

Unofficial translation
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Posted Workers Act (1146/1999)
(as amended by several acts, including No. 1198/2005)

Section 1
Scope

This act applies to work carried out under an employment contract as referred to in chapter 1, section 1, of the Employment Contracts Act (55/2001) by a worker posted to Finland. (74/2001)

For the purposes of this Act, 'posted worker' means a worker who normally carries out his or her work in a country other than Finland and whom an employer undertaking established in another country posts to Finland for a limited period within the framework of the transnational provision of services, if

- 1) the worker is posted to perform work under the direction and on behalf of the undertaking under a contract concluded between the employer and the user of the services operating in Finland,
- 2) the worker is posted to work for an establishment or undertaking owned by the group of undertakings concerned, or
- 3) the worker is hired out to a user undertaking and the employer is a temporary employment undertaking or placement agency.

This Act does not apply to the seagoing personnel of merchant navy undertakings. Except for the provisions of section 9 concerning jurisdiction, other provisions of this Act shall not apply to work performed under a procurement contract concluded by a public central government authority.

Section 2 (74/2001)

Provisions and stipulations governing terms and conditions of employment

The law applicable to the employment contract of a posted worker is determined under the Convention on the law applicable to contractual obligations (Finnish Treaty Series 30/1999).

Even if it were found that the law applicable to the employment contract of a posted worker would be the law of another country, the following provisions of Finnish law shall apply, in so far as they are more favourable to the worker than the legal provisions that would otherwise be applicable:

- 1) as regards compensation and higher rates of pay on the grounds of working hours, sections 22-25 and section 33, paragraphs 2 and 3, of the Working Hours Act (605/1996) and section 5 of the Work in Bakeries Act (302/1961),
- 2) as regards compliance with the prescribed work and rest periods, sections 6-14, 16-21, 26-32, and section 33, paragraph 1, of the Working Hours Act,
- 3) as regards the specification of annual holidays, annual holiday pay and holiday compensation, sections 5-19 of the Annual Holidays Act (162/2005),

- 4) as regards the specification of pay and employee housing, chapter 2, sections 11 and 12, and chapter 13, section 5, of the Employment Contracts Act, and
- 5) as regards provisions concerning family leaves, chapter 4, sections 2, 8 and 9 of the Employment Contracts Act.

On conditions referred to in paragraph 2, the provisions of universally applicable collective agreements as referred to in section chapter 2, section 7, of the Employment Contracts Act concerning annual holiday, working hours and occupational safety shall apply to posted workers' employment relationships.

Posted workers shall be paid a minimum rate of pay, which shall be considered to refer to remuneration specified on the basis of a collective agreement as referred to in chapter 2, section 7, of the Employment Contracts Act. In case this collective agreement is not applicable to the employment relationship, the usual and reasonable wage should be paid to the worker, if the remuneration agreed between the employer and the worker is essentially lower than this. (1198/2005)

Notwithstanding paragraph 2, chapter 1, section 9, chapter 2, section 2, and chapter 13, sections 1 and 2, of the Employment Contracts Act, sections 6, 7, 8, 8 a, 8 d, 9 and 9 a of the Act on Equality between Women and Men (609/1986), hereinafter referred to as *the Equality Act*, the Occupational Safety and Health Act (738/2002), the Occupational Health Care Act (1383/2001), and the Young Workers' Act (998/1993) and provisions and stipulations issued under them shall apply to work performed by posted workers. (1198/2005)

A party claiming in legal proceedings that the law of another country should be applicable to the employment contract of a posted worker shall show proof of the contents of the applicable law. (1198/2005)

Section 3

Special allowances considered part of pay

When it is considered whether a posted worker's pay meets the requirements laid down in section 2, paragraphs 2 and 4, special allowances paid due to the worker's posting, unless they are paid in reimbursement for actual costs incurred because of the posting, shall be considered part of the worker's pay.

Section 4

Threshold period applicable to certain types of work

The provisions of section 2, paragraph 2, subparagraphs 1, 3 and 4, and paragraphs 3 and 4, concerning minimum paid annual holiday and holiday pay do not apply to initial assembly or first installation of goods carried out by a skilled or specialist worker where this is an integral part of a contract for the supply of goods and necessary for taking the goods supplied into use, if the period of the posting does not exceed eight days.

What is provided in paragraph 1 does not apply to building work related to the construction, repair, upkeep, alteration or demolition of buildings. Such work is also

considered to include excavation, earthworks, assembly and dismantling of prefabricated elements, fitting out and installation work, alterations, dismantling, maintenance, upkeep, painting and cleaning work, and improvements.

When the duration of a worker's posting as referred to in paragraph 1 is calculated, all periods within the last 12 months during which such work has been carried out by a worker posted by the same employer shall be taken into account.

Section 4 a (1198/2005)
Selecting a representative

In case the employer of a posted worker intended in Section 1 (*the company posting the worker*) does not have a business location in Finland, they shall have a representative in this country, who is authorised to act for the company posting the worker in a court of law and to receive on behalf of this company writs of summons and other documents issued by the authorities. The representative shall be selected no later than at the date when the posted worker starts working, and the authorisation shall be valid for a minimum of 12 months after the date at which the posted worker ceases working in Finland. The party for which the work is performed shall through their contracts with the company posting the worker or by other means at their disposal ensure that the company posting the worker selects the representative intended herein.

A representative need not be selected in case the posting of the worker is no more than 14 days in duration. In case several consecutive employment contracts concerning the posting without interruption or with short-term interruptions only have been concluded between the posted worker and his/her employer, the posting shall be regarded as having been continuous.

