Working life in Finland in legal terms

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ABOUT WORK AGREEMENTS

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EMPLOYMENT AGREEMENT

Governed by the **EMPLOYMENT CONTRACTS ACT**

It applies to contracts (employment contract):

1. entered into by an employee,
2. agreeing personally to perform
3. work for an employer
4. under the employer's direction and supervision
5. in return for pay or some other remuneration

Now this criteria will also apply to other forms of contracts that do not constitute independent work according to overall consideration

EMPLOYMENT AGREEMENT

The Form of the Contract:

- An employment contract may be oral, written or electronic, but written is the only recommended one!
- The basic employment contract is open-ended
- It can be fixed- term only when it has been made for a specific fixed-term for a **justified reason**

These justified reasons can be for example:

1. Being somebody's temp (a temporary post)/deputyship
2. Periodical work (e.g. in a garden, in a road building site, picking up strawberries/other fruit)/peak demand
3. Completing some specific and time-limited project
4. Work experience placement

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EMPLOYMENT AGREEMENT

A *fixed-term contract* can only be dissolved/terminated for very weighty reason unless otherwise and especially agreed on the work contract e.g. by agreeing on a period of notice

It can adhere to both or to employee, but not only to employer (so that the employer could terminate the agreement with a period of notice, but not the employee: they will have to have the same rights, or the employee should have better rights)

Contracts made for a fixed term on the employer's initiative without a justified reason, shall be considered open-ended

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THE TRIAL PERIOD

A PROBATIONARY PERIOD

The employer and the employee may agree on a trial period of a maximum of six (6) months starting from the beginning of the work.

If a fixed-term employment relationship is shorter than 12 months, the trial period may not exceed 50 % of the duration of the employment period as a whole

A probationary period can only be agreed upon at the beginning of the contract of employment and once regarding one employment unless there are new tasks or other objective reasons for a new trial period during that employment

This will also adhere to a new employment agreement between the same parties if the tasks and the work the employee will come to perform are the ones (and unchanged) he/she has done during the previous employment

The grounds for dissolving the contract of employment during the probationary period must NOT be discriminating or inappropriate

During the probationary period, the employee shall be paid his/her normal remuneration (basically not possible to pay less during this time, but it happens)

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PROHIBITON OF DISCRIMINATION

DUTY TO EQUAL TREATMENT

The employer **shall not** exercise any unjustified discrimination against employees on the basis of;

- Age
- Health
- Disability
- national or ethnic origin
- Nationality
- Sexual orientation
- Language
- Religion
- Opinion
- Belief
- Family ties
- Trade union activity
- Political activity
- Any other comparable circumstance

(will be punished according the Criminal Procedure Act)

All employees, whether part-time, fixed-term or open-ended workers must be treated equally

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INFORMATION ON PRINCIPAL TERMS OF WORK

1. The domicile or business location of the employer and the employee;
2. The date of commencement of the work;
3. The duration of a fixed-term employment contract and the justification for specifying a fixed term;
4. The trial period;
5. The place where the work is to be performed or, if the employee has no primary fixed workplace, an explanation of the principles according to which the employee will work in various work locations;
6. The employee's principal duties;
7. The collective agreement applicable to the work;
8. The grounds for the determination of pay and other remuneration, and the pay period;
9. The regular working hours;
10. The manner of determining annual holiday;
11. The period of notice or the grounds for determining it; (recommended according to the law)
12. In the case of work performed abroad for a minimum period one month, the duration of the work, the currency in which the monetary pay is to be paid, the monetary remunerations and fringe benefits applicable abroad, and the terms for the repatriation of the employee.

GENERAL APPLICABILITY OF COLLECTIVE AGREEMENTS

The employer **shall observe** at least the provisions of a national collective agreement considered representative in the sector in question *(generally applicable/all-binding collective agreement)* on the terms and working conditions of the employment relationship that concern the work the employee performs or nearest comparable work

Any term of an employment contract that is in conflict with an equivalent term in the generally applicable collective agreement is void, and the equivalent provision in the generally applicable collective agreement shall be observed instead

NON-COMPETITION

Competing activity

During the employment the employees shall not do work for another party or engage in such activity that would, taking the nature of the work and the individual employee's position into account, cause harm to their employer as a competing activity contrary to fair employment practices.

Business secrets

During the term of employment, the employee shall not neither utilize nor divulge to third parties the employer's trade or business secrets.

THE NON-COMPETITION AGREEMENT

For a particularly weighty reason related to the operations of the employer in the employment relationship, an agreement made at the beginning of or during the employment relationship (agreement of non-competition) may limit the employee's right to conclude an employment contract on work to begin after the employment relationship has ceased with an employer which engages in operations competing with the first-mentioned employer, and also the employee's right to engage in such operations on their own account.

