The Employment Law Review

Eighth Edition

Editor
Erika C Collins

Law Business Research

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CONTENTS

EDITOR'S PREFACE

Every winter we survey milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. At that time, I read the Preface that I wrote for the first edition back in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. This continues to hold true today, and this eighth edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see *The Employment Law Review* grow and develop over the past seven years to satisfy the initial purpose of this text: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up-to-date reference guide.

Our first general interest chapter continues to track the variety of employment-related issues that arise during cross-border merger and acquisition transactions. After a brief decline following the global financial crisis, mergers and acquisitions remain active. This chapter, along with the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2016 in nations across the globe, and this is the topic of the second general interest chapter. In 2016, many countries in Asia and Europe, as well as North and South America, enhanced their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation as well as gender quotas and pay equity regulation to ensure that all employees, regardless of sex, sexual orientation or gender identity, among other factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where certain classes of individuals remain under-protected and under-represented in the workforce, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

The third general interest chapter focuses on another ever-increasing employment law trend in which companies revise, or consider revising, social media and mobile device management policies. Mobile devices and social media have a prominent role in and impact on both employee recruitment efforts and the interplay between an employer's interest in protecting its business and an employee's right to privacy. Because companies continue to implement 'bring your own device' programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy. 'Bring your own device' issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

Last year we introduced the fourth and newest general interest chapter, which discusses the interplay between religion and employment law. In 2016, we saw several new, interesting and impactful cases that further illustrate the widespread and constantly changing global norms and values concerning religion in the workplace. Religion has a significant status in societies throughout the world, and this chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to such beliefs. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

In addition to these four general interest chapters, this eighth edition of *The Employment Law Review* includes 48 country-specific chapters that detail the legal environment and developments of certain international jurisdictions. This edition has once again been the product of excellent collaboration. I wish to thank our publisher, in particular Gideon Roberton and Iain Wilson, for their hard work and continued support. I also wish to thank all of our contributors and my associate, Ryan Hutzler, for his invaluable efforts to bring this edition to fruition.

Erika C Collins
Proskauer Rose LLP
New York
January 2017

Chapter 18

FINLAND

JP Alho and Carola Möller[1]

I INTRODUCTION

In Finland, employment relationships are regulated by statutory law, collective bargaining agreements, employment contracts, policies and established practices.

Employment relationships are regulated by several laws in Finland. The main provisions are contained in:

a the Employment Contracts Act (55/2001, as amended) including provisions on the employment agreement, terms of employment and termination of employment;
b the Working Hours Act (605/1996, as amended);
c the Annual Holidays Act (162/2005, as amended); and
d the Act on Co-operation within Undertakings (334/2007, as amended).

Additionally, there are several other acts regarding employment relationships.

Collective bargaining agreements play a significant role in the Finnish labour market regulation, as 85 per cent of employees in the private sector are covered by collective bargaining agreements. If the employer is a member of an employers' organisation, it is bound to the collective bargaining agreement concluded by the employers' organisation of which it is a member.

In addition to the above, employers that are not bound by any collective bargaining agreements may have an obligation to comply with the minimum terms of a collective bargaining agreement that has been declared as 'generally binding' in the relevant field of business (approximately 180 generally binding collective bargaining agreements existed in 2016). Thus, certain terms and conditions of employment may arise from a collective bargaining agreement simply because the employer conducts business in a specific field of business.

1 JP Alho and Carola Möller are partners at Krogerus.

Employment disputes are generally heard by local district courts as first instance. The Labour Court hears and resolves disputes arising from the interpretation of collective bargaining agreements and collective bargaining agreement-related industrial actions.

II YEAR IN REVIEW

i New Occupational Accident Act

A new Occupational Accident Act entered into force on 1 January 2016. The main purpose of the new Act is to meet the changed requirements of working life and to clarify the requirements for covering occupational accidents and diseases.

ii Changes in the Act on Job Alternation Leave

The amended Act on Job Alternation Leave came into force on 1 January 2016. Based on the amendments, the employee is required to have an employment period of at least 20 years (previously 16 years) to be entitled to job alternation leave and the maximum duration of the job alternation leave was reduced to 180 calendar days (previously 360 calendar days).

