



Employment Relationship Guide



Employment Relationship Guide

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1. INTRODUCTION

The Federation of Professional and Managerial Staff (YTN) is Akava's collective bargaining organisation for the private sector in charge of the contracts and negotiation activities of upper white-collar employees working in the industrial and service sectors.

The number of YTN's members has grown strongly throughout its existence. At the same time, its weight and influence in the labour market has increased. Our members' awareness of the employment relationship questions concerning upper white-collar employees and their special characteristics has increased.

YTN's membership consists mainly of people with a higher degree of education and experts and managers of various sectors possessing equal know-how and skills. The different professions represented by YTN include lawyers, engineers, economists and business administrators.

This employment relationship guide discusses a wide range of legislation that regulates working life, paying special attention to the characteristics special to the employment relationships of upper white-collar employees. The guide is meant for upper white-collar employees and their representatives, to provide help and support for the various developments and changes that occur in working life.

An upper white-collar employee works in specialist, supervisor, management and executive positions. The tasks of an upper white-collar employee are characterised by a relatively high degree of independence and responsibility. The tasks necessitate higher education or corresponding knowledge and skills derived from work experience.

In addition to a print version, this guide is available on the websites of YTN affiliates. The online guide is updated regularly and the print version is published every few years. The guide has been drawn up by the lawyers and ombudsmen of YTN affiliates, and the editorial work has been carried out by YTN's legal team.

We hope you will find the guide interesting and informative,
YTN Legal Team

Table of contents:

1.	INTRODUCTION	3
2.	THE BASICS OF LABOUR LAW	8
2.1.	Employment relationship and employment contract.....	8
2.1.1.	Distinguishing features of an employment contract.....	8
2.2.	Collective agreements	9
2.3.	Determination of the employment relationship's conditions	9
3.	EMPLOYMENT CONTRACT	11
3.1.	Format and content of an employment contract.....	11
3.2.	Binding nature of an employment contract prior to its beginning.....	12
3.3.	Duration of employment contract	12
3.3.1.	Justified grounds required for fixed-term employment contracts	12
3.4.	Trial period.....	13
3.5.	A transfer of business's effects on employment relationships.	13
3.6.	Employee's general obligations.....	14
3.7.	Business and trade secrets	14
3.8.	Non-disclosure agreement	14
3.9.	Prohibition concerning competing activity.....	14
3.10.	Non-competition agreement	15
3.11.	Employer's general obligations	16
3.12.	Salaries.....	16
3.12.1.	Payment of salary when performance of work is prevented	17
3.12.2.	Sick pay	17
3.13.	Changing the conditions of an employment relationship..	18
4.	WORKING HOURS	19
4.1.	The Working Hours Act's scope of application and executive management	19
4.2.	The Working Hours Act's application to telecommuting and sales work	19
4.3.	Regular working hours	20
4.3.1.	Local agreement on working hours based on a collective bargaining agreement or a generally applicable collective agreement	20
4.3.2.	Local agreement on working hours based on law	20
4.4.	Definition of working hours.....	21
4.4.1.	Travel time	21
4.5.	Stand-by time	21
4.6.	Additional work	21
4.7.	Overtime.....	22
4.7.1.	Daily overtime.....	22
4.7.2.	Weekly overtime.....	22
4.7.3.	Calculating the hourly wage for the purposes of overtime compensation.....	22
4.7.4.	Compensating for overtime	22
4.7.5.	Overtime compensation as a separate monthly remuneration.....	23
4.7.6.	Maximum amounts of overtime.....	23
4.8.	Sunday work.....	23
4.9.	Example of the calculation of additional work, overtime and Sunday work	23
4.10.	Rest periods.....	24
4.10.1.	Lunch break.....	24
4.10.2.	Daily rest period.....	24
4.10.3.	Weekly free time	24
4.11.	Emergency work	24
4.12.	Flexible working hours.....	25
4.13.	Reducing working hours	25
	(the system referred to as 'pekkas' days).....	25
4.14.	Working hours bank system	25
4.15.	Period of claims and penalties relating to the Working Hours Act	25
5.	ANNUAL HOLIDAY	26
5.1.	Basic concepts	26
5.2.	Length of holiday	27
5.2.1.	The time priority principle.....	27
5.3.	Accumulation of annual holiday during a lay-off.....	27
5.4.	Granting holidays	27
5.5.	Impact of sickness on annual holiday	28
5.6.	Holiday pay	28
5.6.1.	Employees with weekly or monthly salaries	28
5.6.2.	Employees with salaries other than weekly or monthly salaries	28
5.6.3.	The salary employed in the calculation of holiday pay..	29
5.7.	Holiday compensation	29
5.7.1.	Holiday compensation when the employment relationship continues	29
5.7.2.	Holiday compensation when the employment relationship ends	30
5.8.	Holiday bonus and end-of-holiday pay	30
5.9.	Working during a holiday.....	30
5.10.	Annual holiday and the termination of an employment relationship.....	30
5.11.	Saving an annual holiday	30
5.12.	Expiration of annual holiday receivables	31
6.	FAMILY LEAVES	32
6.1.	Right to maternity, special maternity, paternity and parental leave	32
6.2.	Notifications concerning leave	32
6.3.	Working during a maternity and parental benefit period ...	33
6.4.	Caregiver leaves	33
6.4.1.	Child-care leave.....	33
6.4.2.	Partial child-care leave.....	33
6.4.3.	Temporary child-care leave	33
6.6.	Absence for taking care of a family member or someone close to the employee.....	34
6.7.	Obligation to pay salary for periods of family leave	34
6.8.	Right to return to work after the end of family leave	34
7.	STUDY LEAVE	35
7.1.	Individuals with a right to apply for study leave.....	35
7.2.	Applying for and granting study leave	35
7.3.	Employment relationship's continuance during study leave	36
7.4.	Employee's right to postpone or interrupt study leave	36
7.5.	Employee's financial benefits during study leave	36
8.	JOB ALTERNATION LEAVE	37
8.1.	Employment relationship's continuance during job alternation leave.....	37
8.2.	Agreeing on job alternation leave	37
8.3.	Requirements for job alternation leave	37
8.4.	Length of job alternation leave	37
8.5.	Hiring an unemployed person for the duration of the leave	38
8.6.	Job alternation leave allowance	38
8.7.	Applying for a job alternation leave allowance	38
8.8.	Special issues	39
9.	INTELLECTUAL PROPERTY RIGHTS IN AN EMPLOYMENT RELATIONSHIP	40
9.1.	Employee inventions.....	40
9.1.1.	Invention's patentability	40
9.1.2.	Rights to exploit an employee invention	40

9.1.3. Procedure	41	12.4. Avoiding the stress factors of work	57
9.1.4. Invention compensation	41	12.5. Workstation ergonomics and work involving display screens	57
9.1.5. Agreements	41	12.6. Threat of violence and harassment	57
9.2. Inventions made in institutes of higher education	41	12.7. Lone working and night work	58
9.2.1. Definition of institute of higher education	42	12.8. Provisions concerning the structures of the workplace and working environment	58
9.2.2. Open research	42	12.9. Special situations of organising work	58
9.2.3. Contract research	42		
9.2.4. Invention notifications	42	13. EQUAL TREATMENT	
9.2.5. Right to invention in open research	42	IN WORKING LIFE	59
9.2.6. Right to invention in contract research	42	13.1. Employer's obligation to treat employees equally and prohibition of discrimination	59
9.2.7. Inventor's right to compensation	42	13.2. Scope of Equality Act	59
9.2.8. Expiration	43	13.3. Employer's duty to promote equality	59
9.2.9. Dispute resolution	43	13.4. Equality plan	59
9.3. Copyright	43	13.5. Prohibition and definition of discrimination	60
9.3.1. Threshold of work	43	13.6. Harassment as a form of prohibited discrimination	60
9.3.2. Copyright in an employment relationship	44	13.7. Duty to make reasonable adjustments for the disabled	61
9.3.3. Computer programs	44	13.8. General legal justifications	61
9.3.4. Layout-design of an integrated circuit	44	13.9. Legal justifications in working life	61
9.3.5. Agreeing on copyright	44	13.10. Positive discrimination	61
10. DATA PROTECTION IN WORKING LIFE	45	13.11. Prohibition on countermeasures	62
10.1. Collection and processing of personal data	45	13.12. Supervisory authorities	62
10.2. Processing information concerning health	45	13.13. Compensation and other consequences	62
10.3. Drug tests	46	13.14. Period for claims and burden of proof	62
10.3.1. Drug tests of job applicants	46	14. EQUALITY BETWEEN WOMEN AND MEN	64
10.3.2. Drug tests during an employment relationship	46	IN WORKING LIFE	
10.4. Personality and aptitude assessments	47	14.1. Scope of application	64
10.5. Using the healthcare services	47	14.2. Authorities and educational institutions' duty to promote equality	64
10.6. Camera surveillance	47	14.3. Employer's duty to promote gender equality	64
10.6.1. Using an image recording	48	14.5. Direct and indirect discrimination on the basis of gender, gender identity or gender expression	66
10.7. Protection of an e-mail message	48	14.6. Gender discrimination in working life	66
10.7.1. Employer's obligations regarding necessary arrangements	48	14.7. Sexual and gender-based harassment	67
10.7.2. Retrieval of e-mail messages that belong to the employer	48	14.8. Employer's countermeasures	68
10.7.3. Opening e-mail messages belonging to the employer	49	14.9. Actions that do not constitute discrimination as referred to in the Act on Equality between Women and Men	68
10.8. Changes to the processing of identification data brought about by section 13a–13k (Lex Nokia) of the Act on the Protection of Privacy in Electronic Communications	49	14.10. Burden of proof	68
10.8.1. Duty of care and duty of planning and co-operation ..	49	14.11. Employer's obligation to report on its action	68
10.8.2. Matters that may become subject to an investigation concerning identification data	50	14.12. Compensation according to the Act on Equality between Women and Men	69
11. OCCUPATIONAL HEALTHCARE	51	69
11.1. Aim and scope	51	14.13. Prohibition on discriminatory vacancy announcements ..	69
11.2. Employer's obligations	51	14.14. Provision of information	69
11.3. Implementation of occupational healthcare	52	to gender equality authorities	69
11.4. Processing data in occupational healthcare	52	14.15. Guidance and advice provided by gender equality authorities	69
12. OCCUPATIONAL HEALTH AND SAFETY	54	15. FREEDOM OF ASSOCIATION AND	
12.1. What does the Act apply to?	54	FREEDOM OF ASSEMBLY	71
12.1.1. Contract work	54	15.1. Freedom of association	71
12.1.2. Other work belonging within the scope of application ..	54	15.2. Freedom of assembly	71
12.2. Employer's occupational health and safety obligations	54	16. PERSONNEL REPRESENTATIVES	72
12.2.1. Occupational health and safety policy	55	16.1. Shop steward	72
12.2.2. Investigating and assessing the hazards of work	55	16.2. Employee representative	72
12.2.3. Work that causes particular risk	55	16.3. Contact person	73
12.2.4. Planning of working environment and work	55	16.4. Occupational health and safety representative	73
12.2.5. Teaching and guidance	56	16.5. Selection of personnel representatives	74
12.2.6. Cooperation	56	16.5.1. The technology industry and the consulting sector	74
12.2.7. Occupational health and safety committee	56	16.5.2. Information technology service industry	74
12.3. Employee's occupational health and safety obligations and rights	56	16.5.3. Election of employee representative	75
12.3.1. Elimination of shortcomings and reporting them	56	16.6. Ensuring the operating conditions of personnel representatives	75
12.3.2. Right to refrain from work	56		

16.6.1. Shop steward	75	22.2. Lay-off of a shop steward, employee representative or occupational health and safety representative.....	95
16.6.2. Employee representative	76	22.3. Advance explanation, hearing an employee and lay-off notice	95
16.6.3 Contact person.....	76	22.4. Postponement, interruption and end of a lay-off	96
17. REPRESENTATION IN THE ADMINISTRATION OF UNDERTAKINGS	77	22.5. Agreeing on a lay-off	96
17.1. Personnel representation based on agreement	77	22.6. Other work during a lay-off	96
17.2. Personnel representation based on law	77	22.7. Fringe benefits during a lay-off	96
17.3. Personnel representatives and their rights, obligations and responsibility	77	22.8. Termination of a laid-off employee's employment relationship.....	97
17.3.1. Release from work	78	23. THE END OF AN EMPLOYMENT CONTRACT	98
17.3.2. Confidentiality	78	23.1. End of a fixed-term employment contract	98
17.4. Consequences for breaking the law	78	23.2. Termination of an employment contract valid until further notice	98
18. PERSONNEL FUNDS	79	23.3. Notice period.....	98
18.1. Establishment of personnel fund	79	23.3.1. Statutory periods of notice	99
18.2. Personnel fund's capital and fund units.....	79	23.3.2. Non-compliance with a period of notice.....	99
18.3. Members of personnel funds.....	80	23.3.3. Termination prior to the start of work.....	99
18.4. Withdrawal of a fund unit	80	23.3.4. Obligation to work during a period of notice.....	99
18.4.1. Payment of fund unit after termination of employment relationship.....	80	23.4. Employee's own resignation	99
18.5. Personnel fund administration.....	80	23.4.1. Consequences of resigning	100
18.6. Corporate restructuring and the dissolution of a personnel fund	80	23.5. Grounds for termination attributable to the employee ...	100
19. CO-OPERATION WITHIN GROUPS	82	23.5.1. Warning.....	101
19.1. Realisation of the group co-operation obligation	82	23.6. Financial and production-related grounds for termination....	101
19.2. Domestic group co-operation	82	23.6.1. Obligation to offer other work.....	101
19.3. International group co-operation	82	23.6.2. Situations in which there at least are no financial or production-related grounds for termination	102
19.3.1. Contractual international group co-operation	83	23.7. Terminating the employment relationship of an employee who is pregnant or on family leave	102
19.3.2. Statutory international group co-operation.....	83	23.8. Termination in connection with a transfer of business.....	102
19.4. Content of group co-operation	83	23.9. Termination in connection with the bankruptcy or death of the employer	103
19.5. Confidentiality	84	23.10. Termination in connection with a restructuring procedure .	103
19.6. Miscellaneous provisions.....	84	23.11. Termination during a lay-off	103
20. EMPLOYEE INVOLVEMENT IN EUROPEAN COMPANIES (SE)	85	23.12. Terminating the employment contract of a shop steward, employee representative or occupational health and safety representative	103
20.1. Provisions concerning employee involvement.....	85	23.13. Employment leave	104
20.2. Negotiations on employee involvement	85	23.14. Re-employment of an employee whose employment contract has been terminated	104
20.3. Content of employee involvement	85	23.15. Cancellation of an employment contract	104
21. CO-OPERATION PROCEDURES	87	23.15.1. Grounds for cancellation	104
21.1. Act's scope of application	87	23.15.2. Examples of grounds for cancellation	105
21.2. Co-operation representatives	87	23.15.3. Exercising a cancellation right	105
21.3. Information to be provided to personnel groups.....	87	23.16. Flat benefit when the employment relationship is terminated	105
21.4. Matters that fall under the scope of the co-operation procedure	88	23.17. Procedure for terminating an employment contract	106
21.4.1. Undertaking's general plans, principles and goals	88	23.17.1. Termination attributable to the employee.....	106
21.4.2. Agreement and decisions by personnel	88	23.17.2. Termination due to other reasons.....	106
21.4.3. Changes in business operations affecting the personnel and arrangement of work.....	89	23.18. Right to pay during waiting days	106
21.4.4. Co-operation procedure in connection with a transfer of business	90	23.19. Liability for damages	107
21.4.5. Co-operation procedure when reducing the use of labour.....	90	23.19.1. Compensation for the termination of an employment relationship.....	107
21.5. Registering the outcome of the co-operation negotiations.....	92	23.19.2. Daily unemployment allowance's effect on damages and the payment of compensation	107
21.6. Right to use experts	92	23.20. Terminating an employment relationship by mutual agreement	107
21.7. Release from work and compensation	92	23.20.1. On the validity and reasonableness of the agreement .	108
21.8. Confidentiality	92	23.20.2. Parties to and background of agreement	108
21.9. Co-operation negotiations' relation to collective agreements' provisions concerning negotiations	93	23.20.3. Employment relationship's termination date and	
21.10. Derogations from the co-operation procedure	93		
21.11. Indemnification and period for filing claim	93		
21.12. Coercive measures.....	93		
21.13. Availability and penalties.....	94		
22. LAY-OFFS	95		
22.1. Grounds for a lay-off	95		

obligation to work.....	108
23.20.4. Employment relationship receivables and holiday compensation.....	108
23.20.5. Separate compensation for the termination of an employment relationship.....	108
23.20.6. Outplacement packages.....	109
23.20.7. Reference letter and certificate of pay.....	109
23.20.8. Waiving rights.....	109
23.21. Reference letter.....	109
23.22. Retirement age.....	109
24. RESOLUTION OF EMPLOYMENT RELATIONSHIP DISPUTES	111
24.1. Negotiation order.....	111
24.2. Written memorandum to association.....	111
24.3. Investigating the legality of the termination of an employment contract.....	112
24.4. Other employment relationship disputes.....	112
25. WAGE SECURITY	113
25.1. Applying for wage security.....	113
25.2. Claims to be paid in the form of wage security.....	113
26. UNEMPLOYMENT SECURITY	115
26.1. Registering at a TE Office.....	115
26.2. Condition of membership and employment.....	115
26.3. Application.....	116
26.4. Period of partial benefit.....	116
26.5. Qualification period.....	116
26.6. Allocations/divisions.....	116
26.7. Amount of earnings-related daily allowance.....	116
26.8. Duration of income security.....	117
27. ON LABOUR OFFENCES	118
27.1. Work safety offence.....	118
27.2. Working hours offence.....	118
27.3. Work discrimination.....	118
27.4. Extortionate work discrimination.....	118
27.5. Violation of the rights of an employee representative.....	118
27.6. Violation of the right to organise.....	118
27.7. Employment agency offence.....	119
27.8. Unauthorised use of foreign labour.....	119
28. LEGAL EXPENSE INSURANCE AND LIABILITY INSURANCE	120
28.1. Legal expense insurance.....	120
28.2. Liability insurance.....	120
YTN unions:	121

2. THE BASICS OF LABOUR LAW

Labour law concerns matters involving the most important resource of business enterprises and other employers, i.e. their employees. Labour law covers norms that regulate the position of an employee and the party that has the work done (the employer).

*Collective Agreements Act (436/1946)
Employment Contracts Act (55/2001)*

2.1. Employment relationship and employment contract

The legal relationship between an employee and an employer is the basis for all labour laws. This legal relationship can be specified further in terms of an employment contract relationship and an employment relationship. An employment contract relationship is created when the employee and employer enter into an employment contract. An employment relationship is created when the employee begins the work specified in the employment contract. Only at this point does the legal relationship become subject to all laws that fall within the scope of labour legislation. In other words, an employment contract relationship often begins before the actual employment relationship.

An employment contract is created when an employee or employees together make a personal commitment to work for an employer under that employer's management and supervision against a salary or some other remuneration. Even if remuneration was not agreed upon, the contract constitutes an employment contract provided that the facts indicate that the work was not meant to be performed without remuneration. In certain borderline cases, it is unclear whether an employment contract exists. Such cases include what are referred to as commission and freelance contracts which often involve entrepreneurship. Work performed under a scholarship constitute another problematic group. In unclear cases, the existence of an employment relationship must always be investigated on a case-by-case basis.

2.1.1. Distinguishing features of an employment contract

For a contract to constitute an employment contract, the following characteristics must be met:

- the contract pertains to the employee's duty to perform the work personally

- the work is performed for the contracting party that is the employer
- the employee works under the management and supervision of the employer (the right of direction)
- the work is carried out against a salary or some other remuneration

The most problematic of these features is the employer's right of direction, or right to supervise work. This is because the employer does not, in fact, have to manage and supervise the work. Rather, it is sufficient that the employer is entitled to exercise the right to supervise work, whenever necessary. This feature is also usually met in situations where the employee works from home or in another workplace of his or her choice. Insofar as this is concerned, the nature of the legal relationship in borderline cases must be decided by means of an overall assessment concerning the employee's position and its dependence or independence. Regarding the requirement of remuneration, it should be noted that the remuneration must have financial value. On the other hand, a mere possibility to earn remuneration usually fulfils the elements necessary for this feature.

According to legal praxis, the managing director of a limited liability company does not work under an employment relationship as referred to in the Employment Contracts Act. Rather, he or she is an organ of the company as referred to in the Limited Liability Companies Act. Correspondingly, the managing director of a cooperative society has been found to be an organ of the cooperative society and not in an employment relationship with the cooperative society. In the event that the parties wish to follow the provisions of labour legislation also in terms of a managing director, this must be agreed upon separately in the director's service contract. This guide does not discuss the service relationship of a managing director. YTN has a separate guide dealing with managing directors' service contracts. On a separate note, it is worth mentioning that the executive directors and managers of associations and foundations do fall under the scope of

the Employment Contracts Act.

2.2. Collective agreements

A part of the conditions governing an employment relationship are agreed on collectively, with collective bargaining agreements. They complement and expand on the provisions of labour legislation in many respects. The law specifies which matters can be agreed upon in collective agreements. In the Collective Agreements Act, a collective (bargaining) agreement is defined as an agreement “concluded by one or more employers or registered associations of employers and one or more registered associations of employees, concerning the conditions to be complied with in contracts of employment or in employment generally”. In principle, the greatest difference between a collective agreement and an employment contract is that when making a collective agreement, associations agree on the conditions of employment relationships on behalf of their members, whereas the conditions of an employment relationship when entering into an employment contract are agreed upon by the employer and employee.

Naturally, all employers must adhere to the collective agreements they have made. In addition, organised employers must adhere to any collective agreements that their employers’ organisation or association has made. The situation is different for unorganised employers. They only need to comply with the generally binding collective agreements of their respective industries.

A collective agreement is considered generally binding if it can be considered a national collective agreement representative of the industry in question. This requirement is fulfilled when the scope of the collective agreement in question covers roughly half of the employees in its industry and when its regional scope covers the entire country. The “industry in question” referred to in law is determined according to the collective agreement’s provision concerning the scope of application. Thus it is not decisive whether the employee is a member of an employees’ organisation or association. In practice, these regulations lead to a situation where a single company needs to comply with various collective agreements in terms of different personnel groups. The generally binding nature of a collective agreement is confirmed by a commission. Decisions concerning the generally binding nature (general applicability) of collective agreements are available (in Finnish) online at www.finlex.fi/normit. Advice on the general applicability of collective agreements is available at YTN affiliates and at occupational health and safety districts.

The legal effects of a collective agreement also include what is referred to as the commitment to labour peace during the validity of the collective agreement. This means that each of the parties to the collective agreement must avoid industrial action pertaining to the collective

agreement or an isolated provision thereof. The contracting parties are also obligated to ensure that the associations, employers and employees under them refrain from illegal industrial action.

2.3. Determination of the employment relationship’s conditions

The conditions of an employment relationship are regulated by laws, collective agreements, the employment contract, established practices, the employer’s rules, etc. Laws include both mandatory and optional provisions. Mandatory legislation does not allow for agreements deviating from it. Optional provisions, on the other hand, may be derogated from with an agreement to that end. When confronted with a decision related to an isolated case on which norm to follow, one can employ the following order of priority:

1. Mandatory legislation (which cannot be deviated from)
2. The provisions of the collective agreements
3. The terms and conditions of the employment contract
4. Optional legislation (which may be derogated from with an agreement)
5. Accepted method or an established procedure of the industry
6. Rules imposed by the employer pursuant to its right to supervise work, i.e. right of direction.

Companies often have various sets of codes or policies which include orders on working hours, fringe benefits, pensions, travel reimbursement, per diem allowances and social benefits. Such a code becomes a part of an employment contract if compliance with it has been agreed upon in the contract in question or if it has, through long-term application, become so established that it must be considered as constituting a condition of the employment contract. In such cases, the employer may not change the code unilaterally. In other cases, codes can be considered as orders given by the employer by virtue of its right of direction and furthermore a code the contents of which may be changed by the employer unilaterally. An individual fringe benefit may also become a condition of the employment relationship even if it was not explicitly agreed upon in the employment contract, should it have been in use for a long period of time and has relevance for the employee.

The determination of an employment contract’s terms and conditions is furthermore subject to what is generally referred to as the principle of favourability, according to which the order of priority between codes and norms may be deviated from in favour of the employee. Due to this, a collective bargaining agreement may provide employees with better benefits than what is required in mandatory legislation. The provisions of collective agreements are likewise minimum provisions, meaning that

employers must, at a minimum, adhere to the salary and other conditions set in those agreements. A non-mandatory legal provision and a non-mandatory provision of a collective agreement can usually be identified from the fact that it contains the phrase “unless otherwise agreed”.

The determination of the conditions of upper white-collar employees’ employment relationships includes its own special feature attributable to the fact that upper white-collar employees do not have collective agreements in all sectors and industries. In sectors where upper white-collar employees have a valid collective agreement, the conditions of their employment relationships are determined as described above. If such a valid collective bargaining agreement does not exist, the situation is different. With such situations in mind, the Federation of Professional and Managerial Staff YTN has made a Basic Agreement with the Confederation of Finnish Industries (EK). According to this Basic Agreement, the general conditions of employment applied to an industry’s salaried employees must also be valid for upper white-collar employees, as applicable. However, these general conditions do not apply to salaries. The Basic Agreement determines the general conditions of employment that should be applied to upper white-collar employees. The Basic Agreement is nonetheless not a collective bargaining agreement, but a recommendation only. In the event that an industry does not have a generally applicable collective agreement and the employer is not a member of an affiliate of a central employers’ organisation or association, the employer is not obligated to apply any collective agreement whatsoever to an upper white-collar employee. The collective agreements made by the Federation of Professional and Managerial Staff YTN are available at: www.ytn.fi.

3. EMPLOYMENT CONTRACT

An employment contract is a basic contract of working life. The format of an employment contract is informal and it is created when an employee and employer agree on the performance of work and the salary to be paid for it as well as on the other benefits and conditions to be applied. It is advisable to draw up employment contracts carefully and, if necessary, to have their content checked by a union/employees' association specialist.

Employment Contracts Act (55/2001)

3.1. Format and content of an employment contract

An employment contract need not follow a prescribed form. Because of this, it can be made orally, in writing or electronically. Tacitly made employment contracts are also valid. Such employment contracts are mainly created in situations where a fixed-term employment contract ends, but the employee continues to work in spite of this. Although an oral contract is as valid as a contract made in writing, it is nonetheless advisable to always make employment contracts in writing. It is preferable due to its clarity and, above all, verifiability. A dispute over the content of a particular condition may arise during the employment relationship. An attempt to prove an orally agreed matter in such situations is very difficult, if not impossible. Provided that an employment contract has been made in writing, a copy must be provided to each contracting party upon request. Employment contract forms (templates) are available on the websites of YTN affiliates. YTN recommends to always make an employment contract and any changes to its terms in writing.

If an employment contract is valid until further notice or for a fixed term of more than a month, the employer must give the employee a written account of the key conditions of working. This account must be given no later than by the end of the first pay period, if said conditions do not become apparent from a written employment contract. Regarding work performed abroad, the account must be given well in advance of the employee travelling to the destination. A written account must also be given of any amendment to a condition of work as soon as possible and, in any case, no later than by the end of the pay period following the amendment, unless the amendment is the result of a legislative amendment or a change to a collective agreement. In practice, employers prefer written employment contracts over giving accounts in writing. This is why written accounts of the

key conditions of work are fairly rare.

The following points must be indicated in a written account of the key conditions of work. Correspondingly, any written employment contract must include at least the following facts:

- parties to the employment contract
- the employer's place of business and the employee's place of residence
- the time when the performance of work begins
- the duration of a fixed-term employment relationship and the grounds for the fixed-term employment
- the trial period, if one has been agreed upon
- the workplace (i.e. the place where the work is performed) or, if the employee does not have a primary fixed workplace, an account of the principles according to which the employee works in various locations or sites
- the employee's primary tasks
- the collective agreement applicable to the job
- the grounds for determining the salary and/or other remuneration as well as the pay period
- regular working hours
- the determination of an annual holiday
- the period of notice or the grounds for determining it
- in an assignment abroad that lasts for at least a month, the length of the assignment, the currency in which the salary in money is paid, any compensation in money to be paid abroad and fringe benefits, as well as the conditions for the employee's repatriation.

In addition, it is a good idea to include an indication of the following:

- holiday bonus/end-of-holiday pay
- sick pay
- training organised by the company
- salary development
- travel and other expense allowances.

In particular, it is worth noting that one need not agree

on a trial period or a non-competition or non-disclosure clause when entering into an employment contract.

3.2. Binding nature of an employment contract prior to its beginning

An employment contract is usually signed well in advance of the job's beginning. If the employee, for one reason or another, wishes to withdraw from the employment contract prior to the beginning of work, it is only possible by following the period of notice which would apply to the employment relationship in any case. If the period of notice is not complied with and the employee does not begin working as agreed, the employer may request that the employee pay a sum corresponding to the salary of the period of notice as compensation.

Section 23.3.3. contains further information on giving notice prior to beginning work.

Naturally, an employment contract is also binding on the employer even before the work begins. Because of this, the employer may not terminate an employment contract at this point unless there are legal grounds for doing so. If no such grounds exist, the employer must pay compensation for the unlawful termination of the employment relationship. Should the employer not comply with the period of notice, it must pay the employee full salary for a period corresponding to the period of notice as compensation.

A fixed-term employment contract may not be terminated, unless such a possibility has been expressly agreed upon. This also applies to the time prior to the beginning of work.

An employment contract cannot be cancelled prior to the beginning of the work on the basis of any possible trial period agreed on by the parties. This should be kept in mind in situations where an employee receives a new and more attractive job offer after signing an employment contract for another job.

3.3. Duration of employment contract

An employment contract may be valid for a fixed period of time or until further notice. In the event that there is no clear agreement on this, an employment contract is always considered valid until further notice. Fixed-term employment contracts are allowed only if there are justified grounds for them or if such a contract is based on the employee's own initiative or if it applies to work performed subsequent to the retirement age of 68. Indefinitely (until further notice) valid employment contracts are always allowed.

3.3.1. Justified grounds required for fixed-term employment contracts

The most important reason that justifies the making of a fixed-term employment contract is the nature of the work concerned. This means hiring a person to perform a particular task only, for example. The seasonal nature of a job may also be cause for concluding a fixed-term employment contract. A fixed-term employment contract may also be concluded when the case involves a substitution or internship or when the employer has some other justified reason related to the company's activities or the work to be performed.

A fixed-term contract is furthermore permissible when the employer's justified grounds concern the unestablished nature of service demand. If no such justified grounds for concluding a fixed-term contract exist, the contract is considered valid until further notice. The law does not impose a maximum number or duration applicable to fixed-term employment contracts, but several consecutive fixed-term employment contracts or their combined duration may indicate that the need for workforce is permanent. Each fixed-term employment contract must also have separate legal grounds. The use of recurring fixed-term employment contracts is not permitted when the number of those employment contracts or their combined duration or the aggregate they constitute proves the employer's need for workforce to be permanent.

In other words, the use of fixed-term contracts is allowed when the case involves the performance of a particular job or compilation of tasks or a particular short-term work that the employer does not have done continuously. The acceptability of the use of a fixed-term contract is dependent on two factors. The use must be justified in terms of the employer's operations and the work it is having done and the reason may not be an attempt to circumvent provisions concerning an employee's protection against termination.

In terms of its duration, a fixed-term employment contract may be tied to calendar time or a particular work performance. A contract in which the duration of the employment relationship is indicated in some other way – such as when hiring an employee to substitute for another employee – is also considered a fixed-term employment contract. In the event that a fixed-term employment contract is concluded for a fixed term that exceeds five years, both parties are entitled to terminate the agreement after five years as if the contract were a contract valid until further notice. In other cases, a fixed-term contract cannot, in principle, be terminated at all, unless such a possibility has been agreed upon separately. It is because of this that it is always worth careful examination whether the parties should agree on the option of termination when entering into a fixed-term contract.

If an employer allows an employee to continue working in a fixed-term employment relationship beyond the agreed term, the employment contract has changed into one that is valid until further notice. Such cases involve what is generally referred to as a tacit extension of the employment relationship.

3.4. Trial period

A part of the validity period of an employment contract may consist of a trial period, during which time the employment contract may be cancelled bilaterally without a period of notice. A trial period may be applied to both a fixed-term employment contract and one which is valid until further notice. An employment relationship does not include a trial period if one has not been separately agreed upon in the employment contract. Thus an employer may not unilaterally decide on a trial period. A trial period's entry into force may not, primarily, be agreed upon once working has commenced. However, a trial period may be agreed on during the employment relationship if the tasks and the employee's position within the company's organisation undergo material changes. This is nevertheless exceptional, and in such cases the trial period applies solely to the new tasks. Should the trial period lead to a rescission, the employee would therefore have the right to return to his or her former tasks.

The purpose of a trial period is to give the parties to the employment relationship a period to consider continuing the employment relationship. This is why an employment relationship may be cancelled without a period of notice and grounds for termination during a trial period. This right to cancel the employment contract lies with both contracting parties. Nonetheless, an employment contract may not be cancelled during a trial period due to what is generally referred to as wrongful grounds. Such grounds include the employee's gender, age, health, national or ethnic origin, sexual orientation, language, religion, opinions, family relations, trade union activity, political activity and other comparable reasons. An employee's pregnancy is likewise a wrongful ground. A shop steward's special protection is not in force during a trial period, due to which his or her employment contract may be cancelled in the same manner as any other employee's. An employment relationship may not be cancelled during a trial period before the work has begun. Nor may an employee cancel an employment relationship during its trial period, should the grounds be wrongful. In an employee's case, the grounds are wrongful when, for example, the employee indicates that he or she has received a better job offer from elsewhere.

The length of a trial period is a matter of agreement. The length may nevertheless not be longer than four months. In exceptional cases, a trial period may be agreed to be as long as six months, provided that the employer arranges for the employee at least four months of continuous

training related to the job in question at the beginning of the employment relationship. Conventional job orientation, however, does not qualify as such training. In a fixed-term employment relationship of less than eight months, the trial period may not exceed half of the employment contract's duration.

Legal praxis has adopted the view that the trial period provision is not permitted when the employee returns to a job similar to his or her former job in the service of the same employer within a short period of time and when no special reason for the trial period can be indicated. In such situations, the trial period provision may be considered an evasion of protection against termination.

3.5. A transfer of business's effects on employment relationships

A transfer of the employer's business means transferring the company, business, corporation or foundation or an operational part thereof to another employer if the business practised as a primary or secondary occupation remains as is or similar after the transfer.

Legal praxis has found situations in which the following requirements are met to constitute a transfer of business:

- There is a contractual relationship between the transferor and transferee
- The transfer concerns a business or part thereof that constitutes an operational entity
- Operations continue more or less unchanged
- Operations continue without delay (i.e. without a longer period of suspension).

An acquisition of the entire share capital of a limited liability company does not constitute a transfer of business, since in such cases the employer does not change. Only the owner of the company changes. Nor is a change in a company's form of incorporation or merger seen as a transfer of business.

When a transfer of business takes place, the rights and obligations of the employer transfer to the new owner or holder immediately. Following the change in ownership, then, the new owner is responsible for salaries, annual holidays, holiday bonuses, etc. The transferor and transferee are jointly and severally liable for any salary arrears outstanding prior to the transfer of business. However, in such cases the transferor is liable for them with regard to the transferee, unless otherwise agreed. In the transfer of a bankruptcy estate, the transferee is not liable for any salary arrears or other receivables due in relation to an employment relationship that have fallen due before the transfer, except in cases where the same people exercise or have exercised control in the company declared bankrupt and transferee company through ownership, an ag-

reement or some other arrangement.

In a transfer of business, employees transfer into the service of the new employer as “old employees”. The employment relationship continues without interruption, which is also why the term of service that accumulated prior to the transfer is also taken into account when calculating the length of the employment relationship. This also means that the terms and conditions of the employment relationship or the employee’s benefits will not be subject to any changes. The applicable collective agreement, on the other hand, may change if the new employer is organised differently than the transferor-employer. The change may take effect only after the term of the collective bargaining agreement has come to an end.

The employer (transferee) may change the conditions of an employment relationship unilaterally only if it has the proper and weighty reason required for a termination of the employment contract. In such cases, the change may be effected only in line with the period of notice. If the employment contract is terminated because the employee’s terms of employment deteriorate to a material extent due to the transfer of business, the employer is considered liable for the end of the employment relationship.

Sections 21.2. and 21.9. contain further information on the employer’s co-operation obligation in connection with a transfer of business.

3.6. Employee’s general obligations

An employee must perform the work assigned to him or her carefully and comply with the rules given by the employer within the framework of its authority on the way the work is to be performed, its quality and scope and on the working hours and workplace. An employee must also avoid everything that is in conflict with the actions that can be required of an employee in his or her position within reason. The requirements of this loyalty obligation may also extend to the employee’s free time. The employee may not publicly criticise his or her employer during free time, for example. These requirements imposed by law are proportionate to the employee’s position within the company in such a way that the obligations of employees who work in managerial positions are more extensive than those of other employees.

Section 12.3. contains more information about an employee’s occupational health and safety obligations.

3.7. Business and trade secrets

According to the Employment Contracts Act, an employee may not, during his or her employment contract, exploit or express to others the employer’s business and trade secrets. This prohibition applies to all business and

trade secrets the employee has been entrusted with or of which he or she has otherwise become aware. If the employee has obtained such information unlawfully, the prohibition will continue even after the employment relationship ends.

According to the Criminal Code, a violation of a business or trade secret is prohibited during an employment relationship and for a two-year period following its termination. However, the prohibition referred to in the Criminal Code only concerns situations in which a person discloses the information (secret) to gain financial benefit for himself or herself or another person, or when the secret is divulged with the intention of causing harm to someone.

An employee who violates business or trade secrecy may have to compensate for the damage or loss caused. Business and trade secrets means both financial secrets – such as information pertaining to a company’s organisation, agreements, marketing and price policies – and technical secrets, such as information concerning structures and material compounds.

A business secret is characterised by the fact that its secrecy carries significance for the business activities of the company in whose possession the business secret is.

3.8. Non-disclosure agreement

The restrictions concerning business and trade secrets provided in the Employment Contracts Act are valid only for the term of an employment relationship. An employee’s non-disclosure obligation may be extended to the time following the end of the employment relationship only with a separate non-disclosure agreement. At times, securing the interests of a particular employer even necessitates such an agreement. Non-disclosure agreements may, however, turn out to be detrimental to the employee. This is why it is not advisable to draw up non-disclosure agreements with too broad a scope and too many restrictions. Such agreements must always detail which matters are to be kept secret and for how long.

3.9. Prohibition concerning competing activity

The employee may not perform work for others or participate in activities which, considering the nature of his or her work and position, may cause manifest harm to the employee’s employer as a competing activity contrary to fair employment practices. Nor may an employee, during the employment relationship, undertake any measures to prepare for competing activity that may be considered unacceptable in light of the aforementioned. This kind of competing work may nevertheless be performed at the employer’s consent. The same applies if the employer is aware of the competing activity when entering into the employment contract and it is not, at the time, expressly agreed that the competing activity must be discontinued.

If the secondary occupation involves a different industry and no competition arises, the work in question may naturally be performed. However, such a permissible secondary occupation may not take so much time that it has adverse effects on the performance of the primary occupation.

The prohibition concerning competing activity takes effect from the moment the employment contract is concluded, even if the work had not yet started. Competing activities are also prohibited during a period of notice, regardless of an obligation to work, and during annual holidays. A new employment contract may nevertheless be signed while still working at the old workplace. In such cases, work in the service of the competitor may not be commenced prior to the end of the employment relationship. Business activity that competes with the employer's business performed in the name of one's own company while the employment relationship lasts may also be considered prohibited competing activity.

The consequences for a breach of this provision may be quite harsh. Material breaches usually result in a cancellation of the employment relationship. Damages may also be claimed from the employee.

3.10. Non-competition agreement

A non-competition agreement may be concluded only for a particularly weighty reason related to the employer's operations or the employment relationship. An agreement such as this restricts the employee's right to enter into an employment contract with the employer's competitor after the employment relationship has ended. A non-competition agreement may also restrict the employee's right to engage in such activity using his or her own name. The purpose of a non-competition agreement is to secure certain interests of the employer. For an employee, this kind of an agreement is always harmful to a greater or lesser extent. Because of this, non-competition agreements should not be entered into without thorough consideration.

Should it nevertheless be necessary to enter into a non-competition agreement, its restrictions should be defined in as much detail as possible. In such cases, it is good idea to name the companies and products the employee may not get or be involved with, for example, as well as the geographical area in which the employee may not operate.

According to the law, a non-competition agreement may not be concluded at all unless there is a particularly weighty reason for doing so. When assessing the existence of such a reason, the factors accounted for include the quality of the employer's activities and a need for protection attributable to the maintenance of a business

or trade secret or special training arranged for the employee by the employer. The assessment must also take into account the employee's position and duties. Non-competition agreements may not be made with employees who, in truth, do not possess know-how that is of material importance to the company's operations. Non-competition agreements may not be made in tasks which do not involve the employer's genuine need to restrict competition.

Non-competition agreements may be considered permissible in cases where the employee's tasks involve product development, research or other comparable operations and when the employer possesses knowledge and competence not in the general use of competitors. The conclusion of non-competition agreements is more permissible in tasks in which the rapid rate of new information and technological advances are factors with material relevance for production operations. A particularly weighty reason attributable to an employment relationship may be at hand when customers are strongly committed to a company through an employee engaged in sales work. In such cases, the grounds for the non-competition agreement is the interest to retain the customers. Special training paid for by the employer may also function as grounds for a non-competition agreement. In such cases, factors such as the costs of the training and any paid leave or scholarship granted by the employer for the purposes of the training may be taken into consideration. Conventional advanced or further training provided by the employer cannot be cited as grounds for a non-competition agreement. Nor can any training acquired and paid for by the employee himself or herself usually serve as grounds for a non-competition agreement.

A non-competition agreement may restrict an employee's right to enter into a new employment contract or practise his or her profession for a maximum period of six months following the end of the employment relationship. In exceptional cases, a non-competition agreement may be in effect for up to a year, provided that the employee receives reasonable compensation for the damage or loss caused by the commitment.

A non-competition agreement may include an agreement on a contractual penalty which will fall due if the agreement is breached. Such a contractual penalty may not exceed the salary paid to the employee during the six months preceding the termination of the employment relationship. If a contractual penalty has not been agreed on, the employee is obligated to compensate for the damage caused to the employer by the breach of the non-competition agreement in accordance with the provisions of the Tort Liability Act. YTN recommends not agreeing on a separate contractual penalty.

Employees who, by virtue of their duties and position are considered to perform a managerial task of a com-

pany, corporation or foundation or an independent part thereof, or to be in a directly comparable independent position, are in a special position in terms of making non-competition agreements. This is namely because they are not subject to the aforementioned restrictions concerning the duration of a non-competition agreement or a possible contractual penalty.

A non-competition agreement is not binding on an employee if the employment relationship has ended due to a reason attributable to the employer. Thus it makes no difference which party terminates the employment contract. The decisive factor is the reason for the termination. It should furthermore be noted that a non-competition agreement is invalid insofar as it has been concluded contrary to the provisions of the Employment Contracts Act.

3.11. Employer's general obligations

An employer must in all respects develop its relations with its employees as well as its employees' mutual relations. The employer must ensure that an employee can perform his or her work also when the company's operations, the work to be performed or working methods change or are being developed. The employer must endeavour to advance employees' possibilities to develop according to their abilities during their careers.

The employer is obligated to treat its employees equally, so that no-one is unjustifiably placed in a position different from that of others due to age, origin, nationality, language, religion, beliefs, opinion, political activity, union activities, family relations, health, disability, sexual orientation or some other reason pertaining to the person. This requirement of an employee's equal treatment must also be adhered to in recruitment. According to the Act on Equality between Women and Men, gender discrimination is also prohibited. More on these in chapters 13 and 14.

Fixed-term and temporary employees may not be subject to terms and conditions of employment that are less favourable than those in other employment relationships merely due to the duration of the contract or the length of working hours, unless there are proper and acceptable reasons for doing so. In all other respects as well, the employer must treat employees equally, unless there is an acceptable reason for deviating from this principle.

An employer must offer work for part-time employees if the employer needs more employees in tasks suitable for the part-time employees. To meet this obligation, the employer is obligated to provide part-time employees with training that can be reasonably arranged taking into account the employer's suitability. To ensure that part-time and fixed-term employees have the possibility to apply for positions about to become vacant, the

employer must announce such positions according to the company's established method for doing so.

An employer's obligations also include arranging the necessary breaks and tools for its employees.

Section 12.2. contains information about the employer's occupational health and safety obligations.

3.12. Salaries

The obligation to pay salaries is the employer's most important obligation. Salaries must primarily be paid in the legal tender of the country in question. However, the employer and employee may agree that the salary or part thereof be paid in the form of other remuneration having monetary value, such as in the form of fringe benefits. The prerequisite for this is that the other agreed remuneration has monetary value. If a salary consists of a salary in money and fringe benefits, the hourly and daily salary is calculated from the total salary. Any possible general pay increases must also be calculated on the basis of the total salary.

The employer and employee are free to agree on the grounds for the salary. Because of this, performance-based pay (such as commissions, bonuses, share of profits) can be applied in addition to a basic salary or in lieu of it. Performance-based pay must be determined only according to performance factors that the employee himself or herself can influence. The principles for calculating payment by results must always be agreed on in detail and in writing, in terms of both profit and expense factors. In the case of payment by results, one must always also agree on how it is paid at the end of an employment relationship. Regarding salesmen, the Act on Commercial Representatives and Salesmen provides for the right to a subsequent commission. Because of this, salesmen are entitled to receive a commission for an agreement created after their employment relationship has ended if the agreement can primarily be considered to have been arrived at with the salesman's contribution during the validity of his or her employment contract and if the agreement is made within a reasonable period of time following the termination of the employment contract.

The maximum pay period for a primary occupation is one month. The salary must be paid no later than on the final day of the pay period. Parties often agree on the payment of salary earlier during the pay period. However, in cases involving hourly or daily wages, salaries must, as an exception to the above, be paid at least twice a month. If part of the salary is determined as a share of profits, commission or some other comparable basis, the payment period may be longer than the aforementioned one, but nonetheless no longer than 12 months.

The salary must be paid to the bank account indicated by

the employee. The employer is responsible for the costs arising from the payment methods. The salary must be at the employee's disposal on its due date. In the event that banks are closed on the due date, the salary must be at the employee's disposal on the preceding working day. When paying a salary, the employer must provide the employee with a payslip that indicates the amount of the salary and basis for its determination. A salary may be paid in cash only for compelling reasons. Section 23.18. contains information on the right to salary during pregnancy.

