

Supervision of the use of foreign labour in 2021

Report

Summary

In 2021, the Occupational Safety and Health Divisions carried out more than 1,500 inspections to supervise the use of foreign labour. In more than half of the inspections, the inspectors checked that employers comply with the statutory minimum terms and conditions of employment for their foreign employees. The inspectors also checked that foreign employees have the right to work in Finland.

The inspections revealed a large number of deficiencies in the compliance with the minimum terms and conditions. Deficiencies in the compliance with the wage provisions of universally binding collective agreements were identified in nearly half of the inspections in which this matter was examined. In most cases, the basic pay or increments were too low, or no increments had been paid. Construction and restaurant sectors were the most problematic areas (Deficiencies were identified in about 65% of the inspections).

A large number of deficiencies in working hour records were also identified. For this reason, it was often difficult to verify the correctness of the wage payments as the inspectors could not determine the actual hours worked.

The inspectors identified a growing number of cases in which an employment relationship had been disguised as entrepreneurship or what is called light entrepreneurship. Occasionally, the employment relationship had been changed into a commission agreement with terms similar to those of an employment contract without the employee understanding the difference. The phenomenon is particularly common in the construction sector but also in car repair shops and car wash shops.

In the inspections on the right to work, at least one foreign employee with no right to work in the job in question in Finland was identified at 20% of

the workplaces. In the construction sector, such employees were identified in one out of three of all inspections.

Following the entry into force of the Act on the Legal Status of Foreigners picking Natural Products (487/2021) in June 2021, inspectors started for the first time to supervise the work of pickers of wild berries with no employment relationship. The supervision involved a wide range of different challenges and it is still too early to assess its impact.

Cooperation between the authorities will enhance the effectiveness of the supervision in many ways. The authorities carried out more than 300 joint inspections and the information obtained from the other authorities was used in hundreds of inspections.

Additional appropriations were allocated for 15 new posts in the supervision of the use of foreign labour for 2021. The extra resources will help us to react more effectively to the tips received by the inspectors supervising the use of foreign labour and to take part in inspections carried out jointly with other authorities.

Occupational safety and health authorities are increasingly communicating directly with foreign employees and parties assisting them. From the perspective of preventing labour exploitation, it is important that foreign employees know their rights in working life. In 2021, the guide 'As a foreign employee in Finland' was updated in 14 languages and an English-language webinar on the rights of employees was held.

Foreign employees and labour exploitation were often in the news. Experts on the supervision of the use of foreign labour should take part in the public discussion on the topic more actively than is now possible.

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1. Overview of the supervision of the use of foreign labour in 2021

In 2021, the Occupational Safety and Health Divisions carried out 1,534 inspections in companies employing foreign labour in Finland to supervise the use of foreign labour. Depending on the type of inspection, the following are some of the matters checked during inspections carried out to supervise the use of foreign labour in Finland:

- have the employers checked their foreign employers' right to work in Finland
- Are the employers in compliance with the provisions on minimum terms and conditions of employment laid down in Finland's mandatory labour legislation.

There are several different types of inspection in the supervision of the use of foreign labour, and they differ in terms of matters to be inspected.

In 2021, inspections were carried out as unannounced inspections and as company inspections. The purpose of the unannounced inspections is to check the employees' right to work and to collect comparative information on minimum terms and conditions of employment from the employees for company inspections. The purpose of the company inspections is to inspect the employees' right to work and compliance with the minimum terms and conditions of employment. Document inspections were also carried out.

Because of the coronavirus epidemic, the number of on-site inspections carried out in 2021 was lower than normal. About one third of all inspections carried out to supervise the use of foreign labour was in the form of document inspections whereas in 2019, only one in eight of all such inspections was carried out on the basis of documents. Unannounced on-site inspections are often a more effective way to identify deficiencies than inspections without any visits to the site.

Compliance with the minimum terms and conditions of employment were checked in more than half of the inspections carried out to supervise the use of foreign labour.