In addition, the amount of the job alternation allowance was amended so that the full amount of the allowance for all employees is currently 70 per cent of the unemployment allowance they would be entitled to if they were unemployed (previously, employees with long work careers were entitled to higher job alternation allowance). Additionally, it is not possible to divide the job alternation leave into periods anymore.

iii Changes in the Annual Holidays Act

The new amended Act on Annual Holidays came into force on 1 April 2016. Following the amendment, annual holiday now accumulates up to 156 days (i.e., six months) during a family leave. Previously annual holiday accumulated during the entire family leave. The aim of the amendment is to reduce public costs relating to family leaves.

Additionally, an employee's right to postpone his or her annual holiday because of his or her incapacity for work has been restricted. The employee is entitled to postpone holiday days that exceed six holiday days if the employee has become incapacitated for work as a result of childbirth, illness or accident during his or her annual holiday. The restriction applies only to annual holiday exceeding 24 holiday days in a holiday year, i.e., the full six days is only applied to cases where the employee has at least 30 days of holidays in the holiday year.

iv Retirement age

New legislation on retirement schemes came into force on 1 January 2017.

Under the amended Act, the general lowest retirement age is gradually increased from the current age of 63 to 65. The retirement age of employees who were born in or after 1965 is adjusted to the change in life expectancy.

v New Act on Posted Workers

The new Act on Posted Workers came into force on 18 June 2016. In general, no significant changes were made to the minimum terms of employment to be applied to the employees posted in Finland. These provisions were, for the most part, transferred to the new Act

as such. The scope of application of the new Act was, however, amended to cover public subcontracting. Additionally, criminal liability for violating the obligations deriving from the Act was replaced by administrative supervision and sanctions.

vi Finnish Competitiveness Pact was concluded

The Finnish labour market stakeholders signed the Competitiveness Pact on 14 June 2016. The main aim of the Pact was to improve Finnish business competitiveness.

The Competitiveness Pact led to legislative changes concerning several employment-related laws. These legislative changes included, for example, amendments to the Employment Contracts Act by which the employee costs were reduced and which, in fact, led to the weakening of the position of the employees. These amendments to the Employment Contracts Act included, for example:

a extending the maximum length of the trial period from four months to six months;

b entitling the employer to extend the trial period, if the employee has been absent from work during the trial period as a result of incapacity for work or family leave;

c shortening the rehire obligation from nine months to four months (however, if the employment relationship has lasted for 12 years, the rehire period is six months); and

d obligating an employer employing at least 30 employees to arrange for employees made redundant on financial and production-related grounds (1) re-employment training and (2) occupational healthcare for a period of six months as of the date on which the employee's obligation to work has ended (these obligations apply to employees whose employment contract has lasted at least five years at the time of the termination of the employee's employment contract).

III SIGNIFICANT CASES

i The employer ought to observe the generally binding collective bargaining agreement applicable to individual employment relationship despite the field of business of the employer (the Supreme Court KKO 2016:18).

The employee had been working as a reporter in a student union's magazine. During the course of the employee's employment relationship, the student union was not bound by any collective bargaining agreement. The employee claimed more salary and holiday pay because she should have been entitled to higher salary pursuant to the generally binding collective bargaining agreement for the media industry on the grounds of her occupation and duties. The student union opposed the claim since the generally binding collective agreement the employee referred to was not applicable to the employer's business operations.

The Supreme Court ruled, contrary to the opinion of the Labour Court, that the student union was obliged to observe the generally binding collective agreement for the media industry to the employee's employment because the employee's duties commissioned by the student union fell within the scope of application of the collective bargaining agreement in question.

This case may result in significant changes regarding employers not bound by any collective bargaining agreement.