- Has to be concluded especially

The criteria taken into account include:

1. the nature of the employer's operations
2. the need for protection related to keeping a business or trade secrets
3. special training given to the employee by the employer
4. the employee's status, position and duties
5. or a special clientele attached to the employee

THE NON-COMPETITION AGREEMENT

Instead of compensation for loss/damages that have been caused by starting to e.g., work for an employer's competitor, the agreement may include a provision on a contractual penalty/payment for liquidated damages, which shall not exceed the employee´s pay for six (6) months.

⇒ **always** go for the compensation for loss /damages, if you can influence it!

Remember! The employment agreement may **NOT** include both ramifications, it has to be either or the non-competition obligation does not apply, if the employment is terminated on the basis of financial and production-related grounds.

If the employment is terminated on person-related reasons or due to trial period, this obligation will stay in place.

PAY DURING ILLNESS

Employees who are prevented from performing their work because of an illness or accident are **entitled to pay during** illness.

If the employment relationship has lasted for a **minimum** of one (1) month, the employee is entitled to **full pay** for the period of disability up to the end of the ninth (9) day following the date of falling ill, but only up to the point at which the employee's right to national sickness allowance under the *Sickness Insurance Act.*

PAYMENT OF SALARY

Salary shall be paid to a financial institution designated by the employee
The employer shall bear the cost, and the payment has to be withdrawable on the due date.

The employer shall also give the employee a calculation/payslip showing the amount of the pay and the grounds for its determination.

If an employer neglects to submit the payslip to the employee, a fine shall be imposed on the employer for violation of the *Employment Contracts Act*.

GROUNDS OF TERMINATION OF THE EMPLOYMENT CONTRACT BY MEANS OF NOTICE

The employer shall not terminate an open-ended employment contract without a proper and weighty reason

- Can be either a person related or financial and production-related

Also, a termination agreement can be made.

A period of notice will ensue, varying from two (2) weeks to six (6) months.

A person themselves can of course always leave if they only abide to the required period of notice.

CANCELLATION/TERMINATION OF THE EMPLOYMENT CONTRACT

WITHOUT A PERIOD OF NOTICE

Only upon an extremely weighty cause the employer is entitled to cancel an employment contract with an immediate effect.

Compensation for groundless termination of an employment contract.

- If the employer has terminated an employment contract contrary to the grounds laid down in this Act, the employer must be ordered to pay compensation for unjustified termination of the employment contract.
- The exclusive compensation must be equivalent to the pay for a minimum of three (3) months or a maximum of 24 months

UNREASONABLE TERMS

If application of a term or condition in the employment contract is contrary to good practice or otherwise unreasonable, the term or condition may be adjusted or ignored.

Mandatory nature of the provisions

- Any agreement reducing the rights of and benefits due to employees under this Act shall be null and void

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ABOUT THE WORKING HOURS

WORKING HOURS

Governed by **WORKING HOURS ACT**

This Act applies to all work performed under an employment contract

This Act does **not apply** e.g.,:

- Work which can be considered management *(a narrow interpretation, only high-level workers considered)*
- Work which, due to the special characteristics or conditions of carrying it out, it **cannot** be considered the employer's business to control or monitor the time used for the performance of the actual work

The time spent on work and the time an employee is required to be present at a place of work at the employer's disposal *(unless flexi-work is agreed on or work is performed remotely)*.

During the daily periods of rest the employee is free to leave the place of work.

Travel time is **not included** in working hours if it does not constitute work performance *(can be otherwise compensated according to a collective agreement).*

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WORKING HOURS

Stand-by time

- An employer and an employee can agree on it
- Upon agreeing on stand-by, the employer and employee must also agree on remuneration for it

General provision

- Regular working hours shall not exceed eight (8) hours a day or 40 hours a week

Flexible working hours

- An employer and an employee can agree on flexible working hours allowing the employee, *within set limits*, to determine the beginning and the end of the daily working hours (working time bank or so called “saldo”)
- From e.g. 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m.
- When working hours are flexible, the regular daily working hours shall be extended or reduced by a flexible period of no more than three hours *or as agreed*
    - The average weekly working hours may not exceed 40
- An employer and an employee can *agree* to reduce hours accumulated in excess of regular working hours by *free time* granted to the employee

WORKING HOURS

Additional work and overtime

- *Additional work* refers to work done on the employer's initiative which does not exceed the regular working hours prescribed above (from 37,5 hours per week to 40 hours)
- *Overtime work* is over that period (over 40 hours per week)
- It is good to ask for a confirmation from the employer, e.g. via e-mail regarding the intended overtime work

Employee's consent

- The specific consent of the employee is required each time overtime is required
  - This cannot be asked in advance!

Maximum amounts of overtime

- The maximum amount of overtime during a four-month period is 138 hours, though 250 hours must not be exceeded in a calendar year.

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FLEXI-WORK

During the ”flexi-work” a worker could do 10-hour days and 48-hour working weeks, but it has to even out to 40-hour weeks during a 4 months 'period.