Earlier supervision observations and information received from the other authorities can often be used as comparative information in the inspections of companies using foreign labour as this information can serve as background data when the information provided by the employers is analysed.

Additional appropriations were allocated for 15 new posts in the supervision of the use of foreign labour for 2021. The additional resources help the Occupational Safety and Health Administration to react more quickly and effectively to the tips received by the supervision of the use of foreign labour and participate more effectively in the joint inspections carried out by the authorities. However, it should be noted that in 2021, each of the Occupational Safety and Health Divisions had to allocate substantial resources to the familiarisation of new foreign labour inspectors. This is particularly the case in small Occupational Safety and Health Divisions, which only had one person providing familiarisation with core matters. The new inspectors started independent inspection work during the year but support will still be required in 2022.

The supervision of the use of foreign labour in individual Occupational Safety and Health Divisions is coordinated by a national project group. It was agreed in the project group that in all Occupational Safety and Health Divisions, minimum terms and conditions of employment should be inspected in at least 50% of all inspections of foreign labour during 2021. About 53% of all inspections of the use of foreign labour carried out in 2021 involved matters concerning compliance with the minimum terms and conditions of employment. This was made into an official target for 2022 and incorporated in the targets set out in the joint performance agreement of the Occupational Safety and Health Divisions.

1.1 Targeting the supervision

Supervision of the use of foreign labour is mainly carried out at sites where deficiencies are likely to be encountered, especially in the compliance with the minimum terms and conditions of employment and the right to work. This should be taken into account when the results of supervision are examined. The inspection findings are unlikely to give an accurate picture of the situation of foreign employees in Finland and instead, deficiencies are highlighted in the supervision.

Tips play a key role in the targeting of supervision, and most of them are received from the authorities involved in the processing of permits for foreign employees. A large number of tips are also received from ordinary citizens and organisations representing employees. Sites for inspections are also selected in cooperation with other authorities in connection with multi-authority inspections.

During 2021, most of the inspections to supervise the use of foreign labour were carried out in the accommodation, catering and construction sectors. Inspections were also carried out in agricultural, cleaning and industrial sectors (Figure 1).

Breakdown of inspections by sector

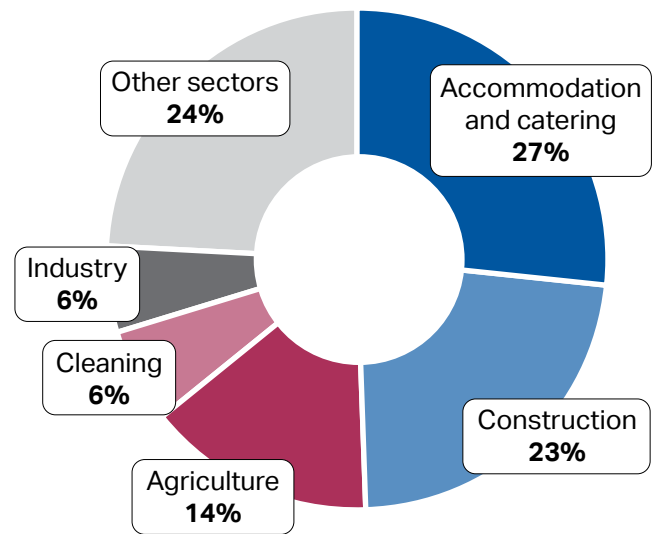


Figure 1. Sectoral breakdown of inspections carried out to supervise the use of foreign labour in 2021. A total of 1,534 inspections were carried out.

In addition to the supervision of the use of foreign labour described above, inspections were also carried out to check the obligations connected with the posting of workers. The focus in the inspections was on companies posting workers to Finland and their contractors.

Supervision of the posting of workers is outside the scope of this report. Supervision of the posting of workers is discussed in the media release ['Nearly 20,000 posted workers in Finland – shortcomings addressed by inspections of posting companies and contractors'](#), which was published on 24 March 2022.

