

12 February 2021, updated 25 March 2022

## **Guideline on occupational safety and health enforcement and the use of authority**

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## 1. Purpose of the guideline

The Ministry of Social Affairs and Health guides occupational safety and health enforcement and provides instructions for the Occupational Safety and Health (OSH) Divisions of the Regional State Administrative Agencies regarding enforcement duties, implementation of legislation and procedural issues. The five Divisions of Occupational Safety and Health of the Regional State Administrative Agencies are the competent OSH enforcement authorities in their regions.

The purpose of this guideline is to ensure the uniform quality of OSH enforcement and the equal treatment of the clients of the Occupational Safety and Health Administration, such as employers and employees. The aim is to ensure that inspection activities are of high quality and effective.

The guideline clarifies the supervisory role and approaches of the OSH authorities both within the Occupational Safety and Health Administration as well as to clients. The guideline has been prepared in cooperation between the Ministry of Social Affairs and Health and the Divisions of Occupational Safety and Health of the Regional State Administrative Agencies. The guideline has been discussed in the Advisory Committee on Occupational Safety and Health with the social partners.

The guideline covers enforcement and other approaches by the Occupational Safety and Health Administration, the activities and inspections carried out by an inspector, inspection reports, obligations binding the employer and other parties and the monitoring of adherence to these, and exercising the authority of the OSH authorities. This guideline replaces the general enforcement guideline 1/2016 and the guideline on the use of authority and reporting suspected offences to the police 1/2015.

## 2. Legal basis

The Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006) lays down provisions on the practices and the use of authority of the OSH authorities in the enforcement of occupational safety and health legislation. The OSH authorities enforce over 100 acts and decrees.

Other acts related to the activities of the OSH authorities include the Administrative Procedure Act (434/2003), the Act on the Openness of Government Activities (621/1999), the Act on Conditional Fines (1113/1990) and the Language Act (423/2003).

## 3. Objectives of the Occupational Safety and Health Administration

The aim of the Occupational Safety and Health Administration is to ensure that work in Finland is as healthy and safe as possible and that it complies with the provisions concerning working life.

The activities of the Occupational Safety and Health Administration are directed in accordance with the objectives regarding the working environment and well-

being at work outlined by the government programme and the Ministry of Social Affairs and Health. The Occupational Safety and Health Administration is independent in carrying out its enforcement task in accordance with International Labour Organisation conventions. The safety management as well as work ability and wellbeing at work plays a key role in developing the work environment, reducing disability as well as promoting health and wellbeing. One objective is that the employer, staff and occupational health care will collaborate in taking measures that promote work ability and return to work.

The vision of OSH enforcement is promoting safe, healthy and fair work by versatile means, responding to changes in the operating environment and developing the operations. OSH enforcement plays a key role in responding to the challenges of the transformation of work and fragmented working life. In addition, the OSH authorities have the duty to prevent accidents at work, prevent occupational diseases and reduce the physical and psychosocial harm caused by work.

OSH enforcement and other measures are used to ensure that these goals are met. Most of the resources are used for enforcement tasks. The enforcement focuses on preventing and eliminating risks and hazards caused by work. Enforcement activities are directed so as to achieve the highest possible societal impact. New phenomena and challenges as well as the transformation of working life face OSH enforcement with the challenge of continuous renewal to ensure that the enforcement approaches correspond to the needs of the changing working life. The aim is that the OSH authority is an enforcement authority able to renew itself and rapidly respond to societal phenomena.

The Occupational Safety and Health Administration also provides advice and instructions on matters related to the health and safety of work and the conditions of employment.

#### **4. Means of influence of the occupational safety and health authorities**

The means of influence of the occupational safety and health authorities include *inspection, other enforcement measures, guidance and tools available for clients* (Figure 1). Of these, inspection and other enforcement measures are means of enforcement. The inspection is the key means of enforcement. Inspections are described in more detail in section 5.



Figure 1. Means of influence of the occupational safety and health authorities.

*Other enforcement measures* include permit decisions, enforcement/mapping surveys and statement for the authorities. The OSH authorities grant various permits. Under the law, some tasks and work arrangements associated with particular risks are subject to a permit, such as an asbestos removal licence, charger's certificate for competency and exemptions related to working hours. Surveys are a suitable screening method for identifying objects of control at which enforcement measures should be targeted. Statements are issued to, e.g. other authorities.

The objective of *guidance* provided by the OSH authorities is to ensure that workplaces have access to sufficient information about their obligations as well as about how to improve their working conditions and what advantages such improvements bring. Guidance measures include provision of advice and information activities that support enforcement, for which a diverse range of channels is used. The Occupational Safety and Health Administration's online service, Tyosuojelu.fi, contains information on the issues subject to the OSH authority's enforcement based on workplace needs. The Occupational Safety and Health Administration's nationwide telephone service also provides advice and instructions on matters related to the health and safety of work and the conditions of employment.

Guidance can be provided before an inspection and on the basis of observations made during the inspection. Guidance can also be provided by means of communications related to enforcement projects that reach a broader target group than merely individual workplaces subject to enforcement measures.

Interactive and public events related to specific industries or topics are organised in cooperation with stakeholders or other authorities. These events may also be virtual. Their goal is to reach the correct target groups and to support clients in their independent efforts. They can be used for purposes such as addressing a topical phenomenon or influencing a specific target group.

