IMPACT OF ELECTRONICS ON LABOR LAW IN FINLAND

Antti Suviranta†

I. TELEWORKING

A. Teleworking (Home Work) as Work in Employment

According to the guidelines for this comparative study, "teleworking" is intended to describe working part or all of the time at the worker's home. Moreover, those engaged in teleworking are described as generally making "extensive use of electronic media to perform their jobs." However, the origin and even the present scope of the rules of Finnish labor law pertaining to work at the employee's home have very little, if any, connection with the use of electronic media.

As early as the Act on Eight Hours' Working Time of 1917, legislation addressed the issue of home work, although in a "negative" sense, since it prohibited employers from prolonging the statutory working time of employees who came within the scope of the statute (i.e., blue-collar employees in factories, construction work, hotels, restaurants, transportation, etc.) by giving them work to perform at home.[1] In 1922, a comprehensive Employment Contracts Act was enacted that replaced several statutes and ordinances pertaining to different branches of economy and life. In this Act, the employment contract was defined to be a contract by which one of the parties, the employee, undertakes to perform work, for remuneration, to the other party, the employer, under the latter's direction and supervision.[2] In 1930, a treatise contended that because the Employment Contracts Act defined employment contracts to pertain

† President (Retired), Supreme Administrative Court of Finland.

1. Act on Eight Hours' Working Time, § 9 (1917) (Fin.).

2. *See* Act Respecting Contracts of Work (1922) (Fin.) [hereinafter Employment Contracts Act]; SUOMEN ASETUSKOKOELMA–FINLANDS FÖRFATTNINGSSAMLING 559 (No. 141) § 1 [hereinafter ASK]; *see* ILO LEGISLATIVE SERIES, Fin. 1 (1922) (English Translation) [hereinafter L.S.]; Antti Suviranta, *Finland, in* INTERNATIONAL ENCYCLOPAEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS ¶ 20 (Blanpain ed., 1999).

to work under the direction and supervision of the employer, home work remained outside the scope of the Act.[3]

Also in 1930, a new Occupational Safety Act was enacted. Work at the employee's home was expressly excluded from the scope of the Act. Also excluded was work otherwise carried out in such circumstances that the employer could not be expected to supervise the organization of the work.[4]

Meanwhile, the Workers' Accident Insurance Acts, 1925 and 1935, had been defined (in almost the same language as the Employment Contracts Act, 1922) to apply to every person who had undertaken to perform work, for remuneration, to the other party, under the latter's direction and supervision.[5] There were certain exceptions, but home work was not among the exceptions, nor was there any other reference to home work in the Acts.

In the judicial practice concerning compensation for employment injuries, home work had, however, gradually begun to be regarded as having been performed in the course of employment if certain conditions were satisfied, for instance that work was performed for one "customer" only and that the working materials were provided by the customer. The legal cases of this kind mainly concerned handicraft work, such as knitting and sewing (by hand or machine) and making lampshades and portable fish traps, as well as copying (by hand or typewriter) court documents, authors' manuscripts, etc.[6]

Thus, we are confronted with the distinction between employees and independent contractors that was recently amply treated in an international comparative survey and study published in the *Comparative Labor Law & Policy Journal*.[7] Professor Arvo Sipilä, who, in Finland, first developed a theoretical framework for the discipline of labor law, defined labor law as the branch of law relating to the employment relationship (i.e., the legal relationship between an employer and an employee, as defined in section 1 of the Employment Contracts Act, 1922)[8] or, within the purposes of this relationship, to its parties. Considering, however, that the provisions on the scope of various labor law statutes had been worded and applied differently,

3. *See* T.M. Kivimäki, *Työsopimuslain 1 §*, 11 DEFENSOR LEGIS 165 (1930).

4. Occupational Safety Act, § 1 (1930) (Fin.).

5. Workers' Accident Insurance Act, § 1 (1925) (Fin.); Workers' Accident Insurance Act, § 1 (1935) (Fin.).

6. *See*, *e.g.*, RAIMO PEKKANEN, SEKATYYPPINEN TYÖSOPIMUS 227, 232 (1966); TYÖSOPIMUSLAKIKOMITEAN MIETINTÖ 29 (1970).

7. *Employed or Self-Employed?: The Role and Content of the Legal Distinction*, 21 COMP. LAB. L. & POL'Y J. 1 (1999).

8. *See supra* note 2.

Professor Sipilä acknowledged that the intensity of "direction and supervision" that was required for the applicability of the various statutes might differ from one statute to another.[9]

In the further development of labor law, provisions defining the scopes of new enactments were drafted according to two main alternatives. Some statutes were defined to cover "employees in an employment relationship to an employer," thereby incorporating the definition of the scope of the Employment Contracts Act, 1922. In some other statutes, the incorporation was effected by borrowing the terms used in section 1 of the Employment Contracts Act, 1922, like earlier in the Workers' Accident Insurance Acts, 1925 and 1935. The first method was used, for example, in the first special statute on paid annual vacations, the Employees' Annual Holidays Act, 1939, and in its successors of 1946 and 1960.[10] (The Employees' Annual Holidays Act, 1939, replaced the sparse provisions on paid annual vacations in the Employment Contracts Act, 1922.) The second method was again used in the Hours of Work Act, 1946, and also in the renewed statutes, the (Employees') Accident Insurance Act, 1948, and the Occupational Safety Act, 1958.[11]

The Employees' Annual Holidays Acts, 1939, 1946, and 1960 included provisions on the holiday to be given or holiday compensation to be paid to employees working (for one employer) at home. The Acts thus presupposed that such employees were, at least in some instances, included under the definition of the scope of the Act.[12] On the other hand, home work was expressly excluded from the scope of the Hours of Work Act, 1946. (Such an exclusion would have been unnecessary in the predecessor of the Hours of Work Act, 1946, the Act on Eight Hours' Working Time, 1917,[13] which was only applicable in undertakings and institutions expressly enumerated in the Act.) The 1946 Act, however, also retained the prohibition from 1917 against prolonging the statutory working time by giving the employees work to perform at home. The exclusion of home work and certain comparable work from the scope of the Occupational Safety Act, 1930, was retained in the successor statute, the

9. *See* ARVO SIPILÄ, SUOMEN TYÖOIKEUDEN KÄSITE JA JÄRJESTELMÄ 144 (1938); JAANA PAANETOJA, TYÖLAINSÄÄDÄNNÖN SOVELTAMISALASTA 141 (1993).

