

EMPLOYMENT CONTRACTS ACT

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18.06.2009 (RT I 2009, 36, 234) 1.07.2009, partially according to § 190

Chapter 1

GENERAL PROVISIONS

§ 1. Definition of employment contract

(1) On the basis of an employment contract a natural person (employee) does work for another person (employer) in subordination to the management and supervision of the employer. The employer remunerates the employee for such work.

(2) If a person does work for another person which, according to the circumstances, can be expected to be done only for remuneration, it is presumed to be an employment contract.

(3) The provisions concerning authorisation agreements apply to employment contracts, unless otherwise provided by this Act.

(4) The provisions concerning employment contracts do not apply to contracts where the person obligated to perform the work is to a significant extent independent in choosing the manner, time and place of performance of the work.

(5) The provisions concerning employment contracts do not apply to the contracts of members of directing bodies of legal persons or directors of branches of foreign companies.

§ 2. Mandatory nature of provisions

Agreements derogating to the detriment of the employee from the provisions of this Act and the Law of Obligations Act concerning the rights and obligations and liability of the parties are void, unless the possibility of an agreement derogating to the detriment of the employee has been provided by this Act.

§ 3. Principle of equal treatment

Employers shall ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality in accordance with the Equal Treatment Act and Gender Equality Act.

Chapter 2

ENTRY INTO EMPLOYMENT CONTRACT

§ 4. Specifications for entry into employment contract

(1) Employment contracts shall be entered into in accordance with the provisions concerning entry into contracts as provided by the Law of Obligations Act.

(2) An employment contract is entered into in writing. An employment contract is also deemed entered into if an employee commences work which, according to the circumstances, can be expected to be done only for remuneration.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

(3) An agreement on an employment contract condition harmful to the employee or related to the validity of the employment contract, which is contingent upon an uncertain event (resolutive condition), is void.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

(4) Failure to adhere to the formal requirement set out in subsection (2) of this section does not result in the voidness of the employment contract.

(5) The formal requirement set out in subsection (2) of this section is not applied if the duration of the validity of the employment contract does not exceed two weeks.

§ 5. Notification of employees of working conditions

(1) A written employment contract shall contain at least the following data:

- 1) the name, personal identification code or registry code, place of residence or seat of the employer and the employee;
- 2) the date of entry into the employment contract and commencement of work by the employee;
- 3) a description of duties;
- 4) the official title if this brings about legal consequences;
- 5) the agreed pay payable for the work (wages), including wages payable based on the economic performance and transactions, the manner of calculation, the procedure for payment and the time of falling due of wages (pay day), as well as taxes and payments payable and withheld by the employer;
- 6) other benefits if agreed upon;
- 7) the time when the employee performs the agreed duties (working time);
- 8) the place of performance of work;
- 9) the duration of holidays;
- 10) a reference to or the terms of advance notification of cancellation of the employment contract;
- 11) the rules of work organisation approved by the employer;
- 12) a reference to a collective agreement if a collective agreement is applicable to the employee.

(2) The data of an employment contract is communicated prudently, clearly and unambiguously. The employer may demand that the employee confirm the communication of the data specified in this section.

(3) If the data has not been communicated to the employee before commencement of work, the employee may demand it at any time. The employer is obligated to communicate data within two weeks of receiving such a request.

(4) Any changes in the data shall be communicated to the employee within one month of making the changes, considering the provisions of subsections (2) and (3) of this section.

(5) The employer shall preserve the written employment contract during the term of validity of the employment contract and for ten years after the termination of the employment contract.

§ 6. Notification of employees of working conditions in special cases

(1) If an employer and an employee agree on a period shorter than that provided for in subsection 86 (1) of this Act in order to assess whether the employee's health, knowledge, skills, abilities and personal characteristics correspond to the level required for performance of the work (probationary period), the employer shall, in addition to what has been specified in § 5 of this Act, notify the employee of the duration of the probationary period.

(2) If the employer and the employee agree that the employment contract is a fixed-term contract, the employer shall, in addition to what has been specified in § 5 of this Act, notify the employee of the duration of the employment contract and the reason for entry into a fixed-term employment contract.

(3) If the employer and the employee agree on the application of the limitation of competition or the employer has determined the confidential information, the employer shall, in addition to what has been specified in § 5 of this Act, notify the employee of the contents of the agreement or confidential information.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

(4) If the employer and the employee agree that the employee does work which is usually done in the employer's enterprise outside the place of performance of the work, including at the employee's place of residence (teleworking), the employer shall, in addition to what has been specified in § 5 of this Act, notify the employee that the duties are performed by way of teleworking.

(5) If the employer and the employee agree that the employee does work in compliance with a third party's (user undertaking) instructions and supervision (temporary agency work), the employer shall, in addition to what has been specified in § 5 of this Act, notify the employee that the duties are performed by way of temporary agency work in the user undertaking.

(6) If the employer and the employee agree that the working time is divided between the recording period unequally (total working time), the employer shall, in addition to what has been specified in § 5 of this Act, notify the employee of the conditions of communicating the working time schedule.

(7) If the employer and the employee agree that the employer compensates the employee for expenses incurred upon doing work or due to the directions or orders of the employer, the employer shall, in addition to what has been specified in § 5 of this Act, notify the employee of the contents of such agreement.

(8) If the employee and the employer agree that the employee works for more than one month in a country whose law does not apply to their employment contract, the employer shall, in addition to what has been specified in § 5 of this Act, notify the employee of the time of working in the country, the currency of payment of the wages, the benefits relating to the stay in the country, and the conditions of returning from the country before the employee leaves for the country.

(9) If the employer has not communicated to the employee the data specified in subsections (1) to (5) of this section it is presumed that no agreements have been made or obligations established.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

§ 7. Entry into employment contracts with minors

(1) An employer shall not enter into an employment contract with a minor under 15 years of age or a minor subject to the obligation to attend school, or allow such minor to work, except in the events provided for in subsection (4) of this section.

(2) An employer shall not enter into an employment contract with a minor or allow a minor to work if the work:

1) is beyond the minor's physical or psychological capacity;

2) is likely to harm the moral development of the minor;

3) involves risks which the minor cannot recognise or avoid owing to their lack of experience or training;

4) is likely to harm the minor's social development or to jeopardise their education;

5) involves health hazards to the minor arising from the nature of the work or from the working environment.

(3) The list of the work and hazards specified in clause (2) 5) of this section shall be established by a regulation of the Government of the Republic.

(4) An employer may enter into an employment contract with a minor of 13-14 years of age or a minor of 15-16 years of age subject to the obligation to attend school and allow them to work if the duties are simple and do not require any major physical or mental effort (light work). Minors of 7-12 years of age are allowed to do light work in the field of culture, art, sports or advertising.

(5) The types of light work which may be done by minors shall be established by a regulation of the Government of the Republic.

(6) An employment contract made in breach of the restrictions specified in this section is void.

§ 8. Consent for employment of minors

(1) An expression of will made by a minor for entry into an employment contract without the consent of a legal representative is void, unless the legal representative subsequently approves the expression of will.

(2) The legal representative of a minor may not consent to the employment during the school holiday of a minor subject to the obligation to attend school for more than a half of each term of the school holiday.

(3) To enter into an employment contract with a minor of 7-14 years of age the employer shall apply to the labour inspector of the place of business for consent. In the application the employer shall indicate information about the working conditions of the minor, including the minor's place of work, duties, age and whether the minor is subject to the obligation to attend school.

(4) If the labour inspector verifies that the work is not prohibited for the minor and the minor's working conditions are in accordance with the requirements provided by law and the minor wants to do the work, the labour inspectorate shall grant the employer the consent specified in subsection (3) of this section.

(5) If, in ascertaining the will of a minor of 7-12 years of age, the labour inspectorate has a reasonable doubt that the minor is not expressing their true will in the presence of the legal representative, the labour inspector shall ascertain the will of the minor in the presence of the minor and a local child protection official.

(6) An employment contract which has been made with a minor without the consent specified in this section is void.

(7) An employer is prohibited to allow a minor to work without the consent or approval of the legal representative.

§ 9. Entry into fixed-term employment contracts

(1) It is presumed that employment contracts are made for an unspecified period. A fixed-term employment contract may be made for up to five years if it is justified by good reasons arising from the temporary fixed-term characteristics of the work, especially a temporary increase in work volume or performance of seasonal work.

(2) For the period of replacement of an employee who is temporarily absent a fixed-term employment contract may be made for the period of replacement.

§ 10. Restriction on consecutive entry into and extension of fixed-term employment contracts

If an employee and an employer have, on the basis of subsection 9 (1) of this Act, on more than two consecutive occasions entered into a fixed-term employment contract for similar work or extended the fixed-term contract more than once in five years, the employment relationship shall be deemed to have been entered into for an unspecified term from the start. Entry into fixed-term employment contracts shall be deemed consecutive if the time between the termination of one employment contract and entry into the next employment contract does not exceed two months.

§ 11. Precontractual negotiations

(1) In precontractual negotiations or upon preparation of an employment contract in another manner, including in a job advertisement or job interview, an employer may not ask the person applying for employment for any data with regard to which the employer does not have any legitimate interest.

(2) The absence of the employer's legitimate interest is presumed first of all in the case of questions which disproportionately concern the private life of the person applying for employment or which are not related to their suitability for the job offered.

(3) The provisions of this section do not limit the application of the provisions of § 14 of the Law of Obligations Act.

§ 12. Amendment of employment contract

Employment contracts may be amended only by agreement between the parties.

§ 13. Specifications for cancellation of employment contracts

(1) An employer may not cancel an employment contract due to error or fraud, relying on the absence of information or false information about an employee with regard to the learning of which the employer does not have a legitimate interest as well as due to error or fraud if the circumstance with regard to which the employer was in error has lost its meaning for the employment contract at the time of the cancellation.

(2) Due to error or fraud the employer may cancel the employment contract within two weeks of learning of the error or fraud.

§ 14. Consequences of cancellation of employment contracts

(1) In the event of the voidness or cancellation of an employment contract the employer or the employee may claim that which was delivered or performed under the contract.

(2) The employee shall return tools and personal protective equipment received for occupational use under a void employment contract.

(3) If an employee deceived an employer with a fact which is of significant importance in determining the wages, the portion of the wages paid to the employee which the employer would have not paid had it known the actual circumstances may be claimed by the employer from the employee.

Chapter 3

DUTIES OF EMPLOYEES AND EMPLOYERS

Division 1

Duties of employees

§ 15. Duties of employees

- (1) An employee shall perform their duties before an employer loyally.
- (2) Unless otherwise provided by law or a collective agreement or an employment contract, the employee shall perform, above all, the following duties:
 - 1) to do the agreed work and perform the duties arising from the characteristics of the work;
 - 2) to do the work in the agreed volume, in the agreed place and at the agreed time;
 - 3) to comply with the lawful instructions of the employer in a timely manner and precisely;
 - 4) to participate in training for the improvement of vocational knowledge and skills;
 - 5) to refrain from actions which hinder other employees from performing their duties or endanger the life, health or property of the employee or third parties;
 - 6) to cooperate with other employees for the purpose of performance of duties;
 - 7) to promptly notify the employer of impediments to work or of the threat thereof and, if possible, to eliminate such impediments or threats without special instructions;
 - 8) at the request of the employer, to notify the employer of any and all material circumstances relating to the employment relationship in which the employer has a legitimate interest;
 - 9) to refrain from actions which harm the reputation of the employer or cause distrust in the employer among clients or partners;
 - 10) to notify the employer at the earliest opportunity of their temporary incapacity for work and, where possible, the presumed duration thereof.
- (3) The employee shall perform their duties personally, unless agreed otherwise.

§ 16. Level of diligence of employees

- (1) An employee shall perform duties loyally, bearing in mind the benefit to the employer, in accordance with their knowledge and skills, and with the diligence arising from the characteristics of the work.
- (2) The level of diligence observed upon performance of the employment contract, which, if not adhered to, makes the employee liable for a breach of the employment contract, shall be determined on the basis of the employee's employment relationship, considering the ordinary risks related to the employer's activities and the employee's work, the training of the employee, professional knowledge required for performance of the work, as well as the employee's abilities and characteristics which the employer knew or should have known.

§ 17. Content of instructions of employers

- (1) An instruction of an employer shall be related to duties provided for in an employment contract.
- (2) Upon giving instructions, employers shall reasonably take the interests and rights of employees into account.

(3) Employees do not have to follow instructions not related to an employment contract, collective agreement or law. Instructions not related to an employment contract, collective agreement or law, which may not be deviated from or which are in conflict with the principle of good faith or reasonableness are void.

(4) Instructions not related to an employment contract, collective agreement or law are valid if arising from an emergency. An emergency is presumed in the event of possible damage or a threat of such damage to the employer's property or other interests caused above all by force majeure.

(5) If duties are performed by way of temporary agency work, the employee shall follow the instructions of the user undertaking as well. Instructions of user undertakings are subject to the provisions of this section. In the event of a conflict between the instructions of the employer and the user undertaking the employee shall follow the instructions of the employer.

§ 18. Working conditions of pregnant employees and employees entitled to pregnancy leave and maternity leave

(1) Pregnant employees and employees who are entitled to pregnancy leave and maternity leave have the right to demand that the employer temporarily provide them with work corresponding to their state of health, unless the employee's state of health does not allow for the performance of the duties provided for in the employment contract on the agreed conditions.

(2) If the employer cannot provide the employee with work corresponding to their state of health, the employee may temporarily refuse to perform the duties.

(3) In the events specified in subsections (1) and (2) of this section the employee shall submit to the employer a certificate of a doctor indicating the restrictions on work due to their state of health and, where possible, proposals regarding duties and working conditions corresponding to their state of health.

[RT I 2009, 15, 93 – entered into force 1.07.2009]

(4) In the events specified in subsections (1) and (2) of this section compensation shall be paid to the employee under the conditions and pursuant to the procedure provided for in the Health Insurance Act.

(5) Upon termination of pregnancy and maternity leave a woman is entitled to use the improved working conditions which she would have been entitled to during her absence.

§ 19. Right of employees to refuse to do work

An employee has the right to refuse to perform work in particular if the employee:

- 1) is on holiday;
- 2) has temporary incapacity for work for the purposes of the Health Insurance Act;
- 3) is representing employees in cases provided by law or a collective agreement;
- 4) is participating in a strike;
- 5) is in compulsory military service or alternative service or is participating in reserve training;
- 6) has other reasons provided for in the employment contract, collective agreement or law.

§ 20. Place of performance of work

Employees shall perform their duties at the place of business of the employer which has the strongest connection with the employment relationship, unless the place of performance of work has not been agreed on. It is presumed that the place of performance of work is agreed on with the precision of the local authority unit.

§ 21. Business trips

(1) Employers have the right to send employees outside of the location prescribed by the employment contract, in order to perform their duties.

(2) Employees may not be sent on business trips for longer than 30 consecutive calendar days, unless the employer and the employee have agreed on a longer term.

(3) Pregnant women and employees raising a disabled child or child under three years of age may be sent on a business trip only with their consent.

(4) Minors may be sent on a business trip only with the prior consent of the minor and their legal representative.

§ 22. Duty to maintain confidentiality

(1) According to § 625 of the Law of Obligations Act and taking into account the notification obligation provided for in subsection 6 (3) of this Act, employers may determine which information employees are obligated to keep as a production or business secret.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

(2) Employers and employees may agree on a contractual penalty for a breach of the duty to maintain confidentiality under the conditions and pursuant to the procedure provided for in the Law of Obligations Act.

(3) The provisions of this section do not preclude compensation for damage caused by a breach of the duty to maintain confidentiality to the extent not covered by a contractual penalty.

§ 23. Agreement on restraint of trade clause

(1) Under an agreement on a restraint of trade clause an employee assumes the obligation not to work for an employer's competitor or not to engage in the same economic or professional activity as the employer.

(2) An agreement on a restraint of trade clause may be entered into if it is necessary for protecting an employer's special economic interest in whose confidentiality the employer has a legitimate interest, especially if the employment relationship allows an employee to become acquainted with the employer's clients or access the employer's production and business secrets and the use of this knowledge may considerably harm the employer.

(3) A restraint of trade clause shall be reasonably and recognisably limited in terms of space, time and objects.

(4) An agreement made in breach of the requirements provided for in this section is void.

§ 24. Validity of agreement on restraint of trade after termination of employment contract

(1) An agreement on a restraint of trade clause applicable after the termination of an employment contract is valid only if:

1) it complies with the conditions provided for in subsections 23 (2) and (3) of this Act;

2) it has been made in writing;

3) compensation is paid for it in accordance with subsection (3) of this section;

4) it has been made for up to one year starting from the termination of the employment contract.

(2) An employer cannot rely on the voidness of an agreement made in breach of the requirements established in subsection (1) of this section if an employee performs the agreement.

(3) An employer shall pay an employee reasonable monthly compensation for performance of the restraint of trade after the termination of the employment contract.

§ 25. Cancellation of agreement on restraint of trade clause

(1) An employer may cancel an agreement on a restraint of trade clause at any time, notifying the employee thereof no less than 30 calendar days in advance.

(2) An employee may cancel the agreement on a restraint of trade clause, notifying the employer thereof no less than 15 calendar days in advance if the employer's interest in restriction of competition is no longer reasonable due to changes in circumstances.

(3) In addition to the provisions of subsection (2) of this section, an employee may cancel the agreement on a restraint of trade clause within 30 calendar days of cancelling the employment contract due to a material breach by an employer, notifying the employer thereof no less than 15 calendar days in advance.

(4) The provisions of subsections (1) and (2) of this section also apply to cancellation of agreements on a restraint of trade clause after the termination of an employment relationship.

§ 26. Contractual penalty upon breach of duty of restraint of trade clause

(1) An employer and an employee may agree on a contractual penalty for a breach of the restraint of trade clause.

(2) The provisions of this section do not preclude compensation for damage caused by a breach of the restraint of trade clause to the extent not covered by a contractual penalty.