The objective of *tools available for clients* is to help workplaces to meet their obligations and develop their key occupational safety and health practices. The self-

evaluation tools intended for workplaces (such as occupational safety and health indicators) will help the workplaces obtain information about the state of their activities as compared to the legislation, other workplaces and their prior OSH standards. Obtaining information about the standard of the workplace's activities will provide motivation for development.

The aim of e-services is to improve the efficiency of the Occupational Safety and Health Administration's operations, to provide diverse service channels to clients and to guide workplaces to fulfil their obligations. The goal is to develop e-services to be interactive and guide users with digital tools offered to clients.

## 5. Inspections

Occupational safety and health enforcement can be divided into the enforcement of working conditions, enforcement of employment relationship regulations and other regulations concerning working life, and monitoring the safety of products. The OSH authorities inspect workplaces and other targets subject to enforcement.

The inspections by the OSH authorities vary according to the object and aims of the inspection, and there are also differences in authority. For example, in connection with the monitoring under the Act on the Contractor's Obligations and Liability when Work is Contracted Out, the enforcement concerns the contractors who use hired workers or have concluded a subcontracting agreement. Market surveillance focuses on the monitoring of product conformity and is different from other types of enforcement in that it can be carried out outside the workplace, for example at fairs or at a retailer's premises. The enforcement of social legislation relating to road transport applies to Finnish and foreign companies and their drivers. In Finland, the surveillance of foreign labour focuses on the enforcement of the right to work and the minimum terms of employment of foreign workers in Finland. The purpose of the monitoring of employment contracts is to ensure the minimum level of working conditions and the equal treatment and security of employment as well as to prevent companies from acquiring competitive advantage by violating the minimum conditions. The objective of the enforcement of the Non-Discrimination Act is to ensure that employers comply with the prohibition of discrimination and promote equality at the workplace.

An OSH inspection is an official duty in which the inspector exercises authority. The inspection includes the following steps:

- The inspector determines compliance with occupational safety and health regulations by examining the required documents, observing the existence, status or content of the inspected issues, and by interviewing or consulting representatives of the employer and employees, and, if necessary, other persons, on an adequate scale.
- The inspector assesses whether the employer has complied with the legislation that the enforcement concerns.

- The inspector informs the employer and the OSH representative (or employee representatives) of key observations and obligations issued to them and provides them with an opportunity to present their views on these and the related deadlines.
- The inspector draws up an inspection report.

### **5.1 Targeting of the inspection and selection of the inspection site**

The Ministry of Social Affairs and Health steers the Occupational Safety and Health Divisions through performance guidance. The activities of the OSH Divisions are based on a four-year framework plan, which creates a frame for the content of enforcement. A performance agreement is used to agree on the key objectives of occupational safety and health enforcement, which are the main targets of the enforcement measures. Inspections can be targeted at a specific field or subject matter, taking into account the scope of supervision. For example, these can involve enhanced enforcement of a law that has just entered into force. OSH authorities also carry out enforcement campaigns and projects.

The inspections carried out by the OSH authorities vary according to the target and objectives of the inspection. The target is an entity suitable for an inspection. It is typically a place of work. Several employers may operate at the same inspection site. On the other hand, one employer may be responsible for several different inspection sites. The enforcement may also target a specific professional group at the workplace, such as supervisors or a single automation line or machine.

The enforcement is adapted to the occupational safety level of the target. The primary concern of the enforcement is that occupational safety and health legislation is complied with. The aim is to support the workplace's independent OSH work and to bring about changes in the workplace's safety management and working conditions. The enforcement must promote cooperation between the employer and employees. The aim of the inspections is to bring about permanent improvements at the workplace.

Enforcement measures should be particularly efficient in workplaces where there is a significant threat of the loss of life and health. Observations made during previous inspections are taken into account in selecting inspection sites. Sources of data in the OSH Division used for the purpose of directing inspections include the enforcement ICT system, analyses of operating environments, enforcement surveys, registers of other authorities, research knowledge, and requests by clients and stakeholders.

### **5.2 Processing of enforcement requests**

Inspections are also carried out based on requests by employers, OSH representatives, employees, and other employee representatives.



When the OSH Division receives a notification that a workplace is suspected of having violated legislation and the notification concerns an immediate risk to life or health, an inspection will be carried out without delay as far as possible.

If the notification concerns an occupational accident, the occupational accident that has resulted in death or serious injury will be investigated as a matter of urgency under the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces.

When the notification concerns an occupational disease, it is assessed whether the case is one that should be investigated by means of enforcement measures. A notification of a suspected or diagnosed occupational disease does not usually give rise to a need for an immediate inspection.

Based on other notifications and requests, the appropriate enforcement methods and procedures will be considered on a case-by-case basis. For example, the client may be given advice on the interpretation of regulations. Particular weight is given to an enforcement request made by an employer or an OSH representative at the workplace.

The OSH authority will take action on the basis of appropriate notifications and requests that fall under its authority. The OSH authority will assess the need for enforcement. The person submitting a notification is informed about the measures that will result from the notification. The identity of the notifier and the information that the enforcement measure results from the notification are kept secret.

However, the identity of the notifier may be disclosed to the employer if this is necessary for enforcement purposes and the notifier gives written consent to it, for example on the request form. Matters where this is necessary include issues related to employment relationships, harassment and discrimination, as well as psychosocial strain, which cannot be inspected due to their nature without revealing the request by the client.