10. Employees' Annual Holidays Act, § 1 (1939) (Fin.) (renewed 1946, 1960).

11. Act Respecting Hours of Work, § 1 (1946) (Fin.) [hereinafter Hours of Work Act]; Act Respecting Accident Insurance, § 1 (1948) (Fin.) [hereinafter Accident Insurance Act]; Act Respecting the Protection of Labour, § 1 (1958) (Fin.) [hereinafter Occupational Safety Act].

12. *See* Employees' Annual Holidays Act, § 11 (1939); Employees' Annual Holidays Act, § 11 (1946); Employees' Annual Holidays Act, § 13 (1960).

13. Act on Eight Hours' Working Time, § 1 (1917) (Fin.).

Occupational Safety Act, 1958. This Act included, however, a prohibition against delivering materials to home workers that, when used in the required manner, might involve a special danger of accident or a risk to health, and this prohibition was expressly declared applicable in spite of the exclusion of home workers from the scope of the Act.[14]

As a consequence of the practice of defining the scopes of labor law statutes in a unified manner, the opinion regarding the varying intensity of the required degree of "direction and subordination" for employment gradually vanished. In the Act on the Conditions of Employment in Commercial Establishments and in Offices, 1946, "employee" was defined to mean "any person who performs work under the direction and supervision of another in an undertaking covered by this Act."[15] The legislative materials show clearly that the "direction and supervision" required by the definition was intended to be fairly immediate. This intention of the drafters was, however, gradually abandoned in favor of the unitary approach to the scope of labor law statutes.[16]

When later statutes applicable to employment relationships were adopted without any exclusion of home work and comparable situations, they were interpreted in a manner that was consistent with the earlier judicial practice pertaining to employment injuries.[17] Of special significance was the application of this implied inclusion of at-home workers respecting the scope of statutes on paid annual leave and, later, employment pensions. On the other hand, statutes on hours of work, and other enactments that expressly exclude home work and other categories of work from their scope, resulted in judicial decisions interpreting the extent of such exclusions.[18]

As a consequence of this development, the references to section 1 of the Employment Contracts Act, 1922, were even abridged in defining the scope of subsequent new legislation (not replacing any earlier enactments). This was notably the case when the scope of the

14. Hours of Work Act, § 1; Hours of Work Act, § 10; Occupational Safety Act, § 3; Occupational Safety Act, § 39.

15. Act Respecting Conditions of Employment in Commercial Establishments and in Offices, § 2 (1946) (Fin.).

16. *See* Antti Suviranta, Book review, *Kirjallisuutta*, 77 LAKIMIES 590 (1979) (reviewing MARTTI KAIRINEN, PERUSSUHDETEORIASTA TYÖOIKEUDEN YLEISTEN OPPIEN OSANA (1979)). *Cf.*, MARTTI KAIRINEN, PERUSSUHDETEORIASTA TYÖOIKEUDEN YLEISTEN OPPIEN OSANA *passim.* (1979); Kairinen, *Työoikeuden perusteita*, *in* TYÖOIKEUS 33 (Kairinen ed., 2002).

17. *See supra* note 6.

18. *See* KARI-PEKKA TIITINEN ET AL., TYÖAIKALAKI 54 (1996); HARRI RAUTIAINEN & KEIJO ÄIMÄLÄ, TYÖAIKALAKI 34 (1996); HANNU HIETALA & MARKUS KAIVANTO, UUSI TYÖAIKALAKI 36 (1996).

Employees' Pensions Act, 1961, was defined simply by stating that employers are obliged to organize and finance the pension security of their employees as provided in the Act.[19] It was taken for granted that the terms "employer" and "employee" were to be understood according to the accustomed labor law practice.

As far as home and comparable work is concerned, the development took a different turn when a new Employment Contracts Act was enacted in 1970. In this Act, the definition of the employment contract contained express provisions on home work and machine assisted work: "The right to direct and supervise the work under section 1 above shall not be deemed to be precluded on the mere grounds that the work is to be carried out at the worker's home or another place of his own choice"; and "Where a worker makes use of machines or other working implements he owns or possesses in carrying out his work, the mere fact that the share of such implements in effecting the total operation is greater than the worker's personal effort shall not preclude the contract from being considered a contract of employment."[20] These provisions were retained in a condensed form in the successor statute, the present Employment Contracts Act, 2001: "The application of this Act shall not be precluded by the mere fact that the work is carried out at the employee's home or a place of his own choice nor by the fact that the work is effected with the employee's working implements or machines."[21]

After the enactment of the Employment Contracts Act, 1970, the unitary course of application of labor law was, in some renewed statutes, achieved by means of an express reference to section 1 of that Act. In connection with the enactment of the Employment Contracts Act, 2001, it was then, however, necessary to amend these references to apply to this Act. No amendments of this kind were, on the other hand, needed in regard to labor law statutes adopted before the Employment Contracts Act, 1970. In the new Occupational Safety Act, 2002, the pre-1970 method of defining the scope of the Act

19. Workers' Pensions Act 1961, § 1 (1961) (Fin.).

20. Act Respecting Contracts of Employment, §§ 11-12 (1970) (Fin.) [hereinafter Employment Contracts Act, 1970]. *See* KAIRINEN, TYÖOIKEUS PERUSTEINEEN 69 (8th ed. 1998).

21. Employment Contracts Act, ch. 1, § 1 (2001) (Fin.) [hereinafter simply Employment Contracts Act]. *See* TAPANI KAHRI ET AL., TYÖSOPIMUSLAKI KÄYTÄNNÖSSÄ 42 (2001); HANNU RAUTIAINEN & MARKUS ÄIMÄLÄ, UUSI TYÖSOPIMUSLAKI 15 (2001); KARI-PEKKA TIITINEN & TARJA KRÖGER, TYÖSOPIMUSLAKI 2001, 14 (2002).

was retained from the predecessor statute, the Occupational Safety Act, 1958.[22]

B. Extent of Home Work

According to surveys conducted in the mid-90's, 8% of the labor force worked exclusively at home, and 6% worked partially at home. Of these home workers, about one-third were considered to be employees, and two-thirds were independent contractors. As reported above, the legal practice established by mid-century was that home work may be considered work in employment when related mainly to handicrafts, typewriting, and similar occupations.[23] Home work in employment still exists in these occupations. In the changed socio-political situation at the turn of the new century, a clear majority of employees working at home consists, however, of family day nurses, i.e. persons (mostly housewives, numbering about 25,000) who, in their own homes, give daytime care to other people's children (often together with their own children) and are, as a rule, remunerated by the local municipality.[24] The number of home workers making extensive use of electronic media to perform their jobs is, in comparison, fairly modest.[25]

