

NB: Unofficial translation
Ministry of Labour, Finland

PAY SECURITY ACT (866/1998)
(as amended by acts No 438/2000 and 78/2001)

Chapter 1
General provisions

Section 1
Purpose of the Act

The purpose of the Pay Security Act is to ensure payment of employees' claims arising from an employment relationship in the event of the employer's insolvency.

Section 2
Scope of application of the Act

Employees are entitled to pay security if

- 1) the work concerned was done in Finland; or
- 2) the work was done abroad in the service of a Finnish employer and the employee is domiciled in Finland.

Work done in Finland does not, however, entitle an employee to pay security if carried out by an employee sent to Finland from abroad by a foreign employer to do temporary work.

Work abroad as referred to above in paragraph 1, subparagraph 2, does not entitle an employee to pay security in so far as he receives any comparable benefit from another country.

Section 3
Authorities

The relevant ministry directs enforcement of the Act and is responsible for development of the pay security system. Employment and economic development centres shall make decisions in matters of pay security and handle other functions connected with enforcement of the Act.

Chapter 2 Conditions for receiving pay security

Section 4 Conditions concerning the claim

Pay security is paid for claims of an employee arising from an employment relationship as referred to in the Employment Contracts Act (55/2001), the grounds and sum of which have been established. (78/2001)

Section 5 Period of application

An application for payment of the claim in the form of pay security shall be submitted within three months of its falling due. In the case of an indemnity or compensation based on the law or a contract, but without a specific due date, the application for payment in the form of pay security shall be submitted within three months of the the date when court ruling acquired legal force or of making a contract according to established labour market practice.

Section 6 Employer's insolvency

The condition for receiving pay security is that the employer is insolvent. The employer shall be considered insolvent:

- 1) if he has been declared bankrupt;
- 2) if it is established at distraint that he is unable to pay his debts;
- 3) if he has neglected to remit the statutory withholding taxes or employer contributions on time;
- 4) if he cannot be contacted or has terminated his operations and sufficient funds cannot be found for payment of the claim; or
- 5) if, in cases comparable to those mentioned above, the employer's insolvency can be established by the pay security authorities clearly and beyond dispute.

Section 7 Duty to secure claims

If the employer has been declared bankrupt, the employee is required to make notification of his claim from the employer's bankruptcy according to the provisions of section 19 of the Bankruptcy Act (31/1868) in order to retain his right to pay security. There is no notification duty if the claim is included in the list of employment relationship claims drawn up by the administrator of the estate as referred to in section 13.

If the employee neglects his duty to secure a claim as described in paragraph 1, this may constitute grounds for refusing to grant pay security in whole or in part.

Section 8 Prevention of abuses

For a justifiable reason, the pay security authorities may refuse an application for pay security or take the amount of pay security to be paid under consideration in the following situations:

- 1) the employee's claim is based on a contract or arrangement which was clearly made in order to obtain pay security;
- 2) the claim applied for as pay security is obviously disproportionate to what could be considered reasonable in view of the work done and other circumstances;
- 3) the employee is repeatedly applying for pay security for claims on the same employer.

For a justified cause, the pay security to be paid may also be limited to the amount paid by the employer to the employee as claims arising from the employment relationship during the year preceding submission of the pay security application.

The 'same employer' as referred to in paragraph 1, subparagraph 3, above includes an undertaking which is controlled on the basis of ownership, agreement or some other arrangement by:

- 1) the former employer;
- 2) a person or persons who have a close relationship with the former employer, as referred to in section 3 of the Act on the Recovery of Property to the Estate of a Bankrupt Person (758/1991);
or
- 3) persons referred to in subparagraphs 1 and 2 above together.

An employee who has previously received pay security has the right, upon application, to obtain advance information on whether pay security will be limited or refused on the grounds described in paragraph 1, subparagraph 3.

Section 9 Maximum amount of pay security

The maximum amount of pay security for one employee for work done for the same employer is FIM 90,000. (438/2000)

The maximum amount of pay security on pay for waiting time as referred to in chapter 2, section 14, of the Employment Contracts Act is equal to the amount which is paid as pay security to cover other claims arising from the employment relationship. (78/2001)

Chapter 3 Application for pay security and the processing of applications

Section 10 Application and applicants

Applications for pay security shall be submitted to an employment office or employment and economic development centre. An application for pay security based on work abroad can also be filed with a Finnish diplomatic mission abroad.

The applicant for pay security can be an employee or an employee organization to which the employee has transferred his claim for collection. When the employer has been declared bankrupt, pay security can also be applied for by the administrator of the bankrupt's estate for the benefit of the employees, on conditions prescribed by decree.

If the employee transfers his claim arising from an employment relationship, the recipient of the transfer is entitled to pay security only where said recipient is an employee organization.