Enforcement measures will also generally not be taken if a long time has passed since the suspected neglect by the employer has occurred, the cause can no longer be determined, or there are grounds to suspect that the measures could not accomplish anything significant. Individual cases will not be investigated if it is found that the neglect has expired under criminal law. Moreover, if the suspected neglect is about to expire under criminal law, processing the case may not be considered appropriate. Enforcement measures will also not be taken if a notification has already been previously filed on the issue and no relevant additional information has been presented in the new notification.

If the notifier is not fluent in Finnish or Swedish, the OSH authority may provide interpretation or translation services to investigate the case. The issue can be interpreted or translated into a language sufficiently understood by the party concerned on a case-by-case basis.

The activities must be impartial, appropriate and objectively justified. It is a matter of good governance to stop the processing of a case at the right time. If no enforcement measures are taken in a client's pending and registered case, a decision is prepared on the proceedings, providing justifications on why was the case. The decision on the proceedings will be submitted to the client.

The OSH authorities do not process matters related to the supervision of interest of an individual employer or an employee, as these are civil disputes, which do not fall within the OSH authorities' scope of authority. For example, supervision of interest is considered to include local and federal negotiations for resolving a dispute concerning an employment relationship, bringing an action before a court or interpreting the contents of a collective agreement.

If the issue does not fall within the sphere of the OSH authorities, the aim is to provide the client with advice on how to proceed with the matter.

It is not the OSH authorities' responsibility to inspect plans concerning the work facilities, work environments or the structures of machinery that are planned and under construction. The OSH authorities are also not responsible for issuing preliminary statements on other issues. Upon request, advice may be provided on individual issues and applicable legislation that the OSH authorities enforce.

### **5.3 Performing an inspection**

An inspection can be carried out as a so-called workplace inspection on the basis of observations made at the inspection site or a document inspection carried out on the basis of written material.

Workplace inspections are the principal method used by the OSH authorities to supervise a workplace's conditions and compliance with working life legislation. Workplace inspections are most appropriate in situations where there is a need to observe working conditions and the working environment, and to engage in dialogue with workplace representatives.

Document inspections can be carried out in the following situations:

- the inspection does not require any observation of working conditions or a visit to the workplace would not provide any added value to the investigation of the matter
- the inspection is focused on a specific issue or set of issues that can be investigated to a sufficient extent based on documents alone.

Inspections can also be carried out using electronic services and tools. Such inspections are suitable in situations such as when there is need for dialogue with workplace representatives, but visiting the workplace is not necessary. For example, the inspector can contact the workplace remotely, by making observations on the information resources available to the authority, by utilising other technical solutions in the enforcement or by combining different working methods in performing the inspection. The OSH authority decides how the inspection is performed.

The inspection may also be carried out in premises within the sphere of domiciliary peace if there is a justified reason to suspect that the work conducted or working conditions in the premises pose a risk to the employee's life or cause significant harm or danger to his or her health, and the inspection cannot be otherwise sufficiently performed.

### *5.3.1 Notifying of an inspection*

The employer is usually informed of the inspection and its timing in advance. In this context, it is also verified that the OSH representative at the workplace is informed of the inspection. If there is no OSH representative at the workplace, information about the inspection is provided as appropriate at the workplace. As far as possible, the employer must ensure that the OSH representative is present during the inspection. If the OSH representative is not present during the inspection, the employer must state the reason for the absence. Inspections may be carried out at different times of the day.

A written notification of the inspection will be submitted in good time. The information provided in the notification includes, in addition to the time of the inspection, the estimated duration of the inspection, the matters addressed in the inspection, which representatives of the authority participate in the inspection and which representatives of the workplace should be present. If required by the nature or scope of the inspection, the inspector may also restrict who participates in, or propose participants to, the inspection. The presence of an occupational health care representative may be beneficial in the inspection, and this may be recommended to the employer if necessary.

The inspection notification also includes information about the documents to be examined in the inspection to ensure that the employer makes these available to the inspector. When the inspection is carried out solely on the basis of documents, a request for information is usually made.

A workplace inspection may be carried out without prior notification if this is necessary for enforcement purposes. After arriving at the workplace or at the latest before leaving the workplace, the inspector informs the employer or the employer's representative and the OSH representative of the inspection, as far as possible. If the employer objects to the inspection, the OSH authority may request executive assistance from the police.

If necessary, the OSH authorities carry out joint inspections with other authorities. These partners include the police, tax authorities, fire and rescue authorities, safety and chemical authorities, the Border Guard, maritime safety authorities, the Finnish Customs, health protection authorities and environmental protection authorities. In these joint inspections, a representative of each authority inspects the site within the scope of its competence.

If it appears that the inspector has no authority, for example when an entrepreneur is working alone without external workforce, no inspection will be performed. In this case, information about the visit and its timing and the number of personnel involved is entered in the enforcement ICT system.

### 5.3.2 *Issues addressed in the inspection*

The inspection uses an agenda, whose content and scope depend on the subject area of the inspection and the hazards and risks at the inspection site. The agenda guides the inspection process to be systematic and consistent regardless of who carries out the inspection. In most cases, the agenda includes:

1. Checking basic workplace information
2. Enforcement of previous obligations and the organisation of occupational healthcare
3. Matters derived from the performance agreement and the objectives of the OSH authority
4. Observations made by the inspector during the workplace visit or based on some other information
5. Issues raised by the employer and employee representatives

### 5.3.3 *Course of inspection*

The inspection starts by the inspector explaining the objectives of the inspection and issues to be addressed, and checks and records basic information for the inspection report and enforcement ICT system.