C. Doing Part of Work as a Teleworker

The prohibition in the Act on Eight Hours' Working Time, 1917, and in the Hours of Work Act, 1946,[26] to prolong the statutory working time of employees by giving them work to perform at home, was not retained in the Hours of Work Act, 1996.[27] According to the preparatory materials, no change in the legal situation was, however, intended. This result is derived from the provisions in the Hours of Work Act on the limits of overtime: if an employee is within the

22. Annual Vactions Act, § 1 (1973) (Fin.) (amended 2001); Hours of Work Act, § 1 (1996) (Fin.) (amended 2001); Accident Insurance Act, § 1 (1948) (Fin.); Occupational Safety Act, § 1 (1958); Occupational Safety Act, 2002, (2002 SUOMEN SÄÄDÖSKOKOELMA-FINLANDS FÖRFATTNINGSSAMLING [hereinafter SÄÄK] 3695, No. 738), § 2; Employees' Pensions Act, § 1 (1961) (Fin.); *see* KAARLO SARKKO & PIRKKO K. KOSKINEN, VUOSILOMALAKI 1, 8 (5th ed. 1989); HARRI HIETALA & KEIJO KAIVANTO, VUOSILOMAOPAS 14 (1998); Kairinen, *supra* note 16, at 108.

23. *See supra* note 6.

24. Act on Children's Daytime Care, § 1 (1973) (amended 1990) [hereinafter Daycare Act]; Daycare Act, § 11.

25. *See* Heikki Uhmavaara & Martti Kairinen, *Työsopimuslaki ja Toimintaympäristön Muutokset*, *in* TYÖSOPIMUSLAKI, SEN TOIMINTAYMPÄRISTÖN MUUTOKSET JA TYÖLLISYYS 45 (Kröger & Tiitinen eds., 1997).

26. Act on Eight Hours' Working Time, § 9 (1917) (Fin.).

27. Hours of Work Act (1996) (Fin.).

scope of the Act, the limits shall be applied to him or her even when he or she performs work outside the premises, and any overtime shall be compensated as determined in the Hours of Work Act.[28]

In other respects, the extent to which an employee can do part of his or her job as a teleworker depends on the agreement of the parties. In the absence of such an agreement, the prerogatives of the employer hardly include any power to order the employee to use his or her own home as a workplace.

D. Prevention of Redundancies

In principle, employers are free to organize their undertakings according to their own appreciation, the structure and number of the staff included. They are not free, however, to replace present employees with new ones. Employment contracts with an indefinite duration may not be suspended or terminated by the employer except upon pertinent and weighty grounds. Operational needs of the employer—as distinguished from reasons connected with the person or conduct of an individual employee—give a right to termination only in case work has been reduced essentially and permanently because of economic or productional reasons or because of a rearrangement of operations. In case the reduction of work is not permanent, but the other conditions are fulfilled, resort may be made to suspensions. Neither a termination nor a suspension is permitted if the employee can be transferred to suitable new tasks or reasonably retrained for such tasks. The duty to transfer or retrain is, when necessary, extended to other undertakings factually controlled in personnel matters by the same employer. Before notice to suspend an employee or to terminate or amend an employment contract is served, the matter shall be discussed with the employee or the appropriate representative of the employees. An employee wrongfully suspended or dismissed is entitled to a (usually normalized) indemnity but not to a reinstatement.[29]

28. *See Government Bill No. 34*, *in* A 1 VUODEN 1996 VALTIOPÄIVÄT 37 (1996); TIITINEN ET AL.; *supra* note 18, at 54; RAUTIAINEN & ÄIMÄLÄ, TYÖAIKALAKI, *supra* note 18, at 36.

29. Employment Contracts Act, ch. 5, §§ 1–3 (2001) (Fin.); Employment Contracts Act, ch. 7, § 1; Employment Contracts Act, ch. 7, §§ 3-4; Employment Contracts Act, ch. 12, §§ 1–3; Act Respecting Cooperation Within Undertakings, §§ 6–8, (1978) (Fin.) [hereinafter Cooperation Act]; Cooperation Act, § 15; KAHRI ET AL., *supra* note 21, at 213, 218, 225, 267, 291, 300, 404, 414; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 149, 234, 286; TITINEN & KRÖGER, *supra* note 21, at 275, 279, 290, 305, 316, 367, 474, 497; Suviranta, *supra* note 2, ¶¶ 320, 324. *But see* Vesa Ullakonoja, *Työaika*, *in* TYÖOIKEUS, *supra* note 16, at 348, 357.

E. Protection by Wage, Hour, and Vacation Laws

There is no minimum wage legislation proper in Finland. Most employees are within the scope of a collective agreement, either because their employer is bound by the agreement as a party to the agreement or as a member of an employers' association or because of the general applicability of certain collective agreements. The wage rates set in an applicable collective agreement take precedence over any lower rate agreed to by an individual employee. Especially in the case of home workers, it may, however, happen that no applicable collective agreement can be found. In such a case, the individual contract in principle prevails; but if no agreement on the remuneration has been made, a usual and equitable compensation shall be given for the work; and if a clause in the individual contract is found to be against good morals or otherwise inequitable, the contract provision in question may be modified.[30]

The express exclusion of home work from the scope of the Hours of Work Act, 1946,[31] was, in judicial practice, also applied to work carried out in another place of the employee's own choice where it was not possible for the employer to control the time used by the employee for work. This extension of the exclusion was made not only more precise but also somewhat wider in the successor statute, the present Hours of Work Act, 1996, which is not applicable "to work carried out at the employee's home or otherwise in such circumstances that the employer cannot be expected to supervise the arrangement of working time."[32] It is to be noted that there is no longer any requirement that the working place should be "of the employee's own choice." According to the Reasons for the Government Bill for the 1996 Act, the employer is "expected to supervise the arrangement of working time," e.g., if the employer is entitled to prescribe, and factually does prescribe, the exact points of time for the daily work to begin and cease, and also if the employee shall report to the employer the points of time the daily work begins and ends and the employer has a factual possibility to supervise how the employee uses the working time. Evidently, the employer can be expected to supervise the arrangement of the working time of an

30. Act Respecting Collective Agreements, § 6 (1946) (Fin.); Employment Contracts Act, ch. 2, §§ 7, 10; Employment Contracts Act, ch. 10, § 2; *see* KAHRI ET AL., *supra* note 21, at 133, 137, 381; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 60, 70, 260; TIITINEN & KRÖGER, *supra* note 21, at 131, 160; Mika Valkonen, *Kollektiiviperusteinen irtisanomissuoja*, *in* TYÖOIKEUS, *supra* note 16, at 673; Suviranta, *supra* note 2, ¶¶ 80, 182.

31. *See supra* note 14.

