

Translation from Finnish

Legally binding only in Finnish or Swedish

Ministry of Economic Affairs and Employment, Finland

Wage Guarantee Act

(866/1998; amendments up to 896/2022 included)

By decision of Parliament, the following is enacted:

Chapter 1

General provisions

Section 1

Purpose of the Act

The purpose of the Wage Guarantee Act is to ensure the payment of employees' claims arising from an employment relationship in the event of the employer's insolvency.

Section 2

Scope of application of the Act

An employee shall be entitled to wage guarantee if

- 1) the work concerned has been done in Finland; or
- 2) the work has been done abroad in the service of a Finnish employer and the employee is domiciled in Finland.

Work done in Finland does not, however, entitle an employee to wage guarantee if it has been carried out by an employee sent to Finland from abroad by a foreign employer to do temporary work.

Work abroad referred to above in subsection 1(2) does not entitle an employee to wage guarantee in so far as the employee is entitled to a similar benefit from another country.

Section 3 (1633/2009)

Authorities

The Ministry of Economic Affairs and Employment directs the enforcement of the Act and is responsible for the development of the wage guarantee system. The Centre for Economic Development, Transport and the Environment makes the decision in a wage guarantee matter and manages other duties related to the enforcement of the Act.

Chapter 2

Conditions for receiving wage guarantee

Section 4 (78/2001)

Claims payable as wage guarantee (938/2004)

Where the grounds and sum have been established, claims of an employee referred to in the Employment Contracts Act (55/2001) arising from an employment relationship are payable as wage guarantee.

The employee's pension contribution and unemployment insurance contribution shall be deducted from the wage guarantee claim. (938/2004)

Section 4a (896/2022)

Claim based on default judgment or settlement

A claim based on a default judgment or a settlement confirmed by a court of law is payable as wage guarantee when the wage guarantee authority, based on other information available, has been able to ascertain the grounds for and sum of the claim.

The payment of claims based on a settlement as wage guarantee additionally requires that the wage guarantee authority is provided with information on the claims arising from the employment relationship on which the settlement is based.

Section 5 (1157/2016)

Time limit for the application

A claim shall be applied for as wage guarantee within three months of its falling due.

Compensation for damage or reparation based on the law or a contract which has no specific due date shall be applied for as wage guarantee within three months of the date when the judgement became final or a contract was concluded in compliance with established labour market practice.

An agreement on deferral of the due date of a claim is binding on the wage guarantee authority when it is concluded before the due date of the claim and is binding in the relationship between the employer and the employee. It is further required that the agreement has been concluded in writing or that deferral of the due date is otherwise verifiable.

Section 5a (896/2022)

Severe labour exploitation

The time limit laid down in section 5 above does not preclude payment of wage guarantee when:

- 1) the employer or its representative has committed against the employee a criminal offence on which provisions are laid down in chapter 25, section 3 or 3a, chapter 36, section 6 or 7 or chapter 47, section 3 or 3a of the Criminal Code of Finland (39/1889) and claims arising from the employment relationship ordered payable by a criminal judgment or criminal damages based on these are applied for as wage guarantee; or
- 2) there is another justified cause to assess that the employee has been subject to severe labour exploitation that has prevented claims from being applied for as wage guarantee within the time limit laid down in section 5.

The claim referred to in paragraph 1 above shall be applied for as wage guarantee within three months of the criminal judgment becoming final and the claim referred to in paragraph 2 within 18 months of the end of the employment relationship.

However, the provisions laid down above in this section shall not apply when the employee, based on a previous employment relationship, has been accorded the time limit referred to in subsection 2.

Section 6

Employer's insolvency

A condition for receiving wage guarantee is that the employer is insolvent. The employer shall be considered insolvent if:

- 1) the employer has been declared bankrupt;
- 2) it has been established that the employer is unable to pay his or her debts that are subject to recovery procedure;
- 3) the employer has neglected to pay the statutory pay-as-you-earn taxes or employer contributions on time;
- 4) the employer cannot be contacted or has terminated the operations and the claim cannot be paid from the employer's funds; or
- 5) in cases comparable to those mentioned above, the employer's insolvency can be clearly established by the wage guarantee authority.