During the inspection round at the workplace, working conditions at the work premises are observed to the extent considered necessary by the inspector. If necessary, photographs or videos are taken of different work stages, machines, facilities etc. In addition, the inspector examines occupational safety and health at the workplace by discussing and asking questions. If the examined issues do not require observing physical working conditions, an inspection round at the workplace is not necessary. However, in this case, employee representatives must be given an opportunity to present their views and ask questions. Questions or issues raised by workplace representatives are answered immediately if possible, or an answer is provided later. Upon request, the inspector must discuss with these persons in private, either at the workplace or, if necessary, at some other location.

If the OSH representative at the workplace does not take part in the inspection, it must be ensured by other means that he or she is consulted about the matters addressed in the inspection. After the inspection, a representative of the personnel or the workplace may submit additional information related to the issues addressed in the inspection.

Inspectors have the right, to such an extent as is necessary for enforcement purposes, to receive from employers for inspection documents and information specified in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces. If necessary, the inspector may request documents in advance for familiarisation prior to the inspection.

When it is necessary to request documents to the inspector, the need and scope of the request for documents and information is scaled to a level that fulfils the need for required information. Particularly documents containing confidential information should be inspected at the workplace or by using information secure means of communication.

In enforcement, occupational safety and health indicators can be used to aid the inspection or they can be used to analyse the situation at the workplace even before the inspection. The use of indicators or surveys before the inspection helps direct the enforcement and the content of the workplace inspection. Indicators used by the OSH authority can also be used in taking independent measures at the workplace.

A multi-employer workplace is inspected in the same way as any other inspection site while paying attention to the fact that there are several operators at the workplace. The enforcement measures are primarily targeted at the employer exercising the main authority and the project supervisor in construction work. If the inspection target does not affect the safety or health of the employees of other employers, the enforcement is also concerned with the employer concerned.

Interaction plays an important role in the employer's activities. Discussing during the inspection can enable reaching an understanding on improving workplace safety management and working conditions and related schedules. Positive feedback is often a good way to promote occupational safety and health.

The inspector provides advice on the content of the legislation and the significance of regulations. The inspector can also provide general information on solutions that have been found to work well.

The inspector has the duty to intervene in any irregularities he or she has observed. However, it is important that the workplace understands that some shortcomings or failures may remain at the workplace which the inspector has not noticed or which he or she has not been informed about. Even though an OSH inspection has been conducted at the workplace, the employer is responsible for ensuring that the conditions at the workplace comply with the valid legislation.

The inspector's duties or authority do not include defining or designing the details of solutions, nor the approval of measures. If the inspector is asked to give an opinion on an issue on which he or she may not comment as a supervisory public official, he or she will state the reasons for this decision.

At the end of the inspection, the inspector presents a summary of key findings. The inspector explains what obligations he or she is considering for the employer and reserves the opportunity for the employer's and the workers' representatives to present their views and ensure they have understood what is required. The inspector discusses the timetable for the implementation of the issued written advice and improvement notices and the monitoring method with the employer or the employer's representative. In addition, the inspector states that an inspection

report will be drawn up and explains the significance of the written advice and improvement notice.

#### *5.3.4 Inspection based solely on documents*

An inspection can be carried out solely on the basis of documents when the enforcement concerns, for example, a matter related to an individual person or some other issue that can be investigated in writing.

An inspection can also be performed solely based on documents in cases where the enforcement concerns document or recording obligations, which is the case with the enforcement of driving and rest time regulations or the Act on the Contractor's Obligations and Liability when Work is Contracted Out. A document inspection may also be performed if an obligation imposed in a prior inspection report has resulted in obtaining a written report from the employer and there is need for imposing further obligations related to the case.

The document inspection involves submitting a request for information to the employer, asking for specific documents or information before a given deadline. A copy of the request for information is sent to the OSH representative with the exception of matters not processed by the representative (e.g. many issues related to employment relationships or pay) or if for other special reasons consulting the representative is not appropriate in connection with the processing of the case.

If the document inspection is based on a request for enforcement initiated in the client's own case, the person submitting the request is given an opportunity to express his or her opinion on the issued reports to the extent that these provide relevant information that may affect the measures taken by the OSH authority.

The inspector assesses at which point sufficient information has been obtained in order to decide the case. The inspector must ensure that the parties concerned are given an opportunity to present clarification on all reports received in connection with the issue that may affect the decisions made by the inspector. Based on these reports, the inspector assesses whether the employer has complied with the legislation that the enforcement concerns. The inspector explains what obligations he or she is considering imposing and provides the employer with an opportunity to express his or her opinion on the obligations and the deadlines set for them.

## **6. Inspection report**

The inspector will draw up an inspection report without delay. The inspection report must reveal the inspection process and the most essential observations made by the inspector. The recording of the inspection process means that the object, time and place of the inspection, the names of the parties consulted in the inspection and other necessary identification details are recorded. Additionally, the inspection report includes a description of the key observations made in the

inspection that are the reason for issuing the written advice or improvement notice. Deviating views on the issues inspected are also information that needs to be recorded. The inspection report must contain essential information from the perspective of the inspection site and further processing of the matter.