32. Hours of Work Act, § 2 (1996) (Fin.).

employee working away from the employer's premises, especially when the employee is paid by time and not by results.[33]

The Annual Holidays Act, 1973—which is applicable to virtually all persons in an employment relationship, except seafarers—entitles a home worker to a compensation payment instead of vacation. The compensation is 8.5% of the employee's remuneration; 11.5% if the employment relationship has continued for at least one year, and it shall be paid in addition to, and together with, every payment of remuneration.[34] The Act also specifies certain holidays. On Independence Day (December 6), work ceases as on a Sunday, and every employee (home workers included) who worked at least six preceding days is entitled to full wages for the day. There are, in law—collective agreements disregarded—no other paid public holidays. Persons within the scope of the Hours of Work Act additionally must be paid double-time for work performed on a public holiday and for Sunday.[35]

F. Protection of Home Workers' Earnings

There are no special rules to ensure that home workers are paid for the work performed. The ordinary rules in the Employment Contracts Act on the employees' remuneration apply. These rules imply, among other things, that wages based on a day or a shorter period as well as piecework wages shall be paid at least twice a month, and weekly and monthly wages at least every month. In the event of the employer's bankruptcy or insolvency, the payment of all employees' wages is, within certain limits, assured by the Government.[36]

G. Expansion of Work Time on Own Initiative

Work beyond the agreed hours is called additional work, if it does not exceed the statutory normal hours, and overtime if it does.

33. *See Government Bill No. 34*, *supra* note 28, at 36; TIITINEN ET AL., *supra* note 18, at 54; RAUTIAINEN & ÄIMÄLÄ, *supra* note 18, at 35.

34. Annual Holidays Act, § 13 (1973) (Fin.) (as amended in 1986); SARKKO & KOSKINEN, *supra* note 22, at 198; HIETALA & KAIVANTO, *supra* note 22, at 131; Ullakonoja, *supra* note 29, at 348.

35. Act on Independence Day as a General Festival and Holiday, §§ 2–4 (1937) (Fin.); Suviranta, *supra* note 2, ¶¶ 171, 180; Ullakonoja, *Vuosiloma*, *in* TYÖOIKEUS, *supra* note 16, at 381.

36. Employment Contracts Act, §§ 13–17 (2001) (Fin.); Act on the Guaranteed Payment of Wages, §§ 4, 9 (1998) (Fin.); KAHRI ET AL., *supra* note 21, at 151; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 85; TIITINEN & KRÖGER, *supra* note 21, at 165; Suviranta, *supra* note 2, ¶¶ 184, 189.

According to the Hours of Work Act, additional work and overtime presuppose an initiative of the employer, although the employer's consent may, in certain cases, be implied. Additional work is paid with the normal (hourly) rate and overtime with time and a half or double time, as the case may be. Piecework is paid according to the accomplished results, even if the work was performed on the employee's own initiative, but with no surplus for overtime unless overtime was at the employer's orders or initiative.[37]

The employer is responsible for the safety and health of the working conditions, and the employer's insurer for work-related injuries and diseases without regard to whether the work was performed on the employee's initiative. The employer's and the insurer's responsibility may, however, be relieved on account of the employee's own culpability, e.g., if work was performed in the absence of the foreman who normally would have supervised the safety of the work.[38]

H. Safety and Healthiness of Work Environment

The original contents of the Occupational Safety Act, 1958, which excluded home work and certain comparable work from its scope, nevertheless prohibited employers from delivering dangerous materials to home workers.[39] It was amended in 1987 by striking this exclusion in principle, but adding special provisions on home work, and other matters. The prohibition concerning dangerous materials was retained and extended to machines, tools, and other equipment delivered by the employer to the employee. Several of the employer's and the employee's duties were modified so as to be suitable to home work, and the like, and the employer's surveillance duty over work environment was not extended to this kind of work. In transferring these regulations to the present Occupational Safety Act, 2002, they were made more systematic without any big changes in the principles.[40]

37. Hours of Work Act, §§ 17, 22; *see* TIITINEN ET AL., *supra* note 18, at 216, 230; RAUTIAINEN & ÄIMÄLÄ, *supra* note 18, at 110, 119; HIETALA & KAIVANTO, *supra* note 18, at 36.

38. Employment Contracts Act, ch. 2, § 3; Employment Contracts Act, ch. 12, § 1; Accident Insurance Act, §§ 5, 8 (1948) (Fin.); *see* KAHRI ET AL., *supra* note 21, at 117, 398; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 59, 278; TIITINEN & KRÖGER, *supra* note 21, at 101, 496; Suviranta, *supra* note 2, ¶¶ 142, 151; Ullakonoja, *supra* note 35, at 357.

39. *See supra* note 14.

40. Occupational Safety Act, § 2 (1958) (Fin.) (as amended in 1987); Decree on the Application of the Occupational Safety Act and the Work Health Care Act on Work referred to

I. Inspections at a Home Worker's Own Residence

The private life and the sanctity of the everyone's home are protected by the Constitution of Finland.[41] The employer has no access to a home worker's residence except upon the latter's consent. The labor inspectors may only upon special grounds make an inspection at a home worker's residence.[42]

J. Benefits for Work Related Injuries

The large conception of the scope of labor law statutes that was first formed in the application of the Workers' Accident Insurance Acts, 1925 and 1935, and then became established with respect to labor law statutes in general (where not expressly excluded)[43] is also applied as regards the present (Employees') Accident Insurance Act, 1948, and the Occupational Diseases Act, 1988. A home worker who is in an employment relationship is thus entitled to the same benefits for work related injuries and diseases as employees working at the employer's premises.[44]

K. Choice of Law

All legislation is valid throughout Finland. The problem concerning teleworkers living in another region than their managers or coemployees does not arise. An exception might be constituted by the legislative autonomy of the Province of Åland. In the field of labor law, the autonomy of the province is, however, of little significance, so even there, the problem will hardly ever arise. The unified court system of Finland also covers the autonomous province, so the national courts also treat all cases having a connection with the province.[45]

International labor law relations are governed by the EEC (Rome) Convention on the Law Applicable to Contractual Relations,

in § 2 of the Occupational Safety Act, § 2 (1988); *see* PIRKKO K. KOSKINEN, TYÖTURVALLISUUDESTA 54, 240 (2nd ed. 1987); Ullakonoja, *supra* note 35, at 387.

41. CONSTITUTION OF FINLAND § 10 (Fin.); *see* Veli-Pekka Viljanen, *Yksityiselämän suoja*, *in* PERUSOIKEUDET 242 (Hallberg et al. eds., 1999).

