



Changes to the Aliens Act that concern employers' obligations

A number of changes have been made to chapter 5 of the Aliens Act (301/2004) concerning the obligations of employers and contractors. The most important of the changes are presented in this bulletin.

The changes to the obligation to check the right to work became applicable from the entry into force of the new provisions (23 February 2023).

Employer's and contractor's obligations (section 82 of the Aliens Act)

Checking the right to work and retaining the information

The employer's obligation to check that its foreign workers have the right to work in Finland will also apply after the entry into force of the changes. However, under the new provisions, this obligation also applies to foreign employers (employers domiciled outside Finland).

Furthermore, employers must now retain the documents specifying their foreign workers' right to work for two years after the end of the employment relationship. In other words, the four-year retention period was shortened to two years.

Contractors now also have the obligation to retain information.



Shutterstock

The obligation to check the right to work and to retain the relevant information also applies to contractors when the workers employed by a foreign employer are working in Finland in contracting or subcontracting work, as temporary agency workers or as internal transfers within the company.

Under the new provisions, the obligation to retain the details of the employees' right to work in Finland also applies to contractors. A contractor means the party awarding the contract or the subcontract and the party commissioning the work.

Continues on the next page >



Submitting information to TE Offices

An employer hiring non-EU nationals or individuals comparable to non-EU nationals or their family members must without delay submit the following information to the Employment and Economic Development Office (TE Office):

- name of the employee
- duration of the employment
- employees' pay
- applicable collective agreement.

In other words, under the new provisions, less information needs to be included in the report submitted to the TE Office than in the past. The information must now be submitted online. The information can only be submitted on paper if electronic channels are not available.

The employer must also give the names of its foreign workers and the applicable collective agreement to the shop steward, elected representative and the occupational safety and health representative at the workplace.

Under the new provisions, contractors only need to give this information to the shop steward, elected representative and the occupational safety and health representative at the workplace. Contractors no longer need to submit any information to the TE Office.

New obligations for main contractors and shipyard operators

The new provisions impose additional obligations on main contractors at construction sites and on shipyard operators. At a construction site, the main contractor or other principal contractor must now check that all foreigners working at the site have the right to work. The same applies to the employer exercising main authority at a shipyard area. In other words, they must check that foreign workers employed by Finnish companies also have the right to work.

Like employers and contractors, the above-mentioned parties must also retain the information on the right to work for two years.

At a construction site, the main contractor must check that all foreigners working at the site have the right to work. The same applies to the employer exercising main authority at a shipyard area.

Unauthorised employment (sections 185 and 186 of the Aliens Act; and chapter 47, section 6a of the Criminal Code)

The criminal liability now also applies to foreign employers and contractors

In the section 'Employer's violation of the Aliens Act', criminal liability has now been extended to cover foreign employers and contractors. Employing foreigners that do not have the right to gainful employment in the work in which they are employed is punishable under the Aliens Act.

In addition to employers, the criminal liability specified in the Aliens Act also applies to contractors that have foreign contracting partners in a contract or a subcontract whose employees work in contracting or subcontracting work, as agency workers or as internal transfers within the company. The provision 'Employer's violation of the Aliens Act' also applies to the main contractor in the construction sector and the employer exercising main authority in a shipyard area.

No changes were made to the type of crime 'Use of unauthorised foreign labour' specified in the Criminal Code. The criminal liability specified in the Criminal Code applies to both employers and contractors but the contractor only has criminal liability for the acts committed by its own foreign contracting partners.

A foreign worker may be guilty of a violation of the Aliens Act if they are engaged in illegal gainful employment. No changes were made to the Aliens Act in this respect.

Continues on the next page >



Posted workers' right to work (section 81b(1) (4) of the Aliens Act)

Time at work and period equivalent to time at work

Also under the new provisions, foreign posted workers have the right to engage in gainful employment without a residence permit for a maximum of 90 days during any period of 180 days. The requirement is that the posted worker is coming to Finland to perform temporary contracting or subcontracting work lasting for a maximum of six months as an employee of a company operating in another EU or EEA country under the freedom to provide services.

It is also required that the foreign worker in question has the permits entitling them to stay and work in the country concerned and that these permits are still in effect after the end of the work in Finland.

The Aliens Act now contains more detailed provisions on how the period entitling a foreign posted worker to work is calculated.

The time at work or the period equivalent to time at work may not exceed 90 days during any 180-day period. Only a substantially longer period spent outside Finland will interrupt the period entitling the foreign posted worker to work provided that this period is not a period equivalent to time at work. The minimum length of such a period is one month.

Under section 7 of the Annual Holidays Act (162/2005), a period equivalent to time at work means among others any period for which the employer is by law obliged to pay wages, time-off granted for the purpose of adjusting average working hours, and working days when the employee has been unable to work for the reasons set out in this section. In other words, short periods of time (one or two days) when the posted worker is staying in the country are not considered when the right to work is calculated.

The period when the foreign posted worker is entitled to work is not interrupted even if they

left Finland during a holiday, sickness absence or time-off granted to adjust working hours.

Permanent employment and the permit granted by the country of origin

It is no longer required that a posted worker is permanently employed by the posting undertaking.

Changes have also been made to the requirement concerning the duration of the permit granted by the country of origin. Under the new provisions, the permit granted by the country of origin for stay and work no longer needs to be valid for one year; the only requirement is that it is still in effect after the work in Finland has ended.

Temporary contracting and subcontracting work

Under the new provisions, temporary contracting and subcontracting work is defined as a contract lasting for a maximum of six months. A contract may last for a maximum of six months or if it consists of more than one part, the total duration may not be more than six months.

The six-month maximum cannot be extended by dividing a contract into smaller contracts. A contract means a specific site of work or a specific project, or more than one site or project if this is specified in the contract. If the contract lasts for more than six months, the employee does not have any right to work under this section.

More information

- > [Website of the Occupational Safety and Health Administration in Finland Tyosuojelu.fi: Employment relationship > Foreign employee](#)
- > [Tyosuojelu.fi: Employment relationship > Posted worker](#)

