



GUIDE TO GOING GLOBAL EMPLOYMENT

Finland



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INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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FINLAND



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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Euro (EUR). The official languages are Finnish and Swedish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign entities may engage employees in Finland subject to business and corporate tax planning considerations, as well as compliance with payroll, tax and other requirements.

Proper payroll operations include making income tax, social security and other necessary deductions at source.

PRE-HIRE CHECKS

Required

Under the Employer Sanction Directive and the Finnish Employment Contract Act, employers are required to ensure that non-European Economic Area nationals comply with residency and immigration requirements, or the employer may face fines for non-compliance. Criminal records must be checked when working with children.

Permissible

For tasks other than working with children, credit history and criminal records may be checked only in situations where the law so requires and by following the procedure stipulated in law. Medical checks may be used to check employees' ability to work. Reference and education checks are common and carried out with the applicant's consent.

IMMIGRATION

Nationals of the EU countries, as well as nationals of countries that belong to the European Economic Area, may work in Finland without a residence permit. Other nationals must have a residence permit or visa to be allowed to work in Finland.

HIRING OPTIONS

Employee

Unless otherwise agreed, an employment contract is valid until further notice. An employment agreement may either be full-time or part-time. If justified reasons exist, an employment agreement may also be fixed-term.

Independent contractor

Independent contractors typically work under a business name or through a company. Independent contractors are not considered to be in an employment relationship, but there's a risk of an employment relationship if the independent contractor actually works under the supervision and control of the employing company.

Agency worker

Agency workers are commonly engaged under fixed-term contracts, but there must be a justified reason for using a fixed-term contract. Employees must be treated equally, and temporary employment is not a reason to discriminate against agency workers. Some collective bargaining agreements (CBA) limit the use of agency workers in the line of business in question. The CBA applicable to the employment terms of agency workers is typically the CBA applied by the user.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

An employment contract may be oral, written or in an electronic form. The terms are defined by the actual relationship between the employer and the employee. As a minimum, the principal terms of employment stipulated in the Employment Contracts Act must be provided in writing. Employment terms may also be established through practice between the employer and the employee.

Probationary periods

Probationary periods are permitted. The employer must agree on the probationary period with the employee. As of January 1, 2017, the maximum duration of such a period is 6 months, and it may be extended in accordance with certain limitations if the employee is on sick leave or on family leave during the probationary period.

CBAs may provide for a shorter period. In fixed-term contracts, the probationary period may be half the contract period, but in any event, no more than 6 months.

Policies

The employer is required to maintain a mandatory equality policy including pay survey and a non-discrimination policy if there are more than 30 employees employed regularly. The equality policy must include a "pay survey" with details of the employment of women and men in different jobs and a classification of jobs performed by women and men, the pay for those jobs and the differences in pay. The policy must be updated every second year and kept at the employees' disposal. In addition, the Act on Co-operation within Undertakings requires that the employer has certain plans, such as a work community development plan, as stipulated in the Act.

Third-party approval

No requirements for third-party approval for employment contracts or policies, except for employees under the age of 15.

LANGUAGE REQUIREMENTS

Finland's official languages are Finnish and Swedish. However, employment contracts may be in another language understood by the employee.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All employees are entitled to minimum employment rights under statute. Generally binding CBAs in place across most sectors also specify minimum employment conditions. Employers that do not belong to an employers' association with a CBA must still observe the minimum collective conditions for their sector. In general, managers in leading positions in the company are often excluded from the scope of a CBA, but only the managing directors, as agents of the company, are excluded from the scope of employment laws.

Working hours

Working hours are specified by the Working Time Act or under the relevant CBA. Regular working hours are typically 7.5 or 8 hours per day and 37.5 to 40 hours per week. The Working Time Act and CBAs also allow for different working-hour arrangements and stipulate mandatory rest periods.

Overtime

Employees may work both additional hours and overtime. Overtime requires the employee's separate consent each time. The working time of an employee, including overtime, must not exceed an average of 48 hours per week over a 4-month period.

According to the Working Time Act, overtime is compensated with additional pay unless it is agreed the employee will be compensated with time off. Daily overtime is work that exceeds 8 hours in a day; for daily overtime, the first 2 hours are paid with a 50-percent increase on normal salary and any hours thereafter with a 100-percent increase. Weekly overtime is work done on the employee's normal day off that exceeds 40 hours in that week; for weekly overtime, all hours are paid with a 50-percent increase on normal salary. CBAs may include different provisions regarding overtime compensation.

Wages

There is no national minimum wage in Finland. Minimum wages are specified in the relevant CBA, if applicable. Otherwise, wages must be "reasonable."

Vacation

An employee who works at least 14 days or 35 hours a month is entitled to paid annual holiday time. An employee is entitled to 2.5 weekdays of holiday for each full holiday credit month. However, the entitlement is 2 weekdays of holiday for each full holiday credit month if the employment relationship has been uninterrupted for a period of less than 1 year by the end of the holiday credit year (the period from April 1 to March inclusive).

