

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

Posted Workers Act  
(1146/1999; amendments up to 679/2015 included;  
repealed by 447/2016)

Section 1  
*Scope*

This act applies to work carried out by a posted worker in Finland under an employment contract referred to in Chapter 1, section 1 of the Employment Contracts Act (55/2001). (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, in the course of a contractual employment relationship, posts to Finland for a limited period within the framework of providing cross-border 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 recipient of the services operating in Finland,
- 2) the worker is posted to work for an establishment or undertaking belonging to the same group of undertakings, or
- 3) the worker is posted for use by another 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. Only the provisions of section 9 of this Act concerning jurisdiction shall apply to work performed under a procurement contract of a public central government authority.

Section 2 (74/2001)

*Applicable provisions concerning working conditions and terms 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).

If the law of another country is applicable to the employment contract of a posted worker, 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(2-3) 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(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), (163/2005)
- 4) as regards the specification of pay and living accommodation benefits, Chapter 2, sections 11 and 12 and Chapter 13, section 5 of the Employment Contracts Act, and
- 5) as regards provisions concerning family leave, Chapter 4, sections 2, 8 and 9 of the Employment Contracts Act.

On the conditions referred to in subsection 2 above, the provisions on working hours, annual holiday and occupational safety set out in generally applicable collective agreements referred to in Chapter 2, section 7 of the Employment Contracts Act shall also apply to the employment contracts of posted workers referred to in section 1(2)(1-2). (11/2012)

Posted workers referred to in section 1(2)(1-2) above 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 cases where this collective agreement is not applicable to the employment relationship, a reasonable normal remuneration should be paid to the worker if the remuneration agreed between the employer and worker is significantly lower than this. (11/2012)

Notwithstanding subsection 2, the provisions of Chapter 1, section 9, Chapter 2, section 2(1-2) 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*, section 7(1) and sections 8, 9, 10, 12, 13-16 and 28 of the Non-Discrimination Act (1325/2014), the Occupational Safety and Health Act (738/2002), the Occupational Health Care Act (1383/2001), and the Young Workers Act (998/1993) shall apply to work performed by posted workers. (1338/2014)

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 2a (11/2012)

##### *Provisions concerning temporary agency workers*

The minimum wage of posted workers referred to in section 1(2)(3) above shall be determined on the basis of Chapter 2, section 9 of the Employment Contracts Act. If no such collective agreement referred to in the stated section or other agreement or practice exists, a reasonable normal remuneration shall be paid to the posted worker if the remuneration agreed between the employer and the worker is essentially lower than this.

On the conditions referred to in section 2(2) above, the provisions of collective agreements referred to in Chapter 2, section 9 of the Employment Contracts Act, or other agreements or practices referred to in the stated section, concerning annual holiday, working hours and occupational safety, shall apply to the employment relationship of posted workers referred to in section 1(2)(3).

If a worker has been hired out to another undertaking in the manner referred to in section 1(2)(3), the user undertaking shall provide the employer of the posted worker with the information that the employer requires in order to meet its obligations.

#### 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, subsections 2 and 4, special allowances paid due to the worker's posting shall be considered part of the worker's pay, unless they are paid in reimbursement for actual costs incurred because of the posting.

## Section 4

### *Threshold period applicable to certain types of work*

The provisions of section 2, subsection 2, paragraphs 1, 3 and 4, and subsections 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 subsection 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 subsection 1 is calculated, all periods within the preceding 12 months during which such work has been carried out by a worker posted by the same employer shall be taken into account.

## Section 4a (1198/2005)

### *Selecting a representative*

If a posted worker's employer referred to in section 1 (*the posting undertaking*) does not have a business location in Finland, it shall have a representative in Finland that is authorised to act for the posting undertaking in a court of law and to receive on behalf of this undertaking summons and other documents issued by the authorities. The representative shall be selected no later than the date on which the posted worker starts working, and the authorization shall be valid for a minimum of 12 months after the date on which the posted worker ceases working in Finland. The party that has ordered the work shall, through its contracts with the posting undertaking or by other means at its disposal, ensure that the posting undertaking selects the representative referred to here.

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

## Section 4b (1198/2005)

### *Obligation to keep records of posted workers*

When the posted worker starts working, the employer or, if the employer does not have a business location in Finland, the representative referred to in section 4a, shall have in its possession the following information in writing:

- 1) the identifying details of the posting undertaking and information on the responsible persons in the country in which the posting undertaking is located;
- 2) identifying details of the posted worker;
- 3) 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 about the basis of the posted worker's right to work.

If the posting undertaking is not obliged to select a representative under section 4a, the undertaking shall be in possession of the information referred to in subsection 1 even 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 posting undertaking shall, before the work performed in Finland is started, inform the party that has ordered the work about who is in possession of the information referred to in subsection 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 pay 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 Working Hours Act or other procedures that ensure the same standard of protection for workers.