If an employment relationship is not subject to any collective agreement, the salary is determined according to the employment contract between the employer and employee. If no agreement has been made on the remuneration to be paid in the employment relationship, the employee must be paid normal and reasonable wages for the work performed.

The employer is entitled to set off any clear and undisputed receivables from the employee's salary. However, the maximum amount that can be claimed equals the sum that could be attached, i.e. a third of the net salary. Naturally, the employer may not set off any disputed receivable from the employee's salary.

The employer's obligations cover the measures of preventive occupational healthcare, and do not therefore pertain to medical treatment.

Occupational Health Care Act (1383/2001)

in principle, every member has one vote, but the bylaws may provide that the number of votes depends on the size of the fund unit. The bylaws may also provide that a meeting may be participated in by mail or with the help of technical tool, provided that verification of the right to participate and the validity of the vote count is possible using procedures comparable to those used for a regular fund meeting. Among other things, a fund meeting decides on any amendments to the fund's bylaws, voting and election regulations and the members of the board of directors. The meeting also adopts financial statements and grants discharge from liability and decides on any measures necessitated by profit or loss and on the dissolution of the fund. A personnel fund must have a board of directors composed of at least three members. The board represents the fund and manages its operations.

An employer or the representative of an employer who wilfully or through gross negligence to the detriment of the employee neglects to keep books on working hours or annual holidays, keeps them erroneously, alters, conceals, destroys or renders them impossible to read may be sentenced to a fine or at most six months' imprisonment.

The same punishment applies to an act carried out despite an express order or prohibition by an occupational health and safety authority, which is a punishable act according to the Working Hours Act or the Annual Holidays Act.

3.12.1. Payment of salary when performance of work is prevented

The employer is obligated to pay an employee a full salary if the employee has been at the employer's disposal in accordance with the employment contract, but prevented from doing the work in question due to a reason attributable to the employer.

However, the situation is different if working is prevented due to a fire or an exceptional natural event that affects the workplace or some other comparable reason independent of the employer and employee. In such cases, the employee is entitled to receive pay for the time of the prevention, but only for a maximum period of 14 days. After this, the employer may suspend the payment of salaries. If the reason independent of the parties to the employment contract that prevents work is the industrial action of other employees that is not interdependent with the employee's terms of employment or working conditions, the employee is entitled to receive his or her salary only for a maximum period of seven days. An employer may deduct from the wages paid to an employee the amount saved due to the employee being prevented from working and the amount the employee has earned with other work or willfully not earned.

3.12.2. Sick pay

According to the Employment Contracts Act, an employee who is prevented from working due to sickness or injury is entitled to sick pay. If the employment relationship has continued for at least a month, the employee is entitled to receive full pay for the time of prevention until the end of the ninth working day following the day the employee fell ill and at most until the time as the employee's right to a daily allowance pursuant to the Health Insurance Act commences. In employment relationships that have continued for less than a month, the employee is correspondingly entitled to receive 50 per cent of his or her salary. However, the incapacity for work may not be caused by the employee's willful or gross negligence. Most collective bargaining agreements, however, agree on employees' entitlement to receive sick pay for a considerably longer period of time. Sick pay has often been agreed on as follows:

The employment relationship has continued without interruption for

Sick pay	
1 month – less than 1 year	for 4 weeks
1 year – less than 5 years	for 5 weeks
5 years or longer	for 3 months

The employer is entitled to deduct from an employee's sick pay any daily health insurance allowances and other

comparable compensation paid to the employee simultaneously. Sick pay is usually calculated from the basic salary, not taking into account overtime pay and other increments. Some collective agreements have, however, departed from this main rule. If an employee's incapacity for work is not due to illness or an injury, the employee is not entitled to sick pay (cosmetic surgery performed at the employee's own wish, for example). The employee must present a reliable account of the incapacity for work to the employer upon request. Many companies are in the habit of asking for a doctor's certificate or some other equivalent account only if the incapacity for work continues for more than three days. Despite this practice, the employer always has the right to request an account for an even shorter period of absence.

3.13. Changing the conditions of an employment relationship

In the event that an employment relationship becomes a lengthy one, the need to change the conditions of the employment contract usually arises at some point. Employment contracts may, of course, always be changed by mutual agreement of the parties. If a particular condition of an employment contract is changed with an agreement, all other conditions in the contract will primarily remain in force as such. An employment contract should nevertheless always be re-written when material changes are made.

The employer may not change the conditions of an employment contract unilaterally. The sole exception to this rule is a situation where the employer has justified grounds to terminate the entire employment contract. In such cases, the employer may change the conditions of the employment contract unilaterally and the changes take effect once the period of notice comes to an end. In other words, the employer terminates an employment contract while offering a new employment contract in return. Should the employee refuse to accept such a change to the employment contract and should there be no grounds for termination required by law for the change, the employee may stop working once the period of notice has ended and claim damages for wrongful termination. The employee may also continue working and contest the grounds for the employer's action. In any case, an evidentiary complaint should be made immediately, because otherwise the employee's action may be construed as a tacit approval of the changes.

It is also worth noting that an employer's right to reduce wages as an alternative to termination is restricted by Supreme Court decisions (KKO 1997:83 and 1996:89). According to one of the aforementioned decisions, a reduction of wages must, along with other restructuring measures, be necessary to secure the company's conditions for operating due to the company's loss-making operations. According to the other decision mentioned, the

reduction of wages must be, together with other restructuring measures, necessary to secure the company's operating conditions.

The employer has the right to unilaterally change an employment relationship into part-time employment by way of a period of notice only if there are financial and production-related grounds for termination. If the employer has unilaterally changed an employee's employment relationship into a part-time one, the employer must primarily offer additional work for the employee in a part-time job when the employer is seeking new workforce for a similar part-time or full-time job. In the event that the new work requires training that the employer can within reason arrange, the employee must be provided with such training.

By virtue of its right to supervise work, the employer is entitled to make only temporary and short-term or minor changes to an employee's tasks. The broader the job description in an employee's employment contract is, the greater the employer's possibility to determine the employee's tasks within the framework of its right to supervise work.

4. WORKING HOURS

Working hours are governed by the Working Hours Act. In addition to employees in the private sector, the Act applies to public sector employees and civil servants. Nearly all upper white-collar employees belong within the scope of the Working Hours Act and are thus entitled to, for instance, overtime compensation.

A contract that reduces the benefits conferred on an employee pursuant to the Working Hours Act is invalid. Thus any employment contract that includes an agreement on the performance of overtime and no compensation for such overtime is not valid.

Working Hours Act (605/1996)

4.1. The Working Hours Act's scope of application and executive management

The applicability of the Working Hours Act on any particular employment relationship determines whether the employee is entitled to compensation (for example a weekly rest period and overtime compensation) under said Act. In principle, all upper white-collar employees belong within the scope of the Working Hours Act.

According to a provision for derogation included in the Act, the Working Hours Act does not apply to work that, on the basis of the tasks it involves or otherwise due to the employee's position, must be seen as management of a company or an independent part thereof or an independent duty directly comparable to management. In practice, the provision for derogation means that only a company's executive management remains beyond the Act's scope of application.

For any particular case to constitute the management tasks of an independent part of a company as referred to in the Working Hours Act, the part managed must be operatively independent and substantial in terms of its size. The size of independent part may be measured by net sales or the number of employees, for example. A typical example of the manager of a company's independent part is a factory manager, but the manager of a major regional office may also be considered a manager of a company's independent part. In contrast, a separate unit that belongs to a company's organisation does not meet the criteria set for a company's independent part.

Nor is the Working Hours Act applied to employees whose tasks are equal to the management duties of a company's independent part. In such cases, the position and duties of the person who is in charge of the tasks must be independent and he or she must exercise decision-making powers equal to management. The person must possess special know-how and be able to decide on his or her working hours. Furthermore, the terms and conditions of such a person's employment relationship must be equal to the terms and conditions applied to

those who take part in management tasks and clearly better than the terms and conditions of the employment relationships of those who work under the person. In practice, this means that the person's position is at least above that of middle management.

However, the employee's formal position within the organisation is not decisive as such, even if it is of key importance. When assessing whether an upper white-collar employee is covered by the scope of the Working Hours Act, attention focuses on the true nature of the tasks and position. What is decisive is the employee's authority to participate in the company's actual management. In a simple organisation, any administrative, commercial and technical directors or managers working in the immediate supervision of executive management – i.e. in practice, the company's management team – remain outside the Act's scope of application. On the other hand, middle management falls within the Act's scope of application, even though their tasks may often be demanding management and planning tasks.

The employer's size matters when assessing the scope of application of the Working Hours Act. The smaller the company involved is, the fewer the number of upper white-collar employees who remain beyond the scope of application of the Working Hours Act. The Act's restrictions, however, cannot be evaded by splitting the company up into smaller independent profit centres, for example.

4.2. The Working Hours Act's application to telecommuting and sales work

Telecommuting refers to a flexible way of organising work based on optionality. The work is performed where it is most efficient and expedient from the point of view of the employee, employer and the work to be performed. Telecommuting is performed outside the workplace, such as from home, a holiday home or in the form of mobile work when traveling.

The Working Hours Act only applies to work in which the

employee's use of time can be monitored by the employer. This requirement is not usually met with regard to telecommuting, due to which the applicability of the Working Hours Act on telecommuting must be agreed to separately with the employer.

Nor is the Working Hours Act applied to work that an employee performs outside his or her fixed workplace, if the employee is at liberty to decide when the work is performed without the employer's monitoring. The provision applies to the work of, among others, a commercial representative or a salesman. In such jobs, the employee is free to decide when, where and who he or she meets for business, due to which "field work" does not fall within the scope of the Working Hours Act. Even in the case of sales and commercial representatives, any work performed at an office under the management and supervision of the employer does fall within the scope of the Working Hours Act.

4.3. Regular working hours

Regular working hours mean the working hours agreed upon in the employment contract or the collective agreement.

According to the Working Hours Act, regular working hours may not exceed 8 hours a day or 40 hours a week. Regular weekly working hours may, according to a working hour arrangement drafted in advance, also be organised as an average of 40 hours a week for a maximum period of 52 weeks.

Nowadays, the most common regular working hours of employees is 7.5 hours a day or 37.5 hours a week. However, the provisions in the Working Hours Act that concern overtime only become applicable when 8 hours a day or 40 hours a week has been reached.

4.3.1. Local agreement on working hours based on a collective bargaining agreement or a generally applicable collective agreement

A local agreement means that national labour market organisations have transferred the possibility to agree on working hours in derogation of the Working Hours Act to workplaces with the collective agreement. A local agreement on regular working hours may be based on a collective (bargaining) agreement, a generally applicable collective agreement or the law.

An employer or a national employers' association may agree with a national employees' association on regular working hours that derogate from the law with a collective agreement. Regular working hours based on a collective agreement may not exceed an average of 40 hours a week within a 52-week reference period.

The Federation of Professional and Managerial Staff

(YTN) has agreed on the possibility to make local agreements concerning working hours with a collective bargaining agreement entered into with the Federation of Finnish Technology Industries, Finnish Energy Industries, Service Sector Employers PALTA, the Chemical Industry Federation of Finland and the Finnish Association of Consulting Firms SKOL.

An unorganised employer may also make a local agreement on working hours with its personnel based on the generally applicable collective agreement (see section 2.2. for more details on collective bargaining agreements) and within its framework. Such a local agreement can be concluded with a shop steward or an employee representative or, if such a person has not been elected, some other representative authorised by the personnel. If there is no personnel representative, the agreement can be concluded with the personnel or a personnel group. A local agreement must be made in writing, unless the parties consider this unnecessary. However, a local agreement must always be made in writing if it is valid for more than two weeks.

The agreement may be valid for a fixed period of time or until further notice. An agreement that is valid until further notice can be terminated when the reference period for the working hours comes to an end. The period of notice is two weeks, unless otherwise agreed. A fixed-term local agreement that is valid for more than a year can be terminated after four months in the same manner as an agreement that is valid until further notice. A local agreement concluded by a personnel representative must be made known to the employees no later than a week prior to the commencement of its application. The agreement is binding on all employees that the personnel representative who made the agreement can be considered to represent. However, an individual employee has the right to comply with his or her earlier working hours, provided that the employee informs the employer of this no later than two days prior to the application of the new system commencing.

4.3.2. Local agreement on working hours based on law

The Working Hours Act gives an employer and an employee the possibility to agree on the extension of daily (24-hour) working hours by a maximum of one hour. An agreement such as this is possible whenever it is not prohibited by a collective agreement. In other words, an agreement that extends working hours by an hour can also be made in a situation where there is no collective agreement at all. The extension is subject to the restriction that the regular working hours must average out to the normal 40 hours a week during a maximum period of four weeks. In addition, the weekly working hours may not exceed 45 hours even during the extension period. The recommendation is to also make any agreements such as these in writing.

4.4. Definition of working hours

Working hours include the time spent on work at the workplace as well as the time that the employee is obligated to be present and at the disposal of the employer at the workplace. In addition, working hours include work that the employer assigns to an employee to perform outside the workplace.

Training incorporated and arranged in connection with working hours is clearly part of working hours. Training sessions are also included in working hours when the training is ordered by the employer and necessary for the employee to be able to perform his or her job (such as the introduction of a new IT system).

Participation in optional training is not considered as part of working hours, unless it has been specifically agreed upon with the employer. A corresponding principle is also applied to what are generally referred to as business entertainment events. If an employer orders an employee to take part in such an event, the time spent is included in working hours. If participation is optional, it takes place on the employee's own time.

A rest period is not included in working hours if the employee may leave the workplace during it (e.g. lunch breaks). Time spent in medical check-ups is not included in working hours, unless it has been agreed upon separately or unless otherwise agreed in a collective agreement.

4.4.1. Travel time

In the case of upper white-collar employees, time spent on travel within the framework of regular working hours is not usually included in working hours. However, the salary of an employee receiving a monthly salary is not reduced, even if part of the working day was spent on traveling. Drawing the line between working hours/travel time has significance in terms of counting overtime.

Travel time is seen to be included in working hours only when the travel is simultaneously a work performance. The question of when travel becomes a work performance is decided on a case-by-case basis. Tasks where the performance is equivalent to travel are considered as work performance (e.g. transporting gravel as a work assignment). Performing work with a laptop computer during travel does not make the travel a work performance when looked at from the perspective of the Working Hours Act. It is advisable to agree on travel completed during regular working hours and its inclusion within working hours with the employer, to ensure any possible compensation for overtime.

According to the Working Hours Act, travel outside regular working hours is considered an employee's free time,

for which the employer is not obligated to pay separate compensation. Compensation for travel time is paid on the basis of the collective bargaining agreements applicable in various industries or on the basis of workplace-specific agreements. It is also possible to agree on compensation for travel during free time within the scope of an employment contract. YTN recommends that an upper white-collar employee be compensated for travel during free time according to the principle of an hour for an hour.

4.5. Stand-by time

An employer and employee may agree on a stand-by time in the framework of which the employee is obligated to remain available to be called in to work when necessary. This kind of stand-by time is not counted in as working hours.

The stand-by time can be agreed in such a way that the employee must stay at home or remain otherwise available (by the phone, for example) for the duration of the stand-by time. However, the length and recurrence of the stand-by time may not place unreasonable strain on the employee's use of his or her free time.

According to the Working Hours Act, stand-by time spent at home is subject to a minimum compensation of 50 per cent of the employee's salary or a corresponding number of hours as free time during regular working hours. Compensation for stand-by time on a mobile phone must be agreed on separately, as it is not mentioned in the law.

If an employee is called in to work during stand-by time, the time spent at work is considered working hours and compensated for in accordance with the Working Hours Act. In most cases, such time is considered overtime.

4.6. Additional work

Additional work is work performed in addition to the agreed regular working hours, but not exceeding the maximum amount of regular working hours as provided in the Working Hours Act. For example, if the employer and employee have agreed on regular working hours equal to 7.5 hours per day, the nature of any work performed until the eight-hour limit is additional. Additional work is accordingly the case if the employee works on his or her regular day off in such a way that the daily (24-hour) working hours do not exceed the limit of 8 hours and the weekly working hours do not exceed the limit of 40 hours.

Additional work may primarily be ordered only with the consent of the employee, meaning that an employee may refuse to perform additional work. The employee may give his or her consent to additional work as early as

when concluding the employment contract, but additional work can also be agreed to on a case-by-case basis. On the other hand, the employee does not have the right to perform additional work without the employer's request or consent.

Additional work is primarily compensated for according to simple hourly wages or exceptionally, as agreed in some collective agreements, according to increased hourly wages.

4.7. Overtime

Overtime is work performed in addition to the maximum length of regular working hours provided in law (i.e. more than 8 hours a day or 40 hours a week). Overtime requires, first and foremost, the consent of the employee, separately for each instance of overtime. Thus the consent to overtime cannot be given in an employment contract, for example. In other words, the employee, as a rule, has a right to refuse to work overtime.

Secondly, overtime requires the request or consent of the employer. This being the case, the employee is not entitled to overtime compensation for any extra work done, unless the overtime in question has been specifically agreed upon with the employer.

In some cases, the employer may be considered to have given tacit approval for the overtime. This can be the case when the overtime has been necessary to bring a particular task to conclusion and the employer has been aware of the situation. An example of the tacit approval of overtime is a situation in which the employer has required a task to be completed while being aware of this not being possible within the framework of agreed working hours.

Even for employees who primarily remain beyond the scope of application of the Working Hours Act (such as salesmen and commercial representatives), a part of working hours may be considered as subject to compensation according to provisions concerning working hours. In the event that the employer determines where a sales representative operates or that overtime is to be done at the employer's office, the employment relationship is subject to the Working Hours Act in this respect, and the sales representative is entitled to overtime compensation when the regular working hours are exceeded. In such situations, the employee remains beyond the scope of the provisions of the Working Hours Act only insofar as the employer is not able to monitor the time spent working.

Cases in which the employer can monitor the use of working hours can also be considered equal to the employer's order. Being present at a trade fair, for example, is included in working hours, because it allows the employer to

easily monitor how the time is spent.

4.7.1. Daily overtime

Work performed on a regular workday beyond the statutory maximum of regular working hours (8 h/day) accounts as daily overtime.

Daily overtime is subject to compensation equal to a 50 per cent increase on the regular wage for the first two hours and a 100 per cent increase on the regular wage for any subsequent hours.

4.7.2. Weekly overtime

Work performed outside the framework of a normal work week accounts as weekly overtime. If, for example, work is usually performed for a total of 40 hours from Monday to Friday, work performed during the weekend accounts as weekly overtime. If the employee has not completed 40 working hours during the regular work week, work performed until the 40-hour limit accounts as additional work. In other words, if the employee has put in 37.5 hours of work within the regular working hours from Monday to Friday and works for another 8 hours on Saturday, 2.5 hours of the work performed on Saturday accounts as additional work.

Weekly overtime is subject to a compensation equal to a 50 per cent increase on the regular wage.

4.7.3. Calculating the hourly wage for the purposes of overtime compensation

For the purpose of overtime compensation, the hourly wage of an employee is usually calculated according to the collective agreement practice, by dividing the monthly salary by 158, when the work week equals 37.5 hours. If, on the other hand, the work week equals 40 hours, the monthly salary is divided by 160 to calculate the hourly wage. The divisor of the monthly salary should nevertheless always be checked from the collective agreement applicable to the employment relationship in question. Monthly salary refers to the total salary, due to which the calculation must also account for fringe benefits.

4.7.4. Compensating for overtime

An employee is entitled to receive the overtime compensation pursuant to the increases in money.

The compensation may, however, also take the form of free time, provided that this is agreed upon with the employee. In this case, too, the compensation must be given according to the increases, instead of according to the principle of an hour for an hour. The free time must be given and exercised within six months of the overtime in question. The time of the free time given as compensation for overtime must be discussed with the employee, but the employer has the ultimate right to decide the time. If the time decided by the employer is not suitable for the employee, he or she may still at this point chan-

ge the compensation given as free time into a monetary compensation.

The employer and employee may agree on combining the free time given as compensation for the performance of additional work and overtime with a carried-over holiday as referred to in the Annual Holidays Act. In such cases, free time is governed by the provisions of the Annual Holidays Act concerning carried-over holidays (for further information on the carrying over of annual holidays, see section 5.11.).

4.7.5. Overtime compensation as a separate monthly remuneration

Compensation for overtime is primarily paid according to the hours of overtime performed, including the applicable increases pursuant to the Working Hours Act. An employee in a managerial position and an employee whose principal task is to directly manage or supervise work and who does not participate in or participates only temporarily in the work of those he or she manages or supervises may nevertheless agree that a fixed overtime compensation be paid for additional work, overtime and Sunday work, in addition to the normal monthly salary.

Collective bargaining agreements have broadened the right to agree on a fixed overtime compensation so that it also applies to employees other than those in a managerial position. The collective bargaining agreement of upper white-collar employees in the Federation of Finnish Technology Industries, for example, allows for an agreement on a fixed overtime compensation with a upper white-collar employee.

The agreement should indicate which part of the upper white-collar employee's monthly salary is remuneration for regular working hours and which is compensation for overtime. In other words, according to the law, the agreement may not be such that the amount of the overtime compensation cannot be distinguished from the normal monthly salary (e.g. "The monthly salary of an upper white-collar employee is €5,000, including compensation for overtime").

The fixed overtime compensation must be, on average, as great as the salary calculated according to the hours for which increase would be payable. When agreeing on the compensation of additional work, overtime and Sunday work with a fixed monthly remuneration, it would also be advisable to agree on the estimated amount of overtime on which the compensation is based, the amount of the remuneration and the agreement's period of notice at the same time.

The number of realised overtime hours must be monitored, and the lump sum remuneration agreement should be adjusted every year, for example, so that it accords with the actual overtime situation. Since the number of

actual additional work, overtime and Sunday work hours varies from one person to the next, the monthly remuneration should not be the same for all upper white-collar employees.

YTN does not recommend agreeing on a fixed monthly remuneration because of the numerous shortcomings observed in such agreements and because they have often led to an outcome that is inferior in comparison to percentage-based overtime compensation in terms of upper white-collar employees.

4.7.6. Maximum amounts of overtime

An employee can, with his or her consent, be asked to work overtime for a maximum of 138 hours during a four-month period and no more than 250 hours during a calendar year. An employer and a personnel representative or personnel group may agree on a maximum of 80 additional overtime hours to be performed per year, but in such a way that the aforementioned 138 hours during a four-month period is not exceeded. Daily and weekly overtime are considered separately when calculating the maximum amounts of overtime.

4.8. Sunday work

Sunday work means work performed on a Sunday or some other religious holiday. Employers may have Sunday work done only if the work is, due to its nature, regularly performed on a Sunday or a religious holiday or if such work has been agreed to in the employment contract or if the employee separately consents to such work.

Sunday work is subject to 100 per cent increase on the regular wage. Sunday work often also qualifies as additional work or overtime. In this case, the work is subject to the payment of compensation for additional work or overtime in addition to the remuneration paid for Sunday work.

4.9. Example of the calculation of additional work, overtime and Sunday work

Example of the calculation of additional work, overtime and Sunday work

	MON	TUE	WED	THU	FRI	SAT	SUN	TOTAL
Regular working hours	7.5	7.5	7.5	7.5	7.5	-	-	37.5
Performed	7.5	8	9	10	12	4	4	54.5
Overtime 50%	-	-	1	2	2	-	-	5
Overtime 100%	-	-	-	-	2	-	-	2

Hours put in – (daily overtime + 40 h)
 = Weekly overtime
 54.5 - (7 + 40) = 7.5

Hours put in – (all overtime + regular working hours)
= Additional work
54.5 - (14.5 + 37.5) = 2.5

Sunday work 4 h

The working hours used in the example is the 7.5 hours a day and 37.5 hours a week common among upper white-collar employees. The actual working hours are shown in the second row. In this example, the daily overtime subject to a 100 per cent increase on the regular wage – i.e. the overtime for more than 10 hours of work performed – has been calculated first. The next figure shown is the daily overtime subject to a 50 per cent increase on the regular wage, or the overtime performed between 8–10 hours. After this, one can calculate the weekly overtime and additional work by following the formulas included in the example. Finally, one should check for the 100 per cent increase on regular wage payable for Sunday work. Work performed on a Sunday may therefore entitle the employee to compensation for Sunday work and to compensation for overtime.

4.10. Rest periods

Statutory rest periods include lunch breaks, daily rest periods and weekly free time.

The practice of coffee breaks common in many workplaces is not based on the law. Provisions and rules concerning coffee breaks and various other rest periods can be found either in the collective bargaining agreement or the workplace's internal rules and policies.

4.10.1. Lunch break

When an employee's daily working hours amount to more than six hours and the employee's presence at the workplace is not necessary for the work to continue, the employee must be given a rest period that is at least an hour long. In such cases, the employee may freely leave the workplace.

The employer and employee may agree on a shorter rest period, the minimum length of which must nonetheless be 30 minutes.

4.10.2. Daily rest period

An employee must primarily be provided with, at least, an 11-hour uninterrupted period of rest during every 24-hour period that follows the beginning of each work shift. If the functional organisation of work so requires, the employer and a personnel representative may agree on the temporary shortening of the daily rest period, with the employee's consent. In such cases, the daily rest period must nevertheless be at least seven hours. Likewise, the daily rest period can be shortened to seven hours in a system of flexible working hours when the employee

himself or herself decides the times at which he or she arrives at and leaves work.

The provisions concerning daily rest periods may be derogated from for a weighty reason for a maximum of three consecutive daily rest periods. Even in such cases, the daily rest period must be at least five hours long. Daily rest periods may be deviated from in work that is, for instance, of a seasonal nature to level out an unexpected peak period, in connection with an accident or the risk of an accident or in work that is necessary to ensure the continuity of operations. If a daily rest period is shortened in the aforementioned way, the employee must be given the rest periods that make up for the daily rest period no later than within a month of the shortening.

4.10.3. Weekly free time

An employee must be provided with a continuous period of free time at least 35 hours in length for a Sunday or, if that is not possible, during some other time of the week. Weekly free time can be organised into an average of 35 hours during a 14-day period. Even in such cases, the free time must amount to at least 24 hours a week.

Weekly free time is most often situated in connection with a weekend. An employee may be ordered to work during the weekly free time provided that the employee has given advance consent to it. The lost free time is primarily compensated for by giving the employee a corresponding period of time as free time within the next three months, unless otherwise agreed. With the employee's consent, the compensation may also be given as money. The amount of the monetary remuneration equals that of the simple basic salary paid for the free time spent on the work.

If an employee works for the whole weekend in addition to having completed a normal work week, the remuneration for the Sunday includes, in addition to the basic salary, the compensation for Sunday work, a compensation for losing the weekly rest period and a compensation for possible weekly or daily overtime.

4.11. Emergency work

Regular working hours can be extended if working is interrupted due to a natural event, accident or other unforeseeable reason or if such an event poses a serious threat to the continuity of operations or people's life or health. Ordering employees to emergency work does not require the employees' consent. An employee may also be called in to do emergency work during their free time.

Emergency work is subject to a remuneration in line with overtime compensation and, if the emergency work is performed during a religious holiday or a Sunday, also to a Sunday compensation. However, emergency work is

not included in the maximum amounts of overtime, meaning that having employees perform emergency work does not restrict an employer's right to have employees perform overtime after emergency work.

Employers can have emergency work done for a maximum period of two weeks per each occasion of emergency work. In practice, emergency work situations usually last only for a few days, and employers may never have emergency work done for any time longer than is necessary. Employers must inform occupational health and safety authorities of emergency work in writing.

4.12. Flexible working hours

Flexible working hours refer to a working hours arrangement in which employees may, within defined limits, determine the daily time at which they begin and stop work. In other words, an employer may not order an employee to use flexible working hours.

The implementation of flexible working hours requires an agreement between the employer and employee. In such cases, the parties must agree on the workplace's fixed working hours, i.e. on the hours when all employees must be present. Another point to be agreed on is the daily limit of flexibility, or how much the employee is allowed to shorten or extend his or her workday. The maximum length of a daily flexibility limit is three hours from the beginning and end of a workday.

The parties must also agree on the timing of rest periods and the maximum accumulation of exceeding or falling short of regular working hours. According to the Working Hours Act, the maximum amount by which regular working hours may be exceeded or fallen short of is 40 hours (i.e. the flexibility balance may be at most +40 or -40 hours). The flexibility limit may, however, also be agreed on with a national collective bargaining agreement. The collective agreement for the upper white-collar employees of the Federation of Finnish Technology Industries, for example, allows for agreeing on a 120-hour flexibility balance with a local agreement.

The employer and employee may agree that the accumulation of excess working hours is reduced by free time granted to the employee.

In a flexible working hours system, overtime must be compensated for in accordance with the Working Hours Act. Work performed at the employer's order in addition to regular working hours is considered additional work or overtime.

According to the prevailing view adopted in legal praxis, work performed at the employer's initiative becomes daily overtime only with regard to time exceeding eight hours, even if the employee had originally decided to do

a six-hour workday on the day in question. In such situations, however, the employer needs the employee's consent for the seventh and eighth hour of work. In spite of this, the work is not considered overtime, but rather the use of flexible working hours.

4.13. Reducing working hours (the system referred to as 'pekkas' days)

The system generally referred to in Finnish as pekkasvaapaat (or 'pekkas' days) was created by labour market organisations to shorten working hours in some industries following a 40-hour work week. Its purpose is to balance the weekly working hours to correspond to the 37.5-hour working hours common in office work. More detailed provisions can be found in the collective agreements of each industry.

4.14. Working hours bank system

A working hours bank is an optional arrangement in which working hours, earned holidays or monetary benefits changed into free time can be saved or borrowed by agreement. The objective is to promote the productivity and competitiveness of companies and work communities and to account for the individual working hour needs of the personnel.

The introduction and conditions of a working hours bank is subject to a company- or workplace-specific working hours bank agreement. A particular personnel group's shop steward or representative may sign the agreement on behalf of the employees.

A working hours bank agreement defines who belong within the agreement's scope, which hours can be transferred to the bank, when the free times can be spent and how they are to be reported, the maximum amounts of hours to be saved and taken as free time, any possible accumulation and reference periods, an employee's inclusion into and separation from the working hours bank system and on the procedure of discontinuing the working hours bank system.

4.15. Period of claims and penalties relating to the Working Hours Act

The right to compensation pursuant to the Working Hours Act expires if the claim is not lodged within two years of the end of the calendar year during which the right to the receivable was created. If the employment relationship has ended, the claim must be filed within two years of the employment relationship's termination. The statutory obligations are sanctioned with a fine.

5. ANNUAL HOLIDAY

The Annual Holidays Act applies to work performed in an employment relationship or civil service relationship. An agreement that reduces benefits conferred on an employee by the Annual Holidays Act is invalid. In other words, an employee cannot waive his or her annual holiday benefits even by his or her own consent.

The payment of a holiday bonus or end-of-holiday pay is not statutory. Rather, their payment is based on the conditions of employment and civil service relationships, workplace-specific agreements or an employee's own employment contract. It is advisable to check the matter from the applicable collective agreement or from the employer when entering into the employment relationship.

Annual Holidays Act (162/2005)

5.1. Basic concepts

The Annual Holidays Act is based on the idea of the earnings principle. In other words, the starting point is that an employee earns a particular holiday benefit for each calendar month.

The holiday year is the calendar year during which the holiday in question is taken.

A holiday credit year begins on 1 April and ends on 31 March. The holiday credit year is the period of time during which the holidays of a particular holiday year are earned.

A full holiday credit month is a calendar month of the holiday credit year during which the employee accumulates a minimum of 14 days at work or the equivalent of days at work. The definition of days at work encompasses all workdays, regardless of their length. If an employee, in accordance with his or her employment contract, spends so few days at work that they do not accumulate a single holiday credit month including 14 days to him or her or that only a part of the calendar months involved include 14 days, a calendar month during which the employee has accumulated a minimum of 35 working hours or the equivalent of 35 working hours is considered a full holiday credit month.

The periods equivalent to time at work have been specified in the Annual Holidays Act. Such periods are considered time at work when counting the number of full holiday credit months. Absences due the following reasons are included in the list of periods equivalent to time at work:

- an employee's own annual holiday
- a special maternity, maternity, paternity or parental leave
- a sickness or accident, nevertheless not exceeding 75 workdays during the holiday credit year
- some medical examinations
- lay-off, nevertheless not exceeding 30 workdays at a

time

- shortened work weeks equivalent to lay-offs, nevertheless not exceeding six months at a time
- a study leave, nevertheless not exceeding 30 workdays during the holiday credit year
- reservist training
- public duty
- some other reasons, provided that the employer is obligated, according to law, to pay a salary to the employee for the day in question despite the absence.

For an employee falling within the scope of the 35-hour earnings rule, the aforementioned 75-day period equals 105 calendar days and a 30-day period 42 calendar days.

The holiday season begins on 2 May and ends on 30 September. A summer holiday is primarily taken during the holiday season.

Holiday pay is salary paid for the holiday period.

Holiday compensation usually refers to a compensation paid in lieu of holiday pay for the earned annual holidays that cannot be taken as an actual holiday. In addition, holiday compensation refers to the compensation paid in lieu of an annual holiday to employees who are at work for such a short period of time (less than 14 days a month or less than 35 hours a month) that they do not earn annual holidays at all.

A holiday bonus is a special bonus based on collective agreements and paid in addition to holiday pay and, in some cases, in addition to a holiday compensation.

An end-of-holiday pay is a bonus similar to a holiday bonus and also based on collective agreements. The payment of an end-of-holiday pay primarily requires, contrary to the payment of a holiday bonus, the employee's return to work.

A holiday bonus and end-of-holiday pay both can also be based on a workplace-specific agreement or an

employee's own employment contract.

5.2. Length of holiday

The length of annual holiday is determined according to full holiday credit months. In principle, employees earn two weekdays of holiday per each full holiday credit month. This means that employees accumulate 24 holiday days during a holiday credit year. If an employment relationship has continued without interruption for at least a year by 31 March, the employee has earned 2.5 weekdays for each full holiday credit month. In this case, employees accumulate 30 days of annual holidays during a holiday credit year. In such cases, the portion that exceeds 24 holidays is winter holiday. When calculating the length of a holiday, a part of a day is rounded up to a full holiday.

This principle of interpretation concerning the length of an annual holiday is also applied in a situation where an employment relationship is coming to an end. In other words, if the employee's employment relationship has continued for at least a year when it ends, the employee earns 2.5 weekdays worth of holidays for the new holiday credit year.

The earned annual holidays are not workdays but weekdays. Saturday is primarily a weekday. This is why any one week of holiday usually spends six earned annual holidays. This rule of holiday calculation applies to all employees, regardless of the days of the week during which any particular employee actually works.

In the context of the Annual Holidays Act, a weekday refers to any other day of the week except Sunday, religious holidays, Independence Day, Christmas Eve, Midsummer Eve, Easter Saturday and May Day. If such a day considered as something other than a weekday is included in an annual holiday, the employee need not use an earned day of the annual holiday for it. The Annual Holidays Act does not contain regulations on a holiday including any minimum number of Saturdays.

Those employees who do not belong within the scope of the 14-day or 35-hour earnings rule do not earn annual holidays. However, if they so wish, they do have the right to get two days off per each calendar month during which they have been in the employment relationship in question. For such days off, they are paid a holiday compensation.

5.2.1. The time priority principle

When there is more than one simultaneous justification for an employee's absence, the justification considered the reason for the absence when calculating the earning of annual holidays is the one that occurs first. This is called the time priority principle. If, for example, a sickness and lay-off occur at the same time, the reason for the ab-

sence is determined according to which of these occurred first. The Labour Council has also adopted the view that when an accident occurs during a strike, the period of disability is not considered time equivalent to days at work. However, if an employee is on an annual holiday when a strike begins, the days of annual holiday coinciding with the strike period must be considered time equivalent to days at work.

5.3. Accumulation of annual holiday during a lay-off

Annual holidays are also accumulated, to a limited extent, during lay-offs. A maximum of 30 workdays at a time are accounted for as time equivalent to days at work with regard to lay-off days. In the case of several lay-off periods, this means that a maximum of 30 days worth of time equivalent to days at work are accumulated for each period of lay-off.

If the lay-offs have been implemented by a shortening of the work week or some other temporary working hours arrangement, a maximum of six months at a time are considered as time equivalent to days at work. If a working hours arrangement such as this continues without interruption after the end of a holiday credit year, the count concerning the new six-month period starts from the change of the holiday credit year.

5.4. Granting holidays

An employee's holiday is granted during the holiday season at a time determined by the employer. If the employee has earned more than 24 days during the holiday credit year, the portion exceeding 24 hours are granted as a winter holiday at a time between 1 October and 30 April determined by the employer.

A summer holiday may be granted outside the holiday season only at the employee's consent. In such cases, the holiday must nonetheless be given during the same calendar year or the following year, before the start of the next holiday season. The winter holiday may also, at the employee's consent and as an exception to the aforementioned, be given at some other point during the calendar year during which the holiday credit year in question ends.

However, the employer and employee may furthermore agree that a part of a holiday that exceeds 12 weekdays is taken within a year of the holiday season's end. In other words, the portion of the holiday that is in excess of 12 weekdays can be postponed so that it is taken during the following summer.

An employer may determine the time of annual holiday within the framework of the holiday season unilaterally. It must, however, first give the employee or the

employee's representative a chance to be heard about the time of the holiday. The employer is nevertheless not bound by an employee's wishes or preferences. In addition, the employer is obligated to give employees or their representative an explanation/clarification of the general principles applicable to the granting of annual holidays in the workplace.

Summer and winter holidays alike should primarily be given within a single contiguous period. At the employee's consent, or when the continuity of work so requires, the employer has the right to give separately, with one or more period, the part of a summer holiday that exceeds 12 weekdays. A winter holiday may be split up only with the employee's consent.

An employer may not, without the employee's consent, determine a part of a holiday that equals the length of three or less days in such a way that a holiday would coincide with the employee's day off. Nor may the employer, without the employee's consent, determine a holiday to begin on the employee's day off, if this leads to a reduction in the number of the employee's workdays.

When the dates of a holiday are determined by the employer, it must inform the employee of them no later than a month prior to the holiday's beginning. If this is not possible, the holiday's dates may be communicated at a later date. However, the information must be delivered no later than two weeks prior to the holiday's beginning. Once the information has been given, it is binding on the employer. Because of this, the employer is obligated to compensate for any damage or loss caused should it unilaterally subsequently change the information. Damage or loss can be caused merely by the employee having to cancel plane tickets already reserved. In practice, the employer's obligation to inform the employee is fulfilled when it puts the holiday lists it has approved on display. From this moment onward, the time of a holiday is considered binding.

An employer and employee may, at the employee's initiative, agree on the employee taking the portion of an annual holiday that is in excess of 24 days as shortened working hours. The agreement must be made in writing. In such cases, the parties must agree on the amount and timing of the shortened working hours and the amount of annual holidays to be spent in such a way.

5.5. Impact of sickness on annual holiday

The following rule has been in force as of the beginning of October 2013:

If an employee is, at the beginning of an annual holiday or a part thereof or during the annual holiday, incapacitated due to childbirth or an accident, the holiday must at the request of the employee be postponed to a later date.

An employee also has the right, at his or her request, to postpone a holiday or a part thereof if it is known that the employee will, during the holiday, have to undergo hospital or comparable treatment during which he or she will be incapacitated. The employee must present, at the employer's request, a reliable account of his or her incapacity. This postponement right only applies to statutory annual holidays.

5.6. Holiday pay

An employee's holiday pay is primarily equal in amount to the pay he or she would earn at work. In other words, the amount of holiday pay is determined according to the salary the employee receives at the beginning of the holiday. The holiday pay must always be paid before the holiday begins, and the employer must provide an account of the amount of the pay and the basis for its calculation. If the holiday is given in parts, the employer must pay the share of the holiday pay corresponding to each part before the part in question begins.

However, for a holiday period at most six days long, the holiday pay may be paid on the pay day normally complied with in the employment relationship in question.

5.6.1. Employees with weekly or monthly salaries

Employees who are paid weekly or monthly salaries are entitled to their agreed pay also during the time of their annual holiday. In the event that an employee who is paid a weekly or monthly salary takes his or her holiday in parts, the holiday pay for each holiday period is calculated in proportion to the holiday and work periods so that it equals the salary paid to the employee otherwise for a corresponding period of time. In other words, the employee's earnings may not decline due to the annual holiday.

If an employee's working hours and, accordingly, salary have changed during the holiday credit year (due to a partial parental leave or part-time retirement or a return to full-time work), the holiday pay is calculated according to a percentage-based formula.

In such cases, the holiday pay is 9 per cent of the earnings of the holiday credit year in employment relationships that have continued for less than a year, and 11.5 per cent after that. If the changes take place only after the end of the holiday credit year or the beginning of a part thereof, the holiday pay is calculated according to the weekly or monthly salary determined on the basis of the working hours during the holiday credit year.

5.6.2. Employees with salaries other than weekly or monthly salaries

The annual holiday pay of hourly-paid employees who

work for a minimum of 14 days a calendar month is arrived at by multiplying the average daily salary with the multiplier determined on the basis of the number of statutory holidays (see the table below). This method of calculation also applies to those paid on the basis of a commission. In these cases, the average daily salary is arrived at by dividing the commissions paid or to be payable during the holiday credit year by the number of workdays completed during the holiday credit year.

If an employee receives commission on top of a fixed monthly salary, the holiday pay must be calculated separately for both parts. In such cases, the holiday pay concerning the monthly salary is calculated in the same fashion as for other employees paid a monthly salary and the holiday pay concerning the commission is calculated in the same fashion as for hourly-paid employees.

If, on the other hand, the commission has been defined in such a way that results entitling the employee to the commission are also generated during the employee's annual holiday, the holiday pay is calculated solely on the basis of the fixed monthly salary.

Number of holidays	Multiplier	Number of holidays	Multiplier
2	1.8	17	15.5
3	2.7	18	16.4
4	3.6	19	17.4
5	4.5	20	18.3
6	5.4	21	19.3
7	6.3	22	20.3
8	7.2	23	21.3
9	8.1	24	22.2
10	9.0	25	23.2
11	9.9	26	24.1
12	10.8	27	25.0
13	11.8	28	25.9
14	12.7	29	26.9
15	13.6	30	27.8
16	14.5		

If the number of holidays is greater than 30, the multiplier is increased by 0.9 per holiday. Part-time employees who, according to their employment contract, work on so few days that their full holiday credit months must be calculated according to the 35-hour rule instead of the 14-day rule and whose salary has not been agreed upon with regard to a week or a period longer than that are subject to a separate rule for calculating holiday pay. These employees receive as holiday pay 9 per cent of the

salary they have earned during the holiday credit year or, if the employment relationship has continued without interruption for more than a year by the end of the holiday credit year, 11.5 per cent of the salary they have earned during the holiday credit year. In such cases, however, the salary will not include any increase paid on the regular wage due to emergency work or overtime.

5.6.3. The salary employed in the calculation of holiday pay

Holiday pay is calculated primarily from the salary in money. Thus fringe benefits are not usually accounted for when calculating holiday pay. This is because any fringe benefits included in the salary must be given in full during an annual holiday. This is why a company car, for example, or a company flat remains in the employee's use during an annual holiday. If an employee does not use a fringe benefit during his or her holiday, it is not compensated for in money. A meal benefit is the sole fringe benefit that must be compensated for also during a holiday, if it is not used. A meal benefit is considered a fringe benefit when it is not subject to the payment of the taxable value determined by the Tax Administration. In such cases, the benefit can be given in the form of a meal voucher for the period of the holiday, in which case a withholding tax is paid on the nominal value. Alternatively, it can be compensated for in money equal to the taxable value determined by the Tax Administration. When an employee pays the taxable value for a meal voucher, they do not need to be given for the period of the holiday. If they nevertheless are given, the difference between the voucher's nominal value and taxable value is considered the employee's taxable income.

5.7. Holiday compensation

Holiday compensation usually refers to a compensation paid in lieu of holiday pay for the earned annual holidays that cannot be taken as an actual holiday. In addition to this, holiday compensation means the compensation paid in lieu of an annual holiday to employees who work for such a short period of time that they do not earn any annual holiday at all.

5.7.1. Holiday compensation when the employment relationship continues

An employee who does not belong within the scope of the 14-day or the 35-hour earnings rule is entitled to receive 9 per cent of the salary paid or to be payable to him or her for work completed during the holiday credit year as holiday compensation. This percentage is 11.5 if the employment relationship has continued for at least a year by the end of the holiday credit year preceding the holiday season. In such cases, however, the salary does not include any increases paid for emergency work or overtime. If the employee has been prevented from working due to a maternity, special maternity, paternity or parental leave, the salary lost during this period of

absence is added to the salary functioning as the basis for the holiday compensation. In principle, paying for a holiday in money is allowed in the aforementioned cases.

5.7.2. Holiday compensation when the employment relationship ends

When an employment relationship ends, the employee is entitled to receive, instead of annual holiday, a holiday compensation for the time for which he or she has not yet received a holiday or holiday compensation. In such cases, the amount of the holiday compensation is calculated according to the basis of the calculation applied to a holiday pay, as applicable. In the event that the employee's employment relationship has continued for such a short period of time that he or she has not yet received a single holiday or holiday compensation, the employee's days at work for the calendar months during which the employment relationship began and ended can be combined. If the sum arrived at in this manner is at least 14 days or 35 hours, this time is considered a single full holiday credit month when determining the holiday compensation.

Should the employer and employee agree on a new employment relationship to begin at a later date before the employment relationship in question ends, they can also agree to transfer the annual holiday benefits accumulated prior to the end of the employment relationship to the following employment relationship. Such an agreement must be made in writing.

5.8. Holiday bonus and end-of-holiday pay

The law does not contain provisions on holiday bonuses or end-of-holiday pay. Provisions concerning these benefits are usually found in collective bargaining agreements. However, there are numerous collective bargaining agreements whose contents may vary considerably. Because of this, provisions concerning holiday bonuses and end-of-holiday pay can be discussed here only in general.

The amount of a holiday bonus or end-of-holiday pay is usually 50 per cent of the holiday pay paid in money. End-of-holiday pay is not usually paid if the employee fails to return to work after an annual holiday. A holiday bonus is not subject to such a requirement of returning to work. Instead, it is usually paid whenever an annual holiday is taken during the relevant employment relationship. In certain rare cases, a holiday bonus and end-of-holiday pay are also paid in connection with a holiday compensation. It is always advisable to check the details concerning holiday bonuses and end-of-holiday pay from the collective agreement applicable to the employment relationship in question.