Requires a specific *written* agreement between the worker and the employer on this which could be terminated with a period of notice.

Should mainly be used for knowledge work *(e.g. senior expert level work)* where at least half of the work is that kind of work which you can do anywhere and any time.

It cannot be agreed on a work where the employer regularly determines the time and place work the work (like customer service on employer´s premises etc.)

The Flexi-work agreement **must** cover at least the following:

- The days that the worker is allowed to work
- The placement of the weekly rest period
- Possible fixed time, which cannot be placed between 23-06
- What will be the normal working time after this agreement has been terminated

This law came into force on the 1st January 2020

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FLEXI-WORK

The main thing to remember is to make a **good** agreement about this.

And since *this is an agreement*, it can also be terminated with the period of notice of three (3) months.

Also, since this is an agreement, the other party (the employee) cannot be forced the other one into this model; it must be *voluntary.*

The employee will monitor working time during this period by themselves.

The flexi-time cannot be less than 50% of the working time (so called working time autonomy).

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THE REMUNERATION OF OVERTIME WORK

Remuneration payable on additional work and overtime

- The remuneration paid on additional work must be at least as much as the wage paid for the agreed working hours

Additional work vs. overtime work

- The wage payable for the first two hours of overtime above the daily regular working hours shall be the regular wage plus 50 per cent and for additional hours (over 10 hours per day) the regular wage plus 100 per cent

By agreement, wages payable for additional work and/or overtime can also be partly or completely converted into corresponding free time (the 50 or 100 per cent have to be added to this too!) during regular working hours.
Apart from the hours in the working time bank/"saldo" that are reimbursed one-to-one.

Can also be paid with a **special lump sum** on top of the basic salary each month, but it must correlate with the real additional hours or overtime done in a specific observation period (preferably done before this kind of a sum is agreed on) and must be counted in a way that it involves the remunerations mentioned above (50 %/100 %).

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THE REST PERIODS

Daily rest periods

- If daily working hours exceed six (6) and an employee's presence at the workplace is not necessitated by work continuity, the employee must be granted a regular rest period of at least one(1) hour within the shift, during which they is free to leave the workplace
- An employer and an employee can agree on a shorter rest period, but this may not be less than half an hour (½)

Daily rest period

- During the 24 hours following the beginning of a work shift, employees must be given an uninterrupted rest period of at least 11 hours

Weekly free time

- Working hours must be organized to allow employees at least 35 hours of uninterrupted free time each week, preferably around a Sunday.

THE REST PERIODS

Derogations from weekly free time:

- If a person is not able to have his/hers weekly free time, the Employees must be compensated for the time spent on work on such a day

Sunday work

- Employees can be required to work on a Sunday or church holiday only when the work concerned is regularly carried out on the said days due to its nature or when agreed otherwise.
- The wage payable for Sunday work is twice the regular wage

THE SO-CALLED VARIABLE WORKING TIME

The changes came into force 2018.

It was meant to battle **zero-hour –working agreements/on-call work.**

Can only be used (zero-hour agreements) if the working time on offer varies also in reality.

The worker has to be notified of the timing and of the placing of the work in good time (at least two (2) weeks before).

Six (6) months' monitoring period:
⇒ if the work has been stable, this whole situation has to be re-valued and renegotiated (possibly open-ended contract that reflects the actual average hours
⇒ if not: employer´s duty to give grounds for "why not"

Right to salary during sick leave, if there has been a shift in the work shift list, if it has been otherwise agreed on or if it´s *otherwise clear* that the worker would have been working that day.

Payment for this time is the average daily payment in 6 months´ period (previous) and during the period of notice the work has to be equal with the average working time during the past 12 (or less, but more than one) months.

Exceeding work (with the agreement), only on worker's consent.

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ZERO-HOURS CONTRACT

It is vital to understand what the *minimum working hours* in your employment contract mean in reality.

A *zero-hours contract* (the weekly working time is 0-20 hours) means your employer does not have to pay you **anything** for a week with zero actual working hours unlike in a situation when the minimum hours are especially stipulated in the working contract.

In that case the employers must always pay at least the minimum working hours guaranteed in the contract even though no work has been offered.

WORKING TIME BANK

A new thing in the law: used to be based on provisions in the collective agreements: can still be based on this law or on collective agreement.

Will be agreed on by the employer and shop steward/(other) elected representative.

In the agreement:

- What time can be saved/transferred to the bank (only 180 hours per year)
- How it can or will be terminated (period of notice)
- How to use the time there: always at least two (2) (whole) weeks per year
- Can also be changed into money under certain criteria

OTHER PROVISIONS

Working hours register

- Employers must register all the hours worked and the relevant remunerations paid for each employee (not if flexi work).

