EMPLOYMENT, FAMILY, AND THE LAW IN FINLAND

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I. INTRODUCTION: CONSTITUTIONAL LAW ASPECTS

Especially after the enactment of the renewed Constitution of Finland in 1999, there is reason to anchor the discussion of almost any legal institution to the relevant constitutional provisions.[1] For the main body of labor law, the most relevant constitutional provision is the rule in section 18.1 *(The Right to Work and the Freedom of Trade)* of the Constitution making it a duty of the public authorities to take care of the protection of the labor force. This provision is the most important base for the statutory rules on the duties of the employers and others to protect the employees in various respects, inter alia as concerns the relationship between employment and the personal and family life of the employees. This protective aspect can be seen as a protection of the safety and health of the employees and their family members and as a participation of the employers and others in the employees' family costs and burdens.

Indeed, in practice this protective aspect is the most important legal institution concerning the relationship between employment and the personal and family life of the employees. However, the Constitution's provisions on fundamental and human rights also have a bearing on this relationship. It is thus expressly provided in section 18.3 of the Constitution that no one shall be dismissed from employment without a reason based on the law (an Act of Parliament). The system of job security based on this constitutional provision is fairly extensive—and falls clearly mainly outside the scope

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1. An English translation of the Constitution of 1999 has been published in book form by the Parliament of Finland and the Ministries for Foreign Affairs and of Justice. *See* THE CONSTITUTION OF FINLAND (2001, with an *Introduction* by Professor Jaakko Nousiainen). For a general background, *see*, *e.g.*, PERTTI PESONEN & OLAVI RIIHINEN, DYNAMIC FINLAND, THE POLITICAL SYSTEM AND THE WELFARE STATE, *passim.* (2002).

of this article. Family considerations enhance this extensive system even more in some respects.

Other constitutional provisions on fundamental and human rights having a bearing on the relationship between employment and the personal and family life of the employees are included in section 6 of the Constitution (*Equality*). It is thus provided in this section that people are equal before the law (subsection 1); that no one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability, or other reason that concerns his or her person (subsection 2); that children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development (subsection 3); and that equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by Acts of Parliament (subsection 4). The constitutional provisions on equality are implemented by a fairly extensive system of protection against discrimination (restricting, with regard to employment, the employers' powers to treat their employees or job-seekers in a discrimininatory manner). This extensive system, too, is enhanced by family considerations in some respects, and will be treated in this report only with regard to these respects.

II. PROTECTION OF SAFETY AND HEALTH, AND PARTICIPATION IN FAMILY COSTS AND BURDENS

A. Family Leaves and Connected Allowances

The main labor law rules accommodating employment to the personal and family life of the employees are included in Chapter 4, Family Leave, of the Employment Contracts Act, 2001, as amended. (The Employment Contracts Act in turn includes the basic rules regulating the legal relationship between employers and their employees. Seafarers, mainly disregarded in the following, however, have their own Seamen's Act, 1978, as amended, and so have public officials their own various special statutes.)

1. Parenthood Leaves and Allowances

Chapter 4, section 1 of the Employment Contracts Act regulates the instances of family leave most intimately connected with

childbirth. Such leaves were originally intended to protect mothers and their unborn and newly born babies against health hazards arising during pregnancy and fairly immediately thereafter. In legislation from the 1910s, it was forbidden to use women for work during the first four or six weeks after confinement and it was also forbidden to use women during the last stages of pregnancy for work that could be dangerous in that condition.[2]

Section 1 of Chapter 4 of the Employment Contracts Act is (after several intermediate stages) the nearest present-day successor to the provisions from the 1910s just mentioned. This section bears the title *Maternity, Special Maternity, Paternity and Parental Leave*. It can be seen from these headings that while health reasons are still an important ground for the provisions of this section, the grounds for the present-day provisions are much broader.

