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EMPLOYMENT AND EMPLOYEE BENEFITS

Employment and employee benefits in Finland: overview

Seppo Havia and Iisa Koskela
Dittmar & Indrenius

global.practicallaw.com/6-503-3587

SCOPE OF EMPLOYMENT REGULATION

1. Do the main laws that regulate the employment relationship apply to:

- **Foreign nationals working in your jurisdiction?**
- **Nationals of your jurisdiction working abroad?**

Laws applicable to foreign nationals

The main laws regulating employment relationships in Finland are the following:

- Employment Contracts Act 2001.
- Working Hours Act 1996.
- Annual Holidays Act 2005.
- Act on the Protection of Privacy in Working Life 2004.
- Act on Co-operation within Undertakings (Co-operation Act) 2007.

These Acts are generally applicable to all employment relationships in Finland. In addition, the provisions of any national collective agreement applicable in the business sector must be observed as minimum conditions of employment.

Finland has adopted Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I) and therefore parties to an employment contract can choose which law governs their relationship. However, the Finnish mandatory legislation and provisions of an applicable collective agreement (if any) apply even if another jurisdiction is identified in the contract.

Laws applicable to nationals working abroad

In the absence of a choice of law clause, Finnish nationals regularly working outside Finland are governed by the law of the country in which they habitually perform their work, even if they were temporarily employed elsewhere.

EMPLOYMENT STATUS

2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

Categories of worker

Finnish law does not categorise workers. The Employment Contracts Act defines the characteristics of an employment contract, which is an agreement to personally perform work for an employer under the employer's direction and supervision in return for pay or some other remuneration. Should those prerequisites be met, labour laws, under which statutory employment rights are regulated, will be applied to the parties' relationship. For example, independent contractors are not categorised as employees as they do not perform work for an employer under the employer's direction and supervision and are therefore not covered by mandatory employee rights, such as protection against dismissal and employment security (*see Question 15*). However, fixed term employees, part-time employees and agency workers may be considered as different categories of workers when compared to permanent full-time employees. Nevertheless, as regards the terms and provisions of employment, it is prohibited to apply less favourable terms to fixed-term or part-time employees or agency workers without a proper and justified reason.

Entitlement to statutory employment rights

See above, *Categories of worker*, and the answer to *Question 15*.

Time periods

An employment contract is valid indefinitely unless it has, for a justified reason, been made for a specific fixed term. Contracts made for a fixed term on the employer's initiative without a justified reason, and consecutive fixed-term contracts concluded without a justified reason, will be considered to be valid indefinitely.

RECRUITMENT

3. Are any grants or incentives available for employing people? Does any information/paperwork need to be filed with the authorities or given to new employees when employing people?

Grants or incentives

There are no general grants or incentives for employing people. However, employment authorities can, under certain circumstances, provide financial assistance to employers that offer work to, among others:

- Long-term unemployed persons.
- Persons under the age of 25 years.
- Persons with disabilities.

Filings

Employers must initially file a record of new employees at the Department of Social Insurances at the Ministry of Labour and Social Insurances. More specifically, when employing someone, the employer must complete and submit a registration form informing the competent authority of the new employee's personal data and duties. After reviewing the registration form, the Department of Social Insurances informs the employer about the approval or denial of the employment in question.

Information given to new employees

An employer must give a written statement of their principal terms of employment to any employee who is employed either:

- Indefinitely.
- For a period exceeding one month.

The written statement must be given to the employee before the end of the employee's first pay period.

This requirement does not apply if the terms are already laid down in a written employment contract that has been given to the employee.

BACKGROUND CHECKS

4. Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

The Act on the Protection of Privacy in Working Life sets out specific rules for processing employee-related personal data and applies, as appropriate, to job applicants as well. The employer is only allowed to process personal data directly necessary for the employee's employment relationship. Specific questions directed at the applicant's health cannot be asked. The questions must be limited so that they relate only to information that is relevant to the performance of work duties, taking into consideration the nature of the work.

The employer should collect personal data about the employee primarily from the employee directly. In order to collect personal data from elsewhere, the employer must obtain the employee's consent. However, this consent is not required when an authority discloses information to the employer to enable the latter to fulfil a statutory duty, or when the employer acquires personal credit data or information from the criminal record in order to establish the employee's reliability. The employer must notify the employee in advance that data concerning the employee is to be collected in order to establish his reliability. If information concerning the employee has been collected from a source other than the employee directly, the employer must notify the employee of this information before it is used in making decisions concerning the employee.

PERMISSION TO WORK

5. What prior approvals do foreign nationals require to work in your country? What information/paperwork needs to be kept or filed with the authorities when they start work?

Visa

Finland applies the Schengen Convention to visas. Citizens of the EU and the EEA, citizens of the Nordic countries and citizens of countries on the specific list of visa-free states do not need visas to enter Finland. Others who travel to Finland for a short period of time need a visa unless specifically provided otherwise by law. A residence permit is usually required for a stay exceeding three months.

Procedure for obtaining approval. Visas can be applied for and obtained from the Finnish diplomatic missions abroad. In addition to the application form and a valid passport, the application documents needed include proof of valid travel insurance and flight tickets. Some embassies or consulates may also require further documentation.

Cost. The visa fee is EUR60.

