

COVID-19 and Labour Law: Finland

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Abstract

The amendments of labour and social law provisions adopted due to Covid-19 in Finland reflect balancing the interests of the employers and the employees. The measures adopted have been agreed with labour market organisations. On one hand, the Government has aimed to maintain jobs by broadening the possibilities for temporary lay-off, on the other hand, the livelihood of employees has been guaranteed by unemployment benefits. Also, the flexibilization of the employment contract during probationary period has been accompanied with the stricter rules concerning the re-employment of the dismissed employee. Finally, the Government has broadened the unemployment security to entrepreneurs, that has especially contributed to the livelihood of self-employed entrepreneurs.

Keywords: Covid-19; Labour Law; Lay-offs; Unemployment Benefits; Probationary Period; Re-employment.

1. General Framework

The Finnish government has adopted restrictions and recommendations during the coronavirus epidemic in order to slow down and prevent the spread of the coronavirus in Finland, to safeguard the resource capacity and resilience of the healthcare system, and to protect people, especially those who are the most at risk. On 16 March 2020, the Government announced, that there is a state of emergency in the country. Several measures were adopted and at the beginning these were supposed to be in force until 13 April 2020.

The premises of schools, educational institutions, universities and universities of applied sciences as well as civic education and other liberal education institutes were closed, and contact teaching was suspended. As an exception, pre-primary education organised in schools and contact teaching for grades 1–3 continued. Public gatherings were limited to no more than ten persons, and it was recommended to avoid spending unnecessary time in public places.

All national and municipal museums, theatres, cultural venues, libraries, National Archives, hobby and leisure centres, swimming pools and other sports facilities, youth centres, clubs, organisations' meeting rooms, day care services for the elderly, rehabilitative

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work facilities and workshops were closed. Private and third-sector operators and religious communities were advised to do the same.

Visits to housing services for the elderly and other at-risk groups were prohibited. Also, visitors to care institutions, health care units and hospitals, with the exception of asymptomatic family members of children and critically ill individuals, family members of those in hospice care and spouses or support persons in the maternity ward, were banned. Public-sector employers were recommended to instruct their employees to work from home if possible. Persons over 70 years of age were recommended to avoid contact with other persons to the extent possible. Non-urgent activities in healthcare and social welfare services were reduced¹.

In the case of critical personnel, exceptions were made to the provisions of the Working Hours Act and the Annual Holidays Act in both the private and public sector, to oblige trained professionals in healthcare and social welfare and internal security, to perform work as necessary. The provisions concerning overtime work, weekly rest periods, breaks and annual leave are not applied if this is inevitable and if this does not jeopardize of the health and safety of the employee².

Finland's borders were closed. Necessary travel for work and to access other necessary services were permitted across the northern and western borders. Freight and goods traffic continued as usual. Finns and permanent residents in Finland returning from abroad were placed in quarantine-like conditions for two weeks. On 7 April 2020, the Government restricted travel across borders even more, only essential travel to work and other necessary traffic is allowed. Employees crossing the border need to have a certificate from their employer stating that the work is essential. Shipping companies operating to Finland from Sweden, Estonia and Germany were recommended to stop the sale of passenger tickets.

On 27 March, the Government restricted the movement to and from the Uusimaa region. Restrictions entered into force on 28 March and lasted until 15 April 2020. The residents of Uusimaa had to stay in the Uusimaa and the residents of other regions were not allowed to visit Uusimaa. These restrictions did not apply if movement was necessary for official activities, travel for work, the performance of military service or any other statutory obligation, or for a compelling personal reason.

On 31 March 2020, the Government issued a decree restricting the operations of restaurants throughout the country. All restaurants were closed starting from 4 April 2020. The restrictions remain in force until the end of May and are applied to all restaurant operations except for preparing food for take away and for delivery by food couriers.

¹ Finnish Government, *Restrictions during the coronavirus epidemic*, <https://valtioneuvosto.fi/en/information-on-coronavirus/current-restrictions>. (accessed 29 April 2020).