Not all upper white-collar employees fall within the sco-

pe of collective bargaining agreements. Such individuals should always agree on a holiday bonus or an end-of-holiday pay in their employment contract. YTN recommends the payment of a holiday bonus or an end-of-holiday pay also in connection with a holiday compensation when the employment relationship ends.

5.9. Working during a holiday

An employer may not keep an employee at work during an annual holiday. In other words, no part of an actual annual holiday may be given in money.

5.10. Annual holiday and the termination of an employment relationship

An employee's annual holiday is not an impediment to the termination of the employment relationship. However, there is a special provision that applies to the delivery of a notice of termination during an annual holiday. More specifically, this applies to a situation where the employer terminates an employee's employment relationship during his or her annual holiday with a notice sent by mail. Such a notice of termination is considered as having been delivered at earliest during the day following the last day of the holiday. This provision only applies to notices sent by mail, not notices of termination delivered personally, for example.

The employer may order the employee to take an annual holiday during the period of notice, provided that the employer complies with the provisions of the Annual Holidays Act pertaining to the determination of a holiday. In such cases, the employer may order that the annual holiday be taken only during the holiday season to which the annual holiday belongs. In addition, the employer must announce the time of the annual holiday in compliance with the time frame for such an announcement specified in the Annual Holidays Act. If the employer has already determined the time for the annual holiday in question at an earlier date, the annual holiday's time may not be changed without the employee's consent.

5.11. Saving an annual holiday

An employee has the opportunity to save a part of his or her annual holiday and take it at a later date. The employer and employee may agree on the portion of annual holiday in excess of 18 days to be transferred to a carried-over holiday. If there is no agreement on saving a holiday, the employee nevertheless has the right to save the part in excess of 24 days of his or her holiday, provided that it does not cause serious adverse effects on the production and service operations of the workplace. In practical terms, this usually means that a maximum of six days of what is generally referred to as a full annual holiday (30 days) can be saved per year at the employee's

decision and, if there is an agreement with the employer, a maximum of 12 days. However, if the employee has better annual holiday benefits than what the Annual Holidays Act requires, the number of saved days can be higher. The combined amount of saved annual holidays is not limited, due to which an employee can save holidays every year he or she wishes to do so. In addition to annual holidays, the employer and employee may also agree on incorporating any free time given as compensation for additional work or overtime to carried-over holidays. Employees are free to use carried-over holidays for whatever purpose they choose.

The employer and employee must negotiate on the saving of an annual holiday and the number of holidays saved no later than when discussing the time of a holiday. The employer may not prohibit the saving of a holiday with regard to the six days subject to an employee's decision, unless there is a weighty reason against saving the holiday. Such a weighty reason may be the case only if the saving causes serious adverse effects to the workplace's production and service operations. The factors accounted for when assessing the amount of these adverse effects include the nature of the employee's tasks and the requirements it imposes on the organisation of work as well as the nature of the employer's activities and the way in which they have been organised. The employer and employee should try to come to an agreement on the time when the carried-over holiday is taken.

If the parties fail to reach an agreement, the carried-over holiday must be given to the employee at a time determined by the employee, but nonetheless at earliest during the following holiday season. In such cases, the employee must inform the employer of his or her intention to take the carried-over holiday no later than four months prior to the holiday's commencement. The employee is paid normal holiday pay during the carried-over holiday. This pay is determined according to the salary the employee is receiving when the carried-over holiday is taken.

5.12. Expiration of annual holiday receivables

An employee's right to annual holiday pay or holiday compensation expires within two years of the end of the calendar year during which the annual holiday should have been given or the holiday compensation paid. The employee's right to a holiday bonus or end-of-holiday pay expires in the same period of time as the annual holiday pay on the basis of which the holiday bonus or end-of-holiday pay is paid.

6. FAMILY LEAVES

An employee has a right to family leave. Maternity, special maternity, paternity and parental leave are tied to maternity, special maternity, paternity and parental leave benefit periods. Child-care leave may be obtained for the purposes of child care until the child turns three. Family leave also includes partial and temporary child-care leave.

An employer does not have a statutory obligation to pay salary for periods of family leave. Many collective agreements, however, include agreements on the payment of a full salary for the first three months of maternity leave and for the first three days of temporary child-care leave.

*Employment Contracts Act (55/2001, Chapter 4)
Health Insurance Act (1224/2004, sections 21–23 and section 23g)*

6.1. Right to maternity, special maternity, paternity and parental leave

A maternity benefit is paid for 105 weekdays, or some four months. The maternity benefit period begins, according to choice, at earliest 50 and at latest 30 weekdays before the expected time of birth.

Special maternity benefit is paid to a woman engaged in particularly risk-prone work, provided that the employer is unable to find a risk-free position for her for the period of pregnancy.

A parental benefit is paid for at most a total of 158 weekdays immediately after the payment of the maternity benefit has ended.

Provisions concerning paternity leave were reformed on 1 January 2013. A father is entitled to a paternity benefit paid for a maximum of 54 weekdays. A father may take a maximum of 18 weekdays off at the same time during which the mother receives a maternity or parental benefit. A father's leave is no longer affected by whether the father uses 12 weekdays of the parental leave. Nor do paternity benefits reduce the parental benefit days. An adoptive parent and a party to a registered relationship who has adopted the child of the other party has an equivalent right to paternity leave.

The change applies to families whose right to the first benefit to be paid for the same child has arisen subsequent to 1 January 2013.

6.2. Notifications concerning leave

The use of the leave requires the employee to inform the employer of it within the prescribed period of time. The employer must be informed of maternity and paternity leave at least two months prior to the beginning of the leave. However, with regard to family leave that lasts for

a maximum period of 12 days, a one-month period of notification is sufficient. A one-month period of notification is also possible when informing the employer about parental leave in situations where informing the employer of the leave two months in advance is not possible due to a spouse going to work and the resultant need to arrange for a child's care. In such cases, however, relying on a month's period of notification always requires that the employer's production and service operations are not met with serious adverse effects as a result.

An employee has the right to take maternity leave earlier than intended and change the time of paternity leave to be taken in connection with childbirth, provided this is necessary due to the child's birth or the health of the child, mother or father. The employer must be informed of such changes as soon as possible. In other cases, the employee may change the time of the leave of which he or she has informed the employer according to the one-month period of notification, but only for a justified reason. Such reasons include unforeseeable and material changes in the requirements for the child's care which the employee cannot have taken into account when informing the employer of the leave. Examples include a serious injury, long-term illness or death of the child or the other parent, the parents' divorce or some other change that has taken place in the requirements for the child's care.

Parental leave may be taken in at most two parts which should be at least 12 weekdays long. The employer must be notified of the employee's intention to take leave and of the leave's duration no later than two months before the start of the leave. The time of the leave may be changed for a justified reason with a notification given at least a month in advance. Leave taken for the purpose of caring for an adoptive child must be notified to the employer, if possible, two months prior to the start of the leave. An adoptive parent may, for a justified reason, change the time of the leave prior to its beginning, as long as he or she informs the employer of this as soon as possible.

6.3. Working during a maternity and parental benefit period

An employee may, at the employer's consent, perform work during the maternity benefit period that does not put the safety of the employee, the foetus or the born child at risk. This kind of work may not be performed within two weeks of the expected time of childbirth or for two weeks subsequent to the childbirth. The employer and employee may interrupt the work at any time whatsoever during the maternity benefit period.

The employer and employee may agree on part-time work to be performed during the parental benefit period. In such cases, the employee is entitled to a partial parental benefit in accordance with the Health Insurance Act.

The interruption of the part-time work and any amendments to its terms and conditions are to be agreed upon. If the parties fail to reach an agreement, the employee may, for a justified reason, interrupt the part-time work and return to the parental leave full time or revert to complying with the earlier working hours.

6.4. Caregiver leaves

6.4.1. Child-care leave

An employee has a right to take child-care leave for the purpose of caring for his or her child or some other child living permanently in his or her household until the child turns three. An adoptive parent has a right to take child-care leave until such time as two years have passed since the adoption. However, an adoptive parent's right to child-care leave has been restricted in such a way that the adoptive parent can no longer take child-care leave when the child has started school.

A maximum of two periods at least a month long can be taken as child-care leave. The employer and employee may agree on periods more than two or shorter than a month. Child-care leave is given to only one parent or guardian at a time. However, one parent or guardian may take one period of child-care leave during the other parent's maternity or parental leave.

The employee must inform the employer of the child-care leave and its length at least two months prior to its beginning. The employee may, for a justified reason, change the time and duration of the child-care leave, as long as the employer is informed of the matter at least a month before the change. The definition of 'justified reason' is discussed above in the section concerning maternity, special maternity, paternity and parental leave. Justified reasons for the interruption of child-care leave also include the taking of new maternity leave.

6.4.2. Partial child-care leave

An employee who has worked for the same employer for a total of at least six of the past 12 months is entitled to partial child-care leave. Partial child-care leave may be taken until the end of the second school year of a child in basic education. If the child belongs within the scope of extended compulsory school attendance, partial child-care leave may be taken until the end of the third school year. The parent of a disabled child or a child suffering from a long-term illness who needs special care and support may take partial child-care leave until the child turns 18.

Both parents or guardians may take partial child-care leave during the same calendar period, but not simultaneously. It is, for example, possible for one parent to take care of the child during the morning and the other for the afternoon.

The proposal concerning partial child-care leave must be submitted at least two months before the commencement of the leave. The employer and employee agree on the leave and the arrangements thereof. The employer may refuse to agree on the leave only if it has serious adverse effects on production and service operations that cannot be avoided by means of reasonable work organisation. The employer must provide the employee with an explanation of the grounds for its refusal.

If an employee is entitled to partial child-care leave, but the parties fail to reach an agreement on the details of the arrangement, the employee must be provided with one period of leave during a calendar year. In such cases, the length and time of the leave are determined according to what is proposed by the employee and in such a way that daily working hours are shortened to six hours.

The interruption of partial child-care leave must be agreed upon. If an agreement is not reached, the employee may interrupt the leave for a justified reason by notifying the employer thereof at least a month in advance. The definition of 'justified reason' is discussed above in section 6.2.

6.4.3. Temporary child-care leave

When an employee's child or some other child living in the employee's household permanently who is less than 10 years old is suddenly taken ill, the employee is entitled to a temporary child-care leave to arrange for the child's care or to take care of the child. The maximum length of such leave is four workdays at a time. The same right belongs to a child's parent who does not live in the same household as the child. Both parents or guardians may not take a temporary child-care leave at the same time.

The employee must inform the employer of a temporary child-care leave and its estimated duration as soon as possible. Should the employer so require, the employee

must present a reliable account of the basis for the leave.

6.5. Absence due to compelling family reasons

An employee is entitled to a temporary absence from work if his or her presence at home or somewhere else is necessary due to an unforeseeable and compelling reason attributable to an illness or accident that has met his or her family.

The employer must be notified of the absence and the reason for it as soon as possible. Should the employer so request, the employee must present a reliable account of the grounds for the absence.

6.6. Absence for taking care of a family member or someone close to the employee

If an employee's absence is necessary because a family member or someone else close to the employee needs special care, the employer must try to organise work in such a way as to give the employee a chance to be absent from work for a determined period of time. The employer and employee agree on the duration and other arrangements of such leave.

The interruption of the leave must be agreed to between the employer and employee. If an interruption cannot be agreed on, the employee may interrupt the leave for a justified reason by informing the employer of this no later than a month prior to the return to work. The employee must present an account of the grounds for the leave and its interruption, should the employer so require. The definition of 'justified reason' is discussed above in section 6.2.

6.7. Obligation to pay salary for periods of family leave

According to the Employment Contracts Act, an employer is not obligated to pay salary for the period of family leave.

However, the employer must compensate a pregnant employee for a loss of earnings attributable to prenatal medical examinations if the examinations cannot be performed outside working hours.

The obligation to pay salary during maternity leave and temporary child-care leave have generally been agreed to with a collective agreement or as part of the employment contract.

According to collective agreements, it is the convention to pay full salary for the first three months of maternity leave. Temporary child-care leave is, according to collec-

tive agreements, paid [leave] in terms of the first three days. However, an industry-specific collective bargaining agreement may allow for longer paid leave.

It is also common to agree on the aforementioned salary practices as part of one's employment contract.

6.8. Right to return to work after the end of family leave

Once the family leave comes to an end, an employee has a right to return primarily to the job he or she held before. If this is not possible, the employee must be offered work in accordance with the employment contract and corresponding to the earlier work. If this is not possible either, the employee must be offered other work in accordance with the employment contract.

7. STUDY LEAVE

Study leave refers to a period of time during which an employee is freed from the performance of tasks included in the employment relationship for the purposes of training or studies. A programme subject to public supervision primarily entitles an employee to study leave. The granting of study leave does not require the training to be related to the employee's occupation or tasks.

Study Leave Act (273/1979)

7.1. Individuals with a right to apply for study leave

Every employee has a right to study leave once their primary employment relationship with the same employer has lasted at least a year in a single or more than one period. In such cases, the maximum amount of study leave that can be granted during a five-year period is two years, in one or more period.

An employee has the right to study leave no longer than five days if the employment relationship with the same employer has lasted for a minimum of three months in one or more periods. Study leave can only be granted from a job which constitutes the employee's primary source of income.

7.2. Applying for and granting study leave

Study leave that lasts for longer than five days must be applied for in writing from the employer at least 45 days before the studies are to commence. If an employee applies for study leave for a maximum period of five workdays, the application must be made to the employer orally or in writing at least 15 days prior to the commencement of the intended study leave. The employer and employee may also agree on some other kind of arrangement.

A study leave application must indicate

- the start and end date of the studies and the applied-for study leave
- the form and objective of the applied-for training or studying
- whether the case involves the completion of a training or study module started during a previous study leave
- the educational institute or other organiser of training or education in the books of which the employ-

ee is enrolled or which organises and supervises the degree

- when the study leave is applied for in order to complete a degree, the application must include a certificate of signing up for the degree, and
- in the case of primarily independent studies, a curriculum approved jointly by the supervising teacher/instructor and the student that indicates the name of the intended degree or the final project/thesis and the studying time it requires.

If granting the study leave at the time mentioned in the application were to cause manifest inconvenience to the employer's operations, the employer is entitled to postpone the starting date of the study leave for a maximum period of six months at a time. If the case in question involves training that recurs less frequently than at intervals of six months, the employer may postpone the study leave at most until such time when the next corresponding training session is arranged. On this basis, the employer may postpone the study leave for a maximum of two times in a row if the employer employs more than five people. The employer does not have the right to refuse study leave.

The employer must inform the applicant of the granting or postponement of the study leave. The relevant notification must be given

- in writing no less than 15 days prior to the commencement of the training or studying, if the study leave lasts for more than five workdays
- no less than seven days prior to the commencement of the training or studying, if the study leave lasts for a maximum of five days.

The employee must present a certificate of a study leave's approved use at the employer's request.

Compliance with the Study Leave Act is supervised by occupational health and safety, educational and emplo-

ymment authorities.

7.3. Employment relationship's continuance during study leave

An employment relationship continues during study leave. An employee's employment relationship cannot be terminated due to study leave. However, the employment relationship of an employee on study leave may also be terminated according to statutory grounds for termination. Given that working has been interrupted, the employee is not entitled to a salary, unless otherwise agreed with the employer. Study leave days are considered equal to days at work when calculating an annual holiday, but their accumulation may not exceed 30 days during any particular holiday credit year.

7.4. Employee's right to postpone or interrupt study leave

An employee may postpone the use of a five-day study leave for at most a year, provided that this does not cause manifest inconvenience to the employer. The application not to exercise or to postpone a granted study leave must always be made in writing and given to the employer no later than two weeks prior to the start of the intended study leave.

An employee has the right to interrupt study leave granted for more than 50 workdays. The employer must be informed of the interruption in writing no later than four weeks before the employee returns to work. In the event that the employer has entered into a fixed-term employment contract with the person substituting for the employee who is on study leave for the duration of the study leave, the employer is not obligated to take the employee on study leave to work during the time for which the substitute's employment contract must remain in force according to the law or the applicable collective agreement. The employer must, without delay and in writing, inform the employee of its decision related to the employee's request for interruption.

If the employee, during the study leave, suffers from incapacity for work due to sickness, childbirth or an accident and if the incapacity for work lasts for more than seven days, the time in excess of this is not counted in the study leave, provided that the employee so requests from the employer without delay. The employee may use study leave interrupted for such reason later.

7.5. Employee's financial benefits during study leave

An employee on unpaid study leave may receive an adult education allowance continuously for a minimum period of two and for a maximum period of 19 months, provided

that the employment relationship is in force for the duration of the training and has been the employee's main occupation with the same employer for at least a year by the time the training or studying commences.

The employment relationship is considered a main occupation if the average working hours in a week has totalled at least 18 hours. A prerequisite for the allowance is that the applicant has been in an employment or civil service relationship with a Finnish employer or worked as an entrepreneur in Finland for a total of at least eight years by the time the allowance month begins. Certain absences may be comparable with employment relationships. However, such absences may not make up more than two years of the entire 8-year work history.

In the case of an employee, the adult education allowance consists of a basic portion and an earnings-related portion, and the amount of the allowance corresponds with unemployment security without any increases. An entrepreneur is only entitled to the basic portion of the allowance. For an employee engaged in part-time studies, the adult education allowance may be granted as an adjusted adult education allowance. The allowance is subject to taxation.

Studies and training that entitle an employee to an adult education allowance are subject to similar requirements as the granting of study leave. An adult education allowance is granted by the Education Fund. The Education Fund is responsible for communications and advice related to adult education allowances. For information on other forms of support related to study leave, please contact Kela.

8. JOB ALTERNATION LEAVE

Job alternation leave offers an employee the chance for a longer period of leave which the employee may use according to his or her choice – in, for example, studying, training, rehabilitation, child care, hobbies, family caregiving or rest. The employee is paid a job alternation leave allowance for the duration of the leave. The option of job alternation leave is open to employees, civil servants and officeholders. For an employer, job alternation leave offers the opportunity to obtain flexibility and new competence in the work community. The temporary position of a job alternation leave substitute gives an unemployed person the chance to maintain and develop his or her skills and to improve his or her opportunities to find a place in the job market.

Act on Job Alternation Leave (1305/2002)

8.1. Employment relationship's continuance during job alternation leave

During the job alternation leave, the employee's employment relationship is in a "state of rest". The conditions of an employment relationship cannot be changed or terminated due to a job alternation leave. A job alternation leave nevertheless does not provide an employee with any special protection against termination. The period of job alternation leave does not accumulate annual holidays.

8.2. Agreeing on job alternation leave

Job alternation leave is an arrangement in which the employee, in accordance with the job alternation agreement made with the employer, is relieved from the performance of the tasks pertaining to the employment relationship for a fixed period of time and in which the employer simultaneously commits to hiring a person registered as unemployed in the TE Office.

Job alternation leave is based on optionality. An employee does not have an absolute right to job alternation leave. Taking such leave requires agreeing on it with the employer. A job alternation agreement must be made in writing. In a job alternation agreement, the employer undertakes to hire a person registered as unemployed in the TE Office for the duration of the leave. Agreement templates are available at: www.te-palvelut.fi and www.suomi.fi.

8.3. Requirements for job alternation leave

Job alternation leave can be taken by a full-time employee and an employee whose working hours equal more than 75 per cent of the working hours of a full-time employee, provided that the employee's employment relationship with the employer has continued without interruption for at least 13 months immediately prior to the

commencement of the job alternation leave. This period of time may include an unpaid leave equalling at most 30 calendar days. Only an absence attributable to a sickness or accident is comparable to days at work when calculating the time spent at work during the 13-month period. A fixed-term employment also allows for agreeing to job alternation leave, if the fixed-term contract is long enough for the work to continue after the job alternation leave. A full-time entrepreneur cannot take a job alternation leave. If the alternator is on a partial child-care leave, study leave or a leave of absence for, say, one day per week, the condition of employment is not fulfilled. A job alternation leave can no longer be commenced after the end of the calendar month during which the alternator turns 60. This maximum age limit does not apply to those born before 1957.

In addition, an employee granted a job alternation leave is required to have been employed for at least sixteen (16) years as referred to in the Employees Pensions Act (395/2006). In this case, all work performed in an earlier employment or civil service relationship or as an entrepreneur counts as having been employed. Family leaves and a period of military service or non-military national service are also considered comparable to being employed. At maximum, a fourth of the period of employment can be time comparable to time at work. Job alternation leave cannot be taken immediately after maternity or parental leave. Employees can ask their unemployment fund to check whether the employment history condition is met.

If an individual wishes to take a new job alternation leave, he or she is required to have accumulated at least five years' worth of new employment history after the previous job alternation leave.

8.4. Length of job alternation leave

The length of a job alternation leave is at least 100 and at

most 360 calendar days. The employee may agree to take the leave in more than one period, as long as each period is at least 100 days long. The job alternation leave's division into periods must be agreed to in advance. An extension of the job alternation leave may also be agreed to during the leave, but the relevant agreement must be made no later than two months prior to the end of the original job alternation leave.

8.5. Hiring an unemployed person for the duration of the leave

The alternator's substitute must be a person registered as an unemployed job seeker with an Employment and Economic Development Office (TE Office) who has been an unemployed job seeker for at least 90 days—without interruption or in parts—during a 14-month period preceding the commencement of the job alternation leave. The person hired as a substitute must be registered as an unemployed job seeker immediately prior to the commencement of the job alternation leave.

The hired substitute can also be a person under 30 years of age registered as an unemployed job seeker with an Employment and Economic Development Office who completed his or her vocational or university degree no more than a year before, or an unemployed job seeker who is under 25 or more than 55 years of age when the job alternation leave begins.

A person considered a full-time student under Chapter 2, section 10 of the Unemployment Security Act may not be hired as a substitute.

The working hours of an employee hired for the duration of job alternation leave must be at least equal in length to the regular working hours of the person taking the leave, but the substitute need not be hired for the tasks taken care of by the alternator. If a part-time employee in the service of the employer is registered as an unemployed person looking for a full-time job in the TE Office, he or she can be hired as a substitute for the job alternation leave, thereby also fulfilling the requirement of hiring someone registered as unemployed in the TE Office. In such cases, the combined addition to the working hours of these employees must be at least equal in length to the alternator's regular working hours. Hiring two unemployed persons as part-time substitutes for the alternator is not allowed.

The unemployed person hired for the duration of the job alternation leave is subject to the laws and regulations applicable to fixed-term employment relationships. The fixed-term employment relationship terminates at the end of the term without separate termination.

If, for one reason or another, the employment relationship of the employee hired for the duration of the job alternation leave ends prior to the end of the leave, the job alternation leave continues as usual. In such cases,

the employer must without delay hire a new unemployed person for the remainder of the leave, except in exceptional cases in which such hiring is no longer possible due to the brevity of the remaining time, the availability of workforce or some other appropriately justifiable reason.

A pay subsidy may be granted for the hiring of a substitute.

8.6. Job alternation leave allowance

The allowance paid for the duration of job alternation leave equals 70 per cent of the daily unemployment allowance which the employee would be entitled to in the case of unemployment. If, however, the employee has accumulated at least a 25-year employment history by the time the job alternation leave begins, the allowance will equal 80 per cent of the aforementioned unemployment compensation. The amount of the job alternation leave allowance is determined primarily on the basis of the earned income preceding the leave.

When determining the salary considered as established, the earned income will not include any fringe benefits the employee will continue to receive during the job alternation leave.

Child increases are not accounted for when calculating a job alternation leave allowance. The allowance is taxable income. One can calculate an estimate of the size of their unemployment compensation with the help of the daily allowance calculator available at www.tyj.fi.

The continuance of fringe benefits during a job alternation leave can be agreed on with the employer. The amount of the job alternation leave allowance is not affected by any compensation earned prior to and paid during the job alternation leave against which the alternator will not be provided with a corresponding period of free time or by fringe benefits not considered as part of earned income and which the employee will continue to receive during the leave as per the job alternation agreement.

Statutory benefits that reduce unemployment security (such as children's home care allowance) also reduce the job alternation leave allowance, since it is determined on the basis of the daily unemployment allowance.

8.7. Applying for a job alternation leave allowance

The employer must deliver to the TE Office prior to beginning of job alternation leave the original copy of the job alternation agreement and a reliable account of hiring an unemployed person for the duration of the leave,

preferably a copy of the relevant employment contract. A corresponding account must be delivered to the TE Office also in case the job alternation leave is divided into periods or extended.

Prior to the beginning of the leave, the employee taking the leave (alternator) must deliver his or her personal information and an account of meeting the requirements for the leave to the TE Office.

The allowance is applied for from the person's own unemployment fund or Kela. The application needs to be accompanied with a salary certificate covering a minimum period of 52 weeks prior to the beginning of the leave and a copy of the job alternation agreement. The job alternation leave allowance may be provided retroactively for a period of three months.

N.B. It is advisable for the employee to find out well in advance of the leave his or her right to the job alternation leave allowance. The relevant inquiries can be addressed to the employee's own unemployment fund or Kela.

- The employee may appeal the decision of an unemployment fund or Kela to the unemployment security appeals board (Työttömyysturvan muutoksenhakulautakunta) and the decision of the board furthermore to the Insurance Court. In both cases, the period for lodging the appeal is 30 days from the time the employee received the decision.

- The managing director of a limited liability company or a cooperative society is not in an employment relationship, given that the managing director is considered a statutory organ of the company.

8.8. Special issues

- Job alternation leave may be interrupted only by an agreement with the employer.
- Job alternation leave ends when a maternity, special maternity, paternity or parental leave begins.
- Job alternation leave allowance is not paid for a period during which the person receives a daily sickness allowance.
- The alternator has the right to return primarily to his or her previous job when the job alternation leave ends. If this is not possible, the alternator must be offered other work that corresponds with the previous work in accordance with the employment contract or employment relationship or, should this also be impossible, other work in accordance with the employment contract.
- It is advisable for a person intending to take job alternation leave to check, well in advance and from the relevant pension institution, how the leave affects his or her pension.
- The leave's impact on taxation should be checked with the tax authorities.
- The substitute can be hired for the purposes of orientation usually no more than two weeks prior to the beginning of the job alternation leave. This is subject to a separate agreement.
- Job alternation leave must be taken in its entirety within two years of its commencement.
- The job alternation leave is spent during any possible temporary return to work at the alternator's own employer.
- If the employment relationship ends, so will the job alternation leave allowance.
- Employees participating in reservist training are entitled to a job alternation leave allowance.

9. INTELLECTUAL PROPERTY RIGHTS IN AN EMPLOYMENT RELATIONSHIP

The purpose of intellectual property rights is to prevent others from exploiting the products of the creative work of a company or individual in a commercial manner. This guide discusses intellectual property rights that have relevance for upper white-collar employees in an employment relationship, i.e. employment invention rights and copyright.

Copyright confers protection on an original literary or artistic work created as a result of creative work. An employee invention, on the other hand, must be a concrete invention with industrial applications that is the result of creative activity and has been achieved by way of a new idea. It should furthermore be new compared to what has been known prior to the date on which the patent application was filed. The invention should also be concrete and have an industrial application.

Act on the Right in Employee Inventions (656/1967)

Act on the Right to Inventions in Institutes of Higher Education (369/2006)

Copyright Act (404/1961)

Act on the Exclusive Right in the Layout-Design (Topography) of an Integrated Circuit (32/1991, section 3)

9.1. Employee inventions

In many cases where an employee or civil servant has made an invention that is patentable, the employer has a right to the invention. This issue is provided for in the Act on the Right in Employee Inventions. The invention need not necessarily be patented. The fact that the invention is patentable is a sufficient basis for applying the law.

9.1.1. Invention's patentability

For the invention to be patented, it must be new in comparison to what has been known prior to the date on which the patent application is filed. The invention must be concrete and it must have an industrial application. In addition to industry, the invention may also be used in other commercial activities. Naturally, the invention must be inventive: an invention is the result of creative activities and achieved through a new idea.

The invention must furthermore have what is generally referred to as technical effect: a device must function as promised. The Patents Act lists several examples of inventions not considered as patentable inventions. Patents are not granted to, for instance, scientific theories, mathematical methods, business plans or surgical, therapeutic and diagnostic methods.

A patent cannot be granted for an invention that has already been made public. In this respect, the time when the patent application is filed is decisive. Premature disclosure must be prevented by all means necessary. This is because the invention will, naturally, be disclosed as a result of the patent and competitors may seek products which remain outside the patent but which nevertheless touch upon it. Indeed, a patent is not always applied for, instead of which there is an attempt to keep the

invention in strict secrecy. In some industries, advances are made so quickly that patents are rarely applied for due to the pace alone.

9.1.2. Rights to exploit an employee invention

Usually, the person who makes an invention gains full rights to the invention he or she made. However, employee inventions differ from other inventions in such a way that the employer is entitled to secure at least a part of the rights related to the invention. On the other hand, the employer is obligated to pay a special compensation to the employee who made the invention to which the employer secures a right. The employer is also considered to include any companies that belong to the same group of companies as the employer.

The employer is entitled to secure the rights to an invention in the following situations:

- If the invention is the result of a specified task given to the employee at work, the employer is entitled to secure full or partial rights to the invention.
- If the invention is the result of activities carried out by the employee to fulfil his or her obligations, or by making use of achievements made at the workplace in a material way, the employer may secure rights to the invention, if the invention's exploitation is part of the employer's industry.
- If an invention falling within the scope of the employer's industry was created in some other connection related to the employment relationship, the employer is entitled to obtain a right of exploitation to the invention. The employer also has a priority right to negotiate on any other rights with the employee.

- If the invention made by an employee was created without a connection to the employment relationship, but its exploitation nevertheless falls within the scope of the employer's industry, the employer has a right of priority to negotiate about the rights to the invention with the employee.

In the event that a patent has not been filed for in a situation described above within the six months of the end of the employment relationship, the invention will be considered as having been made in the employment relationship, unless its inventor presents probable reasons for it having been created subsequent to the employment relationship. The aforementioned period of time may be extended to a year with an agreement to that effect. If the employer does not secure rights to invention, the rights will remain with the employee.

9.1.3. Procedure

An employee must inform the employer of an invention he or she has made without delay and, at the same time, provide information about the invention's content that allows the employer to understand it. At the employer's request, the employee must furthermore provide his or her opinion on the nature of the connection to the employment relationship in which the invention was created.

If the employer secures the rights to the invention, the employee must be notified of this within four months. Prior to receiving such notification, the employee may not claim control over the invention or disclose anything about it in a manner that may result in the invention becoming public and being exploited by a third party.

The employee may nevertheless apply for a patent for his or her invention in Finland. In such cases, the employee may not file an application with the patent authority before a month has passed since the employee provided the employer with a written notification concerning his or her intention to file for a patent for the invention.

9.1.4. Invention compensation

If the employer secures a right to the invention, the employee is entitled to a reasonable compensation. An assessment of the compensation accounts for the financial value of the invention, its state of readiness, the extent of the rights secured by the employer, the conditions of the employment contract and other factors related to the employment relationship that have relevance for the invention's creation. These factors include the employee's tasks and position in the company as well as the connection that the solution (invention) in question has to the employee's employment relationship. Often the magnitude of a compensation paid for an invention comes to within the range of a thousand/few thousand euros. In the case of significant inventions, however, the sum may reach tens of thousand of euros, if not more. The initiative, invention and other such fees employed by

many companies may be wholly inadequate in the case of significant inventions.

In addition to the District Court of Helsinki, disputes involving employee inventions may be processed by the Employee Invention Committee which is, in addition to specialists appointed by the employee and employer, composed of unbiased members who specialise in invention issues. The Committee's opinions are not binding. In practice, they are nevertheless complied with quite well, since the Committee's expertise is held in high regard.

The right to a reasonable compensation for an invention expires ten years after the employer has announced its intention to secure the rights for the invention. In the event that a patent has been granted for the invention, the claim can nevertheless be filed within a year of the patent being granted.

9.1.5. Agreements

Many companies have drawn up internal regulations on employee inventions. The employer and employee may agree on compliance with these regulations in their mutual relationship. However, such agreements may not derogate from some of the central principles provided in the Act on the Right in Employee Inventions, such as the employee's right to receive a reasonable compensation. This means that the inventor may, according to law, claim a reasonable compensation at a later date, too, even if otherwise agreed or even if an invention fee pursuant to the company's regulations on employee inventions had already been paid.

9.2. Inventions made in institutes of higher education

As of 1 January 2007, inventions made in various institutions of higher education (universities, institutes of technology, etc.) have been subject to the Act on the Right to Inventions in Institutes of Higher Education. The Act applies to the inventions made by individuals employed by Finnish institutes of higher education in their employment relationship that can be protected by a patent in Finland as well as to the inventions made by the research fellows of the Academy of Finland in Finnish institutes of higher education that can be protected by a patent in Finland.

Prior to the aforementioned Act's entry into force, inventions made in institutes of higher education remained outside the scope of law. The Act that took effect on 1 January 2007 clarified the procedure applied to inventions made in institutes of higher education to a considerable extent. The research activities occurring in institutes of higher education and the like, and the inventions derived from such activities, are divided into open research and contract(ed) research. In contract research, the institute of higher education largely manages the rights to inven-

tions created in research projects based on agreements made with external partners or on other external funding. In such situations, the institute in question is entitled to secure the rights to an invention. In contrast, open research primarily allows the inventor to retain the rights to an invention he or she has made.

9.2.1. Definition of institute of higher education

In the Act on the Right to Inventions in Institutes of Higher Education, the term 'institute of higher education' refers to the universities mentioned in section 1 of the Universities Act (645/1997), the National Defence College mentioned in section 4 of the Act on the Defence Forces (402/1974), the polytechnics referred to in the Polytechnics Act (351/2003) as well as separate institutes subordinate or common to institutes of higher education.

9.2.2. Open research

Open research means research that:

- is carried out in an employment relationship to fulfil the research duties of institutes of higher education without external funding and without the involvement of external partners;
- is carried out with the help of external funding, but that does not include provisions other than those concerning the publication of results; and
- would meet the criteria for contract research had the institute and research partner not expressly agreed prior to the commencement of the research that the research is open research.

9.2.3. Contract research

Contract research means

- research that constitutes chargeable (service) operations as referred to in the Act on Criteria for Charges Payable to the State (150/1992); and
- research other than open research or the research referred to in the previous clause that involves at least one party external to institutes of higher education as either a party that conducts a part of the research, a financier or other participant and that involves obligations related to the results of the research or the method in which it is conducted.

9.2.4. Invention notifications

The inventor must immediately file an invention notification with the institute of higher education when he or she has made an invention belonging within the scope of the Act on the Right to Inventions in Institutes of Higher Education. The invention notification must be made in writing and include the inventor's opinion on whether the invention was created in open research, contract research or in some other situation. If there is more than one inventor, the inventors must file a joint invention notification.

The invention notification must include details of the

invention – sufficient enough to allow the institute of higher education to assess it – as well as of all the inventors involved. The inventor(s) must furthermore provide the institute of higher education with other necessary information about the invention upon request.

The institute of higher education must provide the inventor with a written report of the measures the institute may effect according to the aforementioned Act without undue delay and no later than within two months of the institute of higher education having received an invention notification that contains all the information required. The report must also indicate whether the institute of higher education shares the inventor's opinion as to whether the invention was created in open research, contract research or some other situation. If the invention notification filed by the inventor does not meet the requirements described above, the institute of higher education must immediately inform the inventor of this fact in writing.

9.2.5. Right to invention in open research

An institute of higher education may secure the rights to an invention created in open research if the inventor has not, within six months of the invention notification filed by the inventor, published the invention or announced his or her intention to exploit the invention. The notification concerning the securing of the rights must be made in writing and the institute of higher education must, prior to giving the notification, inquire from the inventor whether he or she intends to exploit the invention.

If the institute of higher education fails to give a notification concerning its intention to secure the rights to the invention within the prescribed period of time, it must be considered to have waived its right to the invention.

9.2.6. Right to invention in contract research

The institute of higher education is entitled to secure the rights to inventions created in contract research within six months of the invention notification filed by the inventor. The notification concerning the securing of the rights must be made in writing.

If the institute of higher education fails to give a notification concerning its intention to secure the rights to the invention within the prescribed period of time, it must be considered to have waived its right to the invention.

When an institute of higher education has secured the rights to an invention created in contract research, the inventor must, at the request of the institute, sign the transfer deed concerning the invention as well as any other necessary documents without delay.

9.2.7. Inventor's right to compensation

When the institute of higher education has secured the rights to the invention, the inventor is entitled to receive

reasonable compensation for the invention. A contractual term drawn up prior to the invention's creation with which the inventor waives his or her right to a reasonable compensation is invalid.

When calculating the amount of the compensation, one must account for the conditions that contributed to the creation of the invention and the proceeds the institute of higher education stands to gain from it. The institute of higher education must provide the inventor with the information necessary to determine the compensation.

9.2.8. Expiration

An inventor's right to a compensation for the invention becomes time barred within 10 years of the institute of higher education having announced its intention to secure the rights to the invention. The inventor may interrupt the period of limitation by filing a compensation claim within 10 years of the institute of higher education having announced its intention to secure the rights to the invention. If a patent application for the invention has been filed, the claim may nevertheless be lodged within a year of the patent being granted.

9.2.9. Dispute resolution

The Employee Invention Committee referred to in the Act on the Right in Employee Inventions is competent to issue opinions on matters falling within the scope of the Act on the Right to Inventions in Institutes of Higher Education in courts. If the parties fail to reach an agreement on the amount of the compensation to be paid to the inventor, for example, the Employee Invention Committee may be requested to give an opinion on the matter.

The competent court in disputes related to the scope of application of the Act on the Right to Inventions in Institutes of Higher Education is the District Court of Helsinki.

9.3. Copyright

Copyright protects an original literary or artistic work created as a result of creative work. According to the law, copyright is created automatically and not, therefore, through registration, for example. Internationally, copyright protection is based on several international treaties.

Copyright confers both economic and moral rights on the author of a work. Economic rights include the right to decide on the reproduction of the work and on making the work available for the public through various means. Thus the author has the right to prohibit others from using the work.

Regarding moral rights, the most important ones are the right to attribution and the right to integrity. According to the right to attribution, the author's name must be mentioned when using the work in accordance with good practice. Good practice varies according to the in-

dustry. The right to integrity means that the work may not be altered in a way that is prejudicial to the author's literary or artistic reputation and that the work may not be displayed in a context that is prejudicial to the author.

Copyright primarily remains in force throughout the author's lifetime and for a period of 70 years following the year of his or her death.

The Copyright Act includes a list of the most common types of works: fictional or descriptive representation in writing or speech, a musical or dramatic work, a cinematographic work, a photographic work or other work of fine art, a product of architecture, artistic handicraft and industrial art.

In addition, the Copyright Act mentions that literary works also include maps and other descriptive drawings, graphically or three-dimensionally executed works and computer programs. The special mention regarding computer programs could be considered unnecessary, since the concept of a literary work as defined in the Copyright Act is broad to begin with and would therefore cover computer programs even without the special mention.

9.3.1. Threshold of work

When assessing whether a particular product meets the criteria for a work such as referred to in the Copyright Act, attention is paid to the product's independence and originality. A fairly common assessment criterion is based on the assumption that no one else embarking on a similar task would not have made an entirely identical work. On the other hand, with regard to the achievement of a work, the work's artistic quality or purpose has no significance [??]. It is indeed quite a common misconception to think of the threshold as higher than it really is. The aforementioned descriptive drawings and graphically executed works, for example, include diagrams and statistical curves. Likewise, the category of literary representations include slide shows, as long as they contain some originality.

Copyright only provides protection for a concrete work and does not, therefore, protect the work's theme, content or motive. The ideas behind the work as well as the thoughts, the results of research, statements and information expressed by it remain outside the scope of the protection.

Nor is protection according to the Copyright Act provided to inventions, scientific theories or mathematical methods. The operating logic or purpose of a computer program are not protected. Thus a program executing the same outcome does not necessarily infringe the copyright of the first program's author, as long as the execution is not essentially similar in form and does not clearly prove the second program to be an imitation. Ultimately, it is the court which assesses originality with regard to a

computer program or any other work, by comparing the overall impression given by the work to other existing works.

9.3.2. Copyright in an employment relationship

The starting point of the Copyright Act is that the right to a work lies with its author. On the other hand, labour law starts from the premise that the results of work belong to the employer.

With the exception of works such as computer programs and the layout-designs of integrated circuits, Finnish law does not contain provisions on copyright in employment relationships, but according to the commonly accepted and adopted view, the employer does have the exploitation right required by its normal operations to the works created by an employee in an employment relationship even without an agreement to that end.

The extent of this right varies according to the industry in question. The general rule described above has not been tested in higher court instances, due to which it cannot, in actual fact, be considered an official rule. Nonetheless, this model has gained very wide support due to its generality. On the other hand, it is exactly because of its general nature that the model does not provide concrete answers to questions involving the extent to which rights are transferred.

The transfer of copyright may also be agreed on freely in employment contracts. In the event that copyrights have not been agreed on in the context of an employment contract or separately, the rights – with the exception of rights to computer programs and databases – remain with the employee.

On the other hand, the employee's possibility to independently exploit his or her rights especially during the employment relationship are limited in practice. An employee may not engage in competing activities with the employer during the employment relationship. The relevant prohibition is provided in the Employment Contracts Act. An agreement between the parties may have extended this prohibition on competition to include time subsequent to the end of the employment relationship.

The prohibition concerning competing activity may prevent the employee from exploiting his or her copyright. In addition, the employer's right to exploit a work within the framework of its normal operations has generally been considered an exclusive right, meaning that neither may the author compete with this right.

It is also possible that an employee's work protected by copyright contains material seen as the employer's business and trade secrets, in which case the work's exploitation is also restricted by the employee's non-disclosure obligation.

9.3.3. Computer programs

In legislation, the conflicts described above have only been resolved in terms of computer programs by providing that the copyright to a computer program created when performing tasks attributable to an employment or civil service relationship, and to any work directly associated with it, is transferred to the employer. The same provision also applies to a database created when performing tasks attributable to an employment or civil service relationship. However, this provision does not apply to authors who operate independently in the teaching or research work of institutes of higher education.

9.3.4. Layout-design of an integrated circuit

A separate act provides for exclusive rights in the layout-design of an integrated circuit. A layout-design created in an employment relationship is subject to the same principles as a computer program. The employer is entitled to exclusive rights in the layout-design if the layout-design was created when performing tasks attributable to an employment relationship. The parties are, however, free to agree otherwise.

9.3.5. Agreeing on copyright

An author is at liberty to transfer his or her economic rights in part or in full to another party by way of agreement. The transfer may provide the transferee with an exclusive right to the work or a mere exploitation right. The transfer of copyright does not necessarily include a right to alter the work or transfer it to another party, unless otherwise expressly mentioned in the transfer agreement.

There are no special formal requirements regarding an agreement concerning the transfer of copyright. It is indeed a rather common view that the rights may even transfer with a tacit agreement. In such situations, the parties have not expressly agreed on the matter, but the behaviour of the parties reveals the purpose to have been a transfer of rights.

If there is no agreement on the matter, one needs to examine the purpose of the employment relationship, the industry's prevailing practice and other conditions that impact the parties' activities when resolving to whom the right to the work belongs. An agreement in writing is, of course, the best and most unambiguous alternative also with regard to copyrights. It is furthermore worth noting that, in some industries, the transfer of copyright in an employment relationship has been agreed on collectively, by way of collective bargaining agreements.

Legislation does not require an employer to compensate an employee for an employee's work to which the employer secures rights according to what has been explained above. According to YTN's recommendation, the employer should always pay a separate compensation to secure a right more extensive than a conventional exploitation right to an employee's work.

10. DATA PROTECTION IN WORKING LIFE

In many situations, it is important for employers to collect on employees personal data the nature of which may pertain to the protection of privacy. The reconciliation between this need to collect data and the protection of privacy is provided for in the Personal Data Act and the Act on the Protection of Privacy in Working Life. The latter also includes provisions on, for instance, camera surveillance in the workplace, the protection of an e-mail message as well as on personality and aptitude assessments and drug tests.

Personal Data Act (523/1999)

Act on the Protection of Privacy in Working Life (759/2004)

Act on the Protection of Privacy in Electronic Communications (516/2004)

10.1. Collection and processing of personal data

In many situations, employers collect personal data of their employees. The collection of all data, however, is not permitted. In fact, the employer may only process personal data with immediate relevance for the employee's employment relationship that involves the fulfilment of the parties' rights and obligations or the benefits the employer offers to employees or data that relates to the special nature of tasks. This necessity requirement may not be deviated from even with the consent of the employee or a job applicant.

The necessity of the personal data must be evaluated on a case-by-case basis according to the tasks involved and the employer's line of business. Necessary data includes information related to the performance of tasks, the selection of an employee, working conditions and compliance with the conditions of collective bargaining agreements.

The data that may be collected in a recruitment situation mainly includes information necessary to evaluate the candidate's qualifications and aptitude which may also include information pertaining to the person's aptitude in terms of health.

The employer must primarily collect the personal data on an employee from the employee himself or herself. If the employer collects data from sources other than the employee, it must obtain the employee's consent for collecting such data. However, the consent is not necessary when an authority discloses information to the employer for the purpose of the employer fulfilling its statutory obligations or when the employer obtains personal credit information or criminal record information in order to establish the employee's reliability.

The employer must inform the employee in advance of its intention to obtain data for the purpose of establishing reliability. If information concerning an employee

has been collected from sources other than the employee himself or herself, the employer must inform the employee of the information it has obtained before it is used in decision-making pertaining to the employee.

An employer must inform its employees about the kind of personal data on the employees it has recorded. Each employee has the right to check his or her own personal data. If the employee notices mistakes in the data, the mistakes must be corrected at the employee's request. The employer may not store or process erroneous, incomplete, obsolete or otherwise unnecessary personal data. At the workplace, employees' personal data may only be processed by a person who needs said data in his or her work.

10.2. Processing information concerning health

An employer has the right to process information concerning an employee's health if the information has been collected from the employee or from other sources with the employee's written consent and provided that such processing is necessary to remit a sick pay or other benefits related to health and comparable to sick pay. In addition, such information can be used to find out whether there is justified reason for absence from work or if the employee specifically wishes the information to be examined to clarify his or her capacity for work.

The employer must store any information concerning an employee's health separate from the other personal data collected by the employer. Information pertaining to health may only be processed by individuals who, on the basis of such information, prepare or make decisions concerning the employment relationship or execute such decisions. The employer must designate these individuals or determine the tasks which involve the processing of health-related information. The individuals who process such information may not disclose it to outsiders during or after the employment relationship.

However, a doctor's certificate pertaining to the employee's capacity for work disclosed by the employee to the employer may be handed over to an occupational healthcare service provider for the purpose of carrying out the tasks of occupational healthcare specified in the Occupational Health Care Act, unless the employee has forbidden such handover.

