

Translation from Finnish

Legally binding only in Finnish and Swedish

Ministry of Economic Affairs and Employment, Finland

Act on Posting Workers

(447/2016, amendments up to 62/2022 included)

Chapter 1

General provisions

Section 1 (62/2022)

Scope

This Act applies to work carried out in Finland for a limited period by a worker posted from another State under an employment contract referred to in chapter 1, section 1 of the Employment Contracts Act (55/2001) as subcontracted work, as an internal transfer within a group of undertakings or as temporary agency work, and on the basis of an employer's contract concerning cross-border provision of services.

This Act does not apply to the seagoing personnel of merchant navy undertakings.

This Act does not apply to the following subcontracted road transport services of road transport undertakings, or to drivers operating:

- 1) bilateral transport of goods or passengers, where additional operations in accordance with subsections 4 to 6 are permitted;
- 2) across the territory of Finland without loading or unloading cargo and without picking up or setting down passengers;
- 3) on a section of road which begins or ends a combined transport operation, as defined in Council Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States, where the driver has commenced transport in the Member State of establishment of the road transport undertaking and the driver's road transport road section constitutes a single bilateral transport operation.

The limitation on the scope of the additional measures in paragraph 1 of subsection 3 applies only until the date as of which smart tachographs complying with the registration requirement for border crossings and additional operations referred to in the first subparagraph of Article 8 (1) of

Regulation (EU) no 165/2014 of the European Parliament and of the Council on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport, are to be installed for the first time in vehicles registered in the Member State in accordance with the fourth subparagraph of the said Article 8 (1). As of the foregoing date, the possibility of additional measures referred to in paragraphs 10 and 11 of section 2 applies only to drivers using vehicles in which a smart tachograph has been installed, as provided in Articles 8 to 10 of the said Regulation.

In the case of bilateral passenger transport referred to in paragraph 1 of subsection 3 above, a driver may, during the said transport, pick up and set down passengers once, or pick up or set down passengers once in another State through which the driver operates, provided that the driver does not provide passenger transport services between two position points within a Member State crossed. The same applies to the return journey.

One loading and unloading of cargo or one loading or unloading of cargo in another State through which the carriage passes may be performed as an additional operation during the bilateral carriage of goods referred to in paragraph 1 of subsection 3 above, provided that the driver has not loaded and unloaded cargo in the same Member State of the European Union. If a bilateral transport operation starting from the Member State of establishment, during which no additional operations referred to above were performed, is followed by a bilateral transport operation to the Member State of establishment, then no more than two loadings and unloadings of cargo, or no more than two loadings or unloadings of cargo may be performed during the transport operation, provided that the driver has not loaded or unloaded cargo in the same Member State of the European Union.

This Act applies to administrative cooperation between the authorities of European Union Member States in monitoring compliance with legislation on posted workers and to the enforcement of financial administrative penalties and fines under Directive 2014/67/EU of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), hereinafter the Implementing Directive.

Section 1 a (919/2017)

Workers referred to in the Act on the Conditions of Entry and Residence of Third-Country

Nationals in the Context of an Intra-Corporate Transfer

This Act also applies to work carried out in Finland by a worker whose admission is based on the Act on the Conditions of Entry and Residence of Third-Country Nationals in the Context of an Intra-Corporate Transfer (908/2017).

The terms of the contractual employment relationship of a worker referred to in subsection 1 above are determined in accordance with sections 3, 4, 4 a, 5 a and 6 a. The pay of a worker is determined in accordance with the generally applicable collective agreement of the sector or in accordance with the collective agreement binding on the employer as a member of an employers' association or under a tie-in to a collective agreement. If the provisions relating to pay of the collective agreements referred to above do not apply to the contractual employment relationship, the pay is determined in accordance with the pay level of comparable work complied with in the host undertaking. In case there are no employees performing comparable work in the host undertaking, the worker shall be paid at least a normal and reasonable pay. The provisions of section 5, subsections 3 and 4 shall also be applied.(743/2020)

The obligations of the employer are determined in accordance with sections 8-10 and 12, however, so that the host entity of the worker in Finland is considered as the representative referred to in section 8 and that, in addition to the employer, the host entity is jointly and severally liable for the availability of the information referred to in section 10.

In addition, sections 16, 17 and 32-34; section 35, subsection 1, paragraph 3; and sections 36-38 apply, however, so that the negligence fee referred to in section 35, subsection 1, paragraph 3 may only be imposed either on the employer or on the host entity.

Section 2

Definitions

In this Act,

- 1) *posted worker* means a worker who normally carries out his or her work in a State other than Finland and whom an employer undertaking that is established and performing activities in another State posts to Finland for a limited period to perform temporary work in the course of a contractual employment relationship within the framework of providing cross-border services as subcontracted work, as an internal transfer within a group of undertakings or as temporary agency work;
- 2) *subcontracting* means posting a worker to perform work under the direction and on behalf of the posting undertaking under a contract concluded between the employer and

a contractor operating in Finland;