2. Observations made during the supervision of the use of foreign labour

2.1. Minimum terms and conditions of employment

The inspections carried out in 2021 revealed a large number of deficiencies in the compliance with the minimum employment terms and conditions of foreign employees. Most of the deficiencies concerned compliance with the wage provisions of universally binding collective agreements (Figure 2). Deficiencies were identified in nearly half of all inspections in which this matter was assessed. Deficiencies in this area were particularly common in construction and restaurant sectors, in which about 65% of all inspections revealed deficiencies. Wage-related deficiencies in the agricultural sector were also identified in nearly 50% of the inspections in which checks on this matter were carried out.

The most serious deficiencies in the compliance with the wage provisions of the universally binding collective agreements involved the level of basic pay and supplements. However, there were differ-

ences between sectors: for example, in the construction sector, the basic pay received by foreign employees exceeded the minimum set out in the universally binding collective agreements more often than in the restaurant or cleaning sector. At the same time, however, the inspections revealed a large number of deficiencies in the payment of supplements in all sectors referred to above. Employer federations were notified of the deficiencies concerning the payment of wages set out in the collective agreements in their member companies.

In connection with wage-related matters, compliance with the prohibition of discrimination was also supervised during 2021. In the supervision of the use of foreign labour, prohibition of discrimination primarily means that wage-related discrimination on grounds of origin or nationality is prohibited. In 2021, obligations concerning the prohibition of discrimination were issued in ten per cent of the inspections in which compliance with the prohibition of discrimination was assessed.

Compliance with the wage provisions of the universally binding collective agreements

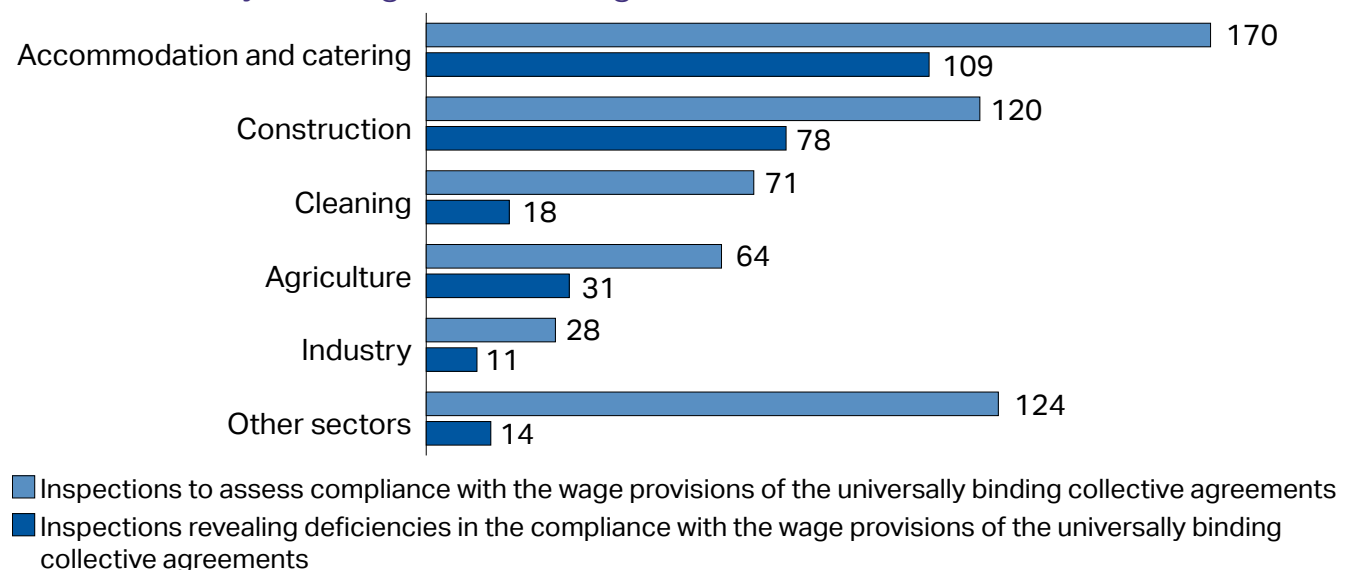


Figure 2. Supervision of compliance with universally binding collective agreements in the supervision of the use of foreign labour and the number of deficiencies identified in 2021. The figures are for February 2022, when some of the inspections for 2021 were still under way. The actual figures are thus slightly higher.

