

Unofficial Translation

Ministry of Labour, Finland
March 2007

Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006)

In accordance with the decision of Parliament, the following is enacted:

Section 1

Objectives of the Act

The objectives of this Act are to promote equal competition between enterprises, to ensure observance of the terms of employment and to create the conditions in which enterprises and organisations governed by public law can ensure that enterprises concluding contracts with them on temporary agency work or subcontracted labour discharge their statutory obligations as contracting parties and employers.

Section 2

Scope of application

This Act shall apply to a contractor :

- 1) who in Finland uses temporary agency workers; or
- 2) at whose premises or work site in Finland an employee is working, who is in the service of an employer having a subcontract with the contractor, and whose tasks relate to the tasks normally performed in the course of the contractor's operations or to transportation relating to the contractor's normal operations.

In building, and in repair, servicing and maintenance relating to building, the Act is applied:

- 1) to construction contractors using subcontractors;
- 2) to all those contractors in the contractual chain contracting out part of the work at a shared workplace as referred to in the Act on Occupational Safety and Health (738/2002) Section 49.

This Act shall not apply when the vessel of an enterprise engaged in merchant shipping is outside the borders of Finland. On board a Finnish vessel, however, this Act shall be applied to work falling within the scope of the Seamen's Act (423/1978), even when the vessel is outside the borders of Finland.

Section 3

Definitions

In this Act:

- 1) *the contractor* shall mean a trader as referred to in Section 3 of the Trade Registers Act (129/1979), who is under an obligation to submit the basic notification referred to in the section in question, and a state, a municipality, a joint municipal authority, the Region of Åland, a municipality or joint municipal authority in Åland, a parish, a parish union, another religious community and other legal person governed by public law and an equivalent enterprise operating abroad;
- 2) *a temporary agency worker* shall mean an employee who has concluded an employment contract with an employer operating in Finland or abroad that has assigned the employee with his or her consent for use of another employer;
- 3) *a subcontract* shall mean a contract made between the contractor and his or her contracting partner to produce a certain work outcome against compensation.

Section 4

Derogations from the scope of the Act

This Act is not applied if:

- 1) the duration of the work by the temporary agency worker or workers does not exceed a total of 10 days; or
- 2) the value of the compensation referred to in Section 2, subsection 1, paragraph 2 is less than 7 500 euros without value added tax.

When calculating the limit values referred to in the above subsection 1, the work is considered to have continued without interruption if the work or work outcome performed for the contractor is based on successive, uninterrupted contracts or with only short breaks between them.

Section 5

The contractor's obligations to check

Before the <contractor> concludes a contract on the use of a temporary agency worker or on work based on a subcontract, the contractor shall require from the contracting partner, and he or she shall provide the contractor with:

- 1) an account of whether the enterprise is entered in the Prepayment Register in compliance with the Act on Prepayment of Tax (1118/1996) and the Employer Register, and is registered as VAT-liable in the Value Added Tax Register in compliance with the Value Added Tax Act (1501/1993);
- 2) an extract from the Trade Register;
- 3) a certificate of tax payment or of tax debt, or an account that a payment plan has been made regarding a tax debt;
- 4) certificates of pension insurances taken out and of pension insurance premiums paid, or an account that a payment agreement on outstanding pension insurance premiums has been made; and
- 5) an account of the collective agreement or the principal terms of employment applicable to the work.

If the employer of the temporary agency worker or the contracting partner to a subcontract is a foreign enterprise, the enterprise shall provide the contractor with information corresponding to that referred to in Section 1 above, by presenting an extract from a register or an equivalent certificate complying with the legislation of the country where the enterprise is domiciled, or in some other generally accepted way.

«The contractor» may also him- or herself procure the information referred to in subsection 1, paragraphs 1 and 2, and in subsection 2. The contractor has the right to accept an account other than an account or certificate provided by an authority as referred to in subsections 1 or 2, provided that it has been given by another party generally held to be reliable that is responsible for evaluating or maintaining information.

The contractor need not request the accounts and certificates referred to in subsections 1, 2 and 5 if he or she has good reason to trust that the contracting partner will discharge their statutory obligations on the grounds that:

- 1) the contracting partner is a state, a municipality, a joint municipal authority, the Region of Åland, a municipality or joint municipal authority in Åland, a parish, a parish union, the Social Insurance Institution or the Bank of Finland, a public limited company as referred to in the Companies Act (624/2006), a state enterprise, a company subject to private law wholly owned by a municipality, or an equivalent foreign organisation or enterprise;
- 2) the operations of the contracting partner are established;
- 3) the contractual relationship between the contractor and the contracting partner can be held to be established on the basis of earlier contractual relationships; or
- 4) there is a reason for trust comparable to what is provided above in paragraphs 1—3 .

If a contract as referred to in this Act is in force for more than 12 months, the contractor's contracting partner must provide the contractor, at 12 month intervals during the contractual relationship, with certificates as referred to in subsection 1, paragraphs 3 and 4, or with information equivalent to that referred to in subsection 2.

