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# The new work and labour law

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# Foreword

This study was carried out as a part of the Research Programme on the Finnish Innovation System financed by Sitra, the Finnish National Fund for Research and Development. The national innovation system is defined as the system of organisations and actors whose interaction shapes the innovativeness of the national economy and society. The main goal of the research programme was to identify the future challenges of the Finnish innovation system. In a rapidly changing techno-economic environment, the Finnish innovation system cannot be expected to repeat its recent successes without continuous and effective development effort.

The research programme included 12 research projects that represented several scientific disciplines: sociology, economics, innovation research, psychology, jurisprudence, etc. The cross-disciplinary approach was chosen to gain many different, but complementary, perspectives on the structure and functioning of the innovation system. The close cooperation of scholars from different disciplines was aimed at creating an innovative research environment for the programme. A particular emphasis was laid on understanding the micro-level innovation processes and innovation networks. The research projects went beyond the traditional organisation- and institution-oriented studies of innovation systems in order to better understand the drivers and context of modern innovation processes. In the changed environment, innovation policies cannot be effective without a deep understanding of these processes and their environment. The results of the whole research programme were synthesised in the programme's final report *Transformation of the Finnish innovation system: A network approach* (Gerd Schienstock and Timo Hämäläinen).

Sitra wants to thank all the researchers, policy makers and distinguished foreign experts that contributed to the success of the research programme. The results of the research programme provide plenty of challenges for further research and future innovation policies.

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# Preface

The new economy and the new forms of working affect the creation of innovations. Innovations are created through the interaction between people and organisations. Labour legislation is only one form of regulating these multilevel relationships.

This report examines the relationship between the new economy, the new work, innovations and working life regulations. The report is a labour legislative portion of Sitra's wider research programme of the system of innovation.

We wish to thank Sitra for the possibility to be part of this research project, which broadly outlines processes of innovation. The research plays a role in opening discussion on those methods, possibilities and challenges placed by the new work, which are central to small national economies in the squeeze of globalisation, such as Finland. Many thanks to Timo Hämäläinen and Gerd Schienstock for the coordination of the entire research programme.

We also thank those persons and parties who have been of irreplaceable assistance in the writing of this report. These include Petri Pitkänen, Risto Haavisto, the Faculty of Law and the Centre for Continuing Education of the University of Lapland, a number of trade unions as well as Lapland Innopolis ™. In the proofreading, translation and editing of this report we would like to thank Robert Kinghorn and LINK Language Services.

Rovaniemi, September 2001

Seppo Koskinen and Hannu Mikkola
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# 1 INTRODUCTION

**Seppo Koskinen**

Three main chapters of this book form a series of studies concerning the relationship between new work (working life) and labour law. The first one includes a general description of the study. In the second the labour law questions involving the knowledge worker will be examined and from this perspective the line between employee and employer will be assessed. In the third the concrete regulation of new work in the Employment Contracts Act and collective agreements will be studied. The studies form an entirety. Each discusses the same problems while supplementing others. Due to the closeness of the parts, they overlap one another to some extent. At the end there is a summary including some policy considerations.

*The new work and labour law* -chapter examines how the new demands set for the use of the workforce can be met from the perspective of labour legislation. It also aims to assess the appropriateness of labour legislation for a solution of the new problems. The new issues to be assessed have in this context been collected from social scientific literature. This type of method is problematic. This approach rests on subjective assessment made in accordance to the literature about the newest developmental aspects of society (the new economy). In this sense as well, many limitations have been made. Now we focus on the changes affecting working life. Based on these it is not possible to form an overall picture of the new economy.

The aim of this study is to present first the actual issue (the change in working life, the new demand placed on the employee etc.) and then to assess it through labour law (indent chapters). The study is based on domestic and foreign literature from the field of social sciences concerning the newest changes in working life. In this sense the problem is the vast quantity of literature as well as the internal discrepancy present to some extent. Nevertheless, through literature the current trends of change affecting both employees and employers have been found. In terms of examination through labour law the problem is in that legislation deals with everything. On the other hand, the issues taken into consideration have often been left in the field of general regulation covering also many other

circumstances. Indeed the issue often concerns whether regulation should be aware of the demands of new working life or at least more aware than it is today.

The demands of working life change constantly. The descriptions provided in the literature on the demands of working life do not necessarily correspond to the present system. Working life is a mixture of new and old. The relationship between the demands of working life and labour law regulation is complex and changing. In spite of these problems the article examine this question which, in addition, is situated within different scientific fields. The main portion of this article discusses the demands made of both employees and employers as well as assesses these from the perspective of labour law. The aim is to present the answers labour law provides for the "processing" of these new demands. The second main part examines the labour law regulation of new work. The discussion is general and most of the attention is paid to the starting points of regulation.

*In the new work and the knowledge worker* -chapter the new work and some of its manifestations will be examined: for example networks and the position of the knowledge worker, as well as their relationship with innovation systems and the processes of creation of innovations. The perspective is general and judicial. In this study, labour and contractual issues as well as immaterial rights are emphasised. In this study the concept of the new work is broader than presented in recent literature. The new work incorporates, in addition to the electronic network also other special features characteristic to today's working life. These include the emergence of networks, performing of work in projects, knowledge work and the new forms of performing work.

The study consists of four parts. In the first and second parts the structures of networks and special questions that they implicate will be examined. In the definition of labour legislation, the status of the knowledge worker is vague. In the world of projects traditional working relationships become unclear. The same applies to the position of the employer. In social decision making we are coming to a point where the legislator should take a stand in how labour legislation can protect the employee in the future. An alternative is the decreasing of the significance of labour legislation so that working performances will be organised through civil and commercial law. This involves questions such as the role in which the work is performed.

The externalisation and outsourcing of activities, and the transition to subcontracting affect the fact that work is increasingly performed as an entrepreneur-like way and as an entrepreneur. The normal working relationship in the knowledge economy is not a "normal" temporary working relationship but something else. It is a combination of the "old" working relationship with projects, temporary short-term relationships, freelance work etc. The point of departure of valid labour legislation is still the so-called old economy, which has not succeeded to renew itself in the manner required by the new economy.

The third part of the study will concern the position of the central actor of the new economy, the 'knowledge worker'. Knowledge work, performed either as an employee, an entrepreneur or as a combination of the two, sets new challenges

for new work and issues relating to new work. The issues which have previously been overlooked, are emphasised and they will become part of everyday life. These include immaterial rights, rights to competition, business and professional secrets and questions relating to data protection and security. Our attempt is to examine these rights and obligations from the perspective of the knowledge worker. In the fourth part there is a summary of the article and some policy implications concerning the knowledge worker and network society.

*The new work and new labour law* -chapter examines the relationship between new work and labour legislation from two perspectives. First, the significance of the Employment Contracts Act in the regulation of new work is considered, both in the light of specific questions and generally. Second, the same issues are dealt with from the perspective of national collective agreements. Finally, a concluding summary is given on the content and significance of these specific methods of regulation.

Due to the below mentioned limitations the analysis made is a broad outline of the relationship of new work and labour legislation. The chapter affects two central aspects of regulation. The study of the Employment Contracts Act is a current issue due to the fact that the new act came into effect 1.6.2001. Collective agreements in turn have not been earlier evaluated from this perspective in literature.

The particular questions which have been selected for examination are based on what the researcher considers possible to find from the two sources. They do not portray the relationship of new work and labour legislation in its entirety. However, the issues found in literature concerning flexible working life are discussed. A more exhaustive examination has been made in the other chapters included in this project.

This chapter deals with already existing regulations as well as those soon taking effect. At the end of this study these will be assessed for example according to how the new work can be regulated (how the relationship of legislation and collective agreement is defined, what the relationship is between centralised and local or individual regulation, whether collective agreements form only general frameworks for company-level regulation) and what is the role of flexibility in the Scandinavian labour law system (socially safe flexibility).

The chapter discusses the assessment of the Employment Contracts Act and collective agreements from a perspective of new work. There are other corresponding perspectives to legislative regulation as well. This type of assessment does not only involve direct legal scholarship. Labour legislation and collective agreements often involve many different kinds of objectives. In this sense, both are compromises. For this reason, assessment made from only one perspective may give a more negative picture than usual of the content of the unity being examined.

# 2 THE NEW WORK AND LABOUR LAW

**Seppo Koskinen**

## Introduction

### The aim of the study

This chapter examines how the new demands set for the use of the workforce can be met from the perspective of labour legislation. It also aims to assess the appropriateness of labour legislation for a solution of the new problems. The new issues to be assessed have in this context been collected from social scientific literature. This approach rests on subjective assessment made in accordance to the literature about the newest developmental aspects of society (the new work). In this sense as well, many limitations have been made. Now we focus "only" on the changes affecting working life. Based on these it is not possible to form an overall picture of the new economy.

The aim of the study is to present first the actual issue (the change in working life, the new demand placed on the employee etc.) and then to assess it through labour law (indent chapters). The study is based on domestic and foreign literature from the field of social sciences concerning the newest changes in working life. In this sense the problem is the vast quantity of literature as well as the internal discrepancy present to some extent. Nevertheless, through literature the current trends of change affecting both employees and employers have been found. In terms of examination through labour law the problem is in that legislation deals with everything. On the other hand, the issues taken into consideration have often been left in the field of general regulation covering also many other circumstances. The issue often concerns whether regulation should be aware of the demands of new working life or at least more aware than it is today.

Literature in the social sciences (besides that of labour law) raises some issues of complaint as points for study by labour law. The more these are found, the more diverse a picture is formed of the legally relevant issues. The large number of questions for labour law does not mean that the correct picture of social reality will be created on their basis. In this relationship, there is an essential difference between studying the goals of labour law and the social sciences. Labour law examines, a little critically, only the matters of interest to labour law. In this text, an attempt has been made to select the questions of labour law so that they have a general correlation with the study by the social sciences concerning the new work.

The demands of working life change constantly. The descriptions provided in the literature on the demands of working life do not necessarily correspond to the present system. Working life is a mixture of new and old. The relationship between the demands of working life and labour law regulation is complex and changing. In spite of these problems the articles examine this question which, in addition, is situated within different scientific fields.

The main portion of the first study is composed by the second chapter. It discusses the demands made of both employees and employers as well as assesses these from the perspective of labour law. The aim is to present the answers labour law provides for the "processing" of these new demands. The second main part is the third chapter, which examines the labour law regulation of new work. The discussion is general and most of the attention is paid to the starting points of regulation.

The study is part of a series of articles concerning the relationship between new work (working life) and labour law. This article includes a general description of the study. In the second study (Hannu Mikkola) the labour law questions involving the knowledge worker will be examined and from this perspective the line between employee and employer will be assessed. In the third study the concrete regulation of new work in the Employment Contracts Act (in terms of the present and new law) and collective agreements will be studied.

## The new directions in working life

The operational environment for the working community is changing and dynamic. Reorganisations of the business world are normal, and they are often large and international. A new kind of industry (new technology, small IT companies) has been created in a relatively short time. In this new industry, the employer-employee setting is determined more in accordance with the conditions of the operations in question (low level of organisation, flexible working hours, etc.) rather than by traditional terms. These do not necessarily correspond to earlier modes of operation.