The duration of the various leaves under this section is not determined directly in the provisions of the section. Instead, employees are entitled to take leave from work for the length of the maternity, special maternity, paternity, and parental allowance (with a common name "parenthood allowances") they are entitled to under the national (compulsory) sickness insurance. The entitlement to these allowances is determined in Chapter 9 of the Sickness Insurance Act, 2004. Chapter 9 of the 2004 statute did not introduce any significant changes from the corresponding provisions in the predecessor statute, the Sickness Insurance Act, 1963, as already profoundly amended.

The maternity, special maternity, paternity, or parental allowance is in each case granted as a (daily) parenthood allowance for each weekday (Saturdays included, but Sundays, church holidays, Independence Day and May Day excluded, disregarding whether such days would have been working days for the employee in question) within the allowance period. For each such weekday, the parenthood allowance amounts as a rule to 70% of one three-hundredth part of the recipient's average yearly earned income as confirmed in taxation. For any income amount in excess of 28,403€ but not in excess of 43,699€ per annum, the daily allowance, however, is 40%, and for any exceeding income (without any upper limit), 25% of the said one-three-hundredth. (One three-hundredth part of the annual net taxable income is an approximation of daily earnings.)

2. *See* Act on Work in Manufacturing and Certain Other Occupations, 1917, § 17; Act on Employment Conditions in Commercial, Clerical and Storage Enterprises, 1919, § 10.

Parenthood allowances are administered, like other sickness insurance benefits, by the governmental Social Insurance Institution, which is financed through compulsory contributions from income tax payers and payroll fees levied from employers, all guaranteed by the State (national government).

Maternity Leave. A woman—regardless of whether she is employed or not—is entitled to a maternity allowance after her pregnancy has lasted for 154 days, provided that the pregnancy is not terminated by an abortion. The allowance is paid for a period of 105 weekdays (Saturdays included), beginning as a rule at least 30 and at most 50 weekdays before the calculated date of confinement. An employee who is entitled to maternity allowance is accordingly entitled to take maternity leave for the period of the allowance.

During the maternity allowance term and with the employer's consent the employee is entitled to perform work that does not pose a risk to her or to the unborn or newly born child. However, such work is not permitted during the two weeks prior to calculated time of birth and two weeks after giving birth. Both the employer and the employee are at any time entitled to discontinue work done during the maternity allowance term.[3]

Special Maternity Leave. In case the working conditions of a pregnant employee—or a self-employed woman—are connected with a chemical substance, radiation, contagious disease, or a similar circumstance, and these conditions endanger her health or the health of the unborn child, she is entitled to a special maternity allowance for the period during which she must refrain from working, not longer, however, than to the beginning of her right to the (ordinary) maternity allowance. Further conditions for the allowance are that she is able to work and that it has not been possible to arrange other suitable work for her for the period in question. (Under the Employment Contracts Act, the employer has a fairly wide duty to provide suitable work for a pregnant employee who cannot continue with her ordinary or previous work.). An employee drawing special maternity allowance is consequently entitled to take special maternity leave for the period to which the allowance is related.

Paternity Leave. Paternity allowance is granted to a father who participates in the care of his child. During the maternity allowance period of the child's mother, the father is entitled to paternity allowance for eighteen weekdays in one, two, three, or four uninterrupted installments. Subsequently, immediately after the end

3. Employment Contracts Act, ch. 4, § 2.

of the parental allowance period, the father is furthermore entitled to paternity allowance for an uninterrupted period of twelve weekdays, provided that he has been on parental allowance (or on partial parental allowance) for the twelve weekdays immediately preceding. A further condition for the paternity allowance is that the father refrains from gainful work during the allowance periods. An employee on paternity allowance is consequently entitled to paternity leave for these periods.