Time frame. The procedure for obtaining a visa takes approximately two weeks. The Finnish police can extend the validity period of an issued visa for proof of force majeure, humanitarian reasons or serious personal reasons preventing a visa holder from leaving Finland.

Sanctions. A foreign national who has entered the country without a residence permit, and who is required to hold a visa or residence permit to stay in Finland but who has not applied for one or has not been issued with one may be refused entry. Moreover, a foreign national who deliberately resides in the country without the required travel document, visa or residence permit can be given a fine for a violation of the Aliens Act 2004.

Permits

EU/EEA citizens do not require residence permits to stay and work in Finland but they must register their right to reside in Finland if their stay exceeds three months. Citizens of non-EU/EEA countries must obtain a specific permit (a residence permit for an employed person).

Foreign workers can work in Finland without a residence permit (for an employed person) if they both:

- Are permanent employees of a company operating in another EU state or in the EEA to perform temporary contracting or subcontracting.
- Hold permits entitling them to reside and work in that other state, which are valid until they have completed their work in Finland.

Procedure for obtaining approval. A residence permit for an employed person can be applied for either:

- Before entry into Finland, from the Finnish diplomatic embassy abroad.
- After entry into Finland, from the local police department.

The first residence permit granted by the Finnish Immigration Service is always a fixed-term permit, after which the police department can grant a renewed permit if the conditions for granting a residence permit are still met.

As of the beginning of 2012, the employer's right to initiate proceedings is repealed. Therefore, currently only the employee can apply for a worker's residence permit.

Cost. The application fee is approximately EUR500.

Time frame. The processing of applications can take from a couple of weeks up to a few months depending on the requested permit. The processing time depends on the type of permit, on the application and on the applicant (for example, whether the permit applies to the applicant themselves or to a family member). Processing time can also vary depending on the workload of the immigration services.

Sanctions. A foreign national who deliberately without a right to gainful employment is gainfully employed or pursues a trade can be given a fine for a violation of the Aliens Act. An employer who deliberately or through negligence employs a foreign national who does not have the right to gainful employment can be given a fine for an employer's violation of the Aliens Act. In addition, an employer who hires or employs a foreign national not in possession of the residence work permit, or otherwise in possession of a permit to work in Finland, can be sentenced for unauthorised use of foreign labour and given a fine or up to a maximum of one year's imprisonment.

RESTRICTIONS ON MANAGERS AND DIRECTORS

6. Are there any restrictions on who can be a manager or company director?

Age restrictions

Managers and company directors must not be under 18 years old.

Nationality restrictions

At least one of the members of the board of directors and the managing director of a Finnish limited liability company must (generally) reside permanently in a European Economic Area (EEA) member state.

Other restrictions

Managers and company directors must not be bankrupt.

REGULATION OF THE EMPLOYMENT RELATIONSHIP

7. How is the employment relationship governed and regulated?

Written employment contract

A written employment contract is not required in Finland. However, the employer must provide the employee with a written statement of the key employment terms by the end of the employee's first salary period detailing, among other things:

- The employee's main duties.
- The duration of a fixed-term employment contract and a justified reason for it (if applicable).
- Probationary period (if applicable).
- Applicable collective agreement.
- Salary and related pay terms.
- Regular working hours and annual holiday.
- Notice period.

Although employment contracts need not take any specific form, it is customary to have written employment contracts in Finland.

Implied terms

The guiding principle of the employment legislation is protecting the employee, which includes absolute legal provisions that cannot be departed from if that departure would be detrimental to the employee. These include, among other things, protection against dismissal, maximum working hours and annual holiday.

Collective agreements

Collective agreements, negotiated between trade unions and employers' organisations for a particular trade or industry, play a central role in the Finnish labour market system. The main distinguishing feature of employment law is therefore the prevalence of collectively agreed terms and conditions of employment.

An employer that is a member of an employer organisation party to a collective agreement must apply the provisions of the collective agreement to the employment relationships of all of its employees. Certain collective agreements can also be declared generally applicable, provided that the agreements are considered representative in the specific sector in question. These collective agreements must be applied as minimum conditions of employment to all employment relationships in the sector concerned.

8. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

Generally, it is difficult or even impossible for an employer to unilaterally change the terms and conditions of employment to the employee's detriment. However, the employer can exercise their right to change the existing terms of employment where that change is based on specific circumstances, for example, changing a term of a bonus or benefit plan that includes a specific provision entitling the employer to make unilateral changes, or where the change in the terms and conditions of employment is an alternative to terminating the employee's employment (change of essential terms of employment). The employer can generally change non-essential terms of employment unilaterally, based on the employer's right to direct work.

MINIMUM WAGE

9. Is there a national (or regional) minimum wage?

There is no statutory minimum pay. However, collective agreements typically contain detailed provisions covering this.

RESTRICTIONS ON WORKING TIME

10. Are there restrictions on working hours? Can an employee opt out on either an individual or collective basis?

Working hours

Regular working hours must generally not exceed eight hours a day and 40 hours a week. However, the regular working hours for white-collar employees specified in collective agreements are typically 7.5 hours a day and 37.5 hours per week.

