HANNES SNELLMAN

Issue 1/2016

FINLAND

Amendments to the Annual Holiday Act as from 1 April 2016

The Finnish Parliament has approved rather significant amendments to the Finnish Annual Holidays Act (162/2005). The amendments are based on the government programme of the Finnish Government led by Prime Minister Juha Sipilä. The objective of the amendments is to save public expenditure and reduce absences due to illness.

Previously, the employee has accrued annual holidays during the entire duration of family leaves (excluding childcare leave, Fi: hoitovapaa), i.e. annual holiday has been accrued for a period of approximately ten months at the maximum. However, the stipulations regarding the period equivalent to time at work have now been amended in such a way that annual holiday is accrued for a period of a maximum of six months during maternity, paternity, and parental leave.

According to the previously effective Annual Holidays Act, the employee has been entitled to postpone any annual holidays during which he/she has been incapable to work due to an illness or accident, and the employee has been able to take the annual holidays at a later stage. Following the amendment to the Annual Holidays Act, the employee is entitled to postpone his/her annual holidays only after six waiting days (Fi: *omavastuupäivä*). However, despite the waiting days, the employee is guaranteed at least four weeks of annual holiday in case the employee has accrued at least 24 annual holidays during the holiday accrual year. The above-mentioned amendments to the Finnish Annual Holidays Act entered into force on 1 April 2016.

Amendment to the Conditions for Job Alternation Leave as from 1 January 2016

The terms of job alternation leave have become stricter as from 1 January 2016. A job alternation leave is an arrangement that offers an employee the opportunity to take a longer leave of absence to be used in any way desired and where the employer hires a person registered as an unemployed job seeker with the Employment and Economic Development Office for the duration of the leave.

According to the new terms, qualifying for an alternation leave requires a working history of at least 20 years (as compared to the minimum of 16 years under the previous law), the maximum duration of the alternation leave has been reduced to 180 days (as compared to the previously applicable 360 days which could be taken in several periods of at least 100 days), and the amount of the alternation compensation is 70% of the earnings-related allowance for all alternators. Previously, the compensation paid during the alternation leave was also 70% of the earnings-related allowance that the person was entitled to in case of unemployment, however, if the working history exceeded 25 years, the compensation was 80% of the earnings-related allowance. In addition, the option of having the alternation leave split into several periods has been removed.

The above-mentioned amendments entered into force on 1 January 2016. However, the amendments are not applicable if the agreement concerning the alternation leave was entered into by 31 December 2015 and the leave begun no later than on 31 March 2016.

General Reform of the Employment Accidents Act Clarifying the Criteria for Occupational Accidents

The new Finnish Occupational Accidents, Injuries, and Diseases Act (459/2015) entered into force on 1 January 2016 replacing three older acts regulating occupational accidents, diseases, and rehabilitation. The objective of the reform is to meet the needs of contemporary working life and to fulfil the minimum legislative requirements set by the Finnish Constitution.

The material amendments of the reform simplify, clarify, and redefine existing regulations. However, the basic structures of the Act, including aspects related to financing and implementation, have not been altered. In addition, some established principles and practices have been incorporated into the new Act.

For instance, the rights and obligations of an insured employee are now specified more precisely, as specifications have been added and unclear phrases have been removed. Such clarifications include, for example, an exhaustive list of all circumstances where an accident can be considered occupational. The causal connection between an accident and an injury or disease is also defined more accurately: If a causal connection does not exist, the accident or disease shall not be regarded as being occupational.

Employers' obligation to insure their employees with an accident insurance and to notify of an occurred accident or suspicion of an occupational disease within 10 days of being informed thereof has not been amended in connection with the reform. Furthermore, the self-insuring of self-employed individuals continues to be voluntary. However, the new Act has been changed so that insurance may only be granted to entrepreneurs holding a pension plan. Moreover, the definition of an entrepreneur has been harmonised with the definition established in the Finnish Employees' Pensions Act (395/2006), depending on ownership of and position within the company.

The new Act requires insurance companies to issue a decision within 30 days of receiving a claim as opposed to the three-month time limit applicable under the old Act. Moreover, the new Act also requires more thorough reasoning for denying compensation than before. Another amendment included in the new Act are the new regulations relating to the supervision of insurance coverage for occupational accidents. In fact, there will be a new register in which information on all companies that have provided an occupational accident insurance for its employees will be collected. The purpose of the register is to facilitate supervision and consequently help combat grey economy.