- 3) *internal transfer within a group of undertakings* means posting a worker to work for an establishment or undertaking located in another State and belonging to the same group of undertakings;
- 4) *temporary agency work* means posting a worker for use by another undertaking (*user undertaking*) and where the employer is a temporary employment undertaking or placement agency (*temporary agency worker*); (743/2020)
- 5) *posting undertaking* means the undertaking that is the employer of the posted worker;
- 6) *contractor* means an undertaking, a user undertaking and another party that buys services from a posting undertaking; (743/2020)
- 7) *building work* means construction, repair, upkeep, alteration or demolition of structures, including excavation, earthmoving, assembly and dismantling of prefabricated elements, fitting out and installation work, alterations, dismantling, maintenance, upkeep, painting and cleaning work, and improvements;
- 8) *builder* means a person or organisation engaging in a building project or directing or monitoring a building project;
- 9) *general (main) contractor* means a contractor that is in a contractual relationship with a builder and has been appointed as the general (main) contractor and is in charge of the supervision of the worksite; (62/2022)
- 10) *bilateral passenger service* means a bilateral transport operation in international passenger transport services that are regular or occasional within the meaning of Regulation (EC) No 1073/2009 of the European Parliament and of the Council on common rules for access to the international market for coach and bus services and amending Regulation (EC) No 561/2006, when the driver performs one of the following actions:
 - a) picks up passengers in a Member State of establishment and sets them down in another State;
 - b) picks up passengers in a Member State or in a third country and sets them down in the Member State of establishment; or
 - c) picks up and sets down passengers in the Member State of establishment in accordance with the Regulation referred to in the introductory paragraph for local excursions outside the Member State of establishment. (62/2022)
- 11) *bilateral transport of goods* means a transfer of goods to be performed on the basis of a transport contract from a Member State of establishment to another State or from another

State to a Member State of establishment within the meaning of Regulation (EC) No 1071/2009 of the European Parliament and of the Council establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC. (62/2022)

Chapter 2

Minimum terms applied to contractual employment relationships

Section 3

Law applicable to employment contracts

The law applicable to the employment contract of a posted worker is specified under Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I).

If, under subsection 1, the law of another State is applicable to the employment contract of a posted worker, the provisions of Finnish law laid down in this chapter and the provisions of collective agreements confirmed as being generally applicable in Finland or of other collective agreements binding on the posting undertaking in Finland and referred to in this chapter shall nevertheless be applied to the employment contract of the posted worker if they are more favourable to the worker than the legal provisions that would otherwise be applicable. (743/2020)

Chapter 1, section 9; chapter 2, section 2(1–2); chapter 3, section 2; and chapter 13, sections 1–2 of the Employment Contracts Act, sections 6–8, 8a, 8d, 9 and 9a of the Act on Equality between Women and Men (609/1986), hereinafter the Equality Act, sections 7(1), 8–10, 12–16 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) and chapter 12, section 5, subsections 1 and 2 of the Act on Public Employment and Business Service (916/2012) always apply, however, to work performed by posted workers in Finland. (743/2020)

Section 4

Working hours, annual holidays and associated remuneration, and family leave

The following apply as the minimum terms of contractual employment relationships for posted workers:

- 1) the provisions of chapter 2 on working hours and stand-by duty, chapters 3 and 4 on regular working hours, chapter 5 on extending the regular working hours and

Sunday work, chapter 6 on rest periods and of chapter 8, sections 36 and 37 on a local agreement on regular working hours based on a generally applicable collective agreement of the Working Hours Act (872/2019) and section 5 of the Work in Bakeries Act (302/1961); (743/2020)

- 2) the provisions of sections 5–19 of the Annual Holidays Act (162/2005);
- 3) chapter 4, sections 2 and 8–9 of the Employment Contracts Act on the right to family leave.

The provisions on working hours, annual holiday and occupational safety set out in a generally applicable collective agreement referred to in chapter 2, section 7 of the Employment Contracts Act or in another collective agreement binding on the posting undertaking referred to in section 5, subsection 1 of this Act also apply to the employment contract of a worker posted on the basis of an agreement on subcontracting or internal transfer within a group of undertakings. However, the provisions of a collective agreement referred to in chapter 2, section 9 of the Employment Contracts Act or another agreement or practice referred to in said section concerning working hours, annual holiday and occupational safety apply to the contractual employment relationship of a posted temporary agency worker. (743/2020)

Section 4 a (743/2020) *

Additional terms of a contractual employment relationship in long-term posting

The additional terms referred to in subsection 2 shall be applied to the contractual employment relationship of a posted worker when the work of the posted worker has factually lasted at least 12 months uninterrupted unless the employer has presented a substantiated request for an extension of the time limit as provided in section 7 a. When calculating the time limit of work, the working time in the same duties of a posted worker previously posted by the employer shall be taken into account if the latter posted worker has been posted to perform the same duties instead of the previous worker. The employer shall notify the worker to be posted at the latest before starting the work that the posted worker referred to above replaces the posted worker who earlier performed the same work at the same place. The provisions of this subsection do not apply to transport operations performed as a subcontractor in road transport or to the drivers thereof. (62/2022)

After the time limit referred to in subsection 1 of the section has been exceeded, the posted worker shall, on the basis of equal treatment, be subject, in addition to the conditions of work referred to in section 4, subsections 1 and 2, also to the provisions of the collective agreement to be applied concerning various compensations, allowances and other financial benefits with the exception of the provisions on conclusion and termination of a contract of employment or on non-

competition clauses and supplementary occupational pension systems. After the time limit in accordance with subsection 1 has been exceeded, the contract of employment of a posted worker shall, in addition, be governed by the provisions of chapter 5 of the Annual Holidays Act on granting annual holiday, the Act on Celebrating Independence Day as a Public Holiday (388/1937) and the Act on Making the First of May a Holiday for Workers in Specified Cases (272/1944).