§ 27. Notification obligation

At the request of an employer, an employee is obligated to provide information about their employment, economic or professional activities during and after the term of validity of the employment contract to an extent which is of relevance for the purposes of adherence to the agreement specified in §§ 23-25 of this Act.

Division 2

Duties of employers

§ 28. Duties of employers

(1) An employer shall perform its duties in regard to an employee loyally.

(2) Above all, an employer is required:

1) to provide employees with the work agreed on and give necessary instructions clearly and in a timely manner;

2) to pay remuneration for work at the time and in the amount agreed;

3) to grant holidays as prescribed and pay holiday pay;

4) to ensure the agreed working and rest time and keep account of working time;

5) for the purpose of development of the professional knowledge and skills of employees, to provide the employees with training based on the interests of the employer's enterprise and bear the training expenses and pay average wages during the training;

6) to ensure working conditions corresponding to occupational health and safety requirements;

7) upon hiring employees as well as during employment, to introduce to the employees the fire safety rules, occupational health and safety rules and rules of work organisation established by the employer;

- 8) upon hiring employees as well as during employment, to introduce the conditions of collective agreements applicable to employees;
- 9) to notify employees working under a fixed-term employment contract of vacant jobs corresponding to their knowledge and skills with regard to which an employment contract can be entered into for an unspecified term;
- 10) to notify full-time employees of the possibilities of part-time work and part-time employees of the possibilities of full-time work, considering the knowledge and skills of the employees;
- 11) to respect employees' privacy and verify the performance of their duties in a manner which does not violate the employee's fundamental rights;
- 12) at the request of an employee, to provide the employee with information about the wages calculated and paid or payable to the employee, and provide other notices characterising the employee or the employment relationship;
- 13) not to disclose, without an employee's consent or legal basis, information about wages calculated, paid or payable to the employee.

§ 29. Amount of wages

- (1) If a person does work which, according to the circumstances, can be expected to be done for remuneration, it is presumed that an agreement on wages has been reached.
- (2) If the amount of wages payable to an employee under a contract has not been agreed on or if the agreement cannot be proven, the amount of the wages is the remuneration specified in a collective agreement or, upon absence of a collective agreement, the remuneration paid for similar work under similar circumstances.
- (3) The employee's tax liability or the taxes, contributions and premiums provided by law which are to be withheld from the wages shall be debited from the agreed wages. Wages shall be paid in money.
- (4) If, in addition to wages, it has been agreed that an employer shall grant an employee other benefits, the employee shall have the right to demand them.
- (5) The Government of the Republic shall establish, by a regulation, the minimum wage corresponding to a specific unit of time.
- (6) Wages falling below the minimum wage established by the Government of the Republic may not be paid to employees.
- (7) [Repealed – RT I 2009, 36, 234 – entered into force 1.07.2009]
- (8) The Government of the Republic shall establish, by a regulation, the conditions and procedure for payment of average wages.

§ 30. Remuneration paid on economic performance

If an employee has the contractual right to receive a part of an employer's profit or turnover or other economic results, it shall be presumed that the approved annual report of the employer in the respective year serves as the basis for calculation of the employee's part.

[RT I 2009, 11, 67 – entered into force 1.07. 2009]

§ 31. Remuneration paid on transactions

If an employee has the contractual right to remuneration on a contract to be made between an employer and a third party, §§ 679-682 of the Law of Obligations Act shall be applied to payment of the remuneration.

§ 32. Agreement on use of remuneration

An agreement under which an employee is obligated to use the wages and other benefits for a certain purpose is void.

§ 33. Time, place and manner of payment of wages

(1) An employer shall pay wages to an employee once a month, unless a shorter term has been agreed on for payment of the wages.

(2) If the pay day falls on a public holiday or a day off, it shall be deemed that the pay day is the working day preceding the public holiday or day off.

(3) The part payable of an employer's economic results shall be paid to an employee after determining the part, but not later than six months after approval of the annual report of the employer.

(4) An employer shall transfer an employee's wages and other remuneration to the bank account indicated by the employee, unless agreed otherwise.

§ 34. Agreement on compensation of training expenses

(1) An employer and employee may agree that the employer shall incur additional expenses for training the employee in comparison with reasonable expenses for training the employee and the employee shall work for the employer during the agreed period (binding period) for the purpose of compensating these expenses.

(2) An agreement on compensation of training is valid only if:

1) it has been made in writing;

2) it specifies the substance and expenses of training;

3) the binding period does not exceed three years;

4) considering the training expenses, the binding period is not unreasonably long.

(3) An employee shall compensate additional expenses incurred by the employer in proportion to the time remaining until the end of the binding period if the employee cancels the employment contract before the expiry of the binding period, unless the reason for cancellation of the employment contract is a fundamental breach of the employment contract by the employer.

(4) An employee shall compensate additional expenses incurred by the employer in proportion to the time remaining until the end of the binding period if the employer cancels the employment contract before the expiry of the binding period due to a fundamental breach of the employment contract by the employee.

(5) An agreement on compensation of training expenses made with a minor or for compensating expenses related to the performance of the employer's training obligation provided by law is void.

§ 35. Payment of wages upon failure to provide work

An employer shall pay average wages to an employee who is capable of working and ready to do work even if the employee does not work because the employer has not provided them with work, has not performed an act required for doing work or has otherwise delayed acceptance of the work, unless the employee is at fault in failing to be provided with work.

§ 36. Payment of wages upon refusal to work or upon fulfilment of other tasks

Wages shall also be paid for the period when an employee follows instructions provided for in subsection 17 (4) of this Act to fulfil other tasks or exercises the right to refuse to perform work specified in clause 19 3) of this Act.

§ 37. Reduction of wages upon failure to provide work

(1) If an employer, due to unforeseen economic circumstances beyond its control, fails to provide an employee with work to the agreed extent, the employer may, for up to three months over a period of 12 months, reduce the wages to a reasonable extent, but not below the minimum wage established by the Government of the Republic, if payment of the agreed wages would be unreasonably burdensome for the employer.

(2) Before reducing wages an employer shall offer an employee another job, if possible.

(3) An employee has the right to refuse to perform work in proportion to the reduction of the wages.

(4) Before reducing wages an employer shall notify the employees' representative or, in their absence, notify employees and consult them pursuant to the procedure provided for in the Employees Representative Act, taking into account the terms provided for in this subsection. The employer shall provide notice of the reduction of wages no less than 14 calendar days in advance. The employees' representative or the employee shall give their opinion within seven calendar days of receiving the employer's notice.

(5) An employee has the right to cancel the employment contract due to reasons provided for in subsection (1) of this section, notifying thereof five working days in advance. Upon cancellation of the employment contract an employee is paid compensation to the extent provided for in subsections 100 (1) and (2) of this Act.

§ 38. Payment of wages upon impediment of work

An employer shall pay an employee average wages for a reasonable period if the employee could not perform work due to a reason arising from the employee, but not caused intentionally or due to severe negligence or if the employee cannot be expected to do work for another reason not attributable to the employee.

§ 39. Specifications of expiry of claims for repayment of wages

An employer's claim for repayment of wages and other financial claims arising from an employment relationship shall expire within 12 months of the time when the employee received the wages or an advance payment of wages.

§ 40. Specifications of compensation of expenses and damage of employees

(1) An employee may demand that expenses incurred in the performance of duties be compensated pursuant to subsections 628 (2) to (4) of the Law of Obligations Act. An agreement on compensation of expenses from wages is void.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

(2) An employee has the right to demand compensation of expenses relating to a business trip. In the case of a business trip abroad an employee also has the right to demand a business trip daily allowance on the conditions and to the extent of the minimum rate established on the basis of subsection (3) of this section, unless the parties have agreed on compensation at a higher rate.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

(3) The Government of the Republic shall establish, by a regulation, the minimum amount and conditions of daily allowance of a business trip abroad, limiting the payment of the daily allowance based on the remoteness of the destination, the start and end time of the trip, and catering provided during the trip.

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(4) An employee has the right to demand compensation for possible expenses relating to a business trip within a reasonable time before the beginning of the business trip. The employee has the right to refuse to go on a business trip if the employer has not made an advance payment within a reasonable time.

(5) Damage caused to an employee in the performance of duties is compensated on the basis of subsection 628 (5) of the Law of Obligations Act. It is presumed that the wages paid to the employee do not cover the damage specified in the previous sentence.

§ 41. Information concerning employees

(1) Employees have the right to access the information gathered about them and demand that incorrect information be removed or corrected.

(2) Employers shall ensure the processing of personal data of employees in accordance with the Personal Data Protection Act.

Division 3

Working and rest time

§ 42. Granting time off

Employers shall grant employees time off under the conditions and pursuant to the procedure provided for in this division. Employees have the right to demand time off under the conditions provided for in § 38 of this Act. Upon granting time off the interests of employers and employees shall reasonably be taken into account.

§ 43. Working time

(1) It is presumed that the employee works 40 hours per seven days (full-time work), unless the employer and the employee have agreed on a shorter working time (part-time work).

(2) It is presumed that the employee works 8 hours a day.

(3) In the case of calculation of the total working time the agreed working time of the employee per period of seven days during the calculation period is taken into account.

(4) Unless the employer and the employee have agreed on a shorter working time, full-time work (shortened full-time work) means:

1) in the case of employees who are 7-12 years of age, 3 hours per day and 15 hours per seven days;

2) in the case of employees who are 13-14 years of age or subject to the obligation to attend school, 4 hours per day and 20 hours per seven days;

3) in the case of employees who are 15 years of age and not subject to the obligation to attend school, 6 hours per day and 30 hours per seven days;

4) in the case of employees who are 16 years of age and not subject to the obligation to attend school, and employees who are 17 years of age, 7 hours per day and 35 hours per seven days.

(5) An agreement in which the calculation of the total working time applied to a minor exceeds the limit provided for in subsection (4) of this section is void.

(6) The Government of the Republic shall establish the working time of educators by a regulation.

§ 44. Overtime

(1) An employer and employee may agree that the employee undertakes to do work over the agreed working time (overtime). In the case of calculation of the total working time, overtime means work exceeding the agreed working time at the end of the calculation period.

(2) An overtime agreement with a minor is void.

(3) An overtime agreement with an employee who comes into contact with hazards in the working environment and whose working time has therefore been shortened based on law is void.

(4) In line with the principle of good faith an employer may demand that an employee perform overtime work due to unforeseen circumstances pertaining to the enterprise or activity of the employer, in particular for prevention of damage.

(5) The performance of overtime work provided for in subsection (4) of this section cannot be demanded of a minor, a pregnant woman or an employee who is entitled to pregnancy and maternity leave.

(6) An employer shall compensate overtime work by time off equal to the overtime, unless it has been agreed that overtime is compensated in money.

(7) Upon compensation of overtime in money, an employer shall pay an employee wages exceeding the normal wages by 1.5 times.

§ 45. Compensation of night work and work done on public holidays

If the working time falls at night (from 10:00 p.m. to 6:00 a.m.), employers shall pay wages for the work exceeding the normal wages by 1.25 times, unless it has been agreed that the wages include remuneration for working at night.

(2) If the working time falls on a public holiday, employers shall pay wages for the work exceeding the normal wages by 2 times.

(3) Employers and employees may agree to compensate work done at night or on public holidays by granting additional time off, differently from the provisions of subsections (1) and (2) of this section.

§ 46. Limit of working time

(1) The working time shall not exceed on average 48 hours per seven days over a calculation period of four months, unless a different calculation period has been provided by law.

(2) The calculation period provided for in subsection (1) of this section may be prolonged by a collective agreement to up to 12 months in the case of health care professionals, agricultural workers and tourism workers.

(3) Employers and employees may agree on a longer working time than that specified in subsection (1) of this section if the working time does not exceed, on average, 52 hours per seven days over a calculation period of 4 months and the agreement is not unfair to the employee. Employees may cancel the agreement at any time, giving two weeks' advance notice thereof.

(4) An employee has the right to refuse to perform overtime work on the basis of the agreement specified in subsection (3) of this section, and the labour inspector of the seat (place of residence) of an employer has the right to prohibit or limit overtime work if the employer fails to fulfil the conditions specified in subsection (3) of this section or occupational health and safety requirements.

(5) Employers shall keep separate accounts of the employees working on the basis of an agreement specified in subsection (3) of this section and submit these to the labour inspector of the seat (place of residence) and the employee's representative at their request.

§ 47. Organisation of working time

(1) Employees shall perform duties at the employer's enterprise or facilities at the normal time (organisation of working time), unless agreed otherwise. The organisation of working time includes, in particular, the start and end of the working time and breaks during the working day.

(2) An agreement under which a break of no less than 30 minutes during the working day has been foreseen per 6 hours of work is void. Breaks during the working day are not considered working time, unless due to the characteristics of the work it is impossible to give a break and an employer gives an employee the opportunity to take a break and dine during working time.

(3) An agreement under which a break of no less than 30 minutes during the working day has been foreseen for minor employees per 4.5 hours of work is void. Breaks during the working day are not considered working time.

(4) Employers may unilaterally change the organisation of working time, provided that the changes arise from the needs of the employer's enterprise and are reasonable, considering mutual interests.

§ 48. On-call time

(1) If an employee and an employer have agreed that the employee shall be available to the employer for performance of duties outside of working time (on-call time), remuneration which is not less than one tenth of the agreed wages shall be paid to the employee.

(2) An agreement on the application of on-call time which does not grant an employee the possibility of using daily and weekly rest time is void.

(3) The part of the on-call time during which an employees is in subordination to the management and supervision of the employer is considered working time.

§ 49. Restrictions on requiring minors to work

(1) An agreement by which a minor employee undertakes to work between 8:00 p.m. and 6:00 a.m. is void.

(2) Subsection (1) of this section does not apply if a minor employee does light work in the field of culture, art, sports or advertising under the supervision of an adult between 8:00 p.m. and 12:00 a.m.

(3) An agreement according to which an employee subject to the obligation to attend school is obligated to perform work immediately before the start of the school day is void.

§ 50. Restriction on night work

(1) An agreement by which an employee who works at least three hours of their daily working time or at least a third of their annual working time at night (night worker) is obligated to work on average more than eight hours during a period of 24 hours over a calculation period of seven days is void.

(2) An agreement by which a night worker whose health is affected by a working environment hazard or the characteristics of their work is obligated to work more than eight hours during a period of 24 hours is void.

(3) In the event specified in subsection (1) of this section the 24-hour period of weekly rest time is excluded from the seven-day calculation period of the average working time of night workers.

(4) Exceptions to the restrictions specified in this section may be made by an employment contract or collective agreement in the events specified in Article 17(3) of Council Directive 2003/88/EC concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, pp. 9-19) and provided that the work does not harm the employee's health or safety and the working time does not exceed the restriction set out in subsection 46 (1) of this Act.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

§ 51. Daily rest time

(1) An agreement by which the consecutive rest period left for an employee over a period of 24 hours is less than 11 hours is void, unless otherwise provided by law.

(2) The following agreements are void:

1) by which the consecutive rest period left for a minor employee of 7-12 years of age over a period of 24 hours is less than 21 hours;

2) by which the consecutive rest period left for a minor employee of 13-14 years of age or an employee subject to the obligation to attend school who is of the same age over a period of 24 hours is less than 20 hours;

3) by which the consecutive rest period left for a minor employee of 15 years of age who is not subject to the obligation to attend school over a period of 24 hours is less than 18 hours;

4) by which the consecutive rest period left for a minor employee of 16 years of age who is not subject to the obligation to attend school or an employee of 17 years of age over a period of 24 hours is less than 17 hours.

(3) Exceptions to the restrictions specified in subsection (1) of this section may be made by a collective agreement in the events specified in Article 17(3) of Council Directive 2003/88/EC concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, pp. 9-19) and provided that the work does not harm the employee's health or safety.

(4) The restriction specified in subsection (1) of this section does not apply to health care professionals or welfare workers, unless the work harms their health or safety.

(5) Employers shall give employees who work more than 13 hours over a period of 24 hours additional time off immediately after the end of the working day equal to the number of hours by which the 13 working hours were exceeded. An agreement by which work exceeding 13 hours is compensated in money is void.

(6) Exceptions to the restrictions specified in subsection (1) of this section may be made by an employment contract or collective agreement in the events specified in Articles 17(3) and (4) of Council Directive 2003/88/EC concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, pp. 9-19) and provided that the duration of one portion of the rest time is at least six consecutive hours and work does not harm the employee's health or safety.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

§ 52. Weekly rest time

(1) An agreement by which the consecutive rest period left for an employee over a period of seven days is less than 48 hours is void, unless otherwise provided by law.

(2) An agreement by which, in the case of calculation of the total working time, the consecutive rest period left for the employee over a period of seven days is less than 36 hours is void, unless otherwise provided by law.

(3) It is presumed that the daily rest time is granted on Saturdays and Sundays.

§ 53. Shortening working time

Employers shall shorten the working day preceding New Year's Day, the anniversary of the Republic of Estonia, Victory Day and Christmas Eve by three hours.

Division 4

Holidays

§ 54. Right to holidays

(1) Employees have the right to holidays pursuant to the procedure provided for in this division.

(2) The holidays specified in §§ 60, 63 and 64 of this Act are granted on the employee's working days.

(3) The annual holidays provided for in §§ 55-58 of this Act do not include the public holiday or national holidays.

§ 55. Annual holidays

It is presumed that an employee's annual holidays are 28 calendar days, unless the employee and the employer have agreed on a longer period of annual holidays or unless otherwise provided by law.

§ 56. Annual holidays of minors

It is presumed that a minor employee's annual holidays are 35 calendar days (minor's annual holidays), unless the employee and the employer have agreed on a longer period of annual holidays or unless otherwise provided by law.

§ 57. Annual holidays of employees receiving incapacity pension

It is presumed that the annual holidays of an employee receiving incapacity pension or national pension based on incapacity for work are 35 calendar days (annual holidays of a person receiving pension for incapacity for work), unless the employee and the employer have agreed on a longer period of annual holidays or unless otherwise provided by law.

§ 58. Annual holidays of educators and research staff

(1) It is presumed that the annual holidays of educators and research staff are up to 56 calendar days (annual holidays of educators), unless the employee and the employer have agreed on a longer period of annual holidays or unless otherwise provided by law.