Protection against Unilateral Termination of Employee Representatives Broadened by Certain Collective Bargaining Agreements

According to Finnish law, an employer is entitled to terminate the employment contract of a shop steward (in Finnish: *luottamusmies*), an elected employee representative (in Finnish: *luottamusvaltuutettu*), or a health and safety representative (in Finnish: *työsuojeluvaltuutettu*) based on grounds related to the employee only if a majority of the employees whom the person represents provide their express consent to the termination. The restrictions applicable to the termination of employment relationships of employee representatives do not apply if the employment contract is cancelled with immediate effect based on grounds related to the employee.

Furthermore, the possibility of making a shop steward, elected employee representative, or health and safety representative redundant on the basis of collective grounds is limited to situations where the person's work ceases completely and where the employer is unable to arrange such alternative work that would correspond to the person's professional skills or which would otherwise be suitable for him/her, or to provide the person with training required by new work duties that can be deemed feasible and reasonable from the viewpoint of both the employer and the employee.

In addition to legislation, collective bargaining agreements often include additional mandatory provisions regarding shop stewards, elected employee representatives, or health and safety representatives. In the recent Finnish Labour Court case TT 2015-136 concerning the shop steward agreement of the collective bargaining agreement for the sheet metal and industrial isolation industry (in Finnish: *pelti- ja teollisuuseristysalan työehtosopimus*), the employer was deemed to have breached the collective bargaining agreement. The shop steward agreement includes a provision according to which the employer shall not terminate the employment agreement of a shop steward based on collective grounds unless the activity of the production unit *is entirely interrupted*. Moreover, the provision enables a deviation from the main rule in situations where the parties jointly state that the head shop steward cannot be offered any work corresponding to his/her profession or which would otherwise be suitable for him/her. The Labour Court found that in situations where either party denies that any joint statement regarding the existence of no alternative work was ever noted, the employer has the burden of proof to provide adequate evidence indicating that the parties had jointly stated that no alternative work could be found for the shop steward before serving notice on the basis of collective grounds. In the said case, the employer was not able to provide such evidence. The Labour Court reviewed as evidentiary documentation, inter alia, the minutes of the co-operation negotiation meetings which were held prior to making any employees redundant, and the Labour Court deemed that the minutes lacked any indication of consensus in this respect.

It should be noted that collective bargaining agreements may also include provisions extending the protection against unilateral termination of an employee representative's employment agreement based on collective grounds for a duration of six months following the termination of the period of representation of the shop steward, elected employee representative, or health and safety representative.

Finnish legislation provides a greater sanction for the unlawful termination of the employment contract of a shop steward, elected employee representative, or health and safety representative if an employer does not comply with the restrictions relating to the unilateral termination of an employee representative (or former employee representative where the applicable collective bargaining agreement provides for the so-called six-month post-protection). Pursuant to the Finnish Employment Contracts Act (55/2001), the maximum amount of damages which a court of law may order the employer to pay as compensation corresponds to the shop steward's or elected employee representative's salary of 30 months, whereas the ordinary maximum amount of damages is equal to the employee's salary of 24 months. In addition, it is common to find mandatory provisions in collective bargaining agreements concerning a minimum amount of compensation in situations of unlawful termination. Often such provisions state that an employer shall be ordered to pay damages in an amount corresponding to 10–30 months' salary in case of a breach of mandatory provisions regarding the protection against the unilateral dismissal of employee representatives.

Russian comment

Russian legislation provides that in certain specific cases, such as in cases of redundancy, the termination of an employment agreement entered into with an employee who also acts as a member of the management of the trade union (including the head of the trade union) must be negotiated with the trade union. Legislation sets out the procedure for conducting such negotiations. However, in case the trade union's consent is not received, the employer still has the opportunity to terminate the employment of such an employee. In case the procedure for conducting the statutory negotiations with the trade union is not duly complied with, the termination of employment with the employee may be considered illegal by the court and the employee will be reinstated. It should also be noted that Russian legislation sets up an exhaustive list of grounds for terminating an employment agreement.

Swedish comment

In Sweden, trade union representatives are protected against unilateral dismissal by the employer. Under the Swedish Trade Union Representatives Act (in Swedish: *lagen om facklig förtroendemans ställning på arbetsplatsen*), trade union representatives enjoy protection against termination based on grounds related to their trade union activities. Moreover, in situations of collective redundancies, the trade union representatives are given priority to continue their employment provided the continuation of employment is regarded as being "particularly important" for the trade union's activities at the work place in question. In case the employer breaches the trade union representative's right of priority for employment, the court may declare the trade union representative's dismissal as void.