If the aim of the inspection is to monitor compliance with previously imposed obligations and impose additional obligations, the inspection report must state which previous inspection and inspection report the new inspection is connected to.

The inspection report records the observations made during the inspection, improvement notices and written advice as well as other matters discussed during the inspection. An inspection report is also prepared for the inspections that do not involve providing the employer with written advice or improvement notices. In this case, only the identification details of the inspections and the issues processed in the inspection are recorded in the inspection report. For the purpose of protecting the notifier, the inspection report does not indicate if the inspection has been carried out on the basis of a notification.

The inspection report is prepared in the official languages of the country in accordance with the Language Act. Saami speakers have the right to use the Saami language before the authorities in processing matters that concern them or involve consulting them. If the obligated party is a foreign citizen, the essential content of the inspection report must be translated into a language understood by the party. This is not an official translation.

If necessary, the inspection report is made to include appendices, such as photographs and summaries of occupational safety and health indicators.

If the inspection has been carried out as a joint inspection with other authorities, it is noted in the inspection report that it concerns a joint inspection. The inspected matter and possible obligations are also indicated.

The inspection report is submitted to the employer and the OSH representative within 30 days of the inspection or when all the necessary material available. In the absence of an OSH representative, the employer shall notify the employees of the inspection report in an appropriate manner at the workplace. The inspector may, at his or her discretion, also submit the inspection report to other parties, such as occupational health care.

If the inspector notices a defect in a matter under the supervision of another authority, the inspection report or extract from it is sent to the authority concerned, taking confidentiality provisions into account.

An inspection report concerning a multi-employer workplace is forwarded to the employer subject to the obligation, and to an employee representative. In addition, if necessary, a copy of the inspection report is submitted for information to the employer that exercises the main authority at the workplace and to the repre-

sentative of its employees. If necessary, a copy of the inspection report is delivered to other employers in the multi-employer workplace and to employee representatives.

## **6.1 Obligations to the employer**

The inspector must describe the defect or other non-compliant condition in the working conditions at a sufficiently concrete level and the written advice or improvement notice issued in it must define the level required by legislation. The inspector's observation is recorded in such a way that it indicates how the observation was made. The obligation must be expressed sufficiently clearly to enable monitoring of compliance and to enable the authorities to make a binding decision later, if necessary. Identifying and explaining problems and defects is also important in any ensuing judicial proceedings.

While the inspector describes the desired state in the obligation, the methods to reach this are not determined in detail. References to standards or other chargeable source materials must be avoided in the obligations. The employer can choose which measures to take to meet the requirements.

If the requested documents have not been made available during the inspection at the workplace, written advice or an improvement notice can be used to provide the OSH authority with them.

The non-compliant condition of a workplace may be referred to the OSH authority for processing without issuing written advice or an improvement notice, if the inspector finds that providing written advice or improvement notice does not seem to lead to correcting or eliminating the state of non-compliance or if the matter cannot be delayed. In this case, the OSH authority will consider making a binding decision.

If the offence is recurring and/or the harm or risk is clearly greater than minor, the inspector must consider whether the offence is an act that meets the characteristics of an offence, in which case there may be reason to consider reporting an offence. In case of a suspected offence, the inspector will refer the case to the OSH authority.

### **6.1.1 Improvement notice**

An improvement notice is made if the hazard or harm caused by the non-compliant condition is greater than negligible. The inspector may also issue an improvement notice in a case where the employer has failed to comply with the instructions provided during a previous inspection, but in this case only the matters listed below.

Under the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces, an improvement notice may be issued in matters concerning



- 1) conditions related to the work environment and the state of the work community that affect the safety and health of employees
- 2) records of working hours or annual holidays or an obligation to keep other similar records
- 3) the obligation referred to in the Employment Contracts Act (55/2001) or in some other act to be enforced by occupational safety and health authorities to issue:
  - a) a written report of the key conditions of employment and additional information required in them
  - b) a written report of the justifications based on which alternating working hours correspond to the employer's need for workforce
  - c) a payslip
  - d) a written certificate of a layoff
  - e) a written notification of the grounds for terminating an employment contract
  - f) a certificate of employment
- 4) the provision of occupational health care
- 5) the prohibition of discrimination referred to in the Non-Discrimination Act (1325/2014), the prohibition of victimisation or the prohibition of discriminatory work advertisements, or the obligation to draw up a plan for the promotion of equality referred to in section 7 (2) of the Act or the right to access information for elected personnel representatives referred to in section 7 (3) of the Act
- 6) monitoring of direct supplementary pension schemes
- 7) the obligation laid down in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces
- 8) The obligation laid down in section 12 of the Act on Posting Workers (447/2016) of providing information to staff representatives or the right to information of the occupational safety and health authority laid down in section 17 (1) (2) (4) or (5).

Each improvement notice for an independent deficit must be specified in sufficient detail.

An improvement notice can be issued as a separate document on a case concerning, for example, a certificate of employment, payroll or key terms of employment.

The notice must set a deadline by which the employer will have to bring the situation in line with the law, if that is not possible right away. Setting the deadline is concerned with informing the employer of the timetable for assessing compliance with the notice.

The time limit is set to actually and reasonably enable remediation of the non-complying conditions to comply with the valid provisions. The deadline may also be the date of the inspection if the employer corrects the condition immediately. Nevertheless, the improvement notice must be made and recorded in the inspection report even if the employer corrects the non-complying conditions during the inspection.