IV BASICS OF ENTERING AN EMPLOYMENT RELATIONSHIP

i Employment relationship

Finnish law does not include rules on the form of an employment agreement. Therefore, written and oral employment agreements are equally valid. However, a simple written employment agreement is the most typical form, as it may be otherwise difficult to prove what has been agreed upon.

The employer must provide the employee with written information on the essential terms of employment within the first month of employment, if these are not included in a written employment agreement.

An employment agreement is deemed to be valid indefinitely unless it has, for a justified reason, been made for a specific fixed term. Agreements made for a fixed term on the employer's initiative without a justified reason shall be considered valid indefinitely. However, it is possible to make a fixed-term employment contract with a long-term unemployed without a justified reason for a maximum period of one year. It is prohibited to use consecutive fixed-term agreements when the amount or total duration of fixed-term agreements or the totality of such agreements indicates a permanent need for labour.

ii Probationary periods

Pursuant to the Employment Contracts Act, the employer and the employee may agree on a probationary period of six months at most. The employer is entitled to extend the trial period, if the employee has been absent from work during the trial period as a result of incapacity for work or family leave. During the probationary period, the employment may be terminated with immediate effect by either party.

If the employment contract is made for a fixed term of less than 12 months, the probationary period may not exceed 50 per cent of the duration of the employment. If the fixed-term employment lasts longer than a year, the probationary period may be six months at maximum.

iii Establishing a presence

A foreign company can hire employees directly without having to set up a branch office or subsidiary company in Finland. However, when business is carried out permanently and when there are employees in Finland, it may be practical to operate through a local company or a branch.

If a foreign company pays out wages or salaries regularly, the company has to register itself as an employer with the tax authorities. If a foreign company has a permanent establishment, it must also register a branch with the Finnish Trade Register. A permanent establishment could be constituted, for example, if the company has a fixed place of business through which the business is wholly or partly carried out, or if a dependent agent (such as an employee) is acting on behalf of the company and has, and habitually exercises, an authority to conclude contracts in the name of the company, unless the activities in question are only preparatory or auxiliary.

When a foreign company is registered as an employer, it will have all the same obligations as Finnish companies (e.g., it must withhold tax on paid wages, pay the employers' social security contribution and file periodic tax returns and annual employer payroll reports). A foreign employer must also take out pension insurance, accident insurance and unemployment insurance for its employees.

V RESTRICTIVE COVENANTS

The employee is prohibited by law from engaging in competing activity causing apparent harm to the employer, such as working for a competing company during the employment relationship.

The employer and the employee may also agree on non-competition restrictions. A non-competition restriction may be valid for up to six months after the termination of the employment. If the employee receives reasonable compensation for the non-competition restriction during the employment or thereafter, the covenant may be agreed to be valid for up to one year after the termination.

Instead of liability for damages, a clause on liquidated damages may be included in a non-competition agreement, but it may not exceed the employee's salary for six months.

Limitations regarding the length of the non-competition restriction and the amount of the liquidated damages do not apply to employees in executive or independent positions directly comparable to executive positions. In such case, the non-competition restriction may be valid for a reasonable time and is null and void to the extent considered unreasonable.

There are no statutory rules regarding other post-employment restrictions such as non-solicitation of customers or employees. Therefore, the use of a non-solicitation clause is less strict than the use of a non-competition restriction. The use of a non-solicitation clause is limited only by what is considered reasonable.

VI WAGES

i Working time

According to the Working Hours Act, the normal maximum regular working hours are eight hours per day and 40 hours per week. However, according to most collective agreements, 7.5 hours per day and 37.5 hours per week are normal working hours.

Work that is carried out between 11pm and 6am is considered night work. According to the Working Hours Act, night work is allowed only in certain specifically mentioned tasks (e.g., period-based or shift work).

ii Overtime

Work that is done on the employer's initiative in excess of eight hours per day and 40 hours per week is normally considered overtime work. Overtime must be compensated based on the actual working hours put in by the employee. Overtime work is compensated with the applicable hourly wage increased by 50 per cent (for the first two hours and weekly overtime), or 100 per cent depending (for the hours exceeding 10 hours) on the actual overtime hours. With certain manager-level employees, it is possible to agree on monthly lump sum compensation for overtime. The employer and employee may agree that overtime is compensated partly or completely by corresponding free time during regular working hours.