Section 11 Competent authority

Applications for pay security shall be processed and disposed of by the employment and economic development centre in whose area the employer is domiciled, except as far as otherwise ordered under section 2, paragraph 3, of the Act on Employment and Economic Development Centres. If this domicile is unknown, the matter shall be dealt with by the employment and economic development centre in whose area most of the work referred to in the application was done. If the employer is bankrupt, the decision shall be made by the employment and economic development centre in whose area the court dealing with the employer's bankruptcy case under section 1a of the Bankruptcy Act has jurisdiction.

In individual cases, the relevant ministry may transfer the processing of an application for pay security from the competent employment and economic development centre to another centre.

Section 12 Hearings

Before the matter is resolved, the employer and the employee shall be given an opportunity to be heard in accordance with section 15 of the Administrative Procedure Act (598/1982). A partner in a partnership or a general partner in a limited partnership or a person otherwise liable for payment of claims can only be made liable for repayment under section 17, if he has also been given an opportunity to be heard concerning the application.

Section 13

Estate administrator's list of claims arising from employment relationships

Immediately upon the bankruptcy being declared, the administrator of a bankrupt's estate shall draw up a list of outstanding claims arising from employment relationships. The administrator, in cooperation with the employment and economic development centre, shall then investigate which of the claims can be paid as pay security. The administrator shall give the employees or their representatives an opportunity to express their opinion on the claims entered in the list.

Chapter 4

Decision on pay security and payment of pay security

Section 14

The decision on pay security and announcement of it

A decision in writing shall be issued on all applications for pay security. The decision shall be justified in the manner required by section 24 of the Administrative Procedure Act. The decision shall be sent immediately to those concerned.

The decision on pay security shall include a ruling on repayment liability according to section 17. If the issue of repayment liability cannot be settled without substantial delay in the decision to grant pay security, the decision on repayment liability can be made separately. The decision shall be made without delay once the repayment liability has been decided on.

Section 15

Payment of pay security

Pay security is paid within a week of the decision on pay security. Pay security shall be subject to tax withholding in accordance with the Prepayment Act (1118/1996) and to other statutory payments payable from an employee's wage, unless otherwise decreed elsewhere in the law. Distrainment orders against wages and orders to refrain from paying wages shall also be effective when pay security is disbursed.

Out of the pay security paid to an employee, the employment and economic development centre may use a maximum of the sum legally subject to distrainment to offset a State counterclaim in accordance with this Act.

Chapter 5

Repayment liability

Section 16

Transfer of claims to the State

Claims payable as pay security and all other entitlements based thereon shall pass to the State on the date of the decision.

Section 17 Repayment liability

The employer, a general partner in a limited partnership, a partner in a partnership or a person otherwise liable for the payment of employees' claims shall repay to the State all claims paid as pay security, including annual interest on claims in accordance with the interest rate laid down in section 4, paragraph 3, of the Interest Act (633/1982) as of the date of the decision.

Section 18 Enforceability of a decision on pay security

A decision on pay security shall be immediately enforceable like a final judgement, unless a court of law, in considering a dispute concerning pay security, rules that the decision shall not be enforced for the time being or that enforcement shall be discontinued.

Section 19 Payment relief

For reasons important for safeguarding employment or for other comparable cause, or if collection would be unreasonable in view of the financial standing of the liable party, the relevant ministry and, to the extent prescribed by decree, employment and economic development centre may grant a deferral of payment or release the employer or other party liable for payment from part or all of his obligation to pay.

A decision on payment relief made by the relevant ministry or employment and economic development centre cannot be appealed.

Section 20 Special period of limitation

Pay security shall be recovered for the State within 10 years of the end of the year in which the pay security decision was made. Thereafter, the right to the payment is forfeited.

The time limit does not prevent receipt of the payment from funds subject to distraint, bankruptcy proceedings or other public summons, if distraint has been carried out in order to collect the claim or if the claim is subject to bankruptcy proceedings or other public summons during the period mentioned above. Special periods of limitation in connection with restructuring and debt rescheduling are laid down in sections 99 and 99a of the Act on Corporate Restructuring (47/1993) and sections 79 and 79a of the Act on Debt Rescheduling for Private Individuals (57/1993).

Chapter 6 Appeal

Section 21 Court proceedings against the employer

If an application that a claim be paid in the form of pay security has been rejected because the employer has disputed the claim and it has not been possible to establish its grounds and amount in the pay security procedure, the employee shall, in order to retain his entitlement to pay security, institute court proceedings against the employer in a district court. The application for summons shall state that the action is based on this paragraph.

The court shall forward the summons, the application for summons and all appended documents and responses to the summons to the State for its information. The State has the right, when it considers this is in its best interests, to enter the case as a defendant within a period set by the court.

In the situations referred to in paragraphs 1 and 2, the court will confirm vis-à-vis the State the claims at the most that the employer is ordered to pay to the employee.

If the employer has disputed the claim applied for as pay security and the employer has not been considered insolvent, the claim shall be dismissed as disputed and the employee shall be given instructions for instituting court proceedings as laid down in paragraph 1.

Section 22 Court proceedings against the State

If a claim subject to a pay security application which has not been disputed by the employer is dismissed as unproven or unfounded, the employee shall, in order to retain his right to pay security, institute a declaratory action against the State in a district court concerning the grounds and sum of his claim.