When the number of holidays is calculated, any fraction of a day is rounded up to constitute 1 full day of holiday. Full annual holiday entitlement covers 4 weeks of summer holiday and 1 week of winter holiday. CBAs may include more favorable vacation entitlements.

An employee who works less than 14 days or 35 hours a month is not entitled to any holiday for that month. An employee who, in accordance with their contract, works less than 14 days or 35 hours during all calendar months is, during the employment relationship, entitled to 2 weekdays of leave for each calendar month in which the employment relationship has been in force. The employee is entitled to receive as holiday compensation 9 to 11.5 percent of their pay for their time at work during the holiday credit year.

Sick leave & pay

Employees are entitled to paid sick leave if they are prevented from performing their work due to an illness or an accident.

The relevant rate of sick pay is specified under the Employment Contracts Act and/or in the relevant CBA. Based on the Employment Contracts Act, employees are entitled to full pay for the period of disability up to the end of the 9th day following the date of falling ill, subject to this entitlement ceasing at the point at which the employee's right to national sickness allowance under the Sickness Insurance Act comes into effect. In employment relationships that have continued for less than 1 month, employees are correspondingly entitled to 50 percent of their pay. CBAs typically include more agreeable sick pay entitlements.

Family leave & pay

Family leave reforms came into force on August 1, 2022. The reforms gave both parents a quota of 160 daily allowance days. Parents are allowed to transfer up to 63 daily allowance days of their own quota to the other parent, the other custodian, their spouse or the spouse of the other parent. For the last stage of pregnancy, there is a pregnancy allowance period of 40 daily allowance days. There are 6 daily allowance days per week. Altogether, daily allowance days amount to more than 14 months. Single parents have the right to use the quotas of both parents. Twins, triplets and other multiple births are an exception to the model; the quota of daily allowance days for such parents is increased by 84 daily allowance days per second child and every child thereafter. Parents in employment relationships have the right to split the leave up to 4 parts. Only pregnancy allowance days have to be used in a single continuous period, starting 14 to 30 days before the estimated due date. An employer is not required to pay the employee salary during family leave unless otherwise agreed. Employees who adopt a child are entitled to the same leave as parents of a biological child with minor adjustments.

Other leave/time off work

In connection of the family leave reform of 2022, all employees were given a right to take leave from work to provide personal assistance or support to a family member or a person the employee has a relationship with and who lives in the same household as the employee. Informal care leave can be taken for a maximum of 5 days during the calendar year.

DISCRIMINATION & HARASSMENT

All employees have the right to equal treatment. Employers must not discriminate on the basis of gender, descent, ethnic or national origin, nationality, religion, age, health, disability, political activity, trade union activity or related reasons. The provisions are set out in the Equality Act and the Non-Discrimination Act. All employees, including applicants, are protected against discrimination.

WHISTLEBLOWING

The new law implementing the EU Whistleblower Protection Directive has entered into force and includes protection for whistleblowers.

BENEFITS & PENSIONS

A statutory and mandatory earnings-related pension scheme accrues pension for all employees who are at least age 17 (as of 2017). Additional collective pension scheme rights may be agreed upon in a CBA. Collective and individual additional pension schemes are also possible, either where unilaterally provided by the employer or agreed contractually as a term of employment.

Employees are often entitled to fringe benefits, such as lunch, mobile phone or car benefits.

DATA PRIVACY

Employees must usually be notified about personal data processing and give consent to this when necessary. Only necessary data may be processed. Special rules apply to data transfers outside of the EEA. There are significant restrictions on monitoring email and internet use.

From May 2018, Finland has been subject to the General Data Protection Regulation (GDPR) which introduced significant new obligations and onerous sanctions for employers.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

The Employment Contracts Act stipulates that, on the transfer of an undertaking, existing employees transfer on their existing employment terms. The Act on Co-operation within Undertakings stipulates information obligations as regards to the personnel. Employees cannot be dismissed merely because of a business transfer, and dismissals

or change of employment terms are possible only on normal grounds after the transfer. Employees or unions cannot object or prevent the transfer, but an employee who is affected by the business transfer is entitled to resign with a shorter notice period. A share sale is not considered a transfer of undertaking.

EMPLOYEE REPRESENTATION

Trade unions are prevalent across all sectors, and 70 percent of Finnish employees are members of a trade union. Employees may be represented either by a shop steward elected based on the applicable CBA or by a representative elected based on the Employment Contracts Act, as well as an industrial safety delegate in occupational health and safety matters. Employers must negotiate or consult with employee representatives, or the whole workforce if there are no representatives. There are no national works councils, and trade unions do not have a general right to information and/or consultation or co-determination rights. Employees do not have the right to participate in any management body of the employer.

TERMINATION

Grounds

Employers are not allowed to terminate an indefinite employment contract without a proper and weighty reason as referred to in the Employment Contracts Act, such as serious breach or neglect of obligations or economic, production-related or reorganizational reasons.

Employees subject to termination laws

All employees under the Employment Contracts Act are protected.