Overtime work can only be performed on the employer's initiative and with the employee's consent which, as a general rule, must be obtained separately each time overtime work is performed. The maximum amount of overtime work is 138 hours during a four-month period and 250 hours in a calendar year. The employer and the employee representatives or personnel can also agree on additional overtime work up to 80 hours in a calendar year, provided that the maximum of 138 hours of overtime work in a four-month period is not exceeded. The employee's salary must generally be raised by 50% for the first two hours of daily overtime work and by 100% thereafter. Hours exceeding 40 weekly working hours (and not considered as daily overtime) must be compensated by a 50% salary increase.

There are certain working time restrictions concerning work performed on Sundays and public holidays, as well as daily and weekly rest periods. In addition, there are specific provisions concerning employees younger than 18 years old.

Rest breaks

Employees are entitled to a rest break of at least one hour provided that the length of their working day exceeds six hours. The length of the rest period can be shortened to 30 minutes by agreement.

Shift workers

The regulation of working hours is generally the same for shift workers. However, field specific collective agreements typically contain particular rules concerning the working hours permissible for shift work. Please also note that night work can only be performed in specific businesses specified by the Working Hours Act.

HOLIDAY ENTITLEMENT

11. Is there a minimum paid holiday entitlement?

Minimum paid holiday entitlement

The Annual Holidays Act establishes the employees' right to paid annual holiday. The holiday credit year runs from 1 April to 31 March. During the first holiday credit year, employees accrue two days of paid holiday per month, and two and a half days thereafter.

The total number of paid holidays is 30 days per year corresponding to five weeks of annual holiday.

Public holidays

There are approximately ten annual public or religious holidays when employees are generally entitled to have a paid day off.

ILLNESS AND INJURY OF EMPLOYEES

12. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Who pays the sick pay and, if the employer, can it recover any of the cost from the government?

Entitlement to paid time off

Employees who are prevented from performing their work by an illness or accident are entitled to pay during illness. However, an employee is not entitled to pay during illness if they have caused their disability wilfully or by gross negligence.

If the employment relationship has lasted for at least one month, an employee is entitled to:

- Full pay from the employer for the period of disability for up to nine days following the date of falling ill.
- Sickness allowance from the state under the Sickness Insurance Act 1963 after ten days. The amount of the sickness allowance is based on the employee's earned income and is paid for weekdays and Saturdays for a maximum period of 300 days.

In employment relationships that have lasted for less than one month, employees are entitled to 50% of their pay.

Entitlement to unpaid time off

Employees prevented from performing their work due to illness or accident are entitled to their full salary during the first day of illness and the following nine weekdays, unless a wider pay obligation has been set out in the applicable collective agreement. An employer can grant additional unpaid time off at an employee's request.

Recovery of sick pay from the state

The employer cannot recover the salary paid to the employee during the ten-day period. If the employer pays a salary to the employee after that period, it can recover the sickness allowance payable to the employee from the Finnish Social Insurance Institution (*Kansaneläkelaitos*) (Kela).

STATUTORY RIGHTS OF PARENTS AND CARERS

13. What are the statutory rights of employees who are:

- **Parents (including maternity, paternity, surrogacy, adoption and parental rights, where applicable)?**
- **Carers (including those of disabled children and adult dependants)?**

Maternity rights

A mother is entitled to:

- Maternity leave of 105 days (excluding Sundays), which typically begins 50 to 30 days before the expected date of birth.
- Parental leave of a maximum of 158 days after the birth, which can be divided between the parents.

The employer is not generally obliged to pay a salary during maternity leave. However, this obligation is often imposed in the applicable collective agreement. Kela grants the employee an earnings-related maternity allowance during the maternity and parental leave. Following this family leave, employees are entitled to return to work with the same employer and primarily to their former duties. Parents also accrue annual holiday during family leave.

Paternity rights

Fathers can take one to 18 working days as paternity leave after the child is born during the maternity and parental allowance. The rest of the paternity leave or the whole 54 working days can be taken after the maternity and parental allowance. Paternity leave can also be divided into shorter periods. An earnings-related paternity allowance will be paid during the paternity leave. The entire paternity leave must be taken before the child turns two years of age and it cannot be assigned to the other parent.

Surrogacy rights

Surrogacy is prohibited in Finland.

Adoption rights

The adoptive parents of a child under seven years of age are entitled to parental leave of 200 working days from the date of the adoption, or 234 working days from the date of the birth of the child, whichever is longer. Adoptive parent's paternity leave must be taken during the two years following the date the child is taken into care.

Parental rights

Both women and men are entitled to full-time childcare leave until their child (or a child living permanently in their household) reaches the age of three. However, only one person with the care and custody of a child can take the leave at a time (except during maternity or parental leave). Kela provides an allowance to employees taking childcare leave.

Parents have a right to partial childcare leave (that is, reduced working hours, until the end of the second year of the child's basic education). In addition to receiving partial salary, Kela pays an allowance to an employee working between 40 to 60% of the maximum amount of working hours of a full-time employee in the sector in question during the partial childcare leave.

Carers' rights

Employees are entitled to temporary absence from work if their immediate presence is necessary because of an unforeseeable and compelling reason due to an illness or accident suffered by a family member.

CONTINUOUS PERIODS OF EMPLOYMENT

14. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

Statutory rights created

Employees' entitlement to paid annual holiday is based on their continuous employment in the service of the same employer. In addition, the minimum length of a notice period is based on continuous employment (*see Question 19*).

Employees with three years' employment history whose employment is terminated on financial and production-related grounds are entitled to support for their re-employment by both the employer and the employment authorities.