### 6.1.2 *Written advice*

Written advice is issued to correct minor and individual deficiencies when the employer fails to meet the minimum standards set in the Act.

A deadline is set in the written advice only based on specific consideration, mainly in matters on which an improvement notice can be issued at a later stage.

In some of the legislation enforced by the OSH authorities, written advice is the only available means to remedy a deficiency or defect. These issues may include the amount of pay, the protection of privacy in working life, driving and rest periods for drivers, maximum working hours, standby hours, rest periods in accordance with the Working Hours Act, matters concerning the employment relationship of foreign employees, and the provision of occupational accident and occupational disease insurance.

### 6.1.3 *Temporary prohibition notice*

The inspector may impose a temporary prohibition notice if a deficiency or defect in violation of valid legislation at the workplace poses an immediate risk of loss of life or health to an employee. Immediate risk means a concrete and imminent, often great danger or risk of a serious accident or damage to health. Temporary prohibition notices may be issued, for example, when there are seriously hazardous defects in the guarding of a machine or in the protection against falls. On the other hand, immediate danger does not mean that its consequences should be visible immediately. The consequences may sometimes be revealed after a long period of time, as is the case with asbestos exposure, for instance.

A temporary prohibition notice is usually issued in connection with or immediately after an inspection and is recorded in the inspection report.

When a temporary prohibition notice is issued, the inspector investigates the views of the employer's representative and the OSH representative on the issue. A temporary prohibition notice may be issued even if the representatives are not reached.

A temporary prohibition notice shall be complied with immediately. The prohibition notice may not be challenged by an appeal. The inspector will draw up a separate document on the temporary prohibition notice and this will be delivered to the workplace immediately. The inspector transfers the case to be processed and solved by the OSH authority using the same document. The OSH authority examines the prerequisites for issuing a temporary prohibition notice. The authority issues a decision that either confirms the prohibition or concludes that the prohibition has expired after the party concerned has been given an opportunity to be heard. The matter must be processed without delay.

## **7. Monitoring**

The inspector must monitor compliance with the issued implementation notices within the set time limit. Monitoring does not necessarily require a new inspection. Monitoring can be carried out based on sufficiently reliable information and

materials provided by the employer. Documents and information are primarily requested from the employer. If necessary, additional information may also be requested from the OSH representative.

Compliance with the written advice is monitored the next time an inspection is performed at the inspection site. Therefore, there is usually no need to request documents or other written reports when monitoring compliance with the written advice. If a deadline has been included in the written advice as a result of exceptional discretion, compliance with it is monitored in an appropriate manner, usually a written report. If the employer fails to comply with the written advice, the advice will be repeated if it is a matter on which an improvement notice may not be issued. In certain situations, however, reporting to the police may be considered.

The inspector assesses what kind of review is adequate. Based on the reports received, the inspector prepares a notification of the fulfilment of the obligation to the employer. If the report is found insufficient, an inspection report imposing new obligations is prepared.

If it is not possible to reliably assess compliance with the obligation on the basis of documents or some other kind of review, a new inspection will be conducted at the workplace. In this case, an inspection report is prepared, describing the inspected site and possibly imposing new obligations. The inspection report must indicate which obligations the monitoring concerns and to which previous inspection and inspection report these are related.

If the deficit identified in an improvement notice is not eliminated or corrected within the time limit, or if the report received is insufficient, the inspector must refer the matter to the OSH authority without delay.

The OSH authority may decide to issue additional time for complying with the improvement notice. Additional time for complying with an improvement notice may be applicable in exceptional cases.

## **8. Objection and administrative complaint**

A written objection concerning a failure of an OSH inspection to comply with the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces can be submitted to the OSH authority. The objection can be drawn up by the employer, the OSH representative and employee concerned and other parties that fall within the scope of the OSH authority's enforcement. The objection must be made within two months of the submission of the inspection report to the employer or some other enforcement measure has been completed. Other enforcement measures include a decision on proceedings that has been used to decide on a matter without taking actual enforcement measures. The OSH authority must notify in writing the person submitting the objection of the measures taken as a result of the objection within a reasonable time.

An administrative complaint can be filed with the superior of a public official or other person performing a public duty, with the relevant agency or with a higher authority supervising the agency. The complaint must be made in writing in accordance with the provisions of the Administrative Procedure Act concerning an administrative complaint. The complaint is not an appeal and its consideration does not affect the processing of the complaint itself. The processing of a complaint involves examining whether the case has been dealt with in accordance with the law and the principles of good governance. The authority in charge of making a decision on the complaint will inform the complainant and the subject of the complaint of his or her views on the matter and, if necessary, provide administrative guidance. If more than two years have expired since the matter that the complaint concerns has taken place, the case will not be investigated unless there are specific reasons for this. Relevant legislation issues provisions on the authority and division of labour of the highest supervisors of legality, the Chancellor of Justice of the government and the Parliamentary Ombudsman.

## **9. Use of authority by the occupational safety and health authority**

After the inspector has referred a case to the OSH authority, the authority will consider whether the conditions for taking action are fulfilled and there is need for this. The aim is to oblige the employer to rectify any deficiencies and defects that are more than minor at the workplace ultimately by the means available to the OSH authority, such as a binding decision or prohibition notice. Under certain conditions, the OSH authority may also submit a notification to the police.

