

Supervision of the use of foreign labour in 2023

Report

Summary

In 2023, the occupational safety and health (OSH) authority carried out more than 2,200 inspections of companies using foreign labour. More than half of the inspections were carried out to supervise that employers complied with the statutory minimum terms of employment for their foreign employees. Inspectors also checked foreign employees' right to work in Finland.

In recent years, the OSH authority has sought to strengthen its role in detecting and combating labour exploitation. For this reason, there was an effort to target an increasing number of the inspections specifically at the enforcement of minimum terms of employment, especially pay and working hours.

Supervision findings indicate that, like in previous years, there were many deficiencies in compliance with the minimum terms of employment in 2023.

Deficiencies in pay were observed in almost half of inspections in which this issue was assessed. The share remained the same as in 2022. There were issues with pay both in the amount of basic pay and in the payment of various bonuses and overtime pay.

A large number of deficiencies in working hour records were also identified. It was often difficult to assess the correctness of pay because actual hours worked could not be determined during enforcement due to neglect of obligations concerning employers' records of working hours.

The inspectors identified a growing number of cases where 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. This phenomenon has previously been particularly visible in the construction and service sectors, but it has also expanded to manufacturing and the forest sector.

Around one-in-ten of the inspections concerning the right to work involved at least one foreign employee who did not have the right to work in Finland. Slightly fewer people without the right to work were encountered compared to 2022.

For the third year now, the scope of supervision in 2023 included the so-called Berry Act (Act on the Legal Status of Foreigners Picking Natural Products 487/2021). Non-compliance with the Berry Act was observed in practically all inspections carried out at pickers' bases, and the number of imposed obligations was considerable.

Cooperation between the authorities will enhance the effectiveness of the supervision in many ways. The number of joint inspections carried out by authorities was 527, which is 67 more than in 2022. In addition, data from other authorities was used in hundreds of inspections. Inspections were also carried out on the basis of tips from employee organisations and citizens.

The OSH authority also strives to prevent labour exploitation through communication and close stakeholder cooperation. In 2023, more multilingual communication was carried out both independently and in cooperation with stakeholders. The target group included foreign-language speakers such as employees and jobseekers, forest berry pickers from Thailand and light entrepreneurs.

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Contents

| | |
|---|----|
| Summary | 2 |
| 1. Overview of supervision in 2023 | 4 |
| 1.1 Targeting the supervision | 5 |
| 2. Supervision findings | 6 |
| 2.1 Minimum terms of employment | 6 |
| 2.2 Foreign employees' right to work..... | 7 |
| 2.3 Employee or entrepreneur?..... | 7 |
| 2.4 Other matters included in supervision..... | 8 |
| 3. Supervision of the natural products sector | 9 |
| 4. Reports to the police | 10 |
| 5. Cooperation between authorities..... | 11 |
| 6. Communications and stakeholder cooperation | 12 |

1. Overview of supervision in 2023

In 2023, the OSH authority carried out more than 2,200 inspections of companies using foreign labour in Finland.

The information in this report was compiled in February 2024, with 60 of the inspections started in 2023 still unfinished. Completed inspections totalled 2,162, which is the figure used as the benchmark for findings.

The largest number of inspections was carried out in companies that had their domicile in Finland. Supervision was also carried out on foreign companies that were not so-called posting companies but whose employees were employed in Finland or for which the criteria for posting were not met.

In addition, supervision was aimed at foreign companies that post workers to Finland and at the contractors of these companies. This report does not address the supervision findings related to posting. For that information, see the report titled *Enforcement of the posting of workers and notifications of posting in 2023* (published in May 2024).

The Occupational Safety and Health (OSH) Divisions of the Regional State Administrative Agencies act as OSH authorities, supervising compliance with OSH regulations in their respective areas. In this report, the OSH Divisions are referred to as a single entity: the OSH authority.

In 2023, over 2,200 inspections were carried out in companies using foreign labour in Finland. Every other inspection supervised the minimum terms of employment.