Section 7

Lodgement obligation

If the employer has been declared bankrupt, to retain the right to wage guarantee the employee shall lodge his or her claim in the employer's bankruptcy as specified in chapter 12, section 6 of the Bankruptcy Act (120/2004). However, a lodgement obligation does not exist if the claim is included in the list of employment relationship claims referred to in section 13 of this Act, drawn up by the administrator of the estate. (135/2004)

If the employee neglects the lodgement obligation provided in subsection 1, this may constitute grounds for refusing wage guarantee in whole or in part.

Section 8

Prevention of irregularities

For a justified cause, the wage guarantee authority has the right to refuse wage guarantee or take the amount of wage guarantee to be paid under consideration in the following situations:

- 1) the employee's claim is based on a contract or arrangement which was clearly made in order to obtain wage guarantee;
- 2) the claim applied for as wage guarantee is obviously disproportionate to what is to be considered reasonable in view of the work done and other circumstances;
- 3) the employee is repeatedly applying for claims on the same employer as wage guarantee;
- 4) the employee has continued in the employment relationship even after the employee must have known, due to failures of wage payment, that the employer was unable to pay wages.

(1157/2016)

For a justified cause, the wage guarantee to be paid may also be limited to the amount paid by the employer to the employee as claims arising from the employment relationship within a year preceding the submission of the application for wage guarantee.

The same employer referred to in subsection 1, paragraph 3 above also includes an undertaking where the power of decision on the basis of ownership, agreement or some other arrangement rests with:

- 1) a former employer;
- 2) a person or persons who have a close relationship with the former employer referred to in section 3 of the Act on the Recovery of Assets to Bankruptcy Estates (758/1991); or
- 3) persons referred to in paragraphs 1 and 2 above jointly.

An employee who has previously received wage guarantee has the right, upon application, to obtain advance information on whether wage guarantee is to be limited or refused on the grounds specified in subsection 1, paragraph 3.

Section 9

Maximum amount of wage guarantee

The maximum amount of wage guarantee for one employee on the grounds of work done for the same employer is 19,000 euros. (678/2021)

The amount of pay for waiting time referred to in chapter 2, section 14 of the Employment Contracts Act shall not exceed the amount of claims paid as wage guarantee from whose delay the obligation to pay for waiting time arises. (1633/2009)

The provisions in section 9a apply to the payment of a claim based on working time banking as wage guarantee. (1257/2006)

Section 9a (1257/2006)

Working time banking claim payable as wage guarantee

A claim based on working time banking may be paid as wage guarantee if the introduction and contents of working time banking have been agreed in writing or the conditions have otherwise been recorded. A further condition is that the employer has kept a working time banking account of each employee's claims and their accrual or that the entries to the account and when they were made can be verified from the working hours and pay bookkeeping.

The maximum amount of a working time banking claim payable as wage guarantee on the grounds of work done for the same employer is the amount corresponding to six months' pay.

Section 9b (1633/2009)

Travel or other expenses incurred from performing the work

Travel or other expenses incurred by the employee from performing the work for the payment of which the employer is responsible shall be paid as wage guarantee if they are of ordinary nature and the amount is reasonable.

Chapter 3

Application for wage guarantee and the processing of applications

Section 10

Application and applicants

An application for wage guarantee shall be submitted to an Employment and Economic Development Office or the Centre for Economic Development, Transport and the Environment. An application for wage guarantee concerning work abroad can also be submitted to a Finnish diplomatic mission abroad. (1633/2009)

The applicant for wage guarantee may be an employee or an employee organisation to which the employee has transferred the claim to be collected. Where the employer is in bankrupt, the estate in bankruptcy may also apply for wage guarantee for the benefit of employees subject to conditions to be laid down by decree.

