

Translation from Finnish
Legally binding only in Finnish and Swedish
Ministry of Economic Affairs and Employment, Finland

Wage Guarantee Act
(866/1998; amendments up to 1552/2015 included)

Chapter 1
General provisions

Section 1

Purpose of the Act

The purpose of the Wage Guarantee Act is to ensure the 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

- (1) An employee shall be entitled to wage guarantee if
 - 1) the work concerned has been done in Finland; or
 - 2) the work has been done abroad in the service of a Finnish employer and the employee is domiciled in Finland.
- (2) Work done in Finland does not, however, entitle an employee to wage guarantee if it has been carried out by an employee sent to Finland from abroad by a foreign employer to do temporary work.
- (3) Work abroad referred to above in subsection 1(2) does not entitle an employee to wage guarantee in so far as the employee is entitled to a similar benefit from another country.

Section 3

Authorities

The Ministry of Employment and the Economy directs the enforcement of the Act and is responsible for the development of the wage guarantee system. The Centre for Economic Development, Transport and the Environment makes the decision in a wage guarantee matter and manages other duties related to the enforcement of the Act.

Chapter 2
Conditions for receiving wage guarantee

Section 4

Claims payable as wage guarantee

- (1) Where the grounds and sum have been established, claims of an employee referred to in the Employment Contracts Act arising from an employment relationship are payable as wage guarantee.
- (2) The employees' pension contribution and wage earners' unemployment insurance contribution shall be deducted from the wage guarantee claim.

Section 5

Time limit for the application

A claim payable as wage guarantee shall be applied for within three months of its falling due. Compensation for damage or reparation based on the law or a contract which has no specific due date shall be applied for as wage guarantee within three months of the date when the judgement became final or a contract was concluded in compliance with established labour market practice.

Section 6

Employer's insolvency

- (1) A condition for receiving wage guarantee is that the employer is insolvent. The employer shall be considered insolvent if:
- 1) the employer has been declared bankrupt;
 - 2) it has been established that the employer is unable to pay his or her debts that are subject to recovery procedure;
 - 3) the employer has neglected to pay the statutory pay-as-you-earn taxes or employer contributions on time;
 - 4) the employer cannot be contacted or has terminated the operations and the claim cannot be paid from the employer's funds; or
 - 5) in cases comparable to those mentioned above, the employer's insolvency can be clearly established by the wage guarantee authority.

Section 7

Lodgement obligation

- (1) If the employer has been declared bankrupt, to retain the right to wage guarantee the employee shall lodge his or her claim in the employer's bankruptcy as specified in Chapter 12, section 6 of the Bankruptcy Act (120/2004). However, a lodgement obligation does not exist if the claim is included in the list of employment relationship claims referred to in section 13 of this Act, drawn up by the administrator of the estate.
- (2) If the employee neglects the lodging obligation provided in subsection 1, this may constitute grounds for refusing wage guarantee in whole or in part.

Section 8

Prevention of irregularities

- (1) For a justified cause, the wage guarantee authority has the right to refuse wage guarantee or take the amount of wage guarantee 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 wage guarantee;
 - 2) the claim applied for as wage guarantee is obviously disproportionate to what is to be considered reasonable in view of the work done and other circumstances;
 - 3) the employee is repeatedly applying for claims on the same employer as wage guarantee;
 - 4) the employee has continued in the employment relationship after obviously having been aware that the employer is incapable of managing the wage payments.
- (2) For a justified cause, the wage guarantee to be paid may also be limited to the amount paid by the employer to the employee as claims arising from the employment relationship within a year preceding the submission of the application for wage guarantee.

- (3) The same employer referred to in subsection 1(3) above also includes an undertaking where the power of decision on the basis of ownership, agreement or some other arrangement rests with:
 - 1) a former employer;
 - 2) a person or persons who have a close relationship with the former employer referred to in section 3 of the Act on Recovery to an Estate in Bankruptcy (758/1991); or
 - 3) persons referred to in paragraphs 1 and 2 above jointly.
- (4) An employee who has previously received wage guarantee has the right, upon application, to obtain advance information on whether wage guarantee is to be limited or refused on the grounds specified in subsection 1(3).

Section 9

Maximum amount of wage guarantee

- (1) The maximum amount of wage guarantee for one employee on the grounds of work done for the same employer is 15 200 euros.
- (2) The amount of pay for waiting time referred to in Chapter 2, section 14 of the Employment Contracts Act shall not exceed the amount of claims paid as wage guarantee from whose delay the obligation to pay for waiting time arises.
- (3) The provisions in section 9 a apply to the payment of a claim based on working time banking as wage guarantee.

