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FINLAND

NEW FINNISH ACT ON POSTED WORKERS – EMPLOYERS NOW OBLIGATED TO INFORM OCCUPATIONAL SAFETY AUTHORITIES

The new Finnish Act on Posted Workers (447/2016) (the Act) will implement Directive 2014/67/EU and replace the previous Act from 1999. Posted employees are employees sent by their employer to carry out a service in another EU Member State on a temporary basis.

The new Act entered into force on 18 June 2016.and aims to safeguard posted workers' rights and strengthen the legal framework for service providers. The biggest challenges associated with the act are related to ensuring that the rules of the Posted Workers Directive are applied throughout the European Union, especially in certain sectors such as construction and road haulage. The aim of the Act is to improve protection of posted workers' rights by preventing fraud, especially in subcontracting chains where the rights of posted workers have not necessarily been respected.

The new Posted Workers Act includes provisions on (i) the minimum terms of employment to be applied to employees posted to work in Finland, (ii) the obligations of the sending party and (iii) of the contractor using the posted employee's services. The Act also includes provisions on (iv) the jurisdiction and collaboration of occupational safety authorities as well as (v) the cross-border execution of financial administrative sanctions and fines.

No significant changes were made to the minimum terms applied to employment contracts. These provisions were for the most part, transferred as such to the new Act. For example, occupational safety and health care provisions, as well as parts of the Employment Contracts Act will still be applied to workers posted to Finland if the provisions are beneficial to the employee. However, the scope of the Act was expanded to include public procurements carried out by central administration authorities.

One of the major amendments to the Act requires companies sending employees to inform the occupational safety authorities of all posted employees sent to work in Finland, at the risk of a fine. The intention is that authorities can target supervision and resources more accurately. Moreover, the penalty system was thoroughly revised. The former provisions on criminal liability were replaced with administrative sanctions. Individuals are no longer held personally liable for the negligence of the company they represent. According to the new legislation a breach of the Act would consequently result in a negligence fine, varying from 1000 to 10 000 euros.

LEGISLATIVE PROPOSAL ON AMENDMENTS TO TRIAL PERIOD, FIXED-TERM EMPLOYMENT AND RE-EMPLOYMENT OBLIGATION

The Finnish Government has given a legislative proposal to the parliament on 15 June 2016, concerning amendments on provisions regulating trial period, fixed-term employment and re-employment obligations.

The proposed law would enter into force 1 January 2017, and it is another action taken by the government to create new jobs

and reduce long-term unemployment.

One of the proposals is to increase the maximum length of a trial period to six months. The employer could also increase the trial period if the employee, during the trial period, was absent from work due to a work disability or family leave.

Following the amendments, a person who has been unemployed for the previous 12 months can be hired with a fixed-term contract without a justified reason, which is typically required by the Employment Contracts Act. The motion aims to improve the employment opportunities for those who have been unemployed long-term.

Further, the duration of the re-employment obligation would be shortened to four months from the current nine months. If employment has lasted for more than 12 years, the re-employment obligation would continue for six months. The objective is to lower the threshold of employment after production-related and financial termination.

COMPETITIVENESS PACT SIGNED BY LABOUR MARKET ORGANIZATIONS IN FINLAND

Central labour market organisations have finally reached an agreement regarding the application of the Competitiveness Pact (Finnish: *Kilpailukykysopimus*). The Pact reached sufficient coverage after lengthy negotiations and was signed on 14 June 2016. The Pact aims to improve the competitiveness of businesses and labour in Finland as well as create new jobs and promote local collective bargaining. No legislative amendments will be introduced, as the Pact includes some provisions on collective bargaining agreements.

Last year, after unsuccessful Social Contract (Finnish: *Yhteiskuntasopimus*) negotiations, the Finnish Government introduced a mandatory legislative package and a conditional list of additional savings and tax increases to promote competitiveness. Labour unions and employers' organizations reacted to the suggested reform by presenting an alternative to the Government proposal known as the Competitiveness Pact. The Government agreed to revoke the reforms set out in the Government Programme and to introduce tax concessions on earned income if the Competitiveness Pact achieved sufficient coverage and was put into effect. The level of sufficiency was set at 90% of the employees and public servants bound by collective bargaining agreements, i.e. roughly 1,7 million Finnish employees.