Section 5 (743/2020)

Pay

In the case of subcontracted work and internal transfers within a group of undertakings the pay payable to a posted worker shall cover at least the mandatory pay items in accordance with the generally applicable collective agreement referred to in chapter 2, section 7 of the Employment Contracts Act. If the posting undertaking is, however, under the Collective Agreements Act (436/1946), bound by a national generally applicable collective agreement in its sector, concluded by representative organisations in its sector, as a member of an employers' association or under a tie-in to the collective agreement, the pay of a posted worker is determined in accordance with this collective agreement. When no collective agreement generally applicable to the work performed by the posted worker or no collective agreement referred to above binding on the posting undertaking exists, the posted worker shall be paid at least a reasonable normal pay if the remuneration agreed upon between the employer and worker is significantly lower than this.*

If the posted worker is a temporary agency worker, his or her pay is nevertheless determined in accordance with chapter 2, section 9 of the Employment Contracts Act. If no such collective agreement or other agreement or practice referred to in said section exists, a reasonable normal pay shall be paid to the posted temporary agency worker if the remuneration agreed upon between the employer and the worker is significantly lower than this.*

Chapter 2, sections 11–12 and chapter 13, section 5 of the Employment Contracts Act apply to the specification of pay and living accommodation benefits in the employment contracts of posted workers.*

Special compensations and allowances payable due to the worker's posting are considered part of the worker's pay unless they are paid in reimbursement of actual costs incurred because of the posting. If the conditions of employment do not define whether the remunerations and allowances payable for being posted are based on actual costs, the reimbursement by the employer shall be deemed as compensation of costs in full and not as pay.*

The employer may set off at most one third of the net pay payable to a posted worker against a counterclaim.

Section 5 a (743/2020)*

Responsibility of the employer for travel and accommodation costs

The responsibility of the employer to reimburse the travel and accommodation costs incurred by the posted worker for being posted to Finland from the habitual country of work shall be determined in accordance with the national legislation or practice applicable to the contractual employment relationship of the worker. If the costs referred to above are not reimbursed at all under the national legislation or practice or if the reimbursement in accordance with the national provisions or provisions agreed upon is materially lower than the travel and accommodation costs for said work deemed usual and reasonable in Finland, the employer shall reimburse the posted worker for the costs referred to above so that the reimbursement level is substantially equivalent to the reimbursement level of the generally applicable collective agreement referred to in chapter 2, section 7 of the Employment Contracts Act with regard to subcontracting and internal transfer within a group of undertakings and to the reimbursement level of the collective agreement referred to in chapter 2, section 9 of the Employment Contracts Act with regard to temporary agency work.

When a posted worker is temporarily posted from his or her regular place of work in Finland to another work place or worksite in Finland or abroad or between worksites in Finland, the travel, accommodation and board costs arising during the posting shall be reimbursed at least in accordance with the provisions of the generally applicable collective agreement referred to in chapter 2, section 7 of the Employment Contracts Act or with the provisions of another collective agreement referred to in section 5, subsection 1 of this Act binding on the posting undertaking. The actual costs reimbursed by the employer and referred to above do not constitute pay of the posted worker.

Section 6

Exceptions concerning the initial assembly and first installation of goods

The following provisions on minimum paid annual holidays and minimum rates of 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 and if the period of the posting does not exceed eight calendar days:

- 1) the provisions of sections 20–23 of the Working Hours Act and section 5 of the Work in Bakeries Act; (876/2019)

- 2) the provisions of sections 5–19 of the Annual Holidays Act;
- 3) the provisions of chapter 2, sections 11–12 and chapter 13, section 5 of the Employment Contracts Act;
- 4) the provisions of collective agreements referred to in section 4(2) of this Act or agreements or practices referred to in that section concerning working hours, annual holiday and occupational safety;
- 5) the provisions on minimum rates of pay referred to in section 5(1–2) of this Act.

The exception set out in subsection 1 above does not apply to building work.

When calculating the duration of a worker's posting as referred to in subsection 1, all periods within the preceding 12 months during which the work in question was carried out by a worker posted by the same posting undertaking are taken into account.

Chapter 3

Obligations of posting undertakings

Section 6 a (743/2020)*

Accommodation conditions

If the employer arranges accommodation for a posted worker for the duration of work in Finland, the accommodation shall fulfil the requirements provided in the Health Protection Act (763/1994) and the provisions on accommodation conditions of the generally applicable collective agreement applicable to the posted worker or of another collective agreement referred to in section 5, subsection 1 of this Act binding on the posting undertaking when the preconditions for the application of the provisions of the collective agreement are met.

Section 7*

Notification of the posting of a worker

Before work is commenced, the posting undertaking shall notify the occupational safety and health authority about the posting of a worker or workers to Finland under an agreement on cross-border service provision. Road transport service subcontracting is governed by the provisions of section 7 b. (62/2022)

A notification of the posting of a worker or workers is not required if the undertaking is posting

workers to Finland in an internal transfer within a group of undertakings for no more than five working days. When calculating the duration of the posting of workers, the period of posting in question and all other periods in the four months preceding the end of the posting during which a worker transferred internally by the same group of undertakings was working in Finland are taken into account. In the case of building work, however, a notification is always a requirement for performing the work. (743/2020)

The notification shall include:

- 1) the identification details of the posting undertaking, its contact information, foreign tax identification number and information on the responsible persons in the State in which the posting undertaking is established;
- 2) the identification details and contact information of the contractor;
- 3) in the case of building work in the construction sector, the identification details and contact information of the builder and the general (main) contractor and the tax number of the posted worker issued by the Finnish Tax Administration;
- 4) the personal data necessary for the identification of each posted worker, his or her personal identification number and the tax identification number of the State of residence and the beginning and end dates of the posting or the anticipated end date;
- 5) the identification details and contact information in Finland of the representative of the posting undertaking referred to in section 8 or information on the grounds under which no representative need be appointed;
- 6) the location or locations where the work will be performed;
- 7) the sector in which the posted worker will work. (743/2020)

If the information referred to in subsection 3 changes significantly, a requirement for the work to continue is that the posting undertaking submits a supplementary notification immediately the changes occur.