The aim of supervision is to guarantee an equal and fair labour market for all and an even playing field for companies. Depending on the type of inspection, the following are some of the matters checked during inspections:

- whether employers have ensured that their foreign employees have the right to work in Finland
- whether employers have complied with Finland's mandatory labour legislation regarding the minimum terms of employment of foreign workers, i.e. compliance with the provisions on working hours and pay.

In addition, supervision covers the organisation of occupational health care, accident insurance and, if necessary, the contractor's obligations arising from the Act on Posting Workers.

At construction sites and shipyards, supervision aims to ensure that the general contractor and the employer exercising effective control have ensured the employees' right to work and retained information on the right to work. In addition, inspections of construction sites and shipyards supervise the obligations laid down in the Occupational Safety and Health Act concerning the preparation of a worksite list and personal IDs.

There are several types of inspections in the supervision of the use of foreign labour. As in previous years, both limited and extensive inspections were carried out in 2023.

In limited inspections, the focus was primarily on supervising the right to work and collecting comparative data for inspections on the minimum terms of employment. Limited inspections were also carried out for following up individual obligations issued in previous inspections.

Extensive inspections addressed the minimum terms of employment in addition to checking the right to work. The minimum terms of employment were supervised with 50% of the inspections.

The majority of the inspections on the use of foreign labour are carried out without prior notice. Especially in the service sector, inspections without prior notice are the only way to get reliable information about a company's employees. Inspections are carried out both on-site at workplaces and on the basis of documents.

1.1 Targeting the supervision

Supervision is mainly carried out at sites where deficiencies are likely to be encountered, especially in the minimum terms of employment and ensuring 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 deficiencies are highlighted in the supervision instead.

Tips are important in the targeting of supervision, and most tips are received from the authorities involved in the processing of foreign employees' residence permits. A large number of tips also arrive from ordinary citizens and organisations representing employees. Inspection targets are also selected by means of the OSH authority's extensive right to access information. In addition, the targets of supervision are selected in close cooperation with other authorities.

In 2023, the use of foreign labour was most supervised in the hotel and restaurant sector (28%) and the construction sector (23%). Inspections were also carried out on seasonal work (8%) and industry (6%).

Breakdown of inspections by sector

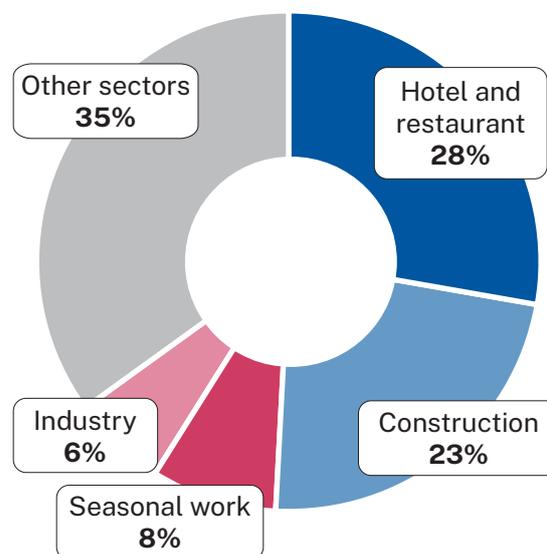


Figure 1. Sectoral distribution of the supervision of the use of foreign labour in 2023.

Of the inspections, 35% were targeted at other sectors, including the cleaning sector, service sector companies – such as stores, car washes, car repair shops, beauty care facilities and massage companies – as well as the transport sector and temporary work agencies.

Compared to 2022, slightly less supervision was carried out in the hotel and restaurant sector, whereas the share of inspections in the construction sector increased. The share of other sectors in supervision grew from 2022.

165 inspections to seasonal work

There were 165 inspections carried out in line with the Seasonal Work Decree. The most inspections were targeted at agriculture, forestry and seasonal hotel and restaurant activities. Seasonal work refers to seasonal sectors of agriculture and tourism that fall within the scope of the Seasonal Work Decree ([Government Decree on the Agriculture and Tourism Sectors with Seasonal Activities 966/2017](#)).