The Competitiveness Pact has been signed with a coverage of approximately 87%, but its final coverage remains unknown. Because the coverage is greater than 85%, the amount of tax concessions will amount to a total of EUR 415 million. The Ministry of Finance estimates that this would be sufficient to compensate for the impact of the Pact on taxpayers in 2017. If coverage reaches 90%, the amount of tax concessions will increase to a total of EUR 515 million. These additional concessions depend on the result of pharmaceutical and financial sector negotiations, which are due by August 2016.

The lengthiest negotiations were connected with the extension of annual work time. As of the beginning of 2017, annual work time will be extended by an average of 24 hours for full-time work without an impact on earnings. Implementation of work time extensions is settled on a local level by the trade unions and employers' organizations. Implementations of the extension have varied from a daily six-minute to a weekly 30 minute to a yearly 24-hour addition to regular work schedules.

Another major provision of the Pact is that the holiday bonuses of public servants will be reduced by 30%. In addition, collective bargaining agreements will be extended for a period of 12 months and therefore wages and salaries frozen for the same time. The Pact includes provisions that improve employees' rights when laid off for production-related and financial grounds in companies with over 30 employees and when the employment relationship has lasted for over five years. Such employees would have the right to occupational health care for six months after termination of employment. These provisions of the Pact are actually proposed amendments to legislation already in preparation.

Furthermore, it was decided that the responsibility of a fixed percentage of the earnings-related pension, unemployment insurance and social security contributions will gradually be moved from the employer to the employee from 2017-2020. The decrease in employer contributions and the timetable of the transition are different for each contribution type.

UNILATERAL DECREASE OF COMPANY CAR BENEFITS NOT ALLOWED

The District Court of Helsinki, in its recent judgement (KO L 14/28482), dated 11 May 2016, found that an employer cannot unilaterally retract or reduce an established fringe benefit.

The company concerned had established a company car policy in 2003, offering its foremen the right to use to a car with a maximum value of up to 28,000 euros. Since then, maximum value was raised to a value of 30,000 euros in 2005. In 2009, the company decided to unilaterally decrease the maximum value to 25,000 euros. An employee claimed damages from the company for the lost benefit.

The District Court found in its judgment that the employee had lost benefit in two ways. First, the employee's taxable income decreased, which lead to lower pension accrual. Second, the court gave importance to the nature of the benefit itself. It stated that the employee had lost a generally acknowledged asset, since he now only had the right to use a cheaper car.

The employer stated in its internal policy from 2002 that a car benefit was meant to be an additional benefit, separate from normal salary and that it could be altered at any time by the employer. There was no written agreement concluded concerning the company car benefit. The District Court found however, that the car benefit was an established term of employment and the employer had not made the employee sufficiently aware of the internal policy allowing unilateral changes. Therefore, the employer did not have the right to decrease the car benefit unilaterally without grounds for notice.

The Court imposed compensation for the employee of approximately 7,000 euros. The amount is the difference between lease price of the previous and present company car, multiplied by the number of months the employee had the less valuable car (EUR 130 x 55 months) and in addition, an interest penalty shall be paid. The employer was also ordered to pay for the employees legal expenses.

Based on this judgement by the District Court, it seems that in order for an employer to unilaterally amend the value of benefits provided based on a policy, the employer should ensure that the employees are sufficiently informed of the employer's right to unilateral policy amendments.

The District Court ruled that instead of applying the taxable value of the benefits when calculating the amount of the loss, the loss should be based on the difference in current lease prices, not the taxable values of the benefits.

This judgement however, is not legally valid yet and we will provide you with an update should a Court of Appeal ruling materially change the situation.

NEW RULING ON THE APPLICATION OF A COLLECTIVE AGREEMENT IN AN INDIVIDUAL EMPLOYMENT RELATIONSHIP

In its recent judgment dated 17 March 2016 (KKO 2016:18), the Finnish Supreme Court ruled that the students' union of a Finnish university shall apply the press industry collective agreement (Finnish: *lehdistöalan työehtosopimus*) to its employee, the editor of the students' union newspaper even though the employer was not otherwise bound by any collective agreement. Employers who are not bound by any collective agreement should especially consider this case. If a company's employees have work duties falling within the scope of a generally applicable collective agreement, the collective agreement may now be regarded as applicable to those employees.