2.2. Foreign employees' right to work

In the inspections assessing foreign employees' right to work, one workplace in five had at least one foreign employee with no right to work in the job in question in Finland.

In the construction sector, nearly one third of all inspections assessing the right to work revealed foreign employees with no right to work. In the cleaning sector, one in four of all inspections revealed at least one foreign employee with no right to work. In the accommodation and catering sector, one inspection in ten revealed employees with no right to work.

Over the past few years, supervision has been directed at sectors where employers are likely to have neglected their obligations in such areas as ensuring the right to work under the Aliens Act (301/2004).

Targeting the supervision at problem areas partially explains the large number of foreigners with no right to work identified during the inspections and it also shows that the inspections are correctly prioritised. At the same time, however, there are more foreigners with no right to work employed in the construction sector, which means that the focusing of the inspections is not the only reason for changes in the supervision observations as they also reflect changes that have taken place in the sector.

Inspections in which foreigners with no right to work were identified

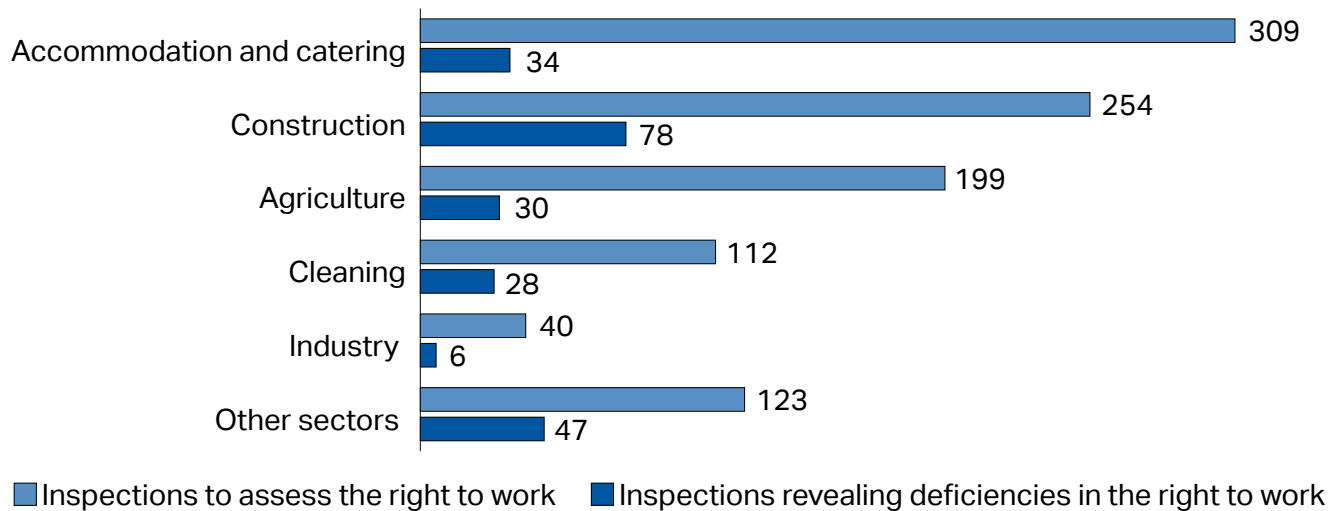


Figure 3. Supervision of the right to work in 2021. The figures are for February 2022, when some of the inspections for 2021 were still under way. The actual figures are thus slightly higher.