42. Act on Labour Protection Supervision and Appeals in Labour Protection Matters, § 3 (1973) (Fin.) (amended 1987) (title was amended from the original "Act to Provide for the Supervision of Labour Protection"); *see* KAIRINEN, *supra* note 16, at 131; Suviranta, *supra* note 2, ¶ 50.

43. *See supra* notes 6 and 16.

44. (Employees') Accident Insurance Act, *supra* note 11; Occupational Diseases Act, (1988) (Fin.).

45. Act on the Self-Government of Åland, §§ 27-28 (1991) (Fin.).

1980, ratified by Finland in 1999. A general rule is that an employment contract is governed by the law in the country where the employee habitually carries out his work in performance of the contract. Mandatory rules of the factual place of work and sometimes of the forum may also be applicable. The Directive of European Communities Concerning the Posting of Workers in the Framework of the Provision of Services, 1996, has been enforced in Finland by an act of 1999, providing for the mandatory application of a number of Finnish labor law provisions on employees sent to Finland from abroad.[46]

II. RESPONSIBILITY FOR HIGH TECHNOLOGY WORK TOOLS

According to the Employment Contracts Acts of 1922 and 1970, tools and working materials were to be provided by the employer, except as far as it had been agreed otherwise or a contrary practice prevailed in the branch ("locality," in the 1922 Act) concerned.[47] In spite of the absence of a corresponding express rule in the existing legislation, it should be clear that the law is the same as hitherto.[48] The parties are thus, in principle, free to agree on the duty to provide even valuable equipment and software, and the parties may also, in many cases, be entitled to presuppose that the teleworker will use his or her own equipment and software in the work; but in the absence of an agreement or common understanding to the contrary, the employer cannot impose on the employee any duty to procure tools or working materials. Depending on the circumstances, even a contract term may be considered unfair and hence invalid (without affecting the validity of the contract in other respects). These principles should also be applicable in regard to any duty to contribute to the costs of protecting the equipment or materials from loss or damage.[49]

The 1922 Act also obliged the employee to return the tools and materials not used by him in proper condition, except in so far as they had been lost through no fault of his own. Similar express provisions are lacking in the 1970 and 2001 Acts. The duty to return the tools

46. Employment Contracts Act, ch. 11 (1970) (Fin.); Posted Employees Act (1999) (Fin.) (amended 2001); *see* Suviranta, *supra* note 2, ¶¶ 93, 94.

47. Employment Contracts Act, § 22 (1922) (Fin.); Employment Contracts Act, 1970, *supra* note 20, § 35; *see* Suviranta, *supra* note 2, ¶ 136.

48. *Cf.* Employment Contracts Act, *supra* note 21, ch. 1, § 1 (showing that work in an employment relationship may be effected with the employee's working implements and machines).

49. Employment Contracts Act, ch. 10, §§ 1–3 (1970); *see* KAHRI ET AL., *supra* note 21, at 377; RAUTIAINEN &ÄIMÄLÄ, *supra* note 21, at 260; Kairinen, *supra* note 16, at 109.

and materials clearly still exists. However, except in cases where a loss or damage has been caused wittingly, the employee is now liable to damages only to the extent it is considered reasonable under the circumstances, and no compensation is payable if the employee was only slightly at fault.[50]

III. ELECTRONIC MONITORING OF PERFORMANCE AND COMMUNICATIONS

A. General

As already mentioned, the private life of everyone is protected by the Constitution of Finland. Moreover, the secrecy of correspondence, telephony, and other confidential communications is declared inviolable by the Constitution. According to the Constitution, more detailed provisions on the protection of personal data shall by laid down by an Act of Parliament, and provisions containing limitations of the secrecy of communications may only be laid down by an Act of Parliament, and only as far as the limitations are necessary for the investigation of crimes jeopardizing the security of the individual or the society or of the sanctity of the home, or at court procedure or security checks, or during a lawful deprivation of liberty.[51]

According to the new Act on the Protection of Privacy in Working Life, 2001, the aims, the putting into use, and the methods of technical monitoring of the personnel, based on the employer's right to direct and supervise work, as well as the use of e-mail and data networks, have been included among the matters which employers shall discuss with their personnel (as a rule under the Act on Cooperation Within Undertakings). After such discussions (and disregarding whether an agreement has been reached), it rests with the employer to decide the matter and to inform the personnel in detail on the aims, methods, and introduction of the monitoring system and on the use of the data networks.

When the Government Bill for the new Act was being considered by the Parliament, the appropriate Committees remarked that the

50. Employment Contracts Act, ch. 12, § 1 (2001) (Fin.); *see* KAHRI ET AL., *supra* note 21, at 399; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 280; TIITINEN & KRÖGER, *supra* 21, at 500; KAIRINEN, *supra* note 16, at 579; Suviranta, *supra* note 2, ¶ 151.

51. CONSTITUTION OF FINLAND § 10 (Fin.); *see* Veli-Pekka Viljanen, *Yksityiselämän suoja*, *in* PERUSOIKEUDET, *supra* note 41, at 346; RIITTA OLLILA, FREEDOM OF SPEECH AND PROTECTION OF PRIVACY IN CONVERGENCE OF ELECTRONIC COMMUNICATIONS 209 (2001); MIKKO NYYSSÖLÄ, YKSITYISYYDEN SUOJA TYÖSUHTEESSA 99 (2001).

proposed provisions on the matter only purported to regulate the procedure to be used at the discussions in question and could not give the employers any substantive right either to monitor the personnel by technical means or to supervise the use of electronic communications by the personnel. However, because technical monitoring in the proposed provisions was said to be based on the employer's right to direct and supervise work, the provisions could give the impression that this employer's right would, in fact, include the right to impose technical monitoring and supervision of data networks—at least after the discussions with the personnel had been concluded. With regard to the constitutional provisions on the right to privacy, etc., such a legal base for monitoring or supervision of data networks was, however, far too meager.