Parental Leave. Immediately after the end of the maternity allowance period, either of the parents, as agreed among themselves, is entitled to a parental allowance for a period of 158 weekdays. In the case of twins, triplets, etc., this number of weekdays is augmented with sixty days for each additional child. The parents are also entitled to agree on a division of the parental allowance period of 158 (or more, in the case of twins, etc.) weekdays between themselves in not more than two installments of generally at least twelve weekdays for each of them. If both parents participate in the care of the infant, they may also agree on a division of their parental allowance period of 158 weekdays for at least two months between themselves into two simultaneous allowances (partial parental allowances) periods, provided that they agree on these periods with their respective employers on part-time work (comprising at least 40% and at most 60% of the normal working time and of corresponding remuneration)—or restrict their working in a corresponding manner in case they perform work independently. The agreed part-time work may be discontinued or its terms changed if so agreed by the parties. If an agreement cannot be reached, the employee is entitled to discontinue the part-time work for a justified reason and either return to full parental leave or resume the observance of his or her earlier working time.

Adoptive Parents' Allowances and Leaves. In case someone takes a child of less than seven years into care with a view to adopt the child and the prospective adoptive parent participates in the care of the child, the prospective parent or that person's spouse is entitled to parental allowance until 234 weekdays have passed from the birth of the child, but at least for 180 weekdays. A further condition for the parental allowance is that the adoptive parent refrains from gainful work for the allowance period. An employee using adoptive parent's parental allowance is consequently entitled to parental leave for the allowance period.

Modalities. The employer must be notified of maternity or paternity leave at least two months before the intended start of the

leave. The employee is, however, entitled to move the maternity leave forward and alter the term of paternity leave intended to be taken in conjunction with childbirth if this is required on the grounds of the child's birth or the child's, mother's, or father's state of health. The employer must be notified of such changes as soon as possible. In other cases, the employee is entitled to change the term of the leave from that which had previously been stated for a justified reason, observing a notice period of one month.

An employee who is entitled to a parental allowance may take parental leave in one or two periods, each with a minimum duration of twelve working days. The employer shall be notified that parental leave will be taken and of its duration no later than two months before the leave begins. The employee is entitled to change the term of the leave for a justified reason, observing a notice period of one month. Of leave to be taken in order to care for an adopted child, the employer shall be notified at least two months before the leave begins if possible. Before the leave begins, the adoptive parent is entitled to change the term of the leave for a justified reason by notifying the employer at the earliest possible date.

a. Proposed Changes

In a government bill submitted to Parliament in September, 2006, several changes are proposed in the provisions on parenthood allowances. For the first fifty-six weekdays of the maternity allowance period the daily allowance is proposed to be raised to 90% of one three-hundredth part of the recipient's average annual net taxable earned income. However, for any income amount in excess of 43,699€ per annum the daily allowance would be (without any maximum limit) 32.5% of the said one-three-hundredth. For the first 50 weekdays of the father's parenthood allowance periods the daily allowance is proposed to be raised to 80% of one three-hundredth part of the recipient's average annual net taxable earned income. For any income amount in excess of 43,699€ per annum, the daily allowance would be (without any maximum limit) 32.5% of the said one three-hundredth. The father's allowance periods would also be made more flexible: especially because it would no longer be necessary to take out an extended (paternity) allowance period immediately after the end of the parental allowance period. With the improvement of the fathers' allowances, it is hoped that fathers would make more use of the parenthood allowances and leaves. Adoptive parents' entitlement to allowances and leaves is proposed to be raised from 180 days at

most to 200 days at most. The modifications are proposed to take effect as of January 1, 2007.[4]

2. Child-care Leave, and Small Children's Care Allowance

Under chapter 4, section 3 of the Employment Contracts Act, the employee is entitled to take child-care leave in order to care for his or her child or some other child living permanently in his or her household, until the child reaches the age of three. Child-care leave can be taken in one or two periods of at least one month, unless the employee and the employer agree on more than two periods or on a period shorter than one month. Only one of the parents or persons having the care and custody of the child is entitled to take child-care leave at one time. During maternity or parental leave, the other parent or other person having care and custody is nonetheless entitled to take one period of child-care leave.