Vicarious Liability shall not as a Main Rule be applied between a Temporary Work Agency and a User-Company under Finnish Law

The Finnish Tort Liability Act (412/1974) sets forth the responsibilities of an employer to compensate the damage suffered by a third party, with whom the employer has not been in a contractual relationship, due to the actions of one of its employees at work. This so-called vicarious liability (in Finnish: *isännänvastuu*) does not necessitate any fault or negligence from the employer's side as it establishes a broad and general obligation for the employer to compensate the damage its employee causes to a third party. Based on the Tort Liability Act, vicarious liability most often requires that: (i) there is a relationship between two parties which bears the characteristics of an employer–employee relationship; and (ii) the damage is caused by the employee at work; and (iii) the damage is caused by an error or negligence of the employee.

In temporary agency work vicarious liability raises two questions in particular:

1. What are the temporary work agency's (in Finnish: *vuokraajatyönantaja*) obligations with regard to compensating the user-company (in Finnish: *käyttäjäyritys*) for damage caused by a temporary agency worker to the user-company?
2. What are the temporary work agency's obligations to compensate a third party for damage caused by a temporary agency worker to the third party?

Answers:

1. In general, when the user-company and the temporary work agency enter into an agreement on staff provision, vicarious liability as described above is set aside. In its precedent decision 2005:135, the Finnish Supreme Court confirmed as a main rule that vicarious liability set forth in the Tort Liability Act shall not be applied between a temporary work agency and the user-company when the temporary agency worker causes damage to the user-company. Thus, the respective liability of the temporary work agency and the user company is determined in accordance with the terms of the agreement on staff provision and not the Tort Liability Act, and, should the temporary agency worker cause damage

to the user-company, the user-company's possibility for a claim depends on whether there has been a breach of contract by the temporary work agency.

2. Usually the user-company and the temporary work agency also agree that the temporary work agency is responsible for compensating any and all damage the temporary agency worker causes to third parties while at work for the user-company. Thus, vicarious liability is often contractually transferred from the user-company to the temporary work agency as the Tort Liability Act does not separately prohibit such a transfer.

Russian comment

As a general rule of Russian law, an employer is liable towards any third party with whom the employer has not been in a contractual relationship for the work (actions) of its employee (for performance of employee of its employment duties).

As regards to agreements on staff provisions, this issue cannot be resolved conclusively. The new rules governing temporary agency work have just entered into force and there is not yet any common practice in this respect. Agreements on staff provisions are governed by labour legislation, which remains silent on the parties' liability towards each other under such agreement. Also, it is not clear whether the parties to an agreement on staff provision can efficiently agree on compensation for damages and limitation of liability as the Russian Civil Code's general principles on compensation for damages might not be applicable in relation to agreements on staff provision, which are governed by labour legislation.

Swedish comment

Under Swedish law, when assessing which one of the parties (i.e., the temporary work agency or the user-company) incurs the vicarious liability for damage caused by an employee, the principal question is which company supervised, led and controlled the work where the damage was caused. In order for the user-company to ensure that the work agency shall compensate for any damage caused by their employees during the period the employees are rented to the user-company, this should be regulated in the agreement between the user-company and the work agency.

RUSSIA

Restrictions to Temporary Agency Work in Russia Came into Force

The amendments to the Russian Labour Code, introduced already in 2014 by the Federal Act No. 116-FZ dated 5 May 2014, have entered into force as of 1 January 2016. As from the beginning of this year, temporary agency workers may be assigned to a user-company only under a so-called contract on staff provision. Only specific companies may act as temporary work agencies, namely private accredited employment agencies (only Russian legal entities) and Russian or foreign legal entities that are affiliated with the legal entity for whom the temporary agency worker will perform the work (e.g. a subsidiary or companies sharing the same executive body and/or the same shareholder). Moreover, a legal entity, which is a party to a shareholders' agreement, may provide temporary agency workers to the other contracting party.

Russian legislation also lists specific circumstances which do not permit the use of temporary agency workers, for example, in order to replace employees who are on strike or in order to perform work during work stoppages.

Finnish comment

In Finland, labour leasing is not subject to licence, however, collective bargaining agreements may impose certain limitations to labor leasing on an individual company level. Such limitations may concern, for example, timing (for instance labour leasing being permitted only during peak seasons), or functions, e.g., labour leasing being permitted only as regards functions which cannot be organized within the company by using the company's own employees (due to, for example, requirements of specific training or experience).

Swedish comment

No licence or permission is required for labour leasing in Sweden. As in Finland, also in Sweden collective bargaining agreements may include restrictions on the use of labour leasing by individual companies.

The Employee's Right to the Salary during Ceased Working in Case of Delays in Salary Payment

Article 142 of the Russian Labour Code provides that in case of a delay in the payment of an employee's salary for more than 15 days, upon a written notification to the employer, the employee has a right to cease work until the salary is paid (except for particular cases provided for in legislation).