10.3. Drug tests

An employer may require an employee or a job applicant to take a drug test only in specific situations. The requirements are different for those seeking a job and those already employed by the employer. The starting point in both situations is that the person tested delivers the certificate concerning the drug test to the employer. The employer is responsible for the costs arising from the certificate. If the employer does not bear the costs, it may not request or demand such a certificate from the employee and the lack of such a certificate may not have any effect whatsoever.

If job applicants and employees are meant to undergo drug tests, the employer must have a comprehensive action programme on alcohol and drugs.

In addition, the tasks for which a drug test certificate is requested or required must be discussed in a co-operation procedure. Given that the issue also involves information concerning health, it is subject to the provisions listed in section 10.2.

10.3.1. Drug tests of job applicants

An employer may request a drug test certificate during a job application phase only from the person selected for the job. The employer may receive and process the information entered in the certificate only if the job applicant is intended to work in tasks that require precision, reliability, independent judgment or quick reactions.

A further requirement is that the performance of the relevant tasks under the influence of drugs or while addicted to drugs could:

- endanger the life, health or occupational safety of the employee or other persons;
- endanger national defence or state security;
- endanger traffic safety;
- increase the risk of significant environmental damage;
- endanger the protection, usability, integrity and quality of information received while working and thus cause harm or damage to public interests protected by confidentiality provisions or endanger the protection of privacy or the rights of data subjects; or
- endanger business or professional secrecy or cause more than a minor level of financial loss to the emp-

loyer or a customer of the employer, provided that the endangerment of the business or professional secrecy or the generation of a financial risk cannot be prevented by other means.

In addition to the aforementioned situations, the employer may also process the information entered in a certificate when the job applicant is meant to carry out tasks

- in which special reliability is required, in which work will be performed elsewhere than in the premises supervised by the employer and in which the performance of duty while under the influence of drugs or while addicted to drugs could cause significant financial loss to a customer of the employer or endanger the customer's personal safety;
- which, on a permanent basis and to a material degree, include raising, teaching, caring for or otherwise looking after a minor, or other work involving personal interaction with a minor, and in which no other person is involved; or
- in which there is independent and uncontrolled access to drugs or a more than minor quantity of medicines that could be used for the purposes of intoxication.

If the job applicant refuses to take the test or fails to submit an acceptable certificate to the employer, he or she may be rejected for the job in question.

These provisions applicable to a job applicant are also applied if an employee's tasks undergo such changes during the employment relationship that they meet the criteria referred to above. The employer must always inform the job applicant or employee – even before the conclusion of an employment contract or before making changes to the terms of employment – that the case involves a task that requires the applicant to take a drug test.

10.3.2. Drug tests during an employment relationship

An employer may obligate an employee to submit a drug test certificate during an employment relationship if the employer has a justified reason to suspect that the employee is working under the influence of drugs.

In addition, an employee may be obligated to submit a drug test certificate if the employer has a justified reason to suspect that the employee is addicted to drugs and when the employee works in tasks that require particular precision, reliability, independent judgment or quick reactions and in which the performance of tasks under the influence of drugs or while addicted to drugs could:

- seriously endanger the life, health or occupational safety of the employee or other persons;
- seriously endanger national defence or state security;
- seriously endanger traffic safety;
- materially increase the risk of significant environmental damage;
- seriously endanger the protection, usability, integrity and quality of information received while working and thus cause harm or damage to public interests protected by confidentiality provisions or violate the protection of privacy or the rights of data subjects;
- endanger business or professional secrecy or cause more than a minor level of financial loss to the employer or a customer of the employer, provided that the endangerment of the business or professional secrecy or the generation of a financial risk cannot be prevented by other means; or
- may materially increase the risk of the illegal trade and spread of substances in the employer's possession as referred to in section 3(1)(5) of the Narcotics Act.

Section 11.3. contains information on the employer's obligation to draw up a comprehensive action programme on alcohol and drugs in writing.

The employer or a representative of the employer who wilfully or through gross negligence violates the provisions concerning drug tests may be sentenced to a fine for violating the Act on Protection of Privacy in Working Life.

10.4. Personality and aptitude assessments

Personality and aptitude assessments are the employer's way of trying to establish an employee's qualifications for taking care of a particular task or the employee's training or other professional development needs. Assessments such as these may only be performed to the extent required by the employment relationship and the management of the tasks. The employer must ensure that the assessments are performed with the help of reliable assessment methods and that the persons who perform them possess the required expertise. The employer must furthermore ensure that the information received from the assessments is free from errors. This means that special attention should be paid to the assessment method employed and the nature thereof.

The assessments always require the consent of the person being assessed. Employees may not be placed under any obligation to take part in such assessments. Despite this, the employer may reject a job applicant if the applicant has refused to participate in this assessment considered necessary by the employer.

If an employee working for the employer has refused to participate in the assessment, the employer may not un-

dertake any measures concerning the employment relationship due to this refusal alone.

At the request of the person being assessed, the employer or the party performing the assessment must provide the person with a written statement drawn up on the assessment free of charge. If the statement has been submitted to the employer orally, the employee must be provided with an account of the statement's content.

10.5. Using the healthcare services

Any examinations, tests and samples concerning employees' health must be performed and taken by healthcare professionals, by persons with relevant laboratory training and by healthcare services as provided in healthcare legislation. This also applies to alcohol and drug tests. An alcohol test may nevertheless be performed in the form of a breathalyser test. Health and medical examinations may only be performed by professionals with a right to do so, since it is important that the examinations are safe and that the results are correct. This allows for ensuring that a person using certain medication on a doctor's orders, for example, is not categorised as a drug user.

An employer may not require an employee to undergo genetic testing when hiring the person or during the employment relationship, and the employer does not have the right to know whether the employee has undergone genetic testing.

10.6. Camera surveillance

Camera surveillance refers to surveillance based on the use of a technical device that continuously transmits or records images. This guide discusses only camera surveillance carried out in the workplace.

An employer may carry out camera surveillance in its premises to ensure the personal safety of employees and other people on the premises, to protect its property and to supervise the proper operation of production processes. Camera surveillance is also allowed when the case involves the prevention or investigation of situations that have endangered safety, property or the production process.

Camera surveillance may not be used to monitor a particular employee or employees in the workplace. Nor may there be camera surveillance in lavatories, changing rooms or other similar places, in other staff facilities or in work rooms designated for the personal use of employees.

As an exception to the main rule, the employer may nonetheless direct the camera surveillance at a particular work location in which employees are at work if the surveillance is essential for:

- preventing an apparent threat of violence related to the work of the employee or an apparent harm or danger to the employee's safety or health;
- preventing and investigating property crimes if an essential part of the employee's work is to handle property of high value or quality, such as money, securities or valuables; or
- safeguarding the employee's interests and rights, where the camera surveillance is based on the request of the employee who is to be the subject of the surveillance and the matter has been agreed on between the employer and the employee.

10.6.1. Using an image recording

Recordings captured through camera surveillance may be used only for the purposes for which the surveillance has been carried out. Because of this, the recordings may not be used to evaluate an employee's performance, for example.

However, the employer has the right to use the recordings for:

- substantiating the grounds for termination of an employment relationship;
- investigating or substantiating harassment or molestation as referred to in the Act on Equality between Women and Men or harassment as referred to in the Equality Act or harassment and inappropriate behaviour as referred to in the Occupational Safety and Health Act, provided that the employer has a justified reason to suspect that the employee is guilty of harassment, molestation or inappropriate behaviour; or
- investigating an occupational accident or some other situation causing a danger or threat as referred to in the Occupational Safety and Health Act.

Before the employer makes a decision on camera surveillance, the purpose and introduction of and the methods used in the technical surveillance directed at the personnel must be discussed in a co-operation procedure. If the case concerns a workplace not included within the scope of co-operation procedures (less than 20 employees), the employer must reserve for the employees or their representatives a chance to be heard on the matter. The employer must inform its employees about the commencement and implementation of the camera surveillance and about how and in which situations the possible recordings are used.

An employer or the employer's representative who willfully or through gross negligence violates the provisions concerning camera surveillance may be sentenced to a

fine for violating the law.

10.7. Protection of an e-mail message

An employer has the right to decide the purposes for which the workplace e-mail is used. An employer may even forbid private e-mail messaging during working hours. Primarily, however, employers allow the use of e-mail for personal communication.

It is particularly worthwhile to remember that external people may send personal e-mail messages to an employee despite any denials of the employer.

The confidentiality of an employee's e-mail messages is protected by law. The provisions aim to ensure that the secrecy of an employee's confidential e-mail messages is not endangered and that messages that belong to the employer and that are necessary for the continuity of operations may be made available to the employer when the employee is prevented from performing his or her duties.

The starting point for the provisions is that opening messages that belong to the employer organisation is based on the employee's consent. The employer may retrieve and open an employee's e-mail messages only on certain conditions and by means of specific procedures.

10.7.1. Employer's obligations regarding necessary arrangements

The employer may not retrieve and open an employee's e-mail messages if the employer has failed to ensure in advance that:

- the employee can, with the aid of the electronic mail system's automatic reply function, send notification to a message sender about his or her absence, and information about the person who is to take care of the tasks of the absent employee; or
- the employee can direct messages to another person approved by the employer for this task or to another employer-approved address of the employee; or
- the employee can give his or her consent to an arrangement whereby in his or her absence another person of his or her choosing and approved by the employer for the task can receive messages sent to the employee, with the aim of establishing whether the employee has been sent a message that is clearly intended for the employer for the purpose of managing the work and on which it is essential for the employer to have information on account of its operations or the appropriate organisation of work.

10.7.2. Retrieval of e-mail messages that belong to the employer

The retrieval of e-mail messages belonging to the employer always occurs with the help of a person using the

authority of an information system administrator. In such situations, the employer is entitled to examine information concerning the sender, recipient and title (subject) of the message.

On the basis of this information, the employer must infer whether messages belonging to the employer have been sent to the employee during his or her absence or whether the employee has, immediately before his or her absence, sent or received messages of which the employer must be aware in order to conclude negotiations, serve customers or secure its operations.

However, the retrieval of an employee's e-mail messages always requires that:

- the employee manages tasks independently on behalf of the employer, and the employer does not operate a system with which the matters attended to by the employee and their processing stages are recorded or can be otherwise ascertained;
- it is evident, on account of the employee's tasks and matters pending, that messages belonging to the employer have been sent or received;
- the employee is temporarily prevented from performing his or her duties, and that messages intended for the employer cannot be obtained for the employer's use despite the fact that the employer has seen to its obligations referred to above; and
- the employee's consent cannot be obtained within a reasonable time and the investigation of the matter cannot be delayed.

Unless the retrieval of a message results in its opening, a report of the retrieval, signed by the persons who participated in it, must be drawn up. The report must indicate why, when and by whom the message was retrieved. The report must be delivered to the employee without delay. Information concerning the message's sender, recipient and title may not be processed to any extent larger than what is required for the purpose of retrieving the message, and the persons who process the information may not disclose the information to third parties during or after the employment relationship.

10.7.3. Opening e-mail messages belonging to the employer

If it is apparent, on the basis of information concerning the sender, recipient or title of an e-mail message, that an e-mail message clearly belonging to the employer and of which the employer needs to be aware to conclude negotiations related to its operations, serve customers or secure its operations has been sent to or by the employee, the message in question may be opened. In such cases, the message is always opened by a person using the authority of an information system administrator in the presence of another person.

A report on the opening of the message signed by the persons who participated in it must be drawn up. The report must indicate which message was opened and why, when and by whom, as well as who was informed about the content of the opened message. The report must be delivered to the employee without undue delay. The opened message must be stored and its content may not be processed in any extent broader than is necessary. The persons who process the information may not disclose the content of the message to third parties during or after the employment relationship.

An employer or the employer's representative who wilfully or through gross negligence retrieves or opens a message sent to or by an employee against the law may be sentenced to a fine for breaking the law.

10.8. Changes to the processing of identification data brought about by section 13a–13k (Lex Nokia) of the Act on the Protection of Privacy in Electronic Communications

Identification data as referred to in the Act on the Protection of Privacy in Electronic Communications is data related to the transmission, distribution or provision of a message in a communication network that can be associated with a subscriber or user.

An employer has the right to process identification data

- to prevent and investigate the disclosure of business secrets, and
- to prevent and investigate unauthorised use.

However, the right to process identification data does not apply to the identification data of telephone services in a fixed or mobile network. Nor does the right to process identification data give the employer a right to open the content of, for example, the e-mail message in question.

10.8.1. Duty of care and duty of planning and co-operation

Before starting the processing of identification data and to prevent the misuse of an information society service, communications network or communications service subject to a charge, a corporate or association subscriber must:

- restrict access to its communications network and service and their use and take other steps to protect the use of its communications network and service with the help of appropriate information security measures;
- define the type of messages that may be transmitted and retrieved through its communications network and how its communications network and service may be used in other respects and the addresses to

which no messages may be communicated.

Before starting the processing of identification data to prevent the disclosure of business secrets, a corporate or association subscriber must:

- restrict access to business secrets and take other steps to protect the use of and data in its communications network and service with the help of appropriate information security measures;
- define the way in which business secrets may be transferred, delivered or otherwise handled in the communications network and the types of addresses to which people entitled to handle business secrets may not send messages.

To prevent the misuse referred to in subsection 1 and 2 of section 13b of the Act on the Protection of Privacy in Electronic Communications, a corporate or association subscriber must give written instructions to the users of the communications network or communications service.

In addition, a corporate or association subscriber must, before it starts to process identification data, designate the persons whose tasks include the processing of identification data or define the tasks in question. Identification data may only be processed by the individuals who take care of the maintenance and information security and safety of the communications network and service of the corporate or association subscriber.

If the corporate or association subscriber is an employer that belongs within the scope of co-operation legislation, the subscriber must:

- discuss the grounds for and standards to be used in the processing of identification data in a co-operation procedure;
- inform the employees or their representatives of any decisions it makes in relation to the processing of identification data in the manner provided in section 21(2) of the Act on the Protection of Privacy in Working Life.

If the corporate or association subscriber is an employer that does not belong within the scope of co-operation legislation, it must hear the employees and inform them of the aforementioned points in the manner provided in subsections 1 and 2 of section 21 of the Act on the Protection of Privacy in Working Life.

To sum up, one can say that the advance obligations consist of ensuring the functionality of the information security network, written instructions to users, planning, the co-operation obligation and communication and an advance notification to the Data Protection Ombudsman.

10.8.2. Matters that may become subject to an investigation concerning identification data

Unauthorised use of a communication network or service that may become subject to monitoring can encompass the installation of a device, program or service in the communication network of the corporate or association subscriber, providing to a third party access to the corporate or association subscriber's communication network or service and any comparable misuse of the communication network or service, if it is contrary to the written instructions referred to in section 13b(3) of the Act on the Protection of Privacy in Electronic Communications.

The processing of identification data carried out to protect business secrets requires the suspected disclosure of business secrets to involve secrets essential to the business operations of the corporate or associate subscriber or its partner or the results of technological or other development work which are likely to be significant in terms of starting up and engaging in business activities.

According to the office of the Data Protection Ombudsman, by August 2013, one corporation had reported its intention to implement the means by which to identify electronic communications made possible by Lex Nokia.

11. OCCUPATIONAL HEALTHCARE

The Occupational Health Care Act provides for the occupational healthcare that an employer must arrange. Occupational healthcare forms a part of basic healthcare and occupational health and safety. The employer's obligations cover the measures of preventive occupational healthcare, and do not therefore pertain to medical treatment.

Occupational Health Care Act (1383/2001)

11.1. Aim and scope

The purpose of occupational healthcare is to prevent work-related sicknesses and accidents and to promote the health and safety of work and the working environment as well as the functioning of the workplace community. The aim is to promote employees' health and work and functional capacity at different stages of their careers. The objective is to make a career last until the retirement age.

The employer is responsible for arranging occupational healthcare services, but the activities must be carried out as cooperation of the employer, employees and occupational healthcare. The occupational healthcare professionals must be professionally independent of employers, employees and their representatives.

The Occupational Health Care Act applies to work in which the employer is obligated to comply with the Occupational Safety and Health Act. The obligation to arrange occupational healthcare applies to all employment and service relationships. Naturally, the need for arrangements may vary according to the workplace.

11.2. Employer's obligations

The employer must arrange occupational healthcare at its expense to the extent required by the work, working arrangements, personnel and the workplace conditions and any changes thereto. "Working arrangements" also includes any health risks and problems related to contract work, part-time work and fixed-term employment relationships. The expression also covers the arrangement of working hours and rest periods attributable to night work or overtime, for example.

A failure to comply with the occupational healthcare obligation is subject to a fine.

The employer and occupational healthcare service provider must make a written agreement of the service. The agreement specified the general arrangements of occupational healthcare as well as the content and extent of the services. The agreement must be reviewed if conditions undergo material changes.

If the employer arranges occupational healthcare services itself, it must indicate the aforementioned matters in a separate description or as part of the action plan for occupational healthcare or the action programme for occupational health and safety.

The employer must inform occupational healthcare of changes concerning an employee's capacity for work. To assess an employee's capacity for work and possibilities to continue at work, the employer must inform occupational healthcare of the employee's sick leave no later than when the absence has continued for a month.

When the employer prepares decisions to implement occupational healthcare, it must do so in cooperation with employees and their representatives. This obligation is sanctioned with a fine. Among other things, cooperation refers to the employees having an opportunity to make proposals for the development of occupational healthcare and to receive information, at an early enough point, about workloads or other factors with an impact on health.

Before the employer makes a decision concerning the content of healthcare services or changes thereto or some other matter with material relevance for the arrangement of occupational healthcare, the matter must be discussed in an occupational health and safety committee or in the context of some other comparable co-operation procedure or together with an occupational health and safety representative. In workplaces with less than ten employees which, according to the law, are not obligated

to select an occupational health and safety representative, it suffices that the personnel is reserved a genuine chance to participate in the handling of the matters.

11.3. Implementation of occupational healthcare

The employer must have a written action plan for occupational healthcare. It can be a part of the action plan for occupational health and safety or some other development programme or plan drawn up by the employer. The action plan must contain the general objectives of occupational healthcare as well as requirements based on workplace conditions and any measures resulting from them.

If the employer intends to request employees or job applicants to take drug tests, it must have an action programme on the prevention of substance abuse. The programme should include the practices observed to prevent substance abuse and for referring individuals with substance abuse problems to treatment.

The tasks that fall within the scope of the action programme must be discussed in a co-operation procedure prior to the programme's approval.

Occupational healthcare is based on a workplace investigation. The investigation examines exposure to physical, chemical and biological substances as well as the level of physical and psychological stress posed by work, the functionality of the workplace community, the risk of accidents and violence, working arrangements and any particular health risk arising from the working environment and employees' characteristics. The aforementioned factors and the workplace-specific needs serve as the basis for a determination of further occupational healthcare measures.

The employer's occupational healthcare includes the following activities/measures:

- An investigation of the healthiness and safety of the work and the working conditions through repeated workplace visits and on the basis of other occupational healthcare methods.
- Assessments of employees' health and capacity for work through medical examinations, for example. An employee may not, without a justified reason, refuse to participate in a medical examination as referred to in the Occupational Health Care Act.
- Suggestions for action and a follow-up of their implementation. The actions pertain to the improvement of occupational health and safety, adjusting work to an employee's requirements and the promotion of working capacity.
- The provision of information and guidance. For a justified reason, the employee must be provided with a report of his or her workload, for example.
- Monitoring how an employee with a disability copes

at work and referring him or her to rehabilitation.

- Drawing up a statement on an employee's capacity for work and possibilities to continue working after the employee has received sick pay for a period of 90 weekdays.
- Co-operation with the necessary parties.
- Participation in the organisation of first aid as referred to in the Occupational Safety and Health Act.
- Planning and implementing measures that maintain and promote capacity for work and investigating the need for rehabilitation when necessary.
- Assessing and monitoring occupational healthcare.

In addition to the services required by the Occupational Health Care Act, the employer may arrange medical treatment and other healthcare services, such as GP and/or specialist-level healthcare, for its employees. When offering such services, employees must be treated equally, regardless of whether they are in a permanent, fixed-term or part-time employment relationship.

11.4. Processing data in occupational healthcare

The employer is obligated to provide information to the parties that take care of occupational healthcare. The information to be provided includes information on work, working arrangements, occupational diseases, industrial accidents, the personnel as well as the conditions of the workplace and any changes thereto.

When requested to do so, an employee must give occupational healthcare information about any risk factors in the workplace.

Occupational healthcare must provide employees and the employer with required information about the health risks of the work and on the means by which to prevent such risks. Employees must be provided with information on any medical examinations performed and their results.

The employer, occupational health and safety committee and occupational health and safety representative have the right to obtain information with significance for the health of employees from occupational healthcare, and information on how to develop the healthiness of the workplace conditions.

The starting point of the Occupational Health Care Act is that information governed by secrecy provisions may not be disclosed without the written consent of the individual in question.

This non-disclosure obligation may be derogated from when the case involves a job that carries a special risk of illness. In such cases, an occupational health physician may give the employer and occupational health and sa-

fety authorities with a written statement on the conclusions drawn in a medical examination. In each such case, the physician assesses the employee's health-related suitability for a particular task.

In a recruitment situation, the job applicant himself or herself should be provided with the conclusions of the medical examination first.

A positive test result obtained from a job applicant or employee's drug test must be verified in a laboratory. The person tested always has the right to receive the test result in writing. The contents of a drug test certificate are provided for in the Act on the Protection of Privacy in Working Life. The certificate is to be given to the person tested, who will deliver it to the employer.

12. OCCUPATIONAL HEALTH AND SAFETY

The purpose of the Occupational Safety and Health Act is to improve working environments and working conditions. The Act's objective is to maintain an employee's physical and mental health and capacity for work throughout the employee's career. The goal is for the employee to retire in good health. In addition, the Act aims to prevent industrial accidents, occupational diseases and health problems caused by a working environment. Indeed, the Act's starting point is the comprehensive management of workplace safety. Section 16.4. contains information about the tasks and selection of occupational health and safety representatives.

Occupational Safety and Health Act (738/2002)

12.1. What does the Act apply to?

The Act applies to all paid work performed in the employment of another. Ordinary hobby activities remain outside the scope of the Act, as do professional sports.

The Occupational Safety and Health Act puts mental health on par with physical health. It is therefore protected in the same manner as physical health. One aspect falling within the scope of mental health and now prohibited by law is the harassment or other inappropriate treatment of an employee in the workplace that may risk or cause problems to the employee's health. In other words, what is prohibited is workplace bullying, but the prohibition also applies to other forms of harassment, such as sexual harassment, and other inappropriate treatment.

The Act does not provide for the allocation of responsibility with regard to occupational health and safety in team work. The management of occupational health and safety in teams and other forms of self-regulating work performance requires, among other things, independent observation. Compliance with the Act is supervised by occupational health and safety authorities.

12.1.1. Contract work

The Act also applies to contract work (hired labour). The party employing contract work is obligated to comply with the provisions of the Occupational Safety and Health Act that concern employers.

Before contract work begins, the professional qualifications required by the contract work and any special features of the work must be defined in sufficient detail. The party that contracts the work must inform the relevant employee's employer of these details. The relevant employer must ensure that the employee possesses the professional skills, experience and suitability required by the work. For its part, the party that contracts the work must see to the employee's orientation.

12.1.2. Other work belonging within the scope of application

The Occupational Safety and Health Act applies to the work performed by a pupil or student in relation to training. This refers to practical training, practical teaching comparable to work, on-the-job learning periods, internships and getting acquainted with working life. The Act also applies to the work of a person participating in an employment measure.

The Occupational Safety and Health Act furthermore applies to work performed at home and to telecommuting performed, as per agreement, in the employee or employer's home, for example.

12.2. Employer's occupational health and safety obligations

The Act contains a provision pertaining to an employer's general duty to exercise care. The employer is obligated to take care of the safety and health of its employees while they are at work by taking the necessary measures. Factors that must be taken into account include those related to the work, working conditions and the working environment as well as those related to an employee's personal qualifications. Factors related to an individual employee include professional skills, work experience, age and gender.

The duty to exercise care does not extend to unusual and unforeseeable circumstances and events which the employer has no control over despite all necessary precautions.

The employer must plan and implement the measures required to improve working conditions. In this respect, the employee should adhere to the principle of

- preventing the creation of hazards and risk factors;
- eliminating hazards and risk factors or, if this is not possible, replacing them with a less hazardous or risk-

ky alternative;

- adopting safety measures which have a general impact before the adoption of individual measures;
- accounting for technological developments and other available means.

The employer must continuously monitor the working environment, the state of the entire working community and work practices. The employer must likewise monitor the effect that any implemented measures have on the safety and healthiness of work. These obligations must be taken into account with respect to both the physical and mental aspect of occupational health and safety.

The monitoring obligation also extends to the working community's social functionality. The employer is expected to monitor the working community so as to detect any possible harassment or other inappropriate treatment early enough to effectively interfere with such unacceptable behaviour.

What is essential is a systematic and continuous focus on the improvement of working conditions. The employer must be aware of the hazards and risk factors of the workplace and the operations engaged in, be they mental, physical or social in nature. The employer is expected to take the action necessary to eliminate a shortcoming as soon as it has become aware of the shortcoming.

The employer may appoint a person as its substitute in managing tasks specified as the employer's obligation in the Occupational Safety and Health Act. The tasks of such a substitute must be defined in sufficient detail. The employer must ensure that the substitute has the appropriate resources and capabilities to manage the tasks referred to in the law.

12.2.1. Occupational health and safety policy

The employer must draw up an occupational health and safety policy. The policy must cover the development needs of the workplace's working conditions and the effects of factors related to the working environment. The policy's objectives in terms of safety, healthiness and working capacity must be taken into account in the workplace's development and planning. The objectives must be discussed with employees and their representatives.

12.2.2. Investigating and assessing the hazards of work

The employer must systematically investigate and identify hazard and risk factors caused by the work, working hours, working environment and the working conditions, and assess their significance in terms of occupational health and safety. This investigation and assessment must be in the employer's possession. Whenever conditions undergo material changes, the investigation must be brought up to date.

The investigation must account for work commitment and workload-related factors, such as those caused by working hours, which must be understood broadly. Work commitment refers, among other things, to travel or an obligation to take calls or answer to e-mail outside working hours. Working hours refer to overtime, night work, shift work and sufficient rest periods. Other workload-related factors include information loads, poor ergonomics, the threat of violence and problems, such as harassment and bullying, caused by a dysfunctional work community.

The employer may draw up the investigation with the help of the expertise available in occupational healthcare.

12.2.3. Work that causes particular risk

If the assessment concerning the risks of a work indicates that the work may cause a particular accident or illness risk, the work in question may be performed only by an employee with the suitable qualifications and personal attributes, or another person working in the immediate supervision of the aforementioned employee. Other people's access to the hazardous area must be restricted.

If the work or the working conditions pose a particular risk to a pregnant employee or a foetus and if the risk factor cannot be eliminated, the employer must make an effort to transfer the employee to more suitable tasks for the duration of the pregnancy.

12.2.4. Planning of working environment and work

When planning the structures of the working environment, production methods and the use of machinery or substances hazardous to health, the employer must account for the effect that they have on employees' health and safety.

The planning and designing (proportioning) of work must take into account employees' physical and mental capabilities. The goal is to avoid harmful workload factors.

The aim of the provision is for the examination of the relationship between a work's requirements and employees' mental and physical capabilities to take place as early as during the work's planning stage. The relationship must be balanced.

Workload factors vary between different tasks. Poor ergonomics/work postures, an excess of physical and mental stress and information overloads are examples of harmful workload factors. Unreasonable time pressures at work and exceptionally frequent work-related travel that nevertheless occurs outside working hours every now and then may also become harmful in terms of the load they generate.

12.2.5. Teaching and guidance

An employer must provide an employee with sufficient information about the workplace's hazard and risk factors and give the employee adequate orientation to the work, working conditions, work and production methods, the use of tools and safe work practices.

12.2.6. Cooperation

Occupational safety is a matter to be managed in cooperation by the employer and the employees. Employees have the right to make suggestions in matters concerning the safety and healthiness of the workplace to the employer. The employer must respond to such suggestions.

12.2.7 Occupational health and safety committee

A workplace in which at least 20 people work on a regular basis must establish an occupational health and safety committee (section 38 of the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Health and Safety at Workplaces). An occupational health and safety committee is the employer's and employees' joint body on occupational health and safety matters, and its task is to promote the safety and healthiness of work at the workplace. An occupational health and safety committee may also be established in a smaller workplace and the establishment of more than one occupational health and safety committee in the same workplace is also possible if the number of employers or employees, the nature of the work or the working conditions give reasons for doing so and if it is agreed to at the workplace.

An occupational health and safety committee is selected for two years at a time and will include representatives selected by the employer, employees and white-collar employees. An occupational health and safety committee is composed of four, eight or twelve members, unless otherwise agreed. Likewise unless otherwise agreed, a quarter of the representatives will be the employer's representatives and three quarters of the representatives will be the personnel's representatives. A half of the representatives will be selected from among the employees in the event that they outnumber the white-collar employees, and vice versa. A quarter of the representatives will be selected from among the smaller personnel group.

The matters to be dealt with in the context of occupational health and safety co-operation are specified in section 26 of the aforementioned Act. Such matters include

- any matters with an immediate effect on the safety and health of employees and any changes thereto;
- the principles and manner of investigating risks and hazards at the workplace and any matters that come up in the aforementioned investigation and workplace survey carried out by occupational healthcare that have a general effect on the safety and health of employees;

- development targets and programmes connected to measures aiming to maintain a capacity to work or that support the continuance of work and other measures connected to the health and safety of employees;
- matters related to the organisation of work and workloads that have an effect on the health, safety and working capacity of employees and any material changes thereto;
- the need and arrangements for training, guidance and induction to be given to employees pursuant to Acts enforced by the occupational safety and health authorities;
- statistics and other follow-up information relating to the work, work environment and the state of the work community and describing safety and health at work;
- follow-up of how the aforementioned matters have been carried out, and follow-up of their effects.

The matters should be discussed in good time with regard to the objectives of the co-operation, taking into account their preparation and implementation schedule.

12.3. Employee's occupational health and safety obligations and rights

The Occupational Safety and Health Act imposes obligations on the employee, too. An employee must comply with the instructions and rules given by the employer. In all other respects as well, the employee must adhere to orderliness, cleanliness, carefulness and caution to maintain safety and healthiness. The employee must also, by the means available to him or her, take care of his or her own safety and health and the safety and health of other employees.

The employee must avoid the harassment and other inappropriate treatment of other employees that is harmful for their safety or health.

12.3.1. Elimination of shortcomings and reporting them

An employee must, without delay, inform the employer and an occupational health and safety representative of any shortcomings or defects in, for instance, working conditions, methods and tools, if they have the potential to risk employees' safety. The employee must also, insofar as possible, eliminate any shortcomings he or she detects that pose an obvious risk. Such cases also warrant a report.

For its part, the employer must inform the employee who made the report and the occupational health and safety representative of the measures undertaken or intended to undertake in the case in question.

12.3.2. Right to refrain from work

If the work poses a serious risk to an employee's own or other employees' life or health, the employee has a right to refrain from the work in question.

This must be reported to the employer. The right not to perform the work in question continues until the employer has eliminated or removed the risk factors or otherwise seen to safe working.

Refraining from work may limit working only to the extent necessary for the safety and healthiness of work.

12.4. Avoiding the stress factors of work

If an employee is found to be stressed in work up to a point that risks his or her health, the employer must, when it becomes aware of the matter, take action to investigate the stress factors and avoid the risk with the means available to the employer. Stress (loading) factors may include erroneously dimensioned tools, work premises and tasks. Such factors may also include continuously stressful work or some other reasons attributable to the work's content, or shortcomings in the management of work, working hours or the organisation of work. Any harassment or other inappropriate treatment directed at an employee and harming or risking his or her health also constitutes a stress factor. If the work demands uninterrupted presence or is continuously stressful, a possibility for breaks that enable the employee to leave the workstation for short periods of time must be arranged.

12.5. Workstation ergonomics and work involving display screens

The structures of workstations and the tools used must be selected, dimensioned and placed ergonomically. Insofar as possible, they must be adjustable and, in terms of their operating characteristics, be of the kind that does not cause harmful loads or stress.

Harmful loading factors caused by work performed with display screens must be reduced up to a point where the work in question is as safe as possible. A workstation must be organised in the appropriate manner from an ergonomic point of view. In addition, one must take into account possible risks caused to eyesight and any harmful loads and stress, be it mental or physical in nature.

More detailed provisions on the organisation of work performed with the help of display screens and on requirements set for the workstations, technical equipment, auxiliary equipment and software used in display screen work may be issued by Government Decree.

12.6. Threat of violence and harassment

In work that entails an evident threat of violence, wor-

king conditions must be arranged in such a manner that, insofar as possible, any incidents of violence are prevented in advance. The workplace must have the security arrangements and devices necessary to prevent violence and a possibility to summon help.

The employer must draw up procedural instructions for work and a workplace such as this. The procedural instructions pay attention to the management of threatening situations and on practices that enable the prevention or restriction of a violent incident's effects on occupational safety. The functionality of the security arrangements and devices must be checked whenever necessary.

According to the Occupational Safety and Health Act, the employer is primarily accountable for the work community being free of harassment or other inappropriate treatment that risks an employee's health. In addition, the Occupational Safety and Health Act obligates employees themselves to avoid any kind of harassment or other inappropriate treatment directed at other employees. Thus both parties respectively are responsible for the conditions of the workplace.

The Act does not define the concept of harassment or inappropriate treatment. Harassment may mean pressure, insults, exclusion, name-calling or sexual harassment directed at an individual. Harassment may also be physical. Extreme cases involve offences sanctioned in the Criminal Code such as assault, sex offences, defamation and work discrimination. The subject of harassment in a work community may be an employee or a person in a supervising position.

A supervisor's work-related orders or decisions made within the framework of his or her right of direction do not constitute inappropriate treatment. Nor are any disputes or disagreements concerning interpretations related to work usually harassment as referred to in law.

The employer has a statutory obligation to monitor the state of the work community and make observations about it. When observing harassment, the employer must immediately take action to prevent the behaviour.

If, for example, an employee treats another employee inappropriately, the latter must first himself or herself clearly indicate to the employee that his or her behaviour is unacceptable. If the situation is not remedied as a result, the matter must be reported to the closest supervisor. In practice, 'employer' means the closest supervisor in the work community in question. The victim of inappropriate treatment or harassment may also report the matter to HR management, an occupational health and safety representative or a shop steward. The employer may also receive the relevant report through occupational healthcare. Taking action is nevertheless always

the employer's responsibility. The matter and course of events must be investigated impartially, after which the remedial measures are determined. The supervisor must remember to treat employees equally in all situations. The workplace having pre-confirmed rules and procedures for harassment situations of which everyone is aware clarifies harassment incidents and makes intervention easier.

When the bully or harasser is a customer or some other outsider, the employer's opportunities to get involved are more limited. In spite of this, it is the employer's duty to discuss the matter within the work community and to seek a solution on how to put a stop to the harassment by giving instructions on what to do in similar situations in the future.

12.7. Lone working and night work

An employer must ensure that a hazard or risk caused by lone working is avoided or that it remains as minor as possible. The employer must arrange an opportunity for necessary communications between the employee and the employer's representative or other employees. The employer must also ensure that the lone worker can summon help when necessary.

A risk assessment may indicate that lone working cannot be considered acceptable in certain tasks. This may be the case if the workplace has been subject to numerous robberies within a short period of time, for instance.

An employee who works nights must, when necessary, be given the opportunity to change his or her tasks or to perform daytime work, should this be necessary to prevent the risk that the nature of the work in question causes to the employee's health.

12.8. Provisions concerning the structures of the workplace and working environment

Ventilation and volume of workroom

The workplace must have a sufficient volume of breathable air. The workplace's ventilation must be adequately efficient and functional.

The volume and area of the workroom must be sufficient. The room must also contain enough space for the performance of work and any mobility required by the work.

Lighting

The workplace must be furnished with suitable and sufficiently effective lighting. Employees' ageing is one of the factors that must be accounted for when arranging lighting. The lighting may not cause a disturbing glare. Insofar as possible, enough natural light must be let into the workplace.

Airborne impurities

If airborne impurities such as dust, smoke, gas or vapour occur in the workplace to a degree which is injurious or disturbing to the employees, their spread should be prevented, as far as possible, by isolating the source of the impurity or by placing it in a closed space or equipment. The airborne impurities should be collected and removed to a sufficient degree by means of ventilation.

Chemical, physical and biological hazards

An employee's exposure to chemical agents that cause risk or hazard must be limited. It is particularly important to ensure protective measures necessary for the prevention of poisoning, oxygen deficiency or other serious risk. This also applies to exposure to physical and biological agents.

Staff facilities

Adequate and appropriately furnished facilities for washing, dressing and the keeping of clothes as well as dining, break and toilet facilities and other personnel facilities must be located within the workplace premises or in its immediate vicinity. When assessing the adequacy of the premises, one must take into account the nature and duration of the work as well as the number of employees.

12.9. Special situations of organising work

Shared workplace

If one employer exercises the main authority at a workplace and if more employers than one or more self-employed workers than one operate there simultaneously or successively, the employers and self-employed workers must, taking the nature of the work and activities into consideration, each for their part and together ensure that their activities do not endanger the employees' safety and health.

The employer exercising the main authority must ensure that an external employer is provided with the necessary information and instructions concerning the workplace's hazards and risk factors and policies relating to occupational health and safety. The external employer must inform the other employers of any hazard and risk factors that its operations may cause in the shared workplace.

Obligations of the employer exercising main authority

The employer exercising the main authority in a shared workplace must see to:

- the coordination of work performed by the employers and self-employed workers in the workplace;
- the organisation of the workplace's traffic and access arrangements;
- the workplace's general orderliness and cleanliness;
- the general planning of the workplace;
- the general safety and healthiness of the working conditions and working environment.

13. EQUAL TREATMENT IN WORKING LIFE

An employer's obligation to treat all of its employees and job applicants equally is provided for in both the Employment Contracts Act and the Equality Act. Equality between women and men in working life and discrimination related to gender identity and gender expression are discussed in section 14.

The Equality Act applies to both public and private activities. The case may involve the conditions for access to self-employment or means of livelihood, recruitment conditions, terms of employment and working conditions, personnel training and promotion, access to training or membership or involvement in an organisation of employees or employers.

*Employment Contracts Act (55/2001)
Equality Act (1325/2014)*

13.1. Employer's obligation to treat employees equally and prohibition of discrimination

The Employment Contracts Act obligates an employer to treat its employees equally in all respects, unless deviating from this is justifiable when considering the employees' tasks and position. The Act underscores this obligation particularly in relation to fixed-term and part-time employees. Unequal treatment does not necessarily constitute discrimination such as it is provided for in the Equality Act and the Act on Equality between Women and Men (see Chapter 14). The requirement of equal treatment does not prevent the use of incentive remuneration schemes, for example, provided that the schemes do not include discriminatory or otherwise inappropriate determination grounds.

13.2. Scope of Equality Act

The Equality Act aims to promote equality and prevent discrimination in both public and private activities. In addition to working life, the Act applies, in its capacity as a general law, to any measures taken by authorities, the production of goods and services and the organisation of training and education.

In addition to employment and civil service relationships, the scope of the Act also covers other legal relationships comparable to employment and civil service relationships and contract work. The Equality Act is likewise applicable to independent workers, practitioners and freelancers and, to a limited extent, also to the legal relationships between business enterprises.

13.3. Employer's duty to promote equality

Every employer must:

- assess the realisation of equality at the workplace; Such assessments must cover all grounds for discrimination and can be carried out in the form of, for instance,

personnel surveys.

- develop working conditions and operating methods with regard to recruiting personnel and making personnel decisions.

The obligation to promote equality therefore applies to access to training, for example, as well as to salaries, fringe benefits and the division of tasks.

- employ promotion measures that are efficient, appropriate and proportionate in terms of the operating environment, resources and other conditions.

What is essential is an impact on the workplace's actual equality.

The Act expressly forbids discriminatory job advertisements. When advertising a vacant job, post or task, an employer may not unjustifiably require applicants to meet the characteristics or factors pertaining to a person such as they are referred to in the Equality Act. This does not prevent the advertisement or announcement of appropriate selection criteria or qualification requirements based on law, for example. Any advertised language proficiency requirements, for instance, must be objectively justifiable.

13.4. Equality plan

An employer that regularly employs at least 30 people must:

- draw up a plan on the measures needed to promote equality;

The employer is responsible for preparing the equality plan. The number of people working for the employer is assessed in a manner equivalent to that specified in the Act on Co-operation within Undertakings. This number

includes any fixed-term employees who perform tasks that fall under the scope of regular activities, part-time employees according to headcount and regardless of working hours, and any contract workers in the company in question.

- discuss the promotion measures and their effectiveness with the personnel or their representatives;

There is no specified form for an equality plan. It would be advisable for it to discuss ways by which to map equality, the plan's content and the grounds for discrimination, implementation schedules, responsibilities with regard to information provided to the personnel and follow-up to be included therein. The more concrete the plan is, the more genuinely it will promote equality. The plan may also function as a means to increase well-being at work. It might be a good idea to conduct a background investigation and survey to function as a basis for the plan. It would also be natural for the shop steward and/or the occupational health and safety representative to be involved in the preparation and assessment.

- a personnel representative who participates in the planning of equality measures is entitled, at his or her request, to get information about the measures the employer has undertaken to realise equality.

An equality plan can be incorporated into a gender equality plan, occupational safety and health action plan, personnel or training plan or some other workplace plan. The employer must nevertheless be able to specify to an occupational health and safety authority the measures it has taken to fulfill its obligations pursuant to the Equality Act. The first equality plan must be drawn up and completed by January 1, 2017, at latest.

13.5. Prohibition and definition of discrimination

“No-one may be discriminated against due to age, origin, nationality, language, religion, beliefs, opinion, political activity, union activities, family relations, health, disability, sexual orientation or some other reason pertaining to the person.”

The list of prohibited grounds for discrimination is not exhaustive, in addition to which many grounds for discrimination may be exhibited simultaneously. The provisions on discrimination are not intended to prohibit all drawings of distinction between people, but one must be able to justify different treatment in a way that is acceptable in terms of the basic legal system. In addition to the acceptability of distinction, the methods selected must be proportionate and their real consequences must be evaluated. Favouring a particular employee or group of employees is prohibited if it translates, from a factual point of view, into discrimination against other employees.

Discrimination is prohibited regardless of whether it is based on a fact pertaining to the person himself or herself or a fact pertaining to someone else. For example, discrimination against an employee's spouse due to the spouse's political activity or status as shop steward would constitute what is referred to as discrimination by association. Discrimination may also result from an assumption, even though a person would not, in fact, be a member of a particular religious minority, for example.

Direct discrimination refers to a situation in which someone is treated, due to a reason related to the person, more unfavourably than someone else has been, is or would be treated. For the case to constitute discrimination, the situation must be comparable. A hypothetical person may likewise serve as a control.

In indirect discrimination, an ostensibly equal rule, justification or practice puts someone at a disadvantage due to a reason related to the person, except in cases where there are acceptable objectives for the action. In addition, such cases require the means employed to achieve the objective to be appropriate and necessary. An employer may not, for example, on the pretext of work clothing, forbid employees from wearing symbols related to nationality or religion in an attempt to discriminate against the employee. In practice, discrimination may become apparent in such a way that people belonging to a particular group find it, in reality, more difficult to meet a particular condition set by their employer than others do or find that any negative consequences apply to them alone.

Any rule, order or obligation to discriminate given at work is also considered comparable to discrimination. The giver must have the authority or be in a position to give instructions or orders that obligate the person receiving the instructions or orders. Such cases may constitute discrimination even if the person receiving the order would not follow the instructions or order.

13.6. Harassment as a form of prohibited discrimination

Behaviour or conduct that intentionally or factually offends a person's human dignity constitutes harassment if the offending behaviour is related to prohibited grounds for discrimination and if it creates an atmosphere that degrades or humiliates the person or is threatening, hostile or aggressive towards the person in an intent to discriminate.

The employer is obligated to take action when it becomes aware of an employee being harassed: if the employer fails to initiate the means at its disposal to stop the harassment, the employer itself will be guilty of harassment.

13.7. Duty to make reasonable adjustments for the disabled

The Equality Act imposes an obligation on the employer to make reasonable adjustments with regard to a disabled person's possibility to get work, perform his or her tasks and advance in his or her working career. The adjustment obligation may concern the physical environment, tools and the organisation of work. The reasonability is assessed from the perspective of the disabled person and in proportion to the employer's size, financial standing, the nature and scale of its operations and the estimated costs and available support. The refusal of reasonable adjustment is considered to constitute discrimination. The employer must give the disabled person, at his or her request, a written report on the grounds for its action.

13.8. General legal justifications

Different treatment is not, as a rule, discrimination, provided that the treatment is based on law. In addition, different treatment is conditioned on an acceptable objective and means that are proportionate to the achievement of this objective.

Even if different treatment had not been provided for in the law, it is legally justified if the treatment has an acceptable objective and means that are proportionate to the achievement of this objective from the perspective of fundamental and human rights. Thus the requirement of enactment by law is not absolute, particularly due to the diversity of private operations. However, permitting different treatment requires, in all circumstances, reasons that are acceptable from the perspective of the basic legal system.

The grounds for different treatment must nevertheless be based on law when they concern:

- 1) the use of public authority or the performance of a public administrative duty;
- 2) the preconditions for engaging in an independent profession or trade or support for business operations;
- 3) education/training, including specialisation and retraining, or being provided with occupational/professional guidance;
- 4) membership or activity in an employee organisation or employers' organisation or some other organisation or association the members of which represent a particular occupation, or the benefits provided by the organisation;
- 5) different treatment based on ethnic origin.

Thus the limitations mentioned above under points 1–5 always require the legal justification for the unequal treatment to be found in the law. Different treatment based on nationality or race, for example, would require a separate enactment by law to that end. Correspondingly, a

trade union may negotiate on benefits for its members on the basis of legislation applicable to collective agreements. In practice, a legal justification not connected to the law may concern only private operations, not public duties.

13.9. Legal justifications in working life

“Different treatment in an employment relationship and an employment relationship under public law, an internship and other comparable activities as well as in recruitment and hiring is justifiable if the treatment is based on actual and decisive criteria applicable to the nature of the tasks and their performance and if the treatment is proportionate to the achievement of the justified objective.”

The employer is obligated to ensure that when treating employees differently, the legal justifications laid down in terms of working life can be found when applying employment contracts, for example, and the employment relationship norms of collective agreements.