If 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 referred to in section 4a, shall have in its possession in Finland documentation on working hours concerning work performed by the posted worker in Finland and records of the wages paid to the posted worker. (1198/2005)

Section 6 (452/2012)

*Provisions applicable to employers' obligation to provide information, their liability for damages, and their responsibilities (1338/2014)*

When the Employment Contracts Act is applied to an employment relationship under this Act, the employer's liability to pay damages shall be determined according to Chapter 12, section 1 of the Employment Contracts Act and the employer's liability to pay a financial sanction shall be determined on the basis of Chapter 11a of the same Act.

Provisions on the employer's liability to pay compensation on the grounds of discrimination prohibited under sections 8, 8a and 8d of the Equality Act are laid down in sections 10 and 11 of the same Act. Provisions on the employer's liability to pay compensation on the grounds of discrimination prohibited under the Non-Discrimination Act are laid down in sections 23 and 24 of that Act. (1338/2014)

Section 7

*Claims for remuneration and compensation*

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

Provisions on claiming compensation or other recompense on the grounds of discrimination prohibited under sections 8, 8a and 8d of the Equality Act are laid down in section 12, subsections

2 and 3 of the same Act and on the grounds of discrimination prohibited under the Non-Discrimination Act in section 26 of that Act. (1338/2014)

Section 8 (679/2015)

*Monitoring*

Monitoring of compliance with this Act is the responsibility of the occupational safety and health authorities, except for the provisions of the Equality Act that are referred to in section 2(5), the compliance with which is monitored by the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal of Finland.

Employers or, if the employer does not have a business location in Finland, the representative referred to in section 4a, must, on request, provide the occupational safety and health authorities with the information and reports referred to in section 4b(1) and section 5(2).

The occupational safety and health authorities have the right to obtain from the employer, on request, sight of the documents concerning the obligation referred to in section 8b and, if necessary, copies of the documents. (1338/2014)

Section 8a (1198/2005)

*Providing information to staff representatives*

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

Section 8b (679/2015)

*Providing the party that has ordered the work with information*

The employer or the representative referred to in section 4a shall, in situations referred to in section 1, subsection 2, paragraph 1 or 3, provide the party that has ordered the work with a certificate stating how the social security of workers posted after the start of the work described in the contract is determined, and no later than when these workers start their work. The written certificate of compliance with the obligation shall be kept for the duration of the work described in the contract.

This section does not apply if the value of the remuneration in the subcontract referred to in section 1(2)(1) is below EUR 9,000 (excluding VAT) or if the total duration of the work of the temporary agency worker or workers referred to in section 1(2)(3) does not exceed 10 working days. When these limits are calculated, the work is considered to have continued without interruption if the work performed for the party that has ordered the work or the outcome of the work is based on a number of successive contracts continuing without interruption or with only short interruptions.

Section 8c (679/2015)

*Providing details of the supervisory authority*

The employer must provide the posted worker with details of the authority that supervises compliance with the Act and provides advice no later than the start of the work. The details may also be provided by the representative selected by the employer referred to in section 4a.

The party that has ordered the work must provide the posting undertaking with written details of the authority supervising compliance with the Act and providing advice. The information provided in writing must be verifiable throughout the duration of the work described in the contract.

This section does not apply if the value of the remuneration in the subcontract referred to in section 1(2)(1) is below EUR 9,000 (excluding VAT) or if the total duration of the work of the temporary agency worker or workers referred to in section 1(2)(3) does not exceed 10 working days. When these limits are calculated, the work is considered to have continued without interruption if the work performed for the party that has ordered the work or the outcome of the work is based on a number of successive contracts continuing without interruption or with only short interruptions. The party that has ordered the work does not have the obligation to provide information referred to in subsection 2 if the contractual relationship between it and the employer can be considered to be well-established on the basis of earlier contractual relationships.

## Section 9

### *Jurisdiction*

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

## Section 9a (679/2015)

### *Penal provisions*

If an employer or its representative or a representative selected pursuant to section 4a intentionally or through negligence

- 1) violates the provisions on possession of information and documentation or the duty to report referred to in section 4b,
- 2) neglects to give the information referred to in section 8a to a staff representative, or
- 3) violates the provisions on providing the party that has ordered the work with information laid down in section 8b,

it shall be sentenced to a fine for *violation of the Posted Workers Act*.

If the party that has ordered the work or its representative intentionally or through negligence neglects the duty of care provided in section 4a, or the employer, the party that has ordered the work or a representative of these violates the obligation to provide information laid down in section 8c, it shall also be convicted of *a violation of the Posted Workers Act*, although in the case of a representative of the party that has ordered the work, this shall only be with due consideration of the instructions and procedures issued at the workplace.

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

The liabilities and responsibilities between the employer and its representatives on the one hand and between the party that has ordered the work and its representatives on the other shall be in accordance with the provisions laid down in Chapter 47, section 7 of the Criminal Code.

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 same ministry shall, as necessary, collaborate in matters concerning implementation with the ministry responsible for drafting legislation on employment relationships and working hours.

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.