Section 9 a

Working time banking claim payable as wage guarantee

- (1) A claim based on working time banking may be paid as wage guarantee if the introduction and contents of working time banking have been agreed in writing or the conditions have otherwise been recorded. A further condition is that the employer has kept a working time banking account of each employee's claims and their accrual or that the entries to the account and when they were made can be verified from the working hours and pay bookkeeping.
- (2) The maximum amount of a working time banking claim payable as wage guarantee on the grounds of work done for the same employer is the amount corresponding to six months' pay.

Section 9 b

Travel or other expenses incurred from performing the work

Travel or other expenses incurred by the employee from performing the work for the payment of which the employer is responsible shall be paid as wage guarantee if they are of ordinary nature and the amount is reasonable.

Chapter 3

Application for wage guarantee and the processing of applications

Section 10

Application and applicants

- (1) An application for wage guarantee shall be submitted to an Employment and Economic Development Office or the Centre for Economic Development, Transport and the Environment. An application for wage guarantee concerning work abroad can also be submitted to a Finnish diplomatic mission abroad.

- (2) The applicant for wage guarantee may be an employee or an employee organisation to which the employee has transferred the claim to be collected. Where the employer is in bankrupt, the estate in bankruptcy may also apply for wage guarantee for the benefit of employees subject to conditions to be laid down by decree.
- (3) If an employee transfers a claim arising from employment relationship, the transferee is entitled to wage guarantee only when the transferee is an employee organisation.

11–11 a §

Sections 11 and 11a have been repealed (1552/2015)

Section 12

Hearing

- (1) Before the matter is resolved, the employer and the employee shall be given an opportunity to be heard in accordance with section 34 of the Administrative Procedure Act (434/2003). A condition for determining a partner in a general partnership and a responsible partner in a limited partnership and another party responsible for paying the claims as liable for repayment as specified in section 17 is that he or she has also been given an opportunity to be heard with regard to the application.
- (2) For the hearing the party concerned shall be allowed 14 days to give a statement or explain the matter. Upon application the time allowed may be extended to 21 days.

Section 13

List of employment relationship claims of the administrator of the estate

After a bankruptcy has been declared, the administrator of the bankruptcy estate shall without delay draw up a list of outstanding claims arising from an employment relationship. The administrator of the estate, in cooperation with the Centre for Economic Development, Transport and the Environment, shall examine which of the claims can be paid as wage guarantee. The administrator of the estate shall give the employees or their representatives an opportunity to express their opinion on the claims entered in the list.

Chapter 4

Decision on and payment of wage guarantee

Section 14

Decision on wage guarantee

A decision on an application for wage guarantee shall be issued in writing. Justification of the decision shall be provided as specified in section 45 of the Administrative Procedure Act.

Subsection 2 has been repealed (1633/2009)

Section 14 a

Service of a decision on wage guarantee

Service of a decision on wage guarantee shall be effected using the regular service procedure provided in section 59 of the Administrative Procedure Act. If the time period for bringing action concerning the employer's recovery claim starts to run from the service of the decision on wage guarantee, service of a decision on wage guarantee shall be effected to the employer

or other party liable for repayment using the verifiable service procedure provided in section 60 of the Administrative Procedure Act.

Section 15

Payment of wage guarantee

- (1) Wage guarantee shall be paid within a week of the decision on wage guarantee. Pay-as-you-earn tax under the Tax Prepayment Act (1118/1996) shall be levied on wage guarantee. An execution order against wages and prohibition on paying wages shall also be effective when paying wage guarantee.
- (2) The party paying the wage guarantee shall declare the amount of wage guarantee of the employee on which pay-as you-earn tax has not been levied or contributions under section 4(2) deducted as the wages for pension purposes to the Finnish Centre for Pensions and as wages subject to pay-as-you-earn tax to the Tax Administration. In addition, the party paying the wage guarantee shall declare the contributions under section 4(2) deducted from the wage guarantee.
- (3) The maximum share of the wage guarantee payable to an employee that the Centre for Economic Development, Transport and the Environment may use to set off a counterclaim under this Act is the share of the employee's wages which may be subject to execution under the law.

Chapter 5

Liability for repayment

Section 16

Transfer of claims to the State

Claims payable as wage guarantee and all entitlements related to it shall pass to the State on the date of the decision.