To make it clear that the enactment did not create any new power for the employer to monitor the personnel or to supervise the use of e-mail, a new paragraph was added to the provision stating that the employer's right to use technical monitoring and supervise the use of e-mail and data networks shall be regulated separately. Another new paragraph includes a prohibition to the employer to take any measure that, in the use of e-mail and data networks, endangers the secrecy of the employees' confidential messages of a private character. Moreover, the Parliament added to the enactment a resolution calling for the Government to prepare immediately, in cooperation with the labor market organizations, propositions for legislation on technical monitoring and the supervision of e-mail at workplaces. The propositions should include clear provisions concerning the kinds of technical monitoring the employer is entitled to use and how the use of e-mail may be supervised. No such propositions have, however, been published before the end of the parliamentary session of 2002 to 2003.[52]

Pending the preparation and enactment of the new legislation asked for by the Parliament, the employers' powers to use technical monitoring and to supervise the use of e-mail and data networks

52. Act on the Protection of Privacy in Working Life, § 9 (2001) (Fin.) (in force from Oct. 1, 2001); Act on Cooperation Within Undertakings, § 6 (1978) (Fin.) (amended 2001); KLAUS NYBLIN, TYÖELÄMÄN SÄHKÖPOSTI 44 (2002). *See* Anti Saarenpää, *Finland*, *in* NORDIC DATA PROTECTION Law 74 (Blume ed., 2001); Seppo Koskinen, *Yksityisyyden suoja työelämässä*, *in* TYÖOIKEUS, *supra* note 16, at 301, 316; ARI RAATIKAINEN, YKSITYISYYDEN SUOJA TYÖELÄMÄSSÄ 33, 387, 422 (3rd ed. 2002); Suviranta, *supra* note 2, ¶ 319. In response to the resolution of the Parliament mentioned above, a Government Bill was submitted to Parliament in December, 2003, proposing to replace the 2001 Act on the Protection of Privacy in Working Life by a new statute with the same name. *See Government Bill No. 162*, to be republished in the collection VUODEN 2003 VALTIOPÄIVÄT, ASIAKIRJAT.

depend primarily on the interpretation of the constitutional provisions on privacy and secrecy of communications. And while the new legislation may, within certain limits, regulate collisions between constitutional liberties (fundamental rights) and other interests, these limits are fairly tight: the core of the constitutional rights must remain intact.[53]

B. Preventing Monitoring from Dehumanizing Work

To the extent that an employer is entitled to use some kind of monitoring, under the right to direct and supervise work or under any other authority, dehumanizing effects should be prevented or alleviated by the duty under the Act on the Protection of Privacy in Working Life to discuss the monitoring with the employees and to inform the staff in detail about the monitoring.[54] And, while the envisaged new legislation may define the employer's powers more exactly and even enlarge them to some extent, the protection through the procedures just mentioned will presumably not be altered much. Secret monitoring in locker or restroom areas or similar places—installation of devices for such secret monitoring included—is punishable under the Criminal Code.[55]

C. Identification of the Employees' Contacts

As already mentioned, the new legislation for the protection of privacy in working life prohibits employers from taking any measures that, in the use of e-mail and data networks, endanger the secrecy of the employees' confidential messages of a private character.[56] The constitutional protection of the secrecy of communications not only covers the substantive contents of the communication but also the identities of the sender and the receiver of the communication. The secrecy of telecommunications is protected by the detailed provisions of the Act on the Protection of Privacy and Data Security within Telecommunications, 1999. This Act provides, among other things, that if a telecommunications operator provides customers with

53. *See* Veli-Pekka Viljanen, *Perusoikeuksien rajoittaminen*, *in* PERUSOIKEUDET, *supra* note 41, at 157, 174; VELI-PEKKA VILJANEN, PERUSOIKEUKSIEN RAJOITUSEDELLYTYKSET *passim.* (2001).

54. Act on the Protection of Privacy in Working Life, § 9.

55. Criminal Code, ch. 24, §§ 5-7 (1891) (Fin.) (amended 2000); *see* NYYSSÖLÄ, *supra* note 51, at 109.

56. Act on the Protection of Privacy in Working Life, § 9; *see* NYBLIN, *supra* note 52, at 56; Reijo Aarnio, *Integritetsskydd i Arbetslivet*, *in* 1 FÖRHANDLINGARNA VID DET 36 NORDISKA JURISMÖTET I HELSINGFORS 15-17 AUGUSTI 2002, 15 (2002).

information on outgoing calls, the three last digits of numbers called shall be deleted (with some exceptions). Moreover, all telecommunications—even outside public networks—shall be confidential unless intended to be generally available.[57] Any one—including employers and coemployees—encroaching upon the secrecy of communications is punishable under the Criminal Code.[58]

D. Forewarning of Monitoring

Procedures prescribed in the Act on the Protection of Privacy in Working Life ought to ensure that employees are effectively forewarned of any technical monitoring and of any supervision of telecommunications. A fine is prescribed for employers violating these provisions. The Act contained a deadline of April 1, 2002 for discussions concerning any existing systems shall be conducted, and information about their contents.[59]

E. Difference between Business and Non-Business Communications

Technical monitoring and supervision of communications, even when allowed, give the employer no right to use the contents of intercepted information, whether for business or non-business. If a communication has clearly been addressed to the employer, "for the attention" of a given employee, it is for the employer to decide about the opening of the communication; but if the message has been addressed directly to an employee, it is not for the employer to intercept it, even if it can be suspected that the message contains business information related to the employer.

57. Act on the Protection of Privacy and Data Security within Telecommunications, §§ 4, 13 (1999) (Fin.); *see* OLLILA, *supra* note 51, at 247; NYYSSÖLÄ, *supra* note 51, at 103, 108; NYBLIN, *supra* note 52, at 27, 32. In November 2002, two foremen in a company were convicted for secret monitoring of the company's employees. *See* HELSINGIN SANOMAT, Nov. 21, 2002.

58. Criminal Code, ch. 38, §§ 3-4 (1891) (amended in 1995, 1999, 2000); Saarenpää, *supra* note 52, at 71.

59. Act on the Protection of Privacy in Working Life, §§ 9, 12-13. In 2000 and 2001, the management of a leading telecommunications operator suspected leakages to newspapers concerning personal relationships within the company and tried to detect whether there had been contacts from the mobile phones of certain employees to certain journalists. In 2002 and 2003, police investigations have been conducted on suspected encroachments by the management upon the secrecy of communications of the personnel. *See* HELSINGIN SANOMAT, Jan. 22, 2003.

IV. MISAPPROPRIATION OF ELECTRONIC PROPERTY

A. General

Under the Employment Contracts Act, 2001, there is, in principle, no more room for the employer to resort to any disciplinary actions. The employment relationship is a contractual relationship with no disciplinary power for any of the contract parties over the other party. The main remedies for the wronged party for any breaches in the relationship are the right to terminate the relationship (with or without notice, and with a duty for the employer to offer another suitable job where possible) and the right to damages; a fine or even imprisonment (inflicted by a court of law, not by the wronged party) is foreseen in certain cases. In cases such as failure to return the employer's tools and materials,[60] as previously noted, the employee is liable for damages only to the extent it is considered reasonable under the circumstances, and no compensation is payable if the employee was only slightly at fault; but where a loss or damage has been caused wittingly, full compensation shall be paid unless there are special reasons to allow a reduction. A remnant of disciplinary actions is the warning that, in many cases, must be given before the relationship can be terminated.[61]

B. Use of Employer's Electronic Property for Personal Purposes

Quite often, employees have at least tacit permission to use the employer's electronic equipment or software for personal purposes. In such a case, the employer can, of course, take no action against the employee.

