Unofficial Translation
Ministry of Employment and the Economy, Finland
January 2016

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

(as amended by several Acts, including 678/2015)

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 is working an employee, 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.

Insofar as construction and related repair, upkeep and maintenance activities (*construction activities*) are concerned, this Act applies: (469/2012)
1) to construction contractors using subcontractors;
2) to all parties in the agreement chain in a common workplace as referred to in section 49 of the Occupational Safety and Health Act (738/2002), acting as contractor when contract includes work tasks.

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 Seafarers' Employment Contracts Act (756/2011), 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 Register 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 in return for compensation.

Section 4. (678/2015) **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 working days; or
2) the value of the compensation referred to in section 2, subsection 1, paragraph 2 is less than 9 000 euros without value added tax (VAT).

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.

The derogation set forth in subsection 1, paragraph 1 above does not apply to the right to receive information concerning a representative of personnel as defined in section 6, subsection 2.

Section 4 a. (678/2015) **Other legislation concerning contractor's obligation**

The Posted Workers Act (1146/1999) contains provisions on the obligation of a contractor and a contracting partner in situations where an enterprise established in another country posts workers to Finland.

Section 5. (678/2015) **The contractor's obligation 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) information on whether the enterprise is entered in the Prepayment Register and in the Employer Register in accordance with the Act on Prepayment of Tax (1118/1996), and registered as VAT-liable in the Value Added Tax Register in compliance with the Value Added Tax Act (1501/1993).
2) extract from the trade register or equivalent information otherwise obtained from the trade register;
3) information showing that the enterprise does not have tax debts referred to in section 20 b, subsection 1, paragraph 2 of the Act on the Public Disclosure and Confidentiality of Tax Information (1346/1999) or a certificate provided by an authority showing the amount of the tax debt;
4) certificates of employee's 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,
6) information showing that the occupational health care services are provided.

If the employer of the temporary agency worker or the contracting partner to a subcontract is a foreign enterprise, the contractor shall request and 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 foreign contracting partner shall also provide the information and certificates referred to in subsection 1, paragraphs 1 and 3 if the foreign enterprise acting as a contracting partner has a business identity code referred to in the Business Information Act (244/2001). If the foreign contracting partner posts posted workers referred to in section 1, subsection 2, paragraphs 1 and 3 of the Posted Workers Act (*posted worker*)

to work in Finland, the contractor shall check how the social security of the workers is determined no later than before the start of the work under the contract referred to in this Act.

The contractor may also him- or herself acquire the information referred to in subsection 1, paragraphs 1 and 2, and in subsection 2 and the information concerning the tax debts of the contracting partner referred to in subsection 1, paragraph 3 from the Finnish Tax Administration under section 20 d or 20 e of the Act on the Public Disclosure and Confidentiality of Tax Information. 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 of this section, 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 or to require the supplying of the information referred to in subsection 6 when concluding the contract if he or she has justified 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 liability company as referred to in the Limited Liability Companies Act (624/2006), an unincorporated state enterprise or a company wholly owned by it, a company subject to private law wholly owned by a municipality or a joint municipal authority, 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 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.

When concluding the contract referred to in this Act, the contractor shall require that the contracting partner provides the certificates stating how the social security of the workers posted after the start of the work described in the contract is determined before the posted workers in question start their work.

The accounts and certificates and information referred to in subsections 1, 2 and 6 above must be kept for no less than two years from the date on which the work relating to the contract has been completed.

Insofar as construction activities are concerned, the contractor's obligation to check is stipulated in section 5 a.

Section 5 a (469/2012)**. Contractor's obligation to check in association with construction activities**

The provisions on the contractor's obligation to check, as stipulated in section 5, also apply to contractors associated with construction activities. However, contractors associated with construction activities are not exempt from the obligation to check on the basis of said section, subsection 4, paragraphs 2 and 3, or on the basis of any other equivalent reason. In addition to the

provisions of subsection 1 of said section, contractors associated with construction activities shall have a certificate showing that the contracting party has taken out insurance in compliance with the Employment Accidents Insurance Act (608/1948).

In construction activities, the contractor shall, in addition to meeting the obligation laid down in section 5, subsection 2, also check that all posted workers have valid certificates stating how the social security of the workers in question is determined before the workers in question start their work. (678/2015)

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 elected representative as referred to in the Employment Contracts Act (55/2001) chapter 13, section 3, and an occupational safety and health representative of any contract concerning temporary agency work or subcontracted labour as referred to in this Act. When providing this information, the reason of using temporary agency work, 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. (874/2012)

For the purpose of resolving disputes between a temporary agency worker and his or her employer on the application of laws or agreements concerning the temporary agency worker’s pay or employment contract, the employer must provide the representative of personnel as described in subsection 1 with sufficient information for resolving the dispute, if the representative of personnel is authorised by the temporary agency worker to receive that information. (708/2008)

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 insurance premiums, unless the contracting partner him- or herself or the tax 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 ceases to perform 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 officials, what is provided in the Act on the Openness of Government Activities (621/1999) and elsewhere in the law is applicable.

Section 9. (678/2015) **Negligence fee and raised 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 or 5 a;
2) concluded a contract on work referred to in this Act with a contracting partner 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) concluded a contract, as referred to in this Act, even though he or she must have realised that the other contracting party did not intend to fulfil its statutory obligations to pay as a contracting party and employer.

The minimum negligence fee is EUR 2,000 while the maximum is EUR 20,000. If the contractor has violated the provisions laid down in subsection 1, paragraph 2 or 3, he or she must pay a raised negligence fee, which is at least EUR 20,000 and no more than EUR 65,000.

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.

The 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.

The negligence fee will not be imposed on the basis of subsection 1 paragraph 2, if the contractor has fulfilled his or her obligation to check as stipulated under section 5 or 5 a, and the presented information, certificates or accounts have not shown that the party referred to subsection 1 paragraph 2 has been barred from conducting business.

No negligence fee is imposed for violations of section 5 a, subsection 2 if the contractor did not know or could not have been reasonably expected to know that there were posted workers that did not have valid certificates stating how the social security of the workers in question is determined.

Section 9 a (678/2015) Repealed

Section 9 b (678/2015) **Review of the amount of the negligence fee and the raised negligence fee**

The minimum and maximum amount of the negligence fee and the raised negligence fee, as stipulated in section 9 above will be adjusted in accordance with the changes in the value of money for three-year periods at a time, by government decree.

Section 10 (1530/2009). **Ordering the negligence fee**

By its decision, the Regional State Administrative Agency orders the contractor to pay the negligence fee within the period determined 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 lodge an appeal against the decision made by the Regional State Administrative Agency in an administrative court in accordance with the provisions laid down in the Administrative Judicial Procedure Act (586/1996).

The negligence fee is payable to the state. The Act on the Enforcement of a Fine (672/2002) is applied in the collection of negligence fees. Interest on overdue payments of negligence fees is charged in accordance with the rate given in section 4, subsection 1 of the Interest Act (633/1982).

Section 11. Penal provision

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

Section 12. Supervision (1530/2009)

The Occupational Safety and Health Authorities supervise compliance with this Act as provided in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (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. If the inspector finds that the prerequisites for imposing a negligence fee exist, the inspector must submit the matter to the Regional State Administrative Agency without delay. If the Occupational Safety and Health Authorities have been notified of a suspected violation of the obligation to check, the Regional State Administrative Agency must process this matter urgently.

Section 13. Entry into force

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

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