Section 17

Liability for repayment

- (1) The employer, a responsible partner in a limited partnership and a partner in a general partnership and another party responsible for the payment of employees' claims shall repay the amounts paid as wage guarantee to the State, including interest under section 4(1) of the Interest Act (633/1982) calculated from the date of the decision.
- (2) The liability for repayment of a party responsible for the payment of employee's claims shall be resolved in the decision on wage guarantee or by a separate decision concerning the liability for repayment. A decision on the liability for repayment shall be made without delay after the liability for repayment has been established.
- (3) The provisions on the service of a decision on wage guarantee in section 14 apply to the service of a decision concerning liability for repayment, as appropriate.

Section 18

Enforceability of a decision on wage guarantee

A decision on wage guarantee and liability for repayment shall be immediately enforceable like a final judgement unless a court of law rules when considering a dispute concerning wage guarantee that the decision shall not be enforced for the time being or that enforcement shall be discontinued.

Section 19

Payment reductions

- (1) For reasons important for safeguarding employment or for other reasons comparable to these or if the collection would be unreasonable in view of the financial position of the party liable for the payment, the Ministry of Employment and the Economy and, up to the amount laid down by decree, the Centre for Economic Development, Transport and the Environment may grant deferral of payment or fully or in part exempt the employer or other party liable for the payment from the payment.
- (2) A decision on payment reduction made by the Ministry of Employment and the Economy or the Centre for Economic Development, Transport and the Environment may not be appealed.

Section 20

Specific period of limitation

- (1) Wage guarantee shall be recovered for the State within 10 years of the end of the year in which the decision of wage guarantee was made. After that the right to the payment is forfeited.
- (2) The time limit does not prevent the receipt of the payment from funds subject to execution, bankruptcy proceedings or other public summons, if execution has been carried out to collect the claim or the claim has been secured in bankruptcy proceedings or on the grounds of other public summons during the above-mentioned time period. Provisions on the relationship of a specific period of limitation to restructuring and adjustment of debts are laid down in sections 99 and 99 a of the Act on the Restructuring of Companies (47/1993) and sections 79 and 79 a of the Act on the Adjustment of the Debts of a Private Individual (57/1993).

Chapter 6

Appeal

Section 21

Action against an employer

- (1) If a claim applied for as wage guarantee has been rejected because the employer has disputed the claim and it has not been possible to establish its grounds and amount in the wage guarantee procedure, to retain the entitlement to wage guarantee the employee shall institute action against the employer in a district court. The application for summons shall state that the action is based on this subsection.
- (2) The court shall forward the summons, the application for summons and documents appended to it and responses to the summons to the State for information. The State has the right, when it considers this to be in its best interests, to enter as a defendant in the legal proceedings within a period set by the court.
- (3) The maximum claims that the court shall confirm vis-à-vis the State in situations referred to in subsections 1 and 2 are the claims that an employer is obliged to pay to the employee.
- (4) If an employer has disputed a claim applied for as wage guarantee and the employer has not been considered insolvent, the claim shall be dismissed as disputed and the employee shall be given instructions for instituting the action referred to in subsection 1.

Section 22

Action against the State

If a claim applied for as wage guarantee which has not been disputed by the employer has been rejected as unproven or unfounded, to retain the entitlement to wage guarantee the employee shall institute declaratory action against the State in a district court concerning the grounds and amount of the claim.

Section 23

Institution of action and legal venue

The time limit for instituting action is six months. The time limit is calculated from the receipt of notice of the decision. Action shall be instituted in the court of law where the employer would be required to act as a defendant in a case concerning a wage claim.

Section 24

Settlement of a claim in the employer's bankruptcy proceedings

- (1) If the employer is bankrupt or is declared bankrupt within the period when action were to be instituted, action cannot be instituted but any disputes concerning the claim shall 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.
- (2) The Centre for Economic Development, Transport and the Environment is entitled to object to a claim secured in bankruptcy proceedings which may become payable as wage guarantee.

Section 25

New application for wage guarantee

A claim based on a judgement may be paid as wage guarantee if a new application is submitted within three months of the date on which the judgement became final, provided that the general conditions for receiving wage guarantee are fulfilled.