(2) The Government of the Republic shall establish, by a regulation, a list of jobs of educators and research staff where the annual holidays of 56 calendar days are granted and the duration of holidays by jobs.

§ 59. Pregnancy and maternity leave

(1) Women have the right to pregnancy and maternity leave of 140 calendar days.

(2) The leave specified in subsection (1) of this section becomes collectible no later than 70 calendar days before the estimated birth date given by a doctor.

[RT I 2009, 15, 93 – entered into force 1.07.2009]

(3) If a woman starts using pregnancy and maternity leave less than 30 days before the estimated birth date given by a doctor, the pregnancy and maternity leave is shortened by the respective period.

[RT I 2009, 15, 93 – entered into force 1.07.2009]

(4) Compensation can be obtained for pregnancy and maternity leave in accordance with the Health Insurance Act.

§ 60. Paternity leave

Fathers have the right to receive up to ten working days of paternity leave during the two months before the estimated birth date given by a doctor and during the two months after the birth of the child.

[RT I 2009, 36, 234 – entered into force 1.07.2009] – according to subsection 190 (3), the second sentence shall enter into force on 1.01.2013. (Correction notice) 18.09.2009 16:50

§ 61. Adoptive parent leave

Adoptive parents of a child under ten years of age are entitled to adoptive parent leave of 70 calendar days as of the date of entry into force of the court judgement approving the adoption. Compensation can be obtained for such period in accordance with the Health Insurance Act.

§ 62. Parental leave

(1) A mother or father is entitled to parental leave until their child reaches the age of three years. One person is entitled to parental leave at a time.

(2) Parental leave can be used in one part or in several parts at any time. It is presumed that employees notify employers of taking or interrupting parental leave 14 calendar days in advance, unless the parties have agreed otherwise.

(3) If a parent has been deprived of parental rights or if a child lives in a social welfare institution the parent is not entitled to parental leave.

(4) Employees are entitled to compensation for the period of parental leave in accordance with the Parental Benefits Act and to a child care allowance in accordance with the State Family Benefits Act.

§ 63. Child care leave

(1) [RT I 2009, 36, 234 – entered into force 1.01.2013] – according to subsection 190 (3), subsection (1) shall enter into force on 1.01.2013. (Correction notice) 18.09.2009 16:50

(2) In addition to the child care leave provided for in subsection (1), the mother or father of a disabled child is entitled to child care leave of one working day per month until the child reaches the age of 18 years, which is paid for on the basis of the average wages.

(3) In the year that a child turns three, 14 and 18 child care leave is granted regardless of whether the birth date of the child falls before or after the leave.

(4) If a parent has been deprived of parental rights or if a child lives in a social welfare institution the parent is not entitled to child care leave.

(5) A child care claim expires after the end of the calendar year in which the claim became collectible.

§ 64. Child care leave without pay

(1) Mothers or fathers who are raising a child of up to 14 years of age or a disabled child of up to 18 years of age are entitled to a child care leave without pay of up to 10 working days per calendar year.

(2) A claim of child care without pay expires after the end of the calendar year in which the claim became collectible.

§ 65. Right of guardian and caregiver to parental leave, child care leave and child care leave without pay

(1) Guardians and persons with whom a foster care agreement has been entered into are entitled to the parental leave, child care leave and child care leave without pay provided for in this division.

(2) The actual caregiver of a child is entitled to the parental leave provided for in § 62 of this Act.

§ 66. Compensation of holiday pay from state budget

(1) Holiday pay for the part exceeding the 28 calendar days provided for in §§ 56 and 57 of this Act shall be compensated from the state budget through the budget of the area of government of the Ministry of Social Affairs.

(2) Holiday pay for the holidays provided for in §§ 60 and 63 of this Act shall be compensated from the state budget through the budget of the area of government of the Ministry of Social Affairs.

(3) The procedure for compensating holiday pay from the state budget shall be established by the Government of the Republic.

§ 67. Study leave

(1) Employees are entitled to study leave under the conditions and pursuant to the procedure provided for in the Adult Education Act.

(2) Employees are entitled to holidays without pay in order to take entrance examinations.

§ 68. Granting of annual holidays

(1) Annual holidays are granted on the basis of time worked.

(2) In addition to time worked, time of temporary incapacity for work, time of holidays (except time of parental leave and holidays without pay granted by agreement of the parties), time when employees are entitled, based on law, to refuse to do work in the event specified in subsection 19 (3) of this Act and other time agreed on between the parties shall be considered as time serving as the basis for the granting of annual holidays.

(3) For each calendar year of work employees are entitled to full annual holidays. If a calendar year includes periods which are not included in the time specified in subsection (2) of this section, annual holidays are granted in proportion to the time serving as the basis for the right of granting holidays.

(4) For a period shorter than a calendar year, annual holidays are calculated in proportion to the time worked in the calendar year of commencement of employment. An employee may demand holidays once they have worked for an employer for at least six months.

(5) Annual holidays shall be used in the calendar year. Annual holidays are granted in parts only by agreement of the parties. Employees shall take holidays for no less than 14 consecutive calendar days. Employers are entitled to refuse to divide annual holidays into parts shorter than seven days. Unused parts of holidays are transferred to the next calendar year.

(6) The claim for annual holidays expires within one year of the end of the calendar year for which holidays are calculated. Expiry is suspended for the period when an employee is on pregnancy and maternity leave, adoptive parent leave and parental leave, as well as for when an employee is undertaking military service or alternative service.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

§ 69. Holiday schedule

(1) Employers set the time of annual holidays, taking into account the requests of employees, which can be reasonably combined with the interests of the employer's enterprise.

(2) Employers draw up a holiday schedule per each calendar year and communicate it to employees within the first quarter of the calendar year. The annual holidays and unused holidays are indicated in the holiday schedule. If other holidays provided by law have been indicated in the holiday schedule, they shall be granted according to the schedule.

(3) Employees notify employers 14 calendar days in advance in a format which can be reproduced in writing of using a holiday not indicated in a holiday schedule.

(4) A holiday schedule may be amended by agreement between an employer and an employee.

(5) An employer has the right to interrupt or postpone a holiday due to an unforeseen material work organisation-related emergency, in particular prevention of damage. The employer compensates the employee for expenses arising from the interruption or postponement of the holiday. If the holiday was interrupted or postponed, the employer shall grant the employee the unused portion of the holiday immediately after cessation of the circumstance interrupting or postponing the holiday or, by agreement of the parties, at another time.

(6) An employee has the right to interrupt, postpone or prematurely terminate a holiday due to material reasons arising from the person of the employee, especially due to temporary incapacity for work, pregnancy and maternity leave or participation in a strike. The employee has the right to demand the unused part of the holiday immediately after cessation of the circumstance impeding the use of the holiday or at another time agreed between the parties. The employee shall notify the employer of an impediment to using the holiday as soon as possible.

(7) The following persons have the right to demand the annual holiday at a suitable time:

- 1) women immediately before and after pregnancy and maternity leave or immediately after parental leave;
- 2) men immediately after parental leave or during the pregnancy and maternity leave of the wife;
- 3) parents raising a child of up to seven years of age;
- 4) parents raising a child of seven to ten years of age, during the child's school holidays;
- 5) minors subject to the obligation to attend school, during school holidays.

§ 70. Holiday pay

- (1) Employees have the right to receive holiday pay pursuant to the procedure provided for in subsection 29 (8) of this Act.
- (2) Holiday pay shall be paid not later than on the penultimate working day before commencement of the holiday, unless the employer and the employee have agreed otherwise. An agreement on the basis of which holiday pay is paid later than on the pay day following the use of the holiday is void.
- (3) An agreement on compensation of holidays with money or other benefits during the term of validity of an employment contract is void.

§ 71. Compensation for unused holiday

Upon termination of the employment contract the employer shall compensate the employee in money for unused annual holidays and annual holidays which have not expired.

Chapter 4

LIMITATIONS OF LIABILITY OF EMPLOYEES

§ 72. Liability of employees

If an employee has breached a duty arising from an employment contract, an employer can use the legal remedies provided for in the Law of Obligations Act only if the employee is guilty of the breach. Evaluation of the level of diligence of the employee proceeds from the provisions of § 16 of this Act.

§ 73. Specifications of reduction of wages

- (1) An employer may reduce wages under the conditions of § 112 of the Law of Obligations Act only if an employee disregarded a clear and timely instruction of the employer regarding the work results and the instruction was reasonable, considering the goal of the duties provided for in the employment contract, the probability of achievement of the expected result and the dependence of the performance of the duty on the duties of the employer and other employees.
- (2) Reduction of wages is void if an employer does not exercise the right of reduction of the wages immediately after acceptance of unsatisfactory work.
- (3) The employer shall, upon reducing wages, take into account the provisions concerning making a claim for payment provided for in § 132 of the Code of Enforcement Procedure.

§ 74. Specifications of compensation of damage

- (1) If an employee has intentionally breached an employment contract, they shall be liable for any and all damage caused to an employer as a result of the breach.
- (2) If an employee has breached an employment contract due to negligence, they shall be liable for the damage caused to the employer to the extent which is determined taking into account the employee's duties, level of guilt, instructions given to the employee, working conditions, risk arising

from the nature of the work, the length of employment by the employer, former behaviour, the employee's wages and reasonable possibilities of the employer for reduction or insurance of damage. Compensation is reduced by the damage caused as a result of a typical risk of damage relating to the activities of the employer.

(3) If an employee does not commence work without good reason or leaves work without advance notification, an employer shall have the right to demand compensation of damage upon cancellation of the employment contract on that ground. It is presumed that the size of damage corresponds to the average monthly wages of the employee. If the claim specified in this subsection is not terminated with a set-off, the employer shall submit it within 20 working days of the failure to appear at work or the ceasing of employment by the employee.

(4) An employer's claim for compensation of damage against an employee for damage caused upon performance of duties expires within 12 months of the time when the employer learned or should have learned of the damage caused and the person obligated to compensate it, but not later than three years after the damage was caused.

(5) An employer's creditor may also demand compensation for the damage specified in this section, unless the creditor's claims are satisfied from the employer's property. In the event of declaration of the bankruptcy of an employer a claim may be filed in the name of the employer only by the trustee in bankruptcy.

(6) The creditor or the trustee in bankruptcy is also entitled to file the claim specified in subsection (5) of this section if the employer has waived the claim against the employee or made a compromise agreement with the employee or otherwise limited the claim or the filing thereof by agreement with the employee or shortened the term of expiry.

(7) Upon compensating damage, an employer cannot rely on § 138 of the Law of Obligations Act.

§ 75. Agreement on proprietary liability

(1) By an agreement on proprietary liability an employee assumed, regardless of guilt, liability for preservation of the property given to them for performance of duties.

(2) An agreement on proprietary liability is valid only if:

1) it has been made in writing;

2) it has been limited reasonably and recognisably for the employee in terms of space, time and objects;

3) only the employee or a definite circle of employees has access to the property entrusted to the employee;

4) the upper financial limit of liability has been agreed on;

5) the employer pays the employee reasonable compensation, considering the upper limit of liability.

§ 76. Liability of employees for damage caused to third parties

(1) If an employee is liable for damage caused to a third party in the course of performance of duties, the employer shall release the employee from the obligation to compensate damage and bear the necessary legal expenses and perform these obligations itself.

(2) An employer may demand compensation for the damage specified in subsection (1) from an employee on the basis of § 74 of this Act.

(3) If an employer has, by contract, precluded the obligation to compensate damage caused in the course of its economic activities against a third party or limited its liability or if its liability is precluded or limited based on law, the preclusion or limitation shall apply to the same extent to those employees of the employer who have damaged the third party in the course of their economic activities.

(4) The provisions of subsections (1) to (3) of this section do not preclude or limit employees' liability for damage intentionally caused to third parties.

§ 77. Contractual penalty for refusal to commence employment or ceasing employment without authorisation

(1) An employer and an employee may agree on a format which can be reproduced in writing on a contractual penalty for a wrongful breach of the employment contract in the event of refusal to commence employment or ceasing employment, if this is done for the purpose of termination of the employment relationship.

(2) The provisions of this section do not preclude claiming compensation for additional damage caused by a breach of an obligation on the basis of subsection 74 (3) of this Act to the extent not covered by the contractual penalty.

§ 78. Specifications of set-off

(1) Extrajudicially, an employer may set off its claims against an employee's wage claims with the employee's consent given in a format which can be reproduced in writing, unless otherwise provided by law.

(2) Consent given before emergence of the right to a set-off is void, unless the employee has consented to the set-off of the amount exceeding the limit of the costs incurred on behalf of the employer.

(3) Without the consent specified in subsection (1) of this section an employer may withhold from an employee's wages any advance payments made to the employee which the employee is obligated to return to the employer and, upon termination of an employment contract, wages for unearned annual holidays.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

(4) The employer shall, upon set-off, take into account the provisions concerning making a claim for payment provided for in § 132 of the Code of Enforcement Procedure.

Chapter 5

TERMINATION AND TRANSFER OF EMPLOYMENT CONTRACT

Division 1

Bases and consequences of termination of employment contract

§ 79. Termination of employment contract by agreement

Parties may terminate a fixed-term employment contract or an employment contract entered into for an unspecified period at any time by agreement.

§ 80. Termination of employment contract upon expiry of term

(1) A fixed-term employment contract expires upon expiry of the term.

(2) If entry into a fixed-term employment contract was in conflict with law or a collective agreement, it shall be deemed that the contract was made for an unspecified term from the start.

(3) If an employee continues to perform work after the expiry of the term of a contract, it shall be deemed that the contract has been entered into for an unspecified term, unless the employer

expressed a different will within five working days of learning or when they should have learned that the employee was continuing to perform the employment contract.

§ 81. Termination of employment contract upon death of employee

An employment contract expires upon the death of an employee.

§ 82. Prohibition to withdraw from employment contract

It is prohibited to withdraw from an employment contract.

§ 83. Termination of employment contract by way of cancellation

Employers and employees have the right to cancel employment contracts only on the bases provided for in this Act.

§ 84. Enforcement of claims upon termination of employment contract

(1) All claims arising from an employment relationship fall due upon termination of the employment contract.

(2) The falling due of the fee payable on transactions to be performed after termination of an employment contract may be postponed by a written agreement, but not for more than six months.

(3) In the case of partially performed transactions, falling due may be postponed for no more than one year.

(4) In the case of insurance contracts and transactions whose performance requires more than half a year, falling due may be postponed for no more than two years.

Division 2

Cancellation

Subdivision 1

Manners of cancellation

§ 85. Ordinary cancellation of employment contract

(1) An employee may ordinarily cancel an employment contract entered into for an unspecified period at any time.

(2) An employee may not ordinarily cancel a fixed-term employment contract, except an employment contract made for the period of replacement of the employee.

(3) It is presumed that cancellation is ordinary unless an employee proves that cancellation is extraordinary.

(4) If an employee does not have a basis for extraordinary cancellation of an employment contract, the cancellation shall be deemed ordinary with the term of advance notice provided by law.

(5) An employer may not cancel an employment contract ordinarily.

§ 86. Cancellation of employment contract during probationary period

(1) An employer and an employee may cancel fixed-term employment contracts and employment contracts entered into for an unspecified term within a probationary period of four months of the date of commencement of employment by the employee.

(2) Non-application or shortening of a probationary period may be agreed on in an employment contract.

(3) An employer and an employee may cancel a fixed-term employment contract made for up to eight months during a probationary period that is not longer than half of the contract term.

(4) An employee may not cancel the employment contract due to a reason that is in conflict with the goal of the probationary period.

§ 87. Extraordinary cancellation of employment contract

An employment contract may be cancelled extraordinarily only with good reason as provided for in this Act and in accordance with the advance notification terms provided for in this Act.

§ 88. Extraordinary cancellation of employment contract by employer for reasons dependent on employee

(1) An employer may extraordinarily terminate an employment contract with good reason dependent on an employee as a result of which, upon respecting mutual interests, the continuance of the employment relationship cannot be expected, especially if the employee has:

1) for a long time been unable to perform their duties due to their state of health, which does not allow for the continuance of the employment relationship (decrease in capacity for work due to state of health). A decrease in capacity for work due to state of health is presumed if the employee's state of health does not allow for the performance of duties over four months;

2) for a long time been unable to perform their duties due to their insufficient work skills, non-suitability for the job or inadaptability, which does not allow for the continuance of the employment relationship (decrease of capacity for work);

3) in spite of a warning, disregarded the employer's reasonable instructions or breached their duties;

4) in spite of the employer's warning appeared at work in a state of intoxication;

5) committed a theft, fraud or an act bringing about the loss of the employer's trust in the employee;

6) brought about a third party's distrust in the employer;

7) culpably and to a significant extent damaged the employer's property or caused the threat of such damage;

8) violated the obligation of maintaining confidentiality or restriction of trade.

(2) Before cancellation of an employment contract, in particular on the basis specified in subsections (1) and (2) of this section, an employer shall offer another job to an employee, where possible. An employer shall offer another job to an employee, including organising, if necessary, the employee's in-service training, adapt the workplace and change the employee's working conditions, unless the changes cause disproportionately high costs for the employer and the offering of another job may, considering the circumstances, be reasonably expected.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

(3) An employer may terminate an employment contract due to a breach of an employee's duties or decrease of their capacity for work, if the employer gave a warning before the cancellation. Prior warning is not a prerequisite for cancellation if, pursuant to the principle of good faith, the employee cannot expect it from the employer due to particular severity of the breach of duties or for another reason.

(4) The employer may cancel the employment contract only within a reasonable time of learning or when they should have learnt of the circumstances serving as the basis for the cancellation.

§ 89. Extraordinary cancellation of employment contract by employer for economic reasons

(1) An employer may extraordinarily terminate an employment contract if the continuance of the employment relationship on the agreed conditions becomes impossible due to a decrease in the work volume, reorganisation of work or other cessation of work (lay-off).