2.3. Other matters included in the supervision

Matters concerning working hours are also highlighted during inspections to supervise compliance with the minimum terms and conditions of employment. There are often deficiencies in working hour records and this is also reflected in the obligations imposed on employers.

In 2021, a total of 332 pieces of written advice and 146 improvement notices were issued on working hour records in the inspections to supervise the use of foreign labour. The figures for shift rosters were 223 and 213, respectively (Figure 4). Because of deficiencies in the records of working hours, it is difficult to verify the correctness of the wage payments as the actual hours worked cannot be determined.

A large number of pieces of written advice (358) were also issued to employers that had failed to inform an employee of the key terms and conditions of work in the manner required under the Employment Contracts Act (55/2001). A large number of pieces of written advice also dealt with compliance with the wage provisions contained in universally binding collective agreements referred to above. Written advice was also issued to employers in matters concerning their obligation to verify foreign employees' right to work during inspections where foreign employees with no right to work were identified.

Inspections also revealed cases in which foreigners were probably in an employment relationship even though in the entrepreneur's view this is not the case. It was concluded during 37 inspections that

the criteria for an employment relationship were met and written advice was issued on the matter. In reality, the number of such cases identified during inspections is higher because written advice on the matter is not directly issued during all inspections as the meeting of the criteria for employment relationship is examined separately for each matter to be inspected. Such situations have frequently arisen during unannounced inspections carried out in restaurants where employers have characterised such persons as 'people helping out at the workplace' who in the employers' view are not in employment relationship.

Situations involving employment relationships disguised as entrepreneur work have become increasingly common in recent years. In Southern Finland alone, inspections revealed more than a dozen such cases in 2021. In many of them, the employment relationship had been disguised as light entrepreneurship. The employment relationship had often been changed into a commission agreement without the employee understanding the difference, or into a commission agreement with terms similar to an employment contract. The phenomenon is particularly common in the construction sector but also in car repair shops and car wash shops.

Using the criteria for an employment relationship contained in the Employment Contracts Act as a basis, the inspectors assess whether or not the person in question is in an employment relationship. It is often difficult to assess the nature of the legal relationship during an inspection carried out at the initiative of the authorities because such inspections are largely based on the documents presented by the company.

Supervision of working hour records and shift rosters

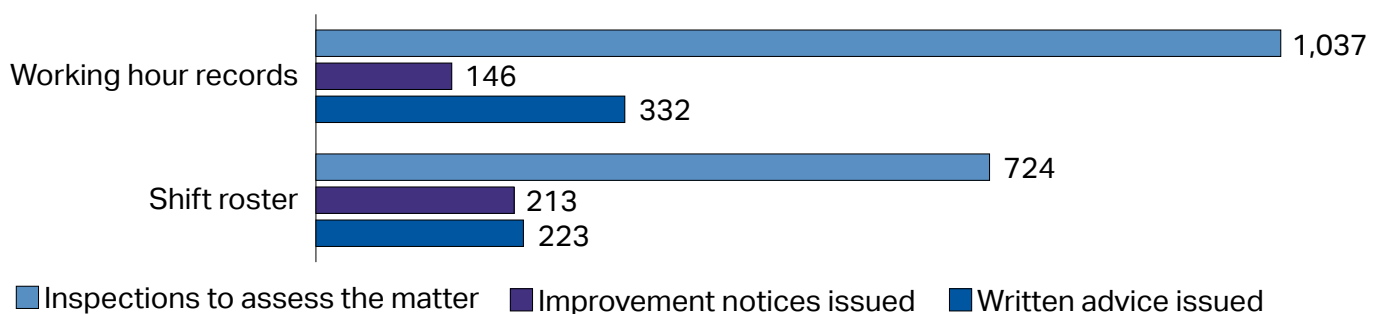


Figure 4. Inspections of working hour records and shift rosters carried out to supervise the use of foreign labour in 2021, as well as obligations issued on the matter. The improvement notice is a stronger instrument of supervision than written advice and it always gives a deadline to correct the matter.