Period for claims

- While an employment relationship is in force, the entitlement to a remuneration as referred to in this Act shall lapse if it is not claimed/summoned to court within two (2) years of the end of the calendar year in which the entitlement arose.

The peremptory nature of provisions: derogations by employment contract only

- Any agreement whereby the benefits accruing to employees under this Act are restricted is void.

Penal provisions

- An employer or an employer's representative who deliberately or out of carelessness violates this Act or rules and regulations issued under it shall be sentenced to a fine for violation of the working hours regulations

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ABOUT HOLIDAYS AND HOW TO EARN THEM

ANNUAL HOLIDAY

Any agreement reducing the benefits that an employee is entitled to under this Act is null and void unless otherwise provided in this Act.

Definitions:

1. the holiday credit year means the period from 1 April to 31 March
2. the holiday season means the period from 2 May to 30 September (summer holiday season, outside this time: the winter holiday season, six (6) holiday days)

Earning annual holiday

An employee is entitled to two and a half weekdays of holiday for each full holiday credit month
However, the employee is entitled to two (2) weekdays of holiday for each full holiday credit month if, by the end of the holiday credit year, the duration of the employment relationship has been an uninterrupted period of less than one year (30/24 days per year)

Full holiday credit month

A calendar month during in which an employee has accumulated at least 14 days of work or, if this cannot be met, done at least 35 hours of work per month
The model of earning holiday cannot be changed during the employment except for a weighty reason (e.g. the employment is turned into a part-time employment permanently or for a longer period)

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ANNUAL HOLIDAY

EXAMPLE 1:

- Work starts on the 21st August 2018
- No holiday accruement in August since there is less that 14 days of work in that month, two (2) days of holiday per each month until the end of March 2019
- Total holiday accruement 14 days that can be used during the holiday season: the 2nd May – 30th September 2019
  - In reality means two weeks of holiday and two (2) extra days since one (1) holiday week takes up six (6) days
- No Winter holiday during 2019-2020

EXAMPLE 2:

- Work starts the 1st April 2018
- During the period of 1st April 2018 to 31st March, 2,5 days of holiday the whole time
- The full holiday is accrued for summer 2019, but no summer or winter holiday 2018!
- 24 days of holiday during the 2nd May – 30th September 2019 which means four (4) full summer holiday weeks
- One week (using six (6) holiday days) of winter holiday during the 1st October 2019 the 30th April 2020
  - N.B.: If works starts on the 2nd March that is not a Sunday, the whole holiday accruement for this time is ONLY 24 days! (Since employment has not lasted a year on the 31st March 2019)

ANNUAL HOLIDAY

An employee has a right to receive at least his/her regular or average pay for the time of his/her annual holiday, as laid down in the act

Holiday pay must be paid before the start of the holiday. For a holiday period not exceeding six (6) days, the holiday pay may be paid on the employee's normal pay day

At the end of an employment relationship, the employee is entitled to a holiday compensation instead of annual holiday for any holiday entitlement or holiday compensation earned but not yet received
The "formula" for counting the holiday compensation is: *monthly salary / 25 x the number of holiday days*

A new thing: Right to supplementary holiday days

- Has come into force on the 1st of April 2019
- If the worker earns less than 24 days of (paid) holiday because of a sick leave or a medical rehabilitation (over 75 days per holiday credit year) during the holiday credit year, he/she is entitled to the missed holiday days
- They are called the supplementary holiday days

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ANNUAL HOLIDAY

Time of granting annual holiday

- An employee is granted annual holiday at a time determined by the employer
- But before determining the timing of the holiday, the employer must grant the employees an *opportunity to express their views* on the matter
- The employer must, as far as possible, take the proposals of the employees into consideration and observe *impartiality* in the timing of the holidays
- The dates for the holiday have to be announced to the employee at least one (1) month prior to the holiday, or at least two (2) weeks if there special circumstances prevail

Penal provisions

- An employer or an employer's representative who deliberately or through carelessness neglects to grant an employee annual holiday as laid down in the Act or keeps an employee at work during the period it has determined as annual holiday, shall be fined for an annual holiday offence
- Once determined holiday cannot be changed or if it is, the employee is entitled to compensation for damages (e.g. flight tickets or so)

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WORK CERTIFICATES

WORK CERTIFICATES

What are they?

On termination of the employment relationship, the employee is **entitled** to receive, on request, a written certificate of employment. The Employment Contracts Act specifies what information the employer may include in the certificate of employment. Neglecting to issue a certificate of employment is a punishable offence.

Contents of a brief certificate of employment:

- duration of the employment relationship (e.g. date of beginning and termination of employment)
- job duties.

Contents of an extended certificate of employment:

- duration of the employment relationship (e.g. date of beginning and termination of employment)
- job duties
- reason for termination of the employment relationship
- testimonial (evaluation of the employee's occupational skills and conduct).