An employer's obligation to re-employ exists where the employment relationship has lasted at least three years and an employee has been given notice for financial and production-related grounds or because of a reorganisation procedure. The employer must offer to re-employ the former employee, if:

- The employer needs new employees within the re-employment period for the same work or work similar to that which the employee had been doing.
- The former employee is continuing to seek work via an employment and economic development office.

Consequences of a transfer of employee

Employees retain all the rights and obligations they had in the service of their previous employer before a transfer of the business.

FIXED TERM, PART-TIME AND AGENCY WORKERS

15. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?

Temporary workers

There is no statutory limit to the duration of a fixed-term employment contract. However, a contract may only be concluded for a fixed term for a justified reason. The justified reason must also be the basis for renewing or prolonging the contract for a fixed term. Contracts made for a fixed term on the employer's initiative without a justified reason, or consecutive fixed-term contracts concluded without a justified reason, are considered valid until further notice.

The probationary period in a fixed-term employment contract must not be for more than either:

- Four months.
- Half the length of the employment relationship.

A fixed-term employment contract generally cannot be terminated, but expires either:

- Automatically at the end of the fixed period.
- On completion of the agreed work.

However, fixed-term contracts for five years or more can be terminated on the same grounds and using the same procedure as employment contracts for an indefinite period after the five years have elapsed.

As regards the terms and provisions of employment, it is prohibited to apply less favourable terms to fixed-term employees without a proper and justified reason.

Regarding the difference between employees and independent contractors, an employee is a person who, on the basis of an employment contract, agrees to personally perform work for an employer under the employer's direction and supervision, and who receives pay or other remuneration for the work.

However, an independent contractor is economically independent and free to determine his activities, working hours and the place of work. Independent contractors are not covered by mandatory employee rights, such as protection against dismissal and employment security.

Misclassifying a temporary worker or independent contractor may result in the employer facing an obligation to provide the worker with the full statutory benefits of company employees. Therefore, the consequences of misclassification may be significant.

Agency workers

Employers must not, without a proper and justifiable reason, employ agency workers on less favourable terms of employment than those of other employment relationships. The minimum terms of employment for temporary agency workers are primarily based on the collective agreement the temporary work agency applies or that is binding on the user company.

The terms of employment applicable to temporary agency workers are determined by their employment contracts with the temporary employment agency, the applicable collective agreement (which may be different from the collective agreement applied by the user company) and the provisions of law. Therefore, as temporary agency workers are not employed by the user company, it is not necessary to provide agency workers with all the benefits granted by the user company to its employees (for example, lunch vouchers and telephone benefits). However, see *Question 17*.

Part-time workers

As regards the terms and provisions of employment, it is prohibited to apply less favourable terms to part-time employees without a proper and justified reason merely because of the duration of the working hours.

DATA PROTECTION

16. Are there any requirements protecting employee privacy or personal data? If so, what are an employer's obligations?

Employees' data protection rights

As regards the terms and provisions of employment, it is prohibited to apply less favourable terms to part-time employees merely because of the duration of the working hours without a proper and justified reason.

Employers' data protection obligations

Employment-related data protection issues are governed primarily by:

- The Personal Data Act 1999.
- The Act on Protection of Privacy in Working Life 2004. This Act supplements the general Personal Data Act and sets out specific rules for processing employee-related personal data.
- The Information Society Code 2014. This Act supplements the Personal Data Act and sets out specific rules for ensuring confidentiality and protection of privacy in electronic communications.

The employer can only process personal data directly necessary for the employee's employment relationship. The necessity requirement is strict and cannot be deviated from, even with the employee's consent. The processing of sensitive data, for example, the employee's state of health, illness or handicap or the employee's sexual preferences and so on, is generally prohibited. The employer must collect all information concerning the employee primarily from the employee and the employee's consent must be obtained to collect information from elsewhere.

In addition, substantial legal restrictions and certain preconditions exist relating to the:

- Use of e-mail in the workplace.
- Technical monitoring of employees.
- Monitoring of employees' telephones.
- Use of technical surveillance software for employees' internet use.
- Processing information on drug use.
- Undertaking of tests and examinations.

Before making decisions on the use of e-mail in the workplace and the technical monitoring of employees, including technical monitoring of the use of the internet, the employer must inform and consult the employees or their representatives under the procedure set out in the Co-operation Act. However, the Co-operation Act only applies to employers regularly employing at least 20 employees.

DISCRIMINATION AND HARASSMENT

17. What protection do employees have from discrimination or harassment, and on what grounds?

Protection from discrimination

The Employment Contracts Act, the Non-discrimination Act 2014 and the Penal Code 1889 set out the main statutory provisions prohibiting discrimination based on:

- Age.
- State of health or disability.
- Ethnic origin or nationality.
- Sexual orientation.
- Religion or belief.
- Language.
- Race or colour.
- Trade union or political activity.
- Other similar personal characteristics.

The Act on Equality between Women and Men 1986 deals with gender-based discrimination, prohibiting, for example, different treatment of employees due to pregnancy, childbirth, parenthood or other reasons related to family responsibilities.

An employer has a general statutory obligation to treat its employees equally and to promote equality between men and women in working life. Unlawful discrimination can be either direct or indirect. Direct discrimination occurs when the employer treats a person less favourably than another employee in a comparable situation. Indirect discrimination can arise when a certain practice puts a person at a particular disadvantage compared with other employees.