“Different treatment based on age or place of residence is furthermore justified, provided that the treatment has an objectively and appropriately justified objective pertaining to employment policies or the labour market or if the different treatment is attributable to the confirmed age limits required to obtain pension or disability benefits.”

Unequal treatment related to grounds for discrimination is, as a rule, forbidden in working life, unless it is based on the nature and performance of the tasks involved. Exceptions to this rule are the employee's age and place of residence, with regard to which employment, labour market and sociopolitical reasons may also allow for different treatment. These are likely to provide an employer with an opportunity to offer retirement packages to employees of a certain age. It has been considered permissible for a municipality to offer summer jobs for young people who are residents of the municipality. The place of residence, however, may not function as legal justification when selecting employees and officeholders for a municipality's employment relationships.

13.10. Positive discrimination

The Equality Act permits what is referred to as positive discrimination: proportionate different treatment factually based on the promotion of equality is not considered discrimination. The objective in such cases must be the prevention or removal of disadvantages attributable to discrimination at a workplace or the more general promotion of equality at work and for the benefit of people who are in a weaker socioeconomic position. Such specific measures translating into special treatment must be proportionate to the objectives set. Thus the prohibition on discrimination does not prevent positive discriminati-

on necessary to secure actual equality, i.e. measures that improve the status and conditions of a particular group, such as minorities.

13.11. Prohibition on countermeasures

“A person may not be treated unfavourably or in a way that has adverse consequences for the person due to the person having invoked the rights or obligations provided in this Act, or because the person has been involved in the investigation of a matter concerning discrimination or taken other action to ensure equality.”

Prohibited countermeasures may include changing tasks or working conditions, weakening the terms of the employment relationship, lay-off and a termination of the employment relationship.

13.12. Supervisory authorities

Occupational health and safety authorities deal with individual cases concerning discrimination, the prohibition on countermeasures, discriminatory job advertising, equality plans and employers’ duty to promote [equality] and employees’ right to receive information. To enhance their authority, occupational health and safety authorities may rely on, for instance, prohibition and default fine procedures in accordance with the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces.

The Non-Discrimination Ombudsman is tasked with the general and social monitoring and promotion of equality and the prevention of discrimination. The Non-Discrimination Ombudsman can assist an employer in the planning of equality measures and a person who has been discriminated against in court. In addition, the Non-Discrimination Ombudsman’s purview includes employed forms of work, self-employed persons and managing directors who are not in an employment relationship. The Non-Discrimination Ombudsman also provides justified opinions to occupational health and safety authorities and mediation assistance, at the request of concerned parties, in matters concerning collective and collective bargaining agreements that do not belong to the labour court.

The National Discrimination and Equality Tribunal may confirm the parties’ settlement in a matter concerning discrimination and the prohibition on countermeasures. The National Discrimination and Equality Tribunal may also issue opinions in matters with relevance for the Act’s application. In matters other than those which fall under the purview of occupational health and safety authorities, the National Discrimination and Equality Tribunal may forbid a party concerned from continuing or repeating discrimination or countermeasures or order the party to take action to fulfill the obligations provided for in the Equality Act within a reasonable prescribed period of

time. The Tribunal may impose a default fine to enforce a prohibition or order issued by it.

13.13. Compensation and other consequences

A person that has become subject to discrimination or countermeasures is entitled to receive compensation for it from the authority, employer or educational institution or the provider of goods or services which has discriminated against or directed countermeasures at the person in violation of the Equality Act.

Such compensation does not prevent the person from claiming damages pursuant to the Tort Liability Act (412/1974) or some other act. For example, a person whose employment relationship has been terminated on discriminatory grounds is entitled—on the basis of a number of laws and a breach of the collective agreement—to damages in addition to the compensation.

Fundamentally, an infringement of equality is equal to a violation of basic rights and human rights. The Act does not specify a lower or upper limit for the compensation. The compensation must be in equitable proportion to the nature, scope and duration of the infringement. Its determination will account for the compensation’s effectiveness, proportionality and cautionary nature. The compensation can be adjusted or not ordered in the event that it would become unreasonable, particularly when considering any attempts by the party that committed the infringement to prevent or remove the action’s effects and its financial standing. The compensation should be compared to a compensation to be awarded on the basis of the Act on Equality between Women and Men.

A contractual term, rule or order contrary to the prohibition on discrimination or countermeasures is invalid. This applies to any corporate rules or provisions of an employment contract or collective agreement in conflict with the Equality Act. A court may also amend a contract or agreement, or order the contract or agreement to become void, provided that this is reasonable.

13.14. Period for claims and burden of proof

A person who considers that he or she has been discriminated against or become the target of countermeasures may claim compensation in a district court or request a district court to declare the discriminatory terms as invalid. A claim concerning discriminatory action must be filed with a district court within two (2) years. This period for claims is counted as of the moment of the infringement or as of the moment when the harassment has been brought to the employer’s attention. If the action is continuous, the period of claims is counted as of the moment when the prohibited action has ended. In hiring based on an open application process, however, the period of limitation is one (1) year as of the moment when

the person concerned becomes aware of the discriminatory selection.

When a matter pertaining to discrimination or countermeasures is being considered by a court or some other authority, the employee concerned must present an account of the factors on which his or her claim is based. If, during such a consideration, the factors presented give reason to believe that the prohibition on discrimination or countermeasures has been infringed, the counterparty must prove that the prohibition has not been infringed to disprove this assumption. While the claimant's burden of proof has been reduced in the Equality Act, a mere claim or suspicion of discrimination will not suffice: the employee must be able to present objective evidence on the justification of the assumption of discrimination.

14. EQUALITY BETWEEN WOMEN AND MEN IN WORKING LIFE

The purpose of the Act on Equality between Women and Men is to prevent gender-based discrimination and to promote equality between women and men and thus to improve women's status, particularly in working life. The Act also aims to prevent discrimination based on gender identity or gender expression. Section 13 contains information on an employer's duty to treat all its employees equally.

The Act on Equality between Women and Men (609/1986)

14.1. Scope of application

In addition to employment and civil service relationships, the scope of the Act also covers other legal relationships comparable to employment and civil service relationships and contract work.

The Act on Equality between Women and Men is applied to independent workers, practitioners and freelancers when the individual in question derives income mainly through his or her skills alone. A further criterion requires work to be performed in conditions similar to those in employment relationships.

The scope of the Act also encompasses the managing directors of limited liability companies and cooperative societies, as long as they are not the company's owners at the same time. In such cases, the clients or principals of the aforementioned persons are subject to the provisions of the Act on Equality between Women and Men concerning employers.

The Act's employer provisions also apply to a company that hires labour from another employer (user enterprise) when the company exercises the authority of an employer. The user enterprise is obligated to prevent harassment and to intervene in any harassment of which it becomes aware. It is obligated to distribute tasks in such a way that individuals are not placed in unequal positions on the basis of gender. However, the user enterprise is not responsible for the decisions that the company that hires out the labour makes in its capacity as an employer. If, for example, the employment relationship of a pregnant employee of the company that hires out labour is terminated, the party responsible for this is the company that hires out labour.

Gender identity refers to a person's own perception of his or her gender. Gender expression, on the other hand, refers to the expression of gender with clothing, beha-

viour/conduct or some other comparable manner.

14.2. Authorities and educational institutions' duty to promote equality

In all their activities, authorities must promote equality between women and men purposefully and systematically. They must create and consolidate administrative and operating practices that ensure the advancement of equality between women and men in the preparatory work undertaken on different matters and in decision-making. In particular, circumstances that prevent the attainment of gender equality must be changed.

The promotion of equality between women and men must be taken into account in the availability and supply of services. This refers to the services provided by an authority or a private entity which the authority offers as public services. Examples include social, educational, cultural, employment, traffic and leisure time services, whether they are statutory or discretionary. The law imposes special obligations on the organisers of public and private education alike. An equality obligation has also been imposed on the composition of public administration and bodies or institutions that exercise public authority: in principle, there must be at least 40 per cent of both genders in any public body or institution named in the law, unless some special reason otherwise dictates. The representative bodies of municipality- or state-owned enterprises are also subject to an equality obligation.

14.3. Employer's duty to promote gender equality

Every employer must promote equality between women and men within working life in a purposeful and systematic manner by:

- acting in such a way that job vacancies attract applications from both women and men;
- promote the equitable recruitment of women and

men in the various jobs and create for them equal opportunities for career advancement;

- promoting equality between women and men in the terms of employment, especially in pay.

On the basis of the salary statistics included in the pay survey explained in more detail below, the employer is obligated to operate in a way that allows for the review and adjustment of the possible wage discrimination situations revealed by the statistics.

- The employer must develop working conditions to ensure they are suitable for both women and men.
- The employer must facilitate the reconciliation of working life and family life for women and men by paying attention especially to working arrangements.

In practice, points 4–5 refer particularly to working hour and annual holiday arrangements as well as to the granting of family and job alternation leave. The employer must, insofar as possible, take into account the needs related to employees' family situations. The provision does nevertheless not interfere with the employer's right to supervise work.

- The employer has a duty to act in a manner that prevents the occurrence of discrimination based on gender. This also applies to sexual harassment and discrimination based on gender identity and gender expression.

An assessment of an employer's obligation to promote gender equality in working life will take into account the resources available and any other factors with relevance for the matter. A limitation should be construed narrowly.

14.4. Gender equality plan and survey of differences in pay

If an employer regularly has an employment relationship with more than 30 employees, it must draw up a gender equality plan at least every other year. The plan must include measures concerning particularly pay and other terms of employment that promote gender equality. The gender equality plan may be incorporated into a personnel and training plan or an occupational safety and health action plan and may include an equality plan. The plan aims to instil the equality perspective and mindset into all planning, preparation and decision-making concerning the personnel and the working environment.

The gender equality plan must be drawn up in cooperation with a shop steward, employee representative, occupational health and safety representative or other representatives designated by the personnel. Its preparation is

subject to the Act on Co-operation within Undertakings.

- An assessment of the gender equality situation in the workplace, including details of the employment of women and men in different jobs and a survey of the grades of jobs performed by women and men, the pay for those jobs and the differences in pay concerning the entire personnel.

The gender equality situation can be investigated by, for instance, studying recruitment practices and the principles of recruitment as well as statistics on pensions, training days, family leave, industrial accidents and absences due to illness. The gender equality situation may also be gauged with the help of a workplace climate survey. This allows the employer to investigate attitudes towards gender equality, the occurrence of harassment and problems related to the reconciliation of family and working life.

The investigation can function as a basis for the joint decisions of the employer and personnel representatives on measures to promote gender equality and on how to implement such measures. However, the employer is nevertheless responsible for the gender equality plan meeting the requirements of law and for the plan to contain an analysis of the employment of women and men in different jobs and a pay survey.

The survey of differences in pay helps to ensure that there are no unjustified differences in pay between women and men in the employer's service performing equivalent work. The pay survey must cover all of the employer's employees, across the borders of personnel groups. It must also cover any part-time and fixed-term employees and employees with a contractual salary. The law requires a calculation of mean pay in terms of every group surveyed. Including various increments and bonuses in the survey will also work for the benefit of equal pay. The pay survey is drawn up in such a way that the salary details of individuals are not apparent. Wage secrecy is protected by the Personal Data Act and the private sector's salary details are not public.

If the examination of groups formed on the basis of a job's degree of difficulty or the tasks involved or some other grounds uncovers clear differences in the pay between women and men, the employer must investigate the reasons and justifications for such differences. The equal pay obligation applies to equivalent jobs even when the work is very different, provided that they can be considered as demanding. When assessing how demanding a job is (i.e. its degree of difficulty), attention should be paid to, for instance, the training and competence required by the work and the degree of responsibility and stress involved and the working conditions.

If the workplace employs a pay system, the differences uncovered are investigated with a review of the central elements of pay. Regarding differences in pay, attention should be paid to how clear and systematic such differences are, even if they were small. It would be worthwhile to identify, in this context, whether the classification concerning the degree of difficulty has been performed in a sustainable way to begin with.

Compliance with different collective agreements cannot be considered a valid reason for different sized pay for equivalent work. The employer is responsible for the non-discriminatory nature of pay, even if the pay survey would not uncover gender-based differences in pay.

The reasons for differences in pay may relate to a job's degree of difficulty, personal performance, special responsibilities, inconvenient working hours, an employee's versatility, working conditions, organisational changes and market factors. If there is no acceptable reason for differences in pay, the employer must undertake the appropriate corrective measures. The employer must investigate and remedy pay discrimination swiftly. Corrective measures may also be included in the gender equality plan. A shop steward, employee representative or some other personnel representative may also initiate measures to manage situations of pay discrimination based on a pay survey.

- Planned measures for promoting gender equality and achieving equality in pay.

The purpose of the measures is to improve the equal career development opportunities of women and men and to implement equality in on-the-job training, working conditions, pay and the equitable use of family leave. The measures may also influence attitudes towards gender equality and harassment. In addition to the measures, it is important to agree on goals, means and schedules.

The gender equality plan can include both short-term and long-term goals. Short-term goals may include the improvement of working conditions, for example. Long-term goals may consist of increasing the number of women in management positions or the elimination of unfounded differences in pay.

- A review of the implementation of measures included in a previous gender equality plan and their results.

The review is employed in monitoring the realisation of the plan, but also functions as a basis for the next plan.

If a gender equality plan is drawn up in all other respects once a year, a local agreement may stipulate a pay survey to be conducted every three years. The employer must inform the personnel of the gender equality plan and its updating.

14.5. Direct and indirect discrimination on the basis of gender, gender identity or gender expression

Both direct and indirect discrimination based on gender, gender identity or gender expression is prohibited.

Direct discrimination means treating women and men differently on the basis of gender or for reasons of pregnancy or childbirth, or treating people differently on the basis of gender identity or gender expression.

If an employer does not intervene in harassment of which it has become aware, the case involves prohibited discrimination, i.e. different treatment on the basis of gender.

When the reason for the discrimination is pregnancy, the person is being treated less favourably than some other person on the basis of gender. The comparison requires a comparable situation between the persons and it can be done in relation to a previously prevalent or purely hypothetical treatment.

In indirect discrimination, the reason may, at first glance, seem gender neutral. Indirect discrimination nevertheless takes place if such action actually puts persons at a disadvantage on the basis of gender, gender identity or gender expression.

The expression "based on gender/on the basis of gender" also covers grounds with an indirect link to gender, such as family responsibilities and parenthood. In such cases, the comparison is not directed at persons of the opposite sex, but at persons to whom the grounds in question does not apply.

Discrimination is prohibited regardless of whether it is based on a fact or assumption pertaining to the person himself or herself or some other person. An example of such discrimination by association would be a situation where an employee's employment relationship was terminated on the grounds that his or her spouse is undergoing a sex-change operation.

The Act on Equality between Women and Men includes a special legal justification applicable to both situations involving direct and situations involving indirect discrimination. The actions found discriminatory above do not constitute discrimination if they aim at an acceptable goal and if the means chosen are appropriate and necessary in relation to that goal.

14.6. Gender discrimination in working life

The prohibition of discrimination in the Act on Equality between Women and Men is complemented with a provision concerning discrimination in working life. The actions of an employer constitute discrimination prohibited under the Act on Equality between Women and Men in,

for example, the following cases.

- Upon employing a person or selecting someone for a particular task or training, the employer bypasses a more qualified person of the opposite sex in favour of the person chosen.

This is not, however, considered discrimination if the employer's action is attributable to some other acceptable reason and not due to gender, or if the action is based on weighty and acceptable grounds related to the nature of the job or the task.

The wording "other acceptable reason and not due to gender" refers primarily to a difference in the personal suitability of the selected person and the person who was not selected.

"Weighty and acceptable grounds related to the nature of the job or the task" must have a genuinely close and appropriate connection to the work or task to be performed. Given that this involves an exception to a right conferred on an individual, the legal justification must be interpreted narrowly: only grounds acceptable according to common standards can justify a departure from the equality requirement in selection situations.

- The employer, upon employing a person or selecting someone for a particular training or determining the terms of an employment relationship, acts in such a way that the person finds himself or herself in a less favourable position on the basis of pregnancy or childbirth or some other gender-related reason.

It is worth noting, in this respect, that the prohibition of discrimination is also applied when making decisions concerning the employment relationship's pay and other terms of employment.

- The employer applies the pay and other terms of employment in such a way that one or more employees find themselves in a less favourable position than one or more other employees in the employer's service performing the same work or work of equal value.

The comparison may also involve a hypothetical employee, provided that the employer's treatment of this person can be shown.

For example, the terms of employment of employees who have taken family leave may not be weakened when they return to work. The employee who returns to work must be provided with all improvements to the terms of employment implemented during the absence.

- The employer manages the work, distributes tasks or

otherwise arranges the working conditions in such a way that one or more employees find themselves in a less favourable position than other employees on the basis of gender.

The Employment Contracts Act provides for the right of the employee who returns from family leave to return to work.

- The employer gives notice on, cancels or otherwise discontinues an employment relationship, or transfers or lays off one or more employees on the basis of gender.

The duration of, for instance, a fixed-term employment contract may not be limited or left without renewal due to the employee's pregnancy or family leave.

The employer is not considered to have violated the discrimination prohibition referred to in subsections 2–5 of the Act if the action aims to achieve an acceptable goal and if the means chosen are acceptable and necessary in relation to this goal. The law considers gender identity and gender expression equal to gender.

14.7. Sexual and gender-based harassment

Sexual harassment, which means harassment based on gender, as well as an order or instructions to engage in gender-based discrimination constitute discrimination as referred to in the Act on Equality between Women and Men.

Sexual harassment, which means harassment and molestation based on gender, is prohibited discrimination. Harassment based on gender and unwanted behaviour of the kind that is based on gender but not sexual in nature, is also prohibited. Such cases may involve degrading speech targeting the opposite sex and other degrading or demeaning of the opposite sex. When workplace bullying is based on the gender of the bullied person, the case constitutes prohibited harassment based on gender. The law considers gender identity and gender expression equal to gender.

An order or instructions to engage in gender-based discrimination also constitutes discrimination. The person guilty of discrimination is the person in a position of authority who gives the order, regardless of whether this order leads to a discriminatory action or not.

The employer must intervene in sexual or gender-based harassment of which it has become aware. Should the employer fail to take action to eliminate or remove the harassment, its failure constitutes discrimination prohibited under the Act on Equality between Women and Men. The employer's obligation applies to the harassment met by an employee at work. Situations outside

work and working conditions remain beyond the scope of this obligation.

The harasser holds primary responsibility for the harassment. The responsibility for the elimination of the harassment transfers to the employer when it has been made aware of the harassment. The employer may confront the harasser over the behaviour and prevent him or her from continuing the harassment.

The harasser may sometimes be the employer, such as a managing director or a member of the board of directors. In such cases, the person harassed need not make a separate report about the harassment to another representative of the employer for the action to be considered prohibited discrimination. However, in such cases, the harassed person does have an obligation to express to the harasser how offensive and unpleasant such behaviour is, unless there are special reasons for not doing so. In the event that the employer neglects its duty to eliminate sexual harassment or molestation, the case constitutes prohibited discrimination that falls within the scope of a compensatory consequence.

14.8. Employer's countermeasures

The action of an employer also constitutes discrimination prohibited under the Act on Equality between Women and Men if a person is given notice or otherwise treated less favourably after she or he has appealed to a right or obligation laid down in said Act or taken part in investigating a matter concerning gender discrimination.

Any witnesses and persons who provided assistance in the matter are also protected against countermeasures. The protection against countermeasures also concerns the time subsequent to an employment relationship. The employer's countermeasure targeted at a former employee constitutes discrimination resulting in a compensatory consequence also when it occurs once the employment relationship has already ended. It is also prohibited to target countermeasures at a job applicant who has applied for a job with the employer earlier and appealed to the Act on Equality between Women and Men at the time. Due to the countermeasures, the compensatory consequence (penalty) may only be sentenced as payable by the employer.

14.9. Actions that do not constitute discrimination as referred to in the Act on Equality between Women and Men

The special protection of women because of pregnancy or childbirth does not constitute discrimination based on gender as referred to in the Act on Equality between Women and Men. The special treatment of women is allowed only on the grounds of protection. Even in such

cases, the need for special protection may not lead to discrimination. The different treatment of women and men due to biological differences is allowed only when the reason for it is the protection of the woman or foetus because of reasons related to health or safety.

Nor does an action based on a plan aiming to implement the Act on Equality between Women and Men constitute gender-based discrimination.

14.10. Burden of proof

When a matter in which a person claims to have been discriminated against on the basis of gender is considered in a court of law or by another competent authority, the defendant must prove that equality between women and men has not been violated, but that the action has been based on some other acceptable reason and not due to gender. The provision does not apply to a criminal matter, in which the burden of proof lies solely with the injured party.

The principal rule in matters concerning the Act on Equality between Women and Men is the principle of the allocation of burden of proof. The plaintiff's burden of proof is reduced with regard to facts in terms of which conventional requirements of evidence endanger the effective implementation of discrimination prohibitions and which are known to or may be decided upon by the defendant, in which case the defendant is in a better position to prove them than the plaintiff.

If, for example, in a matter concerning pay discrimination, a female employee proves, in terms of comparatively many employees, that the average pay of female employees is lower than that of male employees, it is for the employer to prove that its salary payment practice is not discriminatory.

14.11. Employer's obligation to report on its action

An employer must, upon request and without delay, provide anyone who considers that she or he has been discriminated against in, for example, recruitment, a written report on its actions.

A shop steward or some other representative of the employees has an independent right to information related to an individual employee's pay and terms of employment at the employee's consent, when there is reason to suspect pay discrimination based on gender. The shop steward or other employee representative has the right, in cases involving suspected pay discrimination, to gain access to information concerning an employee group without the employees' consent. The information pertains to the group's average wages. The employee representatives may not disclose information pertaining to pay and

terms of employment to others. See section 14.14. for further information on providing gender equality authorities with information.

The report may not include information about health or any other information concerning personal conditions without the consent of the person in question.

14.12. Compensation according to the Act on Equality between Women and Men

The violation of prohibitions concerning, among other things, discrimination in working life, an employer's countermeasures and harassment in workplaces result in an obligation to pay compensation to the injured party under the Act on Equality between Women and Men. The compensation is exempt from tax. However, if such compensation is agreed on without a settlement confirmed by a court of law, the compensation is taxable income.

The minimum amount of such compensation is €3,240. The sum may be reduced or it may not be collected at all if the violator's financial standing is poor and if the violator has made a genuine effort to prevent the discrimination. The compensation may be reduced in, for example, cases where the employer has drawn up a gender equality plan and the discrimination has become apparent when assessing the gender equality situation.

No maximum amount has been determined for the compensation, with the exception of a recruitment situation, in which case the maximum compensation to be paid is €16,210.

A determination of compensation must account for the severity of the discrimination as well as for its extent and duration. If the same action has already resulted in pecuniary consequences by virtue of some other act, this should also be taken into account.

The compensation does not constitute damages. Awarding it does not require the violator's intent or negligence, which may have significance when considering the amount of the compensation. The payment of the compensation does not prevent the injured party from also claiming damages for financial loss under the Tort Liability Act or some other Act, such as the Employment Contracts Act.

Compensation must be claimed by legal action brought at the district court within whose judicial district the employer has its general forum. The action must be brought within two years of the discrimination prohibition being violated. In cases concerning recruitment, the period for claims is shorter: the action must be brought within a year of the violation of the discrimination prohibition. All claims for compensation pertaining to the

same action must be dealt with in the same proceedings as far as possible.

14.13. Prohibition on discriminatory vacancy announcements

Announcements of job vacancies or education or training places may not invite exclusively applications from either women or men, unless there is a weighty and acceptable reason for doing so related to the nature of the job or task, or unless it is based on a plan aiming to implement the Act on Equality between Women and Men.

14.14. Provision of information to gender equality authorities

The Ombudsman for Equality has the right to receive all information necessary for the supervision of compliance with the Act on Equality Between Women and Men from everyone. The Ombudsman must receive the information within a reasonable period of time specified by the Ombudsman. As a means of enforcing this obligation, the Ombudsman for Equality may impose a default fine, the payment of which will be ordered by the National Discrimination and Equality Tribunal.

Upon the request of an employee who suspects that pay discrimination has occurred, the shop steward or other employee representative has the right to obtain information on the pay and terms of employment of an individual employee. This information is received from the Ombudsman for Equality when the individual employee has not given his or her consent to the disclosure of pay information. The Ombudsman for Equality will request the information from the employer. At the same time, the employer is given a chance to present its opinion on the suspected discrimination. The Ombudsman for Equality delivers the information to the shop steward or other representative without delay and in no case later than within two months of receiving the request. The prerequisite for such disclosure is the Ombudsman's assessment that there is reason for suspicion. If the Ombudsman for Equality refuses to give the requested information, the employee representative may bring the matter before the National Discrimination and Equality Tribunal.

The Ombudsman for Equality has the right to conduct a necessary inspection at the workplace if there is reason to suspect that actions contrary to the Act on Equality between Women and Men have been taken there.

14.15. Guidance and advice provided by gender equality authorities

Anyone who suspects that she or he has become the victim of discrimination as referred to in the Act on Equality

between Women and Men may request guidance and advice on the matter from the Ombudsman for Equality. The guidance and advice should aim to prevent a continuation or recurrence of the unlawful practice.

Upon finding that an employer or educational institution is neglecting its obligation to draw up a gender equality plan despite the guidance and advice, the Ombudsman may impose a reasonable time limit within which the obligation must be met.

The National Discrimination and Equality Tribunal may prohibit the continuation of the action under threat of a default fine, if necessary, when the case concerns a violation of the discrimination prohibition, the prohibition of discrimination in working life, the prohibition of harassment occurring in workplaces and the prohibition of discriminatory vacancy announcements. At the request of the Ombudsman for Equality, an employer may be imposed with an obligation to draw up a gender equality plan. If necessary, this obligation may be enforced with a penalty payment.

15. FREEDOM OF ASSOCIATION AND FREEDOM OF ASSEMBLY

The Constitution of Finland contains general provisions on the freedom of association. Alongside the Constitution of Finland, Chapter 13, section 1 of the Employment Contracts Act provides for occupational freedom of association. In addition, the right is recognised in YTN's collective agreements. The Constitution also guarantees everyone the right of assembly, or the right to organise meetings and the right to participate in them.

*The Constitution of Finland (731/1999)
Employment Contracts Act (55/2001)*

15.1. Freedom of association

Freedom of association secures for both employees and employers the right to establish a lawful association, to belong and be active in such an association and, on the other hand, a right not to belong to an association.

Freedom of association also entails that the exercise of the freedom may not have harmful effects. This is provided for in, for instance, Chapter 2, section 2 of the Employment Contracts Act, according to which an employer may not, without a justified reason, treat employees differently due to membership in a trade union, and in Chapter 7, section 2 of said Act which concerns grounds for termination and according to which participation in the activities of an association or an industrial action pursuant to the Collective Agreements Act or executed by the association does not constitute acceptable grounds for termination.

Thus participation in trade union activities or not participating in them do not constitute justified grounds for dismissal, not being selected for a job or for different treatment in working life.

An agreement that restricts freedom of association – and therefore reduces the statutory rights of employees or the employer – is invalid by virtue of the Employment Contracts Act and does not have a binding effect.

In addition, any action contrary to the principle of freedom of association may lead to liability for damages and punishment. In addition, an employer that acts contrary to the discrimination prohibition may be obligated to pay a compensation the amount of which should be equitable in relation to the seriousness of the action, as referred to in the Equality Act. The seriousness of the action is assessed by accounting for the nature, scope and duration of the infringement.

15.2. Freedom of assembly

On the basis of the aforementioned, employees, in addition to and alongside the freedom of association, have the right to organise meetings related to trade union activities without a permission given by their employer or some other party and a right to participate in such meetings.

The employer is, under the Employment Contracts Act, obligated to allow employees and their occupational organisations to use the employees premises free of charge for the purpose of managing occupational matters and matters related to employment relationships and workplace conditions as well as organisational activities during lunch and other breaks and outside working hours, provided that the employer has premises suitable for such activities in the first place and that the exercise of freedom of assembly does not cause inconvenience or harm to the employer's operations.

The employer's obligation to allow its premises to be used for the aforementioned purpose is independent of the number of employees and their degree of unionisation, due to which the employer must allow its premises to be used also by employees who do not belong in trade unions and form a minority of the workplace's personnel.

16. PERSONNEL REPRESENTATIVES

Personnel representatives include shop stewards, employee representatives, contact persons, occupational health and safety representatives, personnel representatives in administration (see section 17), representative bodies in European Companies (see section 20) and cooperation representatives (see section 21). This section discusses the concept, (s) election and protection of a shop steward, employee representative, contact person and occupational health and safety representative.

Shop stewards and contact persons are personnel representatives based on collective agreements and may be selected only on the basis of a collective agreement. The position and selection of employee representatives and occupational health and safety representatives, on the other hand, are based on law.

Employment Contracts Act (55/2001)

Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006)

16.1. Shop steward

Shop steward usually means a representative selected by employees from among themselves on the basis of a collective agreement, whose task is to act as the representative of employees subject to the collective agreement – including, in other words, employees who are not organised or who belong to an employees association other than one which has made the collective agreement. Depending on the collective agreement in question, a shop steward can also be called an employee representative or contact person. Regarding YTN's bargaining sectors, a shop steward for upper white-collar employees may be selected in the technology industry and in the design, consulting, energy, financing, information, chemical, data communications industries and in private sector laboratories.

A shop steward's primary task is to represent individual employees and employee collectives in matters concerning the application of labour legislation and collective agreements. In addition, the shop steward's tasks include the promotion of relations between the employer and the employees. The shop steward should also maintain the negotiation and cooperation activities between the company and its personnel. The shop steward must be present in discussions concerning the company's development.

The shop steward furthermore has some tasks provided for in labour legislation, such as representing employees in preparatory investigations, hearings and negotiations based on the Act on Co-operation within Undertakings leading up to lay-offs or terminations due to the scarcity of work as well as acting as an adviser to an individual employee in a hearing preceding the cancellation of an employment relationship and a notice attributable to the employee.

The shop steward also has the right, within the frame-

work of the law and the collective agreement, to make local agreements that are binding on the upper white-collar employees he or she represents. Such agreements may concern the arrangement of regular working hours, the employer's right to have additional overtime done and the temporary shortening of daily rest periods. In addition to collective (bargaining) agreements, the Act on Co-operation within Undertakings and the Working Hours Act, provisions on the tasks of shop stewards are included in many other Acts related to labour laws, such as in the Employment Contracts Act and the Annual Holidays act.

16.2. Employee representative

In the event that the employees of a particular personnel group in the employer company do not have a shop steward selected on the basis of a collective agreement due to the absence of a collective agreement or some other reason, these employees may, by virtue of the Employment Contracts Act, select an employee representative from amongst themselves.

The employee representative is tasked with taking care of the tasks of an employee representative provided in labour legislation. In addition, the employees may, with a separate majority decision, authorise the employee representative to represent them in matters pertaining to employment relationships and working conditions, defined in the decision in question. The relevant decision may be made as early as when selecting the employee representative.

An employee representative is secondary with regard to a shop steward selected on the basis of the collective agreement and the representative's field of duties is, as a rule, more limited than that of a shop steward. The tasks of an employee representative do not include the supervision of compliance with a collective agreement. Nor can the representative make a valid local agreement

on the reduction of employees' benefits deriving from mandatory legislation on the basis of a provision in a generally applicable collective agreement.

16.3. Contact person

For industries that do not have a valid collective agreement between YTN and an employer's association/federation, upper white-collar employees may choose from among themselves a contact person in accordance with the basic agreement between YTN and the Federation of Finnish Technology Industries adhered to by YTN and the Confederation of Finnish Industries (EK). The contact person acts as the representative of the upper white-collar employees in employment relationship matters that concern the employees collectively and as the representative of a personnel group referred to in the Act on Co-operation within Undertakings in matters pertaining to co-operation. A contact person selected on the basis of the basic agreement may represent upper white-collar employees in issues related to individual employment relationships as well as in the making of a local agreement only pursuant to a separate authorisation. Nor is the contact person qualified to manage the aforementioned tasks of an employee representative provided in law, unless he or she has also been selected to act as an employee representative by way of a separate procedure. A contact person is not protected against termination.

16.4. Occupational health and safety representative

The employees of a workplace which regularly employs at least ten people must select from among their number an occupational health and safety representative and two deputy representatives for two calendar years at a time to represent the employees in co-operation related to occupational health and safety and in their relations with occupational health and safety authorities. The workplace's salaried employees have the right to choose from among their number their own occupational health and safety representative and two deputy representatives.

When employees working for different employers work in the same workplace, they have the right to elect a common occupational health and safety representative to represent them. If the workplace has a shop steward or contact person elected on the basis of a collective agreement or an employee representative as per the Employment Contracts Act, the occupational health and safety representative represents the employees solely in matters concerning the safety and healthiness of work, unless he or she has been elected to take care of both tasks.

The employer must ensure that the occupational health and safety representative and deputy representatives

are provided with the opportunity to receive suitable training on provisions and instructions pertaining to occupational health and safety and on other issues related to the management of the relevant tasks.

The planning and arrangement of the representative's training must be discussed in the appropriate manner and at an early enough stage between the employer and the employees or their representative. The training must take place during working hours, unless otherwise agreed in the collective agreement. The training may not incur costs to the occupational health and safety representative or the deputy representatives.

The occupational health and safety representative is entitled, for the purposes of carrying out his or her tasks, to review documents and lists which the employer must, according to occupational health and safety provisions, maintain. He or she also has the right to study opinions and research data concerning the safety and healthiness of work and to receive copies of all of the aforementioned documents. This also applies to the agreement on occupational healthcare made between the employer and the occupational healthcare service provider or a description drawn up by the employer on the occupational healthcare it organises as well as to the action plan for occupational healthcare.

The occupational health and safety representative may not neglect his or her obligations arising from the employment relationship due to the representative's tasks. The employer may not, without a valid reason, refuse to relieve the occupational health and safety representative from his or her regular work for such a reasonable period of time as is necessary for the representative to take of the representative's tasks. The employer must compensate the occupational health and safety representative for any loss of income attributable to the occupational health and safety tasks he or she has carried out during working hours.

The employer must pay a reasonable compensation for any necessary occupational health and safety-related tasks taken care of outside working hours and reported to the employer or its representative by the occupational health and safety representative. The occupational health and safety representative is similarly protected against termination as a shop steward and employee representative is.

If work causes an immediate and serious threat to an employee's life or health, the occupational health and safety representative has the right, barring some limitations, to suspend the work with regard to the employees he or she represents. When possible, taking into account the nature of the risk and other conditions, the occupational health and safety representative must inform the employer or its representative of the suspension of work

in advance and, in any case, as soon as this can be done in a safe way. The employer may order the work to continue after it has made sure that there is no risk. The employer must immediately inform the relevant occupational health and safety authority in writing of its actions and the grounds thereto.

16.5. Selection of personnel representatives

Barring a few exceptions, YTN's collective bargaining agreements do not contain provisions on the selection method for shop stewards but, in principle, a shop steward can be selected with a vote or with a unanimous decision from among the candidates who have consented to the task and meet the criteria specified in the collective agreement.

Given that the vote can be executed in a number of different ways, it is advisable to choose the method best suited for the conditions of the workplace in question, such as an election meeting, a mail or e-mail vote or a ballot. However, when deciding the election method, one must make sure that the selected method guarantees all eligible upper white-collar employees a chance to take part in the shop steward election.

Following the election, the employer, one's own association and YTN must be notified of the elected shop steward in writing. In the case of YTN, the notification is submitted by way of an electronic form, available at www.ytn.fi/lmilmoitus.

16.5.1. The technology industry and the consulting sector

In accordance with the collective agreement for upper white-collar employees working in the technology industry, the shop steward's sphere of activities must be discussed in cooperation with the employer company's management before a shop steward and deputy shop steward is elected for the company or workplace for the first time. This is also the occasion for specifying the practical arrangement related to the election procedure.

The collective agreement for upper white-collar employees in the consulting sector requires the need for a shop steward to be discussed when electing the shop steward and deputy shop steward for the first time. Such first-time elections also require an investigation of whether the company's or workplace's upper white-collar employees support the election of a shop steward, since the election of a shop steward for a workplace requires the support of a substantial part of the upper white-collar employees. YTN's other bargaining sectors do not have agreements on the aforementioned procedures, due to which they need not be complied with either.

Since an employer does not have the right to prevent the

election of a shop steward, said election does not require the employer's consent or approval, even in the technology industry or the consulting sector, despite the fact that the need for a shop steward must be discussed with the employer. Nor does the aforementioned discussion need to be repeated on the occasion of subsequent shop steward elections.

In the technology industry and consulting sector, the shop steward for upper white-collar employees is elected from among those upper white-collar employees of the workplace who fall within the scope of the collective agreement and belong to the association bound by the agreement and familiar with the workplace's conditions. Thus the person elected as shop steward must belong to the personnel group of upper white-collar employees and, furthermore, be a member of an YTN affiliate.

However, the election must be open to all upper white-collar employees of the workplace, regardless of which association they have aligned with or whether they are organised at all. This being the case, upper white-collar employees belonging to some association other than an YTN affiliate as well as unorganised upper white-collar employees must be given an equal chance to participate in the election of a shop steward in the technology industry and consulting sector.

In contrast, only upper white-collar employees aligned with YTN affiliates are, in principle, eligible to take part in the election of a shop steward in the ICT, financing and private laboratory sectors.

16.5.2. Information technology service industry

In the information technology service sector, employees aligned with the employee associations (or the member associations thereof) that fall within the scope of the collective agreement elect a shop steward from among their numbers. This means that only employees that belong to the Association of IT Sector Employees or an affiliate of YTN may take part in the election of a shop steward. Employees aligned with other associations and unorganised employees cannot be elected shop steward or participate in the election of the shop steward.

An office-specific shop steward may be elected for an independent unit that has an employer representative who determines the terms of employment relationships and may hire and fire employees. The matter is reviewed with the employer prior to the election. However, the employer's consent is not a prerequisite for the election of an office-specific shop steward. A local agreement may allow for the election of more than one shop steward for the independent regional and operative units of a major or regionally decentralised company. The election of a chief shop steward is possible in a company with several shop stewards.

16.5.3. Election of employee representative

As mentioned above, an employee representative is secondary in relation to the shop steward referred to in the collective agreement. An employee representative cannot be elected if the personnel group in question has a shop steward elected on the basis of a collective agreement binding on the employer by virtue of the Collective Agreements Act. The fact that any particular personnel group in the workplace has a shop steward elected on the basis of a collective agreement does not, primarily, prevent other personnel groups in the company from electing an employee representative for themselves. The company's upper white-collar employees, for example, can usually elect themselves an employee representative, even if the other personnel groups would have shop stewards elected on the basis of a collective agreement.

An exception to this rule is a case where upper white-collar employees cannot, for one reason or another, be clearly distinguished as their own personnel group and in which a shop steward pursuant to the collective agreement that is binding on the employer by virtue of the Collective Agreements Act has been elected from among the members of personnel. In such cases, upper white-collar employees cannot elect an employee representative, even in the case that they would also have been ineligible with regard to the election of the shop steward according to the aforementioned collective agreement.

Legislation does not contain provisions on the election methods applicable to employee representatives. Rather, this has been left for the employees themselves to decide. However, an employee representative may only be elected from among the employees of the company in question and the employer must be notified of the election of the representative, because the provisions of the Employment Contracts Act that concern employee representatives and obligate the employer only become applicable as of the date on which the employer was notified of the election or became otherwise aware of it. In addition to the employer, one's own association and YTN should also be notified of the election of an employee representative.

According to the basic agreement between YTN and the Federation of Finnish Technology Industries, the need for a contact person is, before such a person is elected for the first time, subject to the same kind of discussions between company management and upper white-collar employees as when electing a shop steward for the first time on the basis of the collective agreements for the technology industry and the consulting sector.

In addition, the election of a contact person for a workplace requires, as in the case of a shop steward, the support of a substantial part of upper white-collar employees. In accordance with the basic agreement, a contact person is elected for a term of office no less than a year

from among upper white-collar employees familiar with the conditions of the workplace, and the employer must be notified of the election.

It is advisable to also elect the contact person as the employee representative, so as to provide him or her with shop steward protection and the authority to negotiate and make agreements. Correspondingly, the person elected as employee representative should also be elected as contact person per the basic agreement to secure as broad a scope of authority as possible.

According to the collective agreements of upper white-collar employees working in the technology and energy industries as well as the basic agreement between YTN and the Federation of Finnish Technology Industries, to name a few, a shop steward and contact person's term of office must be at least a year long. Some collective agreements do not define the minimum length of a shop steward's term of office. The Employment Contracts Act does not contain provisions on an employee representative's term of office either. YTN nonetheless recommends that a shop steward, contact person and employee representative be elected for a two-year term of office always in the autumn of an odd-numbered year.

16.6. Ensuring the operating conditions of personnel representatives

Shop stewards elected on the basis of YTN's collective agreements must be provided with the information and operating conditions necessary to take care of the tasks. Shop stewards usually also have the right to use, in a manner agreed to in more detail locally, the company's normal office and other such equipment as well as IT devices, software and internet connections included, in carrying out their tasks. A shop steward must furthermore be given reasonable relief of work for the purpose of carrying out the tasks of a shop steward. He or she must also be provided with opportunities for career development comparable to those of other employees and the possibility to participate in training necessary for taking care of a shop steward's tasks in the manner usually defined in more detail in collective agreements.

16.6.1. Shop steward

The special job security created in the context of the Employment Contracts Act forms a material aspect of securing the operating conditions of a shop steward. A shop steward's employment contract may only be terminated – even in cases where sufficient grounds for termination are met – if the majority of the employees he or she represents consent to the termination. In addition, the employment contract of a shop steward can only be terminated or the shop steward laid off if work in the company ceases entirely and he or she cannot be provided with other work that corresponds with his or her professional skills or is otherwise suitable for him or her,

or if the shop steward cannot be trained for other work.

Depending on the collective agreement, the job security described above may have been extended to shop steward candidates and to people whose term as shop steward has come to an end. In such cases, a collective agreement's provisions pertaining to job security are also applied to the shop steward candidates defined therein as of the time the employer has been informed of this in writing, but at earliest three months prior to the beginning of the term of office of a shop steward candidate and up until the results of the election have been confirmed. The security that extends beyond a shop steward's term is valid for a period of six months after the term of office has ended.

Section 23.12. contains more information on protection against termination.

16.6.2. Employee representative

The Employment Contracts Act provides an employee representative with the same kind of right as shop stewards to obtain from the employer the information necessary for the employee representative to carry out his or her tasks. The employee representative is furthermore entitled to enough free time from his or her own work to carry out the tasks of an employee representative and to be compensated for any possible resulting loss of income. However, relief from work for the purpose of taking care of non-statutory duties and the compensation for the resulting loss of income must be agreed to separately between the employer and the employee representative.

For his or her term of office, an employee representative is covered by the same kind of protection against termination and lay-off as a shop steward elected on the basis of a collective agreement, meaning that an employee representative elected by upper white-collar employees working in an industry with no collective agreement is also covered by the scope of shop stewards' protection against termination.

However, pursuant to the Employment Contracts Act, an employee representative is not covered by a job security that extends beyond his or her term of office. Nor does the Employment Contracts Act provide those seeking the position of employee representative with a candidacy protection equivalent to that provided to shop steward candidates by collective agreements.

In addition to what is mentioned above on a shop steward and employee representative's special protection against termination and lay-off, it must be noted that the termination, dismissal or lay-off of a shop steward or employee representative contrary to the Employment Contracts Act is a punishable act for which the employer or its representative guilty of questionable action may be

sentenced to a fine.

Section 23.12. contains more information on protection against termination.

16.6.3 Contact person

According to the basic agreement between YTN and the Federation of Finnish Technology Industries, a contact person of upper white-collar employees is, in terms of his or her operating conditions, comparable to the representatives of other personnel groups. The employer must provide the contact person with the information necessary to handle local co-operation or any other task the contact person is responsible for at any given time according to the same principles as apply to the representatives of other personnel groups.

A contact person and a shop steward for upper white-collar employees elected on the basis of a collective agreement must furthermore be provided once a year, at his or her request, with information on the first and last names, employment relationship commencement dates and department or equivalent of the upper white-collar employees working in his or her sphere of activities and, when separately requested, information on any new upper white-collar employees.

A contact person elected on the basis of the basic agreement does not have special job security, as do shop stewards and employee representatives. It is therefore of primary importance to the contact person's operating conditions to elect him or her as employee representative on the same occasion.

17. REPRESENTATION IN THE ADMINISTRATION OF UNDERTAKINGS

The purpose of personnel representation in the administration of undertakings is to develop a company's (undertaking's) operations, improve the cooperation between the company and its personnel and increase the personnel's possibilities to exert influence. Because of this, the personnel has the right to participate in the discussion of important issues related to the company's business operations, finances and the personnel's status in the company's decision-making, executive, supervisory or advisory bodies.

The relevant Act applies to a Finnish company that regularly employs at least 150 people in Finland. Personnel representation can be organised in two different ways. The principal way is to arrange the representation by agreeing on the forms of representation between the personnel and the company's management. If agreement over representation is not reached, the personnel has the right to request that the representation be implemented as provided in the Act.

Act on Personnel Representation in the Administration of Undertakings (725/1990)

17.1. Personnel representation based on agreement

The agreement on personnel representation in the administration is made between the personnel and the employer in compliance with the procedure specified in the Act on Co-operation within Undertakings. However, the agreement's conclusion requires at least two personnel groups who together represent the majority of employees to accept it.

Personnel representation may be implemented fairly freely at the agreement phase. The agreement may nevertheless not deviate from what is laid down with regard to a personnel representative's protection against termination, qualifications, non-disclosure and penalties. Nor may the agreement deviate from the provisions of other Acts, such as regulations concerning the members of a limited liability company's board of directors. If the company has a personnel fund that has invested funds in the company's shares, this kind of representation achieved through ownership fulfils the personnel representation referred to in law, provided that this is agreed to in co-operation proceedings.

Section 18 contains a more detailed description of personnel funds.

17.2. Personnel representation based on law

If personnel representation cannot be agreed on, the personnel has the right to nominate its representatives and their personal deputies to one or more administrative body selected by the company and including the supervisory board, the board of directors or management groups or similar bodies that together cover the profit units of the company. This right to appointment exists

when it is requested by at least two personnel groups together representing the majority of personnel. The administrative body indicated by the company must have real, instead of merely apparent, decision-making power.

The personnel representatives are appointed in addition to the members of the administrative body in question, selected by the company. The personnel representatives may make up a fourth of the number of the administrative bodies' other members, but nevertheless in such a way that there is always at least one and at most four representatives. The personnel representatives' term of office is equal to that of the members of the administrative body in question. If the maximum length of a term of office has not been determined or agreed, it lasts for three years. The personnel representation must be implemented within a year of the time when the criteria for the Act's application were met and the request for representation was made.