(2) A lay-off is also extraordinary cancellation of an employment contract:

1) upon cessation of the activities of an employer;

2) upon declaration of the bankruptcy or termination of the bankruptcy proceedings of an employer without declaring bankruptcy, due to abatement of the bankruptcy proceedings.

(3) Before cancellation of an employment contract due to a lay-off an employer shall, where possible, offer another job to an employee, except in events specified in subsection (2) of this section. An employer shall, where necessary, organise an employee's in-service training or change the employee's working conditions, unless the changes cause disproportionately high costs for the employer.

(4) Upon cancellation of employment contracts, employers shall take into account the principle of equal treatment.

(5) Upon cancellation of an employment contract due to a lay-off, except in the cases specified in subsection (2) of this section, the employees' representative and those employees raising children under three years of age have the preferential right of keeping their job.

§ 90. Collective cancellation of employment contracts

(1) Collective cancellation of employment contracts means cancellation, due to a lay-off and within 30 calendar days, of the employment contracts of no less than:

1) 5 employees in an enterprise where the average number of employees is up to 19;

2) 10 employees in an enterprise where the average number of employees is 20-99;

3) 10 percent of the employees in an enterprise where the average number of employees is 100-299;

4) 30 employees in an enterprise where the average number of employees is at least 300.

(2) Upon determining the number of employees, subsection 18 (2) of the Employees Representative Act applies.

§ 91. Extraordinary cancellation of employment contract by employee

(1) An employee may cancel an employment contract extraordinarily only with good reason, in particular if, taking into account all circumstances and mutual interests, continuance of the contract cannot reasonably be demanded.

(2) An employee may terminate an employment contract extraordinarily due to a fundamental breach of an employer's obligation, in particular if:

1) the employer has degraded the employee or threatened to do so or allowed the employee's colleagues or third parties to do so;

2) the employer has considerably delayed payment of wages;

3) continuance of work is related to a real threat to the employee's life, health, morals or good name.

(3) An employee may cancel an employment contract extraordinarily due to reasons arising from the employee, in particular if the employee's state of health or family duties do not allow them to perform the agreed work and the employer cannot provide them with suitable work.

(4) An employee may cancel an employment contract only within a reasonable time of learning or when they should have learnt of the circumstances serving as the basis for the cancellation.

§ 92. Restrictions of cancellation

(1) An employer may not cancel an employment contract due to the following:

- 1) an employee is pregnant or has the right to pregnancy and maternity leave;
- 2) an employee performs important family duties;
- 3) an employee does not, in the short term, cope with the performance of duties due to their state of health;
- 4) an employee represents other employees on the basis provided by law;
- 5) a full-time employee does not want to continue working part-time or a part-time employee does not want to continue working full-time;
- 6) an employee is in military service or alternative service.

(2) If an employer cancels an employment contract with an employee who is pregnant or raising a child under three years of age, it shall be deemed that the employment contract has been cancelled due to the reason specified in clause (1) 1) or 2) of this section, unless the employer proves that it cancelled the employment contract on a basis permitted in this Act.

(2) If an employer cancels an employment contract with the employees' representative during their term of office or within one year of the expiry of their term of office, it shall be deemed that the employment contract has been cancelled due to the reason specified in clause (1) 4) of this section, unless the employer proves that it cancelled the employment contract on a basis permitted in this Act.

§ 93. Specifications of cancellation of employment contract with a pregnant woman or person raising a child below the age of three years

(1) An employer may not cancel an employment contract with a pregnant woman or a woman who has the right to pregnancy and maternity leave or a person who is on parental leave or adoptive parent leave due to a lay-off, except upon cessation of the activities of the employer or declaration of the employer's bankruptcy if the activities of the employer cease or upon termination of bankruptcy proceedings, without declaring the bankruptcy, due to abatement of the bankruptcy proceedings.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

(2) An employer may not cancel an employment contract with a pregnant woman or a woman who has the right to pregnancy and maternity leave due to a decrease of the employee's capacity for work.

(3) The provisions of subsections (1) and (2) of this section shall only apply if an employee has notified an employer of her pregnancy or the right to pregnancy and maternity leave before receipt of a cancellation notice or within 14 calendar days thereafter. At the request of an employer an employee shall submit a certificate confirming pregnancy issued by a doctor.

[RT I 2009, 15, 93 – entered into force 1.07.2009]

§ 94. Specifications of cancellation of employment contract with employees' representative

(1) Before cancellation of an employment contract with the employees' representative an employer shall seek the opinions of the employees who chose the person to represent them or the trade union about the cancellation of the employment contract.

(2) The employees who chose the person to represent them or the trade union shall give their opinion within ten working days of being asked for their opinion. The employer shall take the opinion of the employees reasonably into account. The employer shall justify the disregarding of the opinions of the employees.

Subdivision 2

Procedure for cancellation

§ 95. Declaration of cancellation

(1) An employment contract may be cancelled by a declaration of declaration of cancellation made in a format which can be reproduced in writing. Declarations of cancellation made in breach of the formal requirement or contingent declarations of cancellation are void.

(2) Employers shall justify cancellation. Employees shall justify extraordinary cancellation. Cancellation shall be justified in a format which can be reproduced in writing.

(3) Breach of the obligation specified in subsection (2) of this section does not influence the validity of the cancellation, but the party who breached the obligation shall compensate the other party for the damage caused as a result thereof.

§ 96. Advance notification of cancellation due to failure to achieve goal of probationary period

Employment contracts may be cancelled during the probationary period by giving no less than 15 calendar days' advance notice thereof.

§ 97. Terms of advance notice upon cancellation of employment contract by employer

(1) An employer may extraordinarily terminate employment contracts in accordance with the advance notice terms provided for in subsection (2) of this section.

(2) An employer shall give an employee advance notice of extraordinary cancellation if the employee's employment relationship with the employer has lasted:

1) less than one year of employment – no less than 15 calendar days;

2) one to five years of employment – no less than 30 calendar days;

3) five to ten years of employment – no less than 60 calendar days;

4) ten or more years of employment – no less than 90 calendar days.

(3) On the basis specified in subsection 88 (1) of this Act, an employer may cancel an employment contract without adhering to the term of advance notice if, considering any and all circumstances and mutual interests, it cannot be reasonably demanded that the performance of the contract be continued until the expiry of the agreed term or term of advance notice.

(4) Terms of advance notice different from those provided for in subsection (2) of this section may be established by a collective agreement.

§ 98. Terms of advance notification upon cancellation of employment contract by employee

(1) Employees shall notify employers of ordinary cancellation no less than 30 calendar days in advance.

(3) An employee does not have to notify the employer of extraordinary cancellation if, considering any and all circumstances and mutual interests, it cannot be reasonably demanded that the performance of the contract be continued until the expiry of the agreed term or term of advance notice.

§ 99. Obligation to grant time off

If an employer cancels the employment contract extraordinarily, the employer shall grant an employee time off to find a new job to a reasonable extent within the period of advance notice.

§ 100. Compensation for cancellation

(1) Upon cancelling an employment contract due to a lay-off, an employer shall pay an employee compensation to the extent of one month's average wages of the employee.

(2) Upon the cancellation of an employment contract due to a lay-off, an employee has the right to receive an insurance benefit under the conditions and pursuant to the procedure provided for in the Unemployment Insurance Act.

(3) Upon cancelling a fixed-term employment contract for economic reasons, except for reasons specified in clause 89 (2) 2) of this Act, an employer shall pay an employee compensation to an extent that corresponds to the wages that the employee would have been entitled to until the expiry of the contract term. No compensation is paid if the employment contract is cancelled due to force majeure.

(4) If an employee cancels an employment contract extraordinarily for the reason that an employer is in fundamental breach of the contract, the employer shall pay the employee compensation to the extent of three months' average wages of the employee. A court or a labour dispute committee may change the amount of the compensation, considering the circumstances of cancellation of the employment contract and the interests of the parties.

(5) If an employer or an employee gives advance notice of cancellation later than provided by law or a collective agreement, the employee or the employer has the right to receive compensation to the extent to which they would have had the right to obtain upon following the term of advance notice.

§ 101. Notification and consultation of employees upon collective cancellation of employment contracts

(1) Before an employer decides on collective cancellation they shall consult the employees' representative or, in their absence, employees well in advance with the goal of reaching an agreement on prevention of the planned cancellations or reduction of the number of cancellations and mitigation of the consequences of the cancellations, including contribution to the seeking of jobs by or re-training of the employees to be laid off.

(2) For the employees' representative to be able to make proposals in consultations an employer shall provide the employees' representative or, in their absence, employees in a timely manner with any and all necessary information about the planned collective cancellation. The employer shall submit, in a format which can be reproduced in writing, the following information:

- 1) the reasons for the collective cancellation;
- 2) the number and job titles of the employees of the employer;
- 3) the number and job titles of the employees and the selection criteria determining the persons whose employment contracts are to be cancelled;
- 4) the period during which the employment contracts are to be cancelled;
- 5) the method of calculation of the compensation to be paid to the employees in addition to the benefits provided by law or the collective agreement.

(3) The employer shall send a transcript of the information specified in subsection (2) of this section to the Estonian Unemployment Insurance Fund concurrently with the submission of the information to the employees' representative or, in their absence, the employees.

[RT I 2009, 11, 67 – entered into force 1.07.2009]

(4) Upon consultation, the employees' representative or, in their absence, the employees have the right to meet with the representatives of the employer and make proposals pursuant to the procedure and within the term provided for in subsection 113 (3) of this Act.

§ 102. Notification of Estonian Unemployment Insurance Fund of collective cancellation of employment contracts

[RT I 2009, 11, 67 – entered into force 1.07.2009]

(1) After consultations an employer shall submit the information specified in subsection 101 (2) of this Act and the information about consultations to the structural unit of the Estonian Unemployment Insurance Fund in a format which can be reproduced in writing.

(2) The employer shall send a transcript of the information specified in subsection (1) of this section to the employees' representative or, in their absence, the employees concurrently with the submission of the information to the Estonian Unemployment Insurance Fund.

(3) The employees' representative may submit their opinion on the collective cancellation to the Estonian Unemployment Insurance Fund within seven calendar days of sending the transcript of the information specified in subsection (2) of this section.

[RT I 2009, 11, 67 – entered into force 1.07.2009]

§ 103. Term of collective cancellation of employment contracts

(1) An employer may cancel employment contracts after consultation and notification of the Estonian Unemployment Insurance Fund pursuant to the provisions of subsection 102 (1) of this Act.

(2) Collective cancellation of employment contracts enters into force upon the expiry of the term of advance notice of cancellation, but not sooner than 30 calendar days after the time when the Estonian Unemployment Insurance Fund received the information specified in subsection 102 (1) of this Act. During the term specified in this section the Estonian Unemployment Insurance Fund shall seek solutions to the employment problems associated with the collective cancellation.

(3) The Estonian Unemployment Insurance Fund has the right to shorten the term specified in subsection (2) of this section if the employment problems can be resolved within a shorter term.

(4) The Estonian Unemployment Insurance Fund may extend the term specified in subsection (2) of this section to up to 60 calendar days if it finds that it cannot resolve the employment problems relating to the collective cancellation within 30 calendar days.

(5) The Estonian Unemployment Insurance Fund shall communicate a decision to amend the term specified in subsection (2) of this section to an employer in a format which can be reproduced in writing within 14 calendar days of receipt of the information specified in subsection 102 (1) of this Act.

(6) The term of entry into force of the cancellation provided for in this section shall not apply if employment contracts are cancelled collectively due to termination of the activities of the company on the basis of a court judgement which has entered into force.

[RT I 2009, 11, 67 – entered into force 1.07.2009]

Subdivision 3

Voidness and contestation of cancellation

§ 104. Voidness of cancellation

(1) Cancellation of an employment contract without legal basis or in conflict with legal norms is void.

(2) Cancellation of the employment contract of a pregnant employee or an employee entitled to pregnancy and maternity leave is void even if the woman has failed to adhere to the term specified in subsection 93 (3) of this Act due to reasons beyond her control.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

§ 105. Relying on voidness of cancellation of employment contract by employer

(1) An action with a court or a petition to a labour dispute committee for establishment of voidness shall be filed within 30 calendar days of receipt of the declaration of cancellation.

(2) If an action or petition is not filed within the term or if the term for filing the action or petition is not restored, the cancellation shall be valid from the start and the contract will have expired on the date specified in the declaration of cancellation.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

§ 106. Contestation of cancellation of employment contract by employer due to conflict with principle of good faith

Within 30 calendar days of receipt of the declaration of cancellation an employee may file an action with the court or a petition with the labour dispute committee to challenge the cancellation in force due to a conflict with the principle of good faith, unless the employer cancelled the employment contract due to a breach of the employment contract by the employee.

§ 107. Termination of employment contract by a court or labour dispute committee

(1) If a court or labour dispute committee establishes that cancellation of an employment contract is void due to the absence of a legal basis or the non-conformity with law or nullified due to a conflict with the principle of good faith, it shall be deemed that the employment contract has not been terminated upon cancellation.

(2) In the event provided for in subsection (1) of this section the court or labour dispute committee shall, at the request of the employer or the employee, terminate the employment contract as of the time when it would have been terminated in the event of the validity of the cancellation.

(3) The court or labour dispute committee shall not satisfy the employer's request specified in subsection (2) of this section if, at the time of the cancellation, the employee is pregnant or the employee is entitled to pregnancy or maternity leave or has been chosen as the employees' representative, unless it is reasonably impossible when considering mutual interests.

§ 108. Compensation of damage in event of continuance of employment relationship

Upon unlawful cancellation of an employment contract, if the employment relationship continues, an employee has the right to demand compensation of damage, in particular wages not received. The part obtained by way of different use of the employee's labour force may be deducted from the compensation.

§ 109. Compensation in event of termination of employment relationship in court or labour dispute committee

(1) If the court or labour dispute committee terminates an employment contract in the event specified in subsection 107 (2) of this Act, an employer shall pay an employee compensation to the extent of three months' average wages of the employee. The court or labour dispute committee may change the amount of the compensation, considering the circumstances of cancellation and the interests of both parties.

(2) If, in the event specified in subsection 107 (2) of this Act, the court or labour dispute committee terminates an employment contract with an employee who is pregnant, is entitled to pregnancy and maternity leave or has been elected the employees' representative, the employer shall pay the employee compensation to the extent of six months' average wages of the employee. The court or labour dispute committee may change the amount of the compensation, considering the circumstances of cancellation and the interests of both parties.

(3) If the compensation specified in subsections (1) and (2) of the section has been awarded to an employee, the employee shall not have the right to demand the wages which the employee would have been entitled to upon continuance of the employment relationship until the entry into force of the labour dispute resolution body.

(4) In the event of unlawful cancellation of an employment contract by an employee an employer has the right to claim reasonable compensation from the employee.

§ 110. Specifications of expiry of claims of employee

If an employee filed an action or petition for establishment of the voidness of cancellation of an employment contract within the prescribed term, the employee's claims which fall due during the dispute and depend on the result of the dispute shall not expire before three months have passed from entry into force of the decision made in the dispute.

Division 3

Transfer of employment contract

§ 111. Validity of employment contract in event of death of employer

(1) In the event of the death of an employer who is a natural person, an employment contract shall transfer to the employer's successors.

(2) In the event specified in subsection (1) of this section an employee may cancel a fixed-term employment contract and an employment contract entered into for an unspecified term within two weeks of the time when the employee learned or should have learnt of the transfer of the employment contract, notifying thereof 30 calendar days in advance. The successor of an employer may cancel a fixed-term employment contract and an employment contract entered into for an unspecified term within two weeks of the time when the successor learned or should have learnt of the transfer of the employment contract, thereby adhering to the term of advance notice specified in subsection 97 (2) of this Act. This does not restrict cancellation of the employment contract on other grounds.

(3) An employment contract expires upon the death of an employer who is a natural person if the employment contract has been made in considerable reliance on the person of the employer.

§ 112. Validity of employment contract in event of transfer of enterprise

(1) Employment contracts transfer to the acquirer of an enterprise unamended, pursuant to the Law of Obligations Act, if the enterprise continues the same or similar economic activities.

(2) The restrictions provided for in § 181 of the Law of Obligations Act do not apply to transfer of employment contracts.

(3) Transferors and acquirers of enterprises are prohibited to cancel employment contracts due to the transfer of enterprises.

(4) Subsections (1) and (3) of this section shall not apply to the declaration of bankruptcy of employers.

§ 113. Notification and consultation upon transfer of enterprise

(1) The transferor and acquirer of an enterprise shall, in a timely manner but not later than one month before the transfer of the company, submit to the employees' representative or, in their absence, the employees a notice in a format which can be reproduced in writing, containing at least the following information:

- 1) the planned date of transfer of the enterprise;
- 2) the reasons for the transfer of the enterprise;
- 3) the legal, economic and social consequences of the transfer of the enterprise for the employees;
- 4) the measures planned with regard to the employees.

(2) If the transferor or the acquirer of an enterprise intends, as a result of the transfer of the enterprise, to make changes affecting the situation of the employees, they shall consult the employees' representative or, in their absence, the employees with the goal of reaching an agreement on the measures planned.

(3) Upon consultation, the employees' representative has or, in their absence, the employees have the right to meet with the representatives of the transferor and acquirer of the enterprise, including

members of the directing body, and make, in a format which can be reproduced in writing, proposals relating to the measures planned with regard to the employees no later than within 15 days of the submission of the notice specified in subsection (1) of this section, unless a longer term is agreed on. The transferor and the acquirer of the enterprise are obligated to justify any disregard of the proposals.

Chapter 6

RESOLUTION OF DISPUTES AND STATE SUPERVISION

§ 114. Resolution of disputes

Disputes arising from an employment contract shall be resolved under the conditions and pursuant to the procedure provided for in this Act and the Individual Labour Disputes Resolution Act.

§ 115. State supervision

The Labour Inspectorate shall exercise state supervision over fulfilment of the requirements provided for in subsections 5 (1) and (3), § 7, subsections 8 (1) to (3) and (6) and (7), clauses 28 (2) 9) and 10), subsections 29 (3) and 6, subsection 33 (1), § 43, subsections 44 (2) and (3) and (5) to (7), § 45, subsections 46 (1) to (3) and (5), subsections 47 (2) and (3), subsections 48 (1) and (2), §§ 49 to 53, subsections 101 (1) to (3), subsections 102 (1) and (2), and subsections 113 (1) and (2) of this Act under the conditions and pursuant to the procedure provided for in the Occupational Health and Safety Act.