In the case of building work, submission of the notification referred to in subsections 3–4 to the builder and the general (main) contractor is also a requirement for performing the work.

Section 7 a (743/2020)*

Notification procedure for extending the duration of posting

The posting undertaking shall submit to the occupational safety and health authority by electronic means the notification referred to in section 4 a of an extension of the time limit at the latest before the 12-month time limit for factual work of the posted worker has been reached. The reason for the extension of the duration of posting shall be justified in the notification. The 12-month time limit for the application of additional terms may be extended by at most six months.

Section 7 b (62/2022)

Notice of posting of workers on the basis of a subcontract for road transport

Prior to commencing the work, a posting undertaking established in a Member State shall submit a notification of the posting of an employee or employees to Finland based on a subcontract for the provision of cross-border road transport services to the information system established under Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (*the IMI Regulation*), hereinafter referred to as the IMI system.

The notification shall include:

- 1) the number of the Community licence issued to the transport operator;
- 2) the contact details of the competent transport manager or other contact person in the Member State of establishment who is responsible for responding to inquiries from the authorities and receiving documents or notifications;
- 3) the personal data necessary to identify the driver, personal identification number, address of residence and driving licence number;
- 4) the date of commencement of the driver's employment contract and the legislation governing the contract;
- 5) the planned starting and ending dates of the shipment;
- 6) details of the registration numbers of the motor vehicles used;
- 7) details of whether the service is transport of goods or passengers, international transport or cabotage.

If the details referred to in subsection 2 change, then it is a condition for continuing the work that the posting undertaking submits a supplementary notification to the IMI system immediately when the changes occur.

Section 8

Appointment of a representative

The posting undertaking shall have a representative in Finland whom the posted worker and the authorities can contact at all times during the posting of the posted worker. The representative may be a legal person or a natural person.

The posting undertaking does not need to have a representative if it is posting workers to Finland for a maximum period of ten working days. When calculating the duration of the posting of workers, the period of the posting in question and all other periods in the four months preceding the end of the posting during which a worker of the same undertaking was working in Finland are taken into account. The posting undertaking in road transport services does not need to appoint a representative in subcontracting if the employer must submit the notification of posting the driver prescribed in section 7 b. (62/2022)

The representative shall be authorised to receive official documents and summons on behalf of the undertaking and to submit documents from the undertaking to the authorities and the courts. The representative shall also be authorised to represent the posting undertaking in a court of law.

Section 9 (876/2019)

Documentation of working hours and records of annual holidays

A posting undertaking shall comply with the provisions of sections 31 and 32 and section 39, subsection 1, paragraph 4 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. Posting undertakings shall also comply with the provisions of sections 29 and 30 of the Working Hours Act or other procedures that guarantee the same standard of protection to workers.

Section 10

Obligation to keep available information on workers posted to Finland

Posting undertakings shall keep available the following information in written form in Finland for the entire duration of the posting:

- 1) the identification details of the posting undertaking and information on the responsible persons in the State in which the posting undertaking is established;
- 2) the identification details of the posted worker;
- 3) written information in accordance with chapter 2, section 4 of the Employment Contracts Act

on the employment conditions applicable to the employment contract of the posted worker;

- 4) information about the basis of the posted worker's right to work.

If the posting of a worker lasts for more than ten working days, the posting undertaking shall keep available in Finland, in written form for the entire period of posting, the timesheets and payslips and a financial institution's verification of wages paid for the work performed by the posted worker in Finland.

Before work is commenced in Finland, the posting undertaking shall notify the contractor about where the information referred to in subsections 1–2 will be kept during the worker's posting.

After the end of the worker's posting, the posting undertaking shall keep the information referred to in subsections 1–2 for a period of two years.

Subcontracting of road transport services is governed only by paragraph 4 of subsection 1 and otherwise by the provisions of section 10 b. (62/2022)

Section 10 a (62/2022)

Documents required for roadside inspections in subcontracting

In the case of subcontracted road transport services, an employer shall ensure availability of the following documents and information in paper or electronic form during the transport for the purpose of transport control:

- 1) a copy of the notification of posting referred to in section 7 b;
- 2) documentation of the transport service to be discharged in Finland;
- 3) tachograph information.

The driver shall present the documents and accounts referred to in subsection 1 at a roadside inspection if the supervisory authority so requests.

Section 10 b (62/2022)

Provision of information to the occupational safety and health authority

In the case of subcontracted road transport services, an employer shall provide the following information at the request of the occupational safety and health authority after the transport has ended:

- 1) employee work timesheets for work done in Finland;
- 2) proof of payment of wages;
- 3) details of the applicable terms and conditions of employment;
- 4) The transport service information referred to in paragraph 2 of section 10 a (1);
- 5) tachograph information.

The employer shall provide the information referred to in subsection 1 through the IMI system within eight weeks of presentation of the request.

Section 11

Provision of information to the contractor in the case of subcontracted or temporary agency work

If an undertaking sends posted workers to Finland under a subcontracting agreement or to perform temporary agency work following commencement of the work referred to in the contract on the provision of services, the posting undertaking shall provide the contractor with information on how the social security of these workers is determined before these posted workers commence work in Finland.