17.3. Personnel representatives and their rights, obligations and responsibility

A personnel representative must be a legally competent person in an employment relationship with the company and not bankrupt or banned from business operations. If a representative fails to fulfil this criteria, he or she must resign. If personnel groups fail to reach an agreement on the selection of representatives, the various groups set their own candidates, from whom the representatives are then elected according to the same principle as is used in the election of an occupational health and safety representative. The relevant provisions are included in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces and in the Decree on the Supervision of Occupational Safety and Health.

The personnel representatives and the members of the administrative body in question selected by the company have equal right and obligations. What is provided for elsewhere with regard to the administrative body also concerns an administrative body supplemented by personnel representatives, as applicable. Indeed, it is advisable for the personnel representatives selected to a company's board of directors to familiarise themselves with the Limited Liability Companies Act and related works to clarify their own liability status. The personnel representatives and their deputies have the right to review the material concerning a matter under discussion to the same extent as other members of the administrative body.

However, personnel representatives do not have the right to participate in discussions concerning the selection and dismissal of company management, the terms of the management's contracts, the personnel's terms of employment or industrial action. A personnel representative's voting right may be limited by agreement. If only one personnel representative is nominated to the company's board of directors, the deputy representative also has the right to attend meetings and exercise his or her right to be heard. A personnel representative and his or her deputy are protected against termination in a manner equivalent to the protection against termination provided for a shop steward and employee representative in the Employment Contracts Act.

17.3.1. Release from work

The company must grant a personnel representative a release from statutory work for the time the representative needs for representation duties and directly related preparation work carried out in cooperation with other personnel representatives. The employer must also compensate for the resulting loss of income.

Any other time off and compensation for loss of income must be agreed upon on a case-by-case basis between the company and the personnel representative in question. If a personnel representative participates in the meeting of an administrative body outside his or her working hours, the company is obligated to compensate the representative for the relevant expenses and pay him or her a fee for attending the meeting.

17.3.2. Confidentiality

Unless otherwise separately provided for in the confidentiality obligation of the members and deputy members of an administrative body, information indicated by the company as business and trade secrets, the spread of which is likely to harm the company or a contractual partner of it, may be discussed only among the employees, salaried employees and personnel representatives whom the case concerns. Even in these cases, the information may not be disclosed to others. The confidentiality also applies to information pertaining to the financial

standing, health or some other personal matter of a private person, unless the person in question has given his or her consent to the disclosure of said information.

17.4. Consequences for breaking the law

Compliance with personnel representation in the administration of undertakings is supervised by the co-operation ombudsman. A court of law may, upon application, obligate a company (undertaking) to fulfill its duties in relation to personnel representation under the threat of a fine. The application may be filed jointly by the representatives of at least two personnel groups that together represent the majority of personnel. The imposition of a fine may also be applied for by the co-operation ombudsman.

If a company violates the enhanced protection against termination of a personnel representative by terminating the representative's employment relationship, the company's representative may be held accountable in accordance with the Criminal Code. In practice, this translates into a fine. In addition, a sum equal to the salary of 3–30 months may be awarded as damages to a personnel representative for unlawful termination. If the action in question can be construed as "work discrimination", the consequence may be up to six months of imprisonment. A breach of the confidentiality obligation may also result in a fine.

18. PERSONNEL FUNDS

A personnel fund aims to promote the cooperation between a company's personnel and the company and to increase the personnel's opportunities for economic participation. A personnel fund is a fund owned and controlled by a company's personnel. Its assets derive from the performance bonus and profit bonus items paid to it by the company. In addition to the personnel fund contribution paid to fund members in accordance with the performance and profit bonus system, a supplement to a personnel fund contribution may be paid by a separate decision in the fund's bylaws.

The reformed Act on Personnel Funds took effect on 1 January 2011. Funds established during the validity of the former Act are obligated to change the fund's bylaws to accord with the reformed Act within the transitional period, i.e. no later than in the third fund meeting following the Act's entry into force.

Act on Personnel Funds (934/2010)

18.1. Establishment of personnel fund

The establishment of a personnel fund is optional. It can be established in a company, profit unit, a foreign subsidiary, government agency or municipality or the profit unit thereof operating in Finland. A fund can be established when a company or its profit unit employs at least ten employees. In addition, the company's net sales or comparable revenue must be at least €200,000 when establishing the fund.

A joint personnel fund may be established in two or more companies, if the companies belong to the same group of companies. The personnel of a foreign company's branch registered in Finland and the personnel of a foreign subsidiary, provided that the parent company is Finnish, may also belong to a group personnel fund. The Act on Personnel Funds is furthermore applicable to two or more government agencies and departments or municipalities and federations of municipalities and the personnel funds established by their staffs.

The establishment of a personnel fund and the performance or profit bonus systems that accrue the personnel fund contributions as well as the principles according to which they are determined must be negotiated between the company and its personnel in a cooperation procedure or in some other way agreed to with the personnel. The company decides on the performance or profit bonus system that accrues the personnel fund contributions or the application thereof as well as on a supplement to a personnel fund contribution.

Representatives of the various personnel groups draw up a proposal on the establishment of a personnel fund and on the fund's bylaws. The representatives also convene the personnel fund's constituent meeting with a written invitation or some other verifiable manner. The invitation to the constituent meeting is delivered to the future members or the representatives of their choice no

later than a week before the meeting. The meeting must approve the bylaws applicable to the personnel fund before the decision to establish the fund. The decision concerning the fund's bylaws and the establishment of the fund may be approved if it has been supported by at least two-thirds of the votes cast. The constituent meeting also appoints the personnel fund's board of directors and auditors. The Act on Personnel Funds lays down some minimum requirements for the fund's bylaws. The report to register the personnel fund (i.e. registration report) must be submitted in writing to the cooperation ombudsman who also performs a preliminary review of the bylaws. An income statement and balance sheet must also be delivered to the cooperation ombudsman within four months of the end of each financial year.

18.2. Personnel fund's capital and fund units

A personnel fund's equity consists of the members' capital and other fund capital. The members' capital includes capital added to the members' fund units and any value adjustments made to the investments of this capital. The capital accrues from the personnel fund contributions received and their supplements, value adjustments included. Other fund capital includes the fund's joint capital and any donations to the fund. The fund may also have current liabilities as provided for in more detail in the Act on Personnel Funds.

The personnel fund receives personnel fund contributions that are included in members' fund units in accordance with the fund's bylaws. If the personnel fund contribution or its supplement pursuant to the performance or profit bonus system decided by the company is made up of personal units, these are included in the fund units of each member. If the company pays personnel fund contributions or their supplements to the fund more than once during a financial year and the applicable bylaws do not provide otherwise, the payments received by the fund during each financial year will remain either in

a separate single item or separate member-specific units, depending on the performance or profit bonus system accruing personnel fund contributions and their supplements, until the valuation day specified in the Act. If the fund contribution forms a single total sum, it is divided in the manner provided in the fund bylaws into members' shares which are added to each member's fund unit after the evaluation day. In this case, the personal shares are added, as such, to a member's fund unit. Only the capital that has accrued from personnel fund contributions and their supplements, fund profits and investment revaluations may be added to the members' fund units.

18.3. Members of personnel funds

In principle, the personnel fund comprises the company's entire personnel. The company's management can nevertheless be excluded from the fund in the bylaws. When establishing the fund, membership begins immediately for those determined qualified in the bylaws. The membership of those employed by the company subsequently starts from the beginning of the employment relationship, unless otherwise mentioned in the bylaws. The membership must nevertheless begin no later than within six months of the beginning of the employment relationship. Membership ends when a member's employment relationship has ended and the personnel fund units have been paid to him or her in full.

Prior to the new Act's entry into force, a fund's bylaws could include a possibility for the employees of companies belonging to a group to seek membership in some personnel fund within the group other than the personnel fund of their employer company. While the new Act on Personnel Funds does not include a corresponding provision, employees who joined a particular personnel fund during the validity of the former Act nevertheless retain their membership. According to the current Act, group companies may establish respective company-specific personnel funds, a joint personnel fund with some other company/companies or a group personnel fund.

18.4. Withdrawal of a fund unit

The fund unit of each member is divided into a restricted portion and a withdrawable portion. A member is entitled to the withdrawable portion in cash without delay after the evaluation day as provided in the fund's bylaws. The portion of transferable capital is provided in the personnel fund bylaws and can be a maximum of 15 per cent of the restricted portion.

Immediately after the evaluation day each personnel fund member must be given a written statement of the share of the personnel fund contribution and its supplement added to his or her unit, including the grounds for them, and the value of his or her unit and its division into

restricted and withdrawable portions. A member pays personal income tax for 80 per cent, but a 20 per cent share of the withdrawn portion is exempt from tax. Fund units transferred to and withdrawn from the personnel fund do not accumulate a member's social security.

A personnel fund member is also entitled, with certain conditions, to withdraw his or her share of the personnel fund contribution or its supplement in cash, provided that a regulation to that end exists in the performance or profit bonus system adopted by the company. Personnel fund units withdrawn in cash and supplements determined on the basis of the performance or profit bonus system constitute taxable income and are considered as pay when determining social benefits. They are also subject to social security contributions.

18.4.1. Payment of fund unit after termination of employment relationship

Regardless of what is provided in the bylaws with regard to the withdrawal of fund units, a fund unit must be paid in full within four months of the next evaluation day determined in the Act on Personnel Funds after a member's employment relationship ends. If a member's employment relationship has been terminated due to financial and production-related reasons, or the member has given notice once a lay-off has lasted for at least 90 days or if the member retires, the member is entitled to withdraw his or her fund unit in items the amount of which the member is free to decide on no more than four annual fund unit payment days following the end of the employment relationship.

18.5. Personnel fund administration

The decision-making power in a fund belongs to its members. The members exercise their decision-making powers in the personnel fund meeting, to be held at a time provided in the bylaws. In principle, every member has one vote, but the bylaws may provide that the number of votes depends on the size of the fund unit. The bylaws may also provide that a meeting may be participated in by mail or with the help of technical tool, provided that verification of the right to participate and the validity of the vote count is possible using procedures comparable to those used for a regular fund meeting. Among other things, a fund meeting decides on any amendments to the fund's bylaws, voting and election regulations and the members of the board of directors. The meeting also adopts financial statements and grants discharge from liability and decides on any measures necessitated by profit or loss and on the dissolution of the fund. A personnel fund must have a board of directors composed of at least three members. The board represents the fund and manages its operations.

18.6. Corporate restructuring and the dissolution

of a personnel fund

The transfer of personnel fund units is possible in a situation where an employee's employment relationship with the company or profit unit in which the personnel fund is transferred due to corporate restructuring, so as to be carried out in another company with a personnel fund or in which negotiations on the establishment of a personnel fund have been held and decisions on a performance or profit bonus system have been made within a year of the transfer of operations. The same principles may also be applied if a company belonging to a group ceases to be a part of the group and the group has a joint personnel fund for more than two companies and if a company with a personnel fund becomes a part of the group.

The transfer of personnel fund units requires the representative of the transferring employees and the receiving fund to submit a proposal on the terms of the transfer and on the rights of the transferring persons in the fund. The transferring employees must accept the proposal with an at least 2/3 qualified majority, in addition to which the proposal must also be approved by the fund meeting. The Act on Personnel Funds contains more detailed provisions on the transfer of fund units within a group. In such cases, there is no need to organise a vote among fund members on the transfer of fund units, and the transferring persons do not have the right to withdraw their fund unit.

A personnel fund may be dissolved at any time with the fund's decision arrived at with a 2/3 qualifying majority of the votes cast. The company may also decide to permanently discontinue the performance or profit bonus system accruing personnel fund units, in which case the fund loses the basis for its operation. The situations in which the dissolution of a personnel fund is mandatory are provided in more detail in the Act of Personnel Funds. Before a company makes such a decision, the matter must be discussed in a cooperation procedure.

19. CO-OPERATION WITHIN GROUPS

The Act on Co-operation within Finnish and Community-wide Groups of Undertakings provides for both national co-operation as well as co-operation that a Finnish but, should certain criteria be met, also a company operating in other EU or EEC countries should comply with (EWC activities). Both forms of co-operation aim to promote interaction between group management and personnel as well as the joint interaction of personnel. Fundamentally, the operation involves a company notifying selected representatives of possible future changes, particularly ones which concern the position of personnel. The representatives in question then have the chance to express their opinions prior to actual decisions being made. The relevant Finnish Act was enacted in 2007 and amended in 2011.

In this context, 'group' refers to a group in the meaning which it used in legislation concerning limited liability companies, banks and insurance companies which defines a group as being composed of a parent company and a subsidiary. A limited liability company that holds so many of the shares of another limited liability company that it also holds more than half of all votes conferred by the shares is considered a parent company. In the event that the parent company or subsidiary operates in some form other than that of a limited liability company, they will constitute a group only if there is a control relationship such as the one described above between the companies.

Act on Co-operation within Finnish and Community-wide Groups of Undertakings (335/2007)

19.1. Realisation of the group co-operation obligation

The domestic group co-operation obligation applies to a Finnish group which, on a regular basis, employs at least 500 people in Finland. Within such a group, group co-operation must be implemented in companies and independent operating units in Finland that employ at least 20 people on a regular basis.

The Act on Co-operation within Undertakings, the Act on Co-operation within Finnish and Community-wide Groups of Undertakings and EU directives all contain provisions on international group co-operation. In this respect, the Act on Co-operation within Finnish and Community-wide Groups applies to groups with a total of at least 1,000 employees in the European Economic Area and a company with a minimum of 150 employees in at least two Member States. The implementation of local co-operation complies with the Act on Co-operation within Undertakings, because the handling of local matters has been excluded from EWC activities.

19.2. Domestic group co-operation

When it involves various operating units located in different localities across Finland, domestic group co-operation is primarily organised by way of an agreement between group management and personnel representatives. Agreements allow group co-operation to be implemented freely, according to the parties' preferences.

However, if group co-operation has not, for one reason or another, been agreed upon within a year of the time when the criteria concerning the size of the undertaking were met, the co-operation must be implemented accor-

ding to the minimum requirements provided in law. Thus the obligation to implement domestic group co-operation does not require an initiative of personnel representatives.

YTN recommends that, when a group meets the criteria concerning the size of the undertaking, personnel representatives among themselves agree on the procedure with which to initiate negotiations with group management to produce a group co-operation agreement.

If group co-operation, in lieu of an agreement, is implemented according to the Act on Co-operation within Finnish and Community-wide Groups, the personnel of each domestic company that belongs to the group is entitled to elect from among their number at least one representative for the purposes of group co-operation. These personnel representatives must be selected in such a way that all personnel groups within the group are represented. If the company operates in several locations, it is sufficient for a person to represent the personnel of each location that belongs to a particular regional or operational whole.

19.3. International group co-operation

The implementation of international group co-operation complies with the legislation of the country in which the group has its headquarters/head office. Therefore, a Finnish group complies the provisions of the Act on Co-operation within Finnish and Community-wide Undertakings in all other respects except representatives, which are selected according to the national practice of the respective countries. In the case of a foreign group, the provisions of the aforementioned Act are, for the most part, only complied with in issues involving the selection of a Finnish personnel representative.

The objective of international group co-operation is to ensure that companies which have operations in several member states of the European Economic Area are obligated to implement the information and consultation procedure so as to improve employees opportunities to receive information and exert influence in these companies. The operations of the internal market involve the consolidation of companies, cross-border mergers, corporate takeovers and the establishment of joint ventures. To ensure the favourable development of economic operations, it is therefore necessary for companies and groups that operate in several member states to inform and consult with the representatives of the employees whom decisions concern.

19.3.1. Contractual international group co-operation

International group co-operation can be implemented either with an agreement between group management and personnel or according to the standard rules provided in the relevant Act. International group co-operation is primarily agreed upon with an agreement.

The initiative on the establishment of a European Works Council or the introduction of some other procedure can be made either by central management or a minimum of 100 employees and their representatives who operate in at least two companies and member states of the European Economic Area. The numbers may vary so that the initiative is made by 55 employees in one country and 145 employees in another country, for example. The initiative is submitted in the form of a written request to establish a special negotiating body for the purpose of establishing the European Works Council.

YTN recommends that, when a group meets the criteria concerning the size of the undertaking, personnel representatives agree among themselves on a procedure by which to bring about the written negotiation initiative. At the same time, YTN requests that it be informed of an intended initiative procedure as soon as possible. The notification can be addressed to any representative of an YTN affiliate. Together with the trade unions they represent, Finnish personnel representatives request the personnel representatives of the other country required for the initiative to submit a corresponding initiative in writing to group management.

The special negotiating body will be composed of one representative chosen by the personnel from each such member state of the European Economic Area in which the group has a company (undertaking) or branch office. Additional members are furthermore elected in proportion to the number of employees in each respective country. The group's employee representatives in Finland and group management together confirm the number of additional members as follows: one additional member chosen from a member state in which a minimum of 25–

49 per cent of the group personnel are employed, two additional members from a member state in which 50–74 per cent of group personnel are employed and three additional members from a member state in which a minimum of 75 per cent of group personnel are employed.

Finnish and European trade unions have drawn up instructions on the negotiation process and the content of the agreement. YTN recommends following these instructions. In Finland, both the instructions and a template for the agreement are available on the website of the working group of Teollisuuden palkansaajat (YTR) at www.teollisuudenpalkansaajat.fi/ytr/. The site also contains plenty of other useful information and material concerning EWC activities.

19.3.2. Statutory international group co-operation

If international group co-operation has not been agreed upon within three years of the presentation of the negotiation initiative or if group management has not launched negotiations within six months of the negotiation initiative, the international group co-operation must be implemented according to the minimum provisions of law.

In such cases, a European Works Council composed of at least three and at most 30 members must be established. One representative chosen by personnel from among their number is selected for the European Works Council from each such member state of the European Economic Area in which the group has a company (undertaking) or branch office. Additional members are furthermore elected in proportion to the number of employees in each respective country. The members may also set up a working committee composed of at most five members selected from among their number.

The Works Council convenes with group management once a year, when the employee representatives are provided with at least the items mentioned in section 19.4. The Works Council is furthermore entitled to assemble and receive information in legally exceptional situations that have or might have a considerable impact on employees.

19.4. Content of group co-operation

The key aspects of group co-operation are the information obligation of group management and the interaction between management and employees, or consultation.

Unless otherwise agreed, the personnel employed by the group must be provided with at least the following information:

- An annual standard financial report including the consolidated financial statements or, if one does not exist, a comparable report that is available. In addition, information about the outlook for the group's

production, employment, profitability and cost structure and an assessment of expected changes to the number or quality of personnel.

- Information about decisions made by group management concerning any material expansion, contraction or winding down of a group company.
- Information about decisions made by group management concerning a change in the product range, service operations or a comparable production factor of a group company that has an effect on the personnel.

The information must be delivered to employee representatives at a point in time and in a format that allows them to form a joint well-founded opinion on the information they have received. If the employer is unable to take the opinion into account in its decision-making, the employee representatives must be provided with a reasonable response. This must furthermore occur before the company makes a final decision on the matter.

In domestic group co-operation, the information concerning changes (points 2 and 3) must be provided to everyone the changes concern and in such a way that the statutory negotiations can be held. The negotiations included in the procedure concern only the effects that the decision announced is expected to have in a subsidiary. It does not substitute for actual co-operation negotiations to be held in the subsidiary.

In international group co-operation, information concerning changes must be given to the European Works Council or its working committee whenever the information concerns at least two undertakings or branch offices located in different member states or, since the 2011 amendment, also information that concerns only a single member state, if the decision may be expected to have substantial personnel effects in another member state as well (e.g. the decision to close down a factory in one member state is made in another member state).

Employee representatives must therefore also be informed and consulted in exceptional situations. The Works Council members representing the undertakings or branch offices that the measures in question directly involve may also attend the meeting.

19.5. Confidentiality

When company employees or employee representatives, in the context of group co-operation, receive information about the employer's business and trade secrets the spreading of which would be likely to harm the company or its partner, the information in question may be discussed and handled only among the employees and employee representatives whom the information concerns and may not be disclosed to others.

When indicating the confidential nature of the information it provides, the company must furthermore, on each

separate occasion, explain and, if so requested, justify the reason for the confidentiality. Not all information provided by the company can be automatically confidential and EWC representatives may not, indeed, even be presented with an advance and all-encompassing request for confidentiality.

Given that group co-operation also aims to develop interaction among employees, employee representatives must keep the personnel informed about the group co-operation. However, if the employer has indicated any particular piece of information as confidential, the employee representative, when communicating the matter to the employees whom it concerns, must carefully consider his or her procedures and underscore the information's confidentiality.

The confidentiality also applies to information pertaining to the financial standing, health or some other personal matter of a private person, unless the person in question has given his or her consent to the disclosure of said information.

19.6. Miscellaneous provisions

The costs of group co-operation are borne by the employer. Employee representatives have the right to be relieved of regular work for the purpose of participating in group co-operation. In addition, the employer compensates representatives for the loss of income and other costs resulting from the group co-operation.

What is provided in Chapter 7, section 10 of the Employment Contracts Act on the termination of a shop steward and employee representative's employment contract is correspondingly valid with regard to a personnel representative chosen for international group co-operation and his or her deputy's protection against termination.

Compliance with laws applicable to group co-operation is supervised by the co-operation ombudsman and the employer associations and employee associations which have concluded the collective bargaining agreements to be complied with in the employment relationships of the company (undertaking) in question.

An employer belonging to group management or its representative that wilfully or negligently fails to comply with the co-operation obligation may be sentenced to a fine specified in the Act on Co-operation within Undertakings for the violation.

20. EMPLOYEE INVOLVEMENT IN EUROPEAN COMPANIES (SE)

A European company is a limited liability company form that entered into force in October 2004. By registering as a European company, a company may operate in all EU and EEA countries with a single organisation. The minimum capital of European company is €120,000. This company form is governed by an EU regulation and the European Companies Act (742/2004). The abbreviation for a European company is SE (Societas Europaea) in all countries.

*Act on Employee Involvement in European Companies (758/2004)
Council Directive 2001/86/EC*

20.1. Provisions concerning employee involvement

The new company form has been seen as bringing administrative and organisational benefits for companies that have operations in several EU or EEA countries. For now, the new company form does not carry any significant fiscal benefits. A European company's company law-related status is governed by an EU regulation and the European Companies Act (742/2004).

'Employee involvement' means, on the one hand, an information and consultation procedure and, on the other hand, the personnel's right to participate in a company's administration. Employee involvement is governed by the Act on Employee Involvement in European Companies and an EU directive.

The implementation of employee involvement in a European company complies with the legislation of the company's country of registration. The provisions of the Act on Employee Involvement in European Companies applies to a Finnish group in all other respects but the selection of representatives, who are selected according to the national practice.

In the case of a European company registered in some other country, the provisions of the aforementioned Finnish Act are primarily adhered to only with respect to issues related to the selection of Finnish employees' representatives.

20.2. Negotiations on employee involvement

The registration of a European company requires negotiations for the implementation of a participation system for personnel. The chief goal is to agree on employee involvement with the European personnel. The initiative for the establishment of a special negotiating body and for the commencement of negotiations comes from the

company's management.

The negotiations aiming for an agreement must be held within six months. The parties may also agree on a six-month extension period.

YTN recommends that, once a company announces its intention to register as a European company, employees' representatives agree among themselves on a procedure with which to commence negotiations. In addition, YTN requests that a YTN affiliate be contacted in relation to the matter as soon as possible.

Together with the trade unions they represent, Finnish employees' representatives ensure the selection of the employees' representatives of other countries and their participation in the negotiations. Finnish and European trade unions have drawn up instructions on the negotiation procedure and the content of the agreement. A guide and other related material are available on the website of the working group of Teollisuuden Palkansaajat (YTR) at www.teollisuudenpalkansaajat.fi/ytr/.

YTN recommends following these instructions.

20.3. Content of employee involvement

The information and consultation procedure is, in principle, implemented in the form of a dialogue between a representative body composed of employees' representatives and company management. The dialogue requires the company management to regularly communicate information about the company's operations and material changes to the company or plans (= information).

The representative body composed of employees' representatives must be able to express its opinion on the matters of which it has been informed (= consultation). When exceptional circumstances have a significant impact on employees' benefits, and the company mana-

gement decides not to act according to the employees' opinion, employees' representatives have the right to convene again with the management of the European company so as to reach an understanding ("mini negotiation obligation").

The participation of the employees' representatives in the company's administration is realised either in the supervisory board, the board of directors or in management teams that together encompass all of the company's profit units. The representative body is entitled to select, to the administration of a European company, the number of members that corresponds with the greatest share of employee participation prior to the registration of the European company. Thus the personnel's existing participation rights may not be reduced in connection with the registration of a European company.

Employee involvement in European companies is multinational. Negotiating and agreeing on involvement and the functioning of employee involvement requires active cooperation between the employees' representatives and trade unions of different countries.

It is particularly important to immediately get in touch with the specialist of one's own trade union when hearing about the employer company's intention to register as a European company.

21. CO-OPERATION PROCEDURES

The Act on Co-operation within Undertakings aims to promote the interactional co-operation procedures between a company (undertaking) and its personnel based on timely sufficient information to the personnel on the undertaking's state and plans. The objective is to collectively develop the undertaking's operations and employees' opportunities to influence decisions made in the undertaking that concern their work, working conditions and position in the undertaking. In addition, the Act aims to intensify the co-operation between the employer, personnel and the employment and economy authorities to improve the status of employees and to support their employment in connection with the undertaking's operational changes.

Act on Co-operation within Undertakings (334/2007)

21.1. Act's scope of application

The Act on Co-operation within Undertakings is applied in undertakings that employ at least 20 people on a regular basis. In the exceptional cases explained in more detail below, the application of the Act on Co-operation within Undertakings nevertheless requires at least 30 employees.

In the context of the Act on Co-operation within Undertakings, 'undertaking' refers to all corporations, foundations or natural persons engaged in financial operations, regardless of whether the operations are intended to be profitable. The number of employees is considered on an undertaking-specific basis, meaning that each undertaking is considered separately, regardless of possible group relations. The Act on Co-operation within Undertakings is not applied in undertakings that employ fewer than 20 people on a regular basis. In addition, the Act on Co-operation within Undertakings is not applied in government or municipal agencies and services, which are subject to the Act on Co-operation within Government Agencies and Public Services. The Act on Co-operation within Undertakings is, however, applied in state-owned companies.

21.2. Co-operation representatives

The parties to the co-operation are the employer and the personnel of the undertaking which the issue being negotiated concerns. The personnel of the undertaking consists of three personnel groups: workers, employees and senior salaries employees. Each personnel group can be represented by, for example, a shop steward elected according to the collective bargaining agreement, an employee representative elected according to the Employment Contracts Act or a special co-operation representative elected for a two-year term of office according to the Act on Co-operation within Undertakings. In matters pertaining to occupational health and safety and

the personnel's health, the personnel can also be represented by an occupational health and safety representative. If the personnel has not elected any representative at all from among its number, the employer must hold the co-operation negotiations together with all those employees whom the matter being discussed in the co-operation procedure concerns.

21.3. Information to be provided to personnel groups

Listed companies must provide employee representatives with the company's financial statements or revenue accounts immediately after their release. In companies other than listed companies, the personnel must be provided with the financial statements no later than after their adoption. In addition to the financial statements, an employer is obligated to provide the employees' representatives with a report on the undertaking's financial standing at least twice during a financial year. This report must indicate, at a minimum, the outlook for the undertaking's production, service or other operations, employment, profitability and cost structure.

In addition to information related to the company's financial standing, the employer must at least once a year provide the representative of each personnel group with statistics on the salaries paid to the employees of the personnel group he or she represents. The employer must furthermore, upon request, once every quarter, provide the representatives of the personnel groups with information about the number of employees in a fixed-term or part-time employment relationship with the undertaking as well as on the undertaking's principles with regard to the use of external labour.

21.4. Matters that fall under the scope of the co-operation procedure

21.4.1. Undertaking's general plans, principles and goals

The employer is obligated to negotiate with the personnel on certain issues with an impact on the personnel's position. Firstly, this obligation to negotiate concerns the principles and practices complied with in recruitment. These refer to the general operating models which the undertaking routinely uses in its recruitment process. In this context, recruitment refers, in addition to the hiring of new employees, to the transfer of the undertaking's existing employees to other duties within the undertaking.

Secondly, the employer is obligated to annually negotiate with the personnel about its personnel and training plan. These aim to maintain and advance employees' professional competence. When drawing up a personnel and training plan, one must take into account any foreseeable changes in the undertaking's operations that may hold significance for the structure, number or professional skills of the personnel.

The employer must also discuss the principles of using contract work (temporary agency workers) with the personnel. The exception to this rule is undertakings with fewer than 30 employees, which are exempt from the continued negotiation procedure in this respect. When an employer is considering the use of contract work, it must make this known to the representatives of the personnel groups on whose employees' work the work performed by the contract workers would have an effect. The notification to be given to the personnel group representatives must indicate the number of the contract workers, their tasks and work sites, the duration of the contract and the time period(s) during which the workforce in question would be used.

The representative of a personnel group in undertakings with more than 30 employees may, within two days of the employer's notification concerning its intention to use contract work, request the employer to consider discussing the contract in co-operation negotiations (continued negotiation procedure). The negotiations must be held within a week.

In addition to the aforementioned, co-operation negotiations must include discussions about the undertaking's principles and practices in terms of internal communications. Issues that belong within the scope of co-operation negotiations include the ways and means related to the undertaking's internal communications. However, the Act on Co-operation within Undertakings does not impose an obligation to organise an undertaking's internal communication operations in any particular way.

Finally, the scope of the co-operation procedure covers the discussion of plans and practices based on other legislation. The scope of the co-operation procedure includes issues such as the gender equality plan referred to in the Act on Equality between Women and Men, if the plan in question is intended to be included in the personnel plan.

The co-operation procedures must also discuss the tasks in which an employee or worker may be requested to take a drug test, camera surveillance at the workplace, access control and other surveillance to be carried out with technical devices as well as basic issues related to personnel funds and profit bonus systems.

The employer is responsible for taking the initiative for the aforementioned co-operation negotiations. The initiative must furthermore be taken well in advance of the negotiations' commencement. In connection with the initiative, the employer must provide the representatives of the personnel groups with all information necessary for the issue to be discussed. Specific negotiation times have not been provided, but matters should be negotiated in the spirit of co-operation to achieve unanimity. The employer must also communicate the negotiations' results to all those concerned.

21.4.2. Agreement and decisions by personnel

The principal rule of the Act on Co-operation within Undertakings is for the employer to make decisions on the matters discussed in the co-operation negotiations once the negotiations have concluded. However, the Act on Co-operation within Undertakings does contain provisions on matters that require an express agreement between the employer and the personnel or over which the representative of a personnel group holds the decision-making power should the parties fail to reach an agreement.

The employer or the representative of a personnel group may present an initiative for negotiations to annually negotiate and agree on the number and content of co-operation training and the allocation of training per personnel group within the framework of the funds earmarked for this purpose by the employer. Co-operation training refers solely to the workplace's training that promotes co-operation, but the right to such training has not been limited to personnel representatives alone.

An initiative for negotiations may also pertain to working rules complied with in the undertaking or a part thereof and the changes to be made to such rules. Working rules refer primarily to instructions which define and specify the procedures and ground rules of the workplace. However, working rules are not merely instructions of the general kind, but norms binding on both parties of an employment contract, since they are complied with as part of individual employment contracts.

If an undertaking wishes to adopt a regular suggestion scheme or make changes to the rules of an existing suggestion scheme, the matter should be dealt with in the co-operation procedure. The suggestion scheme aims to get the entire personnel involved in the development of the company and traditionally includes the collection, assessment and rewarding of improvement suggestions made by personnel.

An initiative for negotiations may likewise be given on the principles to be followed in the allocation of company flats, the determination of shares per personnel group and the division of flats. Flats meant for the management of the undertaking remain outside the negotiations' scope.

According to Act on Co-operation within Undertakings, the scope of co-operation procedures covers the planning and use of staff facilities and comparable premises as well as the arrangement of children's daycare and catering at the workplace. However, the aforementioned must be arranged within the funds earmarked for the purpose by the employer, due to which the employer is not under a general obligation to cover the costs of the daycare of employees' children, for example.

In addition, agreements on the contributions earmarked by the employer for the purpose of the personnel's hobby, recreational and holiday activities should be made in the co-operation negotiations.

The initiative for negotiations must go through the main points of the matter to be dealt with in the negotiations and the grounds for the initiative for negotiations. Having presented or received an initiative for negotiations, the employer must give the relevant representatives of a personnel group the information necessary for dealing with the matter. In the event that the employer considers the negotiations referred to in an initiative presented by the representative of a personnel group unnecessary, it must inform the relevant personnel group representatives of this and the grounds for it without delay.

Co-operation negotiations should be held in the spirit of co-operation, with the aim of achieving an agreement on the matters discussed. An agreement achieved in co-operation negotiations must be made in writing and can remain valid for a fixed period of time or until further notice. The parties have the right to terminate an agreement valid until further notice with a six-month period of notice, unless they have agreed on some other period of notice. Everyone covered by the scope of the agreement must be informed about the agreement's content and, unless otherwise agreed, the agreement will enter into force a month later.

An agreement on working rules and the rules of a sug-

gestion scheme and any changes thereto is binding on the employer and those employees belonging within the agreement's scope of application whose personnel group representative has made the agreement. However, such an agreement does not supersede an express provision in an individual employee's employment contract that is more favourable for the employee.

If an agreement cannot be reached over the content and personnel group-specific allocation of co-operation training, the allocation of company flats or services or the recreational activities to be offered with the employer's funds, the decision-making power in the matters mentioned lies with the representatives of the relevant personnel groups.

If the parties, on the other hand, fail to reach an agreement on working rules and the rules of the suggestion scheme or changes thereto or on matters related to the division of company flats, the ultimate decision-making power lies with the employer, within the limits of its authority. However, the employer does not have the right to unilaterally confirm the working rules to be complied with in the undertaking or changes to be made thereto.

21.4.3. Changes in business operations affecting the personnel and arrangement of work

Various changes that might have an effect on the position of personnel may be made to business operations. According to the Act on Co-operation within Undertakings, an employer must also negotiate with the personnel on any personnel effects and arrangement of work attributable to changes in business operations that do not lead to the termination of employment contracts, lay-offs or employment contracts' reductions into a part-time employment contracts. Should the planned changes result in terminations, lay-offs or reductions to part-time employment contracts, the employer must hold the negotiations anew, starting from the very beginning, in accordance with the provisions concerning reductions in workforce (see 21.4.5.).

The employer must negotiate with the employees on personnel effects caused by the winding down of the undertaking or a part of it, the undertaking's relocation to another locality or the expansion or contraction of its operations. Similarly, personnel effects caused by acquisitions of machinery and equipment, the arrangement of work or the use of external labour belong within the scope of the co-operation procedure. Changes to service production or product ranges and other comparable changes to business operations must also be negotiated with personnel, if they have personnel effects.

Material changes to tasks, work methods, the arrangement of work and work premises as well as transfers from one task to another attributable to the aforementioned measures that fall within the scope of the employer's

right to supervise work and have an effect on employees' position must be dealt with in co-operation negotiations.

The co-operation procedure must also cover negotiations on the arrangement of regular working hours, any planned changes to them and the planned changes' effects on the beginning and end of regular working hours and on the timing of rest periods and meal breaks, unless otherwise provided in a collective agreement binding on the employer.

It should be noted that, besides the arrangement of tasks, the arrangement of work refers to the content and organisation of work in general and that such arrangements cause material changes to employees' position. The assessment should focus, in particular, on the duration and extent of the change. If the change is not material, the negotiations need not be held at all.

Co-operation negotiations should be held before the employer decides on changes to business operations or other arrangement of work which have a material effect on the employees' position. The negotiations must deal with the essential grounds for, effects and alternatives to the possible changes caused by the employer's plans in relation to the personnel's position. In the spirit of co-operation, the parties should attempt to reach a consensus, but if this not achieved, the employer has the right to decide on the matter. If the matter concerns only a few individuals, the negotiations are held between the employer and the persons whom the matter concerns. In this case, the employees who belong in the scope of the negotiations nonetheless have the right to ask a personnel representative to attend the negotiations.

The employer is obligated to make an initiative on co-operation negotiations. The initiative must indicate the time and place of the negotiations' commencement. The initiative should be made as early as possible. In addition, the employer must, prior to the commencement of the negotiations, provide the relevant employees or representatives of personnel groups with all information necessary with regard to the matter to be discussed and in the employer's possession at the time. The employee or representative of a personnel group must have a sufficient amount of time before the commencement of the negotiations to study and examine the matter both independently and together with other employees or personnel representatives. The information should be attached to the initiative for negotiations.

The representative of a personnel group also has the right to request the commencement of co-operation negotiations. Should the employer find the negotiations unnecessary, it must immediately give a written explanation of its grounds for finding the co-operation negotiations unnecessary. If no such grounds exist, the employer must make an initiative to commence the negotiations

as soon as possible after it has received the request submitted by the representative.

21.4.4. Co-operation procedure in connection with a transfer of business

The transfer of business means the transfer of an undertaking, business, corporation, foundation or an operative part thereof to another employer, provided that the business or its part engaged in as either full-time or part-time business remains the same or similar after the transfer. Legal praxis has found situations in which the following requirements are met to constitute a transfer of business:

- there is a contractual relationship between the transferor and transferee;
- the transfer concerns a business or part thereof that constitutes an operational entity
- operations continue largely unchanged; and
- operations continue forthwith, without a longer period of interruption.

It must be noted that disposing of the entire share capital of a limited liability company does not constitute a transfer of business because, in that case, the employer does not change. Nor is a change of the company form considered a transfer of business.

The employer is not obligated to hold actual negotiations on the transfer of business with the personnel, but both transferor and transferee must inform the representatives of personnel groups of matters related to the transfer of business. The matters to be communicated are the time or scheduled time of the transfer, the reasons for the transfer, the legal, social and economic consequences of the transfer and any planned measures concerning employees. The transferor must give the information well in advance of the transfer and the transferee no later than within a week of the transfer. If the transfer of business results in personnel effects, it is subject to negotiations according to Chapter 6 (see 21.4.3.) or Chapter 8 (see 21.4.5.) of the Act on Co-operation within Undertakings.

21.4.5. Co-operation procedure when reducing the use of labour

The most well-known provisions of the Act on Co-ordination within Undertakings concern the employer's obligation to negotiate with the personnel before it can terminate or lay-off employees or reduce employment contracts to part-time contracts on financial and production-related grounds. The obligation to negotiate concerns the termination of both one or more employment contracts, if the employer is subject to an obligation to negotiate based on the number of employees. The employer may not make decisions on the reduction of workforce before the co-operation negotiations have been held in the appropriate way. The employer is not obli-

gated to negotiate if the undertaking has been declared bankrupt, is placed in liquidation or when the physical person who acted as the employer dies and his or her estate decides not to continue the operations or transfer the undertaking to a new employer.

The employer must give a written negotiation proposal for the commencement of negotiations and employment measures no later than five days prior to the negotiations' commencement. During this time – which is not counted in the actual negotiation period – the personnel representatives have the opportunity to prepare for the negotiations.

The negotiation proposal should indicate, at the very least, the time the negotiations begin and the place in which they are held as well as a summary of the issues to be negotiated. Should the employer give an incomplete negotiation proposal, or indeed fail to give one altogether, it may be liable to an indemnification explained in more detail below (see 21.11.). If the employer is considering terminating the employment relationships of at least ten employees, laying them off for more than 90 days or reducing their employment contracts to part-time contracts, it must also provide the representatives of the relevant employees with the following information:

- information on the grounds for the intended measures;
- a preliminary estimate on the amount of terminations, lay-offs and full-time contracts reduced to part-time contracts;
- a report of the principles according to which the employees whom the terminations, lay-offs and reductions to part-time contracts concern are selected; and
- an estimate of the time during which the measures are carried out.

The grounds for the intended measures refer chiefly to the undertaking's financial standing, descriptions of orders on hand and customer, production and output volumes as well as accounts of the cost structure, competition situation, profitability or the undertaking's strategic future alternatives. The number of employees covered by the co-operation negotiations may change during the negotiations and the employer does not need to give an estimate of the reductions of workforce per personnel group. In other respects, the information must be provided in writing and attached to the negotiation proposal. If a particular piece or part of information cannot be supplied at this point, it can be given later. If the negotiations concern fewer than ten people, an employee or personnel representative must request the information separately, but even in this case, the employer is obligated to provide the information.

The employer must also submit the negotiation proposal or the information indicated therein in writing to the TE Office no later than when the negotiations begin. This

duty to notify applies to all employers, despite the size of the undertaking and the number of employees to be reduced.

If the need to downsize the workforce concerns at least ten employees, the employer must provide the representatives of personnel groups with a plan of action to promote employment at the beginning of the co-operation negotiations. When preparing the action plan, the employer must without delay clarify the public employment services that support employment with the authorities responsible for employment and the economy. The action plan must indicate the schedule for the co-operation negotiation, the procedures to be followed in the negotiations and the envisioned action plans for using public employment services and promote the search for work and training to be complied with during the period of notice.

If the terminations considered by the employer concern fewer than ten employees, the employer must, at the beginning of the co-operation negotiations, present the measures according to which employees' independent search for other jobs or training/education or their employment through public employment services is supported during the period of notice.

Issues pertaining to the reduction of workforce must likewise be dealt with in the spirit of co-operation to achieve consensus, and the personnel must have a genuine opportunity to influence the solutions. Points such as the grounds for and effects of the measures planned by the employer, the principles or plan of action, alternatives for limiting the number of employees subject to the reduction measures and for mitigating the effects on employees must be discussed in the co-operation negotiations.

The duration of the negotiation obligation provided in the Act on Co-operation within Undertakings depends on the nature of the measures considered by the employer and on how many people the undertaking employs. If the termination of employment relationships, lay-offs or reductions of full-time contracts to part-time contracts considered by the employer concern fewer than ten employees or if the lay-offs will not last more than 90 days, the employer has fulfilled its negotiation obligation when negotiations have been held for 14 calendar days. If, on the other hand, the employer is considering terminations, lay-offs that last more than 90 days or reductions of full-time contracts to part-time contracts that concern at least ten employees, the negotiation obligation lasts for six weeks.

An exception to this rule is undertakings which employ 20–29 people, in which negotiations invariably last for 14 days. The same 14-day negotiation obligation also concerns restructuring situations. An employer and emplo-

ees or their representatives may also agree differently with regard to the negotiation times provided in the Act on Co-operation within Undertakings.

Once the negotiation period has come to an end, the employer must, within a reasonable period of time, give the representatives of personnel groups a general report on the decisions to be considered on the basis of the negotiations.

In practice, the report should be given within a few weeks of the negotiations' conclusion and should indicate at least the number of the employees who will be given notice to, laid off or whose contracts will be reduced from full-time to part-time contracts per personnel group, the duration of lay-offs and the time during which the employer plans to execute its decision to downsize the workforce. The individuals whose employment contracts will be terminated, however, need not be named at this point.

21.5. Registering the outcome of the co-operation negotiations

Upon request, the employer must ensure that minutes are drawn up on the co-operation negotiations. The minutes should include details on at least the times during which the negotiations were held, the people present in the negotiations and the outcomes of the negotiations or the participants' dissenting opinions. All of the employer and personnel group representatives present in the negotiations review the minutes and verify them with their signature. The minutes are of material significance for subsequent assessments of whether the negotiations were held in accordance with the Act on Co-operation within Undertakings or whether something was agreed on during them. Because of this, the minutes should be signed only after they have been carefully reviewed and any possible errors have been addressed, by correcting them either in the minutes or in a separate appendix.

21.6. Right to use experts

Personnel group representatives have the right to consult and request information from the experts of the relevant operational unit and, insofar as possible, from other experts and specialists in the undertaking when they are preparing for the co-operation procedure. The expert(s) in question may also be used in the actual co-operation negotiations, when necessary for the issue under discussion. Consulting a financial expert in terms of the undertaking's financial standing, for example, would be natural. The use of external experts may be agreed on with the employer separately.

21.7. Release from work and compensation

For the representatives of personnel groups to be able to take care of the resultant responsibilities in the ap-

propriate manner, they have a right to obtain a sufficient release from their work. The release covers participation in meetings related to the co-operation which a representative of the employer also attends. The release also covers the time which the personnel group representative needs to prepare for the negotiations to be held with the employer together with the representatives of other personnel groups, for example. The employer must compensate for any loss of income resulting from the release from work.

If the representative of a personnel group participates in a co-operation negotiation outside his or her working hours or performs some other task agreed to with the employer, the employer must pay compensate him or her for the time spent on the task in the amount corresponding to the representative's salary for regular working hours.

21.8. Confidentiality

The employer must inform the employees or the representatives of personnel groups as well as the aforementioned experts which issues discussed and addressed in the co-operation negotiations are subject to non-disclosure. Only when a particular issue or case concerns the health or financial standing of a private individual is there no need to make separate mention of its confidentiality. It is advisable to record the issues and subject matters subject to non-disclosure in the minutes, the grounds for the confidentiality included.

The employees, personnel group representatives and aforementioned expert(s) must keep any business and trade secrets of the employer they become aware of during the co-operation procedure confidential. Likewise subject to non-disclosure is any information pertaining to the employer's financial status which is not public by virtue of legislation and the spread of which would likely be harmful to the employer or a partner of it.

The confidentiality obligation also applies to information concerning corporate security and any equivalent security arrangements, the spread of which would likely be harmful to the employer or its partner, as well as to information concerning the health, financial standing or some other information personal to a private individual, unless the person protected by the confidentiality obligation has given his or her consent to the information's disclosure.

The confidentiality obligation does not prevent an employee or the representative of a personnel group from disclosing any information – apart from information concerning the health of a private individual – to other employees or their representatives. However, prior to disclosing the information, the person disclosing it must indicate its confidential nature.

In this manner, information subject to confidentiality/non-disclosure may be disclosed to the extent necessary for the realisation of the purpose of co-operation in terms of the position of these employees.

The confidentiality obligation lasts for the duration of the entire employment relationship and, possibly, pursuant to other legislation, even after it has ended.

21.9. Co-operation negotiations' relation to collective agreements' provisions concerning negotiations

If a matter to be dealt with in the co-operation negotiations should also be discussed in accordance with the collective agreement's order of negotiations binding on the employer, the co-operation negotiations may not be commenced or they must be suspended if the employer or the shop steward who represents those bound by the collective agreement requires the matter to be discussed according to the order of the collective agreement.