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WORK CERTIFICATES

Why should I get one and what are they good for?
The main purpose of a certificate of employment is to tell an external party, such as an employer hiring a new employee, where and when the job-seeker has worked before and what they have done.

You can also use them to keep track of your work history and there will be times when you need to know e.g. dates and places of previous work relationships.

More information on work certificates on Tyosuojelu.fi

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IMPORTANT LAWS

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IMPORTANT LAWS

- Employment Contracts Act
- Working Hours Act
- Annual Holidays Act
- Act on Gender Equality
- Non-discrimination Act
- Co-operation Act
- Occupational Safety and Health Act
- Act on the Protection of Privacy in Working Life

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OTHER IMPORTANT INFO

IMPORTANT TO REMEMBER

Things you should **before** starting work relationship

Work contract

- Can be a employment agreement, freelance contract etc.

Things you should get **during** your work relationship

Payslips

- Before every salary payment, you should get a payslip that has information of what your paid salary consists of. Here is a example: LINK

Things you should get **after** your work relationship

Work testimonial/certificate

- A certificate that states the following; your name and birthday, where you have worked, your work's start and end date and the description of your work tasks

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FINANCIAL AID FOR FOREIGN STUDENTS

AS PROVIDED BY KELA

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FINANCIAL AID FOR FOREIGN STUDENTS

If you are not a Finnish citizen and have come to Finland for study purposes, the general rule is that you **cannot** get financial aid from Finland.

However, you may qualify for financial aid if you meet the following requirements:

- You have arrived in Finland for some other reason than to study. Such a reason can for example be employment or family ties.
- You have been granted a continuous (A) or permanent (P) residence permit or an EU residence permit for third-country nationals (P-EU or P-EY) or a residence card as referred to in the withdrawal agreement between the EU and the United Kingdom.
    - If you are a citizen of another EU or EEA country or of Switzerland, the family member of such a person, or a citizen of a Nordic country, you only must register your right of residence or present your residence card.
- If you are living in Finland permanently.

Whether your residence is considered to be permanent is determined on the basis of the Municipality of Residence Act.

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FINANCIAL AID FOR FOREIGN STUDENTS

If you are a citizen of another EU or EEA or of Switzerland or if you are covered under the withdrawal agreement between the EU and the United Kingdom, you can get financial aid even if you have come to Finland to study.

- You can get financial aid if you are employed in Finland for at least 4 months with an average of at least 10 hours of work per week, or if you have taken out statutory pension insurance for self-employed persons. The entitlement to financial aid for students only continues for the duration of the employment.
- You are also eligible for financial aid if you have a right to permanent residence in Finland as defined in section 1, subsection 2 of the Act on Student Financial Aid.

You are also eligible for financial aid if you are a family member of a citizen of an EU or EEA country or Switzerland who works in Finland or of a British citizen who works in Finland and is covered under the withdrawal agreement between the EU and the United Kingdom.

More information on Kela.fi

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Immaterial Property Rights
IPR in Finland

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WHAT IS A COPYRIGHT

Copyright protects literary and artistic works, so the spectrum of protected works is wide

Literary works include for example;

- works of fiction
- various products of professional literature
    - reports, memos, reports, studies, pleadings, statements, PowerPoint presentations, etc.

Especially in the sphere of working life, materials are constantly being produced that receive or could copyright protection

Copyright is created when a work is created and it receives protection directly after the work is completed under the law, i.e., this right does not need to be applied for and/or registered in any way

The condition for obtaining protection is that the work is an **independent** and **original result** of the intellectual creative work of its author

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WHAT IS A COPYRIGHT

Intellectual property rights and **intellectual capital** are often also associated with significant asset values.

When it comes to intellectual property rights, the key question is **who has the right to use**, in particular, a new and innovative method, device or product invented by an employee or a work created by an employee.

In this case, the most important question is **who owns** the intellectual property rights related to the invention or the result of the creative work or to whom they have been transferred (ownership).

As such, there is no general regulation on employment copyrights, but the regulations regarding computer programs and databases created in the employment relationship are included in the **Copyright Act (404/1961)**.

However, there are significant regulations especially in the gaming industry, because games are usually computer programs and/or databases, even if they use many different formats.

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WHAT IS A COPYRIGHT

Copyright is created when a work is created and it receives protection directly after the work is completed under the law, i.e., it does not need to be applied for and/or registered in any way.

The condition for obtaining protection is that the work is an independent and original result of the intellectual creative work of its author.

However, only products that **exceed the work threshold** receive copyright protection.

In practice, the act threshold is considered to be exceeded if it can be assumed that no one else, when undertaking similar work, would end up with a similar result.

On the other hand, if the appearance of the product is dictated by external factors or the result of purely mechanical work, the work threshold is not exceeded

- For example; computer software, the design of which is limited by (strong) standards, does not rise to the level of work)

WHAT IS A COPYRIGHT

Copyright is always protection of a form of expression

Copyright **does not** protect information the product entails, but this information is protected by other legislation, especially when it is a trade secret, such as, for example, as stipulated in the Trade Secrets Act or the provisions of the Criminal Code.