Employees in executive positions and employees working remotely, for example, from home without the employer supervising or participating in the arrangements of working hours, fall outside the scope of application of the Act and are not entitled to overtime compensation, unless otherwise agreed.

VII FOREIGN WORKERS

Primarily, employers may employ foreign employees without limitations. In general, Finnish labour laws apply to foreign workers, but there may be exceptions relating to employments with international aspects. The employer has to withhold tax on paid wages and pay insurance contributions and social security contributions unless an employee has a certificate showing that he or she is covered by another country's social insurance system.

Citizens of the European Union (EU), Norway, Iceland, Switzerland and Liechtenstein can work in Finland without a residence permit. Citizens of other than the aforementioned countries usually need a residence permit based on employment in order to work in Finland.

Working in Finland with a permit granted by another country is usually not allowed, especially if the duration of the employment is longer than 90 days. In some cases, it is sufficient if an employee has a residence permit or a visa granted by another Schengen country or if the person is allowed to reside in Finland without a visa. Situations when an employee is allowed to work in Finland without a residence permit with or without limitations are covered by the Aliens Act (301/2004, as amended). Provisions on the minimum terms and working conditions of employees posted to Finland are laid down in the Posted Workers Act (447/2016).

VIII GLOBAL POLICIES

Terms of employment may also derive from policies implemented by the employer, provided that such policies are in compliance with the law. There are no specific rules governing internal company policies. Thus, establishing such policies is generally voluntary, but it is recommended that such policies are made in writing.

It is also recommended that the employer reserves the right to amend any policies it has adopted at its own discretion. If the policies are amended, the employees need to be duly informed about the change in order for the change to be binding on the employees.

Additionally, in order for such polices to be binding on the employees, the employer has an obligation to follow the employees' compliance of such policies and react to any non-compliance. If the employer does not take any action in the case of a breach of a policy by an employee, the employer may have difficulties in imposing any negative sanctions based on that policy.

Certain practice followed by the employer may also constitute binding terms of employment. This often applies to certain benefits granted by the employer. The practices may become binding if these have been continuously applied for a lengthy period.

Moreover, there are a few policies that are statutory, such as policies regarding equality plans and personnel plans in order to support equal opportunities between men and women, as well as to support the employees' skills and working capacity. Such statutory policies must typically be discussed with the personnel or their representatives on a regular basis as part of the co-operation with employees.

IX TRANSLATION

There are no rules regarding the language of the employment agreement or other employment-related documents. If the duties of the employee require, for example, English skills or it is otherwise clear that the employee understands English, the agreement and other

instructions and policies can be in English. However, in order to avoid further disputes, it is important to prepare the employment documents in a language the employee fully understands. The employment agreement or parts of it may be declared not to bind the employee if the employee claims that he or she has not understood the meaning of such agreement or policy.

X EMPLOYEE REPRESENTATION

The personnel groups may be represented by shop stewards, elected representatives or cooperation representatives. The most typical form of employee representation is a shop steward referred to in collective bargaining agreements applicable to the employer under the Collective Agreements Act (436/1946) or, in case the employees do not have a shop steward representing them, an elected representative based on the Employment Contracts Act.

In general, each personnel group may separately elect among itself a shop steward. Only the employees who are members of an employee organisation that has entered into the collective bargaining agreement may participate in the election of the shop steward. The shop steward is elected for a fixed term, typically for a term of two years.

A personnel group that does not have a shop steward may elect a representative. The election of the employee representative is not regulated, and thus the employees may, for example, freely decide the date of the election and the candidates.

The shop stewards and elected representatives are entitled to receive the information they need to carry out their representative duties. In addition, they must be reasonably released from work obligations in order to take care of the representative duties. The employer must compensate for any loss of earnings caused thereby.