Positive discrimination in favour of certain groups is allowed if the practices are established to genuinely improve equality in working life. However, these affirmative measures must be consistent and systematic.

In addition, prohibited discrimination can occur if the employer puts an employee in an unfavourable position as a countermeasure against their having complained about or taken action to safeguard equality.

The employer has the burden of proof in establishing the equal treatment of employees. The employee must claim compensation for illegal discrimination within two years of the act of discrimination. Compensation is determined in the form of an indemnity, and the maximum amount of indemnity has been removed with effect from the beginning of year 2015 since the proposed amendments were approved in Parliament. The employer, or its representative, can also be fined or imprisoned for a maximum of six months for general discrimination or discrimination at work under the Penal Code.

An employee who has been discriminated against on the basis of gender can claim compensation from the employer under the Act on Equality between Men and Women. The amount of the compensation is not determined by the damage suffered by the employee. The minimum amount of indemnity is currently EUR3,570. No upper limit has been set for the amount of compensation, except for discrimination in employee recruitment situations, for which the maximum sum payable is currently EUR17,840.

Protection from harassment

Harassment at work is considered a form of prohibited discrimination (*see above, Protection from discrimination*).

WHISTLEBLOWERS

18. Do whistleblowers have any protection?

According to the Securities Market Act, issuers of securities shall have a special procedure appropriately protecting whistleblowers, when informing about suspect infringements of financial market regulations. There is no other specific protection for whistleblowers. However, whistleblowers issuing a report in good faith should be entitled to reasonable protection. In such circumstances the employer should understand that whistleblowers acting in good faith must not be subject to retaliatory actions, such as discrimination or disciplinary measures. Moreover, the employer must always have a substantial and acceptable reason for, for example, terminating the employment relationship.

TERMINATION OF EMPLOYMENT

19. What rights do employees have when their employment contract is terminated?

Notice periods

Unless otherwise provided in the applicable collective agreement, the parties to an employment relationship can agree on the notice period in the employment contract. The maximum length of the notice period is six months. In addition, the notice period applicable for the employer must not be shorter than the one applicable for the employee. If the period of notice is not agreed or set out by a collective agreement, the employer must apply the following statutory notice periods based on the employee's length of service:

- Up to one year's employment: 14 days.
- One to four years' employment: one month.
- Four to eight years' employment: two months.
- Eight to 12 years' employment: four months.
- Over 12 years' employment: six months.

If the employee terminates the employment relationship, the following notice periods are applicable provided that no provisions concerning notice periods are included in the employee's employment contract or in the applicable collective agreement (if any):

- Up to five years' employment: 14 days.
- Over five years' employment: one month.

It is recommended that a written notice of termination is given personally to the employee to be dismissed regardless of the reason(s) for the termination of the employment relationship. However, a notice can also be given by mail or e-mail if it is not possible to deliver the notice personally. Employees are generally entitled to their regular salary and benefits during the notice period even if they are on garden leave during the period, or are paid in lieu of the notice period.

Severance payments

There is no statutory obligation to pay severance.

Procedural requirements for dismissal

The grounds for terminating an employment contract are divided into two categories:

- Individual grounds that relate to the conduct and performance of an individual employee.

- Collective grounds that relate to financial and production-related reasons or to the company's restructuring.

The termination procedure depends on the grounds for dismissal. For a termination on collective grounds, the procedure to be followed is determined by the:

- Size of the employer.
- Number of employees being dismissed.

The pre-dismissal procedure relating to termination of employment on individual grounds generally requires that the employee is heard before the dismissal. In addition, it is generally required that the employee receives a written warning before he can be legally dismissed. For procedural requirements relating to redundancies, see *Question 21*.

20. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Protection against dismissal

An employer must always have valid and acceptable grounds for terminating an employment contract. Termination of employment without legal grounds can lead to an obligation to pay compensation to the employee, equal to between three and 24 months' salary.

Protected employees

The right to dismiss shop stewards, industrial safety delegates and personnel representatives in the administration of undertakings is strictly limited by law and is often further limited by collective agreement. In addition, an employee on family leave cannot be dismissed on collective grounds unless the whole business of the employer is closed. Further, a dismissal is deemed to have taken place due to pregnancy or family leave, unless proved otherwise by the employer.

REDUNDANCY/LAYOFF

21. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

Definition of redundancy/layoff

Legal grounds for terminating an employment contract on collective grounds generally exist if both:

- Work has diminished or been materially reduced due to economic or production related reasons, or due to the restructuring of the enterprise.
- The reduction of work is permanent.

A precondition for terminating an employment contract on economic or production-related grounds is that the employee cannot reasonably be repositioned or retrained within the company. The repositioning obligation continues throughout the notice period and it can, under certain circumstances, also be extended to the employer's subsidiaries. Hiring new employees before the dismissals or immediately afterwards typically discredits any collective grounds for the terminations.

The Co-operation Act applies to terminations on collective grounds at companies regularly employing at least 20 employees in Finland. Employers falling outside the scope of the Co-operation Act have a relatively simple consultation obligation set out in the Employment Contracts Act, under which an employer planning to dismiss employees on collective grounds must discuss the reasons for terminations with the employees as early in advance as possible.