If an employee transfers a claim arising from employment relationship, the transferee is entitled to wage guarantee only when the transferee is an employee organisation.

Sections 11–11a

Sections 11 and 11a were repealed by Act 1552/2015.

Section 12 (938/2004)

Hearing

Before the matter is resolved, the employer and the employee shall be given an opportunity to be heard in accordance with section 34 of the Administrative Procedure Act (434/2003). A condition for determining a partner in a general partnership and a responsible partner in a limited partnership and another party responsible for paying the claims as liable for repayment as specified in section 17 is that he or she has also been given an opportunity to be heard with regard to the application.

For the hearing the party concerned shall be allowed 7–14 days to give a statement or explain the matter. Upon application the time allowed may be extended to 21 days.

Section 13 (1633/2009)

List of employment relationship claims of the administrator of the estate

After a bankruptcy has been declared, the administrator of the bankruptcy estate shall without delay draw up a list of outstanding claims arising from an employment relationship. The administrator of the estate, in cooperation with the Centre for Economic Development, Transport and the Environment, shall examine which of the claims can be paid as wage guarantee. The administrator of the estate shall give the employees or their representatives an opportunity to express their opinion on the claims entered in the list.

Chapter 4

Decision on and payment of wage guarantee

Section 14

Decision on wage guarantee (938/2004)

A decision on an application for wage guarantee shall be issued in writing. Justification of the decision shall be provided as specified in section 45 of the Administrative Procedure Act.
(938/2004)

Subsection 2 was repealed by Act 1633/2009.

Section 14a (938/2004)

Service of a decision on wage guarantee

Service of a decision on wage guarantee shall be effected using the standard service procedure provided in section 59 of the Administrative Procedure Act. If the time period for bringing action concerning the employer's recovery claim starts to run from the service of the decision on wage guarantee, service of a decision on wage guarantee shall be effected to the employer or other party referred to in section 17 that is liable for repayment using the verifiable service procedure provided in section 60 of the Administrative Procedure Act.

Section 15

Payment of wage guarantee

Wage guarantee shall be paid within a week of the decision on wage guarantee. Pay-as-you-earn tax under the Tax Prepayment Act (1118/1996) shall be levied on wage guarantee. An execution

order against wages and prohibition on paying wages shall also be effective when paying wage guarantee. (938/2004)

The party paying the wage guarantee shall declare the amount of wage guarantee of the employee on which pay-as you-earn tax has not been levied or contributions under section 4, subsection 2 deducted as the wages for pension purposes to the Finnish Centre for Pensions and as wages subject to pay-as-you-earn tax to the Tax Administration. In addition, the party paying the wage guarantee shall declare the contributions under section 4, subsection 2 deducted from the wage guarantee to the Tax Administration. (938/2004)

The maximum share of the wage guarantee payable to an employee that the Centre for Economic Development, Transport and the Environment may use to set off a counterclaim under this Act is the share of the employee's wages which may be subject to execution under the law. (1633/2009)

Chapter 5

Liability for repayment

Section 16

Transfer of claims to the State

Claims payable as wage guarantee and all entitlements related to them shall pass to the State on the date of the decision.

Section 17 (938/2004)

Liability for repayment

The employer, a responsible partner in a limited partnership and a partner in a general partnership and another party responsible for the payment of employees' claims shall repay to the State the amounts paid as wage guarantee, including interest under section 4, subsection 1 of the Interest Act (633/1982) calculated from the date of the decision.

The liability for repayment of a party responsible for the payment of employee's claims shall be resolved in the decision on wage guarantee or by a separate decision concerning the liability for repayment. A decision on the liability for repayment shall be made without delay after the liability for repayment has been established. (1633/2009)

The provisions on the service of a decision on wage guarantee in section 14a apply to the service of a decision concerning liability for repayment, as appropriate. (1633/2009)

Section 18 (1633/2009)

Enforceability of a decision on wage guarantee

A decision on wage guarantee and liability for repayment shall be immediately enforceable like a final judgement unless a court of law rules when considering a dispute concerning wage guarantee that the decision shall not be enforced for the time being or that enforcement shall be discontinued.