> In its normal form, salaried employment includes the following characteristics: work is performed for a wage, an employer has both judicial and factual means of control, work is temporally stable, work is performed for one employer, work is concentrated in one place and on one job description, and one's status in salaried employment is determined by professional organisation and social security.
>
> The normal description for employment relations has been controlled and followed through both the actions of legislators and research by labour law. Because a normal employment relationship has been inflexible, society has developed many supplementary forms for the performance of work (part-time work, fixed-term contracts of employment, e-working, freelance employment, consultation, agency work, outside work, etc.).

Economic life and its accompanying working life have traditionally observed a hierarchy in the idea of operation and supervision. The question has been over standardising operations, of centralised multileveled methods of decision-making, and of the supervisory mechanisms that serve them. The traditional male factory worker has served as the model for labour law. From the perspective of supervision, the status of an employee is described through tight control, the supervised use of time, a hierarchy in organisation, and a uniform working community. Besides the Fordist model in the background of management and supervision, a clear division in labour at the company level also appeared through the separation of management, planning, and administration from production. (See e.g. Kairinen 1998, 20.)

The Taylorist model, which followed that of the Fordist, also preserved the above-presented tradition of management and supervision, although it did bring new emphases. The central issue was to separate mental and physical work from one another. This same division created the difference of high and low latitudes for jobs and professions. A certain kind of basic mistrust between employer and employee prevailed in low-latitude physical work, which required the concrete management and supervision of employees. In high-latitude work, the issue was earlier, for example, the obligation to bring about a certain result.

Nowadays, the direction of development is towards decentralised, relatively independently goal-oriented organisations that are networked to differing degrees (for example, company networks, networks of professions, and commercial and personal networks) (see Uhmavaara et al. 2000, 15). A network organisation rests its operations on decentralisation, on relatively independent teams and close cooperation between them (Uhmavaara et al. 2000, 12). More than earlier, work is performed by crossing the traditional borders of professions and duties in different teams or units: operations follow the needs of markets and customers, and seeking new solutions is part of the every day activity of both employees and organisations (see Kasvio & Nieminen 1999, 164—165).

The central points in flexible production and group working are total management, the self control of one's work (the steps in control have either been

removed or reduced), changes in duties and their rotation (the flexible use of the workforce), the increased decision-making authority of employees in the performance of their duties (primitively the technical realisation and the order of performance for their duties), measuring duties based on productivity and results (instead of purely quantitative calculation), and the free grouping of duties as well as interaction and cooperation. (See Koistinen 1999, 294.) The new network-like mode of production is essentially based on trust and the personal capital of its actors. One significant form of capital is social capital — the ability to work with others, to communicate, and to work independently and responsibly. (Kasvio & Nieminen 1999, 213.)

The forms of flexibility that are adapted to working life are usually grouped, on the one hand, to the quantitative and functional and, on the other hand, to outside and inside a company. For example, flexibility in working hours is internal quantitative flexibility. The flexible organisational forms of work such as teamwork, the development of multiskilling, and the delegation of responsibility are located in internal functional flexibility. Subcontractors, externalisation, and the transition of employees to independent entrepreneurs represent external functional flexibility. The use of a fixed-term and employment agency labour force is external quantitative flexibility. Organisations often apply different forms of flexibility in parallel. (See Kandolin & Huuhtanen 2000, 107—108.)

Several features of development indicate increasing instability and differentiation during the 1980s and 1990s. Part time and fixed-term relationships of employment have become more typical than they were earlier. The transition towards a 24-hour society has differentiated working hours and made them flexible. Working hours have become individualised, anti-social, and localised. Despite these changes, the majority of wage earners still work in full-time and permanent relationships of employment. According to a 1997 study about one-third of female wage earners worked in part time and fixed-term relationships of employment; for men, it was slightly less than one-fifth. The relationship of employment for the majority of under 25-year-olds (64%) is, however, part time or fixed-term. Fixed-term contracts are often linked to the initial stages in the working career of a college-educated woman. (See Nätti & Väisänen 2000, 45—49.)

The atypicality of the above-mentioned affects most of the service sector. The labour force in several areas of the service industry is relatively easily replaceable and the expenses for the labour force are proportionally high. Neither can services manufacture stock. As distinct from the international situation, especially fixed-term relationships of employment are, for us, relatively more common in the public than in the private sector. The normal grounds for fixed-term work is the lack of permanent work. (Nätti & Väisänen 2000, 49—50.)

Construction, docking, and forestry are traditionally classified as "piecework". These fields are characterised by the seasonal nature of the

work, and by contract work, male dominance, a low level of education, experiences of unemployment, and the high risk of displacement from the labour markets (piecework as a "trap"). Besides traditional piecework, there is also the so-called modern block employment. It is characterised by continuity in the nature of work, the chaining together of employment relationships, female dominance, a high level of employee training, and a low risk of displacement from the labour markets (piecework as a "bridge"). The essential difference between these two relates to the nature of the work performed. In traditional piecework the interruptible nature of a career can be based on the nature of the work. In modern block working no corresponding justification for piecework can be found in the nature of the work. (See Sutela, Vänskä & Notkola 2000, 109—110.)

In Finland, deviating systems for daytime working hours are common, when compared internationally. According to materials from 1997, 70 percent of workers perform daytime work, 20 percent perform shift and periodic work, and 10 percent perform other forms of working hours. Those in fixed-term employment work more often in shift work or irregularly; in turn, permanent employees normally work during the daytime. (Nätti & Väisänen 2000, 60.) The most commonly used form for flexibility in working hours was overtime work. Over half the wage earners performed overtime regularly each month. Every fourth wage earner regularly performed overtime without any compensation. Slightly less than one-third had irregular working hours, one out of ten performed part-time work, and only four percent performed teleworking. Quantitative flexibility affected the majority of wage earners, with only 21 percent of wage earners completely on the outside. (Kandolin & Huuhtanen 2000, 118.)

Over the past few years, attention has been paid especially to how higher functionaries cope in their work. According to a study of higher-level functionaries in 1997, 69 percent of men and 63 percent of women stated that they performed overtime — the majority weekly — without any form of compensation. The corresponding share for other wage earners was 25 percent. Three out of four higher functionaries stated that they sometimes or partially performed some of their main work at home. On the lower-level functionaries, only every fourth did so; of workers, the figure was every tenth. Almost 50 percent of higher-level functionaries reported that they had difficulties to get away from work during their free time. For other wage earners, the corresponding percent was 20. (See Aitta 2000, 156—157.)

In addition, also the situation of the so-called knowledge worker is in many ways conflicting. The positive elements for a knowledge worker are a high level of autonomy, demanding and interesting work, and a relatively high income. In turn, the conflicting ingredients include the mental weight of the work, the possible strict supervision in principle, and the hard pressure of time focussed on the work. A lot of work has to be performed, in which

> case both free time and family life have often to be subordinated to the demands of work. (Blom & Melin 2000.)

Since the 1980s, the creativity of individuals, the internalised quality control of production, the customer-centred model of operation, and the needs for flexibility have increased. Reciprocally, employees have been offered training, a strengthening of their professional status, and a share in the results of improvement (result-related incomes, funds and bonus systems). (Koistinen 1999, 295—296.) When assessing expertise and creativity, the factors that have been emphasised in relation to the success of employees include good internal and external communication, innovation as a duty for the entire company, strong key personnel, a high quality of management, and reciprocal commitment and loyalty. (Miettinen et al. 1999, 12—14.)

Flexible production describes a part of the operations of modern companies and employers. A part of working life still functions traditionally, in that an employer has both reason and need to direct and supervise his or her employees. However, even for these employees, management and supervision is different now from what it was in, for example, the 1970s and 1980s. Among other things, it is now normal for all employees to cooperate and work together. Moreover, the responsibility for producing results has generally increased.

The changes that have taken place in society were seen in many different ways in working life in the 1990s. For example, different national and international networks became general in economic life (the new network economy). The parts of the network economy were described as dependent on and complementary to one another, but they were also described as partly independent and competitive partial markets.

> New features have been seen at the judicial level, particularly in contract law. A new feature in the development of contract law has been the networking of agreements. For example, in the planning phase for a specific project, an attempt will often be made to link the separate parties involved in the plan through different Letters of Intent or comparable forms of commitment. On the other hand, responsibility can be transferred to the parent companies of those existing businesses involved in a project through different Letters of Comfort. The terms dealing particularly with the distribution of risk are, from the perspective of contracts, of particular significance. Actual project contracts can be divided into four groups: contracts concerning the establishment of a company and the planning of its operations, contracts resulting from an agreement on financing, contracts concerning building, and contracts related to operations at a production facility. (Saarnilehto 1996, 2—4.)

# The new work and the problems in labour law

## Introduction

The internationalisation, networking, and marketisation of the economy have affected working life.

> The following new features, among others, have been emphasised in the discussions on labour law over the past few years: the transfer of the labour force from the industrial to the service sector (tertialisation, deindustrialisation), the division (network of external contracts, hotelling, job disintegration) of the labour force (employment opportunities), the transition of the labour force from employee to entrepreneur, the reduction in full-time employment (full employment through part-time work), changing the wage policy, changing the trade union movement into part of a more general controlling corporate body (trade organisations), and the globalisation of the work process. (Simitis 1996, 4—13.)
>
> An important new direction in development has been the internationalisation of labour law. Finland is committed to many international agreements, particularly over the past few years through the European Union. The EU still has few regulations concerning the labour markets. These norms do however already deal with, for example, the free movement of the labour force, prohibitions on discrimination, the equal treatment of women on the labour markets, rights on the participation of personnel, health and safety, and fixed-term and part-time contracts of employment. Besides the realisation and observance of these regulations, Finland has committed itself to an internal market project. This also emphasises our modes of operation for a market economy. (Kairinen 1996, 720—721.)

Concerning the market economy, flexibility has been spoken of at the levels of both the company and the individual. The issue has been about the demands, both quantitative and qualitative, concerning employees.

> There has been a lot of discussion over the past few years about the information society, which means the modern so-called post-industrial service society. Significant structural changes have made work more technical and knowledge-based than earlier. Making work increasingly more demanding it has caused problems for some of the labour force and, among other things, has increased the efforts to achieve early retirement.

> Flexibility, disbursement, and the dissolution of regulations had already become the key words in Europe during the 1980s. The existing structures on the employers' side have been seen as rigid and hampering productive operations. There has been the desire to emphasise individuality and competition. At the level of employment relations, the aim has been towards being situation-specific and towards individuality. Employment relations have become more flexible relationships of cooperation than they were earlier. Flexibility has been seen in, for example, working hours and job descriptions. Flexibility in working hours as well as extended opening and operational hours has come into use. Job descriptions have expanded and diversified. Working in teams has increased.
>
> The need for flexibility is explained above all by the changes in the structure and operational modes of business life. We have begun to speak of a dual economy (large and small companies), where the mode of operation is stamped by networking. The production of commodities takes place through the cooperation of companies in the required networks. The need for the flexibility of those operating in the chain, especially for the so-called last company, has increased appreciably. With respect to labour law, the central questions of the new economy are securing employment, the acquisition of a female-dominated service labour force, the compatibility of work and family life, atypical employment relations, the increase in the influence of market forces, and internationalisation. (See Uhmavaara & Kairinen 1997, 27—34.)