A written certificate of compliance shall be kept for the duration of the work specified in the agreement.

This section does not apply if the value of the remuneration in the subcontracting agreement is less than EUR 9,000 (excluding value added tax) or if the total duration of the work of the temporary agency worker does not exceed ten working days. Work is considered to have continued without interruption if the work performed for a contractor or the output of the work is based on a number of successive contracts continuing without interruption or with only brief interruptions.

Section 12

Providing information to staff representatives

If the duration of a posting of a posted worker exceeds ten working days, the posting undertaking shall, subject to authorization by the posted worker, give the shop steward elected by the staff group in question or the elected representative referred to in chapter 13, section 3 of the Employment Contracts Act, the information referred to in chapter 2, section 4 of the Employment Contracts Act on the employment conditions applicable to the employment contract of the worker.

Chapter 4

Obligations of the contractor

Section 13

Obligation to submit a notification and to ensure the availability of a representative

The contractor, in contracts signed with the posting undertaking or by other means at its disposal, shall ensure that the posting undertaking submits the notification referred to in section 7 and that the posting undertaking has the representative referred to in section 8.

If an occupational safety and health authority carrying out a supervisory task cannot reach the representative of the posting undertaking, the contractor shall, at the request of the occupational safety and health authority, request the posting undertaking to provide information on where and how the representative may be reached and shall provide the information it obtains to the occupational safety and health authority.

Section 14 (743/2020)*

Submitting information on temporary agency work to a posting undertaking

The user undertaking shall submit to the posting undertaking the information that the undertaking needs to meet its obligations as an employer in the case of temporary agency work.

The user undertaking shall notify the posting undertaking if the worker is posted during the contractual period of temporary agency:

- 1) under the control or direction of another undertaking in Finland or abroad; or
- 2) to another worksite of the user undertaking abroad.

Section 15

Duties of the builder and the general (main) contractor in building work

If a posted worker has not been paid the minimum rate of pay referred to in section 5, he or she may notify the construction site builder or the general (main) contractor of the matter. After receiving the notification, the builder or the general contractor shall immediately request the posting undertaking to provide a report on the wages paid to the posted worker and whether these comply with section 5.

The builder or the general (main) contractor shall immediately send the request for information

and the report submitted by the posting undertaking to the worker. At the request of the worker, the information request and the report shall immediately be submitted to the occupational safety and health authority. The builder or the general (main) contractor shall keep the information request and report for two years following the end of the work.

Chapter 5

Authorities' duties and right to information

Section 16

Competent authorities

The provision of information concerning this Act is the responsibility of the Ministry of Economic Affairs and Employment and the occupational safety and health authority.

The monitoring of compliance with this Act is the responsibility of the occupational safety and health authority, with the exception of the Equality Act provisions set out in section 3, the compliance with which is monitored the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal of Finland.

The occupational safety and health authority, the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal of Finland are responsible for administrative cooperation between the public authorities of European Union Member States on the monitoring of compliance with legislation on posted workers.

The occupational safety and health authority, the Ombudsman for Equality, the National Non-Discrimination and Equality Tribunal of Finland and the administrative courts are responsible for the cross-border serving of decisions on financial administrative penalties and fines. The Legal Register Centre is responsible for the cross-border recovery of financial administrative penalties and fines.

The Act on Regional State Administrative Agencies (896/2009) lays down provisions on the assignment of occupational safety and health authority responsibilities laid down in this Act to one or more occupational safety and health divisions of regional state administrative agencies.

Section 17

Right to information

Occupational safety and health authorities have the right to obtain from posting undertakings, contractors, builders and general (main) contractors, without delay, all the information and

documents that a posting undertaking, contractor, builder or general (main) contractor is required, under this Act, to prepare, keep or submit.

The occupational safety and health authority is also entitled to obtain from the posting undertaking other necessary information and documents than those referred in subsection 1 for the purpose of monitoring compliance with legislation concerning posted workers.

When assessing whether a worker is a posted worker as referred to in this Act or investigating a suspicion of non-compliance with or circumvention of the legislation on posted workers, the occupational safety and health authority also has the right to obtain information and documents necessary for this task from parties that have been in a contractual relationship with the posting undertaking during the preceding 12 months or that have operated concurrently with the posting undertaking on the same worksites during that period.

The occupational safety and health authority is entitled to obtain copies of documents.

The occupational safety and health authority is entitled to obtain from the posting undertaking a translation into Finnish, Swedish or English of the information and documents referred to in section 10 if it cannot perform its supervisory duty on the basis of information or documents in the original language.

In addition to what is provided in this Act, provisions on the occupational safety and health authority's right to information are laid down in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006).

For the purposes of performing their supervisory duties concerning compliance with the provisions of the Equality Act, the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal of Finland have the same right to information as the occupational safety and health authority under subsections 1–5.

In addition to what is laid down in this Act, provisions on the Ombudsman for Equality's right to information are laid down in the Equality Act and on the National Non-Discrimination and Equality Tribunal of Finland's right to information in the Act on the National Non-Discrimination and Equality Tribunal (1327/2014).

Notwithstanding confidentiality provisions, the occupational safety and health authority has the right to submit information it has received under section 7 that is necessary for supervisory duties to other supervisory authorities for the purpose of monitoring the posting of workers.

Chapter 6

Cross-border administrative cooperation

Section 18

Administrative cooperation

Administrative cooperation means mutual provision of assistance between the authorities of Member States in the monitoring of compliance with legislation on posted workers. Monitoring also means an assessment of whether a worker is a posted worker as referred to in this Act and investigating suspected non-compliance with and circumvention of legislation on posted workers. Assistance includes responding to reasoned requests for information and the performance of checks, inspections and investigations.