§ 116. Procedure for challenging precepts

Procedure for challenging precepts are subject to the provisions of the Occupational Health and Safety Act.

Chapter 7

LIABILITY

§ 117. Failure of employer to submit information

(1) Failure by an employer to submit information pursuant to subsection 5 (1) of this Act is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 118. Entry into employment contract with minor for performance of work not advisable for minors or allowing minor to commence such work

(1) Entry, by an employer, into an employment contract with a minor for performance of work not advisable for minors or allowing a minor to commence such work in violation of the requirements provided for in § 7 of this Act is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 119. Entry into employment contract with minor without consent of legal representative and labour inspector

(1) Entry into an employment contract with a minor without the consent of the legal representative and the labour inspector is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 120. Failure of employer to perform notification obligation

(1) Failure by an employer to perform the notification obligation pursuant to clauses 28 (2) 9) and 10) of this Act is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 121. Application of total working time with regard to minors exceeding working time limit

(1) Application of the total working time with regard to a minor thereby exceeding the working time limit is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 122. Failure to adhere to limit of working time

(1) Failure by an employer to apply the limit of the working time pursuant to subsections 46 (1) to (3) of this Act is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 123. Failure to keep account of employees performing individual overtime work

(1) Failure by an employer to keep account of employees performing individual overtime work pursuant to subsection 46 (5) of this Act is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 124. Failure to follow restrictions on requiring minors to work

(1) Failure by an employer to apply the restriction on requiring minors to work pursuant to § 49 of this Act is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§125. Violation of restriction on night work

(1) Violation by an employer of the restriction on night work is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 126. Failure to grant daily rest time

(1) Failure by an employer to grant daily rest time is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 127. Failure to grant weekly rest time

(1) Failure by an employer to grant weekly rest time is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 128. Failure to perform notification and consultation obligation upon collective cancellation of employment contracts

(1) Failure by an employer to perform the notification and consultation obligation upon collective cancellation of employment contracts is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 129. Failure to perform notification and consultation obligation upon transfer of enterprise

(1) Failure by an employer to perform the notification and consultation obligation upon transfer of enterprise is punishable by a fine of up to 100 fine units.

(2) The same act if committed by a legal entity is punishable by a fine of up to 20,000 kroons.

§ 130. Proceedings

(1) The misdemeanours provided for in §§ 117 to 129 of this Act are subject to the provisions of the general part of the Penal Code and the Code of Misdemeanour Procedure.

(2) The body conducting extra-judicial proceedings in the misdemeanours provided for in §§ 117 to 129 of this Act is the Labour Inspectorate.

Chapter 8

IMPLEMENTING PROVISIONS

§ 131. Act applicable to employment contracts

(1) As of 1 July 2009 the provisions of the Employment Contracts Act shall apply to employment contracts made before 1 July 2009.

(2) The provisions of subsection (1) of this section shall not preclude or restrict the rights and obligations of the parties to a contract arising before 1 July 2009. The former act shall apply to facts or acts relating to an employment contract which emerge or which are performed before 1 July 2009.

(3) If, after the entry into force of the Employment Contracts Act, a provision of an employment contract is in conflict with a provision of the Act which cannot be deviated from by agreement of the parties, the provisions of the Act shall apply instead of the provision of the contract.

§ 132. Specifications of termination of fixed-term employment contracts

The provisions of the Employment Contracts Act regarding termination of employment contracts entered into for an unspecified period shall be applied to extraordinary cancellation of fixed-term employment contracts made before 1 July 2009.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

§ 133. Handing over employment record book

Employment record books held by employers at the time of entry into force of this Act shall be handed over to employees and public servants upon termination of the employment contract and service relationship.

§ 134. Entry of data of employment record books in pension insurance register

(1) Employees and public servants whose employment record book contains entries which have a legal meaning upon the calculation of the pension qualifying period may submit the employment record book to the local department of the Social Insurance Board for registration of the data of the employment record book.

(2) An employer may submit an employment record book that has not been taken out by an employee or a public servant within one year of the termination of the employment or service relationship to the department of the Social Insurance Board of the location or place of residence for registration of the data of the employment record book.

(3) The Government of the Republic establishes a procedure for collection of the data of the pension qualifying period and entry thereof in the pension insurance register before granting pensions.

§ 135. Child care leave

(1) Each calendar year mothers or fathers are entitled to child care leave of 66 kroons a day which is paid for:

1) three working days if they have one or two children under 14 years of age;

2) six working days if they have at least three children under 14 years of age or at least one child under 3 years of age.

(2) Holiday pay for the holidays provided for in subsection (1) of this Act shall be compensated from the state budget through the budget of the area of government of the Ministry of Social Affairs.

(3) The procedure for compensating holiday pay from the state budget shall be established by the Government of the Republic.

§ 136. Preservation of personnel files

Employers are not obligated to preserve personnel files made by the time of entry into force of this Act.

§ 137. Expiry of claims of holidays earned before adoption of Act

Claims of annual holidays and additional holidays earned before entry into force of this Act shall expire within four years of the entry into force of the Act.

[RT I 2009, 26, 159 – entered into force 1.07.2009]

§ 137¹. Compensation for unused holidays earned before entry into force of Act

Employers shall compensate unused annual and additional holidays earned before entry into force of this Act upon termination of the employment contract, but not more than to the extent of the unused holidays of four years.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

§ 138. Shift from accounting working years to accounting calendar years when granting holidays

(1) Unused holidays earned or unearned holidays used before 1 January 2010 shall be set off against the holiday claim of the calendar year 2010 during 2010.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

(2) Calendar months shall be considered the basis for the right of claim for holidays if the employee's employment relationship per calendar month has lasted for at least 15 calendar days.

(3) The results of set-off shall be rounded up to a whole number.

§ 139. Specifications of compensation for cancellation

(1) If before 1 January 2015 an employer cancels an employment contract due to a lay-off with an employee whose employment relationship has by the time of entry into force of this Act lasted for at least 20 years, the Estonian Unemployment Insurance Fund shall pay the employee, in addition to the compensation specified in subsection 100 (1) of this Act, a lay-off insurance indemnity to the extent of three months' average wages of the employee under the conditions and pursuant to the procedure provided for in the Unemployment Insurance Act.

(2) The insured person specified in subsection (1) of this section whose last employment relationship was cancelled due to a lay-off shall be entitled to an unemployment insurance indemnity 90 calendar days after the termination of the employment relationship under the conditions and pursuant to the procedure provided for in the Unemployment Insurance Act.

(3) Upon granting an unemployment insurance benefit in the events specified in subsection (1) of this section, the indemnity shall be calculated as of the expiry of the term specified in subsection (2),

unless the application for receipt of the unemployment insurance benefit is submitted after the expiry of the aforementioned term. If the application for receipt of the unemployment insurance benefit is submitted after the expiry of the term, the indemnity shall be calculated pursuant to subsection 11 (5) of the Unemployment Insurance Act.

§ 140. Amendment of Trade Unions Act

The Trade Unions Act (RT I 2000, 57, 372; 2007, 2, 6) is amended as follows:

1) *subsection 16 (4) is amended and worded as follows:*

“(4) An elected member of a trade union who is an employee of an employer and performs the duties of an elected member of a trade union provided for in § 21 of this Act (hereinafter the representative of the trade union) shall be considered the employees’ representative for the purposes of the Employment Contracts Act.”;

2) *subsection (6) is added to § 19 worded as follows:*

“(6) Giving preferences due to membership of a trade union or representation of employees is not considered unequal treatment.”;

3) *subsection 19 (3) is amended and worded as follows:*

«“(3) The restriction of rights provided for in subsection (2) of this section means that due to trade union activities:

- 1) an employee is prohibited from working;
- 2) an employment contract of an employee is cancelled or he or she is released from service;
- 3) the working conditions of an employee are impaired;
- 4) wages, salary or additional remuneration is reduced or not paid;
- 5) disciplinary penalties are imposed;
- 6) an employee is threatened by cancellation of the employment contract, release from service, impairment of working conditions, and imposition of punishment;
- 7) an employee is otherwise treated unequally.”;

4) *section 21² is added to the Act worded as follows:*

“§ 21². Security for period of fulfilment of duties of representative of trade union

The representative of a trade union retains their average wages for the term of performance of the duties of the representative of a trade union pursuant to § 21¹ of this Act.”;

5) *subsection 24 (1) is amended and worded as follows:*

“(1) If an employer violates labour laws or laws regulating public service, an employment contract or collective agreement or other contracts concerning the interests of the members of a trade union, the trade union has the right of recourse to the Labour Inspectorate. A supervisory agency is required to reply to a written appeal no later than within two weeks.”;

6) *section 24¹ is amended and worded as follows:*

“§ 24¹. Exercising state supervision

The Labour Inspectorate exercises state supervision over fulfilment of the requirements provided for in subsections 21¹ (2) and (3) and § 22 of this Act under the conditions and pursuant to the procedure provided for in the Occupational Health and Safety Act.

The Labour Inspectorate exercises state supervision over fulfilment of the requirements provided for in subsection 22 (1) of this Act under the conditions and pursuant to the procedure provided for in the Occupational Health and Safety Act, taking into account the specifications provided for in § 22 of the Employees Representative Act.”;

7) section 24² is amended and worded as follows:

“§ 24². Procedure for challenging precepts

Procedure for challenging precepts is subject to the provisions of the Occupational Health and Safety Act.”

§ 141. Amendment of Public Service Act

The Public Service Act (RT I 1995, 16, 228; 2008, 35, 213) is amended as follows:

1) the text of § 13 is amended and worded as follows:

“Labour laws shall extend to officials and support staff insofar as this Act or specific laws regulating the public service do not provide otherwise.”;

2) clause 23 (1) 6) is repealed;

3) subsection 37 (4) is amended and worded as follows:

“(4) Salary shall be paid pursuant to the procedure provided for in Division 2 of Chapter 3 of the Employment Contracts Act.”;

4) subsection 44 (3) is amended and worded as follows:

“(3) The working and rest time of a public servant shall be specified pursuant to Division 3 of Chapter 3 of the Employment Contracts Act, considering the differences provided by this Act and special laws regulating the public service.”;

5) subsection 45 (1) is amended and worded as follows:

“(1) An official shall be entitled to a base holiday of 35 calendar days under the conditions and pursuant to the procedure provided for in Division 4 of Chapter 3 of the Employment Contract Act and this Act.”;

6) subsection 111 (2) is repealed;

7) clauses 131 (1) 3) and 4) are amended and worded as follows:

“3) 5-10 years – shall be paid five months’ salary as compensation;

4) more than ten years – shall be paid ten months’ salary as compensation.”;

8) subsection 131 (1¹) is repealed;

9) subsection (1²) is added to § 131 worded as follows:

“(1²) As a result of release from service due to the winding-up of an administrative agency or due to lay-off an official has the right to a lay-off insurance indemnity under the conditions and pursuant to the procedure provided for in the Unemployment Insurance Act.”;

10) subsection (1³) is added to § 131 worded as follows:

“(1³) If an official released from office due to the winding-up of an administrative agency or due to lay-off is appointed to office to a position which they are offered upon the winding-up of the administrative agency or in the case provided for in subsection 116 (1) of this Act before the period of time passes for which they are paid compensation pursuant to subsection (1) of this section, they shall return the received compensation to the extent corresponding to the period of time by which they are re-employed in the service earlier as compared to the period of time which is the basis upon payment of the compensation.”;

11) *subsection 132 (4) is repealed;*

12) *section 134 is amended and worded as follows:*

“§ 134. Payment of final settlement upon release from service

(1) An administrative agency is required to pay the final settlement on the day of release from service.

(2) If the final settlement is not paid on the day of release from service, the administrative agency is required to pay the final settlement within five calendar days of the day following submission of the claim.

(3) Upon failure to pay the final settlement by the due date, the administrative agency is required to pay a salary for each working day by which the payment of the final settlement is delayed but not more than one month's salary of the official.”;

13) *the title of Chapter 12 of the Act is amended and worded as follows:*

“SERVICE RECORD”;

14) *section 159 is repealed;*

15) *subsection 160 (2) is amended and worded as follows:*

“(2) A person who is a member of support staff has the right of recourse to a court or the labour dispute committee for the settlement of disputes relating to an employment contract pursuant to the procedure and within the term provided for in the Individual Labour Dispute Resolution Act and the Employment Contracts Act.”.

§ 142. Amendment of Estonian Health Insurance Fund Act

Subsection 28 (3) of the Estonian Health Insurance Fund Act (RT I 2000, 57, 374; 2008, 53, 295) is amended and worded as follows:

“3) enter into, amend and cancel the employment contracts of employees of the health insurance fund;”.

§ 143. Amendment of National Library of Estonia Act

The National Library of Estonia Act (RT I 1998, 34, 488; 2007, 12, 66) is amended as follows:

1) *clause 12 (4) 3) is amended and worded as follows:*

„3) taking up another job on the basis of the Public Service Act or the Employment Contracts Act;”;

2) *clause 12 (4) 5) is amended and worded as follows:*

“5) on another basis provided by law.”.

§ 144. Amendment of Working Conditions of Workers Posted in Estonia Act

The Working Conditions of Workers Posted in Estonia Act (RT I 2004, 19, 134) is amended as follows:

1) subsection 3 (1) is amended and worded as follows:

“(1) For the purposes of this Act, a posted worker is a natural person who usually works in a foreign country on the basis of an employment contract, and whom the employer has posted to work in Estonia for a certain period, in the framework of the provision of services. A contract concluded in a foreign country concerning an employment relationship is considered to be an employment contract for the purposes of this Act if the agreement complies with the provisions of the Employment Contracts Act relating to employment contracts.”;

2) subsection 3 (3) is repealed;

3) subsections 5 (1) to (3) are amended and worded as follows:

“(1) The following are the working conditions established in Estonia that are applicable to posted workers:

- 1) working time;
- 2) rest time;
- 3) time off for ante-natal examination;
- 4) compensation of wages and overtime;
- 5) duration of base holiday;
- 6) equal treatment and equal opportunities.

(2) The Occupational Health and Safety Act shall apply to posted workers even when it is less favourable for posted workers than the provisions of foreign legislation. The fulfilment of the requirements specified in this subsection shall, in the case of work prescribed in clause 2 (1) 1) of this Act, be ensured by the subscriber, and in the case of work prescribed in clauses 2 (1) 2) and 3) of this Act, by the legal entity or sole proprietor for whom the posted worker works in Estonia.

(3) The working conditions specified in clauses (1) 4) and 5) of this section shall not apply in the case of a posting of up to eight days if the posted worker is a skilled worker whose task is the initial assembly or installation of goods required for the introduction of goods that have been ordered, if such work is an inseparable part of a subscription contract.”;

4) subsection 5 (6) is amended and worded as follows:

“(6) In the application of clause (1) 4) of this section, remuneration paid in cash in connection with the posting shall be considered to be part of wages, unless these are paid for the compensation of travel, accommodation or meal expenditure incurred in the course of the posting.”;

5) subsection 5 (7) is repealed;

6) section 8 is amended and worded as follows:

“§ 8. Exercising state supervision

State supervision over compliance with the requirements of this Act shall be exercised by the Labour Inspectorate under the conditions and pursuant to the procedure provided for in the Occupational Health and Safety Act.”;

7) section 9 is amended and worded as follows:

§ 9. Procedure for challenging precepts

Procedure for challenging precepts is subject to the provisions of the Occupational Health and Safety Act.”

§ 145. Amendment of Republic of Estonia Education Act

Subsection 34 (2) of the Republic of Estonia Education Act (RT 1992, 12, 192; 2008, 34, 208) is repealed.

§ 146. Amendment of Performing Arts Institutions Act

The Performing Arts Institutions Act (RT I 2003, 51, 353) is amended as follows:

1) subsection 7 (2) is amended and worded as follows:

“(2) A fixed-term employment contract shall be entered into with a creative employee of a performing arts institution for a period of up to five years.”;

2) subsection (3) is added to § 7 worded as follows:

“(3) The restriction on entry into consecutive fixed-term employment contracts shall not be applied to creative employees of performing arts institutions.”;

3) subsection (4) is added to § 7 worded as follows:

“(4) Employment contracts of creative employees of performing arts institutions made before adoption of this Act shall be brought into compliance with law within one calendar year as of the entry into force of the Act.”

§ 147. Amendment of Emergency Situation Act

Section 26 of the Emergency Situation Act (RT I 1996, 8, 164; 2002, 63, 387) is amended and worded as follows:

“§ 26. Conditions for transfer of workers to rescue work

(1) On the orders of a rescue work coordinator workers may be transferred to rescue work for up to one month.

(2) The transfer specified in this section is prohibited in the case of restrictions arising from the state of health of the worker.”

§ 148. Amendment of Financial Supervision Authority Act

The Financial Supervision Authority Act (RT I 2001, 48, 267; 2007, 68, 421) is amended as follows:

1) clause 23 (2) 6) is amended and worded as follows:

“6) enter into, amend, and cancel employment contracts with employees.”;

2) subsection 30 (1) is amended and worded as follows:

“(1) Employees of the Supervision Authority (hereinafter employees) and members of the management board of the Supervision Authority shall be subject to labour laws unless otherwise provided by this Act.”;

3) subsection 30 (6) is repealed.

§ 149. Amendment of Hobby Schools Act

The Hobby Schools Act (RT I 2007, 4, 19; 2008, 18, 125) is amended as follows:

1) clause 14 (3) 4) is amended and worded as follows:

“4) enter into, amend and cancel employment contracts with the staff of the school;”;

2) *subsection 15 (3) is amended and worded as follows:*

“(3) An employment contract with the head of a hobby school shall be concluded, amended, and cancelled by the rural municipality or city mayor or an official duly authorised by them.”