Section 26

Administrative appeal

- (1) A decision on wage guarantee by which a claim has been rejected on grounds other than those in sections 21 and 22 or a claim has not been examined may be appealed in writing to the Unemployment Security Appeal Board. The appeal shall be submitted to the Centre for Economic Development, Transport and the Environment not later than 30 days after receiving notice of the decision. The Centre for Economic Development, Transport and the Environment shall send the letter of appeal, its opinion and the relevant documents to the Unemployment Security Appeal Board without delay.
- (2) A decision of the Unemployment Security Appeal Board may be appealed to the Insurance Court as provided in the Administrative Judicial Procedure Act. The provisions on regular service in section 59 of the Administrative Procedure Act apply to the receipt of notice of a decision.
- (3) The provisions in Chapter 11 of the Administrative Judicial Procedure Act apply to the extraordinary appeal of a decision given on wage guarantee matter referred to in subsection 1 or 2.
- (4) A decision on wage guarantee may not be appealed by an employer or other party liable for payment.

Section 27

Employer's action concerning recovery

- (1) An employer or other party liable for payment may apply for recovery concerning a decision on wage guarantee or liability for repayment in the court of law where the employer would be required to act as a defendant in a case concerning a wage claim. Action concerning recovery shall be instituted within 60 days of receiving notice of the decision on wage guarantee or liability for repayment.
- (2) If the employer or other party liable for payment has been declared bankrupt or is declared bankrupt during the period for instituting action for recovery, disputes concerning liability for payment may be resolved in the bankruptcy proceedings.

Chapter 7

Miscellaneous provisions

Section 28

Access to information and executive assistance

- (1) An employer is obliged to provide the Centre for Economic Development, Transport and the Environment with information needed to enforce this Act, which the Centre is entitled to verify from the employer's accounts. The police authority is obliged to provide executive assistance needed to obtain information.
- (2) Notwithstanding the provisions on secrecy and other restrictions concerning access to information, the Centre for Economic Development, Transport and the Environment is entitled to obtain information needed for processing wage guarantee applications free of charge from tax authorities, execution authorities, occupational safety and health authorities, the Social Insurance Institution, Finnish Centre for Pensions, pension institutions, unemployment funds and Employment and Economic Development Offices.
- (3) The Centre for Economic Development, Transport and the Environment is also entitled to obtain information for the processing of a wage guarantee matter from an authority or corporation managing wage guarantee matters of another Member State of the European Union.

Section 28 a

Provision of secret information

Notwithstanding the provisions on secrecy and other restrictions concerning access to information, the Centre for Economic Development, Transport and the Environment is entitled to provide an authority or corporation managing wage guarantee matters of a Member State of the European Union with information needed for processing a wage guarantee matter under consideration there.

Section 29

Undue wage guarantee benefit

Anyone who has caused, intentionally or negligently, an undue payment of wage guarantee or other benefit under this Act to be granted shall be obliged to return the undue payment or compensate for the value of the benefit with interest under section 4(1) of the Interest Act (633/1982) calculated from the date when the benefit was granted.

Section 30

Penal provisions

- (1) The penalty for acquiring or attempting to acquire wage guarantee by fraud shall be imposed under Chapter 36, sections 1–3 of the Criminal Code (39/1889).
- (2) The penalty for subsidy fraud concerning a reduction or exemption under this Act shall be imposed under Chapter 29, sections 5, 6 and 8, of the Criminal Code.

Section 31

Financing

The Unemployment Insurance Funds referred to in the Act on Financing Unemployment Benefits (555/1998) shall pay to the State retroactively the difference between the amounts paid to employees as wage guarantee and the principal collected from employers on an annual basis in accordance with an invoice sent by the relevant ministry. However, amounts that have not been collected from employers or other parties liable for payment as specified in 19 are deducted from the difference. If the payment is delayed, interest for late payment of 16 per cent shall be paid on it.

Section 32

Further provisions

Further provisions on the enforcement of this Act are issued by decree.

Chapter 8

Entry into force and transitional provisions

Section 33

Entry into force

- (1) This Act enters into force on 1 January 1999.
- (2) This Act repeals the Wage Guarantee Act issued of 10 August 1973 (649/1973) with subsequent amendments.

Section 34

Transitional provisions

- (1) This Act shall apply to applications for wage guarantee submitted to the employment authority after the entry into force of the Act. The provisions on appeal in Chapter 6 of this Act shall also apply to appeals under consideration upon the entry into force of the Act.
- (2) Provisions in force upon the entry into force of this Act shall apply to new applications for wage guarantee under section 25 of the Act, if a claim based on a judgement has for the first time been applied for as wage guarantee before the entry into force of this Act and this is without prejudice to the application of provisions on appeal in subsection 1.
- (3) The provisions in force upon the entry into force of this Act still apply to an invoice of the Unemployment Insurance Fund concerning the year 1998.
- (4) State claims based on decisions on wage guarantee made before the entry into force of this Act shall expire no later than at the end of 2008.