² Sisäministeriö, *Valmiuslain soveltaminen mahdollistaa poikkeamisen työaika-, vuosiloma- ja työsopimuslain säännöksistä pelastustoimessa ja hätäkeskustoiminnassa*, 20 March 2020, https://valtioneuvosto.fi/artikkeli/-/asset_publisher/valmiuslain-soveltaminen-mahdollistaa-poikkeamisen-tyoaika-vuosiloma-ja-tyosopimuslain-saannoksista-pelastustoimessa-ja-hatakeskustoiminnassa?_101_INSTANCE_LZ3RQQ4vvWXR_groupId=1410869 (accessed 29 April 2020).

On 6 April 2020, the Government decided to continue most of the restrictions until 13 May 2020. Restrictions concerning public gatherings of more than 500 persons stay in force until 31 July 2020³.

In 20 March 2020 the Government also decided about initial measures to secure people's livelihoods and liquidity of companies in COVID-19 situation. The proposals of the labour market organisations were taken into account in adopting the measures. The measures are temporary and as a rule, remain in force for three months⁴. The overview of these measures is given below.

2. Flexibilization of the regulation concerning lay-offs

The Government adopted several amendments concerning lay-offs. On one hand the use of lay-offs was flexibilized, on the other hand the unemployment security of employees being laid off was strengthened.

2.1 Flexibilization of the regulation concerning lay-offs

According to Finnish Employment Contracts' Act laying off means temporary interruption of work and remuneration on the basis of an employer decision or an agreement made on the employer's initiative, while the employment relationship continues in other respects.⁵ In the case of lay-off, the employment relationship stays in force, but the performance of work as well as the payment of remuneration is suspended temporarily. After the period of lay-off ends, the employment relationship continues in the same conditions as before the lay-off⁶.

The employer is entitled to lay off an employee if 1) the employer has a financial or production-related reason for terminating the employment contract; or 2) the work or the employer's potential for offering work have diminished temporarily and the employer cannot reasonably provide the employee with other suitable work or training corresponding to its needs; the work or the potential for offering work are considered to have diminished temporarily if they can be estimated to last a maximum of 90 days. Without the existence of abovementioned reasons, the employer and the employee may, during the employment

³ Finnish Government (1).

⁴ Ministry of Economic Affairs and Employment, *Minister of Employment Tuula Haatainen: Flexibility and security to labour market from Government's actions*, 20 March 2020, https://tem.fi/en/article/-/asset_publisher/hallituksen-paattamat-toimet-tuovat-joustoa-ja-turvaa-tyomarkkinoille (accessed 29 April 2020).

⁵ Chapter 5, Section 1, Työsopimuslaki 55/2001, <https://finlex.fi/en/laki/kaannokset/2001/en20010055.pdf> (accessed 29 April 2020).

⁶ Kairinen, M., Koskinen, S., Nieminen, K., Ullakonoja, V., Valkonen, M., *Työoikeus, juridiikka*. Helsinki: WSOYpro., 2013.

relationship, agree on a lay-off for a fixed period if this is needed in view of the employer's operations or financial standing⁷.

Regularly the employer is not entitled to lay off an employee working in a fixed-term employment relationship. This is allowed only if the employee is working as a substitute for a permanent employee and if the employer would be entitled to lay off the permanent employee if the permanent employee were working⁸.

Since 1 April 2020 the employer can lay off a fixed-term employee under the same conditions as an employee with an employment contract of indefinite duration. As an exception fixed-term employees working for the state, local municipalities, the Social Insurance Institution of Finland, church or the Government of Ahvenanmaa can be laid off only if the employee is working as a substitute for a permanent employee and if the employer would be entitled to lay off the permanent employee if the latter was working⁹.