Section 19

Payment reductions

For reasons important for safeguarding employment or for other reasons comparable to these or if the collection would be unreasonable in view of the financial position of the party liable for the payment, the Ministry of Economic Affairs and Employment and, up to the amount laid down by decree, the Centre for Economic Development, Transport and the Environment may grant deferral of payment or fully or in part exempt the employer or other party liable for the payment from the payment.

A decision on payment reduction made by the Ministry of Economic Affairs and Employment or the Centre for Economic Development, Transport and the Environment may not be appealed.

Section 20 (675/2019)

Specific period of limitation

Wage guarantee shall be recovered for the State within 10 years of the end of the year in which the decision of wage guarantee was made. After that the right to the payment is forfeited.

Expiration of the period of limitation does not preclude recovery from assets subject to attachment or surrendered into bankruptcy or from assets from which claims notified by public summons shall be paid when prior to the expiration of the period of limitation referred to in subsection 1:

- 1) attachment has been carried out in order to collect on the claim;
- 2) the debtor has been declared bankrupt or the claim has been lodged in the meeting of the parties in the sale of a real property as provided in the Enforcement Code (705/2007); or
- 3) the claim has been notified in consequence of a public summons.

Separate provisions are laid down on the effect of the debt adjustment of a private individual and the restructuring of an enterprise.

Chapter 6

Requests for review

Section 21

Action against an employer

If a claim applied for as wage guarantee has been rejected because the employer has disputed the claim and it has not been possible to establish its grounds and amount in the wage guarantee procedure, to retain the entitlement to wage guarantee the employee shall institute action against the employer in a district court. The application for summons shall state that the action is based on this subsection.

The court shall forward the summons, the application for summons and documents appended to it and responses to the summons to the State for information. The State has the right, when it considers this to be in its best interests, to enter as a defendant in the legal proceedings within a period set by the court.

The maximum claims that the court shall confirm vis-à-vis the State in situations referred to in subsections 1 and 2 are the claims that an employer is obliged to pay to the employee.

If an employer has disputed a claim applied for as wage guarantee and the employer has not been considered insolvent, the claim shall be dismissed as disputed and the employee shall be given instructions for instituting the action referred to in subsection 1.

Section 22 (896/2022)

Action against the State

If a claim applied for as wage guarantee which has not been disputed by the employer has been rejected on the basis of section 4 as unproven or unfounded, to retain the entitlement to wage guarantee the employee shall institute declaratory action against the State in a district court concerning the grounds and amount of the claim.

Section 23

Institution of action and legal venue

The time limit for instituting action is six months. The time limit is calculated from the receipt of notice of the decision. Action shall be instituted in the court of law where the employer would be required to act as a defendant in a case concerning a wage claim.

Section 24

Settlement of a claim in the employer's bankruptcy proceedings

If the employer is bankrupt or is declared bankrupt within the period when action were to be instituted, action cannot be instituted but any disputes concerning the claim shall be settled in the bankruptcy proceedings. If the bankruptcy proceedings are cancelled or lapse, the six-month time limit shall be calculated from the date of the termination of the bankruptcy proceedings.

The Centre for Economic Development, Transport and the Environment is entitled to object to a claim lodged in bankruptcy proceedings which may become payable as wage guarantee.
(1633/2009)

Section 25

New application for wage guarantee

A claim based on a judgement may be paid as wage guarantee if a new application is submitted within three months of the date on which the judgement became final, provided that the general conditions for receiving wage guarantee are fulfilled.