Photos taken by a photographer can receive copyright protection if the photos are independent and original, but also photos that fall below the work threshold receive photo protection according to copyright law (e.g., passport photos or X-rays receive protection as ordinary photos)

- *Note! photo protection always belongs to the photographer, not the model*

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WHAT IS A COPYRIGHT

Copyright always belongs to the author of the work, i.e., the natural person.

Companies and other organizations can only have rights that have been transferred to them from the author or photographer.

(On the other hand, forms of protection based on investments, such as e. g., database protection, always belong to the entity that bears the financial risk of producing the database, i.e., usually for the company or other organization)

Thus, things regarding this must be agreed very precisely.

The Copyright Act does not require the agreement on the transfer of rights to have a specific form *(excl. computer programs and databases, for which the situation is quite straightforward at the point of transfer)*

WHAT IS A COPYRIGHT

Copyright is divided into two main blocks:

1. FINANCIAL
    - Economic rights regulate the use of the work as an object of exchange or making it available to the public
        - These are usually the rights that the employer wants for the works created by its employees

2. MORAL
    - Moral rights protect the author's personal touch on the work and include e.g., paternity and respect rights

Economic and moral rights apply to all types of works and forms of use of the works.

Copyrights in Employment relationship

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COPYRIGHTS IN EMPLOYMENT RELATIONSHIP

The employer usually hires the employee to create protected materials with the intention of being able to use them in one's business.

The starting point in labor law is that the employer gets the rights to **the result of the work**.

If the employer hires an employee to create materials protected by copyright, the employer's starting point is naturally that they can use all the materials created by the employee to the extent required by the employer's normal operations.

Therefore, this excludes e.g., a situation where an employee creates a work that is not originally part of the employer's normal activities, but which the employer realizes could be used in one's business

=> **If this happens to you, you must negotiate, ask for (more) money, not give up on the creation/work until you are happy with the outcome and make a contract with precise limits**

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COPYRIGHTS IN EMPLOYMENT RELATIONSHIP

If an employer hires an employee as a programmer, the rights to the computer programs or databases one makes are **usually always** transferred to the employer.

The same applies to other materials created by employees, such as various written products, maps, mechanical and construction drawings, photographs, multimedia products, AV products, etc., which were created under the management and supervision of the employer and as part of the employee's duties.

On the other hand, if a programmer makes games or composes music in their spare time for one’s own purposes, with one’s own equipped/licenses/programs and it is not about the tasks that the employee has been hired to do, then the rights do not pass to the employer based solely on the employment relationship.

But all in all, the starting point in labor law is that the employer gets the rights to the result of the work.

COPYRIGHTS IN EMPLOYMENT RELATIONSHIP

In practice, a generally accepted principle has been derived from the before mentioned interpretation points, according to which *(especially financial)* rights to the materials created by the employee while performing one's duties are transferred directly to the employer to the extent required by the employer's normal industry.

This is because the Copyright Act does not have general provisions regarding employee rights.

Instead, §40b of the law contains provisions on computer programs and databases created in the course of employment, which are transferred directly to the employer under this law.

Employment inventions *(patentable)* are a separate matter, and a person cannot, for example, waive them in advance.

- And there is a fee payable for an employment invention according to law .

COPYRIGHTS IN EMPLOYMENT RELATIONSHIP

The **prerequisite** for the application of the regulations and legal principles regarding employee rights is **that the work have been created in an employment relationship.**

The starting point in defining the employment relationship is that:

- **a worker does work with an employment contract to another by themselves under employer´s direction and control for some for of reimbursement/salary**

In an employment relationship, the employer usually has the opportunity to give instructions regarding the quality, nature, content, time and method of work, based on his directive authority.

It is not always clear whether the criteria for employment are met or not.

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COPYRIGHTS IN EMPLOYMENT RELATIONSHIP

Especially in **short-term non-standard** *(not full-time and open-ended)* **employment** relationships, drawing the line between employment and self-employment can be difficult.

In such situations, it is **particularly important to agree on copyrights**, because the principles and regulations regarding employment copyrights only apply to works created in the employment relationship.

Students are also always excluded from the regulation regarding employee rights, if not regarded an employment agreement.

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Computer programs and databases

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COMPUTER PROGRAMS AND DATABASES

If the computer program and the work **immediately related to it** have been created while fulfilling work tasks resulting from the employment relationship, the copyright to the computer program and the work **is transferred to the employer straight away**.

However, the parties can by agreement ignore the provisions of the law and agree that the rights remain with the author.

According to the law, the provisions laid down only apply, unless otherwise agreed.

It follows from the provision of the law that the interpretational starting point for computer programs is that the rights have been and will be transferred to the employer.