At the company level, the issue has included the increase in the methods for making contracts, especially for local agreements on collective agreements as well as cooperation in companies.

> According to the theory of flexible modes of action, local agreements become more common because the competitive strategies of companies and the arrangements for work are renewed. Companies increasingly have to compete through methods other than low costs. Besides the price, the decisive competitive factors are the suitability of products and services for customers as well as quality and a fast reaction to the needs of the markets. A multi-skilled personnel, group work and close cooperation between different professions and hierarchical levels is needed to realise this form of competitive strategy. Generally, a company has to bring about a change to its earlier labour organisation (territorial thought, limited duties, etc.) for success in competition. Thus, the needs to discuss, consult, and agree on the content and realisation of reforms are created for the local parties.
>
> Changes in the organisation of labour are the basis for flexible modes of operation. In the local agreements of 1998, a significant change in the organisation of work was agreed in one-third of the places of businesses. Reforms to the wage system (result and profit related incomes) were agreed in about two-thirds of those places of business that complied with changes

> in the organisation of labour. In flexible workplaces, local agreement is a tool for the control of change. Particularly large demands on efficiency and quality are focussed on those companies operating under the pressure of international competition. Different organisational and other changes as well as their control through local agreements are more common in export companies than they are in those companies focussing on the domestic market. (Niemelä 2000.)

Both legislation (the Act on Working Hours, 1996) and the collective agreements at the end of the 1990s provided new opportunities for local agreements, especially in the question of working hours. At the level of the employee, the demands for flexibility have particularly concerned duties, working hours, wages and the place of employment.

> Local agreements on the terms of employment are already fairly general in Finnish working life. At least one wage-related issue is nowadays agreed locally in almost 90 percent of all companies. Agreeing on the arrangements for working hours is equally as common. Agreements relating to the positions and job descriptions of personnel are made in slightly more than every second company. Most agreements are made concerning flexible hours of employment, the exchange overtime payments for free time, the length of meal times and rest periods, the provision of annual holidays and result-related incomes.
>
> Nowadays, wages are a significant issue in local agreements. Result-related incomes have become more common in the past few years and they are often agreed locally. Some kind of an agreement on an income-related wage has been made in almost half the companies. Systems of remuneration and their related systems for assessing the demands of work have been developed both nationally and locally. Employers have emphasised that Finland's growth strategy which is based on skills and high technology demands more pay differentials than before. They claim that only small differences in salaries do not encourage employees in developing their skills and in doing so, they slow down the essential structural change of the economy.
>
> In relation to the positions of personnel and their job descriptions and in accordance with the Act on Cooperation, it is more usual to agree on operational practices and on the methods to be applied through the influence of personnel when significant changes are to be made to the content and organisation of duties. The methods to be applied in the significant transfer of employees are also agreed through the influence of the personnel. (Uhmavaara & Kairinen 1997, 19—27.)

Different agreements at the level of the individual have also become more common in working life over the past few years. The issue has arisen through, for

example, the dimming borderline between employee and entrepreneur. When making a contract of employment, an attempt is already made that the freedom of contract would be as large as possible (for example, working hours are agreed from zero upwards, an employee is hired into the service of an employer for an undefined task, etc.). Employees are nowadays given more freedom than earlier, which in some cases has even hampered the identification of the status of an employee. Special problems are caused by the fact that work is often performed at intervals on the basis of many different contracts (for example, a part-time worker with several relationships of employment, a common employee that can be transferred among several employers, or simultaneously being an employee and an entrepreneur).

The Employment Contracts Act (ECA) is applied to contracts, whereby an employee is bound to perform work personally under the management and supervision of an employer in return for a wage or other form of remuneration. The concept of a contract of employment is to make rights mandatory. The parties to a contract of employment cannot agree that, in fulfilling the above-mentioned forms of identification in the contractual relationship, the Act will not be applied.

In a relationship of employment characteristic is the non-independent status of the performer of that work. An employee is obliged to observe the authority of his or her employer based on the instructions and direction that are given to him or her. An employer can direct how, when and where work is to be performed. The identification of the existence of the right of direction has been concluded from the different factors related to the performance of work. These include e.g. the forms of remuneration in use, the reimbursement of expenses, the place for the performance of work, and the use of one's own or the employer's tools. Some of these can be determined by the contracting parties.

The applicable conditions that influence the status of the performer of work are e.g. the definition for the job, the method used in the performance of the job, the time and place for the work, the status of the worker in the organisation of the commissioner of that work, the personal objectives set for the performer of work, the structure of reimbursement, the rights of the parties (e.g., the rights to perform other assignments and duties), and the obligations of the parties (e.g., the obligation to use one's own tools and materials).

The title of a contract for the performance of work does not resolve the nature of the legal relationship in those cases where the terms and conditions of the contract, the title of the contract, and the factual conditions for the work do not meet one another. In those cases, the contract and the factual conditions of work have to be assessed in their entirety. Here, besides the intention of the contractual parties arising from the title of the contract, consideration has to be given to the terms and conditions in a contract,

and especially to the factual conditions for the performance of work. The mandatory regulations in the ECA cannot be avoided simply by formatting the terms and conditions of a contract.

Through a contract an employee is personally committed to performing work. Moreover, through a contract of employment, several employees can be committed to the joint performance of work as a team. The application of the ECA does not prevent an employee from performing work at home or in a place of his or her choice, neither does it prevent the performance of work using the tools or machines of the employee in question. If it can be concluded from the conditions that the performer of work in a contractual relationship has the kind of economic risk that is typical for an independent entrepreneur, the work is no longer performed in a relationship of employment. (See Koskinen, Mikkola & Purola 1997.)

The new work has also created special demands for flexibility in the question of working hours. Customer-orientation has emphasised the need to perform work in accordance with the wishes of the customer. The aim is to perform work when there is work to perform. In those situations in which work is continually on offer, this method of operation can easily lead to a conflict with the maximum number of overtime hours allowed by the Act on Working Hours. However, the use of a periodic-like form of working hours has become more general.

The Act of Working Hours and the new collective agreements extensively allow flexible local agreements on working hours. In turn, project-like modes of operation have emphasised the need to agree fixed-term contracts of employment that are limited in their total duration. In some fields, flexibility in working hours at the individual level is also seen in the general spread of free time during the working day.

The legislation on working hours is mainly designed for the protection of an employee. Although freedom of contract has increased, there are many mandatory regulations in law. By increasing the possibilities to deviate from the mandatory regulations of the law, the responsibility for the protection of working hours is partially transferred to the parties in a contract. In the 1996 Act on Working Hours, the national labour organisations were given quite extensive eligibility to agree, among other things, on the times and breaks to be read into working hours. No limitations were set in the Act to the content of contracts. The legislator trusted that the parties are equal to such an extent that a contract meets the demands for the protection of an employee. (See Tiitinen, Kröger, Lonka & Paanetoja 1996, 18.)

Over the past few years, there has been some publicity to the possibility presented by the Employment Protection Authorities of overstatement in observing working hours. The issue has been over the miscellaneous influences from new kinds of working practices, which are all going in the same

direction; in many cases, the border between work and home has become unclear (employees take their work home in accordance with internalised entrepreneurship, etc.), contracts of employment based on working hours have lost their status and have been replaced by income-related modes of operation, the performance of overtime is not even noted by employees themselves, etc. In many cases, the above-mentioned features are natural (e.g., in teleworking, for those in positions of leadership, etc.). Moreover, the fact that employees may have at home technically good possibilities to bring about the result wanted by the employer has led to the creation of the situation described above.

Particularly those in expert and managerial duties have focused on the results of work, and duties have been taken care of by prolonging the workday. In projects, work is performed outside the official working hours more than before. This has also become technically easier thanks to developing information technology. In addition, work has been organised into venture and project-based unities, to which the attached partial ventures require familiarisation and the completion of each venture within its deadline.

With respect to labour law however, it is not acceptable that an employer factually forces employees to work in the above-mentioned manner by cutting back on resources or by refusing to pay overtime. The Act on Working Hours, as collective agreements, has mandatory rights with respect to overtime. An employer bears the responsibility of the requirements for technical operation at the place of employment. Deviation from this point of departure can only be possible through equal agreement.

Internationalisation has also raised questions about foreign workers as well as about Finnish workers sent abroad.

One general principle in the application of laws for contractual obligations under the Convention of Rome is that the laws of the state, which have been agreed by the parties concerned, shall be applied to contracts of employment. The legal reference has to be specific or it otherwise has to use sufficiently clear expression about the terms or conditions of the contract. The legal reference however shall not reduce those rights of employees, which they have in accordance with the mandatory regulations of that country, which would be applied in the absence of a legal reference.

If a legal reference has not been agreed, the laws of that state in which the employee normally works are to be applied. If an employee does not normally work in only one state, the laws of that state in which the employee was hired shall be applied in general to the contract of employment in the state where the job is located. This particular law shall be observed for employees sent to Finland. Reference is made in this law to those regulations in material laws that determine the protection of employees sent to Finland regardless of the applicable law for a minimum level of employment contract. The regulations in generally binding collective

agreements concerning annual leave, working hours, and employment protection, are also observed on the employment relationships for workers sent to Finland. Moreover, a worker is to be paid a minimum wage, which is considered a remuneration that is determined on the basis of generally binding collective agreements.

The demands of this new operational environment have problematised the content of current labour law regulation. The issues that have been mentioned as concretely reflecting on the new regulation of labour law have included the ascension of services, the growth in the intensity of information and expertise, the increase in customer-orientation, the ascension of teamwork and networked modes of operation, entrepreneurship and the growth of so-called internal entrepreneurship, changes in the status of an employer (including company joint ventures and the ascension of small businesses), and the atypicalisation of wage work. Moreover, there have been noticeable changes at the company level in the use of managerial authority over the past few years. (See Uhmavaara & Kairinen 1997.)

With respect to networks, the concrete problems associated with labour law include identifying an employer and an employee, common employers and common employees, the transfer and renting out of employees, the uninterrupted continuation of the terms for an employment relationship, the responsibility for work safety, the protection of working hours, inventions during an employment relationship, participatory systems, liability for compensation, and job security.

At the level of the employer, the issue includes the concept of a company becoming increasingly unclear with the forward march of different networks (e.g., concerns, franchises, subcontractors, agency labour, non-legal entity forms of cooperation, etc.). The problems relate, among other things, to the use of the power of direction, the identification of an employer, the definition of responsibility for working hours, and to the user of the right to dismissal.

The problems created by the new work are seen differently at different levels (for employee and employer at individual and collective levels). For example, the changes in company operations, the increased competition from a skilled labour force, the content of the duty to be loyal, etc. all create different problems for employees and employers. These problems will be presented next — first from the perspective of employees.

The main emphasis for labour law is typically on the changes of those with the status of employee. Besides labour law, the changes concerning employers also relate to company and contract law (for example, the break-up on companies into smaller units and the merger of companies as well as joint company projects).

## The level of the employee

### Introduction

At the level of the employee, the problems of labour law are connected centrally to tripartition: key employees, normal employees, and atypical employees. The different significance of these employees for an employer leads to miscellaneous systems, terms, and conditions of employment. An effort is made to tightly bind key employees to an employer (through systems of remuneration for example), whereas usually the link between fixed-term employees and an employer is random in-between the contract periods. As such, the new demands for the new work somehow affect all those in this kind of service for an employer. The new demands are related centrally to the content of management and supervision.