According to the Employment Contracts' Act the employer is obligated to notify employees of a lay-off in person a minimum of 14 days before the lay-off begins. On 20 March 2020 the Government decided to shorten the notification period concerning lay-offs to five days from the present 14 days. Since 1 April 2020 the employer is required to inform the employee of the lay-off no later than five days before the lay-off begins. In case the employer is the state, local municipalities, the Social Insurance Institution of Finland, church or the Government of Ahvenanmaa, the notice period of 14 days still applies¹⁰.

However, the Employment Contracts' Act enables the national employer and employee associations to derogate from the notice period foreseen in law and agree on different notice period¹¹. This provision was not amended and employers are still allowed to deviate from the notice period requirement to comply with collective agreements between national employer and employee associations¹².

In addition to giving notice concerning lay-off, the employer is obligated to conduct co-operation negotiations before lay-off. Normally, negotiations need to be conducted during the period of 14 days, if the number of the employees working for the employer is less than 10 or if the lay-offs last for maximum 90 days. If the employer employs more than 10 employees or the lay-offs last more than 90 days, the negotiations need to be conducted during six weeks. If the number of employees is regularly 20, but less than 30, the period of conducting negotiations is 14 days¹³.

⁷ Chapter 5, Section 2, Työsopimuslaki 55/2001, <https://finlex.fi/en/laki/kaannokset/2001/en20010055.pdf> (accessed 29 April 2020).

⁸ Chapter 5, Section 2, Työsopimuslaki.

⁹ Chapter 5, Section 2 (31.3.2020/167), Työsopimuslaki 55/2001.

¹⁰ Chapter 5, Section 4 (31.3.2020/167), Työsopimuslaki..

¹¹ Chapter 13, Section 7, Työsopimuslaki.

¹² Ministry of Economic Affairs and Employment, *Notice period for temporary lay-offs and the duration of co-operation negotiations will be shortened due to COVID-19*, 26 March 2020, https://tem.fi/en/article/-/asset_publisher/koronaviruksen-vuoksi-lomautusten-ilmoitusaikaa-ja-yhteistoimintaneuvotteluiden-kestoaikaa-lyhennetaan (accessed 29 April 2020).

¹³ Chapter 8, Section 51, Laki yhteistoiminnasta yrityksissä 30.3.2007/334.

Since 1 April 2020, the duration of co-operation negotiations regarding lay-offs will be shortened from the current six weeks or 14 days to five days¹⁴. All abovementioned amendments are in force until 30 June 2020.

2.2 Extended right to unemployment benefit during temporary lay-off

According to Finnish Unemployment Security Act, the employee, who has been laid off is regarded as an unemployed person and has a right to unemployment benefits¹⁵. Usually, the employee has a right to unemployment benefits if she/he has been laid off by the employer on the basis that the employer has a financial or production-related reasons¹⁶.

In 9 April 2020 the Act was amended so that the employee has a right to unemployment benefits both in the case of lay-off by the employer because of financial or production-related reasons, and in the case of lay-off based on the agreement of the employer and the employee¹⁷.

The Act was also amended as regards the maximum time of the right to unemployment benefits. Depending on the period, during which the person has been employed before becoming unemployed, she/he has a right to receive unemployment benefits during 300 to 500 days. The days for which the person receives unemployment benefits because of being laid off are reduced from the maximum number of benefit days¹⁸. According to the amendment, the time for which the person has been receiving unemployment benefits because of being laid off, is not taken into account in counting the maximum time of the right to benefits¹⁹. These amendments are applicable from 15 April 2020 until 6 July 2020.

On 31 March 2020 the amendment concerning the right of a laid off person to engage in business activities or studies were adopted. Regularly the person does not have a right to receive unemployment benefits if she/he is predominantly engaged in business activities or studies²⁰. According to the amendment this restriction is not applicable to laid off jobseekers²¹. The amendment provides easier access to unemployment benefit to those who study or engage in business activities while being laid off. If the person has income from business activities, the Social Insurance Institution and the unemployment fund take this income into account in the adjusted unemployment benefit²². The amendment is in force from 1 April 2020 until 31 July 2020.