21.10. Derogations from the co-operation procedure

An employer may derogate from its obligation to negotiate provided in the Act on Co-operation within Undertakings for particularly weight reasons causing harm to the undertaking's production or service operations or the its finances. A derogation from the obligation to negotiate furthermore requires that the aforementioned reasons could not have been foreseen.

When the grounds for derogating from the co-operation obligations referred to above no longer exist, the employer must initiate the co-operation negotiations without delay, also clarifying the grounds for the exceptional procedure therein.

21.11. Indemnification and period for filing claim

An employer which has terminated an employment relationship, laid off an employee or reduced a full-time contract to a part-time contract through a wilful or grossly negligent failure to comply with the procedure provided in the act on Co-operation within Undertakings may be ordered to pay an indemnification to the employee who has been laid off or whose employment contract has been terminated or reduced from a full-time contract to a part-time one. The maximum amount of such indemnification is €34,140.

When determining the amount of the indemnification, one must take into account the degree to which the co-operation obligation has been neglected and the employer's circumstances in general as well as the nature

of the measure aimed at the employee and the duration of his or her employment relationship. If the employer's neglect can, all things considered, be seen as minor, the indemnification need not be awarded.

The employer may be ordered to pay the indemnification regardless of whether it had legal grounds for the termination, lay-off or reduction from a full-time to part-time contract. Thus the indemnification is a sanction solely for neglecting the co-operation procedure the employer has a statutory obligation to comply with. If there are no legal grounds for the termination, lay-off or the reduction of a full-time contract to a part-time one as required by the Employment Contracts Act, the employer may be ordered to pay damages for an unlawful termination in addition to the aforementioned indemnification.

The employee's right to the indemnification expires if the claim during an ongoing employment relationship is not filed within two years of the calendar year during which the right to the indemnification was created. Thus the right to claim indemnification for a violation of the Act on Co-operation within Undertakings that occurred in 2013 expires on 31 December 2015. The right to indemnification expires once the employment relationship ends, unless the relevant claim is filed within two years of the termination of the employment relationship.

21.12. Coercive measures

If an employer neglects its obligation to provide information laid down in the Act on Co-operation within Undertakings, a personnel group may request, in a court of law, that the employer be obligated, within the time prescribed by the court and under the threat of a fine, to provide the personnel with:

- information on the undertaking's financial standing;
- pay information;
- information on the undertaking's employment relationships; and
- an account of the principles on the use of external workforce applied in the undertaking.

If the employer neglects its obligation to draw up a personnel plan and/or training goals, the Ministry of Employment and the Economy may, at the request of the representative of a personnel group, request that a court of law impose a conditional fine on the employer. This means that the employer must draw up the personnel plan and the training goals under the threat of a fine.

21.13. Availability and penalties

The Act on Co-operation within Undertakings must be on display for everyone to see at the workplace.

An employer who wilfully or negligently fails to comply with the negotiation procedure specified in the Act on Co-operation within Undertakings may, in addition to indemnification, be sentenced to a fine for a violation of the Act. Responsibility for the violation of the co-operation obligation is borne by the representative of the employer whose duties the obligation falls under.

An employee, the representative of such or the aforementioned expert who breaches the confidentiality obligation may, on the other hand, be held accountable under the Criminal Code.

22. LAY-OFFS

A lay-off means a temporary interruption of work and salary payment taking place at the employer's initiative while the other terms of employment remain in force. A lay-off may remain in force until further notice or for fixed period of time. In any case, it is a temporary solution. It can be implemented by a complete suspension of work or by shortening an employee's working hours (part-time lay-off). If the reason for a lay-off is the temporary diminishment of work, the maximum period for a lay-off can usually be 90 days.

Employment Contracts Act (55/2001, Chapter 5)

22.1. Grounds for a lay-off

An employer may lay off an employee if it has financial or production-related grounds for terminating the employment relationship. In other words, an employee can be laid off if the work offered has materially and permanently diminished due to financial and production-related reasons or due to reasons related to a restructuring of the employer's operations, and the employee cannot be re-assigned or retrained within reason.

The criteria for lay-offs may also be met when the diminishment of work is temporary in nature and is estimated to last a maximum of 90 days. Even in this case, the prerequisite is that the employee cannot be re-assigned to or retrained for a new job. The 90-day limit for a fixed-term lay-off is nevertheless not unconditional. Rather, according to the legislative drafts of the Employment Contracts Act, it is a kind of flexible measure between a fixed-term lay-off and one that is in force until further notice. According to the Employment Contracts Act, an employee may not be laid off due to a reason for termination related to the employee's person or when the grounds for a cancellation of the employment contract according to the Act are met.

Lay-offs may be targeted at employees whose employment contracts are valid until further notice. However, an employee with a fixed-term contract who works as a substitute for a permanent employee can also be laid off, provided that the employer would have the right to lay off the permanent employee, if he or she would be working.

In addition, the employer and employee may agree, while the employment relationship lasts, on a temporary lay-off when it is necessary for the employer's operations or financial situation. In such cases, any possible factors that weaken unemployment security must nevertheless be taken into account.

The employment contracts of employees with fixed-term contracts may include a condition according to which the contract may be mutually terminated in the same manner as a contract that is valid until further notice. However, employers do not primarily have the right to lay off employees with such contracts. An employer may not lay off an employee after the employee's employment relationship has been terminated at the employer's initiative. In other words, the employer cannot be discharged of its obligation to pay a salary for the period of notice this way.

22.2. Lay-off of a shop steward, employee representative or occupational health and safety representative

The Employment Contracts Act gives special protection to a shop steward and employee representative. Shop stewards or employee representatives may be laid off only if their work ends completely and no other job corresponding to their professional skills or otherwise suitable them can be arranged or if they cannot be trained for another job. A shop steward and employee representative are therefore the last to be laid off, provided that their professional skills and experience allow them to handle the jobs that remain.

What is explained above in terms of laying off shop steward and employee representatives correspondingly applies to laying off occupational health and safety representatives.

22.3. Advance explanation, hearing an employee and lay-off notice

Prior to giving the actual lay-off notice, the employer must give the employee or the employees' representative an advance explanation of the lay-off and an estimate

of the matters to be specified in the lay-off notice, detailed below. Following the advance explanation, prior to the lay-off notice, the employer must give the employees or their representative a chance to be heard on the explanation given. However, the advance explanation need not be given if the employer is obligated to hold co-operation negotiations with the personnel. In such cases, the financial and production-related grounds for the lay-offs as well as the lay-off's effects and possible alternatives to it will be discussed in the co-operation procedure.

Lay-off notices must be delivered to employees in person, in compliance with a minimum notice period of 14 days. A different notice period can be agreed on with collective bargaining agreements and many of them do indeed include agreements on longer notice periods for lay-off notices. According to the collective agreement applicable to upper white-collar employees working in the technology industries, for example, the notice period for a lay-off notice is a month when the employment relationship has lasted for more than a year.

If the notice cannot be given in person, it can also be delivered by mail or electronically. The lay-off notice must indicate the grounds for the lay-off, its time of commencement and duration or estimated duration.

At the employee's request, the employer must give a written certificate of the lay-off that indicates at least the reason for the lay-off, its time of commencement and its duration or estimated duration. In practice, it is always wise to ask for such a certificate, because it is required when taking care of affairs with employment authorities, among others.

The lay-off notices must also be delivered to the representative of the employees laid off. The employer must inform the employment authorities of the lay-off if it concerns at least ten employees.

22.4. Postponement, interruption and end of a lay-off

The Employment Contracts Act does not recognise a lay-off's postponement procedure. Because of this, a lay-off may not be postponed unilaterally by the employer, unless the procedure has been agreed upon in the employment contract or with the employee. According to the Employment Contracts Act, the only way to change the time at which a lay-off begins is to cancel the lay-off and give a new lay-off notice in compliance with the appropriate notice periods.

As mentioned above, collective agreements often contain more detailed provisions on the postponement and interruption of lay-offs. According to some collective agreements, the time of a lay-off may be postponed on certain grounds in such a way that the original lay-off notice is cancelled and the employee is provided with a new lay-

off notice.

Nor does the Employment Contracts Act recognise the interruption of a lay-off. Because of this, an employer may not unilaterally order an employee to work temporarily during a lay-off in such a way that the lay-off would continue after this temporary return to work. An interruption of a lay-off is possible only if its agreed upon separately between the employer and the employee.

According to the Employment Contracts Act, the employer's only means to get an employee to work with a unilateral decision is to end the lay-off. In such cases, a new lay-off can, of course, begin after a new lay-off notice and the appropriate notice period.

A fixed-term lay-off ends at the end of the indicated or agreed period of time. An employee laid off until further notice must be informed about the beginning of work no less than seven days in advance, unless otherwise agreed.

22.5. Agreeing on a lay-off

YTN does not recommend agreeing on a lay-off. Such agreements may carry risks with regard to obtaining daily unemployment allowance for the duration of the lay-off. If agreeing on a lay-off, one should always first find out how the relevant unemployment funds view the matter.

22.6. Other work during a lay-off

The Employment Contracts Act does not prevent an employee from taking on another job for the duration of a lay-off. An employee who has accepted another job during a lay-off may terminate the employment contract he or she has made with the other employer with a five-day period of notice, regardless of the period of notice to be complied with otherwise. An employee is therefore entitled to enter into an employment contract for a job that corresponds with his or her occupation for the duration of a lay-off. However, the case may not involve operations in direct competition with the employer's operations, since the non-competition clause applicable to the employment relationship remains in force throughout the lay-off. Nor may an employee disclose the employer's business or trade secrets during a lay-off.

22.7. Fringe benefits during a lay-off

In the event that an employee has at his or her disposal a flat as an emolument or on the basis of a lease agreement included in the employment contract, the employee's right to use the flat will remain intact for the duration of the lay-off. A fair-value rent, however, must be paid for the flat for the time in question. The employee must be informed of the charging of the rent no later than a month before the payment obligation begins. In exceptional cases, when important circumstances so require,

the employer may nonetheless change the flat to some other suitable flat. In such cases, the relocation costs are borne by the employer.

The right to use other fringe benefits, such as company car or phone and meal benefits, are interrupted for the duration of the lay-off. In other words, the fringe benefits are on a par with the salary. In practice, an employer sometimes lets an employee use fringe benefits during a lay-off, too. This has a bearing on the determination of the daily unemployment allowance, since in such cases, the employee is considered to receive a part of his or her pay.

Section 26.7. contains more information on an adjusted daily allowance.

22.8. Termination of a laid-off employee's employment relationship

An employee who has been laid off may terminate his or her employment contract to end immediately, without a period of notice, regardless of whether the employment contract is valid for a fixed period of time or until further notice. However, this right ceases for the final seven days leading up to end of the lay-off. A termination during these final seven days will be subject to the normal period of notice.

If the lay-off has lasted continuously for more than 200 calendar days, the laid-off employee has the right to receive the pay for his or her period of notice as compensation, in the same fashion as if the employer were to terminate the employment contract. An annual holiday or a formal short-term stint of work meant to circumvent the provision do not interrupt the continuous period of the lay-off.

An employer may terminate an employee's employment contract during a lay-off, but laid-off employees must also be paid a salary for the period of notice. If the notice period for the lay-off has been longer than 14 days pursuant to the law or a collective agreement, the employer may deduct a 14-day salary from the salary paid for the period of notice.

Section 5.3. contains information on a lay-off's effect on the accumulation of an annual holiday.

23. THE END OF AN EMPLOYMENT CONTRACT

An employment relationship may terminate in a number of ways. An employee himself or herself may terminate or cancel the employment contract. The employer may terminate the employment relationship either for reasons attributable to the employee or financial and production-related reasons or, in serious cases, even cancel the employee's employment contract. An employment relationship may also end in cancellation during a trial period either at the will of the employee or the employer. A fixed-term employment contract, on the other hand, normally ends without any separate measures when the term comes to an end—for example, after the work has been completed.

An employee does not need to give a reason for terminating his or her employment contract. An employer, on the other hand, must always justify the termination of an employee's employment contract.

23.1. End of a fixed-term employment contract

A fixed-term employment contract ends when the term comes to an end or when the task has been completed. A fixed-term contract need not be terminated and there is no period of notice. If the length of the fixed-term employment relationship has not been determined according to the calendar and its end depends on a factor that is known to the employer but not the employee, the employer must let the employee know about the expected end of the employment relationship well in advance.

A fixed-term employment contract cannot, primarily, be terminated. However, it can be terminated to end in the middle of the employment contract, if the right to terminate has been expressly agreed upon. If a fixed-term employment contract is terminated by the employer, it must have grounds for the termination.

The parties to the employment contract may also agree on the termination of a fixed-term employment contract, even if the right to terminate has not been agreed upon in advance. What is to be noted in such cases is the agreement's effect on unemployment security.

Another exception is a fixed-term employment contract made for a period that lasts for more than five years, which can be terminated according to the same grounds and procedures as an employment contract valid until further notice after five years have passed since the contract was made.

A fixed-term employment contract may furthermore be terminated prematurely by cancelling the employment relationship on the grounds required by the Employment Contracts Act.

See also the sections on trial periods (3.4.), the cancellation of an employment relationship (23.15.), restructuring procedures (23.10.), termination in connection with a transfer of business (23.8.) and the bankruptcy or death

of the employer (23.9.).

23.2. Termination of an employment contract valid until further notice

An employment contract valid until further notice primarily ends through termination by either party, the termination taking effect once the period of notice has expired. In addition, an employer is required to give legal grounds for the termination. An employee may terminate his or her employment contract without giving a reason for it.

23.3. Notice period

A period of notice can be agreed upon, within certain limitations, freely either with an employment contract or a collective agreement. The maximum length for a period of notice is nevertheless six months.

Regarding a period of notice, it may also be agreed that the employer comply with a longer period of notice than the employee. If the period of notice agreed upon with regard to the employer is shorter than the employee's period of notice, the employee may comply with the employer's period of notice.

It may also be agreed that no period of notice at all will be complied with. This kind of agreement may also be made only in the termination situation. If such an agreement is made, the employment relationship is considered to terminate at the end of the workday or shift in question.

An agreement that waives a period of notice prevents the employee from receiving an unemployment benefit for a corresponding period. Statutory periods of notice are complied with in cases where there is no agreement whatsoever as to a period of notice.

23.3.1. Statutory periods of notice

The following periods of notice are complied with if no other agreement has been made.

Duration of employment	Employer's period of notice
at most 1 year	14 days
more than 1 year–4 years	1 month
more than 4 year–8 years	2 months
more than 8 year–12 years	4 months
more than 12 years	6 months

Duration of employment	Employee's period of notice
at most 5 years	14 days
more than 5 years	1 month

Exceptional periods of notice are complied with in relation to a transfer of business, bankruptcy or a restructuring procedure. For further information on those, see the relevant sections.

If the period of notice is counted as months, the day on which the employment relationship ends corresponds with the date of termination; for example, when complying with a one-month period of notice, if the employment relationship is terminated on 6 July, the final day of work is 6 August. Accordingly, when complying with a two-week period of notice, an employment relationship that is terminated on Monday, 6 July, ends with the final day of work on Monday, 20 July.

23.3.2. Non-compliance with a period of notice

If an employer fails to comply with the period of notice when terminating an employment contract, it is obligated to pay the employee a salary for the entire period of notice, holiday compensation included. If it is the employee who fails to comply with the period of notice, he or she is obligated to pay to the employer an amount equal to the salary for the period of notice as a lump-sum compensation. The employer is entitled to withhold this sum from the payoff to be paid to the employee, complying with what has been provided on an employer's right of set-off. The employer may primarily set-off a maximum of one-third of an employee's net pay. A separate decree has furthermore confirmed the protected amounts in euros which must, at minimum, remain at the disposal of the employee.

If non-compliance with the period of notice with regard to either party concerns only a part of the period of notice, the aforementioned payment obligation only applies to a corresponding amount of the pay for the period of notice.

23.3.3. Termination prior to the start of work

An employment contract can be terminated even before the employment relationship (the performance of work) begins. In the event that the period of notice to be complied with in this situation is longer than the period remaining until the employment relationship begins, and the person will not be working for this time, the period in excess will incur for the employer an obligation to pay salary and for the employee an obligation to work. If the employee fails to fulfill his or her obligation to work, he or she is in breach of the employment contract made and will be liable for the damage thus caused to the employer. In practice, however, the parties often agree on the termination of the employment contract without an obligation to work.

See section 3.2. for further information.

23.3.4. Obligation to work during a period of notice

An employment relationship continues largely according to the previous terms for the duration of a period of notice. A period of notice is therefore a part of the normal employment relationship, during which both parties are still required to fulfil their contractual obligations pursuant to the employment contract. In other words, the employee still needs to carry out his or her tasks per the employment contract. An employee may also be on annual holiday, sick leave, paternity leave, etc., during a period of notice. As is the case during the employment relationship's validity in any other case, too, the employer decides on holidays during a period of notice. The employee may merely suggest that he or she be allowed to take any remaining holidays during the period of notice.

Section 5.10. includes more information on taking an annual holiday during a period of notice.

The employer and employee may agree on the employee not being under an obligation to work during the period of notice. The employer may also unilaterally release the employee from the obligation to work during the period of notice.

It is always advisable to request such a release in writing, so that the employee cannot be claimed to have neglected his or her obligation to work later. Even if the employer releases the employee from the obligation to work, the salary for the period of notice must nevertheless be paid normally and in full.

23.4. Employee's own resignation

An employee does not need to give a reason for terminating his or her employment contract. When resigning, an employee must comply with the period of notice specified in the employment contract or, if no period of notice has been agreed upon, the aforementioned periods of notice according to the Employment Contracts Act.

If an employee terminates his or her employment contract according to a, say, two-month period of notice, when his or her correct period of notice is a month, there is a risk that the employer will consider the employment contract to terminate after the original period of notice.

It is advisable to prepare two copies in writing of a notice of termination, one for the employer and one for the employee as evidence. While the notice can be drawn up in free form, it does need to indicate the names of the parties, the date when the employment relationship is terminated and the date on which it ends. If an employee resigns to move to a new job, she or he should not submit the notice of termination before signing the new employment contract.

An employee can also terminate an employment contract himself or herself after the employer has terminated it. In this case, the parties comply with the employee's period of notice, if it is shorter than the time remaining of the employer's period of notice.

23.4.1. Consequences of resigning

The period of notice does not differ from the normal course of an employment relationship in any way. The employee's obligation to work continues until the end of the period of notice, unless the parties agree or the employer tells the employee that the employee is not obligated to work during the period of notice. The period of notice may overlap in part or in full with an annual holiday, sick leave or family leave.

When resigning, the employee must take into account that, if he or she does not have new employment, the termination of the old employment relationship at his or her own initiative usually leads to a qualifying period for unemployment security. If the employee does not have a valid reason for terminating the employment relationship, the labour commission will impose a 90-day period during which he or she is not entitled to a compensation.

Valid reasons for terminating an employment contract/resignation include the grounds for termination specified in the Employment Contracts Act or that the work cannot be considered suitable in relation to the employee's capacity for work. At times an employee may also have a valid reason to resign when his or her family is relocating to another locality because of the spouse's work. According to legal praxis, valid reasons have not, in some cases, included problems in child care, difficulties to travel or difficulties caused by the length of working hours.

The employer may sometimes suggest to the employee that he or she resign instead of the employer terminating the employment contract. The employer may also suggest an agreement to terminate the employment relationship. Such agreements are discussed in more detail under section 23.20. below. Employees should take a cri-

tical attitude towards such suggestions and investigate their effects before signing the agreement. Expert help is available through the union or employees' association's lawyer. Termination at one's own initiative and the aforementioned agreement eliminate the employee's option of contesting the termination of the employment relationship later.

Should the employee resign in a situation where the grounds for termination would otherwise be a financial or production-related reason attributable to the employer, the employee loses his or her right to the increased portion of the earnings-related unemployment benefit.

An employee who terminates the employment relationship at his or her own initiative gets a shorter period of notice and less pay than he or she would get in a termination initiated by the employer. Often the duration of the employment relationship and work history also remain shorter.

23.5. Grounds for termination attributable to the employee

According to the Employment Contracts Act, an employer may terminate an employment contract valid until further notice only for a proper and weighty reason. Such proper and weighty grounds attributable to the employee or related to his or her person include a serious breach or neglect of duties deriving from the law or the employment contract which have a material impact on the employment relationship and such material changes in the ability to work related to the employee's person due to which the employee is no longer able to cope with his or her tasks. When assessing the properness and weight, one should account for the circumstances of the employer and employee as a whole.

At least the following cannot be regarded as a proper and weighty reason such as referred to in the Employment Contracts Act:

- an illness, disability or accident affecting the employee, unless his or her working capacity is substantially reduced thereby for such a long period of time as to render it unreasonable to require the employer to continue the employment relationship;
- the employee's participation in industrial action arranged by an employees' association or in accordance with the Collective Agreements Act;
- the employee's political, religious or other opinions or his or her participation in social activity or associations;
- resorting to means of legal protection available to employees.

Given the brevity of the Employment Contracts Act, it is nearly impossible to determine, by way of any general ru-

les or examples, when the proper and weighty grounds referred to in the Act exist. This is why the adequacy of the grounds for termination must always be assessed on a case-by-case basis according to established legal praxis.

The assessment of the proper and weighty reason giving grounds for termination must therefore always be carried out as an overall assessment in such a way that all factors and circumstances with an impact on the case are taken into consideration. Termination on such grounds should only occur when an employer acting in good faith cannot reasonably be expected to act in any other way.

Typical grounds for an individual termination include a failure to carry out tasks, non-compliance with instructions given by the employer within the framework of its right to supervise work, a breach of administrative rules, unjustified absences and evident negligence in work.

On the other hand, prior to termination, the employer must also find out whether the termination could be avoided by re-assigning the employee to another task. If the grounds for termination constitute such a serious breach related to the employment relationship that the employer cannot reasonably be expected to continue the contractual relationship, there is no need to give a warning or investigate the possibility to re-assign the employee.

23.5.1. Warning

Employees who have failed to fulfil their contractual obligations arising from the employment relationship or breached them may nevertheless not be given notice to until they have been warned and given a chance to amend their conduct.

The warning can be given orally or in writing. The warning must be based on actual events and specified in such a way that the employee understands what the issue concerns. The employee must be given a genuine opportunity to amend his or her conduct or behaviour.

The law contains no provisions as to the number of warnings or their validity. A warning can be considered to remain valid for roughly a year, but each case must be considered individually. An employer's policy with regard to warnings should be consistent and equal.

If an employee is not guilty of any breach or neglect, the warning is insignificant and the employer cannot appeal to it as grounds for termination. However, to avoid ambiguity, an employee should always verifiably dispute an unwarranted warning. The contesting may take place orally or in writing. What is essential is that the employee can, if necessary, prove to have notified the employer of the fact that he or she has considered the warning unwarranted.

23.6. Financial and production-related grounds for termination

An employer may terminate an employment contract when the work offered has diminished materially and permanently due to financial or production-related grounds or a restructuring of the employer's operation. The law therefore requires the work to have been diminished both materially and permanently, at the same time. If this is not the case, the termination of employment contracts is not an option.

When assessing the diminishment of work, the situation must be viewed separately in the case of each employee. If the diminishment is merely temporary, the employer does not have the right to give notice to the employee. In such cases, the employer may only consider a lay-off. The diminishment of work is considered temporary if the period of time for which work has diminished does not exceed 90 days.

The diminishment of work may be the result of a number of reasons. Possible reasons include a decline in demand, tougher competition, the undertaking's products becoming outdated, a transition to subcontracting, the employer's rationalisation measures and the contraction or refocusing of operations.

Situations in which work has not diminished per se, but in which the undertaking is making a loss and is terminating employment contracts to achieve cost savings are very problematic. In such cases, the situation must be considered as a whole and one should attempt to investigate whether the cost savings to be gained by cutting the workforce are a genuinely essential factor for the continuity of the undertaking's operation.

Changes to the material terms of employment relationships, such as a reduction of wages, are discussed in more detail in section 3.13.

23.6.1. Obligation to offer other work

The material diminishment of work alone does not provide adequate grounds for termination if the employee can be re-assigned to another job in lieu of it. In such cases, the employee must primarily be offered work that corresponds with his or her employment contract. If such work is not available, the employee must be offered other work that corresponds with his or her training, professional skills or experience.

When assessing the possibilities for such re-assignment, it should also be investigated whether the arrangement in question could be realised by providing the employee with training for the task in question. In such cases, the employer must arrange for the employee such training required by the tasks that can be considered suitable and reasonable from the perspective of both parties.

If the employer has a reasonable possibility to re-assign or train the employee for a new task, it does not have

the right to terminate the employment relationship. However, the employer is only obligated to arrange training that serves the employer's needs and the employee's professional development. In other words, the employer cannot be required to make arrangements for training that deviate from the nature of its line of business or the level considered conventional with the regard to the size of the workplace.

The Labour Court's decision TT 2005:77, which concerned a matter involving a member of YTN, focused on the employer's obligation to offer work as an alternative to a termination of the employment relationship.

While work in the unit of the employee whose employment relationship was terminated had clearly diminished, there were plenty of vacancies in the large undertaking to which new external employees had been recruited. Some of the tasks in question were unsuitable for the employee, while other tasks were of the kind for which she or he, based on experience, could likely have been hired after a fairly short period of training and orientation. The employer offered the employee in question only one other job in a completely different locality, to which the employee was unable to relocate due to personal reasons.

Although the undertaking had an electronic system with open vacancies in use for the purposes internal recruitment and even though the employer emphasised an employee's own initiative, the Labour Court's decision underscored the employer's obligation, at its own initiative, to investigate the work on offer internally for an employee whose employment relationship was under threat of termination and the person's ability to cope with such work. The Labour Court found the employer to have failed to fulfil its obligation to offer work and training, instead of which the employment contract had been terminated without due cause. The employer was therefore obligated to pay damages to the employee.

If an employee refuses the new tasks offered to him or her, the procedure is not construed as constituting a termination of the employment contract at the employee's own initiative. However, such refusal lowers the amount of damages the employee may be entitled to due to the unfounded termination of the employment relationship.

If an employer which exercises actual control in personnel matters in some other undertaking or corporation through a shareholding, agreement or some other arrangement cannot offer an employee the aforementioned work, the employer must investigate whether it can fulfil its obligation to offer work and training by offering the employee other work from the undertakings or corporations under its control. According to the Employment Contracts Act, the obligation to offer work extends only from a parent company towards subsidiaries, not from a

subsidiary towards another subsidiary or the parent company.

23.6.2. Situations in which there at least are no financial or production-related grounds for termination

The Employment Contracts Act also includes a list of examples in which the grounds are not sufficient for terminating an employee's employment contract due to financial or production-related reasons.

According to the provision in question, such grounds do not exist at least in the following situations:

- The employer has prior or subsequent to the termination hired a new employee for similar tasks, even though the operating conditions have not changed during the equivalent period.
- The reorganisation of work has not led to an actual diminishment of work.

23.7. Terminating the employment relationship of an employee who is pregnant or on family leave

The employment contract of an employee who is on maternity, special maternity, paternity, parental or child care leave may be terminated due to financial and production-related grounds only if the employer's operations cease altogether.

The employer may not terminate an employee's employment contract because of a pregnancy or on the grounds that the employee exercises his or her statutory right to a family leave provided in the Employment Contracts Act. The protection begins from the moment the employer becomes aware of the pregnancy. The employee is obligated to present proof of the pregnancy if the employer requests such proof. If an employer terminates the employment contract of an employee who is pregnant or on family leave, the termination is considered to be attributable to the employee's pregnancy or family leave, unless the employer is able to prove otherwise.

23.8. Termination in connection with a transfer of business

A new owner may not terminate the employment contract of an employee in connection with a transfer of business on the basis of the transfer. The employer can therefore terminate the employee's employment contract only if there are the financial and production-related grounds for the termination referred to in the Employment Contracts Act or a proper and weighty reason related to the employee's person. In such cases, the period of notice is equal to any other case of termination.

Employees may, in connection with a transfer of business and regardless of the period of notice to be otherwise

complied with in the employment relationship or its duration, terminate their employment contracts to end on the date of the transfer, if they have been informed of the transfer of business by the employer or the company's new proprietor no later than a month prior to the date of the transfer. If the employees are informed of the transfer at a later date, they may terminate their employment contracts to end as of the date of the transfer or after, but in any case no later than within a month of having been informed of the transfer of business. This right also belongs to an employee who has a fixed-term employment contract.

Section 3.5. contains further information on such transfer's effect on employment relationships.

23.9. Termination in connection with the bankruptcy or death of the employer

When an employer is declared bankrupt, an employment contract, regardless of its duration, may be terminated mutually with a 14-day period of notice, even if the parties would have agreed on a longer period of notice. This also applies to a fixed-term employment contract. This special 14-day period of notice may, however, only be used after the bankruptcy has commenced. Not even the knowledge of the undertaking's imminent bankruptcy entitles anyone to use this shortened period of notice, even if the bankruptcy were to occur immediately after the termination.

When an employer is driven into bankruptcy, the bankruptcy estate has the right to terminate any employment contracts already terminated again, with a 14-day period of notice, thereby shortening any ongoing periods of notice. The salary for the bankruptcy period is paid by the bankruptcy estate.

When an employer dies, both a party to the estate and an employee have the right to terminate an employment contract, regardless of its duration, with a 14-day period of notice. This also applies to a fixed-term employment contract. This special right to terminate an employment contract must be exercised within three months of the employer's death.

23.10. Termination in connection with a restructuring procedure

If the employer is subject to corporate restructuring proceedings, it may terminate an employee's employment contract if the grounds for the termination are:

- an arrangement or measure carried out during the restructuring procedure that is necessary to avoid bankruptcy and because of which work stops or diminishes materially and permanently; or

- a measure based on the confirmed restructuring programme due to which work stops or diminishes materially and permanently; or
- an arrangement attributable to a financial reason confirmed in the restructuring programme and based on the programme that requires the downsizing of workforce.

However, the aforementioned right to terminate employment contracts does not apply if the employee can be reasonably, in terms of his or her professional skills and capacity, be re-assigned or trained for another job. In the event that the right to terminate employment contracts is exercised, the terminations may be carried out in accordance with a two-month period of notice, even if longer periods of notice had been agreed upon. This period of notice also applies to fixed-term employment contracts. The period of notice applicable to an employee terminating an employment contract in connection with a restructuring procedure is primarily 14 days.

23.11. Termination during a lay-off

An employer may terminate an employee's employment contract during a lay-off if the diminishment of work proves to be permanent. In such situations, the employer must pay the employee the salary for a period of notice. The employer may deduct a 14-day salary from the salary paid for the period of notice if the employee has been laid off according to a longer lay-off notice period than the statutory or contractual 14-day notice period.

Section 22.8., concerning lay-offs, discusses an employee's right to terminate his or her employment contract during a lay-off.

23.12. Terminating the employment contract of a shop steward, employee representative or occupational health and safety representative

The Employment Contracts Act provides a special protection against termination for shop stewards and employee representatives. For an employer to terminate the contract of a shop steward or employee representative for a reason related to the person of the aforementioned, the majority of the employees the shop steward or employee representative in question represents must give their consent to the termination, in addition to the requirement concerning adequate grounds for termination.

The employment contracts of shop stewards and employee representatives may nevertheless be terminated if their work ceases completely and they cannot be arranged with work that corresponds with their professional skills or is otherwise suitable for them or if they cannot

be trained for other work.

What is explained above with regard to terminating the employment contracts of shop stewards and employee representatives applies correspondingly to the termination of an occupational health and safety representative's employment contract.

23.13. Employment leave

When an employment contract has been terminated due to financial and production-related reasons or in connection with a restructuring procedure, the employee is entitled to a paid employment leave during the period of notice. The employee may use the leave to draw up an employment plan, labour market training or practical training, on-the-job learning, searching for a new job, a job interview or re-assignment coaching. Following the termination, the employer and employee may also agree on the employee not exercising his or her right to this leave.

The duration of the employment leave is determined according to a particular employee's period of notice as follows:

Duration of employment leave	Length of period of notice
1. a maximum of 5 workdays in all	at most 1 month
2. a maximum of 10 workdays in all	more than 1 month, no more than 4 months
3. a maximum of 20 workdays in all	more than 4 months

The leave can also be taken as partial workdays. Prior to taking an employment leave or a part thereof, the employee must inform the employer of the leave and the grounds for it as early as possible. Should the employer so request, the employee must present a reliable report on the grounds for the leave. Exercising the leave may not cause significant inconvenience for the employer.

The employment plan should be drawn up at a TE Office immediately after an employee entitled to the plan requests it. The employee must submit his or her request no later than within 30 days after the employment relationship has ended.

23.14. Re-employment of an employee whose employment contract has been terminated

An employer must offer work to an employee whose contract the employer has terminated due to financial and production-related grounds or in connection with a restructuring procedure if its need for workforce with regard to the same or similar tasks that the employee in question has performed arises again after the termination. This obligation remains in force for a period of nine

months following the end of the employee's period of notice. An employee who falls within the scope of this obligation to offer work must be given priority even over a more qualified external candidate, as long as he or she meets the requirements set for the task.

However, the obligation to offer work only applies if the employee has registered as a job seeker in the TE Office and the job search is still in effect. In practice, the obligation to re-employ functions in such a way that the employer must inquire from the local employment authority whether its former employees whose contracts were terminated are seeking jobs through the authority in question and, should the response be positive, offer work primarily to these job seekers. This obligation also applies to the transferee in a transfer of business when the transferor has terminated an employee's employment contract to end prior to the moment of transfer.

23.15. Cancellation of an employment contract

Cancellation is an extremely exceptional way to end an employment contract. The cancellation of an employment contract mainly comes into play only when the case involves an exceptionally serious breach of contract by one contracting party. The cancellation of an employment contract requires a particularly weighty reason. If an employment contract is cancelled, it ends without a period of notice. The employment relationship nevertheless continues until the end of the shift or day in question. Because of this, the employee is entitled to his or her full pay for the day, even if the employer would order the employee to leave the workplace immediately.

The assessment of the grounds for cancellation is not always easy. If an employer has cancelled an employee's employment contract even if the grounds for terminating it have been met, the employee is entitled to receive the salary for the period of notice she or he has lost as compensation. In the event that even the grounds for a termination are not met, the employee may be awarded damages for the unlawful termination of the employment contract, if the employer has wilfully or negligently failed to comply with the provisions concerning cancellation in the Employment Contracts Act.

23.15.1. Grounds for cancellation

The particularly weighty reasons that entitle an employer to cancel an employee's employment contract include such a serious breach or neglect of the employee's duties with material effect on the employment relationship and based on the employment contract or the law that the employer cannot reasonably be expected to continue the contractual relationship even for the duration of a period of notice. Correspondingly, an employee has the right to cancel an employment contract with immediate effect if the employer breaches or neglects its duties with material effect on the employment relationship and based

on the employment contract or the law to such a serious extent that the employee cannot reasonably be expected to continue the contractual relationship even for the duration of a period of notice.

An employer furthermore has the right to consider an employment contract cancelled if the employee is absent from the workplace for at least seven days without notifying the employer of a valid reason for his or her absence during this time. In such cases, the employment contract is considered cancelled as of the start of the absence. If the employer has not been notified of the absence due to an acceptable reason such as the employee being hospitalised, the cancellation of the employment contract is rescinded. The employee is entitled to an equivalent right if the employer is similarly absent for a week and has no substitute at the workplace.

23.15.2. Examples of grounds for cancellation

The employer may cancel an employment contract in, for example, the following cases:

- the employee has materially misled the employer when entering into the employment contract;
- the employee's negligence risks health and safety at the workplace, or the employee is present while intoxicated or uses intoxicating substances on the premises contrary to workplace regulations;
- the employee grossly slanders the character of the employer or the employer's family member, substitute or a co-worker or is violent towards them;
- the employee exploits to his or her own advantage or discloses to a third party the employer's business or trade secrets in an aggravated manner or enters into a competing employment contract;
- the employee wilfully or negligently fails to carry out his or her duties and continues to do so despite a warning.

The employee may cancel an employment contract in, for example, the following cases:

- the employer has materially misled the employee when entering into the employment contract;
- the employee's reputation or morality is endangered due to the employment relationship;
- the employer or the employer's substitute grossly slanders the character of the employee or the employee's family member or is violent towards them;
- the employer or the employer's substitute risks health and safety at the workplace with their negligence;
- the employee is not given enough work;
- the salary is not paid according to agreement.

The lists above serve as mere examples and are applicable only when the circumstances do not give reasons for other considerations. When assessing the grounds for

cancellation, one must always remember to review each case separately, taking into account the big picture.

23.15.3. Exercising a cancellation right

In terms of time, a cancellation right is fairly limited. A cancellation right expires if the employment contract has not been cancelled within 14 days of when a party to the employment contract became aware of the fulfilment of the grounds for cancellation. If the grounds for cancellation are continuous, the employment contract must be cancelled within 14 days of the time when the employer/employee becomes aware of a cessation of the grounds. Only in exceptional cases, when the cancellation is hindered due to a valid reason, may it be carried out later. In such cases, the employment contract must be cancelled within 14 days of the end of the hindrance. If the cancellation is not carried out within the prescribed period of time, the right to cancel the employment relationship expires. Even in such cases, it may be possible to terminate the employment relationship on the same grounds.

23.16. Flat benefit when the employment relationship is terminated

When an employment relationship ends, the employee's right to use a flat (accommodation) provided to her or him as emolument depends on the duration of the employment relationship. If the employment relationship has lasted for at least a year, the period of notice concerning a company flat is six months in terms of the employer. If the employment relationship has lasted less than a year, the period of notice concerning a company flat is three months in terms of the employer.

If the employer cancels the employment relationship for a reason other than the employee's illness, the period of notice is three months, if the employment relationship has lasted for at least a year. If the employment relationship has been shorter than this, the period of notice is one month. These periods of notice also apply when the employee resigns or cancels his or her employment contract without legal grounds for doing so.

If the agreed work requires the employee to reside in a particular flat or property and this is expressly mentioned in writing in the employment contract or lease agreement, the right to use the flat ends within a month of the end of the employment relationship, regardless of the duration of the employment relationship.

A company flat's period of notice is counted as full calendar months.

The employee may be provided with some other suitable flat to use for the time subsequent to the end of the employment relationship, if the employer has an important reason for it. In such cases, the relocation costs are borne by the employer. The employee must pay a rent for the

flat for any period following the end of the employment relationship. The amount of the rent may not exceed the reasonable monthly housing expense per square metre for the locality in question confirmed pursuant to the Housing Allowance Act. The employee must be informed of the amount of the rent, which can be collected from the beginning of the month immediately following the 14-day period after the notification.

The legal provisions concerning company flats are mandatory. The rights they confer on an employee may not be restricted in an employment contract, for example.

23.17. Procedure for terminating an employment contract

The employer must give the notice on the termination of an employment contract to the employee in person. In the event that the employment contract is terminated at the employee's initiative, the notice must be given to the employer or the employer's representative. If delivery in this manner is not possible, the notice may be delivered by mail or electronically. The recipient is considered to have received the notice no later than on the seventh day following its dispatch. If the employee is on annual holiday or an at least two-week leave due to an averaging out of working hours at the time, the notice of termination sent by mail or electronically is considered to have been delivered at earliest on the day following the last day of the holiday or leave. If the employee nevertheless verifiably receives the notice of termination earlier, the termination is considered to occur at that moment, and the special provisions concerning the mailing of the notice do not apply.

Another exception to these provisions concerning the delivery moment of a notice of the termination of an employment relationship are situations in which the employment relationship is cancelled by appealing to a trial period or for some other particularly weighty reason. In such cases, it suffices that the notice has been mailed or sent electronically within the prescribed period of time.

Employers quite often request that a notice of termination be acknowledged. It is worth reading the document carefully and in time before signing. The notice may contain entries according to which the employee has accepted or agreed upon the termination with the employer. If the employee has a reason to believe that he or she may cause harm by signing the notice of termination, it should not be signed.

The law does not prescribe a specified form for the termination or cancellation of an employment contract. Because of this, an employment contract may be terminated either orally or in writing. The written procedure is more common and recommended. If the employee has not received a written notice of termination or cancellation, she

or he may request one from the employer. In such cases, the employer is obligated to immediately notify the employee of the main points of the grounds for termination or cancellation and the date on which the employment contract ends. The employee will need these documents when registering at the TE Office.

23.17.1. Termination attributable to the employee

When grounds for termination related to the person of the employee appear, the employer must deliver the notice of termination within a reasonable period of time. Before the employer terminates an employment contract for a reason attributable to the employee, the employee must be given a chance to be heard on the grounds for the termination. The same procedure applies if the employer intends to cancel an employee's employment contract. The employee is entitled to use a consulting assistant in the hearing. In the event that the employee intends to cancel the employment contract, he or she must give the employer a chance to be heard before doing so.

23.17.2. Termination due to other reasons

Before the employment relationship of an employee is terminated due to financial and production-related grounds or in connection with a restructuring procedure, the employer must explain the grounds for and alternatives to the termination to the employee. The employee must likewise be informed of the services available at the TE Office as soon as possible.

If the employment contract is terminated due to the employer's death or bankruptcy, the employee must be informed of the grounds for the termination as soon as possible. If the employment contracts of several employees are being terminated at once, the explanation may be given to the employees or their representatives together. If the grounds for the termination are being negotiated with the employees in accordance with the Act on Co-operation within Undertakings or a binding collective agreement, the employer need not give the separate explanation on them referred to herein.

23.18. Right to pay during waiting days

When an employment relationship ends, all receivables arising from the employment relationship must be paid on the last day of the employment relationship, unless otherwise agreed. If this payment by the employer is delayed, the employee is entitled, in addition to the interest on late payment referred to in the Interest Act, to receive a salary for the days of waiting, though only for a maximum of six days.

If the employee's receivable is not clear and undisputed, or if the delay in payment is attributable to a miscalculation or some other comparable error by the employer, the employee is entitled to a salary for the waiting period

only if he or she reminds the employer of the delay within a month of the employment relationship's end. Following the reminder, the employer has three weekdays to pay the remaining receivables. The right to a salary for the waiting period will, in such cases, take effect after the three weekdays reserved for the employer's payment have passed.

23.19. Liability for damages

If the employer wilfully or negligently fails to fulfil its contractual obligations arising from the Employment Contracts Act or an employment contract, it must compensate the employee for the damage caused thereby. The employee is also subject to a liability for damages based on equivalent grounds. The liability for damage caused by the employee through mistake or neglect depends on the degree of guilt to be considered the employee's fault. A wilful act is largely subject to a full liability for damages, whereas in the case of minor negligence, the employee is free of liability. In other situations involving negligence, the liability is adjusted to be reasonable when accounting for the magnitude of the damage, the severity of the act, the position of the damaging party, the need of the injured party and other circumstances.

23.19.1. Compensation for the termination of an employment relationship

An employer that has terminated an employee's employment contract contrary to the grounds provided in the Employment Contracts Act may be ordered to compensate the employee for the unfounded termination of the employment relationship. Such compensation equals three months' salary at minimum and 24 months' salary at maximum. The maximum amount of compensation payable to a shop steward or an employee representative elected on the basis of a collective agreement, however, may equal 30 months' salary.

If the case involves a termination due to financial and production-related grounds or an unfounded termination in connection with a restructuring procedure, an unlawful cancellation during a trial period or a cancellation contrary to the grounds for cancellation provided in the Employment Contracts Act, the compensation may amount to less than three months' salary.

Depending on the reasons for the termination of the employment relationship, the amount of compensation is influenced by, for example, the estimated duration of the time the employee will remain without work and loss of income, the remaining duration of a fixed-term employment contract, the duration of the employment relationship, the employee's age and possibility to find work that corresponds with his or her occupation and education, the employer's procedure when terminating the employment relationship, a cause for termination attributable to an employee herself or himself, the employer and

employee's general circumstances and other comparable factors.

23.19.2. Daily unemployment allowance's effect on damages and the payment of compensation

The unemployment compensation paid to an employee usually effects the amount of damages and compensation for the unfounded termination of an employment relationship payable to the employee.

When the case concerns compensation based on emoluments lost due to unemployment, the deductions to be made from the compensation are as follows:

- 75 per cent of the earnings-adjusted daily allowances paid to the employee during the period in question;
- 80 per cent of the basic daily allowances paid to the employee during the period in question; and
- the labour market subsidy, in full, paid to the employee during the period in question.

A court of law may adjust the deduction so as to make it reasonable or not adjust it, if it is considered reasonable. If an agreement on the employer's obligation to compensate is made between the employer and the employees or associations, the agreement must make a separate mention of the full compensation and the compensation for emoluments lost prior to the agreement's conclusion included therein. In addition, part of the compensation may be ordered as compensation for intangible damage due to an injury on the employee's person. The aforementioned daily unemployment allowance deductions concern only the compensation due to the loss of emolument, not the intangible damages. The deductions may also be adjusted in an agreement between the parties. The following section contains more information on the termination of an employment relationship by mutual agreement.

The employer is responsible for paying the deducted sums forward. The employee is responsible for delivering a copy of the agreement to the unemployment fund, if the employee is unemployed and receives a daily allowance from the fund.

23.20. Terminating an employment relationship by mutual agreement

A mutual agreement is a sometime-used alternative to a conventional termination. There are no special provisions on the form or terms of an agreement to terminate an employment relationship. It should nevertheless always be made in writing; in addition, it should be reviewed with a lawyer in respect of the terms and resulting consequences, such as unemployment security, no later than before signing the agreement. One should exercise great care when making such agreements.

23.20.1. On the validity and reasonableness of the agreement

The parties' free will to conclude an agreement is an important starting point for the conclusion of a valid agreement. The agreement's inception may not be influenced by coercion directed at the other party, fraudulent misrepresentation or by taking advantage of the other party's lack of judgment or dependent position. In the event that one party wishes to appeal to the agreement's invalidity or unreasonableness, the party should be able to prove it. If an employee feels coerced into concluding an agreement with the employer, he or she should contact a union lawyer immediately, and always before signing.

23.20.2. Parties to and background of agreement

The parties to the agreement – the employer and the employee – are mentioned at the beginning. It is especially important to name the employer with regard to a group [of companies] and in case the employee has worked for more than one employer.

The section on background usually includes a summary of the circumstances that led to the agreement, such as an organisational change implemented in the undertaking and the consequential material diminishment of the work of the employee in question (financial and production-related background) or the parties' mutual attempt to solve their disputes or personal chemistry disagreements amicably (individual-based background). In the event that the agreement is made only after the employment relationship has been terminated, the background section usually also indicates the date on which the notice of termination was given and the grounds for termination mentioned therein.

When an employment relationship ends by way of mutual agreement, the labour commission will generally impose a 90-day qualification period on the employee.

Background information furthermore usually includes the date on which the employee started working for the employer and the latest work she or he has carried out.