Next, we study some new practices and demands central to employees. First, we deal with the changes in management and supervision and second with the changes that have taken place in the status of employees. Third, we present the demands placed upon new employees and fourth, the forms for the performance of atypical work. Following these, we shall review the new emphases placed on job security and finally the status of supervisors and shop stewards. Based upon the study, a comprehensive picture of the status of an employee in the new work will be created. However, not all features and emphases can be brought forth in the presentation. Now, even through performing a study of the general features, it is possible to see how diverse and multileveled the change in question is.

### Changes in management and supervision

Different modes of work and contracts, such as atypical employment relationships and outside labour, have become more general. The performance of work has changed. For example, the appearance of projects and fixed-term employment has complicated the use of the right to management and supervision. Outside performers of work, agency employees, and those in the service of subcontractors for example, have also hampered the traditional performance of management and supervision.

Employees are nowadays divided more clearly than earlier into core and periphery employees. Employers forcefully make provision for the work of their key personnel and its requirements. This also requires a new ideology for management and supervision. Key personnel are both bound and supervised in a manner differing from that used for periphery employees. Many different means are also used for the right to the management and supervision of periphery employees. The issue is often over concrete direction.

Along with networking, there has been a break-up of company operations and a related individualisation in the performance of work (distancing from an employer). For these employees, the meaning and status of management and supervision is clearly different from that in, for example, teamwork. With respect

to for example teleworkers, the question can be of adopting a clear result-based commitment.

Cutbacks and the break-up of organisations as well as the growth in the amount and demands of work have described the changes in work. (See Uhmavaara & Kairinen 1997, 1—55.) Adjusting to the changes that have taken place through management and supervision has also been central over the past few years. With this in mind, the question has been, on the one hand, about agreed contracts or the changes in these contracts. On the other hand, the question has been about the increases in, and control of, different commitments and transitions.

> Supervision in working life has traditionally operated in a pyramid-like manner, from top to bottom. Strategic planning softened the pyramid-like nature of supervision through dividing the authority and responsibility. Emphasising a learning organisation (teams, etc.) has further broken the hierarchical setting for supervision. Especially in networks, it has been emphasised that a network does not allow giving orders or the flow of information in only one direction. The question is more of setting common objectives, of reducing the hierarchy (increasing the autonomy of groups and employees, the decentralisation and speeding-up of decision-making, the elimination of the steps in superiority), and of strengthening network relations (increasing group-like working, multi-skilling, flexible arrangements to working). (Koski, Räsänen & Schienstock 1997, 43.)
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> In the new model of production, the self-regulation of employees increases, work is more extensive and integrated than it was earlier, the significance of training is emphasised, the rate of participation by employees increases, and group and teamwork become more common (Koski, Räsänen & Schienstock 1997, 48). In particular, realising the organisation of teamwork emphasises the independence and self-guidance of work, the integration of duties, continual personal development, the personal and collective responsibility of a team, equality and democracy, open communication, and the control of all kinds of duties.
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> Independence in teamwork affects the selection of supervisor and other members, the decisions over the division of labour, the working methods, working hours, participation in outside activities, and the qualitative and quantitative formation of objectives. The small amount or lack of formal control coming from outside and from the top especially relates to self-guidance. The goal to make the working community innovative at all its levels is in the background to the change. (Koski, Räsänen & Schienstock 1997, 50.)
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> In the new modes of working, the traditional right of management and supervision belonging to the employer essentially changes its form. This right was used earlier by the representatives of an employer, the supervisors, who are now more the support and development people that work in groups and teams. The task of this intermediary level of management is to

act as a practitioner for the information coming from above and as a theoriser for the information coming from below. For its part, the flexibility of employment relations and the increase in local contracts also reduces the tradition of giving instructions to someone to perform a duty.

The question for a team itself is primarily about group control. From the perspective of an employer, achieving a certain result is central. The assessment of commitment to a result emphasises the trust between an employer and a team. Independent teamwork requires open communication in both directions. Employees should also have comprehensive information about their own activity and its assessment. This may also require freer access to company information systems than is currently available.

The new flexible mode of production does not affect all jobs. Many workplaces are still described through management-set goals, outside determination, and the unilateral realisation of change. The question at the level of the contract of employment is of a clear job description: at the level of collective agreements it is a question of centralised national agreements. Management and supervision are practised by staff specifically hired for this purpose. Above all, changes take place through inevitable outside pressure.

With the general spread of a flexible model of production and the loss of the significance of the traditional model, many intermediary forms have become normal in working life. Here, the problem has been both the realisation of change and the parallel existence of different systems.

In existing organisations, the issues enabling change are central for labour law. The question is, for example, of the changes to be made to contracts of employment (duties, places of employment, working hours, wages), the changes to company operations arising from reorganisation (the transfer of an undertaking), and the use of part-time and fixed-term employees, etc. There are many legal difficulties facing the realisation of this change, for example, the repeated renewal of fixed-term contracts of employment, changing a contract of employment requires a basis for dismissal, the transition to being a subcontractor may be the transfer of an undertaking, etc. The question is often of flexibility in the pursuit of partial solutions. These are, for example, partial networking, establishing teams, and increasing self-guidance. They are also the transitions to using outside labour forces or agency employees, fixed-term employees, e-workers, etc.

Nowadays, management and supervision function in different ways depending on concrete conditions (field, employer, employees, etc.). For this reason, it has begun to lose its significance as a criterion for identifying an employment

relationship. There are different managements and supervision in different organisations. The solutions for identifying a relationship of employment can no longer be made simply based on the intensity of management and supervision. Employers and employees have also become different. With respect to some employers, the issue is about management and supervision in closed places of employment. In turn, other employers have opened up and therefore work accordingly. For their part, some employees are the focus of special care and supervision as key personnel. However, peripheral employees come and go often without anyone caring.

The separation and differentiation of management and supervision have become the great challenges of working life. They set special demands on personnel policy, which has traditionally emphasised equivalency and equal treatment. With respect to the part played by management, the central issues relate to the networking of company operations and the formation of teams. With respect to the supervision, the emphasis put on the status of special groups is, in turn, significant. The question has been over core employees, e-workers, and of people working alone, etc.

Labour law has become more flexible along with the new forms of management and supervision. Management and supervision do not need to be practised in a particular way to be acknowledged as having the legal consequences of labour law. In different organisations, employers and employees in different positions have their own interests in relation to management and supervision. These are generally realised in mutual agreements. Through this, contracts have taken on a central status in the new labour law. In freeing concrete regulation, the last forms of protection, even fundamental rights, have on the other hand increased their significance.

The traditional central position of management and supervision in labour law has become problematic. It still works in certain companies, whereas in others it has changed its content to such an extent that labour law has to be re-evaluated. Traditionally, management and supervision have not been a point for regulation in labour law. They have been preserved formally unchanged throughout the century. However, labour law has changed, as have economic and working life. These changes have reflected on the position of management and supervision in labour law. The issue has been over the increasing effects of different networks, commitments, transitions, and freedom. Some of these changes are regulated and some are not.

> In the new economy, technical supervision is often related to the information work. The extent and permissibility of technical supervision is determined based on special legislation that is difficult to resolve. The term 'technical supervision' means, for example, supervision using cameras and listening devices. From the perspective of the information work and the new economy, the most central issues are the systems for recording data processing, the use of email, and the problems of privacy.

For example, the law protecting privacy in telecommunications and data security in telecommunications activities regulates the obligation to confidentiality for those in the service, or for those who have been in the service, of telecommunications companies and how they recognise and handle identifiable information. The law applies to the supply of Internet services and email, among other things, as long as they relate to the transfer of data. If an employee uses, for example, his or her employer's connection at the place of employment, the employer as the subscriber has the obligation to pay the telephone or email bill. This is seen as forming an acceptable basis, within certain limitations, to give the employer identifiable information for determining the bill.

If an employer, as the result of an agreement or for any other reason, has the right to read his or her employees' emails then there is reason to ensure the protection of the privacy of employees with respect to the private confidential nature of email correspondence. If, in the above-mentioned situation, an employer receives knowledge about confidential messages other than those related to the work then the employer cannot disclose their contents or use those contents or existence of the information in them. (See HE 75/2000, 29).

The purpose of technical supervision, its use at the working places and the methods in this type of supervision for the use of both email and information networks belong to the matters handled in the regulations on cooperation in companies.

**Changes in the content of employee status**

The emphasis on entrepreneurship has increased the externalisation of work and the growth of so-called internal entrepreneurship. The externalisation of work has meant, among other things, that employees are encouraged to perform the work that they performed earlier as workers, as entrepreneurs. With respect to internal entrepreneurship, the issue has been over the relationship between the responsibility for results and wages.

Transitions from employee to entrepreneur and vice-versa are of course possible. However, should an authority or court determine that nothing has happened or there are at least no essential changes in the factual conditions, this form of transition is not generally accepted. As such, this is founded to limit the freedom of citizens to organise their own activities. No regulation prohibits a change of status. However, the form chosen for the performance of the selected work should meet the factual situation. In this evaluation, the problem is to combine factual conditions and legal rulings. If the issue is over business operations the status does not change even though an individual action would typically be performed as for the employment

relationship. Correspondingly, the status of an employee does not change by the fact that he or she performs some functions independently in an entrepreneurial manner.

Changing one's status requires a sufficient change in the factual conditions. In any evaluation, consideration is also given to the stability of conditions. If the issue is over an existing activity in its initial phase, significance is also given to the forecast development of the activity. The borderline between employee and entrepreneur is not normally drawn simply based on formal criteria. The possibilities for drawing the borderline can be limited either by clear outside definitions or by respecting the agreements and stabilised practices of the party in question. However, for example, a factual employee cannot change to an entrepreneur in this manner. (See Koskinen, Mikkola & Purola 1997, 149—152.)

The internal entrepreneurial-like elements for a relationship of employment have been forcefully emphasised over the past few years. Traditionally an employee has had the obligation to perform the work defined or belonging to him or her, but nowadays the independent performance of work and the issues related to taking responsibility are being emphasised. The issues related to the functionality of the working community and to the good total results of all employees are important in any evaluation.

The new work has created the need to do away with the traditional content of employee status. In practice, this has meant for instance, the right and obligation for an employee to perform many different jobs. In the case of supervisors, the question has been about greater obligations than earlier to participate in the performance of work and the dissolution of their special status. The dissolution of statuses for the performance of work best occurs by hiring an employee into the service of an employer and not by hiring him or her for any specific task. On the other hand, even here labour law protects the justifiable understanding of an employee about the position for which he or she was factually intended. By virtue of his or her right of direction, an employer can only make slight changes to a contract of employment during an employment relationship. Essential changes require an employer to have grounds for dismissal.

The right of an employer to manage and supervise work is the right of direction. An employee is to perform the work given to him or her carefully by observing those instructions that the employer, in accordance with his or her authority, has given for the performance, quality, and extent of that work as well as in relation to time and place. An employer is given the right to direct the management and supervision of work and regulate the employment relationship. Corresponding general regulations are found in

the collective agreements for different professions. In these, the right of direction is both expanded and contracted when compared with the ECA.