Assistance may also include the provision and serving of documents related to administrative procedure.

In administrative cooperation, communication between the authorities of Member States is conducted electronically using the IMI system. Communication may also take place in another manner if this has been separately agreed with the other Member State (62/2022).

No compensation is demanded for the costs incurred in responding to a request for assistance.

Section 19

Request for assistance made to a Finnish authority

A reasoned request for information or to perform checks, inspections or investigations made by a competent authority of another Member State of the European Union or the European Commission to a Finnish authority is to be made to the Finnish authority competent to fulfil the request.

If the request for information concerns verification of the establishment of an undertaking in Finland and the information may be obtained from a register to which the Finnish authority has access, the Finnish authority shall submit the information requested from it within two working days of receiving the request. The authority of the other Member State or the European Commission shall justify the urgency of the request for information.

If the request is other than a request for information referred to in subsection 2 or a request to check, inspect or investigate, the Finnish authority shall submit the information requested from it

within 25 working days of receiving the request.

Finnish authorities may provide information to a competent authority of another Member State of the European Union or to the European Commission for the purpose of monitoring compliance with legislation on posted workers, notwithstanding confidentiality provisions and other limitations on the right to information. When providing confidential information, the Finnish authority shall request that the information be kept confidential.

Section 20

Delayed fulfilment or non-fulfilment of a request for assistance

If the fulfilment of a request for assistance made to a Finnish authority is delayed or if the request cannot be fulfilled, the authority of the other Member State or the European Commission that made the request shall be notified without delay and a reason for the delay or non-fulfilment shall be provided at the same time.

Section 21

Independent provision of information

If, in the course of its supervision, a Finnish authority discovers details of the operations of an undertaking that is established in Finland and is posting workers abroad that suggest that the undertaking is not complying with legislation applicable to its operations, the authority shall notify the competent authority of the State to which the posting undertaking has posted workers of these details.

Section 22

Request for assistance made to an authority of another Member State

Reasoned requests for information and requests to carry out a check, inspection or investigation made by a Finnish authority to an authority of another European Union Member State are made to the authority designated by the Member State in question. The request is made by the competent authority processing the matter in Finland.

If the matter is urgent and the request for information concerns verifying the establishment of an undertaking in the other Member State from a register, the information may be obtained through an urgent request. The reasons for the urgency shall be provided in the request.

For the purpose of monitoring compliance with legislation on posted workers, a Finnish authority may also request information that is confidential under the legislation of Finland or the another

European Union Member State or that is subject to some other limitation on obtaining information. If so requested by an authority of another Member State, the Finnish authority shall keep confidential any confidential information it receives.

Information obtained from another European Union Member State may only be used for the purpose for which it has been requested.

Section 23

Submitting and serving documents

Chapter 7 lays down provisions on the cross-border serving of decisions on financial administrative penalties and fines.

Other documents than those referred to in chapter 7 concerning administrative procedures may be provided or served on reciprocal terms or as administrative cooperation between Finland and another European Union Member State.

A request made by an authority of another European Union Member State to a Finnish authority for the provision or serving of a document is made to the competent occupational safety and health authority in compliance with what is laid down in chapter 7 on the serving of decisions on financial administrative penalties or fines, unless otherwise separately agreed with the other Member State.

Finnish authorities serve documents in the manner laid down in the Administrative Procedure Act (434/2003), unless otherwise agreed with the Member State making the request. The service recipient is entitled to refuse the document if it has not been drawn up in the Finnish or the Swedish language or a translation into one of these languages has not been attached to the document. This notwithstanding, the document may be served if the recipient agrees to receive the document or is proficient in the language in which the document or its translation has been made.

A competent Finnish authority may make a request to a competent authority of another European Union Member State to provide or serve a document if permitted by the law of the Member State in question. The request shall be made in compliance with the procedure required by the Member State in question and what has been agreed between Finland and the Member State in question.

Chapter 7

Cross-border enforcement of financial administrative penalties and fines

Section 24

Scope

This chapter applies to the cross-border enforcement of financial administrative penalties and fines imposed by authorities of European Union Member States concerning the monitoring of compliance with legislation on posted workers.

Under this chapter:

- 1) a decision issued in another European Union Member State under which a financial administrative penalty or fine is imposed on a posting undertaking established in Finland is to be served or implemented in Finland;
- 2) a decision issued by a Finnish authority under which a financial administrative penalty or fine is imposed on a posting undertaking established in another Member State is sent to the other European Union Member State to be served or enforced.

No compensation is demanded for the costs incurred in the cross-border service of a decision or recovery.

This chapter does not apply to serving or enforcing decisions that fall under the scope of the Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties or Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Section 25

Request to a Finnish authority to serve a decision

A request by an authority of another European Union Member State made to a Finnish authority to serve a decision to a posting undertaking established in Finland concerning the imposition of a financial administrative penalty or fine is to be made to the competent occupational safety and health authority.

Requests to serve a decision shall be made in the IMI system. The decision to be served shall be appended to the request. The request shall provide the information referred to in Article 16(1) and Article 16(2)(a) of the Implementing Directive.

The provisions of the Administrative Procedure Act shall be complied with when serving a decision of the competent occupational safety and health authority to a posting undertaking

established in Finland. In case of a decision issued by a judicial authority, the provisions of the Administrative Judicial Procedure Act (808/2019) shall be complied with when serving the decision. The decision may not, however, be served by public notice. (743/2020)

The decision shall be served as soon as possible and within one month after receiving the service request at the latest. The competent occupational safety and health authority shall immediately notify the requesting authority of the measures taken and the date on which the decision was served to the recipient. The requesting authority shall be notified if the decision cannot be served.