¹⁴ Chapter 8, Section 51 (31.3.2020/169), Laki yhteistoiminnasta yrityksissä.

¹⁵ Chapter 2, Section 1, Työttömyysturvalaki 30.12.2002/1290.

¹⁶ Chapter 1, Section 5, Työttömyysturvalaki.

¹⁷ Chapter 1, Section 5 (9.4.2020/214), Työttömyysturvalaki.

¹⁸ Hallituksen esitys HE 38 2020 vp Hallituksen esitys eduskunnalle laeiksi työttömyysturvalain, työttömyysetuuskien rahoituksesta annetun lain ja työttömyyskassalain väliaikaisesta muuttamisesta.

¹⁹ Chapter 6, Section 7, Työttömyysturvalaki.

²⁰ Chapter 2, Section 1; 4-16, Työttömyysturvalaki.

²¹ Chapter 2, Section 1; 4-16, Työttömyysturvalaki.

²² Ministry of Economic Affairs and Employment , *Legislative amendment extends employees' right to unemployment benefit during lay-off and provides easier and quicker access to unemployment benefit*, 31 March 2020 14.45, https://tem.fi/en/article/-/asset_publisher/lakimuutos-laajentaa-lomautetun-oikeutta-tyottomyysetuuteen-seka-nopeuttaa-tyottomyysetuuden-hakemista-ja-saamista (accessed 29 April 2020)

3. Improvements to the unemployment security of wage-earners

Finnish Government has also decided to improve the unemployment security of wage-earners. The amendments concerning the personal liability period in the case of unemployment, the minimum obligatory employment period before the unemployment, and the payment of unemployment benefits to entrepreneurs and freelancers were adopted.

According to the Unemployment Security Act the person has no right to receive unemployment benefits during the personal liability period. The personal liability period lasts for five days. This provision was amended temporarily, and the amendment foresees that the unemployment benefit is paid also for the personal liability period²³.

Another requirement to the receipt of unemployment benefits concerns the employment period before becoming unemployed. A person has a right to unemployment benefits if she/he fulfils the employment requirement. During the last 28 months the person needs to be in an employment relationship for at least 26 weeks. The minimum obligatory period of employment was also temporarily reduced, and now the person has a right to unemployment benefits if she/he has been employed for 13 weeks²⁴. Both, the amendment concerning personal liability period, and the employment condition are in force from 15 April 2020 until 6 July 2020.

The right to receive unemployment benefits has been broadened also to entrepreneurs. According to the Unemployment Security Act regularly the person has no right to unemployment benefits if she/he is primarily engaged in business activities as an entrepreneur²⁵. Temporarily, the entrepreneur (regardless of the type of her/his business activity) is eligible for labour market support, if the following conditions are met: 1) the entrepreneur's full-time employment has ended, or the monthly income from the entrepreneurial activities is less than EUR 1,089.67 per each entrepreneur, and 2) the full-time work or the reduction in income is caused by coronavirus epidemic. The business activities do not need to be ceased in order to receive labour market support²⁶.

The amendment is in force from 8 April 2020 until 30 June 2020. Nevertheless, labour market support can be paid to entrepreneurs also retroactively. If the entrepreneur registers as a jobseeker by 15 April 2020, she/he will be entitled to labour market support for the period starting on 16 March²⁷.

²³ Chapter 11, Section 4b (20.12.2013/1049), Työttömyysturvalaki.

²⁴ Chapter 5, Section 3, 3a, Työttömyysturvalaki.

²⁵ Chapter 11, Section 4c, Työttömyysturvalaki.

²⁶ Chapter 2, Section 5, Työttömyysturvalaki; Ministry of Economic Affairs and Employment, *Act on the Right of Entrepreneurs to Unemployment Security enters into force on 8 April 2020*, 7 April 2020, https://tem.fi/en/article/-/asset_publisher/laki-yrittajien-oikeudesta-tyottomyysturvaan-tulee-voimaan-8-4-2020 (accessed 29 April 2020).