An employer's right of direction includes achieving the kind of changes to an employment relationship that necessarily relate to the conditions or reemphasis of the performance of work or to the arrangements for the work itself, so that the quality and extent of the work do not essentially change. An employer shall not demand an employee to observe the kind of directions that the employer should understand as being contrary to the terms in the employment relationship or the conditions of a collective agreement. All those terms that either have been agreed specifically or those have become the equivalents of an contract through the practice remain outside the right of direction.

If a change to the terms for an employment relationship has a permanent and unconditional character and goes outside the field of a contract, it is to be realised only on the basis of the termination of the contract. Changes that are made by grounds for dismissal can be reasons related to both an employee and company operations. The basis for dismissal requires the same weight regardless of whether it is realised through the ending or changing of an employment contract.

The changes to the terms in a contract of employment usually concern working hours, the place for the performance of work, duties, and remuneration. An employer has the right to direct an employee, for example, into new tasks if these new duties do not essentially change the tasks detailed in terms of the employment relationship and the transfer does not weaken the employee's benefits or if the employer has grounds for dismissal. An employee is obliged to perform work that immediately relates to his or her actual job and does not essentially change the quality of his or her work. Changing the essential tasks in the terms of an employment relationship is resolved on the basis of the principal content of work in accordance with the contract of employment. For example, the permanent transfer to another task usually changes the essential terms of a contract of employment. In a total evaluation of essentiality, consideration is mainly given to three factors: the amount of the other work, its quality, and the duration of that work. (Valkonen 1997, 19—30 and 41—52.)

New questions on professional skills and qualifications with respect to agreeing on a contract of employment have also appeared over the past few years. When selecting a certain employee, an employer also ensures the suitability and qualification of that employee. For this reason, labour law has traditionally emphasised the binding commitment of an employer to make a decision at the time of hiring an employee. On the other hand, the demands for professional skills and qualifications may change during the employment relationship. In particular, the ascension of services has emphasised the personal commitment to work. An employee should be suitable for the work he or she performs.

Hiring a person for work has traditionally fallen within the decision-making authority of an employer. However, according to the Employment Contracts Act, when hiring an employee an employer has to apply that which is regulated in the Act for the equal treatment of employees. Moreover, the principles for hiring an employee, its methods, the information received from and given to the applicant for a job at the time of being hired, and the arrangements for preparing for work fall with the sphere of cooperative methods.

The demands on the suitability of employees for their duties and the related demands for their good health have also increased. They form one central part of the criteria for the selection of employees. For this reason, the use of tests aimed at measuring different abilities and personal characteristics has become more common. An employer has the freedom to select his or her employees. However, an employer must not discriminate against job applicants when hiring employees. Lately, there has been emphasis on both following things: the information on the personal characteristics and health of the individual do not form a basis for discrimination in practice, and the protection of the privacy of employees.

Different tests, through which personal information is collected in accordance with the Personal Data Act, are used in an evaluation of the personal characteristics as well as of the knowledge and skills of job applicants and employees. From the perspective of an employer, this kind of assessment is justified in the employment application phase and, among other things, when developing career planning and the organisation of work. Usually evaluations on suitability are conducted for job applicants. In turn, personal evaluations generally relate to career promotion and the selections for personnel training.

Anyone in Finland is entitled to practise an activity that includes methods for the evaluation of suitability. Many different methods of testing are used to collect personal information and there are different people and associations to complete these tests. In particular, employers consider it important to get information about the personality of a person and his or her dedication to work at the time of an application for a job. Despite their attempt at neutrality, the methods of testing generally include factors of uncertainty.

Besides these features of development, there has been a question over the new content of the privacy of employees (the individualisation of an employee).

The individualisation of employees has been seen, for example, in the discussions about protecting privacy in working life. An employer may only deal with the personal information of an employee that immediately relates to his or her employment relationship. This requirement for necessity can not be deviated from even with the approval of the employee in question.

> An employer shall collect the personal information about an employee primarily from the employee in question. An employee can be tested on the preconditions for his or her working duties, or can be tested to see if he or she can manage with training or other professional development. An employer is to ensure that the methods of testing are reliable, that those performing the tests are specialised in the field, and that the information they obtain is free from error. Collecting personal information during the period of employment as well as the purpose of the technical supervision of personnel, and the introduction and methods for the use of both email and information networks will fall within the sphere of cooperative methods.

An employer in the new work has to consider also possible personnel risks. These mainly relate to information security, the obligation to maintain a secret, rival contracts of employment, agreements on the prohibition of competitive activity, and inappropriate procedures in business operations. The more employees receive or have to produce new information for their use the greater the risk this kind of employee constitutes. Moreover, according to the legislation, for example, only a competitive contract of employment in opposition to good practices and apparently damaging to an employer is contrary to the contractual obligation of an employee. Even an agreement on the prohibition of competitive activities is only possible for weighty reasons. From the perspective of personnel risks, the current legislation protects an employee more than it does an employer.

**New requirements for employees**

The requirements set on an employee describe that he or she is obliged to take full advantage of his or her skills for maximum performance. Moreover, it is emphasised that an employee has to invest in his or her own training. The requirements thus set on employees have expanded and become more demanding. On the other hand, employers individualise the requirements in question less than they did earlier. This has resulted in situations where an employer has begun to evaluate the skills of an employee based solely on general criteria such as trustworthiness/lack of trust, and cooperative/uncooperative.

An attempt has been made to find the best possible employees for each organisation and for different duties through recruitment. The objective of personnel policy has been to emphasise a precise form of employment in relation to the economic and productive fluctuations of a company. The more diversified and the less limited the duties in question are, the more important multi-skilling, the ability to develop in one's work, and the ability to learn new things are for the success of an employee. Besides these, emphasis is placed on flexibility and the ability to acclimatise, teamworking skills, perseverance, the ability to withstand pressure, enthusiasm, and commitment to the company. An employer wants people that have the ability to renew and develop within a company, in an organisation, and in accordance with the changes in their operational environments. The final

selection of an employee occurs through interaction, in which the applicant must be able to assure the employer that he or she is a good investment for the company. Human capital is forming capital for a company, and the desire is to keep that capital in the possession of the company. This occurs through, for example, binding those people that have received an investment in training to the company. They who succeed in getting employed more on the basis of their readiness for productive formal training are in a good position, from the perspectives of negotiations for employment contract, job security, etc.

Comprehensively expressed requirements set for employees appear to lead to a general evaluation of the success of employees in their work. The more comprehensive the demands are, the more difficult they are to fulfil for those employees for whom work is only a mean to satisfy other needs. Many employees still work according to the directions that are given by their employer. For this reason, new requirements should be reasonable. Moreover, consideration has to be given to what can generally be demanded of an employee when evaluating his or her neglect. In particular, customer-orientation has increased the demands for the functional and chronological flexibility of employees and emphasised the significance of trust and the ability to cooperate.

> An inability to cooperate is a basis for changing the duties of the party concerned, and sometimes it is a reason for termination of employment relationship. Moreover, the breach of other obligations is normally related to the inability to cooperate as a basis for dismissal. A lack of trust on the other hand generally requires some kind of proof of other neglect in order to suffice as a basis for intervention or termination. The significance of the inability to cooperate or of a lack of trust is resolved based on what an employer can be reasonably demanded. In relation to a lack of trust, the issue at the general level is the attitude of an employer to the ability of an employee to handle his or her duties.
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> Those in managerial or supervisory positions differ from normal employees in that their cooperation can be part of their contractual obligations, or their ability to cooperate is required in order to fulfil their obligations. Here however, not all those in managerial or supervisory positions have the same status. With respect to those in managerial positions, the lack of trust is an easier basis for termination than it is for normal employees. The independence of employees often leads to the fact that an employee can only be evaluated on the basis of his or her results. If the result is insufficient, an employer may have grounds for termination even though he or she could not indicate any certain specific neglect or act to justify the termination of employment relationship.
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> The responsibility of those in positions of leadership to exercise due care can be emphasised with good reason. The responsibility to exercise due care includes ensuring cooperative activities and trustworthy relationships

between employees and personnel groups and flexibility in jobs, achieving results, and the performance of work, etc. The question is of the certain overall responsibility of an employee. In principle, the obligation affects all actors at a place of work; in practice, its significance is greatest for those in positions of leadership.

At the general level, an inability to cooperate and a lack of trust relate to the liberalisation (marketisation) of the judicial system. The more sensitive the legal concepts are for the understanding of the parties in question the more difficult it is for their acts to be based on legal control. Cooperation and trust have become important with, among other things, the new forms for the performance of work (e.g., teams). Because the concrete significance of management and supervision has declined, the trust, for example, has been correspondingly emphasised. Relationships of cooperation and trust have nowadays entered working life and these have already formed independent points for evaluation. (See Koskinen 1997a, 164—165 and 169—173.)

With respect to many employees, the new work has increased the demands for professional skills and qualifications. The question has been over both the visible changes in recruiting and the increase in demands during the period of employment. The personal input of an employee is demanded for the development of a company. Employees are often enticed with rewards to make recommendations for development and otherwise act in accordance with an internal model for entrepreneurship. Here, labour law has to evaluate which development and innovation is part of the normal duties of an employee and what falls within the sphere of distinct intellectual rights. Drawing the borderline between the rights of a company and those of an individual is central in this kind of system.

If an invention is the result of an employee fulfilling his or her duties, or it is essentially the result of taking advantage of the experience gained in an employer's business or establishment, the employer has the right, if the beneficial use of the invention belong to his or her field, to the total or partial rights to the invention. If the invention is the result of a more exactly defined task given to an employee, an employer has the above-mentioned right, even if the use of the invention does not belong to the operational field of the employer. If the issue is about exploiting an invention that belongs to the operational field of an employer but was created on another occasion related to relationship of employment, the employer in question is entitled to receive the rights to use the invention.

Should an employer wish to receive more extensive rights or the right to an invention that was created without connection with an employment relationship but the use of which however belongs to the employer's operational field, the employer has precedence in getting the said rights through an agreement with the employee. (See, the Act on the Rights of Employees to Make Inventions, Section 4.)

With the reduction in the traditional time-related mode of working, the basis for defining wages have also changed. In many present-day jobs, the measurement of the result and value of work is more open to interpretation than it was earlier. This has caused problems with the assessment of personal wages, for example. There are no regulations on this matter in the Employment Contracts Act. In many national collective agreements, a wage is determined by task-based and personal-based share. On the other hand, since jobs are often performed in different teams and groups the possible equal wages for the members of the groups and teams in question can, in many situations, be considered justifiable. Also, to some degree opposing, modes of approach have been presented on wages: an individual wage and a possible equal group-related wage. In many sectors, the position of the transitional periphery workers have also strengthened, including the consultations on the terms of performance of work (e.g., networked people, and information workers). With respect to these workers, the issue is already partially about individual bargaining conditions. (See Schienstock 1999, 9—12.)