As of 10 January 2016, the Federal Act No. 434-FZ dated 30 December 2015 supplements Article 142. The amended Article 142 provides that, in addition, the employee will be entitled to his/her salary for the mentioned period during which the employee refuses to work in situations where the refusal is related to the employer's omission to pay the employee his/her salary. This amendment confirms the previous practice, which was already widely applied by the courts.

Finnish comment

Under Finnish law, an employee is entitled to salary for work performed in an employment relationship. Salary must be paid on the last day of the salary payment period, unless the employer and the employee agree otherwise. The salary payment period is typically one month, however, hourly-based salary must be paid at least twice per month. The salary is paid to the employee's bank account and must be at the employee's disposal on its due date, otherwise the employee will be entitled to claim late payment interest as of the due date. The employer will not be liable for late payment interest only in so-called *force majeure* situations (insurmountable obstacle). In case of late salary payment in situations of termination of employment, the employee will be entitled to salary for so-called waiting days (in Finnish: *palkka odotuspäiviltä*) for a maximum of six days.

If an employer neglects to pay the employee his/her salary or a part thereof, the employee can terminate his/her employment agreement based on the employer's omission, in which case the notice period applicable to the employer shall apply. Moreover, the employee can claim any unpaid salary in the relevant court of law.

Swedish comment

There are no special rules that apply in Sweden with regard to the employer's neglect related to payment of salary. A neglect of salary payment would simply be considered as a material breach of contract and the employee could terminate the employment immediately without observing any notice period. The employee may also claim for unpaid salary in court.

SWEDEN

Stricter Measures against Abuse of Fixed-Term Employment Agreements

In Sweden, the possibilities of entering into a fixed-term employment agreement with an employee are relatively liberal. However, the Swedish Government has presented a bill proposing certain amendments to the Employment Protection Act (in Swedish: *Lag (1982:80) om anställningsskydd*) concerning such possibilities.

The contemplated amendments essentially mean that the current restriction regarding general fixed-term employment would be supplemented with a new rule. Currently, a general fixed-term employment becomes a permanent position in case the total employment period of the general fixed-term employment exceeds two years within a five-year period. The bill proposes that the modification into an indefinitely valid employment agreement should not only happen if the employment period exceeds two years during a five-year period, but also in case of various subsequent fixed-term positions, seasonal work positions or positions as substitute during a corresponding period. Under the amendments, employment agreements would be regarded as having succeeded one another if a new form of employment has occurred within six months after a previous employment agreement has ended. However, it would be possible to deviate from the proposed rule in collective bargaining agreements. Moreover, the bill also proposes that employees aged 67 or more shall be exempted from the rules. Finally, the bill suggests that employees with fixed-term employment agreements shall be given a more extensive right to receive information regarding the positions that will have relevance to the application of the conversion rules.

The purpose of the amendment is to improve the situation of employees who risk being stuck in fixed-term employment relationships for a long time and to ensure that the Employment Protection Act meets the requirements concerning measures to prevent misuse under the so-called Fixed-Term Directive.

The amendments are proposed to enter into force on 1 May 2016.

Finnish comment

In Finland, the possibilities of entering into a fixed-term employment agreement with an employee are somewhat stricter than in Sweden. Under Finnish law, a fixed-term employment agreement may only be concluded on justified grounds. However, there has been discussion on the possibility of rendering it easier for an employer to enter into a fixed-term employment agreement with an employee. In case no such justified grounds exist, a fixed-term employment agreement is considered as indefinitely valid. However, the Finnish Government is currently contemplating an amendment to the currently applicable legislation in order to allow fixed-term employment agreements of a maximum duration of one year to be entered into without the presence of justified grounds for entering into such an agreement. It should be noted, however, that the situation is still open and so far no decisions have been made.

Russian comment

In Russia, the Russian Federation Labour Code lists the specific circumstances in which an employer may enter into a fixed-term employment agreement with an employee. In other circumstances, the employment agreement may be considered as being indefinitely valid.

A fixed-term employment agreement can be entered into with, e.g., a general director, a deputy of a general director, or a chief accountant. Moreover,

- with pensioners concluding new employment agreements;
- with full-time students;
- with employees at a secondary job;
- for work in Northern regions (as listed in legislation);
- in small and medium sized enterprises fulfilling the criteria set by the law; and
- for work concerning the prevention or liquidation of accidents.

In some specific cases, an employment agreement must be concluded for a fixed term, for example:

- for the period of another employee's temporary absence, e.g., for maternity leave, etc.;
- for temporary work (less than 2 months);
- for seasonal work;
- with employees sent to work abroad;
- for work which is not the company's daily activity (e.g., construction, installation, start up, or similar work) or work required in result of a temporary (less than 1 year) expansion of production; and
- for people employed for a certain project when there is no definite date concerning the end of the project.

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