§ 150. Amendment of Individual Labour Dispute Resolution Act

The Individual Labour Dispute Resolution Act (RT I 1996, 3, 57; 2006, 58, 439) is amended as follows:

1) *in the Act the word ‘salary’ is substituted by the word ‘wages’ in the appropriate form;*

2) *section 2 is amended and worded as follows:*

“§ 2. Definition of individual labour dispute

For the purposes of this Act an individual labour dispute is a dispute in private law between an employee and an employer which arises from an employment contract. An individual labour dispute is also a dispute over a claim arising from preparation of an employment contract.”;

3) *subsection 4 (¹) is amended and worded as follows:*

“(1) Disputes over financial claims exceeding 150,000 kroons are not resolved by the labour dispute committee.”;

4) *subsections 6 (2) and (3) are amended and worded as follows:*

“(2) The limitation period for filing a claim to contest the justification for cancellation of an employment contract is 30 calendar days.

(3) The limitation period for filing a claim for payment of wages is three years.”;

5) *sections 7 and 8 are repealed;*

6) *the second sentence of subsection 13 (1) is repealed;*

7) *section 23 is amended and worded as follows:*

“§ 23. Communication of decision

(1) The decision of a labour dispute committee shall be communicated to the parties to the dispute within five working days of the meeting being held. On the date the meeting is held the parties shall be informed of the date and time of communication of the decision.

(2) On the date of communication of a decision, a copy of the decision shall be given to the parties or the decision delivered to the parties pursuant to the procedure provided for in the Administrative Procedure Act.”;

8) *section 23¹ is added to the Act worded as follows:*

“§ 23¹. Delivery of decision by placement in mailbox

(1) If a decision cannot be delivered by hand because it cannot be handed over on the date of communication of the decision or on the residential or business premises of the recipient, the decision shall be deemed delivered by placing the decision in the mailbox belonging to the residential or business premises or another similar place used by the recipient for receiving mail and which usually ensures the preservation of mail.

(2) Delivery in the manner specified in subsection (1) of this section is only allowed if it has twice been attempted to hand over the decision to the recipient at considerably different times of day with no less than three days between them and delivery to a representative of the recipient is not possible either.

(3) In the event specified in subsection (1) of this section the date of delivery is written on the envelope of the item to be delivered.”;

9) *section 23² is added to the Act worded as follows:*

“§ 23². Delivery of decision by storage

(1) On the conditions provided for in § 23¹ of this Act a document may also be stored in a post office or rural municipality or city government of the place of delivery of the document or in the office of the labour dispute committee in whose territorial jurisdiction the place of delivery of the document is located.

(2) In the case of storage, a written notice is left at or sent by mail to the address of the recipient and, if this is not possible, the notice is attached to the door of the residential premises or business premises or place of stay. The notice shall clearly indicate that a decision of the labour dispute committee has been stored, and that by such storage, the decision is considered to have been delivered and the term of contestation shall commence as of that moment.

(3) A decision is considered to have been delivered once three days have passed from the delivery or leaving of the written notice specified in subsection (2) of this section. The date of delivery is written on the envelope of the document.

(4) The document submitted for delivery is returned to the labour dispute committee after 30 days have passed from its being considered to have been delivered.”;

10) *section 27 is amended and worded as follows:*

“§ 27. Immediate execution of decisions

(1) A labour dispute committee may, by a decision, obligate an employer to immediately continue the performance of an employment contract if the committee establishes that the cancellation of the employment contract by the employer is void.

(2) The labour dispute committee shall declare that a decision to award payment of wages be executed immediately to the indispensable extent, but not more than to the extent of two months' wages.

(3) Upon having recourse to a court for the purpose of contesting a decision that is subject to immediate execution, one can apply for suspension of immediate execution by way of securing an action.”;

11) *chapters 5 and 6 of the Act are repealed.*

§ 151. Amendment of Defence Forces Service Act

The Defence Forces Service Act (RT I 2000, 28, 167; 2008, 53, 294) is amended as follows:

1) *subsection 69 (7) is amended and worded as follows:*

“(7) Upon release of a conscript from compulsory military service, the conscript shall receive all documents stored by him for the duration of the compulsory military service.”;

2) *subsection 120 (1) is amended and worded as follows:*

“(1) A regular member of the Defence Forces shall be released from contractual service on the date specified in the directive on the release and all service pay, benefits and compensation due (final settlement) shall be paid to them.”;

3) *section 124 is amended and worded as follows:*

“§ 124. Liability of commander organising service for withholding final settlement of regular member of Defence Forces

(1) If the final settlement is not paid to a regular member of the Defence Forces by the date of their release from active service, the commander organising service is required to pay the final settlement within five days of the day following the making of the request.

(2) If the commander organising service withholds final settlement of a regular member of the Defence Forces, the commander is required to pay them the salary of the most recent position and the rank allowance for each working day that the final settlement is withheld, but not more than one month's average salary of the member.”;

4) subsection 161 (1) is amended and worded as follows:

“(1) Regular members of the Defence Forces shall receive holiday pay on the bases and pursuant to the procedure the Employment Contracts Act.”;

5) subsection 168 (5) is amended and worded as follows:

“(5) The working and rest time of regular members of the Defence Forces shall be determined on the basis of the Employment Contracts Act, taking into account the specifications provided for in this Act.”;

6) subsection 169 (2) is amended and worded as follows:

“(2) Annual and other leave shall be granted to regular members of the Defence Forces on the basis of and pursuant to the procedure provided for in this Act and the Employment Contracts Act.”;

7) section 194 is repealed.

§ 152. Amendment of Local Government Organisation Act

Subsection 50 (2) of the Local Government Organisation Act (RT I 1993, 37, 558; 2008, 53, 293) is amended and worded as follows:

“(2) A rural municipality or city mayor shall not hold any other state or local government office, be employed by any agency under the administration of the state or local government, or belong to directing bodies of companies with local government participation. A rural municipality or city mayor is required to notify the agency where they are in the service at the given moment or with which they have an employment contract of their election within five working days of the election results being approved. An employment contract of a rural municipality or city mayor shall be terminated pursuant to subsection 91 (1) of the Employment Contracts Act, or he or she shall be released from office pursuant to § 127 of the Public Service Act.”

§ 153. Amendment of Collective Agreements Act

The Collective Agreements Act (RT I 1993, 20, 353; 2002, 61, 375) is amended as follows:

1) subsection 4 (2) is amended and worded as follows:

(2) The terms and conditions of a collective agreement which are less favourable to employees than those prescribed by an Act or other legislation are void, unless the possibility of such an agreement has been provided by law.”;

2) clause 6 (1) 4) is amended and worded as follows:

4) conditions for amendment and cancellation of an employment contract, and the bases for refusal to perform work.”;

3) section 9 is amended and worded as follows:

“§ 9. Guarantees

Employment contracts of representatives of the parties who participate in negotiations shall not be cancelled pursuant to clause 92 (1) 4) of the Employment Contracts Act.”;

4) section 16¹ is amended and worded as follows:

“§ 16¹. Exercising state supervision

State supervision over compliance with the requirements of this Act shall be exercised by the Labour Inspectorate under the conditions and pursuant to the procedure provided for in the Occupational Health and Safety Act.”;

5) section 16² is amended and worded as follows:

“§ 16². Procedure for challenging precepts

Procedure for challenging precepts is subject to the provisions of the Occupational Health and Safety Act.”

§ 154. Amendment of Collective Labour Dispute Resolution Act

The Collective Labour Dispute Resolution Act (RT I 1993, 26, 442; 2002, 63, 387) is amended as follows:

1) subsection 7 (1) is amended and worded as follows:

(1) Failing agreement on labour disputes, the employers and representatives of the employees have the right of recourse to federations of employers and federations of employees.”;

2) subsection 22 (3) is amended and worded as follows:

“(3) Strikes or lock-outs which are called or organised in violation of the procedure established by this Act are unlawful.”;

3) subsection 24 (1) is amended and worded as follows:

“(1) Participation in a strike shall not be considered to be a breach of an employment contract and shall not result in the employee’s liability, unless the employee is the organiser of a strike that has been declared unlawful by a court.”

§ 155. Amendment of Pre-school Child Care Institutions Act

The Pre-school Child Care Institutions Act (RT I 1999, 27, 387; 2008, 18, 125) is amended as follows:

1) subsection 20 (4) is amended and worded as follows:

“(4) Employment contracts with teachers, health care professionals, employees who manage the child care institution and employees who assist the teachers shall be entered into, amended and cancelled by the head.”;

2) subsection 21 (7) is amended and worded as follows:

“(7) An employment contract with the head shall be entered into, amended, and cancelled by the rural municipality or city mayor or an official duly authorised by them.”

§ 156. Amendment of Anti-corruption Act

Subsection 15¹ (1) of the Anti-corruption Act (RT I 1999, 16, 276; 2007, 24, 126) is amended and worded as follows:

“(1) For the purposes of this Act salary data means data on the salary, wages and other remuneration payable to an official, which is subject to social tax and paid in the positions specified in § 4 of this Act.”

§ 157. Amendment of Vocational Educational Institutions Act

The Vocational Educational Institutions Act (RT I 1998, 64/65, 1007; 2008, 34, 208) is amended as follows:

1) *subsection 17 (6) is amended and worded as follows:*

“(6) The Occupational Health and Safety Act shall apply to students during work practice.”;

2) *subsection 25 (5) is amended and worded as follows:*

« (5) The employment contract of the head of a state school shall be entered into, amended or cancelled by the minister who directs the ministry in whose area of government the state school is located or their authorised representative. An employment contract with the head of a municipal school shall be entered into, amended and cancelled by the rural municipality or city mayor or their authorised representative.”

3) *subsection 29 (2) is amended and worded as follows:*

“(2) The head of a school shall enter into, amend or cancel employment contracts with members of staff.”

§ 158. Amendment of Aviation Act

Subsection 27¹ is added to the Aviation Act (RT I 1999, 26, 376; 2008, 52, 290) worded as follows:

“§ 27¹. Working, flight and rest time of civil aircraft crew

(1) The maximum annual working and on-call time shall not exceed 2,000 hours. The total flight time shall not exceed 900 hours per year.

(2) The maximum annual working time shall be evenly divided throughout the year.

(3) A member of the crew of a civil aircraft is given no fewer than seven days off each calendar month and no fewer than 96 days off each calendar year. A day off for the purposes of this subsection means a period of 24 hours which begins at 0:00 a.m. local time.”

§ 159. Amendment of Traffic Act

The Traffic Act (RT I 2001, 3, 6; 2008, 54, 304) is amended as follows:

1) *the title of Chapter 4¹ is amended and worded as follows:*

“WORKING AND REST TIME AND WAGES OF DRIVERS”;

2) *subsection 20³ (10) is amended and worded as follows:*

“(10) In events not specified in this section, the provisions of Division 3 of Chapter 3 of the Employment Contracts Act apply to the working and rest time of drivers.”;

3) *section 20¹⁰ is added to the Act worded as follows:*

“§ 20¹⁰. Specifications of calculation and payment of drivers of goods road transport vehicle

Upon the calculation and payment of wages of drivers of motor vehicles, the requirements of Article 10 of Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No. 3821/85 and (EC) No. 2135/98 and repealing Council Regulation (EEC) No. 3820/85 (OJ L 102, 11.04.2006, pp 1-14).”;

4) *the words “or the head of the local Labour Inspectorate department” in the appropriate case are left out of subsections 46¹ (1), (3), (3¹) and (4);*

5) subsection 46¹ (3²) is amended and worded as follows:

"(3²) The precept provided for in subsection (3) of this section and the decision set out in subsection (3¹) shall be made and the challenge submitted against the precept and decision shall be resolved pursuant to the procedure provided for in the Occupational Health and Safety Act.";

6) section 46² is added to the Act worded as follows:

"§ 46². State supervision of fulfilment of requirements of remuneration of motor vehicle drivers and procedure for challenging precepts

(1) The Labour Inspectorate exercises state supervision over fulfilment of the requirements established with regard to remuneration of the driver specified in § 20¹⁰ of the Act under the conditions and pursuant to the procedure provided for in the Occupational Health and Safety Act.

(2) Procedure for challenging precepts is subject to the provisions of the Occupational Health and Safety Act."

§ 160. Amendment of Seafarers Act

The Seafarers Act (RT I 2001, 21, 114; 2005, 57, 453) is amended as follows:

1) clause 10 2) is repealed;

2) section 11 is amended and worded as follows:

"§11. Specifications of performance of seafarer's contract of employment

(1) If a crew member commences or terminates employment on a ship which is located elsewhere than the place where the seafarer's contract of employment is entered into, the shipowner shall, at the shipowner's expense, make travel arrangements for the crew member to reach the location of the ship or the place of entry into the seafarer's contract of employment and provide the crew member with food and accommodation during the journey to or from the ship.

(2) For the time specified in subsection (1) of this section the shipowner shall pay average wages to the crew member.";

3) subsection 21 (2) is amended and worded as follows:

"(2) If a ship on which a crew member commences or terminates employment is not located in the place of entry into the seafarer's contract of employment, the shipowner shall calculate the wages as of the moment of commencement of the journey to or from the ship, unless agreed otherwise in the seafarer's contract.";

4) subsection 40 (1) is amended and worded as follows:

"(1) A crew member is entitled to annual holidays of a duration of 35 calendar days.";

5) subsection 43 (2) is repealed;

6) the words "location (residence)" are replaced with the words "place of business" in subsection 44 (4);

7) subsection 47 (4) is repealed;

8) subsection 48 (2) is amended and worded as follows:

(2) The standard limits on overtime provided for in the Employment Contracts Act do not apply to crew members.";

9) the text of § 50 is amended and worded as follows:

“The payment of additional remuneration for night work provided for in the Employment Contracts Act does not apply to crew members.”;

10) section 59¹ is amended and worded as follows:

“§ 59¹. Exercising state supervision

(1) The Labour Inspectorate exercises state supervision of the fulfilment of the requirements provided for in this Act and legislation adopted on the basis thereof in the field of occupational health and safety and employment relationships and the Health Protection Inspectorate in the field of health protection under the conditions and pursuant to the procedure provided for in the Occupational Health and Safety Act.

(2) The Labour Inspectorate and the Health Protection Inspectorate cooperate in the inspection of ships, including exchanging information with the Maritime Administration.

(3) The supervisory official who made a precept ordering elimination of a fundamental breach sends a transcript of the precept to the Maritime Administration immediately. »;

11) section 59² is amended and worded as follows:

§ 59². Procedure for challenging precepts

Procedure for challenging precepts is subject to the provisions of the Occupational Health and Safety Act.”

§ 161. Amendment of Rescue Act

Subsection 34 (4) of the Rescue Act (RT I 1994, 28, 424; 2008, 35, 213) is amended and worded as follows:

“(4) Upon the payment of benefits, the average wages calculated on the basis of the Employment Contracts Act are used as the basis for calculation of the salary of one month. To calculate the annual salary the monthly salary is multiplied by 12.”

§ 162. Amendment of Rescue Service Act

The Rescue Service Act (RT I 2008, 8, 57) is amended as follows:

1) subsection 1 (3) is amended and worded as follows:

“(3) Labour laws, with the specifications arising from this Act, apply to rescue workers.”;

2) subsection 14 (5) is amended and worded as follows:

“(5) Upon the payment of benefits, the average wages calculated on the basis of the Employment Contracts Act are used as the basis for calculation of the monthly salary of a rescue worker. To calculate the annual salary the monthly salary is multiplied by 12.”;

3) subsection 20 (1) is amended and worded as follows:

“(1) Upon the calculation of the working time of a rescue worker, Division 3 of Chapter 3 of the Employment Contracts Act applies with the specifications provided for in this Act.”;

4) subsection (1¹) is added to § 20 worded as follows:

“(1¹) The calculation period of the working time of a rescue worker is up to six months.”;

5) subsection 20 (2) is repealed;

6) section 22 is amended and worded as follows:

“§ 22. Rescue work outside dispatch area

The provisions of § 40 of the Public Service Act and § 21 of the Employment Contracts Act do not apply to requiring rescue workers to work throughout the day for the purpose of the performance of rescue work outside the dispatch area approved by a directive of the Director General of the Rescue Board.”

§ 163. Amendment of Basic Schools and Upper Secondary Schools Act

The Basic Schools and Upper Secondary Schools Act (RT I 1993, 63, 892; 2008, 18, 125) is amended as follows:

1) subsection 36 (4) is amended and worded as follows:

“(4) The functions, obligations, rights and liability of staff shall be determined by the statutes of the school and in an employment contract, which are in accordance with labour laws.”;

2) subsection 38 (1) is amended and worded as follows:

“(1) The head of the school shall enter into, amend and cancel employment contracts with the staff in accordance with labour laws. The head of a school shall enter into an employment contract with a teacher to be employed on the basis of an international agreement for the term determined by the international agreement.”

§ 164. Amendment of Health Insurance Act

The Health Insurance Act (RT I 2002, 62, 377; 2008, 34, 210) is amended as follows:

1) subsections 6 (4) and (5) are amended and worded as follows:

“(4) Insurance cover is suspended two months after the time when the employer fails to pay social tax or two months after suspension of a service relationship if the employer does not pay social tax for the period of suspension of the service relationship. An employer is required to notify the health insurance fund of suspension of a service relationship within ten calendar days. After expiry of the period of suspension, the insurance cover resumes without a waiting period.