Procedural requirements

For terminations on collective grounds the employer must:

- Give employee representatives five days' prior written notice of the consultations when the negotiations relate to possible terminations.
- Give employee representatives the necessary information relating to the contemplated redundancies before the co-operation consultation.
- Inform the local employment authorities of the consultation procedure relating to the possible reduction of manpower.

During the co-operation consultation, the parties must discuss the grounds for, the effects of, and the alternatives to the planned redundancies, as well as the possibility of retraining and repositioning the employees to be dismissed.

The minimum period of the consultations is:

- Two weeks if the subject of the negotiations is the termination of fewer than ten employment contracts.
- Six weeks if at least ten employment contracts are to be terminated.

Failure to conduct the co-operation consultation procedure will not make the dismissal itself unfair, but can result in compensation currently up to a maximum of EUR34,519 for each affected employee.

Redundancy/layoff pay

There is no statutory obligation to pay severance, but the applicable notice period must be observed.

Collective redundancies

The procedural requirement of providing employee representatives the necessary information relating to the contemplated redundancies is a mandatory requirement when the employer is considering serving notice of termination or lay-off for over 90 days, or reducing a contract of employment to a part-time contract for over ten employees. Where these plans affect less than ten employees, this procedure is optional. However, the employer must always issue the required information in writing at the request of the employee or the representative of the personnel group concerned.

EMPLOYEE REPRESENTATION AND CONSULTATION

22. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What does consultation require? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management representation

The Act on Personnel Representation in the Administration of Undertakings 1990 gives the employees of companies regularly employing at least 150 employees in Finland a right to participate in matters that affect the employees and the company's business. Employee representation is usually arranged on the basis of an agreement, but can also be arranged in accordance with legal provisions. Typically, employee representation involves appointing representatives to the supervisory board, the board of directors or management groups.

Consultation

The Co-operation Act applies to companies that regularly employ at least 20 employees in Finland. Under the Act, the employee representatives must be consulted and negotiated with when, among other things, the following are contemplated:

- A reduction of workforce.
- A transfer of business.
- Changes in business operations affecting employees and their work arrangements.

Certain general plans and principles of the company must also be handled in a co-operation consultation and personnel representatives must be provided with information relating to the operations of the company specified by the Act.

Finland has implemented and incorporated Directive 94/45/EC on the establishment of a European works council (EWC Directive) into the Act on Co-operation within Finnish and Community-wide Groups of Undertakings 2007 (Directive 94/45/EC was repealed by Directive 2009/38/EC).

Major transactions

Co-operation consultations must be held in connection with a major business transaction.

23. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

Failure to conduct a consultation procedure in connection with redundancies and lay-offs can result in the employer's liability to pay an indemnity of up to EUR34,519 for each affected employee. The amount of the indemnity is not bound to the damage suffered by the employee. When specifying the amount the court will, among other things, take the following matters into account:

- The degree of negligence affecting the co-operation consultation obligation.
- The employer's general circumstances.
- The nature of the measure applied in respect of the employee and duration of the employment relationship.

Employee action

It is not possible for the employees to take any action to prevent proposals going ahead.

CONSEQUENCES OF A BUSINESS TRANSFER

24. Is there any statutory protection of employees on a business transfer?

Automatic transfer of employees

Finland has incorporated Directive 2001/23/EC on safeguarding employees' rights on transfers of undertakings, businesses or parts of businesses (Transfer of Undertakings Directive). If a transaction constitutes a transfer of business, all the employees engaged in the business concerned at the time of the transfer are automatically transferred to the acquirer of the business on the basis of mandatory law. Correspondingly, the acquirer must take over all the transferred employees on their current terms of employment. The acquirer then has the same rights and obligations towards the transferred employees as the transferor had.

Protection against dismissal

Employment contracts cannot be terminated merely because of the transfer of business.

Harmonisation of employment terms

Harmonisation of the general terms of employment between existing and transferred employees is generally possible only under certain specific circumstances or by agreement. Nevertheless, the acquirer does not have a wider right to unilaterally change the employees' terms of employment than the previous employer had.

EMPLOYER AND PARENT COMPANY LIABILITY

25. Are there any circumstances in which:

- **An employer can be liable for the acts of its employees?**
- **A parent company can be liable for the acts of a subsidiary company's employees?**

Employer liability

An employer is vicariously liable to pay damages for injury or damage caused by its employee through an error or negligence relating to the employee's work. The compensation awarded depends on the amount of damage or injury caused and the degree of negligence on the employee's part. However, if the employee causes injury or damage wilfully or by negligence, the employee may be obliged to compensate the employer for the damage caused.

Parent company liability

Generally, a parent company is not held liable for the acts of its subsidiary companies' employees.

EMPLOYER INSOLVENCY

26. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?

Employee rights on insolvency

The Pay Security Act 1998 ensures payment of employees' claims arising from an employment relationship in the event of the employer's insolvency. The Centre for Economic Development, Transport and the Environment in whose area the employer is domiciled deals with applications for pay security and makes decisions regarding them. Pay security is paid by the state within a week of the decision on pay security. The employer must repay to the state all claims paid as pay security.

State guarantee fund

See above, *Employee rights on insolvency.*

HEALTH AND SAFETY OBLIGATIONS

27. What are an employer's obligations regarding the health and safety of its employees?

Employers have a general duty to consider all the factors that could affect employees' health and safety at work and to take whatever measures necessary to protect their employees by, among other things:

- Assessing, analysing and drafting plans for the promotion of health and safety at work within their organisations.
- Carrying out workplace risk assessments.
- Eliminating these risks as far as reasonably possible.