In case there is no such permission or the employee exceeds the limits of the permitted use, the employee is in breach of his or her duties under the employment relationship. The employer's remedies for the breach have just been discussed above. In cases of misuse of the employer's electronic hardware or software, the employer's damage might often be considered to have been caused wittingly.

60. *See* text at *supra* note 50.

61. Employment Contracts Act, ch. 7, § 2 (1970) (Fin.); Employment Contracts Act, ch. 8, § 1; Employment Contracts Act, ch. 12, § 1; *see* KAHRI ET AL., *supra* note 21, at 273, 334, 399; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 205, 280; TIITINEN & KRÖGER, *supra* note 21, at 113, 323, 359, 425, 500; Seppo Koskinen, *Päättäminen henkilökohtaisilla perusteilla*, *in* TYÖOIKEUS, *supra* note 16, at 589, 594, 599, 645; KAIRINEN, *supra* note 16, at 579; Suviranta, *supra* note 2, ¶ 151.

C. Employer Responsibility for Employee Misbehavior

If, in the course of work, an employee causes damage to a fellow employee or an outsider, the damage shall be compensated by the employer, as a rule in full. The crucial question might be whether the damage was caused in the course of the employee's work. If the employee, for example, uses leased hardware or licensed software to accomplish a task for the employer, the employer is clearly responsible toward the lessor or licensor, even if the employee knew that he or she violated the terms of the lease or license. But in the contractual relationship between the employer and the lessor or licensor, the employer would, as a rule, also be responsible in case the employee used the hardware or software for activities totally unconnected with the employer's business—even for making and selling unauthorized copies for his or her own profit. In such a case it is evident that, as a rule, the employer's damage has been caused wittingly and, consequently, the employee is, in general, liable to compensate the employer's damage in full.[62] The employer's other remedies for the employee's breaches have been discussed above.[63]

D. Protection of Employees Informing Against their Employers

Employees owe loyalty towards their employers,[64] but this duty does not oblige the employee to conceal the employer's illegal measures in business. Consequently, an employee disclosing to outside sources that the employer uses pirated software is not in breach of his or her duties in the employment relationship, and is protected by the provisions against unlawful terminations.[65] It is, of course, possible to imagine exceptional situations, e.g., that the employee has first participated in the illegal operations and then feels disfavored and seeks revenge. A false disclosure is, of course, a

62. Employment Contracts Act, ch. 12, § 1; Damages Act, ch. 3, § 1 (1974) (Fin.); *see* KAHRI ET AL., *supra* note 21, at 399; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 283; Juhani Kaivola, *Isännänvastuu*, *in* 1 ENCYCLOPAEDIA IURIDICA FENNICA 211 (Mattila ed., 1994); TIITINEN & KRÖGER, *supra* note 21, at 500, 506; Kairinen, *supra* note 16, at 581; Suviranta, *supra* note 2, ¶ 153.

63. *See supra* note 61.

64. Employment Contracts Act, ch. 3, § 1; *see* KAHRI ET AL., *supra* note 21, at 167; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 95; TIITINEN & KRÖGER, *supra* note 21, at 204; Suviranta, *supra* note 2, ¶ 131; *cf. also* Koskinen, *supra* note 61, at 600, 646.

65. Employment Contracts Act, ch. 7, §§ 1-2; *see* KAHRI ET AL., *supra* note 21, at 267; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 203; TIITINEN & KRÖGER, *supra* note 21, at 323, 358; Suviranta, *supra* note 2, ¶ 210.

breach in the relationship entitling the employer to the remedies mentioned above.[66]

V. ACCESS TO WORKERS AND WORKER SUPPORT ENTITIES THROUGH EMPLOYER'S TELECOMMUNICATION FACILITIES

According to the Employment Contracts Act, the employer shall, as a rule, allow employees and their organizations to use appropriate spaces free of charge for meetings to handle employment and trade union matters.[67] There is, however, no provision in the law on the use of the employer's telecommunication facilities. Collective agreements have had provisions on the use of conventional (paper) bulletin boards and on the distribution of leaflets, etc., as well as on the chief shop steward's and the labor protection delegate's facilities, such as office space and telephone. Practical matters concerning the use of the employer's telecommunication facilities without losing much working time have been, as a rule, solved peacefully at workplaces. In the two-year master agreement (February 2003 to February 2005), concluded on December 2, 2002 by the national confederations of employers and trade unions and then adopted by most industry and craft-wide federations, the shop stewards have been granted the right to use the employer's computer facilities and e-mail and Internet connections.[68]

Employees are often provided with mobile phones for work use by their employers. Then the tax authorities take it for granted that the phones are also used for personal purposes and tax the employees for the presumed value of the personal use. In these circumstances there is no idea for the employers to restrict the use of the phones for business purposes only. The employers can only take steps to minimize the use of the employer's time for personal calls and to prevent calls to paying service numbers, etc.

66. *See supra* notes 61 and 62.

67. Employment Contracts Act, ch. 13, § 2; *see* KAHRI ET AL., *supra* note 21, at 422; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 304; TIITINEN & KRÖGER, *supra* note 21, at 54; Martti Kairinen, *Kollektiivinen työoikeus*, *Lähtökohtia, in* TYÖOIKEUS*, supra* note 16, at 828; Suviranta, *supra* note 2, ¶ 282.

68. *See, e.g.,* General Agreement between the Confederation of Finnish Industry and Employers and the Central Organization of Finnish Trade Unions June 4, 1997, ch 4; Suviranta, *supra* note 2, ¶ 284; HELSINGIN SANOMAT, Dec. 2, 2002.

VI. EMPLOYEE DISSEMINATION OF COMPLAINTS THROUGH ELECTRONIC MEDIA

An ordinary employee can hardly be reproached by the employer for having used publicly accessible Web sites, etc., to make accurate statements complaining about a particular manager or a particular employer policy. A misuse of the employer's time or implements might give occasion for a withdrawal of the employee's salary for the time not used to work or to a recovery of the employer's network costs for the message in question. That the employer is a government entity does not make any difference.