> Nowadays, wages are divided into task and personal –based parts in almost every third national collective agreement. A task-oriented wage is based on the demands of the task. In many collective agreements, the demands for work are grouped according to the level of difficulty: the responsibility required by the work, independence, the required training, the level of difficulty, and information skill. With respect to personal orientation, consideration is given to, among other things, cooperative skills, the ability to interact with others, accomplishment, care, professional expertise, language skills, initiative, judgement, responsibility, and the development and the results of the work. These kinds of agreements are found, for example, in the metal industry, computer services, and communications.
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> With their foundations in profits or results, the use of methods for the payment of wages that complement those for the remuneration detailed in collective agreements have become more common, especially during the 1990's. This development has been significant, partly non-regulated, and it falls within the sphere of the decision-making of companies. Systems of reward have been colourful in both their designation and implementation. There are no current regulations on result-related incomes in collective agreements. The law has only regulated profit-related incomes, which can be transferred to personnel funds or be paid in cash to the members of the fund.
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> Local agreements on result-related incomes have increasingly been made over the past few years. (See Rusanen 1999; Nieminen, Niemelä & Uhmavaara 2000.) An result-related incomes were agreed for about every second job in the private sector at the end of the 1990s. Agreement on result-related incomes is clearly more common in those jobs in which the reorganisation of company operations has been realised (a change related to the organisation of work, the break-up of the whole organisation into smaller

companies, the consolidation of units into a larger entirety, the increased purchase of work from outside sources, or projects to develop productivity). The ability of personnel to cooperate internally has been high in those places of employment where result-related incomes have been used.

Unless otherwise detailed by a collective agreement or a contract of employment, a company has the right to determine a result or incentive-related income. Deciding on a result-related system is normally the duty of a company board. Usually, obtaining a reward is bound to the economic results of a company or its division. With respect to employees, the rewards they are given can become firmly established practices that are equal to an agreement, which an employer cannot unilaterally change. The rewards paid by an employer can be singular, requiring a separate decision, or equal to an agreement, in other words recurrent without any separate decision. If a system of reward is based on the unilateral decision of an employer then he or she can entitle himself or herself to change it. A system of reward can concern individual employees, some personnel groups, or the personnel as an entire body. Usually, entitlement to a reward is only for the entire period under examination, including those also in the service of an employer at the time of its determination. (See Koskinen 1999, 40—43.)

When considering the prerequisites for business operations, the emphasis on extensive skills in the nature of work as well as the work of teams have led, especially in the 1990s, to the fact that neither employment nor the permanency of the terms for an employment relationship have had the same assurance as earlier. The parties to a contract of employment can agree sufficient flexibility to assure a contract of employment within the framework of the freedom to make a contract. These objectives can be secured through the regulations in collective agreements and through local agreements. (See Valkonen 1997, 64.)

By virtue of his or her right to the supervision of work, an employer has the right to organise the work and working methods. An employee is obliged to perform those jobs to which he or she has agreed or which he or she can be required to perform because of changes in work. On the instructions of an employer, an employee is obliged to perform the work that directly relates to his or her job and does not essentially change the quality of his or her work. However, collective agreements often include regulations that expand an employer's general right of direction. (For example, an employer has the right to transfer an employee to another job with the prerequisite that this does not endanger the benefits or status of the employee in question).

The point of departure in many collective agreements is that the nature of the performance of work can be also permanently changed as a result of a transfer based on the right of direction, if at the same time there is no interference with the wage. In the assessment of essentiality, consideration

is primarily given to three factors: the amount of the other work, its quality, and the duration of that work. If the new work does not differ from the work intended in the contract of employment, in that the question would not be the simultaneous notification of a change in the employee's job description or something else that had not been agreed, the refusal of the work could entitle the employer to terminate the contract of employment on an individual basis. Again, if the nature of the unilateral notification of change to the terms of a contract of employment is permanent and unconditional and it falls outside the field of the contract of employment, the legal act is to be evaluated as a termination of the contract of employment (and the employer needs a ground for termination). (See Valkonen 1997, 26–29 and 41–52.)

An employer can ensure the efficient course of work by, for example, combining jobs. Consequently, certain jobs are shared out; they are transferred to be performed by others. If combining jobs does not essentially change the job description of an employee in his or her contract of employment, the employee is not entitled to decline the change. With the cessation of duties because of the combination of two jobs, neither employee has absolute preference to be offered the combined job. If, when considering the skills of the employees, the combined job also profoundly exceeds the obligation to relocate and train, it can be offered directly to workers outside the company. (See Valkonen 1998, 861–865.)

The sphere of an employer's power of direction includes giving timetable for the performance of the work and issuing instructions for the fluency of that work. An employee is obliged to observe those instructions that an employer gives in accordance with his or her authority in the relationship of the use and investment of working hours. If a change in working hours is not essential, an employer can change the working hours when their specification has not otherwise been agreed or regulated by law and the terms involving working hours are not firmly established. (Valkonen 1997, 32–38.)

If a job has been explicitly agreed, an employer has no right to change the terms concerning the place for the performance of the work even though the length of the journey to work or the terms for the employment relationship remain unchanged. Often, a contract of employment includes a regulation according to which an employee is obliged to perform the work addressed to him or her by the employer while in the service of that employer. This regulation obliges an employee to transfer at least temporarily to another centre operated by the employer. Unless a contract of employment includes terms on the place of employment, changing the place of employment does not usually form an essential alteration to the contract of employment. (Valkonen 1997, 38–41.)

The fact that it should be possible for employees to have a flexible rotation in their careers has been emphasised in the new economy. Employees should rotate

in different jobs within the framework of at least the same company. Moreover, the rotation of employees between companies has received support at the level of principle. With respect to labour law, the central points in this situation are the content of the contract between parties and the kinds of changes they have agreed during the contractual relationship.

> For example, diverse ways of rotating employees can be agreed when making a contract of employment. The more business and professional secrets are emphasised in business operations, the more unlikely it is possible to arrange the rotation of employees in practice - at least between businesses. This kind of operation would be formally justifiable especially for key workers but, in practice, it is only possible to a limited extent for the above-mentioned reasons. There are many hindrances, both technical and principal, to the transfer of employees also within a company. Ultimately, the current problems relate to determining the wage of an employee when his or her position is not known. In addition, the duty to be loyal may cause difficult conditions of balance in these circumstances.

The increase in the intensity of operational knowledge and expertise has emphasised the significance of training. The issue is specifically over the obligation of an employer to provide training during the period of an employment relationship. In addition, leaves of absence for studies, as well as those for training contracts, have increased. In particular, the spread of new technology has emphasised the need of employees to know how to use it. Moreover, it has emphasised the obligation for continual training in the use of new information technology programmes. Both employer and employee are obligated to act on this issue. An employer has to ensure sufficient training at the correct level, whereas an employee has to be ready to receive this kind of training. The training organised by an employer should be focussed equally on employees of different age groups and genders. An employer is also economically responsible for procuring the training required by the work. In turn, refusal about the training can form a basis for terminating a contract of employment — if the training in question is, for example, necessary for the employee to handle his or her work. With the new technology, an employer has to ensure that the operational prerequisites for employees are equal.

> With respect to training, employees can be divided into two groups. Those in permanent employment get continual training whereas for others the question is mainly about the compatibility of current, as well as the necessary, knowledge and skills. (See Schienstock 1999, 18.) The obligation of an employer to relocate and retrain an employee often relates to the dismissal of an employee. According to the ECA an essential and permanent reduction in work is not sufficient to form a basis for dismissal, if the employee, with respect to his or her professional skills and abilities, can be relocated or retrained for new duties. Here, the objective of the legislator was to ensure

> the permanent relocation of an employee. An employee does not need to be offered work that essentially exceeds or falls below his or her professional skills. An employee has the obligation to accept work only in accordance with his or her contract of employment. The limits resulting from an employer's departmental or other organisational structure do not reduce the obligations of that employer.
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> When assessing the possibilities for retraining, consideration is given to the economic and practical requirements of the employer in providing that training and, on the other hand, consideration is given to the suitability of the employee to receive the training that is required. The obligation of an employer relates to the training for work that is necessary for the employer's operations. A prerequisite for the creation of the obligation to train is that an employer has to offer the work in question after the training. The question is usually about continuing or further education, or retraining. From the perspective of an employer, the obligation to retrain should be reasonable. (See Koskinen 2000, 111—114.)

This new kind of business activity has emphasised the obligation of an employee to maintain secrecy and stressed the prohibition on competitive activities during and after an employment relationship. An employer can limit the activities of an employee through agreements that prohibit competitive activities after the employment relationship or by appealing to the prohibition on competitive activities, or generally to the employee's duty to be loyal.

> The obligation to avoid competitive activities is part of the general duties of an employee to be loyal. (See Koskinen 1991.) The prohibition limits all competitive activity and not simply competing contracts of employment made with another employer. When assessing the permissibility of an employee's activities, consideration is given to both the nature of the work and the status of the employee. Nowadays, an interpretation also has to consider the Constitution, according to which everyone has the right to procure an income through a job, profession, or livelihood of his or her choice. The regulations dealing with competitive activities are limitations on the fundamental rights prescribed by law.
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> Despite the regulation on the prohibition of competitive activities, an employer does not have an exclusive right to an employee's workforce. For example, an employee working part-time or laid-off is entitled to seek work with another employer in accordance with his or her profession, unless otherwise arising from the special nature of the job. An employee has the right to determine the use of his or her free time by performing, for example, a second job, if no specific limits to this result from one or another regulation.

An employee shall not start any competitive activity in a relationship of employment that, as an act contrary to the observation of good practice, would obviously damage the employer. Simply the possibility for damage is insufficient – the activity shall obviously damage the employer. The good practice is evaluated specifically for each case. The regulation does not prohibit the competitive activity that was known by the employer when the contract of employment was agreed. The people higher up in the employer's organisation have a greater duty to be loyal than those in lower positions and therefore their right to conduct competitive activities with their employer is generally more limited. Moreover, the competitive situation in the employer's field of operation affects the right of an employee to act competitively.

According to the Supreme Court (KKO 1990:37) planning to establish a company that will go into competition with an employer is not itself the competitive act intended in the ECA. The employee in the case was not seen as being responsible for the number of negotiations held with the employer's customers to establish an advertising agency nor was the employee to be held responsible for negotiating the transfer of the company's sales secretary to the service of the new company before the termination of employment. However, it was decided that the company did have a basis for dismissal because if the person in question had remained in the service of the company it would have endangered the company's operational prerequisites.

In another judgement (KKO 1993:59), an employer was found to have the right to terminate a contract of employment when there was justifiable cause to suspect that the manager in question was preparing for competitive operations.

Although the preparation of competitive activities is a principal freedom, being in a relationship of employment however does form an essential limit to this kind of activity. At the general level, the limitations are based on the duty to be loyal and the good practices that are observed in a relationship of employment The practices between an employer and an employee are both the focus and basis of any evaluation.

The protection of business and professional secrets is also central in jobs in the new economy (including the IT fields). Here too, the ECA includes prohibitions on their revelation.

In accordance with the ECA, an employee must not beneficially use or express to others the business of professional secrets of an employer that have been entrusted to that employee or have otherwise come to his or her knowledge during the period of a contract. No one may unlawfully procure or try to procure information on business secrets nor may they use or express such procured information. This rule specifically protects business secrets as well as technical models and instructions. The characteristic of a

business secret is that keeping that fact a secret is important for the business operations of the company that possess that secret. A business secret means both economic secrets, which are for example information on the organisation, agreements, marketing, or pricing policy of a company, and technical business secrets, which deal with, among other things, the structure and material compounds of products.