2. Supervision findings

2.1 Minimum terms of employment

Similarly to previous years, inspections revealed a large number of deficiencies in compliance with the minimum terms of employment for foreign employees. Deficiencies were especially found in pay. Deficiencies in pay were identified in almost half (47%) of the inspections where this matter was addressed. Deficiencies ranged from missing evening work bonuses to serious labour exploitation.

Compared to 2022, the number of deficiencies in the minimum terms of employment remained at the same level. Deficiencies in pay were also observed in nearly half of the inspections (47%) addressing seasonal work. This means that the figure is in line with findings from other sectors concerning pay.

Employers belonging to an employers' association are not within the OSH authority's scope of inspections for compliance with the applicable collective agreement. This means that the OSH authority cannot supervise the pay of employees employed by companies in an employers' association, except for compliance with the prohibition of discrimination. However, any discovered deficiencies in the payment of wages or compliance with the applicable collective agreement are notified to the relevant employers' association.

On 1 June 2023, the OSH authority became entitled to issue an improvement notice on pay, enabling escalation to a decision on an administrative conditional fine. Such an improvement notice can be issued if the deficiency in pay is material and significant and if the basis and amount of pay can be stated unambiguously.

Previously, only written advice could be issued on pay, even if the pay was very low. An improvement notice instructs an employer to rectify a deficiency, but it cannot be used to oblige an employer to retroactively pay missing wages. If

The minimum terms of employment were supervised with over 1,000 inspections. Nearly half of the inspections revealed deficiencies in pay.

an employer does not comply with an improvement notice, the OSH authority may, under threat of a conditional fine, oblige the employer to adjust the pay in accordance with the universally binding collective agreement.

Compliance with the prohibition of discrimination laid down in the Non-Discrimination Act was supervised in connection with pay-related matters in 2023 similarly to previous years. In the supervision of the use of foreign labour, the prohibition of discrimination primarily means that wage-related discrimination on grounds of origin or nationality is prohibited.

There were 113 obligations imposed on non-compliance with the prohibition of discrimination, amounting to about 11% of the inspections where compliance with the prohibition of discrimination was assessed. The number of obligations imposed due to non-compliance with the prohibition of discrimination remained at the same level as in 2022. In the supervision of seasonal work, the prohibition of discrimination was supervised with 69 inspections, of which 9% resulted in an obligation imposed to the employer to comply with the prohibition of discrimination. In other words, not all cases of underpayment constituted discrimination as referred to in the Non-Discrimination Act. In cases where some employees of a certain nationality are paid wages in accordance with the collective agreement and some employees of the same nationality are not, it is difficult to prove that the employer's actions were discriminatory on the basis of nationality or origin.

2.2 Foreign employees' right to work

When supervising the verification of the right to work, about 10% of the inspections discovered at least one foreign employee who did not have the right to perform the work in question in Finland. Most commonly, the issue was that the employee was working in the wrong sector. The proportion of inspections discovering a missing right to work decreased slightly from 2022.

The OSH authority receives a great deal of information on unauthorised work from other authorities, such as the TE Offices' work permit services, the Finnish Border Guard and the Finnish Immigration Service. Based on this information, it has been possible for several years to target supervision at workplaces where one or more persons are known to have worked without the right to work. Thus, the fact that 10% of the inspections revealed unauthorised labour force is more indicative of the successful targeting of supervision than of Finnish employment in general.