(5) The provisions of subsection (4) of this section do not apply if the insured person is entitled to receive a benefit for temporary incapacity for work.”;

2) clauses 51 (1) 3) and 4) are amended and worded as follows:

“(3) provision of the insured person with work corresponding to their state of health based on subsection 18 (1) of the Employment Contracts Act or temporary easement of the conditions of service of the insured person or their temporary transfer to another position on the basis of § 51 of the Public Service Act;

4) refusal of the insured person to work on the basis of subsection 18 (2) of the Employment Contracts Act and temporary release of the person from the performance of their duties of service on the basis of § 51 of the Public Service Act.”;

3) subsection 53 (3) is amended and worded as follows:

“(3) In the case of an insured event specified in clause 51 (1) 4) of this Act, the additional conditions for the granting and payment of the benefit are the decision of a doctor, midwife or dentist specifying the need to provide the insured person with work corresponding to their state of health or transfer the insured person to an easier job and describing the recommended conditions of employment or service.”;

4) clause 54 (1) 2) is amended and worded as follows:

"2) 80 percent in the event of receiving out-patient health services, nursing a family member who is ill at home, refusal to do work not corresponding to the state of health, temporary release from the performance of his or her duties, or quarantine;"

5) subsection 54 (3) is amended and worded as follows:

"(3) If an employee has been provided with work corresponding to their state of health or a public servant has been temporarily transferred to another job or their conditions of service have been temporarily eased, the health insurance fund shall pay the insured person a benefit in such an amount that the total amount of the benefit and the wages or salary receivable for the period, divided by the number of calendar days in the period, is equal to the insured person's average income per calendar day.";

6) subsection 56 (2) is amended and worded as follows:

"(2) If an obligation to pay sickness benefit is based on the provision of an employee with work corresponding to the health condition or temporary transfer of a servant to another job or the temporary easement of their working conditions, the benefit is calculated as of the first day on which the employee or servant assumed the new job or the job with eased conditions of employment or service.";

7) subsection 57 (4) is repealed;

8) the following words are left out of subsections 58 (1) and (3):

"in the case of a multiple birth or delivery with complications, for 154 calendar days";

9) subsection 58 (2) is amended and worded as follows:

"(2) If a pregnant woman has been provided with work corresponding to her state of health or the conditions of service of a pregnant woman have been eased during her pregnancy, the woman has the right to receive maternity benefit for 140 calendar days if the pregnancy and maternity leave of the woman commences at least 70 calendar days before the estimated date of delivery as determined by a doctor or midwife. The number of days by which the pregnancy and maternity leave of the woman commences later than the term provided for in this subsection shall be deducted from the period for which the woman has the right to receive maternity benefit.";

10) subsections 60 (4) and (5) are amended and worded as follows:

"(4) An insured person does not have the right to receive a benefit for temporary incapacity for work if the temporary incapacity for work commences at a time when the insured person is:

1) on holiday;

2) on care leave during a holiday.

(5) In the cases listed in subsection (4) of this section, the insured person acquires the right to receive a benefit as of the day when they assume or are required to assume their duties."

§ 165. Amendment of National Defence Duties Act

The National Defence Duties Act (RT I 1995, 25, 352; 2008, 35, 213) is amended as follows:

1) subsection 26 (4) is amended and worded as follows:

"(4) An employer shall retain the average wages the persons specified in subsection (3) of this section for the time during which they were under the command of the commanding officer of a military unit pursuant to the procedure established on the basis of subsection 29 (8) of the Employment Contracts Act.";

2) subsection (5) is added to § 26 worded as follows:

“(5) The body authorised to assume use of the property shall compensate the employer for the remuneration specified in subsection (4).”;

3) section 37 is amended and worded as follows:

“§ 37. Compensation for carriage obligation

(1) During performance of the carriage obligation the employer shall retain the average wages of the person on whom the carriage obligation was imposed pursuant to the procedure established on the basis of subsection 29 (8) of the Employment Contracts Act.

(2) The body authorised to decide on the carriage obligation shall compensate the employer for the remuneration specified in subsection (1).”;

4) section 42 is amended and worded as follows:

“§ 42. Compensation for duties

(1) During performance of the duties the employer shall retain the average wages of the employee pursuant to the procedure established on the basis of subsection 29 (8) of the Employment Contracts Act.

(2) The body authorised to decide on the duty shall compensate the employer for the remuneration specified in subsection (1).”

§ 166. Amendment of State Fees Act

Clause 22 (1) 1) of the State Fees Act (RT I 2006, 58, 439; 2008, 52, 290) is amended and worded as follows:

“1) hearing of an action or appeal concerning wages, establishment of voidness of cancellation of an employment contract, reinstatement in service, or amendment of the written legal basis for release of a person from service;”.

§ 167. Amendment of State Secrets and Classified Information of Foreign States Act

Clause 27 (3) 2) of the State Secrets and Classified Information of Foreign States Act (RT I 2007, 16, 77; 2008, 35, 213) is amended and worded as follows:

“2) this person is dismissed from an office that requires access to state secrets under the procedure provided by the Public Service Act or some other specific legal act regulating public services or an employment contract of the person is cancelled pursuant to the procedure provided for in the Employment Contracts Act.”

§ 168. Amendment of Procedure for Taking Oath of Conscience Act

Section 7 of the Procedure for Taking Oath of Conscience Act (RT 1992, 31, 408; RT I 1994, 68, 1170) is amended and worded as follows:

“§ 7. A person who would like to retain the job specified in §§ 5 and 6 of this Act which they took before the formation of the Riigikogu shall take an oath of conscience within 30 days of the gathering of the Riigikogu pursuant to the procedure provided for in §§ 1, 2, 5 and 6 of this Act. If a person does not take an oath of conscience, the person shall be released from office on the basis given in clause 88 (1) 2) of the Employment Contracts Act.”

§ 169. Amendment of Social Tax Act

The Social Tax Act (RT I 2000, 102, 675; 2008, 8, 57) is amended as follows:

1) clause 2 (1) 1) is amended and worded as follows:

“1) on wages and other remuneration paid to employees in money;”;

2) *in clause 2 (1) 5) the word 'salary' is substituted by the word 'wages';*

3) *clause 2 (3) 1) is amended and worded as follows:*

"1) employees who are on holiday or who have refused to perform work on the basis provided for in § 19 of the Employment Contracts Act;"

4) *clause 2 (4) 1) is repealed;*

5) *clause 2 (4) 2) is amended and worded as follows:*

"2) employees or public servants to whom reduced working time applies in this month pursuant to subsection 43 (4) or (6) of the Employment Contracts Act;"

6) *in section 2¹ the word 'salary' is substituted by the word 'wages';*

7) *clause 3 5) is amended and worded as follows:*

"5) wage compensation paid for additional holiday days and breaks for feeding a child provided for in § 66 of the Employment Contracts Act, subsection 10 (5) of the Occupational Health and Safety Act and subsection 15 (3) of the Social Welfare Act;"

§ 170. Amendment of General Part of Civil Code Act

Section 66¹ is added to the General Part of the Civil Code Act (RT I 2002, 35, 216; 2007, 24, 128) and worded as follows:

§ 66¹. Enterprise

Enterprise is a business entity through which a person operates."

§ 171. Amendment of Security Act

Section 21¹ is added to the Security Act (RT I 2003, 68, 461; 2008, 28, 181) and worded as follows:

"§ 21¹. Working time limits of security guards

(1) Upon the calculation of the working time of a security guard, Division 3 of Chapter 3 of the Employment Contracts Act applies with the specifications provided for in this Act.

(2) The calculation period of the working time of a security guard is up to six months."

§ 172. Amendment of Adult Education Act

Section 8 of the Adult Education Act (RT I 1993, 74, 1054; 2007, 4, 17) is amended and worded as follows:

"(1) Employees and public servants shall be granted study leave in order to participate in education and training.

(2) Employees and public servants shall be granted study leave of up to 30 calendar days per calendar year in order to participate in education and training.

(3) Average wages shall be ensured for employees and public servants for 20 calendar days for the period of study leave related to formal education and vocational training.

(4) For the purpose of completion of formal training additional study leave of 15 calendar days is granted, thereby paying to employees and public servants the minimum wages established on the basis of subsection 29 (5) of the Employment Contracts Act.

(5) The provisions of subsections (2) to (4) of this section apply to employees and public servants who participate in daytime and full-time study in formal education within the adult education system.”

§ 173. Amendment of Employees Disciplinary Punishments Act

The Employees Disciplinary Punishments Act (RT 1993, 26, 441; 2000, 102, 674) is amended as follows:

1) *section 1 is amended and worded as follows:*

“§ 1. Scope of application of Act

This Act is applied to officials in public service and other events provided by law, taking into account the differences provided for in these acts. This Act does not apply to relationships under employment contracts.”;

2) *sections 2 to 5, 16, 21 and subsection 20 (3) are repealed.*

§ 174. Amendment of Employees Representative Act

The Employees Representative Act (RT I 2007, 2, 6) is amended as follows:

1) *section 8 is amended and worded as follows:*

“§ 8. Term of authority of employees’ representative

(1) The term of authority of the employees’ representative is three years, unless the general meeting has decided otherwise.

(2) Upon the transfer of an enterprise, the authority of the employees’ representative is valid until expiry of the authority, but not more than one year after the transfer.

(3) The restrictions provided for in § 181 of the Law of Obligations Act do not apply to the transfer of the authority of the employees’ representative.”;

2) *clause 9 3) is repealed;*

3) *section 14¹ is added to the Act worded as follows:*

“§ 14¹. Security for period of fulfilment of duties and training of employees’ representative

The employees’ representative retains their average wages for the term of performance of the duties and participation in training pursuant to subsection 13 (3) of this Act.”;

4) *section 22 is amended and worded as follows:*

“§ 22. Exercising state supervision

The Labour Inspectorate exercises state supervision of the fulfilment of the requirements provided for in subsections 9 (1) and (2), 13 (3) and §§ 17, 18 and 20 of this Act under the conditions and pursuant to the procedure provided for in the Occupational Health and Safety Act.”;

5) *section 23 is amended and worded as follows:*

§ 23. Procedure for challenging precepts

Procedure for challenging precepts is subject to the provisions of the Occupational Health and Safety Act.”

§ 175. Amendment of Community-scale Involvement of Employees Act

The Community-scale Involvement of Employees Act (RT I 2005, 6, 21; 2007, 65, 405) is amended as follows:

1) *subsection 83 (1) is amended and worded as follows:*

“§ 83. Exercising state supervision

(1) Regardless of the seat of the central management of the controlling undertaking of a Community-scale undertaking or a Community-scale group of undertakings or the registered seat of an SE or SCE, the Labour Inspectorate shall exercise state supervision over adherence to the requirements of the Act under the conditions and pursuant to the procedure provided for in the Occupational Health and Safety Act.”;

2) *section 84 is amended and worded as follows:*

§ 84. Procedure for challenging precepts

Procedure for challenging precepts is subject to the provisions of the Occupational Health and Safety Act.”

§ 176. Amendment of Occupational Health and Safety Act

The Occupational Health and Safety Act (RT I 1999, 60, 616; 2007, 59, 381) is amended as follows:

1) *section 10 is amended and worded as follows:*

“§ 10. Pregnant women and employees who are breastfeeding

(1) An employer shall create suitable working and rest conditions for pregnant women and women who are breastfeeding.

(2) Upon assigning work to pregnant women and women who are breastfeeding, employers shall observe the restrictions provided by legislation to ensure their safety.

(3) The Government of the Republic shall establish, by a regulation, the occupational health and safety requirements for the work of pregnant women and breastfeeding women.

(4) An employer is required to provide pregnant women the time off indicated in the decision of a doctor or midwife for ante-natal examinations, which is considered working time.

(5) A mother breastfeeding a child is entitled to additional breaks for feeding the child until the child reaches the age of 18 months. Additional breaks shall be granted once every three hours with a duration of no less than 30 minutes on each occasion. The duration of a break granted for feeding two or more children under 18 months of age shall be no less than one hour.

(6) The breaks for feeding a child shall be considered working time and average wages calculated on the basis of subsection 29 (8) of the Employment Contracts Act shall be paid for them from the state budget through the budget of the area of government of the Ministry of Social Affairs, unless the mother is paid the parental benefit for raising the child.

(7) The Government of the Republic shall establish, by a regulation, the procedure for compensation of average wages from the state budget.”;

2) *section 10¹ is added to the Act worded as follows:*

“§ 10¹. Minor and disabled employees

(1) An employer shall create suitable working and rest conditions for minors and disabled employees.

(2) Upon assigning work to minors, employers shall observe the restrictions provided by legislation to ensure their safety.

(3) An employer is required to enable, pursuant to the procedure provided by Acts regulating employment and service relationships, an employee who has become partially incapacitated for work in the employer's enterprise as a result of an occupational accident or occupational disease to continue work suitable for them in the enterprise.

(4) The work, work equipment and workplace of a disabled employee shall be customised to their physical and mental abilities. Customisation means the making of the buildings, workrooms, workplaces or work equipment of the employer accessible and usable for disabled persons. This requirement also applies to commonly used routes and non-work rooms used by disabled employees.”;

3) clause 13 (1) 3) is amended and worded as follows:

“3) conduct risk assessment of the working environment to ascertain the risk factors present in the working environment, measure their parameters as necessary and assess the risks to the health and safety of employees, taking into account the gender and age characteristics of the employees, including special risks to the workers specified in § 10 and 10¹ of this Act and risks related to the workplaces and the use of work equipment and work organisation. The results of risk assessment shall be formalised in writing and retained for 55 years;”;

4) clause 13 (1) 7) is amended and worded as follows:

“7) organise, pursuant to the procedure provided in this Act, other Acts or legislation established on the basis thereof, the provision of medical examinations for employees whose health may be affected, in the course of the work process, by risk factors present in the working environment or the nature of work, and bear the costs related thereto. The Minister of Social Affairs shall establish the procedure for the medical examination of employees;”;

5) clause 13 (1) 7¹) is amended and worded as follows:

“7¹) organise, pursuant to the procedure established by the Minister of Social Affairs on the basis of clause 7) of this subsection, the provision of medical examinations for employees who work at night before they start night work as well as with regular intervals during work and bear the costs related thereto;”;

6) subsection 13 (2) is amended and worded as follows:

(2) An employer has the right to establish more stringent occupational health and safety requirements in the enterprise than those prescribed by legislation.”;

7) subsection 14 (3) is repealed;

8) in clauses 14 (5) 7) and 17 (6) 3) the word “location” is substituted by the word “place of business”;

9) subsections (1¹) and (1²) are added to § 17 worded as follows:

(1¹) Upon the transfer of an enterprise, the authority of the working environment representative is valid until expiry of the authority, but not more than one year after the transfer.

(1²) The restrictions provided for in § 181 of the Law of Obligations Act do not apply to the transfer of the authority of the working environment representative.”;

10) the words “Republic of Estonia Employment Contracts Act” in subsection 17 (8) are substituted by the words “Employment Contracts Act”;

11) the words “Republic of Estonia Employment Contracts Act” in subsection 18 (9) are substituted by the words “Employment Contracts Act”;

12) clause 23 (5) 2) is amended and worded as follows:

“2) the employee shall provide an excerpt from their medical records.”

§ 177. Amendment of Labour Market Services and Benefits Act

The Labour Market Services and Benefits Act (RT I 2005, 54, 430; 2008, 48, 265) is amended as follows:

1) clause 8¹ (4) 9) is amended and worded as follows:

“9) unemployment insurance benefit and benefits paid in the case of lay-offs and insolvency of employers;”;

2) subsection 15 (3) is amended and worded as follows:

“(3) Work practice shall last for up to four months.”;

3) subsection 15 (9) is amended and worded as follows:

“(9) No employment contract shall be made for the period of work practice and no labour laws shall be applied to work practice, except § 7, subsections 8 (1) and (2) and (6), subsections 43 (1) and (2) and clauses 43 (4) 2) and 4), §§ 47, 49 and 53, and the Occupational Health and Safety Act.”;

4) subsection 16 (7) is amended and worded as follows:

“(7) No employment contract shall be made for the period of public work and no labour laws shall be applied to public work, except § 7, subsections 8 (1) and (2) and (6), clause 43 (4) 2), and §§ 47, 49 and 53, and the Occupational Health and Safety Act.”;

5) subsection (6) is added to § 17 worded as follows:

“(6) No employment contract shall be made for the period of coaching for working life and no labour laws shall be applied to coaching for working life, except § 7, subsections 8 (1) and (2) and (6), subsections 43 (1) and (2) and clauses 43 (4) 2) and 4), §§ 47, 49 and 53, and the Occupational Health and Safety Act.”;

6) subsection 18 (6) is amended and worded as follows:

“(6) Wage subsidy shall not be paid for the period for which a service relationship has been suspended or work has been refused, including for holidays. Such period shall not be included in the period of six months specified in subsection (4) of this section.”;

7) clauses 18 (7) 1) and 2) are amended and worded as follows:

“1) the public servant was released due to a breach of duties of service, loss of confidence, or an indecent act or the employment contract of the employee was cancelled due to reasons specified in clauses 88 (1) 3) to 8) of the Employment Contracts Act;

2) the public servant is unsuitable for their position due to professional skills or for reasons of health or the employment contract with the employee has been cancelled due to reasons specified in clauses 88 (1) 1) and 2) of the Employment Contracts Act.”;

8) subsection 31 (1) is amended and worded as follows:

“(1) The basis for calculation of unemployment allowance shall be the daily unemployment allowance rate established by the state budget for each budgetary year, whereby the multiple of the daily allowance rate and 31 shall not be lower than 50 percent of the minimum monthly wages established on the basis of subsection 29 (5) of the Employment Contracts Act in force on July 1 in the year preceding the budgetary year.”;

9) section 38¹ is added to the Act worded as follows:

“§ 38¹. Acting as intermediary of temporary agency labour

Temporary agency labour may be mediated by a legal entity in private law who has been registered as an intermediary of temporary agency labour in the register of economic activities.”;

10) subsection 39 (1) is amended and worded as follows:

“(1) A legal entity in private law or a sole proprietor shall submit a registration application established on the basis of subsection 20 (4) of the Register of Economic Activities Act to the Ministry of Social Affairs to be registered in the register of economic activities as a provider of labour market services or an intermediary of temporary agency labour.”;

11) clause 39 (2) 1) is amended and worded as follows:

“(1) the labour market services which the applicant wishes to provide (provision of information on the situation on the labour market, job mediation, career counselling) or acting as an intermediary of temporary agency labour.”;

§ 178. Amendment of Unemployment Insurance Act

The Unemployment Insurance Act (RT I 2001, 59, 359; 2008, 53, 295) is amended as follows:

1) subsection 1 (1) is amended and worded as follows:

“(1) This Act regulates the conditions and procedure for the payment and granting of benefits upon unemployment, lay-off and insolvency of employers, and the organisation of unemployment insurance.”;

2) section 2 is amended and worded as follows:

“§ 2. Definition of unemployment insurance

Unemployment insurance is a type of compulsory insurance whose purpose is to provide, upon unemployment, partial compensation for lost income to insured persons for the time of their search for work, and partial compensation to employees and public servants for expenses related to the cancellation of employment contracts and service relationships in the event of a lay-off, and the protection of the claims of the employees upon the insolvency of employers.”;

3) clause 3 (2) 3) is amended and worded as follows:

“(3) is a member of management of a controlling body for the purposes of § 9 of the Income Tax Act to whom the Employment Contracts Act does not extend.”;

4) clause 5 2) is amended and worded as follows:

“(2) insurance benefit upon a lay-off.”;

5) clause 6 (1) 2) is amended and worded as follows:

“(2) their unemployment insurance period is at least 12 months during the 36 months prior to registration as unemployed, except in the event specified in clause 3) of this subsection, or”;

6) clause 3) is added to subsection 6 (1) worded as follows:

“(3) upon termination of their last employment contract or service relationship and upon cancellation of the employment contract on the initiative of the employee or upon termination of the service relationship on the initiative of the public servant, except upon cancellation of the employment relationship on the bases specified in subsections 37 (5), 91 (2) and 107 (2) of the Employment Contracts Act, the unemployment insurance period is at least 48 months during the 60 months prior to registration as unemployed.”;

7) subsection 6 (2) is amended and worded as follows:

“(2) An insured person does not have the right to receive an unemployment insurance benefit if the person’s last employment or service relationship was terminated due to the reasons specified in clauses 88 (1) 3) to 8) of the Employment Contracts Act or a breach of duties of service, loss of confidence or an indecent act.”;

8) subsections (4) and (5) are added to § 6 worded as follows:

“(4) An insured person whose last employment or service relationship was cancelled due to a lay-off or who cancelled the employment contract on the basis of subsection 37 (5) of the Employment Contracts Act and who corresponds to the provisions of subsection (1) of this section shall be entitled to an unemployment insurance benefit:

1) if the employment or service relationship with the employer lasted five to ten years – 30 calendar days after the end of the employment or service relationship;

2) if the employment or service relationship with the employer lasted more than ten years – 60 calendar days after the end of the employment or service relationship.