The accounts and certificates referred to in subsections 1 and 2 above must be kept for no less than two years from the date on which the work relating to the contract has been completed.

Section 6

Providing information to a representative of personnel

The contractor shall on request notify a shop steward elected on the basis of a collective agreement, or if no such representative has been elected, an occupational safety and health representative and an elected representative as referred to in the Employment Contracts Act (55/2001) Chapter 13, Section 3, of any contract concerning temporary agency work or subcontracted labour as referred to in this Act. When providing this information, the number of employees engaged, the identifying details of the enterprise concerned, the work site, the tasks, the duration of the contract and the applicable collective agreement or principal terms of employment are to be made clear.

Section 7

Validity of information

The information, certificates and accounts presented by virtue of this Act shall not be more than three months old.

If «the contractor» concludes a new contract with the same contracting partner before 12 months has elapsed since he or she has discharged the obligation to check referred to in section 5 on concluding the contract for the first time, the contractor is not subject to a new obligation to check, unless he or she has reason to believe that changes requiring review have taken place in the contracting partner's circumstances.

Section 8

Confidentiality

«The contractor » or a person in his or her service shall not disclose any information as referred to in Section 5, received while performing the tasks provided in this Act, regarding the payment of tax or a tax debt or taking out or payment of pension insurance or outstanding pension premiums, unless the contracting partner him- or herself or an authority by virtue of law has made it public, or an employment pension institution by virtue of law has disclosed it for entry in a credit information register. Information falling within the scope of the confidentiality obligation may not be disclosed to outsiders, even after the person no longer performs the task in the course of which he or she has received the information in question.

As regards the non-disclosure obligation of a civil servant or person acting in an official capacity, what is provided in the Act on the Openness of Government Activities (621/1999) and elsewhere in the law is applicable.

Section 9

Negligence fee

«The contractor» shall be obliged to pay a negligence fee if «the contractor» has:

- 1) neglected the obligation to check referred to in Section 5;
- 2) concluded a contract on work referred to in this Act with a trader who has been barred from conducting business under the Act on Business Injunctions (1059/1985) or with an enterprise in which a partner, a member of the Board of Directors, the Managing Director, or another person in a comparable position has been barred from conducting business; or
- 3) has concluded a contract as referred to in paragraph 2, despite the fact that he or she must have known that the other contracting partner had no intention of discharging their statutory obligations as a contracting partner and as an employer.

The amount of the negligence fee is prescribed as no less than 1,500 euros and no more than 15,000 euros.

In determining the amount of the negligence fee, the factors taken into account are the degree, type and extent of the negligence, and the value of the contract between the contractor and the contracting partner. Factors to be considered for lowering the negligence fee are the contractor's effort to prevent or eliminate the effects of the negligence, and factors for raising the fee are the fact that the contractor's negligence has been repeated or systematic, and other circumstances.

It is possible that a negligence fee will not be prescribed, or a lower sum may be prescribed than the minimum amount, if the negligence can be considered minor and it can be considered reasonable to refrain from prescribing a negligence fee or to lower the negligence fee in consideration of the circumstances.

Section 10

Ordering the negligence fee

By its decision, the local office of the Occupational Safety and Health Inspectorate shall order the contractor to pay the negligence fee by the date stipulated in the decision. The right to give a decision on a negligence fee expires if the matter concerning the ordering of the fee has not been taken up within two years from the date on which the work relating to the contract as referred to in this Act has been completed.

«The contractor» may apply for amendment of the decision given by the local office of the Occupational Safety and Health Inspectorate by appealing to an administrative court as provided in the Administrative Judicial Procedure Act (586/1996).

The negligence fee is payable to the state, and the Act on the Collection of Taxes and Payments by Distraint (367/1961) is applied to its collection. The Act on Surtax and Penalty Interest (1556/1995) is applied to negligence fees.

Section 11

Penalty provision

The penalty for a confidentiality offence or violation as provided in Section 8 is prescribed according to the Penal Code (39/1889) Chapter 38 Section 1 or 2, unless the act is punishable under Chapter 40 Section 5 of the Penal Code, or a more severe penalty is provided elsewhere in the law.

Section 12

Supervision

The Occupational Safety and Health authorities supervise compliance with this Act as provided in the Act on the Supervision of Occupational Safety and Health and Cooperation on Occupational Safety and Health at the Workplace (44/2006), unless otherwise ensuing from this Act.

The Occupational Safety and Health authorities have the right to receive from the contractor on request the documents relating to the obligation to check and to take copies of them if necessary. Should the inspector notice that the conditions for prescribing a negligence fee exist, he or she must immediately bring the matter to the local office of the Occupational Safety and Health Inspectorate for consideration. If the Occupational Safety and Health authority has received notification of suspicion that the obligation to check has been breached, the local office of the Occupational Safety and Health Inspectorate shall deal with the matter urgently.

Section 13

Entry into force

This Act shall enter into force on the 1st day of January 2007.

Measures relating to the implementation of the Act may be undertaken before its entry into force.

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Helsinki, December 22, 2006

President of the Republic of Finland

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