Section 26

Administrative appeal

A decision on wage guarantee by which a claim has been rejected on grounds other than those mentioned in sections 21 and 22 or by which a claim has been ruled inadmissible is eligible for review by appeal by the employee to the Social Security Appeal Board. The request for review shall be submitted to the Centre for Economic Development, Transport and the Environment not later than 30 days after receiving notice of the decision. The Centre for Economic Development, Transport and the Environment shall send the letter of appeal, its opinion and the relevant documents to the Social Security Appeal Board without delay. (841/2019)

A decision of the Social Security Appeal Board is eligible for judicial review by appeal to the Insurance Court as provided in the Administrative Judicial Procedure Act (808/2019). Service of the decision is effected by standard service. (841/2019)

The provisions of chapter 13 of the Administrative Judicial Procedure Act shall apply to extraordinary request for review of a wage guarantee decision referred to in subsection 1 or 2. (841/2019)

A decision on wage guarantee may not be appealed by an employer or other party liable for payment. (938/2004)

Section 27

Employer's action concerning recovery

An employer or other party liable for payment may apply for recovery concerning a decision on wage guarantee or liability for repayment in the court of law where the employer would be required to act as a defendant in a case concerning a wage claim. Action concerning recovery shall be instituted within 60 days of receiving notice of the decision on wage guarantee or liability for repayment. (1633/2009)

If the employer or other party liable for payment has been declared bankrupt or is declared bankrupt during the period for instituting action for recovery, disputes concerning liability for payment may be resolved in the bankruptcy proceedings.

Chapter 7

Miscellaneous provisions

Section 28 (896/2022)

Obligation of party to contribute and to provide information

All parties to a wage guarantee matter are subject to an obligation to contribute to the investigation of the wage guarantee matter and to provide the wage guarantee authority with the information necessary for the enforcement of the law.

Section 28a (896/2022)

Obligation to provide information on behalf of a legal person

The obligation to provide information on behalf of a legal person that is an employer also applies to:

- 1) a person who is a member of the board of directors or a comparable body, or is the chief executive officer or has a comparable position;
- 2) a person who is personally liable for the commitments of the legal person;
- 3) a person who is entitled to sign for the legal person alone or jointly with another person;
- 4) a person who, in view of the circumstances, is effectively managing the operations of the legal person or attending to its administration or the administration of its assets.

Also a person who has held a position referred to in subsection 1 during the year preceding the request for information is subject to the obligation to provide information.

If there are no persons referred to in subsection 1 or 2, the person who most recently held a comparable position is subject to the same obligation.

Section 28b (896/2022)

Conditional fine and executive assistance

The wage guarantee authority may order an employer or a person referred to in section 28a to surrender the following materials or equivalent information on pain of a fine as provided in the Act on Conditional Fines (1113/1990):

- 1) copies of the documents pertaining to the employment relationship, working hours registers and annual holiday records when these are necessary in order to investigate the wage guarantee matter;
- 2) accounting ledgers, vouchers, other accounting materials and other documents and records relating to business activities or professional activities when these are indispensable to investigating the wage guarantee matter; and
- 3) documents pertaining to the governance and contracts of a corporate entity or foundation when these are indispensable to investigating the wage guarantee matter.

The provisions of subsection 1 apply also to a party in respect of which the need has arisen to determine whether the party is liable for the claims applied for as wage guarantee as the assignee referred to in chapter 1, section 10 of the Employment Contracts Act or on the basis of chapter 2, section 5, subsection 2 of the Annual Holidays Act (162/2005).

The police authority is obliged to provide the executive assistance needed to obtain information.

Section 28 c (896/2022)

Obtaining information from non-parties

Notwithstanding secrecy provisions, the Centre for Economic Development, Transport and the Environment is entitled to obtain free of charge information indispensable to the enforcement of the law from tax authorities, enforcement authorities, occupational safety and health authorities, the Social Insurance Institution of Finland, the Finnish Centre for Pensions, pension institutions, unemployment funds, Employment and Economic Development Offices and municipalities and information indispensable to determining the wage guarantee applicant's right to work from the Finnish Immigration Service.