Shop stewards and elected representatives have special protection against dismissals. Their employment can be terminated on individual grounds only if the majority of the employees represented by them accept the termination. Moreover, in cases of collective dismissals, reorganisation procedures or bankruptcy, the employment can be terminated only if the work of the shop steward or elected representative ceases completely and the employer is unable either to arrange work that corresponds to the person's professional skills or is otherwise suitable, or to train the person for some other work.

If a majority of any personnel group is not entitled to participate in the election of a shop steward, the employees belonging to such majority are entitled to elect, on a majority decision, a cooperation representative from among themselves for a maximum of two years at a time to represent them in cooperation procedures.

Moreover, in order to ensure the health and safety at work, the employees in every workplace with at least 10 employees should elect among themselves an occupational safety and health representative and two deputy members to represent the employees in matters regarding the safety of the workplace. The occupational safety and health representative is entitled to be released from work obligations as well as receive the essential information for carrying out the industrial safety duties and enjoys the same special protection against dismissal as shop stewards and elected representatives.

The Act on Personnel Representation in the Administration of Undertakings (725/90, as amended) is applicable to companies that regularly employ at least 150 employees in Finland. Pursuant to the Act, an employer and the representatives of the employees can agree on personnel representation in order to promote the personnel's participation in

decision-making in executive, supervisory or advisory bodies of the undertaking. However, in case no agreement can be reached, the personnel can appoint their representatives to the Supervisory Board or other comparable body chosen by the employer.

Moreover, according to the Act on Cooperation within Finnish and Community-wide Groups of Undertakings (335/2007), cooperation procedures between management and personnel must be established in Finnish company groups ensuring the dialogue of company management and employees. The parties may agree on the election procedure and the number of representatives.

XI DATA PROTECTION

i Requirements for registration

According to the Act on Protection of Privacy on Working Life (759/2004, as amended), the employer is allowed to process only necessary personal information relating directly to the employee's work. Primarily, the employer must collect information concerning the employee from the employee himself or herself.

Under the Personal Data Act (523/1999, as amended), the employer is allowed to process the personal data regarding its employees without registering with the data protection agency. Primarily, the data controller has an obligation to notify the Data Protection Ombudsman of any automated data processing. The notification obligation does not, however, exist if the data is processed on grounds that are exempt from the notification obligation in accordance with the Act (such as processing employee data within the employer company or the same group of companies).

The data controller is always required to take appropriate measures to protect personal data by carrying out any technical and organisational measures necessary for protecting personal data against unauthorised access and unlawful processing, as well as any accidental or unlawful disposal, manipulation, disclosure or transfer. The adequate measures and techniques of protection must be defined by taking into account the costs, quality, quantity and age of the data.

ii Cross-border data transfers

The provisions of the data protection legislation must be complied with when transferring any personal data. The same rules apply to a transfer of personal data in Finland and within the EU and the European Economic Area (EEA).

If personal data is transferred outside the EU or the EEA, it should be ensured that the country to which the data is transferred guarantees an adequate level of data protection. In general, the transfer of personal data requires a notification to the Finnish Data Ombudsman if adequate data protection is not guaranteed by any measures listed in the Personal Data Act. The notification obligation does not, however, exist if the data is processed on grounds that are exempt from the notification obligation as laid down in the Act.

iii Sensitive data

Personal data is deemed sensitive when it relates to the following:

a race or ethnic origin;
b the social, political or religious affiliation or trade-union membership of a person;
c a criminal act, punishment or other criminal sanction;

d the state of health, illness or handicap of a person or the treatment or other comparable measures directed at the person;
e the sexual preferences or sex life of a person; or
f the social welfare needs of a person or the social welfare assistance received by the person.

The processing of sensitive data is prohibited, unless specifically allowed by law.

iv Background checks

The employer's right to conduct background checks is somewhat limited and the employee's consent is, in general, required when information is gathered from someone other than the employee, which applies also to situations when looking to recruit a new employee. The term 'background check' leaves open what the employee is giving consent to.