(5) An insured person who used pregnancy and maternity leave or parental leave during the 36 months specified in clause (1) 2) of this section of the 60 months specified in clause (1) 3) of this section shall have the 36-month or 60-month period extended by the time that the person was on leave, unless the database of unemployment insurance contains data on the unemployment insurance period with regard to the same period.”;

9) clause 8 (2) 3) is amended and worded as follows:

“(3) complies with the other terms for receipt of unemployment insurance benefit provided by this Act, except for the insurance benefit requirement specified in clause 6 (1) 2) and 3) of this Act.”;

10) subsection 4¹ is added to § 9 and subsections 9 (4) and (5) are amended and worded as follows:

“(4) The amount of unemployment insurance benefit per calendar day shall be the following percentage of the remuneration per calendar day, calculated based on subsections (1) to (3) of this section:

1) 70 percent from the first calendar day to the 100th calendar day;

2) 50 percent from the 101st calendar day to the 360th calendar day.

(4¹) Upon the termination of the last employment contract or service relationship and upon the cancellation of the employment contract on the initiative of the employee or upon the termination of the service relationship on the initiative of the public servant, except upon the cancellation of the employment relationship on the bases specified in subsections 37 (5), 91 (2) and 107 (2) of the Employment Contracts Act, the amount of the unemployment insurance benefit per calendar day is 40 percent of the wages per calendar day calculated on the basis of subsection (1) to (3) of this section from the first until the 360th calendar day.

(5) If the amount of the insured person's unemployment insurance benefit per calendar day calculated on the basis of this section is less than 50 percent of the daily allowance rate calculated on the basis of the minimum hourly rate of wages established on the basis of subsection 29 (5) of the Employment Contracts Act, the amount of the unemployment insurance benefit per calendar day shall be equal to 50 percent of the latter.”;

11) subsection 9 (7) is amended and worded as follows:

“(7) The amount of unemployment insurance benefit shall not be recalculated at the turn of the calendar year.”;

12) subsection (6) is added to § 11 worded as follows:

“(6) Upon granting an unemployment insurance benefit in the events specified in subsection 6 (4) of this section, the indemnity shall be calculated as of the expiry of the term specified in the same subsection, unless the application for receipt of the unemployment insurance benefit is submitted after

the expiry of the aforementioned term. If the application for receipt of the unemployment insurance benefit is submitted after the expiry of the term specified in subsection 6 (4) of this Act, the benefit shall be calculated pursuant to subsection (5) of this section.”;

13) section 2¹ is added to the Act worded as follows:

“Chapter 2¹

INSURANCE BENEFIT UPON LAY-OFF

§ 14¹. Right to insurance benefit upon lay-off

An employee or public servant whose employment or service relationship with the employer has lasted for at least five years and whose employment contract has been cancelled due to a lay-off or who has cancelled the employment contract on the basis of subsection 37 (5) of the Employment Contracts Act or whose service relationship has been terminated on the basis of § 115 or 116 of the Public Service Act is entitled to an insurance benefit upon lay-off.

§ 14². Amount of insurance benefit upon lay-off

(1) In the event of a lay-off an insurance benefit shall be paid to an employee or public servant whose employment or service relationship with the employer has lasted:

- 1) five to ten years – to the extent of one month’s average wages or salary;
- 2) more than ten years – to the extent of two months’ average wages or pay.

(2) The amount of the benefit specified in subsection (1) of this section shall be calculated on the basis of the employee's or the public servant's average wages or salary per calendar day in nine months thereby relying on the data of the database of unemployment insurance. The average wages or salary of the employee or the public servant per calendar day is calculated by dividing the total amount of remuneration paid by the employer to the employee or the public servant in the nine months of employment preceding the last three months of employment by 270. Thereby the remuneration specified in subsection 40 (2) of this Act is not taken into account. In the case of an employee or public servant who has received wages or salary for a period shorter than nine months in the period preceding the last three months of employment, the total amount of the remuneration actually paid shall be used as the basis, dividing it by the number of months worked and a multiple of 30. The months of employment taken into account are the months when, according to the data of the database of unemployment insurance, remuneration was paid to the employee or public servant.

§ 14³. Application for insurance benefit upon lay-off

(1) To apply for an insurance benefit in the event of a lay-off an employer shall submit to the unemployment fund a duly formalised application within five calendar days of the termination of the employment or service relationship. The form of the application for the indemnity and the list of documents to be enclosed shall be established by a regulation of the Minister of Social Affairs.

(2) The application specified in subsection (1) of this section shall be deemed to have been received as of the date of receipt of the application along with proper documents by the Estonian Unemployment Insurance Fund.

§ 14⁴. Granting and payment of insurance benefit upon lay-off

(1) The unemployment fund shall review the application and make a decision to grant the insurance benefit within 14 calendar days of the date of receipt of the application.

(2) With good reason the unemployment fund may extend the term by 14 calendar days. The unemployment fund shall immediately notify the employer and the employee or the public servant of the extension of the term and give the reasons for the extension.

(3) The unemployment fund shall deliver the decision specified in subsection (1) of this section to the employer and the employee, according to the choice made in the application, by regular mail or electronically within five calendar days of making the decision.

(4) The indemnity shall be paid no later than on the fifth calendar day as of making the decision to the employee's or the public servant's:

1) bank account in Estonia at the expense of the payer, or

2) bank account abroad at the expense of the recipient, unless provided otherwise in an international agreement.”;

14) chapter 3 of the Act is repealed.

15) clauses 20 (1) 1) and 3) are amended and worded as follows:

“1) wages not received from the period before declaring the employer insolvent;”;

3) upon the cancellation of the employment contract, benefits not received which are prescribed by the Employment Contracts Act from the period before or after declaring the employer insolvent.”;

16) subsection 20 (3) is amended and worded as follows:

(3) In the events specified in clause (1) 1) of this section compensation shall be paid to the employee to the extent of the gross wages of the last three months of employment, but not more than triple the average gross wages in Estonia in the quarter preceding declaring the employer insolvent based on the data published by the Statistical Office.“;

17) subsection 20 (5) is amended and worded as follows:

“(5) In the events specified in clause 1 (3) of this section compensation shall be paid to the employee to the extent of the gross wages of the last two months of employment, but not more than single average gross wages in Estonia in the quarter preceding declaring the employer insolvent based on the data published by the Statistical Office.“;

18) section 23 is amended and worded as follows:

“§ 23. Objective of unemployment fund

(1) The objective of the unemployment fund is the payment of unemployment insurance benefits, benefits upon lay-offs and benefits upon the insolvency of an employer pursuant to the procedure provided for in this Act and other legislation.

(2) In order to achieve its objectives, the unemployment fund has the right to receive the necessary information from all state and local government bodies and the databases maintained by them and from insured persons, employers and applicants for insurance unless the receipt of information is restricted by law.”;

19) clause 33 (3) 2) is amended and worded as follows:

“2) the budget of the trust fund for benefits upon lay-offs and insolvency of employers;”.

20) subsection 33 (4) is amended and worded as follows:

“(4) The operating expenses of the unemployment fund and the transfers to the reserve capital shall be allocated proportionally between the unemployment insurance benefit trust fund and the trust fund for benefits upon lay-offs and insolvency of employers.”;

21) clause 36 (2) 2) is amended and worded as follows:

“2) the trust fund for benefits upon lay-offs and insolvency of employers.”;

22) section 38 is amended and worded as follows:

“§ 38. Trust fund for benefits upon lay-offs and insolvency of employers

(1) The unemployment insurance premiums of employers and the income received from the investment thereof shall form the trust fund for benefits upon lay-offs and insolvency of employers.

(2) The assets of the trust fund for benefits upon lay-offs and insolvency of employers shall be used:

1) in order to pay the benefits provided for in § 14¹ and subsection 20 (1) of this Act and the social tax calculated on the basis of the benefits;

2) in order to pay the social tax calculated on the basis of the unemployment insurance benefits;

3) in order to cover the bank charges related to the payment of benefits;

4) in order to cover the transaction costs and fees directly related to investment of the assets of the trust fund;

5) in order to cover the operating expenses of the unemployment fund;

6) for transfers to reserve capital.”;

23) *section 40 is amended and worded as follows:*

“§ 40. Object of unemployment insurance premium

(1) An unemployment insurance premium shall be paid:

1) on wages, salary and other remuneration paid to insured persons according to the rate of unemployment insurance premium established for the insured persons and employees;

2) on wages, salary and other remuneration paid to the persons specified in clause 3 (2) 5) of this Act according to the rate of unemployment insurance premium established for the employees.

(2) An unemployment insurance premium shall not be paid:

1) on compensation or benefits paid by the employer upon the cancellation of an employment contract or release from service prescribed to insured persons by law;

2) on compensation or benefits or fines for delay upon the unlawful cancellation of an employment contract or unlawful release from service prescribed to insured persons by law;

3) on wages upon the withholding of the final settlement prescribed to insured persons by law;

4) the amounts specified in § 3 of the Social Tax Act.”;

24) *clause 42 (1) 5) is amended and worded as follows:*

“5) issue, at the request of an insured person, or send electronically, upon the termination of an employment or service relationship, a certificate concerning the types and amount of remuneration and unemployment insurance premiums withheld on the remuneration for each calendar month, the basis and time of termination of the last employment or service relationship of the insured person, the length of employment with the employer, and the time spent on pregnancy and maternity or parental leave.”;

25) *subsection 46 (1) is amended and worded as follows:*

“(1) The unemployment fund shall reclaim a benefit granted and paid without legal basis to an insured person, an employee or a public servant (hereinafter beneficiary) from the beneficiary.”;

26) *subsection 46 (3) is amended and worded as follows:*

“(3) The unemployment fund may reclaim a lay-off benefit granted and paid to a beneficiary without legal basis from the employer if the benefit had been paid due to incorrect data submitted by the employer and the benefit cannot be reclaimed from the beneficiary.”;

27) subsections (9) to (11) are added to § 52 worded as follows:

“(9) The benefit provided for in clause 5 2) of this Act shall be paid and the waiting periods specified in subsection 6 (4) of this Act shall be applied to employees or public servants whose employment or service relationship is terminated after 30 June 2009.

(10) Benefit for collective cancellation of employment contracts is paid on the grounds and pursuant to the procedure effective before 1 July 2009 to persons whose employment contract is cancelled collectively and for whom the benefit is applied for before 1 July 2009, but whose employment or service relationship terminates after 30 June 2009. The benefit provided for in subsection 5 (2) of this Act is not paid in the case of a lay-off to and the waiting periods specified in subsection 6 (4) are not applied to the aforementioned persons.

(11) The size of the unemployment insurance benefit provided for in subsection 9 (4) of this Act as of 1 July 2009 is applied to the insured whom the benefit is granted after 30 June 2009 and the benefits granted before 1 July 2009 are not recalculated. If the benefit granted to a person before 1 July 2009 is smaller than the benefit calculated pursuant to subsection 9 (5) of this Act, the benefit shall be recalculated as of 1 July 2009.”

§ 179. Amendment of Parental Benefit Act

The Parental Benefit Act (RT I 2003, 82, 549; 2008, 48, 264) is amended as follows:

1) subsections 3 (2¹) and (2²) are amended and worded as follows:

“(2¹) The number of calendar months specified in subsection (2) of this section shall be the difference between the number of calendar days in the calendar year and the number of days during which the person is temporarily released from work on the basis of a certificate of incapacity for work divided by 30. However, it shall not exceed 12. Leave due to impossibility of demanding work corresponding to the state of health or refusal to perform work or temporary easement of the current conditions of employment or service or temporary transfer to another job shall not be included in days during which the person is temporarily released from work on the basis of a certificate of incapacity for work. The number of calendar months shall be calculated to the accuracy of two decimal places. If the number of calendar months is zero, but the person has received income subject to social tax, his or her income shall be divided by 12.

(2²) Upon the granting of work corresponding to the state of health, refusal to perform work, temporary easement of the current conditions of employment or service or temporary transfer to another job, or if this is impossible, the benefit for temporary incapacity for work paid on the basis of the Health Insurance Act for the calendar year prior to the date on which the right to receive the benefit arose shall be divided by the number of calendar days calculated on the basis of subsection (2¹) of this section. The result of the division shall be included in the average income per calendar month specified in subsection (1).”;

2) subsection 4 (4) is amended and worded as follows:

“(4) The benefit shall be granted for the period as of the date on which the right to receive the benefit arises until 435 days after the granting of a maternity benefit. If the mother of the child does not have the right to receive a maternity benefit, the benefit shall be granted until the day the child attains 18 months of age.”

§ 180. Amendment of Imprisonment Act

Subsection 41 (2) of the Imprisonment Act (RT I 2000, 58, 376; 2008, 41, correction notice) is amended and worded as follows:

“(2) Provisions of labour law, including the provisions concerning entry into employment contracts, wages and holidays, shall apply to unsupervised work of prisoners outside a prison. An employment contract entered into with a prisoner shall not indicate that they are serving a sentence.”

§ 181. Amendment of Blood Act

Clause 7 (3) 5) of the Blood Act (RT I 2005, 13, 63; 2008, 3, 22) is amended and worded as follows:

“5) to be given time off by the employer to donate blood;”.

§ 182. Amendment of Aliens Act

Subsection 13³ (13) of the Aliens Act (RT I 1993, 44, 637; 2008, 18, 122) is amended and worded as follows:

“(13) In addition to the conditions specified in subsection (6) of this section, the natural person or legal entity for whom the service in Estonia is provided shall be designated in the alien’s residence permit for work, if the alien is a posted worker for the purposes of the Working Conditions of Workers Posted in Estonia Act.”

§ 183. Amendment of Commercial Code

Section 5 of the Commercial Code (RT I 1995, 26–28, 355; 2008, 52, 288) is repealed.

§ 184. Amendment of Universities Act

The Universities Act (RT I 1995, 12, 119; 2008, 34, 208) is amended as follows:

1) subsection 17 (3) is amended and worded as follows:

“(3) The oldest member of the council of the university shall enter into an employment contract with the Rector on behalf of the university and the employment contract shall be in accordance with the provisions of the Employment Contracts Act and this Act.”

2) clause 17 (5) 1) is amended and worded as follows:

“1) on the grounds prescribed in the Employment Contracts Act;”;

3) section 40 is amended and worded as follows:

“§ 40. Other employees of university

The rights and obligations of other employees of university are regulated in accordance with labour laws.”

§ 185. Repeal of Republic of Estonia Employment Contracts Act

The Republic of Estonia Employment Contracts Act (RT 1992, 15/16, 241; RT I 2007, 44, 316) is repealed, except §§ 13¹ and 13².

§ 186. Repeal of Pay Act

The Pay Act (RT I 1994, 11, 154; 2007, 54, 362) is repealed.

§ 187. Repeal of Holidays Act

The Holidays Act (RT I 2001, 42, 233; 2007, 71, 436) is repealed.

§ 188. Repeal of Working and Rest Time Act

The Working and Rest time Act (RT I 2001, 17, 78; 2006, 14, 112) is repealed.

§ 189. Repeal of Labour Code of Estonian SSR

The Labour Code of the Estonian SSR is repealed.

§ 190. Entry into force

(1) This Act shall enter into force on 1 July 2009.

(2) Section 134 of this Act shall enter into force on 1 January 2011.

(3) The second sentence of § 60, subsection 63 (1), and clause 177 8) of this Act shall enter into force on 1 January 2013.

(4) Clauses 178 5)-10) of this Act shall enter into force on 1 January 2013.

(5) Section 135 of this Act shall be repealed as of 1 January 2013.

[RT I 2009, 36, 234 – entered into force 1.07.2009]

Correction notice

The second sentence of § 60 and subsection 63 (1) which enter into force on 1 January 2013 have been omitted from this consolidated text.