Section 4 b (1198/2005)
Liability to keep records of posted workers

As the posted worker starts working, the employer or, if the employer does not have a business location in Finland, the employer's representative intended in Section 4 a, shall have in their possession the following information in writing:

- 1) the identifying details of the company posting the worker and information on the responsible persons in the country in which the company posting the worker is located;
- 2) identifying details of the posted worker,
- 3) written information pursuant to Chapter 2 Section 4 of the Employment Contracts Act on the working conditions applicable to the employment contract of the posted worker; and
- 4) information on the basis of the employment rights of the posted worker.

In case the company posting a worker is not obliged to select a representative pursuant to Section 4 a, the company shall also be in possession of the information intended in Paragraph 1 when it does not have a business location in Finland.

In order to safeguard the minimum working conditions applicable to the employment relationship of a posted worker, the company posting the worker shall, before the work performed in Finland is initiated, let the party for whom the work is performed know who is in possession of the information intended in Paragraph 1 during the worker's posting. This information shall be kept on file for two years after the posted worker has ceased working in Finland.

Section 5 (163/2005)

Documentation of working hours, records of annual holidays and payment details (1198/2005)

The provisions of sections 36, 37 and 37a of the Working Hours Act concerning documentation of working hours and section 29 of the Annual Holidays Act concerning records to be kept on annual holidays apply to work carried out by posted workers. Employers shall also comply with the provisions of section 34 and 35 of the Employment Contracts Act or other procedures that ensure the same standard of protection for workers.

In case the posting of a worker lasts for more than eight days, the employer or, if the employer does not have a business location in Finland, the representative intended in Section 4 a, shall have in their possession in Finland documentation on the working hours concerning work performed in Finland and records of the wages paid to the posted worker. (1198/2005)

Section 6

Provisions applicable to employers' liability to pay compensation

When the Employment Contracts Act is applied to an employment relationship under this Act, the employer's liability to pay damages is determined according to chapter 12, section 1 of the Employment Contracts Act. (74/2001)

As regards employers' liability to pay compensation on the grounds of discrimination as specified in section 8 of the Equality Act, section 10, paragraphs 1-3 and 5, section 11 and, as appropriate, section 10, paragraph 4, of the said Act shall apply.

Section 7

Claims for remuneration and compensation

In order to claim remuneration under provisions referred to in section 2, paragraph 2, subparagraph 1, legal action must be brought within the time limit referred to in section 38 of the Working Hours Act. In order to claim remuneration under provisions referred to in section 2, paragraph 2, subparagraph 3, legal action must be brought within the time limit referred to in section 34 of the Annual Holidays Act. (163/2005)

Concerning claims for compensation and other recompense on the grounds of discrimination as specified in section 8 of the Equality Act, section 12, paragraphs 2 and 3, and section 13 of the said Act shall apply.

Section 8 *Supervision*

Supervision of compliance with this Act is the responsibility of the occupational safety and health authorities, except for the provisions of the Equality Act referred to in section 2, paragraph 5, in which case supervision of compliance is the responsibility of the Equality Ombudsman and the Equality Board.

Employers or, if the employer does not have a business location in Finland, the representative intended in Section 4 a, must on request provide the occupational safety and health authorities with the information and reports referred to in Sections 4 b.1 and 5.2. (1198/2005)

Section 8 a (1198/2005) *Providing information to staff representatives*

In case the posting of a posted worker is more than eight days in duration, the employer or the representative intended in Section 4 a shall, subject to authorisation by the posted worker, give the shop steward elected by the staff group in question or the delegate intended in Chapter 13 Section 3 of the Employment Contracts Act the information pursuant to Section 4 b.1, subparagraph 3 of this Act on the terms and conditions of work applicable to the employment contract of the worker.

Section 9 *Jurisdiction*

Notwithstanding provisions on jurisdiction elsewhere in the law or in international conventions binding on Finland, action based on rights or duties referred to in this Act can also be brought before a Finnish district court within whose jurisdiction posted workers carry or carried out work as referred to in this Act.

Section 9 a (1198/2006) *Penal provisions*

In case an employer or their representative or a representative selected pursuant to Section 4 a intentionally or through negligence violate the provisions on possession of information and reports or duty to report intended in Section 4 b, or neglect to give the information intended in Section 8 a to a staff representative, they shall be sentenced to a fine for *the violation of the Posted Workers Act*.

The party for whom the work is performed or their representative, who intentionally or through negligence neglect the duty of care provided in Section 4 a, shall also be convicted of *a violation of the Posted Workers Act*, the representative of the party having the work performed, however, only in consideration of the instructions and procedures issued at the workplace.

The penalty for violations of the labour legislation is imposed in Chapter 47 of the Penal Code (39/1889).

Section 10
Implementation

The ministry in charge of occupational safety and health and its supervision is responsible for the implementation of this Act, the provision of related information, and cooperation with the authorities of other Member States, and the said ministry shall, as necessary, collaborate with the ministry responsible for law-drafting concerning employment relationships and working hours in matters concerning implementation.

Section 11
Entry into force

This Act enters into force on December 16, 1999.

Measures needed for the implementation of this Act can be taken before it enters into force.

The amendment No 74/2001 came into force on 1 st June 2001.

The amendment No 749/2002 came into force on 1 st January 2003.

The amendment No 163/2005 came into force on 1 st April 2005.

The amendment No 1198/2005 came into force on 1 st January 2006.