Section 26

Grounds for refusal concerning the serving of a decision

A competent occupational safety and health authority may refuse to serve a decision in Finland concerning the imposition of a financial administrative penalty or fine if:

- 1) the service request does not provide the information referred to in Article 16(1) and Article 16(2)(a) of the Implementing Directive;
- 2) the service request is otherwise deficient; or
- 3) the content of the service request and the decision to be served do not clearly correspond with each other.

The requesting authority shall be immediately notified of the refusal and the grounds for it.

Section 27

Request to an authority of another Member State to serve a decision

If a decision by a competent Finnish authority concerning a financial administrative penalty or fine is required to be served to a posting undertaking in another European Union Member State, the authority that issued the decision may make the service request to the competent authority appointed by the Member State in question.

The service request shall be made in the IMI system. The decision shall be appended to the service request. The request shall provide the information referred to in Article 16(1) and Article 16(2)(a) of the Implementing Directive.

Section 28

Request for recovery made to a Finnish authority

Requests by authorities of other European Union Member States made to a Finnish authority to recover a financial administrative penalty or fine from a posting undertaking established in

Finland are to be made to the Legal Register Centre.

The recovery request shall be made in the IMI system. The decision to be enforced shall be appended to the recovery request. The decision shall be enforceable in the Member State where it was issued. The request shall provide the information referred to in Article 16(1) and Article 16(2)(b) of the Implementing Directive.

The Legal Register Centre decides on the implementation of the recovery request without hearing the views of the party that is subject to the decision. The Legal Register Centre shall serve the recovery request and the decision to implement it to the party that is subject to the recovery as soon as possible and no later than one month after receiving the recovery request.

Financial administrative penalties and fines are enforced in Finland in accordance with Finnish law and following the procedure laid down in the Act on the Enforcement of a Fine (672/2002), unless otherwise provided in this Act. Appeal against a decision of the Legal Register Centre to enforce the recovery request is governed by provisions of the Administrative Judicial Procedure Act.(743/2020)

The Legal Register Centre shall immediately notify the authority that made the recovery request of the measures taken and the date on which the recovery request was served to the recipient. The assets collected in the recovery of a financial administrative penalty or fine will remain with the State of Finland.

Section 29

Grounds for refusal concerning recovery

The Legal Register Centre is entitled to refuse to recover financial administrative penalties and fines if:

- 1) the request for recovery does not provide the information referred to in Article 16(1) and Article 16(2)(b) of the Implementing Directive;
- 2) the request for recovery is deficient;
- 3) the content of the request for recovery and of the decision concerning the financial administrative penalty or fine do not clearly correspond with each other;
- 4) it is evident that the costs of recovering the financial administrative penalty or fine or the resources required for the recovery are disproportionate to the recoverable amount or that the recovery will involve significant difficulty; or

5) the amount of the financial administrative penalty or fine is less than EUR 350.

The Legal Register Centre shall always refuse to recover a financial administrative penalty or fine if the recovery of the penalty or fine in question is clearly contrary to the basic principles of the Finnish judicial system.

No appeal may be made against a decision concerning the refusal referred to above in subsections 1–2.

The authority of another European Union Member State that made the recovery request shall be immediately notified of the refusal to enforce the request and the grounds for this.

Section 30

Request for recovery made to an authority of another Member State

Requests by the Legal Register Centre to an authority of another European Union Member State concerning the recovery of a financial administrative penalty or fine imposed by a competent Finnish authority from a posting undertaking established in the Member State in question are made to the competent authority appointed by that Member State.

The recovery request shall be made in the IMI system. The decision to be enforced shall be appended to the recovery request. The request shall provide the information referred to in Article 16(1) and Article 16(2)(b) of the Implementing Directive.

Section 31

Suspension of service or recovery

If the posting undertaking that is subject to the service or recovery or some other relevant party contests the decision concerning the financial administrative penalty or fine or a claim on the basis of which the decision was made or appeals against the decision during the service or recovery procedure, the competent Finnish authority that made the service or recovery request shall, on the request of the posting undertaking or other relevant party, inform the competent authority of the European Union Member State that received the request for service or recovery about the matter and withdraw the service or recovery request in the IMI system.

If a competent authority of another European Union Member State declares that a decision concerning a financial administrative penalty or fine submitted for service or recovery in Finland or a claim on the basis of which the decision was made has been contested or appealed against, the Finnish authority responsible for implementing the service or recovery request shall

immediately suspend the service or recovery procedure.

Chapter 8

Miscellaneous provisions

Section 32

Provisions applicable to posting undertakings' obligation to provide information, their liability for damages, and their responsibilities

If the Employment Contracts Act is applied to an employment relationship referred to in this Act, the posting undertaking's liability to pay damages as an employer is determined in accordance with chapter 12, section 1 of the Employment Contracts Act and the employer's liability to pay a financial penalty is determined in accordance with chapter 11a of the same Act.

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

Section 33 (876/2019)

Period for claims concerning damages and compensation in certain cases

A claim concerning damages under provisions referred to in section 4(1)(1) above shall be brought within the time limit referred to in section 40 of the Working Hours Act. A claim concerning damages under provisions referred to in section 4(1)(2) above shall be brought within the time limit referred to in section 34 of the Annual Holidays Act.