The objective of the OSH authority is to make the employer or other person obliged to comply with the requirements of labour legislation. The administrative measures of the OSH authority focus on the future, while the assessment of criminal sanctions focuses on the past, i.e. evaluating negligence that has already occurred. Administrative and criminal processes are not mutually exclusive; both processes may be pending at the same time.

### **9.1 Binding decision**

#### *9.1.1 Preparation and consultation*

If an employer has failed to comply with an improvement notice, the OSH authorities may impose an obligation requiring the employer to correct or eliminate the condition that is in violation of the provisions. A binding decision may be issued on a matter on which an improvement notice may be issued pursuant to the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces. To improve the effect of the obligation, a conditional fine, a notice of enforced compliance or a notice of enforced suspension may be imposed. The decision-making procedure complies with the provisions laid down on decision-making in the Administrative Procedure Act. Pursuant to the provisions, an opportunity to be heard in the matter is provided to the employer and/or other obligated party and possible other parties concerned. In addition to the parties concerned, the OSH representative must also be given an opportunity to be heard.

As a rule, the hearing is carried out in writing by sending a document to persons to be heard asking them to provide clarification within a set time frame on why no measures have been taken at the workplace to correct the non-complying conditions. This consultation involves explaining that the OSH authority is considering making a decision that is binding on the employer, describes the obligation to be imposed with sufficient accuracy, and at the same time states the time limit considered for the implementation of the obligation and the amount of the conditional fine to be imposed as a sanction for the obligation. When considering the time limit for responding, the nature and extent of the problem or defect will be taken into account as well as issues such as whether the matter has been known to the persons making decisions on the employer's activities.

### *9.1.2 Decision and sanctions*

In the decision, the employer or other obligated party is obliged to take the measures required within a set time frame. The decision must state clearly what the party is obliged to do, the time limit set for the fulfilment of the obligation and the penalty for the non-fulfilment of the obligation. The length of the time frame is considered on a case-by-case basis, taking into account the length of the period already given in connection with the improvement notice and, for example, the time during which it will be possible to ensure the compliance of the conditions with valid provisions. However, the time frame must always be at least long enough that the measures can actually be taken.

The aim is that the compliance with the obligation will achieve an acceptable level that meets the minimum requirements in the legislation. The employer may, at its discretion, choose the means to fulfil the obligation. Compliance with the obligation must be possible to verify objectively.

The binding decision is prepared in the official languages of the country in accordance with the Language Act. Saami speakers have the right to use the Saami language before the authorities in processing matters that concern them or involve consulting them. The official language of the community is verified from the Finnish Trade Register. If the obligated party is foreign, the authority must translate the content of the decision into a language understood by the party. This is not an official translation.

To improve the effect of the obligation imposed in the decision, a conditional fine, a notice of enforced compliance or a notice of enforced suspension may be imposed. A notice of a conditional fine is the measure most commonly used in the administrative procedure. If the decision contains several different obligations, a separate notice of a conditional fine will be imposed to improve compliance with each obligation.

The decision is sent to the obligated party and any other parties concerned with evidence and for the information of the OSH representative.

A binding decision issued by the OSH authority may be appealed to the Administrative Court. The decision is accompanied by instructions for submitting a complaint. The appeal period for the decision is 30 days after receiving information about the decision.

### *9.1.3 Enforcement of compliance with the decision*

After the deadline set in the decision, compliance with the decision is subject to enforcement. The enforcement may involve, for example, the employer sending a copy of document, such as an occupational health care contract or working time records, to the OSH authority. If, on the basis of the reports received, the OSH authority finds that the obligation has been complied with, the matter will be concluded by a decision on proceedings. If it is not possible to reliably assess compliance with the obligation on the basis of documents or some other kind of review, a new inspection will be conducted.

If the inspection finds that the obligation laid down in the decision has been fulfilled, this is noted in the inspection report. If the situation at the workplace has changed to such an extent that there are no longer grounds for the obligation imposed in the decision, this will also be stated in the inspection report. In these situations, the case is closed with a decision on the proceedings. The decision on the proceedings is submitted to the employer or other obligation party concerned.

### *9.1.4 Order to pay a conditional fine*

If the party concerned has failed to comply with a decision or has only partly complied with it, the OSH authority will consider imposing the sanction set for non-compliance. In this case, the obligated employer or other party must be heard. In this context, hearing the party aims to establish whether there is a valid reason for the failure to comply with the obligation. At the same time, the employer or other obligated party is also heard for the purpose of a new binding decision.

After the hearing, the OSH authority will order the party concerned to pay the conditional fine if the obligation imposed has not been complied with and there is no valid reason for the non-compliance. In addition, the order to pay a conditional fine requires that the decision on imposing a notice of a conditional fine is legally valid or that the OSH authority has ordered compliance with its decision despite appeals.

The employer or another party obligated by the decision has the right to appeal to the administrative court against a decision on the order to pay a conditional fine.

If the obligation has not been complied with, the OSH authority will continue to take measures to remedy the situation, which in practice means launching a new decision-making procedure. A new deadline will be set for the party concerned to eliminate the defect or deficiency. The compliance with the obligation is reinforced by imposing a clearly higher notice of a conditional fine. If an appeal has

been made against a previous decision, the new decision-making procedure will not be initiated until the appellate authority has resolved the appeal.