The employee shall notify the employer of the child-care leave and its duration at least two months before the leave will begin. The employee may change the term and duration of the child-care leave for a justified reason by notifying the employer at least one month before the change takes place.

Small children's care allowance is granted for children who are not participating, or participate to a limited extent only, in municipal daycare of children. (After the parenthood allowance period, all children under the school age are entitled to participate in municipal daycare, but participation is not compulsory.) Small children's care allowance is granted under three headings: Children's Home Care Allowance, Private Day Care Allowance, and Partial Care Allowance. (Partial care allowance is discussed below, in connection with partial child-care leave.)

The children's home care allowance is granted for children under three years of age, as well as for other children in the family cared for in the same manner as the children under three. The private daycare allowance is granted to arrange the daycare by means of paid services, provided that children's home care allowance is not paid for any of the family's children. Both allowances are partially income tested according to rather complicated formulae: with rising income the allowance sinks, but does not disappear altogether.

4. *See* Government Bill No. 112, to be published in the collection A 1 VUODEN 2006 VALTIOPÄIVÄT (2006).

3. Partial Child-care Leave and Partial Child-care Allowance

An employee who has been employed by the same employer for an aggregate period of at least twelve of the past twenty-four months is entitled to take partial child-care leave in order to care for his or her child or some other child living permanently in the employee's household, under chapter 4, section 4 of the Employment Contracts Act; such leave can be taken up to the end of the year during which the child begins comprehensive school. Only one of the parents or persons having the care and custody of the child is entitled to take partial child-care leave at the same time. The employee shall submit a proposal on partial child-care leave to the employer no later than two months before the leave should begin.

The employer and the employee shall agree on partial child-care leave and the detailed arrangements concerning it as they see fit. The employer cannot refuse to agree on or grant such leave unless the leave causes serious inconvenience to production or service operations that cannot be avoided through reasonable rearrangements of work. The employer must provide the employee with an account of the grounds for a refusal.

If an employee is entitled to partial child-care leave, but it is not possible to reach agreement on the detailed arrangements, the employee shall be granted one period of partial child-care leave in a calendar year. The duration and timing of the leave shall be according to the employee's proposal. In such cases, the partial child-care leave shall be granted by reducing the regular working hours to six hours per day. The reduced working hours shall cover a continuous period, not including rest breaks. If regular working hours have been arranged on the basis of an average, the average shall be reduced to thirty hours per week.

Interruption of partial child-care leave. Any changes in partial child-care leave shall be agreed on. If it is not possible to reach an agreement, the employee has the right to interrupt the partial child-care leave for a justified reason, observing a notice period of at least one month.

Partial child-care allowance (70€ per calendar month) is granted to an employed parent or custodian of a child under three years of age or having his or her first or second school year at comprehensive school (or having certain special needs), provided that the average weekly working time of the parent or custodian is at most thirty hours for the sake of the care of the child (disregarding whether the length of the working time is due to partial child-care leave expressly

granted), that the parent or custodian is not receiving children's home care allowance for the care of the child, and that the family is not receiving maternity, paternity, parental, special maternity, or partial parental allowance for the period in question.

4. Temporary Child-care Leave

If the employee's child or some other child who lives permanently in the employee's household falls suddenly ill and is under ten years of age, the employee is entitled to temporary child-care leave under chapter 4, section 6 of the Employment Contracts Act for a maximum of four working days at a time in order to arrange for care of the child or to care for the child personally. Both of the child's parents (or both persons having the care and custody of the child) are not entitled to take simultaneous temporary child-care leave.

The employee shall notify the employer of temporary child-care leave and of its estimated duration as soon as possible. If the employer so requires, the employee shall present a reliable account of the grounds for temporary child-care leave.