3. Supervision of the natural products sector

The Act on the Legal Status of Foreigners picking Natural Products entered into force in June 2021. The new act imposes obligations on operators in the natural products sector and gives the pickers rights that are supervised by the occupational safety and health authorities.

For the first time, the occupational safety and health authorities have the powers to supervise the work of persons picking wild berries who are not in an employment relationship. The supervision of the picking of natural products is the specialisation task of the Occupational Safety and Health Division of the Regional State Administrative Agency for Northern Finland and all divisions are represented in the project group coordinating the supervision.

The project group started to plan the supervision in early summer 2021 and supervision was launched in a number of bases for natural product pickers in late summer and the autumn. Inspections were carried out in all divisions, except for South-western Finland, where there were no such bases.

Under the new act, operators must submit an advance notification of the location of the base for natural product pickers. During the first season, it was noted that the substantial regional differences in the berry harvest had a major impact on the location of the bases, and the details of the periods when they are used provided in advance were often incomplete. As a result, in such regions as Northern Finland, most of the inspection visits were made to bases that had already been closed because the operators had reacted quickly to poor picking results and moved the bases to more southern locations.

The inspection visits to the bases revealed a large number of deficiencies in the compliance with

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the new act. The following were some of the difficulties facing the inspectors: remote location of the bases, extremely poor language skills of the berry pickers and the fact that the berry pickers work in the forest throughout the daylight hours, from early morning to late evening as a result of which, it was not worthwhile to carry out the inspections during typical working hours.

It is difficult to estimate the effectiveness of the supervision on the basis of one season. Based on the observations made during the first berry-picking season, operating models will be improved and the supervision made more effective by starting the inspections earlier during the berry-picking season, by making more use of interpreters in the inspections, by improving the quality of the interviews and information material translated into different languages and by clarifying the operators' notification procedure.

4. Cooperation between the authorities

Many of the inspections to supervise the use of foreign labour are carried out as multi-authority cooperation. In 2021, more than 300 inspections to supervise the use of foreign labour were carried out as multi-authority inspections. The number of such inspections was substantially lower than in previous years, which was the result of the coronavirus pandemic and its impacts on field supervision.

Most of the joint inspections were carried out in cooperation with the police but many other authorities were also involved. Joint inspections were also carried out with the Finnish Border Guard, Finnish Tax Administration, Finnish Centre for Pensions, municipal building inspectors and alcohol inspectors of Regional State Administrative Agencies. Cooperation with the police involved local police departments and the national human trafficking group.

In the inspections carried out to supervise the use of foreign labour, extensive use is made of the information obtained from the other authorities on the basis of the right of the occupational safety and health authorities to access information.

The right to access information was used during hundreds of inspections in 2021. There are no exact nationwide figures available for 2021 but in Southern Finland alone, the right was used during more than 400 inspections carried out to supervise compliance with the legislation on the use of foreign labour. The right to access information allows the occupational safety and health authorities to obtain information from the Incomes Register of the Finnish Tax Administration, information contained in the compliance reports produced by the Grey Economy Information Unit and information from the Register of Aliens.

The Occupational Safety and Health Administration is coordinating a multi-authority project as part of the combating of the grey economy. The project is also closely linked to the supervision of the use of foreign labour. Cooperation between the authori-

In 2021, more than 300 inspections were carried out in cooperation with other authorities to supervise the use of foreign labour.

ties in the supervision of the use of foreign labour still involves challenges, especially in connection with the prioritisation of supervision. The aim is that multi-authority cooperation can help to solve at least some of these challenges.

At national level, inspectors supervising the use of foreign labour have taken part in the deliberations of the Ministry of Economic Affairs and Employment's working and steering groups overhauling the Aliens Act. The inspectors have also submitted comments on the legislative proposal. The Occupational Safety and Health Administration has also been represented in the multi-authority cooperation project of the Ministry of the Interior.