If the employee claims that the rights have remained with them, they **must prove** that the parties have mutually agreed in a way that deviates from the provisions of the law and how.

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COMPUTER PROGRAMS AND DATABASES

The special regulation on computer programs and databases is based on certain special features related to the creation of them.

Computer programs are often created as a group effort, and the production of large software/database has characteristics of an industrial process.

- The work is divided into different work phases and parts
- The production of large software requires several years of work
- The amount and nature of the contributions of the employees involved in the development work vary greatly

Software is replaced relatively quickly by new(er) software, the production of which is often based on earlier versions.

Consequently, it is practically difficult or impossible to separate the contributions of individual authors in the final program.

In addition, securing the position of the owner of the program also requires that there is no ambiguity about the right holder of the program, which is usually very difficult or impossible

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COMPUTER PROGRAMS AND DATABASES

The transfer of computer program rights covers not only **the right related to the actual program** but also **the rights related to other works included in the program**, such as text files etc.

According to the regulation, in addition to the rights to the computer program, the rights to the work directly related to the program (e.g., a game, a book about making one), such as program descriptions, other support material and other program documentation, are to be transferred to the employer.

Note! If, however, the employee creates computer programs in his free-time that are in no way related to their job duties, the rights to the program are not transferred to the employer based on the assumptions of the provision

- In this case, the employer's devices and/or programs, and at least not working time, may not be used
- The employer must therefore always be able to demonstrate that the created computer program is related to the employee's job duties

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COMPUTER PROGRAMS AND DATABASES

Otherwise, the Copyright Act **does not** specify the extent to which the rights are transferred to the employer.

The basic starting point when assessing the extent of transferable rights is that the employer must be able to carry out their usual business without legal obstacles, while other rights remain with the author.

According to the provisions of the Copyright Act, the transfer of copyright does not include the right to change the work, nor the right to transfer this right to another, unless otherwise agreed *(generally, the matter is agreed upon, especially when it comes to games)*.

The provision has generally been interpreted in such a way that there is no right of modification and transfer, unless there is an explicit mention of them in the contract.

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COMPUTER PROGRAMS AND DATABASES

In practice, however, the regulations have usually been interpreted so that the employer gets modification and sublicense rights, in which case the employer can make new versions of the software or transfer usage rights to the software to its partners *(again, especially games).*

Computer programs must be constantly developed, and the life cycle of one version of a computer program is often very short.

Modification rights are thus important to the running of a software business.

Also, sublicense rights, which enable the licensing of software to third parties, are in many cases necessary for the normal business of software companies.

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COMPUTER PROGRAMS AND DATABASES

Copyright contracts are subject to the general principle of freedom of contract.

As a general rule, the parties can freely agree on the terms of the contract.

The employer's interest in the contract is usually to obtain the broadest possible rights, which secures both current and future business needs.

On the other hand, it is in the employee's interest to secure the fulfillment of their own **moral rights**

- **Right of Paternity**: The right to be mentioned as the author
- **Right to Respect**: The prohibition to change the work in a way that violates the author's value
- The possibilities of using the work to the extent that the employer does not want to use the work ***(important point!)***

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PATERNITY RIGHTS

According to *Section 3 of the Copyright Act*, the author has the right to be mentioned in accordance with good practice when a copy is made of the work, or when the work is made available to the public.

The requirement to conform to good practice refers to the generally followed procedures in each field.

In certain situations of use, the authors' names are usually not mentioned, for example in computer programs and games, only the company to which the rights belong is often mentioned

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RIGHT OF RESPECT

Moral rights also include the prohibition of changing the work in a way that offends the author's value or making the work available to the public in a context that offends the author.

As a general rule, the author **cannot** validly waive these moral rights (nor should one).

The contractual condition regarding the total transfer of moral rights is therefore invalid, but the parties can agree, for example, on the way in which the author's name is mentioned.

Such a contractual condition is naturally binding, and the employer must ensure that the procedure agreed with the author is strictly followed.

Conduct contrary to the contract may meet the hallmarks of copyright infringement.

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COMPUTER PROGRAMS AND DATABASES

The employee's rights to use the works they have created may be limited by other obligations arising from the employment relationship, such as **confidentiality obligations** and **non-competition**.

The employee **cannot** therefore use an unpublished work that the employer protects as a trade secret or use the work for activities that compete with the employer.

A contractual condition by which the author waives his moral rights according to *Section 3 of the Copyright Act* is **invalid**.

According to *Section 29 of the Copyright Act*, the agreement can also be reasonable.

Rationalization does not come into question solely on the basis that the agreement can be considered disadvantageous from the point of view of one of the parties *(and in general, rationalization is quite exceptional anyway).*

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COMPUTER PROGRAMS AND DATABASES

Rationalization can come into question e.g., when *(in a fairly usual situation)* the author is not paid a separate compensation for copyright in addition to the usual monthly salary

=> *Rarely* applies to the gaming industry.