Health and safety at work does not just cover physical welfare, but also includes issues such as mental health, working hours, sexual harassment and discrimination at work. Employers must maintain an accident insurance policy covering all the employees and insuring against occupational diseases and work-related accidents.

In addition, a workplace health and safety representative and, in workplaces of 20 or more people, a separate health and safety board, must be appointed for consultation and supervision purposes on various key health and safety issues.

Failure to observe health and safety principles at work can render the employer liable for any damage suffered by employees as a result of the breach. The employer's representatives can also be punished with a fine or with imprisonment for a maximum one-year term.

TAXATION OF EMPLOYMENT INCOME

28. What is the basis of taxation of employment income for:

- **Foreign nationals working in your jurisdiction?**
- **Nationals of your jurisdiction working abroad?**

Foreign nationals

Foreign nationals staying in Finland for a maximum of six months are not considered residents for tax purposes and are therefore taxed only on income derived from Finland. The Finnish employer deducts withholding tax at a fixed 35% tax at source rate from the employee's wages.

Foreign nationals staying in Finland for more than six months on a continuous basis are generally taxed under the same progressive income tax rates as the permanent residents of Finland.

Nationals working abroad

Finnish citizens are tax residents of Finland unless they leave Finland permanently. Therefore, a Finnish citizen who leaves Finland to work temporarily in another country is usually taxed as a resident individual in Finland. Generally, tax residents are subject to income tax on their entire income, whether derived in Finland or abroad, unless Finnish tax treaties provide otherwise. If a citizen indicates to the tax authorities that they are moving permanently out of Finland and provides the authority with evidence of not maintaining substantial ties with Finland, the employee can request to be taxed as a non-resident. If not, they will generally be taxed for three years as a resident, after which they are taxed as a non-resident.

29. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?

Rate of taxation on employment income

The individual progressive income tax rates for 2018 are as follows:

- EUR17,200 to EUR25,700: 6.0%.
- EUR25,700 to EUR42,400: 17.25%.
- EUR42,400 to EUR74,200: 21.25%.
- EUR74,200 or more: 31.25%.

The tax rates listed above are applied in between the cut-off values for each tax bracket. Up to the lower limits, a lump sum tax, calculated according to the preceding rates, is paid.

In addition to the national income tax, an employee is subject to municipal income tax. Fixed municipal tax rates vary between 16.5% and 22.5% depending on the municipality.

Church tax is paid by the members of Finnish Evangelical Lutheran and Orthodox churches only. Fixed church tax rates vary between 1% and 2%.

Taxes are withheld by the employer from the employee's salary.

Social security contributions

Both employers and employees must pay unemployment insurance premiums, sickness insurance premiums and employment pension insurances.

- The employers' unemployment premium for 2017 is 0.80% for the first EUR2,059.500 of wages and 3.30% after that. The employees' premium for 2016 is 1.60% of gross salary.
- The employers' sickness insurance premiums for 2017 amount to 1.08% of gross salaries. The respective figure for employees is 1.58%.
- The employers' employment pension insurance for 2017 amounts to an average of 17.95% of gross salaries while employees' employment pension insurance is either 6.15% or 7.65% depending on the employees' age.

An employer withholds from an employee's salary those social security contributions that are payable by the employee.

An employer only must pay the following social security contributions:

- Employee accident insurance, approximately 0.8% of gross salary. The contributions vary according to the danger of the work and the number of accidents.
- Employee group life insurance, with contributions varying depending on the insurance company.

BONUSES

30. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded, whether generally or in particular sectors?

Discretionary bonus schemes are relatively common in Finland. No official guidelines have been published generally or in particular sectors but the incentive plans must not be discriminatory (in violation of the obligation of equal treatment referred to in the Employment Contracts Act) or against good practice.

INTELLECTUAL PROPERTY (IP)

31. If employees create IP rights in the course of their employment, who owns the rights?

The Act on the Right in Employee Inventions 1967 is the main regulation concerning the parties' rights in relation to employee inventions. The Act applies to employee inventions patentable in Finland and in states where the employer can generally obtain the right to a patentable invention created by the employee if:

- The employee is working in the service of the employer.
- The intellectual property (IP) is created in connection with the employment under the employee's main work tasks.
- The IP is exploitable by the employer within its or its subsidiary's line of business.

The employee has a mandatory right to receive a reasonable compensation for the patentable invention. This right cannot be waived by the employee.

There is no regulation on employment-related copyrights. Therefore it is recommended to agree on the transfer of these rights in an employment contract. However, the copyright in computer software and databases created within the scope of principal work tasks in an employment relationship generally passes automatically to the employer.

RESTRAINT OF TRADE

32. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of activities

During the employment relationship, employees must not work for another party or engage in an activity that would, taking into account the nature of the work and the individual employee's position, cause fundamental harm to the employer.

Post-employment restrictive covenants

An employer and an employee can only agree on post-termination non-competition obligations if there are "particularly weighty" reasons to do so. These reasons typically relate to the employee's special position in the company on the basis of which he has learned about the employer's business and trade secrets.

