUE** annual holidays in accordance with the Annual Holidays Act. If the employment relationship at the end of the holiday accrual year on 31 March has lasted for less than a year, an employee accrues two (2) days of annual holidays per full month of work. If the employment relationship has lasted for more than a year by 31 March, the amount of annual holiday accrued per each full month of work is 2.5 days.

It is advisable for new employees to agree on extra paid holidays, given how they have not had the chance to accrue a full 30-day holiday right at the beginning of the employment relationship.

Holiday bonus terms do not derive from the the Annual Holidays Act. Instead, collective agreements contain fairly comprehensive terms on holiday bonuses. The parties may also agree separately on a holiday bonus to be paid in connection with the annual holiday pay.

#### **7. Sick pay**

**IN ACCORDANCE** with the Employment Contracts Act, should an employee become incapacitated for work due to illness or an accident, the employee is entitled to sick pay for a period that lasts, at maximum, until the end of the ninth working day (Mon-Sat) following the day on which the employee fell ill or had the accident. In employment relationships that have lasted for less than a month, the employee is entitled to receive 50 per cent of his or her salary.

Collective agreements typically contain terms on the payment of sick pay for periods of time longer than what is mentioned above.

## 8. Training

**THE EMPLOYER** is obligated to organise and bear the costs of any induction and supplementary training necessary for the employee's work. The parties may exceptionally agree on sharing the training costs, provided that the training is not necessary in terms of the work or if it is not based on the employer's needs.

## 9. Travel costs and travel time

**THE TAX** Administration annually determines the maximum amounts of and criteria for tax-exempt compensation for travel costs. These tax guidelines do not obligate employers to compensate employees for business travel costs. Collective agreements, however, include fairly comprehensive terms on compensating employees for travel costs. If there is no applicable collective agreement, the parties should agree on the compensation of travel costs in the employment contract.

According to the Working Hours Act, travel time does not constitute working hours, unless the travelling itself is a part of the employee's performance. The law does not obligate an employer to pay compensation for time spent travelling. Therefore, compensation for travel time should be agreed in the employment contract.

## 10. Intellectual property rights

### Copyright

Copyright is determined according to the Copyright Act.

### Employee inventions

An employer's right to an invention made by an employee is determined in accordance with what is provided in the Act on the Right in Employee Inventions. It is not advisable to agree on employee inventions in deviation from the law.

## 11. Collective agreement

**THE COLLECTIVE** agreement applicable to the employment relationship must always be mentioned in the employment contract.

A collective agreement may be applicable based on the employer being organised with an industry employer association (normal binding effect) or on the employer operating in an industry with a generally binding collective agreement. Should there be no applicable collective agreement, the parties may in the employment contract nonetheless specify that they will observe a collective agreement.

## 12. Other terms and conditions

**IN ACCORDANCE** with the Employment Contracts Act, an employee is entitled to family leave pursuant to the Health Insurance Act. However, there is no statutory obligation to pay salary for family leave. Collective agreements typically contain terms on an employee's right to his or her salary, for example, during a maternity or paternity leave, or during a temporary child-care leave meant for arranging short-term care for a child less than 10 years old. If there is no applicable collective agreement, it is advisable to agree to what extent salary will be paid for family leave.

The terms of an individual supplementary pension should be agreed on together with the employer and an insurance company. It is also important to agree on a right to a paid-up policy and to make what is referred to as an agreement on irrevocability, which will prevent the employer from ending the insurance and withdrawing the accrued funds.



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