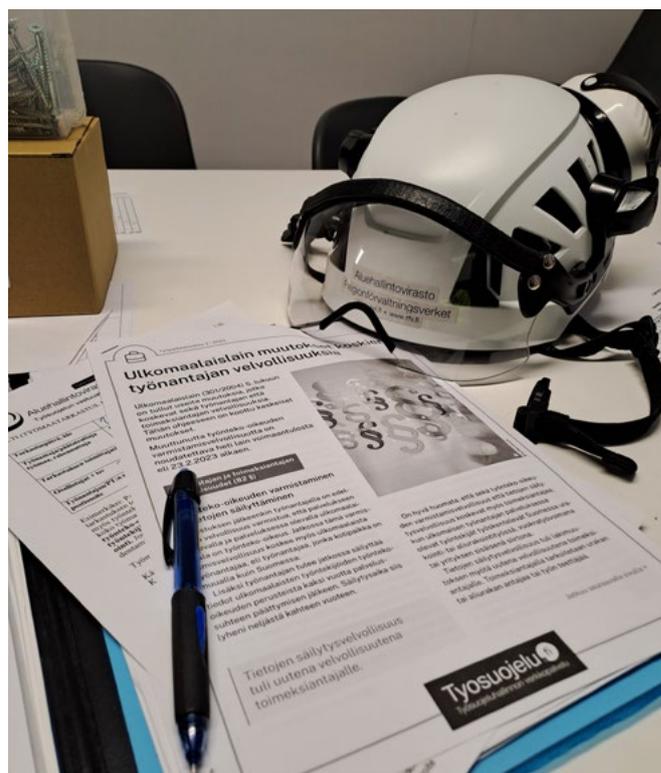
2.3 Employee or entrepreneur?

Inspections of foreign labour are discovering more and more cases where it seems that a foreigner has an employment relationship with the employer even though this is not the case in the view of the business paying for the work.

Traditionally, such situations have been particularly discovered during unannounced inspections of restaurants. These cases often concern people encountered at the workplace who, according to the employer, are not in an employment relationship and have only come to help.

In addition to these cases, supervision in 2023 uncovered an increasing number of cases where there was a suspicion that employment was disguised as entrepreneurship. In many of them, the employment relationship had been disguised as light entrepreneurship. From the perspective of labour legislation, a person doing work in exchange for payment is always either an entrepreneur or an employee, and the position of a so-called light entrepreneur does not differ from that of other kinds of entrepreneur.

The employment relationship had often been changed into a commission agreement without



the employee understanding the difference, or into a commission agreement with terms that seemed like terms of employment. This phenomenon has become more widespread and is particularly visible in the construction sector, but also in the cleaning sector, car repair shops, car wash shops and seasonal work.

The OSH authority only supervises work carried out in an employment relationship, so in these cases, the OSH authority must first make an assessment of whether or not there is an employment relationship. In supervision, this is assessed through the characteristics of employment set out in the Employment Contracts Act.

If the inspector finds that the work in question has been carried out in an employment relationship, the employer may be issued an improvement notice, for example on the record of working hours and the provision of pay slips. It is possible to escalate an improvement notice to an obligatory administrative decision, in which case the employer is obliged to comply with the improvement notice with the threat of a conditional fine. The employer has the right to appeal the decision to the Administrative Court.

2.4 Other matters included in supervision

One of the key considerations supervised with inspections on the minimum terms of employment is working hours. There are often deficiencies in the records of working hours, which is also reflected in the obligations imposed on employers.

A total of 46% of inspections revealed shortcomings in the record of working hours. For shift rosters, that number was 38%. In seasonal work, deficiencies in the record of working hours were observed in 40% of inspections. As many as 71% of shift rosters contained deficiencies. Obligations were imposed on the record of working hours and shift rosters in situations where no such documents existed or where prepared documents were deficient. Neglect in the record of working hours was especially discovered in recording the hours for contract work.

If there are deficiencies in the record of working hours, the actual hours worked cannot be determined and it is difficult to assess the correctness of pay. Failure to comply with the regulations on the record of working hours and shift roster has a significant impact on the correctness of employees' pay.

Many shortcomings were discovered in documents related to working hours.

If there are deficiencies in the record of working hours, the actual hours worked cannot be determined and it is difficult to assess the correctness of pay.



Workplace bulletin 1 | 2023

1 (2)

Working hours are limited in fixed-term employment relationships too

Employers must ensure that their employees' working hours do not exceed the maximum permitted amount. This also applies to fixed-term employment contracts.

The average working time cannot go over 48 hours per week during an adjustment period. In short employment relationships, this is calculated in relation to the duration of the employment relationship.