Section 23 Institution of action and place of jurisdiction

The period for instituting action is six months. The period is calculated from the receipt of notice of the decision. The action shall be instituted in the court of law where the employer would be required to answer a case concerning a wage claim.

Section 24 Settlement of a claim in the employer's bankruptcy proceedings

If the employer is bankrupt or is declared bankrupt within the period when action should be instituted, action cannot be instituted and disputes concerning the claim shall instead be settled in

the bankruptcy proceedings. If the bankruptcy proceedings are cancelled or lapse, the six-month time limit shall be calculated from the date of the termination of the bankruptcy proceedings.

Employment and economic development centres are entitled to object to the payment of a claim filed in bankruptcy proceedings which may be payable as pay security.

Section 25 New pay security applications

A claim based on a court ruling can be paid as pay security if a new application is submitted within three months of the date on which the court decision acquires legal force, assuming that the general conditions for receiving pay security are fulfilled.

Section 26 Administrative appeal

An employee may appeal a pay security decision rejecting an application on grounds other than those referred to in sections 21 and 22 by submitting a written complaint to the Unemployment Security Appeal Board. The appeal shall be submitted to an employment and economic development centre not later than 30 days after receiving notice of the decision. Unless otherwise shown in the course of the appeal, the appealing party shall be considered to have been notified of the decision on the seventh day after the decision is posted to the address given by the party. The written complaint shall be submitted to the employment and economic development centre, which shall immediately send the letter of complaint and the relevant documentation, together with its opinion, to the Unemployment Security Appeal Board.

A party dissatisfied with a decision of the Unemployment Security Appeal Board may appeal it to the Supreme Administrative Court within the time laid down in paragraph 1 after receiving notice of the Board's decision.

Section 27 Employer's recovery claim

An employer or other party liable for payment may submit a recovery claim concerning a pay security decision to the court of law where the employer would be required to answer a case concerning a wage claim. A suit for recovery shall be instituted within 60 days of receiving notice of the pay security decision.

If the employer or other party liable for payment has been declared bankrupt, or he is declared bankrupt during the period for instituting a suit for recovery, disputes concerning liability for payment may, however, be settled in connection with the bankruptcy proceedings.

Chapter 7 Miscellaneous provisions

Section 28 Obtaining information and executive assistance

Employers shall provide the employment and economic development centres with all information needed to enforce this Act. The said authorities shall be entitled to verify this information against the employers' accounts. The police authorities shall provide any executive assistance needed to obtain information.

The employment and economic development centres are entitled to obtain from tax authorities, distraint authorities, labour protection authorities, the Social Insurance Institution, unemployment funds and employment offices any information needed for processing pay security applications.

Section 29 Unfounded pay security

Whosoever, knowingly or through negligence, has caused an unwarranted disbursement of pay security or an unwarranted granting of other benefit under this Act, shall be liable to return or compensate the amount paid in excess with interest according to section 4, paragraph 3, of the Interest Act, calculated as of the day the benefit was granted.

Section 30 Penal provisions

The penalty for acquiring, or attempting to acquire, pay security fraudulently shall be imposed in accordance with chapter 36, sections 1 to 3, of the Penal Code (39/1889).

The penalty for social assistance fraud which concerns an easement or exemption under this Act shall be imposed under chapter 29, sections 5, 6 and 8, of the Penal Code.

Section 31 Funding

The Unemployment Insurance Funds as referred to in the Act on Financing Unemployment Benefits (555/1998) shall each year retroactively reimburse to the State the difference between the amounts paid to employees as pay security and the principal collected from employers, according to an invoice sent by the relevant ministry. Amounts the collection of which from employers or other parties liable for payment has been renounced under section 19 shall be deducted from the difference, however. If the reimbursement is delayed, it becomes subject to a penalty interest of 16 per cent.

Section 32
Further provisions

More detailed provisions on the enforcement of this Act will be issued by decree.

Chapter 8
Entry into force and transitional provisions

Section 33
Entry into force

This Act enters into force on January 1, 1999.

This Act repeals the Pay Security Act issued on August 10, 1973 (649/1973) and subsequent amendments to it.

Section 34
Transitional provisions

This Act shall apply to pay security applications submitted to the employment authorities after the entry into force of the Act. The provisions on appeals procedures in chapter 6 of this Act shall also apply to appeals in progress when the Act enters into force.

New pay security applications according to section 25 of this Act shall be subject to the provisions in force at the time this Act enters into force, if a claim based on a legal decision was first applied for as pay security before this Act entered into force and application of the provisions on appeal in paragraph 1 do not provide otherwise.

The provisions in force when this Act enters into force still apply to the invoice of the Unemployment Insurance Fund for 1998.

State claims based on pay security decisions made before this Act enters into force expire by the end of 2008 at the latest.

Helsinki, November 27, 1998

The amendment No 438/2000 came into force on 1 st July 2000.

The amendment No 78/2001 comes into force on 1 st June 2001.