When assessing reasonableness, it is also important how much the employer has in terms of creating the works.

For example, computer programs and databases are usually works of such a quality that they would not necessarily be created outside of the employment relationship without the employer's financial and production investments, and the author also usually does not have the opportunity to use such works themselves

=> This can be denied if you feel like it

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ECONOMIC RIGHTS

Economic rights according to the Copyright Act are **assignable** rights.

These economic rights include the right to make copies of the work and the right to make the work available to the public unaltered or modified.

The production of a piece is any reproduction of a work, such as photocopying, printing, photography or manual reproduction, as well as the production of works by industrial or artistic methods.

Making a piece or a copy often also means saving it to a device that can be used to reproduce the piece.

Saving a work in computer memory, on a server is, in the sense of copyright, making a copy of the work.

The right to produce a piece covers all possible copying techniques.

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ECONOMIC RIGHTS

The work can be made available to the public by transmitting the work to the public, for example, on radio or television, on an information network, on a cable network or via a satellite or a digital network or platform.

The scope of the right of transmission to the public includes all the various wireless or wire distribution methods of the work.

This right also includes *"on demand"* broadcasts, such as e-commerce or, for example, streaming.

Making available to the public also includes offering *(publicly)* recordings/copies for sale, rent or loan.

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RIGHTS TRANSFERABLE TO THE EMPLOYER

The transfer of very broad rights to the employer is not justified or profitable if the employer's actual need for utilization is very limited, and the acquisition of broad rights cannot be considered justified either to protect the employer's competitive or confidentiality interests.

It is usually agreed that the rights transferred from the employee are not temporally linked to the duration of the employee's employment.

Because of this, the employer often wants to get the right to use materials created by the employee even after the employee's employment has ended.

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COMPENSATION FOR THE RIGHTS TRANSFERRED

The Copyright Act has **no** provisions on a compensation to be paid to the author when these rights are transferred.

In this respect, the situation differs from the regulation on inventions.

According to the *Employment Inventions Act*, the inventor has the right to reasonable compensation if the employer wants the rights to the invention for himself, but this do not apply when talking about merely other rights *(copyright etc.).*

Compensation **very rarely applies** to computer programs and databases, regarding which the employer's rights are already broad in principle.

Reasonable compensation is usually not only the salary normally paid to the employee.

Copyrights can and should instead be taken into account when agreeing on the employee's normal salary as a factor influencing the size of the salary

Law Changes in 2024 and up-and-coming changes for 2025

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THE 3-MONTH RULE

AFTER ONE LOSES THEIR JOB

A foreign employee's employment-based residence permit **expires**, and they **must** leave Finland if they are **unable to find a new job within three (3) months** of the end of the expiration.

- Exemptions for "*international experts*" to which six (6) months' rule is applied
  => Who will meet these requirements still a bit foggy.
- This will apply to 3rd country workers and to the ones without a permanent residence permit

If a person **is not able** to find a job within 3 or 6 months, there will be a hearing, and the final decision on exportation will still be based on an **overall assessment** where especially the needs and rights of the children and the protection of family-life are taken into account.

A person would be able to work and seek jobs in a **branch outside the original working permit**, but <u>needs</u> to be a branch with a shortage of manpower *(e.g., IT mentioned).*

This applies only to work-related residence permit, i.e., not the permits based on something else, e.g., family-ties.

UP-AND-COMING CHANGES

(2025)

- First day of sick leave to be unpaid (possibly in 2025)
- Local collective agreements to be allowed at individual workplaces which can be weaker than legislation or collective agreements
- Dismissals on personal grounds to be made easier: in future, an "*proper*" reason will suffice, no "*weighty*" needed anymore.
- No particular grounds will be required for a fixed-term contract of 12 months.
- The warning period for furloughs will be reduced to seven (7) days (from 14).
- The Co-operation Act will only be observed in companies of over 50 employees (now 20) when it comes change negotiations.
- The notification period for change negotiations will be halved (also other changes on their way).
- The export-driven pay rise model will be enacted in law.

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CUTS TO UNEMPLOYMENT SECURITY

→ Earnings-related unemployment benefit is now cut by 20% after just two months of unemployment and after that in 34 weeks' time by 25 % from the maximum amount of benefit.

- *An example:* a person gets 1.500 €/month (=maximum amount), so after 8 weeks one gets 1.200 €/month and after 34 weeks the amount drops to 1.125 €/month.

→ Employees will now need to have worked for **52 weeks** to be eligible for earnings-related unemployment benefit.

→ The qualifying period for unemployment security will be extended to 7 days *(used to be 5)*

→ The exempt amount for adjusted unemployment benefit, €300/month, will be **abolished**.

→ The vacation compensation paid at the end of employment will again prevent payment of unemployment benefit during the period equivalent to the untaken vacation.

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