A different case might be if the employee were in a confidential position and could lose his or her trustworthiness as the employer's representative. The employee could be transferred to a less confidential position or even dismissed. The employee's breach could also entitle the employer to a monetary compensation.[69]

VII. TRAINING AND RETRAINING IN NEW TECHNOLOGIES

A. Availability and Use of Training and Retraining

The employer's duty to train or retrain employees to avoid redundancies has been discussed above.[70] Also for other situations, employers have, in the new Employment Contracts Act, been expressly told to ensure that their employees are able to carry out their work even when the operations of the enterprise, the work to be carried out or the work methods, are changed or developed. In addition, the employers shall strive to further the employees' possibilities to develop themselves according to their abilities in order to advance in their careers.[71]

Under the Study Leave Act, 1979, study leaves are granted for general, vocational, professional, and trade union education and training. An employee is entitled to a study leave of five days after having been in the employer's service for three months (with or without interruptions), and after one year's service, to a leave of two years at the most during a service period of five years. The employer has no duty under the law to pay any remuneration for the time of the

69. *See supra* notes 60 and 61.

70. *See supra* note 29.

71. Employment Contracts Act, at ch. 2, § 1; *see* KAHRI ET AL., *supra* note 21, at 111; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 52; TIITINEN & KRÖGER, *supra* note 21, at 98; Kimmo Nieminen, *Työsuhdevapaat*, *in* TYÖOIKEUS, *supra* note 16, at 557.

study leave; and a study leave is no ground for the employer to terminate an employment relationship.[72]

The provisions of the Study Leave Act are supplemented by collective agreements. Under the General Agreement of 1997, for example, the employer shall pay compensation for foregone earnings as well as for the employee's direct outlays if an employee is sent to vocational training by the employer, or to training organized by the employer and trade union parties in common (e.g., for purposes of labor safety and health), or to trade union training approved of by both parties together.[73]

As can be seen, these arrangements have not been created primarily to meet new electronic technologies. Nevertheless, circumstances connected with these new technologies are, without doubt, a major occasion for the use of the arrangements.

B. Covenants of Non-competition

After the end of an employment relationship, the employee is, in principle, free to compete with his or her former employer either by founding a competing business of his or her own or by entering into the service of a competitor of the former employer. Only on especially weighty grounds, connected with the employer's activities or the employment relationship, is it possible to conclude an agreement restricting the freedom of an employee to compete with the employer after the end of the employment relationship. In determining the existence of especially weighty grounds just referred to, account shall be taken, among other things, of the nature of the employer's business, the protection the employer needs because of business or trade secrets or special training provided by the employer, as well as of the position and tasks of the employee.

A covenant of non-competition may restrict the freedom of the employee for six months at most after the end of the employment relationship, or for one year at most in case the employee can be regarded to have had a reasonable compensation for the disadvantage caused by the covenant. An employee breaking his or her duties under the covenant is liable to damages like for any other breach of his or her duties under the contract of employment.[74] Alternatively,

72. Act Respecting Study Leave, §§ 4, 11 (1979) (Fin.) (amended 1997); *see* L.S., Fin. 1 (1979) (English translation); *see* Suviranta, *supra* note 2, ¶ 201.

73. General Agreement between the Confederation of Finnish Industry and Employers and the Central Organization of Finnish Trade Unions, *supra* note 68, at ch. 7; *see* Suviranta, *supra* note 2, ¶ 337.

74. *See supra* notes 60 and 61.

the damages may, in the covenant, be replaced with a conventional penalty that shall not exceed the earnings of the employee during the final six months of the employment relationship. The time limits and the maximum amount of the conventional penalty are not applicable to a covenant concluded with an immediate subordinate of the managing director of the undertaking who is in a managerial position and participates in the direction of the undertaking or of an independent part of it. No covenant is, however, binding on an employee whose employment relationship ended because of redundancy or another reason that shall be attributed to the employer.

A covenant concluded in violation of these provisions is null and void. In addition, an agreement not to engage in a certain activity or not to conclude an employment contract with an employer engaged in such activity is not binding to the extent it unduly restricts the contractor's freedom of activity. This rule of law is also applicable to former employees in a managerial position.[75]

C. Protection of Redundant Employees

Prevention of redundancies because of new technologies has been discussed above.[76] When employees have been dismissed because of lack of work and the employer needs new employees to perform the same or similar jobs within nine months after the end of the employment relationships, the employer shall offer the jobs to the dismissed employees if they are still registered as job seekers at the employment office. The employer's part-time employees have, however, a preferential right to be offered additional employment.[77]

An unemployed redundant employee is, with certain exceptions, entitled to a daily benefit under the Unemployment Security Act, 1984. Depending, among other things, on the length of the unemployment and the employee's membership in an unemployment fund, the daily benefit may be either a basic benefit from Government funds or an earnings-related benefit financed partly by the employers,

75. Employment Contracts Act, ch. 3, § 5; Acts in Law Act (Contracts Act), § 38 (1929) (Fin.) (amended 1982); *see* KAHRI ET AL., *supra* note 21, at 180; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 102; TIITINEN & KRÖGER, *supra* note 21, at 208, 217; Seppo Koskinen, *Kilpailukieltosopimus*, *in* TYÖOIKEUS, *supra* note 16, at 413; Suviranta, *supra* note 2, ¶ 251.

76. *See supra* note 29.

77. Employment Contracts Act, ch. 2, § 6; Employment Contracts Act, ch. 6, § 6; *see* KAHRI ET AL., *supra* note 21, at 123, 256; RAUTIAINEN & ÄIMÄLÄ, *supra* note 21, at 58, 193; TITINEN & KRÖGER, *supra* note 21, at 117, 458; Mika Valkonen, *Työnantajan takaisinottovelvollisuus*, *in* TYÖOIKEUS, *supra* note 16, at 791; Suviranta, *supra* note 2, ¶¶ 135, 217.

partly by the Government, and partly by the members of the unemployment funds themselves.[78]

78. Act Respecting the Protection of the Livelihood of Unemployed Persons (now replaced by a new Act of 2002), § 1 (1984) (Fin.) [hereinafter Unemployed Persons Act]; Unemployed Persons Act, § 4; Unemployed Persons Act, § 7; Unemployed Persons Act, § 13; Unemployed Persons Act, §§ 16-23; *see* L.S., Fin. 1 A (1984) (English translation); *see*, *e.g.*, Olli Valpola, *Työmarkkinatuki, Työttömyyspäiväraha, Työttömyysturva*, *in* 3 ENCYCLOPAEDIA IURIDICA FENNICA, 684, 808, 811 (1994); Hanna Leskelä, *Työttömyys*, *in* TOIMEENTULOTURVA 2001, at 148 (17th ed. Hilkamo); KELAN ETUUDET PÄHKINÄNKUORESSA ASIANTUNTIJOILLE 45 (2001).