23.20.3. Employment relationship's termination date and obligation to work

The date on which the employment relationship ends should be indicated precisely. Usually the employment relationship ends after a period of notice, but it can also be agreed that it ends immediately and that the salary for the period of notice, holiday compensation included, be paid as a lump sum.

In practice, it is fairly common to agree that the employee will not be obligated to work, at least for the entire period of notice. The parties should indeed agree mutual ground rules on how, on the one hand, to carry out the winding down of the employee's tasks or their transfer to other employees and, on the other hand, how to take into con-

sideration the situation's effects on the employee, i.e. issues involving motivation and information security. For the sake of clarity, it is also recommended to expressly agree on whether the employee may take an annual holiday at the same time or whether she or he is merely released from the obligation to work, in which case the holidays are compensated for in money.

23.20.4. Employment relationship receivables and holiday compensation

The mutual agreement on the termination of an employment relationship should specify what the employee's payoff contains and on which day it will be paid. The most common employment relationship receivables, in addition to the salary for the period of notice, consist of overtime compensation, reimbursements for costs such as travel expenses and various performance pays (commissions, bonuses, subsequent commission and options).

Holiday entitlements are regulated by the Annual Holidays Act. The employee should not agree on terms poorer than what he or she is statutorily entitled to even in a situation where the employment relationship is coming to an end. The agreement usually indicates the number of holidays the employee has accrued during the previous holiday credit year and, correspondingly, the number of holidays she or he has time to accrue by the end of the employment relationship.

Section 5.7. discusses holiday compensation in more detail.

23.20.5. Separate compensation for the termination of an employment relationship

The parties are free to agree on the amount of the compensation to be paid to the employee. What is decisive when assessing the amount of reasonable compensation is a consideration involving matters of law – in other words, the likelihood of the grounds for the termination being legal or illegal. If the compensation is paid as damages, a part of the daily unemployment allowances paid to the employee should be deducted from it as further specified in the Employment Contracts Act.

If the compensation is paid as what may be referred to as a golden handshake, the deductions are not made. It is worth remembering that the employee is not entitled to receive daily unemployment allowance during the period over which the golden handshake received can be divided. A six-month handshake, for example, equals roughly a division over six months, for which time the fund will not pay a daily allowance. In spite of this, it is vitally important to remember to register at the TE Office no later than when the employment relationship ends.

In addition, it is worth checking with the tax administration whether the employee has the possibility for income spreading pursuant to the Income Tax Act to rationalise

the taxation of the lump sum as well as the rest of the payoff.

In addition to the withholding of tax, the compensation for termination is subject only to social security costs. The compensation does not accrue pension. This is because the compensation is not subject to pension insurance contributions, given that the employment relationship has ended.

23.20.6. Outplacement packages

Sometimes, as part of the mutual agreement to terminate an employment relationship, the employer pays for what is generally referred to as an outplacement package on behalf of the employee. Such packages are usually bought from external consulting firms. If the employer suggests an outplacement service, it is worth making an appointment with the consulting firm and studying the content of the service before making the relevant decision.

If the employment relationship has been terminated due to financial and production-related grounds, it may be possible that the TE Office accepts the outplacement service as part of the employment plan of the change security. However, this must be expressly agreed upon in advance with the TE Office of one's own place of residence.

23.20.7. Reference letter and certificate of pay

It should be agreed in the agreement that the employee is provided with a positive reference letter that promotes employment on the date when the employment relationship ends. The employee will also need a certificate of pay for the unemployment fund.

23.20.8. Waiving rights

This is one of the key, often final, provisions of a mutual agreement to terminate an employment relationship, in which the parties mutually waive all demands towards each other in relation to the employment relationship and its termination.

This means that, after signing the agreement, the employee can no longer contest the grounds for the termination of his or her employment relationship, for example, unless he or she can prove the unreasonableness or invalidity of the agreement or some provision thereof. If the employment contract has included a separate non-competition clause, it is worth agreeing that the employer will not make any demands in that regard either.

23.21. Reference letter

When an employment relationship ends, the employer must give the employee a reference letter, if the employee asks for one. The reference letter must indicate the duration of the employment relationship and the quality of the tasks involved, the latter meaning a description of

the employee's principal duties.

In addition, should the employee specifically so request, the certificate must indicate the reason for the termination of the employment relationship and an assessment of the employee's skills and conduct.

The employer is obligated to provide a reference letter for a period of ten years as of the end of the employment relationship. However, a certificate on the employee's skills and behaviour must be requested within five years of the employment relationship's end. If more than ten years have passed since the end of the employment relationship, the employer is obligated to provide a reference letter only insofar as this does not cause unreasonable inconvenience for the employer. The same conditions apply to replacing a lost or damaged reference letter with a new one.

The Employment Contracts Act does not recognise what are referred to as temporary reference letters, which do appear in practice. This is why an employer is not obligated to provide an employee with a reference letter while the employment relationship lasts.

The employer may not include in the reference letter any sign or give the reference letter in a form the purpose of which is to give any information on the employee other than what becomes apparent from the wording. Violating the obligation to give a reference letter is a punishable act that may result in a fine.

23.22. Retirement age

An employment contract ends when the employee reaches the age of retirement (68). In such cases, the employment relationship ends automatically, without a termination and a period of notice at the end of the calendar month during which the employee turns 68.

However, if they so wish, the employer and employee may agree on the continuation of the employment relationship even after the age of 68, either in the form of a fixed-term contract or one that is valid until further notice. In such cases, the conclusion of a fixed-term contract does not require grounds for the fixed term.

Employees are basically free to retire at the point they choose, between the ages of 63 and 68. If an employee wishes to retire before the age of 68, he or she must terminate the employment relationship in accordance with the period of notice.

On the other hand, the employer may not terminate an employee's employment relationship on the basis of an age less than 68. In such cases, the employer can only 'terminate the employment relationship when the

grounds for termination referred to in the Employment Contracts Act are at hand.

A retirement age lower than the statutory one may nevertheless be agreed on. However, such an agreement is binding only if the lower retirement age includes a pension benefit of a sufficient level or some other financial benefit.

24. RESOLUTION OF EMPLOYMENT RELATIONSHIP DISPUTES

Any disputes and disagreements that arise between an employer and employee should be resolved at the company level locally, between a representative of the employer and the employee. Dispute resolution may also be assisted by the workplace's shop steward or employee representative, the contact person for upper white-collar employees or a company association. Associations and unions provide information on the contact persons of companies when necessary. If a dispute cannot be resolved through negotiations held at the workplace, an association or union will take the matter under consideration. The association will nevertheless provide background assistance even during local negotiations.

24.1. Negotiation order

The Federation of Professional and Managerial Staff (YTN) has agreed on a negotiation system with the Confederation of Finnish Industries (EK) to be used in the resolution of employment relationship disputes, if the dispute involves an organised employer. Each YTN affiliate may, of course, also investigate and resolve disputes in which the employer party is not organised. The agreed and common negotiation order is basically of the following kind.

Disputes and disagreements should primarily be resolved locally, at the company level locally, between a representative of the employer and the employee. In such cases, an individual upper white-collar employee may negotiate on the employment relationship dispute with his or her superior or the company management. It is nevertheless always a good idea to get in touch with the shop steward or employee representative when an employment relationship dispute emerges. The employee may also authorise the representative of his or her personnel group to negotiate on the matter on his or her behalf. At this point, it is usually advisable to consult the association's lawyers if the case involves the interpretation of law, other regulations or an individual employment agreement.

In the event that the issue involves employment relationship matters common to all upper white-collar employees, it may be referred to a special local negotiation body. Such a local negotiation body is composed of representatives of the company and the upper white-collar employees.

If the local negotiations fail to reach an agreement on the matter, the dispute may be referred to an association lawyer and the employer or an association representing the employer or some other legal representative. In the case of particularly far-reaching and fundamental disputes, the matter may also be discussed between YTN and EK. If the dispute cannot be resolved through negotia-

tions, it may be brought before a court of law.

Naturally, all of the negotiation options for handling a dispute must be exhausted first, before the two-year period during which legal action must be taken expires. Disputes arising from the interpretation of collective agreements are resolved in the Labour Court, in which only parties to a collective agreement may bring action. Before action is brought, however, negotiations according to the negotiation order aiming to resolve the dispute must be held.

A court of arbitration may also be used as an alternative to the Labour Court. The dispute may only be brought before a court of arbitration if the parties agree on it. Such an agreement may also be included in an employment contract.

A court of arbitration differs from the proceedings held in a court of law mainly in that the matter is not public, the conclusive resolution to the dispute is usually obtained faster and the decision of the arbitrators is not subject to appeal. YTN nonetheless does not recommend employing a court of arbitration due to its steep price. The legal expense insurances cover only a fraction of the costs or none at all.

24.2. Written memorandum to association

Before contacting one's own association, it is advisable to draw up a concise written memorandum on what has transpired. The memorandum will help to clarify the picture of the dispute situation, and it is necessary for the association's employee to obtain basic information.

The description should indicate the following points:

- details on the memorandum's author and employer
- the time the employment relationship began
- the main content of the agreement (whether the parties have agreed on any special arrangements,

- amount and quality of pay, etc.); append a written
- employment contract, if one has been drawn up
- position within organisation, job and content of work
- the problems that have appeared and an opinion on the reasons for them, a description of the problem and its development
- any possible documents that may clarify the situation such as minutes drawn up on co-operation negotiations or personnel bulletins.

If the employees' association and employer or the association that represents the employer fail to find a solution to the matter, the dispute may be resolved by way of legal proceedings.

24.3. Investigating the legality of the termination of an employment contract

If an employee considers the termination of his or her employment contract to have occurred contrary to the Employment Contracts Act and attempts to resolve the matter through negotiations as described above have failed, the matter may be referred to a court of law for resolution. The action in a dispute concerning the termination of an employment contract must primarily be filed in the district court of the employer's registered office within two years of the employment relationship's end. The termination or cancellation takes effect even if the dispute is being considered by a court of law. Therefore, even an investigation by means of legal proceedings cannot prevent the termination from taking effect. Should the termination subsequently be found unlawful, the employer will become liable for damages in accordance with the court's decision.

24.4. Other employment relationship disputes

In addition to disputes concerning terminations, a variety of other legal disputes may arise in relation to employment relationships. The lawyers of YTN's affiliates are naturally available for investigations concerning all kinds of disputes arising from employment relationships. Ultimately, all disputes for which a resolution has not been achieved through negotiations may be brought before a court of law.

Typical legal disputes also include cases in which an employee is claiming some kind of outstanding receivable from the employer. Such cases may involve pay, annual holiday compensation, holiday bonuses, overtime compensation, daily allowances, travel expense reimbursements, etc. At times, the case involves a dispute in which the employee claims damages from the employer due to the employer's wilful or negligent failure to fulfil its obligations based on the Employment Contracts Act or the employment contract. An employer may also claim damages from an employee. In such cases, however, the amount of damages may be adjusted by the court so as

to be reasonable.

An action concerning a dispute attributable to the termination of an employment relationship must be filed in a general court of first instance within two years of the employment relationship's end.

25. WAGE SECURITY

The wage security system secures the payment of an employee's claims (receivables) arising from an employment relationship in the event of the employer's bankruptcy or other insolvency situation. All claims the employer would be obligated to pay to an employee are payable in the form of wage security. Wage security is paid only for claims of an employee arising from an employment relationship. Wage security does therefore not cover, for example, the managing director of a limited liability company, given that a managing director is not considered to be in an employment relationship, but a statutory organ of the company.

Applications for wage security are received by the Employment and Economic Development Offices (TE Offices) and the Centres for Economic Development, Transport and the Environment (ELY Centres), which also offer advice on issues related to wage security. The application for wage security is processed by the ELY Centre of the employer's registered office. The ELY Centre also makes the decision in the matter.

Pay Security Act (866/1998), Government Decree on Pay Security (1276/2009)

25.1. Applying for wage security

Wage security is applied for with a form available in TE Offices and online, at www.suomi.fi/asiointi. When the employer is bankrupt, wage security may also be applied for by the administrator of the bankrupt's estate on behalf of the employees. The application for payment of the claim in the form of wage security must be submitted within three months of its falling due. Claims arising from an employment relationship usually fall due on the pay day. A payoff usually falls due when the employment relationship ends. If the application has not been filed within the prescribed three months, the wage claim cannot be paid in the form of wage security.

It is advisable for the employee to apply for his or her claim in the form of wage security if the employer is insolvent or if there is reason to suspect that the employer may become insolvent during any legal proceedings concerning a wage claim.

The decision in a wage security matter is made by the ELY Centre of the employer's registered office after having heard both employer and employee. Only claims that are unambiguous and undisputed in terms of their bases and amounts can be paid as wage security. If the employer contests the wage claim applied for as wage security, and the accuracy of the claim cannot be established in the wage security procedure, the claim cannot be paid in the form of wage security before its amount and basis have been resolved in a legally valid judgment.

The employee whose application for wage security has been rejected must, in order to retain his entitlement to pay security, take legal action against the employer within six months of having been informed of the wage security decision.

If the employee wins the dispute in court, the claim based on the court's decision may be paid in the form of wage security, provided that a new application is sub-

mitted within three months of the judgment becoming legally valid and that the general conditions for receiving wage security are met.

25.2. Claims to be paid in the form of wage security

Claims paid in the form of wage security include, for example,

- actual salary
- commissions
- holiday pay and holiday compensation
- holiday bonus and end-of-holiday pay
- compensation for reduced working hours ('pekkas' days)
- salary for a period of notice
- salary paid during a pregnancy
- compensation for tools and travel expenses
- daily allowances
- damages based on the employment relationship
- any interest on late payment related to the above.

Claims in the nature of damages, the amount of which is only established in a court of law, can be applied for as wage security within three months of the matter being resolved by a legally valid judgment. However, if the employer has cancelled the employment contract without grounds for doing so, the salary for the period of notice should be applied for within three months of the date of the cancellation, even if the actual legal proceedings were still in their infancy.

The maximum amount of claims to be paid in the form of wage security is €15,200 per employee. Working hours bank claims are subject to a maximum amount with regard to wage security. This maximum amount equals the employee's salary for six months on the basis of work performed for the same employer. The claims applied

for as wage security must be indicated in the application as gross amounts, i.e. in such a way that the withholding of tax is not deducted. Claims to be paid in the form of wage security are subject to the withholding of tax, which is 30 per cent until €5,000 and 50 per cent for any portion exceeding that. The state collects any claims paid in the form of wage security from the employer or the employer's bankruptcy estate, interest included.

26. UNEMPLOYMENT SECURITY

A person residing in Finland and registered as an unemployed job seeker in need of full-time work at a TE Office, and who furthermore meets the employment condition, is entitled to a daily unemployment allowance. The employment condition stands to show that the person has been in the labour market regularly and earned his or her income through gainful employment.

Unemployment funds pay their members an earnings-related daily allowance for the period of unemployment or lay-off. This allowance consists of a basic part that equals the amount of basic daily allowance as well as an earnings part that is determined according to the earned income of the person in question. The amount of the basic daily allowance is confirmed annually in accordance with the National Pensions Index. In the event that a person is not a member of an unemployment fund and thus not entitled to an earnings-related daily allowance, the Social Insurance Institution of Finland (Kela) pays him or her the basic daily allowance.

Kela also pays a labour market subsidy to an unemployed person who does not meet the employment condition and to a person who has received either a basic daily allowance or earnings-related daily allowance for a period of 500 days.

*Unemployment Security Act (1290/2002)
Act on Public Labour and Business Services (916/2012)*

26.1. Registering at a TE Office

To receive a daily unemployment allowance, a person must register at a TE Office. The registration must be done as soon as the employment relationship ends, also in cases where the person has received various financial support packages from the employer. The unemployment is considered to have begun from the day on which the job search has taken effect in the TE Office of the person's place of residence. A registration cannot be made retroactively.

The TE Office gives the unemployment fund a binding statement on whether the statutory employment-related conditions concerning the payment of an earnings-related daily allowance are met in the case of the person in question. The statement serves as a basis for the unemployment fund's decision on the payment of the daily unemployment fund.

After registration, it is also important to comply with the instructions and dates given by the TE Office to maintain the validity of the job search and to ensure the earnings-related daily allowance.

26.2. Condition of membership and employment

The unemployment fund may begin paying an earnings-related daily allowance after the member's membership and employment conditions have been met.

The membership condition is met once the person has been a member of the unemployment fund, i.e. insured, for at least 26 calendar weeks.

The employment condition is met when the person has been in paid employment for at least 26 calendar weeks during his or her membership period, each calendar week

containing at least 18 working hours. Weeks that accrue the employment condition may be accumulated during the 28 months immediately preceding the registration as an unemployed job seeker. A further requirement is for the pay to have complied with the collective agreement, but if there is no collective agreement for the industry in question, the minimum pay for full-time work must be at least €1,165 per month (in 2015).

The aforementioned 28-month period – referred to as the period of review – may be extended if the person has had an acceptable reason for being absent from the labour market. Such acceptable reasons include an illness, liability for military service, job alternation leave, a scholarship period, the birth of a child and caring for a child less than three years old. The review period may be extended, at maximum, to seven years.

The validity of the employment condition ends when the person has been absent from the labour market for more than six months without an acceptable reason. In such cases, the earnings-related daily allowance can only be paid after the person meets the employment condition again.

Exceptions to the accrual of the employment condition are made when the person works in an industry with exceptional working hours arrangements, such as in teaching, or when the person works in connection with a partial daily sickness allowance.

If the person has met the employment and membership condition prior to the beginning of a partial retirement or partial disability pension, the earnings-related daily allowance is determined according to the income from the full-time work prior to retirement. Accordingly, if the person has met the membership and employment condition prior to the beginning of partial child care leave, the daily allowance is determined from the income prior to the beginning of the partial child care leave.

The employment condition does not include working hours transferred into the working hours bank, but it does include the time when the person has been on leave, spending the time accumulated in the working hours bank, and received corresponding pay.

26.3. Application

Daily unemployment allowance is paid only on the basis of an application. The application forms are available in TE Offices, at unemployment funds and online, at www.tyj.fi/lomakkeet. It is also worth checking the possibility to take care of matters electronically (eAsiointi) with one's unemployment fund. The application is filled in and, supplemented with the documents mentioned on the form, submitted to the unemployment fund of which the person is a member. If the person is not a member of an unemployment fund or if she or he is entitled to an earnings-related daily allowance, the daily allowance is applied for from Kela.

The daily allowance is applied for retrospectively, in periods of four calendar weeks or a month. A daily allowance cannot be applied for in advance. The application for daily unemployment allowance must be submitted no later than three months from the date for which the person wishes to receive a daily allowance.

26.4. Period of partial benefit

Daily unemployment allowances are paid after the person has been registered as an unemployed job seeker in the TE Office for five full workdays during a maximum of eight consecutive calendar weeks.

The period of partial benefit is set whenever the maximum 500-day period of payment for an earnings-related daily allowance begins again from the start. The period of partial benefit is nevertheless not imposed if the maximum period for daily allowance begins within a year of the beginning of the previous maximum period and if the period of partial benefit had been imposed at the beginning of the maximum period for the previous daily allowance.

Days of partial benefit do not include days when the person is not entitled for a daily allowance, such as qualification periods or the allocation/division of severance pay. But the period of partial benefit does include the period of partial benefit related to a daily sickness allowance and rehabilitation money as well as the days during which the person has been paid an unemployment benefit for services that promote employment.

26.5. Qualification period

When submitting an employment-related statement to the unemployment fund, the TE Office simultaneously determines any possible qualification period, i.e. the period during which the applicant is not entitled to an unemployment benefit. The qualification period, 90 days, is imposed when, for example, the person has resigned from his or her work without a valid reason or has herself or himself caused the employment contract to end.

26.6. Allocations/divisions

A financial benefit received from the employer in relation to the termination of an employment relationship, such as severance pay, golden handshake, support package, incentive – other than damages – prevents the granting of daily unemployment allowance for the period of time over which the financial benefit is divided according to the pay received for the latest employment relationship. It is of no consequence under which name the benefit is paid. Training arranged or paid for by the employer, however, is not allocated as a benefit.

26.7. Amount of earnings-related daily allowance

One can calculate an estimate of the amount of his or her earnings-related daily allowance in the service available at www.tyj.fi.

The amount of the earnings-related daily allowance is calculated from the established earnings subject to the withholding of tax for the period preceding the unemployment at least for the time that meets the employment condition. Holiday bonuses and holiday compensation is deducted from the earned income. In addition to these amounts, a percentage equal to the employee's pension insurance and unemployment insurance contributions as well as the contribution for daily sickness insurance allowance, or 4.28 (in 2015), is deducted from the earned income.

If the daily allowance is determined according to earned income from a period earlier than what is mentioned above due to an extension of the review period concerning the accumulation of the applicant's employment condition for an acceptable reason, the earned income is increased according to the employment pension index.

An earnings-related daily allowance is composed of a basic portion, the earnings-related portion and child increases. The basic portion is equal to the amount of the basic daily allowance confirmed annually according to the National Pensions Index. In 2015, the basic daily allowance is €32.80. The earnings-related portion is 45 per cent of the difference between the person's daily salary and the aforementioned basic portion. If the monthly salary ex-

ceeds what is referred to as a culmination point which, in 2015, was €3,116.00, the amount of the earnings-related portion for the part that exceeds this is 20 per cent. Any dependent children under 18 entitle the person to a child increase. The maximum amount of a full earnings-related daily allowance, child increases included, may amount to 90 per cent of the daily salary that serves as the basis for the daily allowance.

An earnings-related daily allowance may furthermore be increased for a maximum period of 90 days, provided that the applicant has a sufficiently lengthy employment history, or for a maximum period of 200 days, provided that the applicant participates in the service promoting employment agreed upon with the TE Office.

If the person finds part-time or partial employment, the earnings-related daily allowance is paid in an adjusted form. An adjusted daily allowance equals the full earnings-related daily allowance less a 50 per cent protected amount (€300.00) of the salary earned during the adjustment period. The adjustment period lasts for either a month or four weeks.

26.8. Duration of income security

Following a possible division/allocation and period of partial benefits, the earnings-related daily allowance is paid for five days a week. The daily allowance is paid for a maximum period of 500 unemployment days.

The earnings-related daily allowance is determined again whenever the employment condition is met, at which the counting of a new maximum period of 500 days begins. If the maximum 500-day period of payment has not yet been achieved when the earnings-related daily allowance is re-determined, the earnings-related daily allowance will be at least 80 per cent of the previous allowance paid without child increases.

However, the payment of the earnings-related daily allowance's earnings-related portion will shorten to 400 days if the beneficiary of the earnings-related daily allowance has not been at work for at least three years prior to the commencement of the right to daily unemployment allowance.

The payment of earnings-related daily allowance will also shorten to 400 days when the beneficiary of the earnings-related daily allowance has declined a service that promotes employment or suspended such a service during the first 250 days of daily unemployment allowance. If the beneficiary of the earnings-related daily allowance has not been at work for three years and has declined a service that promotes employment or suspended such a service, the payment of the earnings-related portion is shortened to 300 days.

When the payment period of an earnings-related daily

allowance has been shortened, the amount of the daily allowance paid for the final 100 or 200 days of the maximum period will equal the amount of a basic daily allowance.

An earnings-related daily allowance can be paid on "additional days" after the 500-day maximum period:

- A person born in 1950–1954 who will turn 59 prior to the achievement of the 500-day maximum period may be paid an earnings-related daily allowance until the end of the calendar month during which the person turns 65. In addition, the person is required to have worked for at least five years during the past 20 years.
- A person born in 1955 or 1956 who will turn 60 prior to the achievement of the 500-day maximum period may be paid an earnings-related daily allowance until the end of the calendar month during which the person turns 65. In addition, the person is required to have worked for at least five years during the past 20 years.
- A person born in 1957 or later who will turn 61 prior to the achievement of the 500-day maximum period may be paid an earnings-related daily allowance until the end of the calendar month during which the person turns 65. In addition, the person is required to have worked for at least five years during the past 20 years.

Further information on unemployment benefits and unemployment funds

- Unemployment Fund for Higher Educated Employees Erko, www.erko.fi
- IAET-kassa, www.iaet.fi
- Lakimiesten työttömyyskassa, www.lakimiestentk.fi
- Lääkärien työttömyyskassa, www.laakarientkassa.fi
- Unemployment Fund for Sales and Marketing Professionals, www.smkj.fi
- Teachers' Unemployment Fund, www.opetk.fi

On the unemployment security of entrepreneurs:

- The Unemployment Fund for Entrepreneurs and the Self-Employed (AYT), www.ayt.fi

27. ON LABOUR OFFENCES

The Criminal Code contains a separate chapter on labour offences which includes the most serious offences related to employment relationships, particularly those for which a person may be sentenced to jail time. In addition to the provisions of the Criminal Code, many Acts regulating employment relationships include their own penal provisions.

The Criminal Code uses the terms employer and employee and the representatives of the aforementioned uniformly, regardless of whether the provisions pertain to offences involving employment relationships in the private or public sector. In terms of protection under the criminal code, employees in employment and civil service relationships are in an equal position.

The person or party penalised for a procedure or measure deemed punishable under the Criminal Code is the one whose obligations the act or neglect is seen to violate. In such cases, consideration is given to the person's position, the quality of the person's tasks and authorities and his or her involvement in the matter in all other respects.

Criminal Code (39/1889; Chapter 47)

27.1. Work safety offence

An employer or the representative of an employer may be sentenced to a fine or at most one year of imprisonment if the employer or representative has wilfully or negligently violated work safety regulations. A punishment may also be ordered if the employer or representative has neglected to supervise compliance with the regulations or the financial conditions for arranging operations or other conditions for occupational health and safety.

An isolated and minor violation of a work safety regulation is not considered a work safety offence, but can nevertheless constitute a minor offence according to the Occupational Safety and Health Act or the Occupational Health Care Act.

The Criminal Code provides a separate punishment for negligent homicide, negligent bodily injury and imperilment.

27.2. Working hours offence

An employer or the representative of an employer who wilfully or through gross negligence to the detriment of the employee neglects to keep books on working hours or annual holidays, keeps them erroneously, alters, conceals, destroys or renders them impossible to read may be sentenced to a fine or at most six months' imprisonment.

The same punishment applies to an act carried out despite an express order or prohibition by an occupational health and safety authority, which is a punishable act according to the Working Hours Act or the Annual Holidays Act.

27.3. Work discrimination

An employer or the representative of an employer who, when announcing a vacancy, selecting an employee or during an employment relationship places a job applicant or an employee, without a weighty and acceptable reason, at a disadvantage due to the applicant or employee's race, national

or ethnic origin, nationality, skin colour, language, gender, age, family relations, sexual orientation, heritage, disability, health, religion, social opinion, political or occupational activity or some other comparable reason may be sentenced to a fine or imprisonment for at most six months.

27.4. Extortionate work discrimination

When in the work discrimination the job applicant or employee is placed in a considerably inferior position by taking advantage of his or her financial or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the perpetrator can be sentenced to a fine or imprisonment for at most two years, unless a stricter punishment is provided elsewhere in the law.

27.5. Violation of the rights of an employee representative

The employer or the representative of the employer may be sentenced to a fine if they, without statutory grounds or grounds specified in a collective agreement, terminate the employment relationship, dismiss or lay-off a shop steward, employee representative, an occupational health and safety representative or a personnel or employee representative referred to in the Act on Cooperation within Undertakings or the Act on Personnel Representation in the Administration of Undertakings or change the employment relationship to a part-time one.

27.6. Violation of the right to organise

An employer or representative of the employer who prevents an employee from establishing a legal occupational or political association or prevents joining or belonging to such an association and activity therein may be ordered to pay a fine.

A fine may also be ordered when an employer or its representative prevents employees or their trade unions from appointing or electing a shop steward, employee representative, occupational health and safety representative or a personnel representative in administration in the workplace.

A fine may also be imposed on the person who forces an employee to join or belong to an occupational or political association.

27.7. Employment agency offence

A person who in violation of the employment agency services payment prohibition provided in the Public Employment and Entrepreneur Agency Act charges a fee from individual customers may be ordered to pay a fine or at most sentenced to one year of imprisonment.

27.8. Unauthorised use of foreign labour

An employer or representative of the employer who hires or keeps in its employment a foreign national who does not possess a residence work permit or other permit entitling him or her to work in Finland may be ordered to pay a fine or sentenced to imprisonment for at most one year.

A contractor, subcontractor or commissioner of work or a representative thereof who neglects to ensure that the foreign employees in the contract or subcontract work that it has awarded a foreign company or the foreign employees placed at its disposal by a foreign company as contract labour have a residence work permit or other permit to work in Finland may be sanctioned for the unauthorised use of foreign labour.

If the employee has caused the damage by means other than minor negligence, he or she may become personally liable for damages. Once the employer has paid the damages to the injured party, the employer has the right to claim the damages paid from the employee. The damages must nevertheless be adjusted. The same principles apply to damage the employee causes directly to the employer.

YTN affiliates have also taken out liability insurances for their members. The purpose of these policies is to reduce a member's liability for damages. The liability insurance compensates, for the damage caused to another, the amount which the insured is obligated to pay to the employer according to the Tort Liability Act and the Employment Contracts Act. The maximum amounts of com-

ensation per occurrence of property damage or bodily injury vary according to association. You can get more information from the lawyer in your own association.

Compensation may be reduced or refused altogether if the insured caused the damage or injury wilfully/intentionally or through gross negligence. The compensation may likewise be refused or its amount reduced if the insured has not taken the necessary precautions even though the occurrence of damage or injury has been evident.

The terms of the insurance vary according to association and are worth checking from one's own association.

28. LEGAL EXPENSE INSURANCE AND LIABILITY INSURANCE

YTN affiliates have taken out various legal expense insurances for their members. The purpose of such insurances is to compensate for the legal expenses related to disputes concerning the member's employment or civil service relationships. YTN affiliates have also taken out various liability insurances for their members. The purpose of these insurances is to reduce a member's obligation to pay damages. The insurance terms vary according to the affiliate. It is always worth checking the insurance terms from one's own association.

28.1. Legal expense insurance

The legal expense insurances of YTN affiliates compensate for legal expenses of disputes related to a member's employment or civil service relationship. It is always advisable to get in touch with the lawyers of one's own association before filling in a legal expense insurance declaration, since the contents, deductible and compensation for the counterparty's legal expenses vary according to association. A legal expense insurance declaration should only be filed with the insurance company when the dispute cannot be resolved through negotiations with the assistance of the associations' lawyers.

Using the insurance requires that the matter is being taken care of by an attorney or other lawyer. The insurance does not apply to a matter which does not involve the insured's employment or civil service relationship, which is of minor significance to the employee, which does not involve a contested request or demand or in which the insured is accused of a wilful or intentional act or gross negligence.

28.2. Liability insurance

Liability insurance provides coverage for a liability for damages the insured may become subject to as a result of a property or bodily injury the insured has caused in his or her office, employment or occupation.

The valid tort legislation imposes on the employer primary liability for damages for loss or damage caused by an employee during the course of his or her work.

The employee is entirely free of liability for damages if he or she can be considered to have caused the damage through minor negligence only. In practice, this means that the damage is the result of human error or that the action of the party that caused the damage has otherwise been only slightly reproachable.

If the employee has caused the damage by means other than minor negligence, he or she may become personally liable for damages. Once the employer has paid the damages to the injured party, the employer has the right to claim the damages paid from the employee. The damages must nevertheless be adjusted. The same principles apply to damage the employee causes directly to the employer.

YTN affiliates have also taken out liability insurances for their members. The purpose of these policies is to reduce a member's liability for damages. The liability insurance compensates, for the damage caused to another, the amount which the insured is obligated to pay to the employer according to the Tort Liability Act and the Employment Contracts Act. The maximum amounts of compensation per occurrence of property damage or bodily injury vary according to association. You can get more information from the lawyer in your own association.

Compensation may be reduced or refused altogether if the insured caused the damage or injury wilfully/intentionally or through gross negligence. The compensation may likewise be refused or its amount reduced if the insured has not taken the necessary precautions even though the occurrence of damage or injury has been evident.

The terms of the insurance vary according to association and are worth checking from one's own association.

YTN unions:

Agronomiliitto	www.agronomiliitto.fi
Akava Special Branches	www.akavanerityisalat.fi
Akavan Yleinen Ryhmä	www.akavanyleinenryhma.fi
Driftingenjöröförbundet i Finland DIFF	www.diff.fi
Union of Professional Engineers in Finland IL	www.ilry.fi
Union of Technical Professionals KTK	www.ktk-ry.fi
Finnish Union of Experts in Science LAL	www.luonnontieteilijät.fi
Union of Finnish Academic Foresters	www.metsanhoitajat.fi
Union of Sales and Marketing Professionals SMKJ	www.mma.fi
Finnish Union of University Professors	www.professoriliitto.fi
Professional Coaches of Finland SAVAL	www.saval.fi
The Finnish Business School Graduates	www.ekonomit.fi
Finnish Pharmacists' Association	www.farmasialiitto.fi
Association of Finnish Lawyers	www.lakimiesliitto.fi
Finnish Psychological Association	www.psyli.fi
Finnish Association of Occupational Health Nurses	www.stthl.net
Academic Engineers and Architects in Finland TEK	www.tek.fi
Finnish Union of University Researchers and Teachers	www.tieteentekijoidenliitto.fi
Tradenomiliitto TRAL	www.tral.fi
Social Science Professionals	www.yhteiskunta-ala.fi
Association for Managers and Professionals YTY	www.yty.fi
Finnish Union of Environmental Professionals YKL	www.ykl.fi

THE FEDERATION OF PROFESSIONAL AND MANAGERIAL STAFF (YTN)

The employer and upper white-collar employee (hereinafter employee) identified below have agreed on the following terms of employment. In addition, this agreement is subject to the provisions of a possible collective agreement.

EMPLOYER	EMPLOYEE
Name	Name
Address	Address
Business ID	Personal identification number

1. EMPLOYMENT RELATIONSHIP

The employment relationship begins on _____

- The employment relationship is valid until further notice [/indefinitely]
- The employment relationship is of a fixed term and valid until _____
- The employment relationship is of a fixed term and valid until the task specified below has been performed

The grounds for the fixed-term employment are

The employment relationship is subject to a ____-month trial period

2. WORKPLACE AND JOB TITLE

Actual place of work

Job title

Duties

3. PERIOD OF NOTICE

- The employer and employee's periods of notice comply with the Employment Contracts Act
- The employer and employee's periods of notice comply with the collective agreement
- The separately agreed periods of notice are
 _____ months when the contract is terminated by the employer
 _____ months when the employee resigns

4. WAGES

The salary in money at the beginning of the employment relationship is

€ _____/month

or

€ _____/hour

Fringe benefits in addition to salary in money

- Phone benefit
- Company car benefit, free Company car benefit, usage right
- Meal benefit
- Flat benefit
- _____

The wages are adjusted annually, taking into account the industry's general wage development, the task's degree of difficulty and the employee's performance in the task.

The wages are paid to bank account number _____

The payday(s) is the _____ of the month.

Performance-based pay

Grounds for determination

Time of performance

When the employment relationship ends, the performance-based pay is paid according to the employment relationship's duration (pro rata temporis) in relation to the performance-pay period.

5. WORKING HOURS

Regular working hours

- 7.5 h/day and 37.5 h/week (Mon–Fri)
- 8 h/day and 40 h/week (Mon–Fri)
- Flexible working hours
- Part-time work, at least _____ h/week, and workdays _____

The compensation to be paid for any time exceeding the regular working hours

- will be paid in cash or given as free time in accordance with the Working Hours Act.
- will be paid as a separate compensation amounting to € _____ a month. The amount of realised additional work and overtime is reviewed every six months, and the amount of the separate compensation is adjusted accordingly.

6. ANNUAL HOLIDAY

The length of the annual holiday is determined according to the Annual Holidays Act.

In addition to the holiday accrual pursuant to the Annual Holidays Act, the employee is entitled to _____ days of extra paid holidays to be taken during the first year/first two years of the employment relationship.

A holiday bonus amounting to 50 per cent of the annual holiday pay, fringe benefits included, will be paid in connection with the annual holiday pay.

The holiday bonus will also be paid from the holiday compensation.

7. SICK PAY

Sick pay is paid according to:

- the Employment Contracts Act (1+9 days)
- the collective agreement
- for a period of three (3) months
- the duration of the employment relationship so that, when the employment relationship has continued without interruption for,
 - less than one (1) year, for four (4) weeks
 - one (1) year but less than five (5) years, for five (5) weeks
 - at least five (5) years, for three (3) months
- some other policy as follows:

8. TRAINING

The employer provides the employee with the induction, supplemental, further and re-training necessary with regard to the employee's job.

In addition, the parties have agreed as follows:

9. TRAVEL COSTS AND TRAVEL TIME

Travel cost compensation is determined as follows

- the maximum tax-exempt amounts pursuant to a decision by the Tax Administration.
- the collective agreement.
- to the following _____

Business travel carried out outside of regular working hours is subject to

- a fixed compensation of € _____ per month
- a compensation of simple hourly wages according to "the hour-for-hour" principle or an equivalent amount of free time
- a compensation as follows:

10. INTELLECTUAL PROPERTY RIGHTS

COPYRIGHT

The copyright to works protected by copyright and born as a result of the employee's work will remain with the employee.

The employer shall have a right of exploitation to the aforementioned works within the scope required by its regular operations for the duration of this agreement's validity.

The copyright's assignment subsequent to the end of this agreement will be agreed to separately.

INVENTIONS

The employer's right to an invention made by the employee is determined in accordance with what is provided in the Act on the Right in Employee Inventions.

11. COLLECTIVE AGREEMENT

The employment relationship is subject to the _____ industry's collective agreement

made between the Federation of Professional and Managerial Staff (YTN) and _____.

The employment relationship is subject to the _____ industry's collective agreement

made between _____ and _____.

12. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A full salary for a period of three months is paid during a maternity leave.

A full salary for a period of _____ days is paid during a paternity leave.

A full salary for a maximum of four (4) days is paid for any temporary child-care leave.

A salary for a period of reservist training is paid so that the employee receives full fringe benefits with the reservist pay paid by the state.

The employer will take out a travel insurance policy for the employee.

The employer will take out a liability insurance policy for the employee.

The employer will take out an individual supplementary pension insurance for the employee. The annual premium is € _____.

Once the employment relationship comes to an end, the employee will receive a paid-up policy of the pension.

This contract was prepared in two (2) copies, one (1) for each party.

Place and date

Employer's signature

Employee's signature

INSTRUCTIONS FOR COMPLETING THE EMPLOYMENT CONTRACT FORM

It is advisable to pay special attention to the following matters when completing the employment contract form:

1. Employment relationship

Fill in the section “the employment relationship begins on” with the date on which you have agreed to start working. If the terms of the employment relationship change, or in situations involving, for instance, a transfer of business, the aforementioned section is filled in with the original date on which employment relationship began.

An employment contract can always be agreed to be valid until further notice, i.e. indefinitely. A fixed-term employment contract requires a justified reason. The grounds for the contract’s fixed-term nature are specified in the employment contract. The duration of a fixed-term contract can be tied to, for example, a calendar period or the completion of a particular task.

Agreeing on a trial period is voluntary. The application of a trial period requires that the relevant term has been agreed upon in the employment contract. The trial period may not last longer than four months. If the employment relationship begins with an uninterrupted, work-related training period more than four months long, the trial period may not last longer than six months. Trial periods are placed at the beginning of an employment relationship. While they last, the employment relationship may be cancelled without a period of notice.

In the case of fixed-term employment of less than eight (8) months, the trial period may not exceed 50% of the duration of the employment.

2. Workplace and job title

The workplace agreed on is typically a particular town/city or a specified office/outlet.

The employment contract specifies the job title (“title”) and the tasks which the employee will perform in his or her work. The looser the specification of the tasks to be performed is in the employment contract, the greater the employer’s right, based on its right to supervise work, to indicate other tasks to the employee.

3. Period of notice

According to the Employment Contracts Act, the parties to an employment contract are free to agree on the length of a period of notice, but it may not be longer than six (6) months. The parties may agree that the employee’s period of notice is shorter than employer’s period of notice. The employer’s period of notice may nevertheless not be shorter than the agreed employee’s period of notice is.

Unless otherwise agreed with regard to the period of notice, the period of notice to be complied with by the employer is determined, according to the Employment

Contracts Act, as follows:

Duration of employment relationship	Period of notice
no more than one (1) year	14 days
more than one (1) year but no more than four (4) years	1 month
more than four (4) years but no more than eight (8) years	2 months
more than eight (8) years but no more than twelve (12) years	4 months
more than twelve (12) years	6 months

Unless otherwise agreed, the employee must comply, according to the Employment Contracts Act, with a 14-day period of notice if the employment relationship has continued for a maximum of five years, and a one-month period of notice if the employment relationship has continued for more than five years.

4. Wages

It is advisable to agree on fringe benefits in addition to salary in money. At the same time, the parties must agree on whether the fringe benefits are received on top of the salary in money or whether their taxable value is to be deducted from the salary in money.

It is advisable to agree on any performance-based pay in as much detail as possible as well as on such determination grounds applicable to the performance-based pay which the employee can influence through his or her own activities and which are clearly measurable.

It is also a good idea to agree on the period for which the performance-based pay is paid, in case the employment relationship ends in the middle of the performance-based pay period.

5. Working hours

The employee’s regular daily and weekly working hours are agreed on when entering into an employment contract.

When agreeing on flexible working hours, the parties must take into account the limitations provided in section 13 of the Working Hours Act.

Overtime is compensated for with the overtime compensation specified in the Working Hours Act. If separately agreed, overtime may also be compensated for with “increased” free time in the equivalent manner. Unless otherwise agreed, overtime will be compensated in cash. The performance of overtime requires the employer’s order and the employee’s consent.

According to the Working Hours Act, the employment

contract of an employee in a leading position may include an agreement on the increased salary to be paid for overtime and Sunday work to be paid as a separate monthly compensation denominated in euros. An upper white-collar employee who works in a purely specialist role may not agree on a monthly compensation, unless the collective agreement allows for it, as is the case in, for example, the technology industry.

6. Annual holiday

The employee accrues annual holidays in accordance with the Annual Holidays Act. If the employment relationship has lasted for less than a year once the holiday accrual year ends on 31 March, the employee accrues two (2) days of annual holiday per a month at work. If the employment relationship has lasted for more than a year by 31 March, the amount of annual holiday accrued per a month at work is 2.5 days.

Given that an employee has not had the chance to accrue a full 30-day holiday right at the beginning of an employment relationship, it is advisable to agree on extra paid holidays in the employment contract.

While a holiday bonus is not a term of an employment relationship based on the Annual Holidays Act, collective agreements contain fairly comprehensive agreements on holiday bonuses. A holiday bonus to be paid in connection with the annual holiday pay may also be agreed to in the employment contract.

7. Sick pay

By virtue of the Employment Contracts Act, an employee is entitled, during an inability to work attributable to illness or an accident, to sick pay for a period that lasts, at maximum, until the end of the ninth working day following the day on which the employee fell ill or had the accident. In employment relationships that have lasted for less than a month, the employee is entitled to receive 50 per cent of his or her salary.

Collective agreements typically agree on the payment of sick pay for period of time longer than what is mentioned above.

8. Training

The employer is obligated to organise and bear the costs of any induction and supplementary training necessary in terms of the employee's work. The parties may exceptionally agree on a division of training costs, provided that the training is not necessary in terms of the work or if it is not based on the employer's needs.

9. Travel costs and travel time

The Tax Administration confirms the maximum amounts of and criteria for the tax-exempt compensation for travel costs with its decision. The decision does not obligate employers to compensate any costs arising to the employ-

ee as a result of business travel. Collective agreements include fairly comprehensive agreements on compensating for employees' travel costs. If there is no applicable collective agreement, the compensation for travel costs must be agreed on in the context of the employment contract.

According to the Working Hours Act, travel does not constitute working hours, unless it is simultaneously a work performance. The law does not obligate an employer to pay compensation for time spent on travel. This is why a compensation for travel time must be agreed on in the context of the employment contract.

10. Intellectual property rights

Copyright

Copyrights are determined according to the Copyright Act.

Employee inventions

The employer's right to an invention made by the employee is determined in accordance with what is provided in the Act on the Right in Employee Inventions. It is not advisable to make agreements that derogate from the law in terms of employee inventions.

11. Collective agreement

The collective agreement applicable to the employment relationship must always be mentioned in the employment contract.

The application of a collective agreement may be based on the employer being organised with an industry employee association (normal binding effect) or on the employer operating in an industry with a what is referred to as generally binding collective agreement. The application of a collective agreement may also be agreed on in an employment contract.

12. Other terms and conditions of employment

By virtue of the Employment Contracts Act, an employee is entitled to take leave for family leave periods pursuant to the Health Insurance Act, but there is no statutory obligation to pay salary for the various family leave periods. Collective agreements typically agree on an employee's right to his or her pay during a maternity or paternity leave, for example, and during a temporary child-care leave meant for arranging care for a child less than 10 years old. If there is no applicable collective agreement, it is advisable to agree on the paid nature of various periods of family leaves.

The terms of an individual supplementary pension should be agreed on together with the employer and an insurance company. It is also important to agree on a right to a paid-up policy and to make what is referred to as an agreement on irrevocability, which will prevent the employer from ending the insurance and withdrawing the accrued funds.

The Federation of Professional and Managerial Staff (YTN) is Akava's collective bargaining organisation for the private sector. Within Akava's membership field, YTN is in charge of the negotiations and agreement operations of upper white-collar employees in the industrial, business and service sectors. YTN's essential goal is to improve upper white-collar employees' income level and terms and conditions of work by, for example, strengthening the agreement operations of the industrial and service sectors.

This is the second, revised edition of YTN's Employment Relationship Guide. The guide discusses particularly issues related to the employment relationships of upper white-collar employees. It is meant to serve as a guide to the different situations faced in working life by both upper white-collar employees and their shop stewards.

YTN unions:

Agronomiliitto
Akava Special Branches
Akavan Yleinen Ryhmä
Driftingenjöröförbundet i Finland DIFF
Union of Professional Engineers in Finland IL
Union of Technical Professionals KTK
Finnish Union of Experts in Science LAL
Union of Finnish Academic Foresters
Union of Sales and Marketing Professionals SMKJ
Finnish Union of University Professors
Professional Coaches of Finland SAVAL
The Finnish Business School Graduates
Finnish Pharmacists' Association
Association of Finnish Lawyers
Finnish Psychological Association
Finnish Association of Occupational Health Nurses
Academic Engineers and Architects in Finland TEK
Finnish Union of University Researchers and Teachers
Tradenomiliitto TRAL
Social Science Professionals
Association for Managers and Professionals YTY
Finnish Union of Environmental Professionals YKL