The use of personal data regarding credit information, health and drug use is strictly regulated by law. The employer is only allowed to process personal data directly necessary for the employee's employment relationship. No exceptions can be made to the necessity requirement, even with the employee's consent.

Consent is not required when an authority discloses information to the employer to enable the employer to fulfil a statutory duty or when the employer acquires personal credit data or information on criminal records in order to establish the employee's reliability. However, the employer's right to collect such data is strictly restricted by law and information on criminal records can only be obtained under exceptional circumstances. However, the employer must notify the employee in advance that such data is to be collected.

XII DISCONTINUING EMPLOYMENT

i Dismissal

In Finland, the termination of an employment relationship requires a proper and weighty reason. Employment may be terminated with notice for reasons attributable to the employee such as serious breach or neglect of obligations arising from the employment contract or the law and having an essential impact on the employment relationship. Employment may also be terminated when essential changes to working conditions are necessary that render the employee unnecessary or redundant. The employer's and the employee's overall circumstances must be taken into account when assessing the proper and weighty nature of the reason.

Dismissal with grounds attributable to the employee requires a prior written warning, unless the reason for termination is such a serious breach of the employee's obligations that it would be unreasonable to require the employer to continue the employment relationship.

However, according to the Employment Contracts Act, at least the following cannot be regarded as proper and weighty reasons for dismissal:

a illness, disability or accident affecting the employee, unless working capacity is substantially reduced thereby for such a long term as to render it unreasonable to require that the employer continue the contractual relationship;
b participation of the employee in industrial action arranged by an employee union or in accordance with the Collective Agreements Act;
c the employee's political, religious or other opinions or participation in social activity or associations; and
d resort to means of legal protection available to employees.

Employment may be terminated by the employer with immediate effect only due to an extremely serious breach of the employee's obligations.

Prior to terminating the employment on individual grounds, the employee must be given an opportunity to be heard on the grounds for termination.

The employer is not required to pay any severance pay in connection with termination, provided that lawful reasons for termination exist. However, the employer must pay the employee his or her salary for the notice period and compensation for accrued holidays as well as any unpaid commission or bonus.

The parties may always enter into a settlement agreement regarding the termination of the employment. There is no specific law governing settlement agreements. The parties may agree on the content of the agreement as long as the content complies with general rules and principles.

If the termination is deemed unlawful by a court, the employer will be ordered to pay compensation to the employee. The amount of the compensation could be up to 24 months' total salary of the employee, depending on an overall assessment of the circumstances.

Finnish employment law does not recognise the concept of 'void or invalid dismissal'. Hence, even if a termination of employment is considered unlawful and the employer could then be ordered to pay compensation to the dismissed employee, the termination will remain in force.

ii Redundancies

Under the Employment Contracts Act, the employment may be terminated by the employer due to substantial and permanent reduction in the work to be offered either for:

a financial or production-related reasons; or

b reasons arising from reorganisation of the employer's operations.

However, an employee may not be made redundant if the employee can be placed in, or trained for, other duties. This obligation to offer work covers all the employer's operations, departments and offices and is extended to subsidiaries and other entities if the employer exercises effective control over personnel matters in such entities.

In addition, grounds for termination are deemed not to exist if a new employee has been hired either before or after the termination for similar duties without any real change in the employer's operating conditions or if no actual reduction in work has occurred due to the reorganisation. If the employer needs new employees for the same or similar work within four months of the termination, the employer has an obligation to offer re-employment to employees who have been made redundant and are registered at an unemployment office. However, if the employment relationship has lasted for 12 years, the rehire period is six months.

Additionally, an employer employing at least 30 employees is obliged to offer employees made redundant on financial and production-related grounds re-employment training. The employer also has an obligation to arrange occupational healthcare for employees made redundant on financial and production-related grounds for a period of six months after the employee has been released from duties. These obligations apply to employees whose employment contract has lasted at least five years at the time of the termination of the employee's employment contract.