The maximum amount of working hours sets the upper limit for an employee's total working hours. It includes all hours worked, no matter whether they constitute regular hours, additional work or overtime.

Employers must actively and systematically monitor their employees' working hours. Only actual hours worked should be recorded in working time records. Working time records and payroll records must be kept separate.

Employers must actively monitor that maximum working hours are not exceeded.

The provision on maximum working hours is intended to protect employees' safety and health.

Working too-long hours can cause workload that is harmful to health and increase the risk of accidents. Violating the provision is a punishable offence.



Jari-Pekka Tuomi/SHU/SHU/SHU



Anni Pyykkönen

The ceiling for total working hours applies to all work regardless of how working hours are organised, i.e. general working hours, period-based working hours, flexible working hours schemes and flexible working time arrangements.

What is an adjustment period?

Under the Working Hours Act, the rule of thumb is that employees' total working hours, including any overtime, must not exceed an average of 48 hours per week over a four-month period. Each of these four-month adjustment periods are treated as separate entities.

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Continues on the next page >

Even in fixed-term employment relationships, the employer has to ensure that working hours do not exceed the maximum permitted number, which is 48 hours per week. In 2023, the OSH authority published a workplace bulletin on the topic, available at [Tyosuojelu.fi: tyosuojelu.fi/en/about-us/publications/workplace-bulletins](https://tyosuojelu.fi/en/about-us/publications/workplace-bulletins).

3. Supervision of the natural products sector

The Act on the Legal Status of Foreigners Picking Natural Products, or the so-called Berry Act, has been in force since June 2021. The Berry Act has now been within the scope of supervision for three seasons of picking natural products. The Act applies to foreigners who pick natural products in such a way that they have accommodation and meals provided by an operator in the natural product picking sector, in practice often a berry sector company. Persons within the scope of application of the Act come to Finland to pick berries under everyman's rights, and they have not generally been considered to be employed by the facilitating company. The OSH authority is not competent to supervise the earnings level of persons picking natural products who are not in an employment relationship.

In 2023, a total of 28 inspections in line with the Berry Act were carried out in the OSH Divisions of Northern Finland, Western and Inland Finland and Eastern Finland in extensive cooperation between authorities.

The number of bases reported to the OSH authority was 45, which was almost half of the number in 2022. Supervision reached a comprehensive sample of bases. Most of the pickers were from Thailand.

In practice, all inspections revealed shortcomings in compliance with the Berry Act. The most shortcomings were observed in the orientation of the pickers and the obligation to keep authorities' contact details visible at the base. In half of the inspections, the berry company was issued written advice for inadequate orientation. More than 60% resulted in written advice on the obligation

The Berry Act has now been within the scope of supervision for three seasons of picking natural products.

In practice, all inspections revealed shortcomings in compliance with the Berry Act.

to keep authorities' contact information visible. None of the inspected operators in the berry sector could fully meet the obligations under the Berry Act.

During a few inspection visits, it was found that although an advance notification by the berry operator to the OSH authority indicated that a base would be operational at the time of the inspection, the berry operator had already moved the base to another location, making it impossible to carry out supervision.

Berry bases usually employ support staff, such as cooks, car mechanics, camp leaders, bookkeepers and location scouts. In some cases, supervision also addressed the terms of employment and working conditions of the support staff, which revealed serious shortcomings.

The berry industry has been suspected of human trafficking for several years, which indicates that very serious shortcomings have been observed in the working and living conditions of berry pickers.

4. Reports to the police

Under the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006, section 50), the OSH authority is obliged to report to the police if they suspect that an employer has committed an employment offence punishable under a law supervised by the OSH authority or the Criminal Code. However, this report need not be submitted if the act can be considered minor in view of the circumstances and public interest does not require the notification to be made.