In Finland, a collective agreement may be declared generally applicable by the Committee Affirming the General Applicability of Collective Agreements (Finnish: *Työehtosopimusten yleissitovuuden vahvistamislautakunta*) subordinate to the Finnish Ministry of Social Affairs and Health. A collective agreement is declared generally applicable when the employers covered by the agreement (i.e. affiliated with the employers' association that concluded the collective agreement) employ at least 50% of all the employees in the specific sector. Moreover, in order to be considered generally binding, a collective agreement has to be national (i.e. concluded at the sectoral level and intended to be applicable in the whole sector and not only in a single company).

The generally binding nature of a collective agreement means that even non-organised employers (i.e. employers who do not belong to an employers' association) are obliged to apply the agreement to guarantee at a minimum level, the terms and conditions agreed upon in the collective agreement for its employees.

The question that the Supreme Court was asked to review related to the interpretation of "sector in question" (Finnish: asianomaisella alalla) in Chapter 2 Section 7 of the Finnish Employment Contracts Act (55/2001). The employee argued that the sector in question should be understood as referring to the duties described in the employment agreement as well as the employee's education and profession (so-called professional field principle, Finnish: *ammattialaperiaate*). Thus, even though the students' union was not bound by any collective agreement, it should have applied the provisions of the generally applicable collective agreement for the press industry specifically in respect to the individual employee who worked as the editor of the students' union newspaper.

The students' union on the other hand, argued that the sector in question referred to the main line of business of the employer (so-called line of business principle, Finnish: *toimialaperiaate*). Therefore, the students' union argued that it was not bound by the collective agreement for the press industry, as it was not a company working in the press industry.

During court proceedings, the Appeal Court of Turku referred to the same question in its request for comment to the Labour Court, which is the instance that has the authority to interpret provisions of collective agreements in Finland. In its statement, the Labour Court took the stance that the main line of business of the employer (i.e. the line of business principle) should be considered the basis for interpreting the applicability of collective agreements.

However, the Supreme Court took the stance that the students' union line of business did not fall within the scope of the collective agreement for the press industry. However, the Supreme Court ruled that if the employer is not otherwise bound by any collective agreement, a generally applicable collective agreement may become applicable in respect to an individual

employee based on the employee's profession or work duties. Hence, as the employee in question had in this instance performed editorial work as described in the collective agreement for the press industry, the students' union should have applied the generally applicable collective agreement to the employee in question.

The Supreme Court ordered the students' union as the employer, to compensate the employee approximately EUR 20,000 as unpaid salary in accordance with the minimum terms of employment of the generally applicable collective agreement for the press industry.

RUSSIA

RUSSIAN DIRECTORS SUBJECT TO CORPORATE PROCEDURE RATHER THAN LABOUR LAW

Traditionally, employees in Russia are ensured protection through labour law as the weak party in employment relations. Courts of general jurisdiction usually support the employees in court disputes.

Nowadays, directors of companies in Russia (i.e. general directors or managing directors) are considered employees in accordance with the law. The only difference from ordinary employees is that a company has the right to terminate an employment contract with a director early without a specific reason, provided that compensation for an early termination has been paid. In addition, directors are personally responsible for companies' business activity; however, labour law does not properly regulate compensation of damages to companies by their directors.

In practice, this means that Russian labour law provides company directors with an extensive number of guarantees, e.g. limitations of dismissal during parental and sick leaves, claim of damages, etc.

Disputes with directors are not processed in state commercial courts, but in courts of general jurisdiction, which are often not familiar with corporate law and procedures. Sometimes this creates problems for companies wishing to smoothly dismiss a director or compensate damages to the company incurred through improper management of the company.

In recent years, efforts have been made on a high level to try to change this situation through case law, however, the labour laws have not been changed accordingly.

Just recently, a draft law has been introduced for development by the Ministry of Justice of the Russian Federation. If the law enters into force as drafted, the Labour Code's regulation will no longer apply to the directors. Instead the corporate procedures specified in the Civil Code would be applied.

The special legislative status of directors is going to entail a provision on the compensation of damages to companies, option programs for directors (which are currently out of the labour laws) and assign the jurisdiction in disputes with directors to the state commercial courts. However, directors will likely retain guarantees related to pregnancy and parental leave as this issue was recently reviewed and confirmed by the Constitutional Court.

This draft law has not been submitted to the State Duma yet and awaits further development and discussion, however, in any event, this is a long awaited and positive step forward for business.

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