If the employer employs permanently more than 20 employees, it is required to enter into cooperation negotiations under the Act on Cooperation within Undertakings with its

employees or their representatives when planning measures that may lead to redundancies. The purpose of the negotiations is to discuss the grounds for the planned measures, to explain how the measures affect the employees, to find possible alternatives to terminations and to inform the employees of their rights to certain unemployment benefits and to support in job seeking provided by the public employment offices.

The negotiation procedure takes approximately three to seven weeks depending on the number of employees concerned by the planned redundancies and the size of the employer. The negotiation procedure is rather formal and should be documented carefully in order to avoid later disputes. It is important that no final decisions about redundancies or any such measures that may lead to redundancies are made prior to the fulfilment of the negotiation obligation.

If the employer has failed to comply with the obligations under the Act on Cooperation within Undertakings, each employee who has been made redundant, or laid off, or whose employment has been reduced to part-time, may be entitled to an indemnity amounting to a maximum of €34,519.

XIII TRANSFER OF BUSINESS

As a member of the EU, Finland is required to comply with the Council Directive 2001/23/EC (on the approximation of the laws of the Member States relating to safeguarding employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses) and observe the rulings of the European Court of Justice regarding the interpretation of the directive. The minimum standards of the Directive have been implemented into the Employment Contracts Act.

Under the Employment Contracts Act, all employees within the business being transferred will automatically transfer to the new owner at the date of the transfer of business.

The legal consequences of a transfer of business are often summarised by stating that 'employees will transfer to the service of the transferee as old employees with existing terms of employment'. Thus, all the rights and obligations deriving from the existing employment agreements are transferred to the transferee by virtue of law and no consent is required from the transferring employees. The employees may not object to the transfer of business. However, a transferring employee has a specific right to terminate the employment as from the transfer date regardless of any applicable notice periods.

The employer is not entitled to terminate the employment contract or unilaterally change the terms of employment due to the transfer of business without legal termination grounds. If the terms of employment are unilaterally changed to the detriment of an employee as a result of the transfer of business and the employee terminates the employment due to this, the employer is considered to be responsible for the termination of employment.

The Act on Cooperation within Undertakings includes an information obligation for the transferor and the transferee in connection with a transfer of business. The Act is applicable if the employer regularly employs at least 20 employees. Both the transferor and the transferee have an obligation to inform the representatives of the employees on the transfer date or the planned transfer date, including grounds for the transfer, the legal, economic and social consequences of the transfer and planned measures that concern the employees.

If either the transferor or the transferee in connection with the transfer of business considers measures that may lead to termination of employments or significant changes to the terms of employment on financial, production related or reorganisational grounds,

cooperation negotiations concerning the reduction of personnel must be carried out prior to making any decision on the matter. In such situation, the above mentioned information obligation is not sufficient. The negotiations regarding reduction of personnel are more formal with strict requirements on minimum negotiation periods and issues to be discussed during the negotiations.

XIV OUTLOOK

The Finnish employment environment has faced some changes that have aimed to improve Finnish business competitiveness. Labour market stakeholders have been implementing the Competitiveness Pact by negotiating collective bargaining agreements. Additionally, certain legislative changes in employment-related legislation came into force in January 2017.

Appendix 1

ABOUT THE AUTHORS

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JP Alho has in-depth experience in advising clients in dispute resolution, arbitration, labour law, including employment disputes, insolvency law and commercial law assignments. He also represents clients in matters related to the protection of privacy and information security. Mr Alho acts as an adviser for the board of directors of several companies. He also lectures on contract law and labour law issues.

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Carola Möller focuses on employment law and dispute resolution. She regularly advises clients on all aspects of employment law, including day-to-day advice, employment and executive agreements, as well as terminations and reorganisations. She also assists clients in matters related to data protection and privacy issues with a particular focus on human resources data and employment issues. She also represents clients before general courts and arbitration tribunals, especially in employment-related matters. She serves as the co-head of the firm's employment and benefits practice.

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