Provisions on employment offences are laid down in chapter 47 of the Criminal Code. Employment offences include discrimination at work and extortionate discrimination at work. The obligation to report also applies to human trafficking and aggravated human trafficking under the Criminal Code, when the act is related to work-related exploitation (Criminal Code 39/1889, chapter 25, sections 3 and 3a). As of 1 June 2023, the offence categories to be reported to the police include fraud and aggravated fraud as well as extortion and aggravated extortion when an employer has violated the legislation under the supervision of the OSH authority.

Under the Aliens Act (3001/2004), the OSH authority has an obligation to report to the police if there are probable grounds for suspecting the use of unauthorised foreign labour laid down in chapter 47, section 6a of the Criminal Code, a violation of the Aliens Act under section 185 of the Act or an employer's violation of Aliens Act under section 186 of the Act. However, due to an amendment to the Aliens Act that entered into force in 2023, this report need not be submitted if the act can be considered minor in view of the circumstances and if public interest does not require the notification to be made.

In 2023, the OSH authority submitted 260 reports to the police on employers who had used unauthorised foreign labour. One report could include several employees employed by the same employer. If unauthorised work was observed during a joint inspection with the police, a separate report by the OSH authority was not always necessary, and

Based on observations made on the use of foreign labour, the OSH authority made **289** reports to the police in 2023.

the police handled the cases directly on the basis of the information obtained during the inspection.

Based on the supervision findings of the use of foreign labour, the OSH authority filed 24 police reports on workplace discrimination and extortionate work discrimination and 5 reports on human trafficking. Accurate statistics on the extortion and fraud reports are not yet available.

The OSH authority is aware of many more cases of exploitation than the aforementioned numbers. Some of the cases arrive to the OSH authority when an injured party submits a report directly to the police and that report or related pre-trial investigation material is submitted to the OSH authority for an opinion or statement. In addition, some of the suspected abuses have been observed in joint enforcement with the police, in which case the police have started the pre-trial investigation directly without a separate report from the OSH authority. The aim is to further intensify cooperation between the authorities to establish this model as a national operating method.

Work discrimination as an offence requires that the grounds for discrimination and the causal link between the discriminatory act and the grounds for discrimination can be established in the case. In practice, it must be possible to demonstrate that, for example, the employer has paid the employee too low a wage due to their nationality or origin. In cases where some employees of a certain nationality are paid wages in accordance with a collective agreement and some employees of the same nationality are not, it is difficult to prove that the employer acted in a discriminatory way on the basis of the employees' nationality. In addition, discrimination at work as an offence always requires an employment relationship, it is not applicable to situations where work is performed as an entrepreneur.

5. Cooperation between authorities

Much of the supervision of the use of foreign labour is carried out in cooperation between authorities. In 2023, 527 joint inspections were carried out, compared to 460 such inspections in 2022. Most joint inspections were carried out with the police. Cooperation with the police involved both the local police departments and the national human trafficking investigation team.

Joint inspections were also carried out with authorities such as the Border Guard, the Finnish Tax Administration, Finnish Customs, the Finnish Centre for Pensions, alcohol licence inspectors of Regional State Administrative Agencies, fire inspectors and municipal health inspectors. Supervisory cooperation was also carried out within the OSH Authority, for example with inspectors enforcing contractor's obligations.

The OSH authority also engaged in active cooperation with authorities from other EU countries. In 2023, supervision efforts continued with the police as part of EMPACT, the European Multi-disciplinary Platform Against Criminal Threats. A representative of the OSH authority is a member

of a working group of the European Labour Authority (ELA), made up of representatives from Member States' OSH authorities. The working group exchanges information on good enforcement practices and develops joint inspection activities between Member States.

The supervision of the use of foreign labour makes extensive use of information from other authorities, which can be used thanks to the OSH authority's extensive right to access information. The right to access information was used during hundreds of inspections in 2023. Due to the right of access to information, the OSH authority receives information from the Tax Administration's Incomes Register and construction notifications, the obligation compliance reports of the Grey Economy Information Unit and the Register of Aliens.

All inspection reports on the use of foreign labour are submitted to the Finnish Immigration Service and the TE Office's work permit services for information so that they can be used for processing residence permits.