The obligation of employees to maintain secrecy is also regulated in the Act on cooperation on companies and in the Act on the representation of personnel in company administration. A prerequisite of the obligation to maintain secrecy in these regulations is that an employer informs staff that this information is to be kept secret. The same prerequisite is not in force in the ECA. The punishment for breaking company secrecy is regulated also in Criminal Law. This enactment also covers the unlawful use or illegal expression of business or professional secrets to another. An employee can be punished if he or she has broken a company secret in order to gain personal economic benefit, or if he or she has used a company secret to benefit or damage another. The liability to punishment requires an intentional act, whereas the regulation in the ECA also covers the negligent expression of business and professional secrets.

The prohibition on revealing business and professional secrets is legally limited to the duration of an employment relationship. An employee will usually have the right to use the information, skills, and experience gained during his or her employment relationship to acquire an income. However, if the information to be kept secret was obtained illegally, the prohibition continues after the termination of the employment relationship. The Supreme Court (KKO 1984: II: 43) has determined that an employee acted contrary to the law when he beneficially used machine drawings and drafts that were comparable with those of his previous employer for designing a machine in his new place of employment.

The obligation to maintain secrecy for unlawfully acquired information is in force for as long as the business or professional secret has, from the point of view of the employer, economic significance. The liability for compensation as a result of breaking the regulation rests with both the employee and with the person to whom the employee expressed the information. In order to avoid liability for compensation, the recipient of secret information will have to have acted in good faith.

The interest of an employer to bind an employee is central in a quickly developing and competitively inclined economy. In many ways, employers have also linked training to keeping their employees in the service of the company for at least a certain period. As such, the market economy system should allow an employee to begin entrepreneurial activities on his or her own initiative as much as possible. An agreement for a prohibition on competitive activities requires a weighty reason. This kind of reason is seen as existing in those fields in which the new economy is

considered functional (IT, KIBS fields, etc.). Moreover, the kinds of people that could be considered to start their own entrepreneurial activities (those in managerial positions and those with special skills) are those that are considered as examples that fall within the sphere of the prohibition on competitive activities. The same problem affects competitive activities and the duty to be loyal. In the new work, competitive activities and the duty to be loyal may be expanded to affect more than simply key workers, because this model of operations emphasises working in teams, few limitations to a task, a low hierarchy, etc.

> For special weighty reasons connected to an employment relationship, the right of an employee to seal a contract of employment with someone who practices a determined type of competitive livelihood, profession, or other activity with an employer, or the right to practice one's own activity of this kind, can be limited by an agreement. Besides other things, in evaluating the special weighty reasons consideration has to be given to the quality of the employer's operations and the need for the protection that results in maintaining business and professional secrets, or to the training organised by the employer for his or her employees, and the position and duties of the employee.
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> The evaluation is to be made specifically for each case. The permissibility of an agreement is generally justified if the duties of an employee relate to product development, research, or other equivalent activity, and the employer has the kind of knowledge or expertise that is not generally available to competitors. In this case, an employer has a justifiable need to prevent the transfer of important information and expertise to competitive operations and, on the other hand, consideration has to be given to the possibility of an employee to acquire an income through work that corresponds to his or her professional skills and to the right to freely choose his or her place of employment. If an activity is not prohibited during a period of employment then neither is it prohibited after the termination of employment. With respect to his or her former employer, an employee has obligations based on the employment relationship only in the case that the matter was separately agreed. An agreement on the prohibition of competitive activities can be made either at the time of making the contract of employment or during the employment relationship.
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> Making an agreement on the prohibition of competitive activities can be permissible for specific duties in which the fast renewal of information and the development of technology are essential factors in production. A special weighty reason can also exist in companies where the clientele is bonded to the company through, for example, the sales activities of an employee (maintaining customer interests). Maintaining business and professional secrets can also be a basis for an agreement on prohibiting competitive activities. Besides technical developments in a company, an employer may have a justifiable need to prevent, for example, the contents of contracts

with suppliers and customers from coming to the attention of competitors after the termination of an employment relationship. After a patent has been obtained, an employer usually no longer has the justification to secure a prohibition on competitive activities in order to preserve business and professional secrets.

Special training financed by an employer can also be a basis for an agreement on the prohibition of competitive activities. In evaluating the especial weighty reason, consideration can be given to the costs of training and the local leaves of absence and grants given by an employer for that training. The normal advance and continuing education or familiarisation training offered by an employer cannot be considered as the basis for such an agreement. Training acquired and financed by an employee cannot usually be considered as a basis for an contract unless the employer, for example, has given local leave of absence for that training or for during its related period of studies.

The position and duties of an employee also have to be taken into consideration when evaluating especial weighty reasons. An agreement may be justified if an employee serves in a position that provides him or her with competitively important or protected information or he or she accumulates equivalent and other expertise. However, the knowledge and skills have to be of the kind that is acceptable for maintaining as secret when consideration is given to the legislation on livelihoods and competition.

An agreement on the prohibition of competitive activities may limit the right of an employee to make a new contract of employment or to practice a profession for a maximum of six months. The period of limitation for competition can be one year at the most if an employee can be seen to have gained reasonable compensation for the inconvenience caused to him or her by this commitment. However, an employer is not obliged to pay compensation to an employee for the period of limitation on competition. The contractual penalty related to an contract must not exceed the wages received by the employee for the six months preceding the termination of the employment relationship. A contractual penalty can be the loss of some other economic benefit.

The liability for compensation is the normal result of breaking an agreement on the prohibition of competitive activities. If no limitation has been agreed to the contractual penalty, the liability to be paid by an employee for breaking an agreement is determined in accordance with the regulations for compensation liability in the ECA. The amount of compensation depends on the degree of the employee's negligence. An agreement does not bind an employee if the relationship of employment was terminated by the employer. These regulations do not relate to employees who, based on their duties and positions, are considered as performing managerial duties for a company, association, or foundation or for their independent sections, or are in independent positions immediately parallel to this kind of managerial duty.

An agreement on the prohibition of competitive activities that is made without any special weighty reason is invalid. If an agreement is otherwise valid but it is made to exceed six months, it is valid only for a six-month period. The reasonableness of an agreement is evaluated through the Act on Legal Acts. In evaluating the reasonability of the commitment, consideration has to be given to those benefits and encumbrances caused to both parties to the agreement. From the perspective of an employer, consideration has to be given to his or her need for protection in securing business secrets. With respect to an employee, attention must be given to the fact that his or her latitude is not limited more than is necessary when considering, among other things, the perspectives of competition. Moreover, consideration must be given to the amount of remuneration an employee has received as compensation, and similarly to kinds of opportunities that an employee has to transfer elsewhere.

The results of an employee's work belong to the employer, but the result of creative work basically belongs to its creator. There is a contradiction between the regulation of intellectual rights and labour law. This contradiction is resolved in many ways: through the law on inventions made during an employment relationship, through the regulations on copyright and profession-specific practices, through the regulation on design copyright, through the protection of business secrets, etc. The new economy has emphasised these contradictions. On the one hand, the creativity of an employee is supported and the protection of his or her privacy is emphasised. On the other hand, human capital is supervised and an employer, to a reasonable extent, even has the right to exploit the results that fall within the sphere of an employee's copyright.

Nowadays, plenty of copyright-protected materials are created in relationships of employment (productions with digital content, multimedia productions, research and development projects, etc.). In the tradition of legal practice, an employee is the original copyright holder. In this case, the central question is the extent and basis for which the copyright of certain materials transfers from an employee to an employer.

According to the Copyright Act, the copyrights for a computer programme, a database or its immediately related work created in the performance of one's job or in an employment relationship transfer to the employer, unless agreed otherwise by the employer and employee. The regulation is not however applicable to a computer programme or database created by an independently functioning actor in teaching or research at an institute of higher learning. With respect to other material, unless otherwise agreed, an employer gets the required right of use to the materials created by the customary activities of an employee. In related rights that protect copyright in some investments, the rights transfer directly to the producer or manufacturer. These are, for example, the copyright of a recording producer,

the right of an AV producer, the right of a database and register producer, etc. as well as the rights of public radio broadcasting companies.

Copyrights can be transferred within the limitations of freedom of contract and the transferability of copyright. Here, however, there are some exceptions and limitations; for example, moral rights are non-transferable, the singular transfer of current and future rights may be an unreasonable legal act, an employee is protected by interpreting transfer narrowly, etc. The transfer of copyright can be agreed immediately at the beginning of an employment relationship if the employee produces or can produce copyright protected materials in his or her duties. With respect to existing copyrights held by employees, emphasis is placed on the significance of an employer's procedural practice and contract in atypical employment relationships. In this situation, copyrights, as with the obligation to maintain a secret and the prohibition on competitive activities for example, are generally agreed immediately at the beginning of a relationship of employment.

Copyright is not the same as the right of ownership to a work. The right of ownership is determined based on general legal principles. With respect to copyright, the central factors limiting its legal utilisation include contractual obligations, for example, the prohibition on competitive activities and the duty to maintain a secret.

The blurring of the borders of work and family life, the fast renewal of jobs, the demand for multi-skilling, circulation at work, and the increasing use of result-related wage systems have added, in addition to many other factors, to the pressures at work. Each person performing work has to make an effort in order to manage on the markets. Difficulties in adjusting to, or managing in, the new culture of work lead to consequences of different degrees both for individual workers and the entire working community. From the point of view of an individual worker, the extreme consequence, exhaustion at work, is characterised by total fatigue, a cynical approach to work, and weakened professional self-esteem. The pressures at work discharge themselves as a form of mild behaviour such as bad temper, irritation, absenteeism, etc. From the perspective of the working community, the central issue is that of results. The more seldom and the fewer the factors of disturbance are, the better the community can aim for the future.

In the working community, monitoring how workers manage is especially a matter for an employer. The Employment Contracts Act states that an employer has to ensure that an employee is also able to cope in his or her work during any changes and development in the activities of the company, the work to be performed, or the working procedures. This obligation means, for example, providing the guidance, familiarisation, and training as demanded by the changes in the work. Moreover, observing this obligation as such requires the monitoring of conditions at the place of employment, including how employees are coping.

An employer is also otherwise obliged to ensure employment safety. He or she has to take into consideration everything that is necessary in relation to the quality of the work, working conditions, the age and sex of an employee, professional skills, and anything else that he or she considers is in accordance with moderation so that an employee faces no risk to his or her health as a result of the work. Moreover, the legislation on working hours and annual leave is designed to protect the performer of work from excessive load.

Fatigue and excessive strain at work create many significant situations for labour law. For example, these can be sickness, leaving work without permission, unsuitable behaviour, and the neglect of one's duties, alcohol abuse, and inefficiency. In each of these cases, an employer has to evaluate the relationship of the factors resulting from, on the one hand, the working community and, on the other hand, the worker in question.

