

Act on the Contractor's Obligations and Liability when Work is Contracted Out

Contractor's obligations and liability when work is contracted out

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Pursuant to the Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006), the parties contracting work out shall check that the enterprises concluding contracts with them discharge their statutory obligations as contracting partners and employers. The objectives of the act are to promote equal competition between enterprises and to ensure observance of the terms of employment. The Division of Occupational Safety and Health of the Regional State Administrative Agency for Southern Finland is tasked with supervising compliance with the Act.

Scope of application

The Act applies to all work performed in any trade or industry in Finland. The Act applies to both Finnish enterprises and enterprises established abroad that contract work out to outside labour.

For the purposes of the Act, a contractor means any enterprise or public body that uses temporary agency workers or workers in the service of an employer having a subcontract with the contractor. A contractor may be any business required by law to submit a notification on starting business operations to the Trade Register. The contractor also means enterprises established abroad when they operate or have work performed in Finland. As a rule, self-employed persons engaged in farming/fishing or households are not considered to be contractors for the purposes of this Act.

A temporary agency worker refers to an employee who has concluded an employment contract with an employer that has assigned the employee with his or her consent for the use of another employer. The employee works under the management and supervision of the recipient of labour.

In subcontracted work, this Act is applied to the contractor provided that

- the contractor and contracting partner have concluded a contract on a certain work outcome against compensation. This does not have to be in writing; it may also be a verbal agreement.
- work is performed on the contractor's premises or other work site in Finland. The work site assigned by the contractor can also be situated elsewhere than on premises controlled by the contractor. Such work sites are typical of, for instance, trades and activities associated with construction, travel and transportation activities, as well as in service production where services are provided on the purchaser's or user's premises.
- work relates to tasks or transports normally performed in the course of the contractor's operations. Cleaning work and the maintenance and servicing of equipment and premises are always deemed to be tasks normally performed in the course of the contractor's operations.
- employee or employees in the service of the contracting partner having concluded a subcontract are performing work for the contractor.

In construction operations, the obligation to check information applies to all contractors, even though construction operations would not fall within the scope of the contractor's regular line of business. Apart from new construction projects, construction work further comprises, for instance, upkeep, repair and civil engineering tasks. In relation to contracts regarding construction, the accounts must also be obtained when the work is performed by an entrepreneur.

The Act on the Contractor's Obligations and Liability when Work is Contracted Out does not apply to minor subcontracts and short-term use of temporary agency workers. The Act is not applied if the duration of the work by the temporary agency worker or workers does not exceed a total of 10 days, or where the

compensation payable for a subcontract is less than EUR 9,000 without value added tax. The obligation to check cannot be circumvented by artificially breaking up the work or work outcome into separate contracts which do not exceed the limit values referred to above. When calculating the limit values, the work is considered to have continued without interruption if the work is based on successive contracts or contracts with only short breaks between them. The limit value is not year- or financial-year-specific.

The content of the contractor's obligation to check information

Before the contractor concludes a contract on the use of a temporary agency worker or on work or work outcome based on a subcontract, the contractor shall procure the following information, accounts, extracts and declarations concerning the contracting partner:

- 1) Information on whether the contracting partner is entered in the Prepayment Register and Employer Register, and registered as VAT liable in the Value Added Tax Register;
- 2) Extract from the trade register or equivalent information otherwise obtained from the trade register;
- 3) Report on the contracting partner's tax payment status;
- 4) Certificates of pension insurance taken out and of pension insurance premiums paid, or an account that a payment agreement on outstanding pension insurance premiums has been made;
- 5) Account of the collective agreement or principal terms of employment applicable to the work;
- 6) Account of the organisation of occupational health care services
- 7) Certificates of statutory employment accident insurance taken out (in association with construction contracts)

If the contract regards construction operations and the work shall be performed by the



The contractor may procure the information on the contracting partner's tax payment status directly through the public Tax Debt Register available via the online service of the Finnish Business Information System. In the event that the Tax Debt Register indicates any outstanding tax debt, the contractor must also procure a certificate of tax debt in order to meet its obligation to check information.

entrepreneur alone, the contractor must obtain the accounts specified under items 1–3.

The contractor may procure the information on the contracting partner's tax payment status directly through the public Tax Debt Register available via the online service of the Finnish Business Information System (www.ytj.fi). In the event that the Tax Debt Register indicates any outstanding tax debt, the contractor must also procure a certificate of tax debt in order to meet its obligation to check information.

In the event that the contracting partner is not included in the Tax Debt Register (e.g., a foreign company or corporation without an affiliate or branch office in Finland), the contractor must procure a certificate of tax paid or tax debt, or an account that a payment plan has been made for tax debt respective to the contracting partner.

The contractor must at all times assess whether the contracting partner intends to fulfil its statutory payment obligations. If the amount of tax debt can be regarded as considerable and the contractor should have known that the contracting partner does not intend to fulfil its statutory payment obligations, an increased negligence fee may be imposed on the contractor.