OSH inspectors, a health inspector and a fire inspector preparing to inspect a forest berry pickers' base in Ähtäri in autumn 2023.

6. Communications and stakeholder cooperation

The OSH authority also strives to prevent labour exploitation through communication and close stakeholder cooperation. It is important that foreign employees know the rules of work in Finland and where to get help if problems arise. The OSH authority can better identify and tackle labour exploitation if foreign employees come forward with problems they have encountered.

Communications rely on cooperation with parties who are in direct contact with foreign-language employees and jobseekers or who already have well-functioning channels for reaching them. This cooperation increased dramatically already in 2022, when the OSH authority sought to particularly reach out to people who had fled the war in Ukraine. In 2023, the cooperation expanded with better coverage of various language groups.

One of the most impactful cooperation projects was carried out with the multilingual website InfoFinland.fi. The Work and Enterprise section of the website was modified in cooperation to offer essential information on the rules of work in a way that is easy to understand. The text now particularly includes things that many foreign-language speakers struggle with, based on supervision findings. InfoFinland, available in 12 languages, reaches a significant number of foreign-language speakers who live in Finland or are planning to come here.

We also produced an increased amount of multilingual materials. We prepared the *Are you self-employed or an employee?* instructions in ten languages. The instructions include help for a light entrepreneur to reflect on whether they are actually self-employed and ask for help if necessary. For berry pickers from Thailand, we produced a guide in Thai and English titled *Wild berry picker's rights*, which was delivered to berry pickers alongside visa decisions. The guide titled *As a foreign employee in Finland* was translated into three new languages: Persian, Tagalog and Uzbek.



OSH inspectors were at the Recruit Ukraine event to inform jobseekers about the rules of work. The event was held in Helsinki in March 2023.

We also encountered foreign-language speakers living in Finland face-to-face. During the year, we participated in six different recruitment and entrepreneurship fairs. In addition, we spoke with employees and jobseekers at 11 events. At fairs and other events, we reached over a thousand people in total. One of the objectives of these encounters is to lower the threshold for asking for help from the authorities when necessary.

In the supervision of the use of foreign labour, we engage in stakeholder cooperation with authorities and the third sector. The number of stakeholder events and the time spent on these events increased significantly compared to the previous year. In 2023, for example cooperation with actors in the forest sector and the third sector increased significantly compared to the previous year. During the year, our experts took part in several events, providing information on the employee's rights, labour exploitation and the employment relationship issues of seasonal workers. Our experts are also involved in regional networks aimed at authorities and NGOs to combat human trafficking.

Cooperation between authorities was developed in a national multi-authority cooperation project launched in the OSH Administration in 2021 as part of a programme to combat grey economy and financial crime. The project concluded at the end of 2023. The project developed risk-based targeting and supervisory cooperation, with a particular focus on self-initiated information exchange, and increased cross-border cooperation with Estonia and Lithuania. Although the project has concluded, the regional cooperation forums established during the project will carry on. The cooperation forums plan risk-based supervision between various authorities.

An inspector supervising the use of foreign labour is also involved in the national cooperation network related to the EU Platform Tackling Undeclared Work. The network includes several different authorities in the fields of labour legislation, health and safety, social security and taxation. Undeclared work manifests as a violation of workers' rights, unfair competition between companies and tax revenue lost by the state. The network promotes cooperation between authorities to tackle undeclared work.

The themes of labour exploitation are often also highlighted in the media. Our experts participated in the public discourse by issuing 7 media releases and giving 21 interviews. The releases received good visibility with a total of 66 articles written in the media.

The OSH Divisions engage in effective cooperation with Victim Support Finland, which handles client cases related to labour exploitation. The OSH Divisions have also cooperated with the Fair Labour project of the Finnish Refugee Council. In 2023, the Fair Labour project organised employment information sessions in different parts of Finland together with inspectors who supervise the use of foreign labour.

The occupational safety and health authorities are involved in the Fair Labour network jointly run by 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 the 'Day of fair labour' and arranged public discussion events for politicians on labour exploitation.

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