## 9.2 Prohibition notice

The competent OSH authority may prohibit the use of a machine, work equipment or other technical device, a product or a work method or the continuation of work until the non-complying conditions have been remedied or eliminated. Instead of the temporary prohibition notice issued by the inspector, a prohibition notice imposed by the OSH authority is used in situations where the risk of loss of health does not require immediate intervention, for example in the case of exposure to hazards caused by indoor air at the workplace, which does not pose an immediate risk.

The prohibition notice is issued by the OSH authority's decision. A conditional fine may be imposed to ensure compliance with the prohibition notice. Before issuing a prohibition notice, the party concerned and the OSH representative, if the workplace has one, must be consulted.

The prohibition notice decision, including relevant evidence, must be submitted without delay to the parties involved and for information to the OSH representative. The decision can be appealed to the administrative court. The prohibition notice is valid until the non-complying condition has been rectified or eliminated.

## 9.3 Negligence fee

The OSH authority may impose a negligence fee for certain types of negligence under the Act on the Contractor's Obligations and Liability when Work is Contracted Out and the failure to comply with the obligations laid down in the Act on Posting Workers. The negligence fee is a punitive financial penalty, the amount and criteria of which are laid down in a strict manner by law. If the inspector finds that the preconditions for imposing a negligence fee exist, he or she must refer the matter to the OSH authority.

In matters concerning contractor's obligations, the negligence fee may be imposed after a contractor has neglected the contractor's obligation to check. A contractor may be ordered to pay a raised negligence fee if the contractor has entered into a contract with a party that is prohibited from doing business, or if the contractor has concluded a contract, even though the contractor must have realised that the other contracting party did not intend to fulfil its statutory obligations to pay.

In the enforcement concerning posted workers, a negligence fee may be imposed on the posting undertaking for failing to submit a notification on posting workers, appoint a representative of the posting undertaking and keeping available information and reports. Under certain conditions, the fee may also be imposed on the contracting agency and a contractor or main contractor acting as builders.

As a rule, imposing a negligence fee requires giving the party concerned an opportunity to be heard before making a decision. The decision is sent to the party

with evidence. The decision on a negligence fee may be appealed to the administrative court. The decision is accompanied by instructions for submitting a complaint. The appeal period for the decision is 30 days after receiving information about the decision.

## **9.4 Activities of the occupational safety and health authority in employment offences**

### *9.4.1 Co-operation and expert activities*

The OSH authority acts as an impartial expert in criminal matters in close cooperation with the police and the prosecutor, for example in reports and requests for investigation made to the police, and in statements issued to the prosecutor on the basis of pre-trial investigation materials. The OSH authority will issue a statement on the basis of pre-trial investigation material by the police in employment offence cases before the conclusion of the consideration of charges after a prosecutor has provided an opportunity for this.

If necessary, the OSH authority may also pay attention to investigating the prerequisites for the punishment of a legal person in its notifications and statements and during legal proceedings, and objectively highlight issues that may indicate the involvement of management and negligence in the organisation.

In addition, the OSH authority may also propose that the police investigate the penalty for asset forfeiture, which in practice always means the loss of the financial benefit gained from an offence. Calculations or other investigations may be carried out to assess the extent of this benefit.

The OSH authority has the right to be present and be heard in the oral hearing of a criminal case, in which its task and objective is to ensure sufficient expertise at all stages of the proceedings.

### *9.4.2 The notification duty of the occupational safety and health authority*

In addition to imposing obligations, an occupational safety and health inspection may lead to the OSH authority notifying the police of any non-compliance it has observed. Pursuant to section 50 of the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces, the OSH authority is obligated to notify the police, if there are probable grounds for suspecting that an act punishable under any act enforced by the OSH authority or under Chapter 25, section 3 or 3a, Chapter 44, section 1, subsection 1, paragraph 3 or paragraphs 8–10 or Chapter 47 of the Criminal Code of Finland has been committed by the employer. In respect of the acts referred to in Chapter 25, section 3 and 3a and Chapter 44, section 1, subsection 1, paragraphs 3 and 9 of the Criminal Code of Finland, the notification application only applies to cases where actions have been taken that are contrary to the minimum terms of employment or the provisions on the safety and health of work or which concern technical devices subject to enforcement measures by the OSH authority.



The more serious employment offences laid down in the Criminal Code of Finland include work safety offences, working hours offences, work discrimination, discrimination at work tantamount to extortion and unauthorised use of foreign labour. Trafficking in human beings is also punishable under Chapter 25 of the Criminal Code of Finland. In addition to these offences, several acts under the enforcement of the OSH authority contain separate penal provisions, including as the Occupational Safety and Health Act, the Employment Contracts Act, the Working Hours Act, the Occupational Health Care Act, the Annual Holidays Act and the Young Workers' Act.

There is no need for a notification if the act is minor considering the circumstances, and the public interest does not require a notification. In this case, the OSH authority decides on whether to file a notification based on his or her discretion with the exception of the unauthorised use of foreign labour referred to in Chapter 47, section 6a of the Criminal Code, as well as the violations of the Aliens Act and the employer's violation of the Aliens Act, to which the authority's discretionary power does not apply.

The consideration of the notification threshold is made on the basis of observations made in the enforcement duty, taking into account, for example, information received from other authorities. A decision not to issue a notification is always based on overall assessment and the special features of each individual case.

The OSH authority will monitor the case law in order to develop the enforcement activities.