5. Absence for Compelling Family Reasons

Under chapter 4, section 7 of the Employment Contracts Act, the employee is entitled to temporary absence from work if his or her immediate presence is necessary because of an unforeseeable and compelling reason due to an illness or accident suffered by the family. The employee must notify the employer of the absence and its reason as soon as possible. If the employer so requests, the employee must present a reliable account of the grounds for the absence.

6. Wages During Family Leaves

The employer has no legal duty to pay the employee remuneration for the duration of any of the instances of family leave referred to above. Nonetheless, the employer shall compensate a pregnant employee for loss of earnings incurred from medical consultations prior to the birth if it is not possible to arrange the consultations outside working hours.[5] In addition, several collective agreements augment the employee's daily allowance (especially the

5, Employment Contracts Act, ch. 4, § 8.

maternity allowance) for a certain period of time, for example, with the difference between the employee's usual wages and the maternity allowance; and seafarers have a similar right under the Seamen's Act to wages during the maternity allowance period.

7. Return to Work

At the end of a family leave referred to above, the employee is entitled to return to his or her former duties. If this is not possible, the employee shall be offered equivalent work in accordance with his or her employment contract, and if this is not possible either, other work in accordance with the employment contract.[6]

B. Other Family Allowances

In addition to the family allowances just discussed entitling family leaves, families are entitled to other benefits without any direct connection to leaves or other terms of employment. These benefits are described in the following in a more summary fashion.

"Maternity grant" is a lump sum payment (of 140€) or a package in kind, as elected by the mother. A woman expecting her first child usually elects the package, while the lump sum is customarily elected at later confinements. The maternity grant is intended to promote the health and well-being of the mother and baby, and a health examination of the mother in due time is regularly a precondition for the grant. In the case of twins, a double amount (280 €) is paid for the second baby, and in the case of triplets, a triple amount (420 €) for the third baby. An adoptive parent is also entitled to a maternity grant.

"Family allowance" is a periodic payment for each child under seventeen years of age. The allowance for one child is 100 € per calendar month. In the case of more than one child, the monthly allowance is 110.50€ for the second child, 131€ for the third child, 151.50€ for the fourth child, and 172€ for each additional child. For a child of a single parent, the monthly allowance is increased by 36.60€.

Household allowance is granted as a reduction of the income tax with 60% (with an annual maximum of 2,300 €) of the price paid by the taxpayer to a professional provider of household services for such services. A corresponding allowance is granted for the wages of a person employed directly by the taxpayer for household work.

6. *See* KIMMO PIETILÄINEN, PERHEVAPAAT, *passim.* (2003); KARI-PEKKA TIITINEN & TARJA KRÖGER, TYÖSOPIMUSOIKEUS 233–256, 421–425 (2nd ed. 2003).

C. STATISTICS OF FAMILY ALLOWANCES IN 2004[7]

	Number of recipients	Aggregate amount (millions of euros)
Maternity allowances, and parental allowances to mothers	98,400	561.5
Paternity allowances, and parental allowances to fathers	46,900	48.9
Maternity grants	56,497	11.12
Small children's care allowances:		305.9
–children's home care allowances	103,850	
–private day care allowances	14,850	
–partial care allowances	10,874	
Family allowances:		1,428.8
–number of families	570,413	
–number of children	1,039,967	

III. HUMAN RIGHTS ASPECTS

A. Influence of Family Considerations on Job Security

As previously mentioned, it is expressly provided in Section 18 of the Constitution of Finland, 1999, that no one shall be dismissed from employment without a reason based on the law (an Act of Parliament). All employees are thus directly protected by this constitutional provision that only allows dismissals in cases expressly regulated in legislation, mainly in the Employment Contracts Act (and in the Seamen's Act as well in the statutes concerning public officials). The system of job security embodied in this legislation is fairly extensive—and falls mainly outside the scope of this report.