²⁷ Ministry of Economic Affairs and Employment, *ibid*

4. Changes in the probationary period and re-employment obligation

Amendments have been made also to the legislation concerning probationary period. According to the Employment Contracts' Act, the employer and the employee may agree on a trial period of a maximum of six months starting from the beginning of the work. The probationary period is extended if the employee has been absent from work because of family leave or incapacity for work. In the case of fixed-term work, the maximum probationary period can comprise half of the length of the contract, but no more than six months²⁸.

During the probationary period, the employment contract may be terminated by either party. The employment contract may not, however, be terminated on discriminatory or otherwise inappropriate grounds with regard to the purpose of the probationary period²⁹. There are no notice periods foreseen for the termination of the contract during the probationary period, and the contract ends immediately³⁰.

The main purpose of probationary period is to enable both parties of the employment relationship to estimate whether the work is suitable to the employee and whether the relationship satisfies the parties. The employment relationship can be terminated by the parties during probationary period only because of the reasons that respond to the purpose of this period. Other grounds are not acceptable. As a rule, also financial or production-related reasons are not acceptable grounds for the termination of the contract during probationary period³¹. In Finnish court practice those grounds have been regarded as acceptable only if they are straightforwardly related to the performance of working tasks by the employee. For example, if the employee cannot develop the production in such a way that it becomes profitable, the contract can be terminated without notice periods during probationary period³².

Temporarily the provision on probationary period has been amended so that the employment contract can be terminated also for financial or production-related reasons. An exception is made for the employees employed by the state, local municipalities, the Social Insurance Institution of Finland, church or the Government of Ahvenanmaa, whose employment contract cannot be terminated during the probationary period for financial or production-related reasons³³.

To balance the easier termination process, the employer's obligation to the re-employment of the employee was also extended. Regularly, if the contract is terminated by the employer on financial or production-related grounds, and the employer needs new employees within four months of the termination for the same or similar work, the employer is obligated to offer work to this former employee if the employee continues to seek work via an Employment and Economic Development Office. If the employment relationship has lasted for at least 12 years, the re-employment period is six months³⁴.

²⁸ Chapter 1, Section 4, Työsopimuslaki.

²⁹ Chapter 1, Section 4, Työsopimuslaki.

³⁰ Kairinen, M.*et al* (6)

³¹ Kairinen, M.*et al* (6)

³² Judgement S 97/495 of the Court of Appeal of Helsinki from 26 June 1997.

³³ Chapter 1, Section 4 (31.3.2020/167), Työsopimuslaki.

³⁴ Chapter 6, Section 6, Työsopimuslaki.

With temporary amendment, the re-employment obligation was extended to 9 months. This amendment applies to all situations in which the employment relationship is terminated by the employer because of financial or production-related reasons, not only to terminations during probationary period. In the case of the employees of the state, local municipalities, the Social Insurance Institution of Finland, church or the Government of Ahvenanmaa, the period of re-employment is still four or six months³⁵.

Amendments concerning probationary period and re-employment obligation are in force from 1 April 2020 until 30 June 2020.

5. Conclusion

The amendments of labour and social law provisions adopted due to Covid-19 in Finland reflect balancing the interests of the employers and the employees. The measures taken have been agreed with labour market organisations. On one hand, the Government has aimed to maintain jobs by broadening the possibilities for temporary lay-off, on the other hand, the livelihood of employees has been guaranteed by unemployment benefits. Also, the flexibilization of the employment contract during probationary period has been accompanied with the stricter rules concerning the re-employment of the dismissed employee. Finally, the Government has broadened the unemployment security to entrepreneurs, that has especially contributed to the livelihood of self-employed entrepreneurs.

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³⁵ Chapter 6, Section 6 (31.3.2020/167), Työsopimuslaki.