A claim concerning compensation or other damages made on the grounds of discrimination prohibited under section 8, 8 a or 8 d of the Equality Act shall be brought within the time laid down in section 12(2–3) of the same Act. A claim concerning compensation or other damages made on the grounds of discrimination prohibited under the Non-Discrimination Act shall be brought within the time laid down in section 26 of that Act.

Section 34

Jurisdiction

In addition to what is laid down on court jurisdiction elsewhere in the law or in the legislation of

the European Union or in international conventions binding on Finland, the district court within whose jurisdiction a worker is or has been employed as a posted worker is competent to investigate claims based on the rights and obligations referred to in this Act.

Section 35

Negligence fee

A posting undertaking is liable to pay a negligence fee if it has neglected its obligation to:

- 1) submit the notification on posting workers referred to in section 7 or 7 b;
- 2) appoint the representative referred to in section 8; or
- 3) keep available the information and reports referred to in section 10(1–2);
- 4) keep available the documents and information referred to in section 10 a (1); or
- 5) provide information to the occupational safety and health authority in accordance with sections 10 and 10 b. (62/2022)

A contractor is liable to pay a negligence fee if it has neglected its duty to act referred to in section 13(2) despite being requested to do so by the occupational safety and health authority.

With regard to building work, the builder or the general (main) contractor is liable to pay a negligence fee if, having received notification about a posted worker, it has not requested a report from the posting undertaking or provided the report it has received to the posted worker, or, despite the request of the posted worker, has not submitted the report it has received to the occupational safety and health authority as required under section 15.

A negligence fee may be imposed on a natural person only when the person has failed to comply with the obligations referred to in this section willfully or through negligence.

Section 36

Amount of the negligence fee

The negligence fee for negligence referred to in section 35 is at least EUR 1,000 and not more than EUR 10,000, taking into consideration the type, extent and recurrence of the negligence.

If the act can be considered minor and waiving the penalty or imposing a penalty that is less than the minimum amount can be considered reasonable in view of the type and recurrence of the negligence and its deliberateness and other conditions, the negligence fee may be waived or a penalty that is less than the minimum amount may be imposed.

If a negligence fee were to be imposed on two or more acts of negligence at the same time, a

joint amount is imposed on these negligence acts, which may not exceed EUR 10,000.

Section 37

Hearing

Before a negligence fee is imposed, the party concerned shall be given an opportunity to provide an explanation in accordance with section 34 of the Administrative Procedure Act. The negligence fee may, however, be imposed without hearing the views of the party concerned if the recipient of the request for an explanation is a posting undertaking that does not have a representative referred to in section 8 in Finland.

A negligence fee may not, however, be imposed without hearing the views of the posting undertaking and on the grounds that the undertaking does not have a representative in Finland if agreement has been made through administrative cooperation with the State in which the undertaking is established regarding the serving of documents other than those referred to in chapter 7 or if the State in question allows the direct service of such documents within its territory.

Section 38

Imposing a negligence fee

A negligence fee is imposed by the occupational safety and health authority, which will also set a deadline for its payment.

The decision concerning a negligence fee shall be served to the negligent party in the manner laid down in the Administrative Procedure Act. If the negligent party is a posting undertaking that does not have a representative referred to in section 8 of this Act in Finland, the payment decision is, however, served in accordance with the provisions of this Act on cross-border service of financial administrative penalties and fines. Appeal against a decision on a negligence fee is governed by the provisions of the Administrative Judicial Procedure Act. (743/2020)

The negligence fee is paid to the State. The Act on the Enforcement of a Fine applies to the enforcement of the fee. If a negligence fee has not been paid by its due date at the latest, penalty interest will be charged in accordance with the interest rate referred to in section 4(1) of the Interest Act (633/1982).

The right to issue a decision concerning a negligence fee will fall under the statute of limitations if the matter concerning its imposition has not been filed within two years of the end of the posting covered by an agreement referred to in this Act. The negligence fee will fall under the statute of

limitations five years after the beginning of the year following its imposition.

Section 39 (876/2019)

Penal provisions

Punishment for employment offences is laid down in chapter 47 of the Criminal Code of Finland (39/1889), punishment for violation of working hours regulations is laid down in section 44 of the Working Hours Act and punishment for a violation of annual holiday regulations is laid down in section 38 of the Annual Holidays Act.

Section 40

Entry into force

This Act enters into force on 18 June 2016. However, the entry into force of section 7 and section 35(1)(1) of this Act is laid down separately by law.

This Act repeals the Posted Workers Act (1146/1999).

Workers posted at the time this Act enters into force are only subject to the provisions of chapters 5 and 6 of this Act. Otherwise they are subject to the provisions effective at the time of the entry into force of this Act.

Act 743/2020*: This act enters into force on 1 December 2020. However section 7 enters into force on 1 October 2021.

Instead of what is provided in section 4 a, section 5, subsections 1-4 and sections 5 a, 6 a, 7, 7 a and 14, the provisions in force upon the entry into force of this Act shall apply to work in the field of road transport until 31 January 2022. Road transport sector employees working in Finland as posted workers before 1 February 2022 are governed by the provisions that were in force at that time until 30 June 2022. Section 4 a of this Act nevertheless applies as of 2 February 2022 when calculating the duration of the work of a posted worker. (61/2022)

The provisions in force upon the entry into force of this Act shall apply to workers posted at the time this Act enters into force until 12 months have passed from the entry into force of the Act. Section 4 a of this Act shall, however, apply from the entry into force of the Act when calculating the duration of the work of a posted worker.

Act 62/2022*: This act enters into force on 1 February 2022.