Notwithstanding secrecy provisions and other restrictions concerning access to information, the Centre for Economic Development, Transport and the Environment is entitled to obtain information

indispensable to deciding a wage guarantee matter from the party which exercises effective control of a joint construction or shipbuilding site or is another principal contractor at such a site as well as from the accounting firm of the wage guarantee applicant's employer. The employer's accounting firm is entitled to receive reasonable compensation from the Centre for Economic Development, Transport and the Environment, within the limits of the available appropriation, for costs arising from compliance with the obligation to provide information.

The Centre for Economic Development, Transport and the Environment is also entitled to obtain information indispensable to the processing of a wage guarantee matter from an authority or entity managing wage guarantee matters of another Member State of the European Union.

Section 28 d (896/2022)

Disclosure of information

Notwithstanding secrecy provisions, the Centre for Economic Development, Transport and the Environment is entitled to disclose to an authority or entity managing wage guarantee matters of a Member State of the European Union information that is indispensable to processing a wage guarantee matter under consideration there.

Notwithstanding secrecy provisions, the Centre for Economic Development, Transport and the Environment may on its own initiative disclose information relating to wage guarantee that is indispensable to:

- 1) the criminal investigation authorities in order to prevent, detect and investigate criminal offences and bring these to the prosecution authorities for consideration of charges;
- 2) the prosecutor for the duties laid down in section 9 of the Act on the National Prosecution Authority (32/2019);
- 3) the Financial Intelligence Unit for the duties laid down in section 2 of the Act on the Financial Intelligence Unit (445/2017);
- 4) the Tax Administration for the duties laid down in section 2 of the Act on the Tax Administration (503/2010);

5) the occupational safety and health authority referred to in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006) for statutory occupational safety and health enforcement duties.

Section 29 (938/2004)

Undue wage guarantee benefit

Anyone who has caused, intentionally or negligently, an undue payment of wage guarantee or other benefit under this Act to be granted shall be obliged to return the undue payment or compensate for the value of the benefit with interest under section 4, subsection 1 of the Interest Act calculated from the date when the benefit was granted.

Section 30

Penal provisions

The penalty for acquiring or attempting to acquire wage guarantee by fraud shall be imposed under chapter 36, sections 1–3 of the Criminal Code (39/1889).

The penalty for subsidy fraud concerning a reduction or exemption under this Act shall be imposed under chapter 29, sections 5, 6 and 8, of the Criminal Code.

Section 31

Financing

The Unemployment Insurance Funds referred to in the Act on Financing Unemployment Benefits (555/1998) shall pay to the State retroactively the difference between the amounts paid to employees as wage guarantee and the principal collected from employers on an annual basis in accordance with an invoice sent by the relevant ministry. However, amounts that have not been collected from employers or other parties liable for payment as specified in 19 are deducted from the difference. If the payment is delayed, interest for late payment of 16 per cent shall be paid on it.

Section 32

Further provisions

Further provisions on the enforcement of this Act are issued by decree.

Chapter 8

Entry into force and transitional provisions

Section 33

Entry into force

This Act enters into force on 1 January 1999.

This Act repeals the Wage Guarantee Act of 10 August 1973 (649/1973) with subsequent amendments.

Section 34

Transitional provisions

This Act shall apply to applications for wage guarantee submitted to the employment authority after the entry into force of the Act. The provisions on appeal in chapter 6 of this Act shall also apply to appeals under consideration upon the entry into force of the Act.

Provisions in force upon the entry into force of this Act shall apply to new applications for wage guarantee under section 25 of the Act, if a claim based on a judgement has for the first time been applied for as wage guarantee before the entry into force of this Act and this is without prejudice to the application of provisions on appeal in subsection 1.

The provisions in force upon the entry into force of this Act still apply to an invoice of the Unemployment Insurance Fund concerning the year 1998.

State claims based on decisions on wage guarantee made before the entry into force of this Act shall expire no later than at the end of 2008.