All divisions are in regular contact with the work permit services of the TE Offices in their own regions. Regular contacts have also been maintained with the Finnish Immigration Service and joint interpretations have been sought. The cooperation group Luotetut työnantajat (Trusted Employers), with a representative from the Occupational Safety and Health Divisions of the Regional State Administrative Agencies for Southern Finland and Northern Finland, has also been operating under the auspices of the Finnish Immigration Service.

All reports on the inspections carried out to supervise the use of foreign labour are entered in the UMA register where they are accessible to all permit authorities.

Issues concerning the supervision of the use of foreign labour were discussed in several government working groups during 2021 and their members have also included experts on the topic.

5. Communications and stakeholder cooperation

In addition to supervision, the occupational safety and health authorities also work to combat the problems arising from the use of foreign labour by means of communications and close cooperation with stakeholders. Compared with the previous years, in 2021, the occupational safety and health authorities increasingly communicated directly with foreign employees and parties assisting them in work-related matters.

From the perspective of preventing labour exploitation, it is extremely important that foreign employees know their rights in working life. Experience has shown that labour exploitation can be better identified and tackled with supervision if the foreign employees themselves bring up the problems that they have encountered.

The guide 'As a foreign employee in Finland' published by the occupational safety and health authorities and updated in 2021, is the key instrument in communicating with employees. At the same time, the range of languages was increased, and the guide is now available in 14 languages. The guide provides key information on such matters as pay, working hours and other matters concerning the employment relationship. It also describes where to get help in problem situations.

In autumn 2021, the occupational safety and health authorities organised an English-language webinar titled *Workers' rights in Finland*. It was intended for employees with inadequate skills in Finnish and for parties that help them in work-related issues. The event received excellent feedback from the participants (score 4.5 on a scale of 1 to 5). The webinar and its recording reached a total of about 600 people. The event was planned and marketed in cooperation with the multicultural network Moniheli.

The inspectors supervising the use of foreign labour also took part in a number of multi-authority webinars. Issues such as observations made during inspections, obligations of the employer and the contractor, and topical legislative issues were discussed at the events. These webinars were mainly intended for employers, contractors, other authorities and stakeholder groups.

In a new target group, the occupational safety and health authorities also worked to reach households employing foreign labour. A press release was issued on the supervision of households and the employment terms and conditions of those working at home, and it received a great deal of attention in the media.

The employment of foreigners and labour exploitation have been extensively covered in the media, and experts on the supervision of the use of foreign labour are often interviewed on the topic. The experts have described observations made during inspections and inspection findings. Many of the news stories are based on the inspection reports produced by the occupational safety and health authorities, which have been made available to the media following extensive information requests.

There might be a need for more extensive communications on matters concerning the use of foreign labour. The experts on the supervision of the use of foreign labour should take part in the public discussion on the employment of foreigners more often and in a more timely manner and also highlight observations at their own initiative.

Experts on the supervision of the use of foreign labour working in the Occupational Safety and Health Administration are quite prepared to be more actively involved in the communications effort. However, this has not yet been possible because the Occupational Safety and Health Administration has not yet managed to solve the issue of providing resources for communications as part of the inspectors' work.

In the past, the focus in the stakeholder cooperation in the supervision of the use of foreign labour was on cooperation with other authorities but in recent years, there has also been more cooperation with third-sector actors.

In the area of the Regional State Administrative Agency for Southern Finland, there has been particularly successful cooperation with Victim Support Finland, which takes care of customer cases involving labour exploitation. Victim Support Finland also coordinates networks to combat human trafficking intended for the authorities and organ-

isations, and inspectors from different divisions have taken part in their work.

The occupational safety and health authorities are involved in the *Reilu työ* (Fair Labour) network jointly run by the authorities and organisations, in which themes concerning the use of foreign labour and labour exploitation are regularly discussed. The network has produced joint media releases for *Kunnon työn päivä* (Day of fair labour) and arranged public discussion events for politicians on labour exploitation.

Tyosuojelu.fi

Website of the Occupational Safety
and Health Administration in Finland