At the time of entering into the contract, the information and documentation referred to above must not be more than three months old. The

information, accounts and certificates must be retained for no less than two years from the date on which the work relating to the contract has been completed. The contractor can also obtain the accounts from a private service provider who is considered reliable. The contractor must also retain these reports and accounts.

If the contractor signs a new agreement with the same partner before 12 months have elapsed from the signing of the previous agreement and the obtaining of the related reports, the contractor is generally exempt from obtaining new reports. However, if there is reason to believe that there has been a material change in the partner's circumstances warranting a new investigation, then the contractor must obtain new reports on the partner before signing the new agreement.

The contractor need not request the accounts and certificates referred to above in this Act if the contractor has good reason to trust that the contracting partner will discharge their statutory obligations on the grounds that the contracting partner is a public body governed by public law or a public limited company. A reason for trust can also be based on earlier contractual relationships between the contractor and the contracting partner, or on the fact that the operations of the contracting partner are established. Contractors associated with construction operations are not exempt from the obligation to check on the grounds of trust based on earlier contractual relationships between the contractor and the contracting partner, or on the fact that the operations of the contracting partner are established, or on the grounds of any equivalent reason.

The contractor must always consider if there is a justified reason to trust that the contracting partner will discharge his statutory obligations. By presenting a document, the contractor must show that the operations of the contracting partner are established. Moreover; it is foreseen that the contractor is not aware of any circumstances removing the justified reason to trust the contracting partner (for example that

the contracting partner has been eliminated from Prepayment Tax).

In the case of extended agreements with an agreement period of more than one year, the partner must submit to the contractor a report on tax payments and pension insurance every 12 months.

Foreign enterprise as contracting partner

The contractor must procure similar information also on a foreign contracting partner.

If, at the time of entering into the contract, the foreign enterprise holds a Finnish Business ID, the register information under item 1 above and the report on the enterprise's tax payment status under item 3 above must be obtained both from Finland and the state of the enterprise's registered domicile.

If the foreign enterprise sends posted workers to Finland, the contractor must, before they commence work, investigate and ascertain the validity of the health and accident insurance coverage of the workers. Accounts must be obtained for the employees who first start their work in Finland. In order to comply with the obligation to check, the contractor must also require in writing before concluding the contract that the contracting partner provides the certificates stating how the social security of the workers is determined also for the workers starting at a later date. In accordance with the Act on Posting Workers, the employer acting as the contracting partner is obligated to provide the contractor with accounts stating how the social security of the workers is determined also for the posted workers starting at a later date.

In contracts related to construction operations, the contractor must throughout the validity of the contract continuously check that all posted workers of the contracting partner have valid certificates stating how the social security of the workers in question is determined.

The main principle is that all work done in Finland must be insured in Finland. This applies

to both Finnish and foreign employers and employees. An exception is made for employees temporarily assigned to work in Finland. In such a case, the social security legislation of their country of origin may be applied to posted workers for the duration of their work in Finland.

For posted workers coming from the European Union or the European Economic Area, the information on the pension and accident insurances taken out for the worker can be demonstrated by presenting the posted worker's A1 form. In the event that the contracting partner does not present the posted worker's certificates, the information referred to above must, in most cases, be demonstrated by presenting an account of the employees' pension insurance in Finland and, in contracts relating to construction operations, also a certificate of accident insurance taken in Finland.

Failure to fulfil the obligation to check information and the negligence fee

The contractor may be obliged to pay a negligence fee for failure to fulfil the obligation to check information. The minimum negligence fee is EUR 2,110 while the maximum is EUR 21,100.

An increased negligence fee will be assigned to a contractor that has concluded a contract on work referred to in this Act with an entrepreneur who has been barred from conducting business under the Act on Business Injunctions or with an enterprise in which a partner, member of the Board of Directors, Managing Director or another person in a comparable position has been barred from conducting business. Similarly, an increased negligence fee may be ordered where the contractor has entered into a contract, even though it must have realised that the other contracting partner did not intend to fulfil its statutory obligations as a contracting partner and employer. The minimum increased negligence fee is EUR 21,100, whilst the maximum is EUR 68,500.

The negligence fee and the increased negligence fee are ordered by the Division of

Occupational Safety and Health of the Regional State Administrative Agency for Southern Finland.

Providing information to a representative of personnel

The shop steward, the occupational safety and health representative and an elected representative have the right to obtain information laid down in detail in the Act on the Contractor's Liability linked to any contract concerning temporary agency work or subcontracted labour.

When providing this information, the reason for using temporary agency work, number of employees engaged, identifying details of the enterprise concerned, work site, tasks, duration of contract and the applicable collective agreement or principal terms of employment are to be made clear.

Confidentiality

In obtaining the reports required by law, contractors may become privy to confidential information concerning partners. A contractor or any employee of the contractor may not disclose such information to any third parties. A person obtaining confidential information may not disclose it even after that person is no longer in the position in which he/she obtained that information. Confidential information includes but is not limited to the following: details on tax payments or tax debt, and details on the taking out of pension insurance, pension insurance contributions or outstanding pension insurance contributions.

FURTHER INFORMATION

Tyosuojelu.fi

Website of the Occupational Safety and Health Administration in Finland