7. *See* 40 STATISTICAL YEARBOOK OF THE SOCIAL INSURANCE INSTITUTION, FINLAND, 2004, at 79, 143–147. 231–243, *English Summary*, at 306–307, 316-319 (2005); 100 STATISTICAL YEARBOOK OF FINLAND (new series), 2005, at 465, 468 (2005).

However, family considerations enhance this extensive system even more in some respects.

B. Termination in the Case of an Employee Who is Pregnant or on Family Leave

The employer is not entitled to terminate an employment contract because of the employee's pregnancy or because the employee is exercising his or her right to a family leave mentioned above. The employer is entitled to terminate the employment contract of an employee on maternity, special maternity, paternity, parental, or child-care leave on a ground not connected with the capacity or conduct of the employee only if the employer's operations cease completely. This rule signifies that in case termination of the employment contract is not allowed, the period of notice of termination can only be reckoned from the close of the family leave (thus entitling the employee to remuneration until the end of the period of notice).

In case an employee opposes a termination on the ground that she is pregnant, the employee must present the employer with proof of pregnancy on request. In no case may the employer ask questions about a job-seeker's (actual or planned) pregnancies. Questions necessitated by safety and health reasons may only be presented after the conclusion of the employment contract.

If the employer terminates the employment contract of a pregnant employee or of an employee on family leave, the termination shall be deemed to have taken place because of the employee's pregnancy or family leave unless the employer can prove that there was another reason.[8] As in other cases of violations of job security, a termination in violation of the job security provisions previously discussed not only terminates the employment, but also makes the employer liable to pay a (normalized) indemnity to the employee. The unlawful termination may also constitute a discriminatory treatment of the employee with adverse consequences for the employer (see below).

8. Employment Contracts Act, ch. 7, § 9.

IV. INFLUENCE OF FAMILY CONSIDERATIONS ON PROTECTION AGAINST DISCRIMINATION

Finland also has a fairly extensive system of protection against discrimination in employment (restricting employers' powers to treat their employees or job-seekers in a discriminatory manner). This extensive system, too, is enhanced by family considerations in some respects, and, as discussed in the Introduction, is fundamentally based on specific provisions in the Constitution of 1999, in this case on section 6 (*Equality*).

The prohibition of discrimination is listed in the legislative materials among the constitutional provisions that are directly applicable to relations between private subjects. The prohibition in the Constitution is nevertheless developed further and specified in legislation implementing the constitutional prohibition. The implementing legislation includes, in addition to several provisions of the Employment Contracts Act and some other labor law statutes, especially the Act on Equality between Women and Men (also known as The Equality Act), 1986, as amended, and the Non-Discrimination Act, 2004 (concerned with other kinds of discrimination than sexual).

Direct and indirect (sexual) discrimination are forbidden in the Equality Act. If someone is transferred to a different position because of pregnancy or childbirth, this is listed in the Act as a case of direct (sexual) discrimination. If some one is transferred to a different position because of parenthood or because of a duty to provide for a family, this is listed in the Act as a case of indirect (sexual) discrimination.

The main field of application of the prohibition of discrimination is working life: hiring, firing, promotions, wages and salaries, supervision of work, etc. The prohibition is, however, widely applicable in various other fields of life, for example, in the selection of customers and students. It is not necessary that someone is discriminated against in favor of an actual person: a hypothetical comparison is enough. Nor is it in the cases of pregnancy needed that the comparison be with a person of the opposite sex. To combat discrimination because of pregnancy, or other reasons, the same means are available as in cases of discrimination in favor of a person of the opposite sex: official supervision, prosecutions, private lawsuits, partially shifted burden of proof, pecuniary compensation, etc.[9]

9. *See* KAROLIINA AHTELA ET AL., TASA-ARVO JA YHDENVERTAISUUS 15–30, 102–106, 133–137, 145–157, 179–181 (2006); Antti Suviranta, *On two brands of equality*, *in* FINNISH ACADEMY OF SCIENCE AND LETTERS, YEAR BOOK 2005, at 47–53 (2006).