Compensation is not required for a post-employment non-compete covenant that restricts the employee's right to conclude a new employment contract or to engage in the trade concerned for up to a maximum of six months. The restricted period can be extended to a maximum of one year, if the employee receives acceptable compensation. Breaches of the non-competition undertaking can be penalised with liquidated damages amounting to a maximum of the employee's six months' salary. The limitations concerning the length of the non-competition period and the amount of liquidated damages are not applicable to certain managerial employees. In addition, the post-employment non-compete restrictions do not bind the employee if the employer terminates the contract for financial and production-related reasons.

The parties to the employment relationship can, however, freely agree on post-termination non-solicitation. However, under certain circumstances this type of restriction can be considered excessive and therefore invalid.

RELOCATION OF EMPLOYEES

33. Can employers include mobility clauses in employment contracts, or take any other measures, to ensure that employees are obliged to relocate?

According to the Employment Contracts Act 2001, the employee works under the management and supervision of the employer. The employer's right to supervise work includes the right to determine the content of the work as well as when and where the work is performed. It is possible to agree on the employee's location in the employment contract. However, this may set out restrictions on the relocation of the employee during the employment.

If the parties have not specifically agreed on relocation, the following factors, among others, are taken into account:

- The established practices in the workplace.
- The nature of the work.
- What the employee knew or what the employee should have known based on their professional experience regarding the possible relocation requirements of the work.

PROPOSALS FOR REFORM

34. Are there any proposals to reform employment law in your jurisdiction?

The Working Hours Act. The Finnish Ministry of Economic Affairs and Employment appointed a working group in 2016 to examine the current regulation of working hours (particularly the Working Hours Act (605/1996)) and prepare proposals for updating legislation to meet the requirements of the 2020s. The working group submitted its report on the updated regulation of working hours and the new Working Hours Act in July 2017. The report includes dissenting opinions by labour market organisations, the representatives of which were members of the working group. However, the working group report has not yet been ratified by the Finnish parliament.

The working group report introduces a new model of flexible working hours for managerial employees and for employees who are able to govern their own working hours. The proposed model would also enable the use of working hour banks as a tool to govern the working hours in fields where there are no collective agreements or the applicable collective agreement does not include provisions regarding working hour banks. These changes aim to increase flexibility in the organisation of work and are, above all, based on trust between the employer and the employee.

Zero-hour employment contracts. The use of zero-hour employment contracts has also been recently examined in Finland. The working group report aims to strengthen the position of employees by limiting the use of zero-hour employment contracts to situations where the employer actually has variable need for manpower. In addition, these employers will have a responsibility to provide the employee with an estimate on the anticipated amount of work.

According to the report, employees' rights to sick pay and salary during the notice period will also be ensured by restricting the employer's right to decide on these matters single-handedly. Furthermore, employees will have the right to refuse a shift offered by the employer in certain circumstances. The employee will also no longer be able to give consent to additional work for an undefined period of time.

However, the working group report on the use of zero-hour employment contracts has not yet been ratified by the Finnish parliament.

ONLINE RESOURCES

Finlex

W *www.finlex.fi/en*

Description. Free public internet service that provides legislative information. It is a bilingual website in Finnish and Swedish, the two official languages of Finland. The home page is also available in English and unofficial full-text translations of Finnish Acts of Parliament (mostly in English) can be consulted. Finlex is maintained by the Ministry of Justice of Finland together with Edita publishing, a private company. Only the Finnish and Swedish language versions are binding.

Practical Law **Contributor profiles**

Seppo Havia, Partner, Head of Employment, Benefits and Pensions

Dittmar & Indrenius
T +358 9 6817 0105 F +358 9 652 406
E seppo.havia@dittmar.fi
W www.dittmar.fi

Professional qualifications. Member of the Finnish Bar; University of Helsinki (LLM), 1991; trained at the bench, 1992

Areas of practice. Employment; benefits and pensions; dispute resolution.

Non-professional qualifications. Specialist qualification in management, Management Institute of Finland (MIF)

Recent transactions

- Providing day-to-day employment law advice to (among others) GlaxoSmithKline, Capgemini, Santen Pharmaceuticals, Finnair, Rexel, Finnish State Railways, Thermo Fisher Scientific, Apple and Qualcomm.
- Advising and assisting Finnair in many precedent-setting court cases concerning, among others, the use of precautionary measures to prohibit illegal strikes and thereto related damage claims.
- Representing major Finnish Technology Industry and Forest Industry companies in precedent-setting criminal and damage claim cases regarding labour unions' liabilities in illegal strikes.

Languages. Finnish, Swedish and English

Professional associations/memberships. Member of the International Bar and Finnish Bar Associations; European Employment Lawyers Association; Industrial Lawyers Association.

Publications. Regular author and co-author of several international publications on employment and pensions law, such as:

- Practical Law Global Guides.
- Global Legal Group legal guides.
- Getting the Deal Through legal guides.
- Employment Law in Europe editions of Tottel Publishing.
- EU and International Employment Law guides of Jordans.
- Workforce Restructuring in Europe of Bloomsbury Professional.

Iisa Koskela, Associate

Dittmar & Indrenius

T +358 9 6817 0138
E iisa.koskela@dittmar.fi
W www.dittmar.fi

Professional qualifications. University of Helsinki (LLM), 2017

Areas of practice. Employment; benefits and pensions; data protection; intellectual property rights.

Languages. Finnish, Swedish, English