Restricted or prohibited terminations

The employment of a shop steward, an elected representative or an industrial safety delegate may be terminated due to redundancy only if the work of the representative in question ceases completely and the employer is unable either to arrange work that corresponds to the person's professional skill or is otherwise suitable, or is unable to train the person for other work.

The employer can terminate the employment contract of an employee on maternity, special maternity, paternity, parental or child care leave due to redundancy only if its operations cease completely.

Third-party approval for termination/termination documents

No third-party approval required. However, if a shop steward's, elected representative's or health and safety representative's employment is terminated on personal grounds, the majority of employees who are eligible to vote for the person must approve the termination.

Mass layoff rules

A formal and heavily sanctioned consultation process must be followed in case of mass redundancies as set out in the Act on Co-operation within Undertakings, if the employer regularly employs at least 20 employees. Furthermore, the Employment Contracts Act imposes some obligations to the employer (eg. obligations to offer work, training and rehire) regardless of the number of employees.

Notice

In general, the length of the notice period depends on the length of the employment. Unless otherwise agreed in the applicable CBA or employment contract, notice periods according to the Employment Contracts Act are as follows:

- 14 days if the employment has continued for up to 1 year
- 1 month if the employment has continued for more than 1 year but no more than 4 years
- 2 months if the employment relationship has continued for more than 4 years but no more than 8 years
- 4 months if the employment relationship has continued for more than 8 years but no more than 12 years
- 6 months if the employment relationship has continued for more than 12 years

Statutory right to pay in lieu of notice or garden leave

No statutory right to pay in lieu of notice. Payment in lieu of notice requires an agreement with the employee. However, employees may be unilaterally placed on garden leave.

Severance

No statutory right to severance payment, although severance may be agreed upon in the employment contract. Termination agreements are also allowed.

POST-TERMINATION RESTRAINTS

Non-competition

According to the Employment Contracts Act, a post-termination non-competition obligation is possible for a particularly weighty reason related to the operations of the employer or to the employment relationship. The obligation may limit the employee's right to conclude an employment contract with a competing employer, as well as the employee's right to engage in competing operations on their own account for a maximum of 1 year. The restriction concerning length of the obligation is not applied to employees who, in view of their duties and status, are deemed to be engaged in the direction of the company, corporate body or an independent part thereof.

Employers have an obligation to pay compensation to employees for the period of the non-competition restriction after the employment. The compensation shall equal to 40 percent of the employee's regular salary if the restriction period is up to 6 months and 60 percent of the employee's regular salary (for the full period) if the restriction period is longer than 6 months. The compensation will be payable during the non-competition restriction period on the employer's regular pay days. The payment schedule can be mutually agreed otherwise.

after termination of the employment. The employer will be allowed to terminate the non-competition agreement during the employment relationship without specific grounds – but not after the employee has resigned. The applicable notice period will be 1/3 of the agreed non-competition restriction period, or a minimum of 2 months. A shorter notice period can be mutually agreed only after the employee has resigned.

Non-solicitation

Non-solicitation of customers or employees is not regulated by the law. However, such covenants are possible and common. According to case law, such covenants may in some rare cases be comparable to non-competition obligations and, therefore, they may be subject to the same requirements.

Confidentiality

Post-termination confidentiality clauses are not regulated in the law, but such covenants are common.

WAIVERS

A waiver of rights is possible only in exit or settlement agreements and only to a certain extent. An employee cannot waive mandatory minimum rights provided by the employment laws.

REMEDIES

Discrimination

Should the employer fail to comply with provisions on gender equality, the employer may be ordered to pay an indemnity to the affected employee, the amount of which is reset every 3 years. The minimum amount of the indemnity is EUR3,740, and in connection with recruitment, the maximum amount is EUR18,690. In the event the employer fails to comply with the Non-Discrimination Act, which covers grounds other than gender-based discrimination, the employer may be ordered to pay an indemnity to the affected employee, the maximum amount of which is not restricted in the Act. The affected employee may also claim compensation for loss of income.

Unfair dismissal

Compensation varies between 0 and 24 months' salary in case of redundancies and between 3 and 24 months' salary in case of termination due to reasons relating to the individual employee. The court cannot enforce a reinstatement.

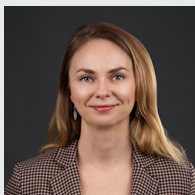
Failure to inform & consult

The sanction for not following the required consultation process in connection with redundancies is a fixed indemnity amounting to maximum of EUR35,000 per each terminated employee regardless of whether the termination is unlawful. The sanction for breaching informing obligations in connection with the transfer of an undertaking is a fine, set as part of a criminal process.

CRIMINAL SANCTIONS

Typically, employers face criminal prosecution in connection with alleged discrimination, or where breach of occupational health and safety obligations has caused damage to an employee, or if the employer has not complied with working-hour regulations. Failure to comply with the Employment Contracts Act or with information obligations in connection with the transfer of an undertaking may also be sanctioned with a criminal fine.

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