The details of sickness related to work fatigue and exhaustion have been examined to some degree by legal praxis. Exhaustion at work (burn out) has caused problems for labour law, especially when evaluating the basis for the termination of a contract of employment and the obligation to pay a wage during sick leave. If exhaustion from work is considered as a sickness, an employee cannot be dismissed – if the sickness was not the consequence of an essential and permanent weakening in the working ability of the employee. In this case, the right to terminate a contract of employment is considered in accordance with the actual affects of exhaustion from work. Simply fatigue from work cannot be a sickness. Therefore, it is evaluated as a possible neglect of one's obligation to work.

With respect to the obligation to pay a wage on the basis of exhaustion, exhaustion can be considered as a sickness for which the payment of a wage falls within the sphere of collective agreements, if according to the presented medical evaluation, it has caused the employee's inability to work. In collective agreements, the obligation of an employer to pay a wage during a period of sickness is generally bound to a certificate issued by a doctor.

With respect to sickness, a doctor's certificate set the framework for the discretionary power of an employer. From the perspective of a fatigued employee, a clearly more difficult situation is created when he or she behaves in an otherwise unsuitable manner possibly as a result of fatigue. For example, an employee may be absent from work for a week without informing his or her employer of a valid reason. According to the ECA, this kind of behaviour entitles the employer to consider the contract of employment as dissolved. If the employee has had no valid reason for his or her neglect, the right of the employer is final. If a fatigued employee abuses the use of alcohol at his or her place of employment or the use of alcohol essentially weakens his or her performance, the issue is not, according to Finnish legal praxis, one of sickness but rather one of the neglect of one's duties.

The obligation of an employer to interfere in a situation has to be evaluated in relation to the lesser inappropriate behaviour connected to fatigue mentioned above (for example, to calm down an ill-tempered employee). An employer may also have the obligation to locate the employee either permanently or temporarily in another task before initiating the termination of the contract of employment. According to ECA, an employer has to give a hearing to an employee before dismissal in order to clarify whether his or her relocation in other work would avoid that dismissal. An exception to this situation is where an employee has proceeded in such a manner that, in all reasonableness, the employer cannot be required to continue the relationship of employment.

In relation to non-achievement, the issue may be both of the total neglect of work and of its performance without any visible results. Although employers generally show their understanding in such situations, and it can even legally be required of them to do so, at some point the limit that can reasonably be expected of an employer is exceeded. An employer (not including so-called social companies) operates within the sphere of the markets. Keeping a fatigued employee at work may thus endanger the jobs of other employees.

A large amount of work and urgency are seen as a problem at places of employment. Taking care of the problem requires both separate and joint measures at the many levels of the working community, health care, and the public authority. Unfortunately, these measures have been few. In the current working culture, no one says no to an employer's proposal for new work. Positively said, the issue is one of strengthening internal entrepreneurship. From another perspective, the issue is of great economic losses, the factual weakening of working commitment, and the decrease in the quality of professional self-esteem. Family life can be subordinated to the demands of work.

Maintaining working ability is primarily a company-specific function. For this purpose, an employer will continually monitor, for staffing purposes for example, the working conditions, including the workload, at the place of employment. However, many outside factors affect work fatigue and exhaustion, the future of the field for example. Both moreover are bonded to the working culture and the security provided by society.

**The atypical performance of work**

From the perspective of labour law, perhaps the most central developmental feature has been the atypicalisation of paid labour. This has particularly meant the increase of fixed-term and part-time work. Over the past few years, the government in Finland, under the influence of EU law, has aspired to increase the regulations that oblige an employer to treat those performing work in different forms equitably.

Currently, there are some regulations about fixed-term and part-time employment relationships in the ECA. However, there is nothing about, for example, teamwork, agency employees, and e-workers.

Contracts of employment are in force either for an undetermined or for a fixed-term period. The termination of a fixed-term contract of employment is determined objectively, such as by a date, the completion of a specific task, or on the basis of a certain event. A contract of employment is in force for an undetermined period unless there is a justifiable reason to agree on one for a fixed-term. A fixed-term contract of employment made on the initiative of an employer without any justifiable reason, as with any subsequently agreed fixed-term contract made without any justifiable reason, is considered as a contract in force for an undetermined period.

The avoidance of job security is prevented by providing the demand for a justifiable reason. If an employer has a permanent need for a labour force, the use of fixed-term contracts of employment is not allowed. On the other hand, the use of fixed-term contracts is not restricted when there is a legally intended reason. The limitations to making a fixed-term contract relate only to agreements made under the initiative of an employer.

The use of fixed-term contracts of employment is justified when the question is about the performance of a specific or entire job, or the kind of short-term defined work that an employer does not continuously commission. In evaluating the prerequisites for the use of a fixed-term contract, attention is paid not only to the special nature of the work itself but also to the particular features of the work from the perspective of each employer. These criteria are, for example, the possibilities of an employer to offer work only as separate jobs because of the expanse of his or her operations, the special professional demands placed upon the performer of the work, or the fact that the employer does not usually commission this kind of work.

The use of fixed-term contracts of employment is also possible for seasonal work or for the duration of a specific order. A prerequisite for both situations is that an employer is not able to offer more work to the employees in question. A basis for a fixed-term contract can also be the need for substitutes, a reason justified in relation to other company operations or the performance of work (e.g., an additional labour force to stabilise peak production demands), or the instability of demand.

The use of a fixed-term contract of employment is thus permissible only if it is justifiable from the perspective of company operations and the work under commission, and its purpose is not to avoid the regulations for the protection of employees against unfair dismissal. A prerequisite for the repeated use of a fixed-term contract is first that there is a justifiable reason for making each fixed-term contract of employment. Secondly, it is required that an employer does not attempt to avoid the job security through the repeated use of fixed-term contracts of employment.

From the perspective of increasing the benefits of an employment relationship, a relationship of employment is seen as one single period if it is based on immediately renewed contracts of employment or on contracts that follow one another with only very short intervals, even though the question is about legally fixed-term contracts of employment. In this way, the wage benefits based on earnings for annual leave and the duration of an employment relationship are determined as for employment relationships that are for an undetermined period. Ultimately, the deciding factor as such is whether an employee has performed continuous work for an employer.

An employer also commits to the prohibition on discrimination and the demand for equitable treatment in his or her relationship to fixed-term and part-time employees. Unless there is a justifiable formal reason, no terms of employment that are more disadvantageous than in any other employment relationship may be applied in these kinds of employment relationship simply because of their duration. The principle requires consistent actions and solutions from an employer in relation to his or her employees.

Different projects have become common in the new work. From the perspective of employers, the question has been about increasing the operational flexibility of the labour force. In turn, employees have seen projects at least as a means for future employment. The common point of view has emphasised project-like modes of action analogous with the principles of a networking economy. Fixed-term contracts of employment are one central part of project activity.

A project of fixed duration is generally a basis for agreeing a fixed-term contract of employment. In this kind of situation, work is focusing on only the project in question. In this case, a fixed-term contract cannot be considered as avoiding job security. In practice, projects often follow one another. The longer the common duration of consecutive projects, the more likely an employer shall agree on a contract for an undetermined duration with the employee. Simply uncertainty over the continuation of outside financing is not a basis for a fixed-term contract of employment. The transfer of the operational risks of a business to the employees is not considered acceptable by labour law.

If a project is based on separately budgeted funds and the work has a project-like character (corresponding work had not been performed before the employees were hired, and neither after the termination of the employment relationship), in other words the question is about other than operations intended to be permanent, then there is justification for agreeing on a fixed-term contract of employment. With respect to financing, the central points are its unparalleled nature and independence from the decision-making authority of the employer. A basis for fixed-term employment in relation to projects can also be the lack of clarity for the tasks, actions, and the points of emphasis as well as any changes that can

be anticipated (for example, at the initiation of a project or based on the uncertainty of the possibility to offer work). In relation to evaluating the nature of fixed-term employment, a central significance is also placed on whether employees have had the simultaneous right and factual possibility to refuse work offered by an employer as well as to perform work for another employer.

Central to that described above is the permanency of work. If work is permanent, an employer has to use same legal form in making a contract for that work — in other words, contracts for an undetermined period. Nowadays, many permanent associations that provide work base their modes of action on projects. Fixed-term contracts of employment are to be used when the activity itself is for a fixed duration.

Nowadays, the ascendancy of group work, networked modes of operation, and multi-skilling are common in working life. However, the legislation on contracts of employment, as with that for collective agreements, does not consider these matters. In the ECA there is only one general enactment about the working community, but there are no regulations on teamwork. Labour law is still centred on the individual. The new features of development, however, have been towards the generalisation of teamwork.

The use of different forms of group work, such as teams, cells, or project groups has increased evenly. In 1999, two-thirds of wage earners worked at least some of the time in these kinds of groups. Group work occurred the most in the public sector and the least in private service jobs. Clearly, its intensity has grown even faster than the spread of group work. Ever more often, one works mainly in a group. The intensity of group work has grown in all sectors. (See Työolobarometri 2000.)

The ascendancy of group work and networked modes of operation relates to mutual loyalty and solidarity. Loyalty does not affect only the relationship between an employer and employee; it also relates to the relationships between employees with different statuses. In addition, the transitions to these forms of work are still unregulated in detail. Moreover, there are many open questions about the allocation and division of responsibility. Working in groups or teams sets demands on the cooperative ability and mutual trust of employees.

In practice, the transition to teamwork has often taken place through the unilateral managerial decision of an employer. The change can be realised by virtue of the right of direction if the transition does not cause an essential change in the duties or position of the employee in question. Generally, the transition from normal work to teamwork is an essential change affecting the statuses of personnel, which requires both an agreement with the parties at the individual level and also consultation in accordance

with the law for cooperative activities in companies. The essential problems of teamwork relate to the "lives" of the teams in all their phases – establishment, operations, and termination.

One central problem in relation to the operations of teams is whether a team can be evaluated as a whole. Handling a team as a whole cannot be based on legislation. The strongest basis for this kind of treatment is an established job-specific practice. Despite these problems, teams form a new means to canalise both the use of the right of direction and employer responsibility. There are difficult legal questions related to teams. For example, how can the composition of a team be changed, how is a wage determined within the framework of a team, and on what basis can a contract of employment for the members of a team be decided?

The transition to teamwork means a reduction in the instructions directed at workers by management and the concentration of supervision for the inspection of results. Those employees working in teams have themselves developed much more extensive modes of operation than they had earlier. Moreover, teams have had to develop their own supervision. Factual management and supervision have thus partially transferred to the field, although an employer does retain the right to use them.

Labour law has hardly handled the problematics related to teams. In some research on local agreements, it was ascertained that groups or teams operated as the other party. An employer's right of direction is usually considered as the legal basis for teamwork. However, the central issue is the kind of contract that an employee has made. If the contract was not originally made for teamwork, its transition usually requires consultation in accordance with the Act on Cooperation and agreement on changing the terms of the contract separately for each employee. The general regulations in collective agreements on the employer's right to management, as with the procedures for cooperation, do not entitle an employer to change a contract of employment in this way.

The rights and obligations of an employee and employer are specifically determined while working in a team. For example, the authority of those working in a team is also determined in relation to the status of the team in question. Defining this status is problematic. Some of those working in teams do not know for what they are responsible and what team responsibility means. The principle of loyalty requires listening to the other party and providing information, as well as consultation and agreement. Employees can commit to a common responsibility in a team. However, nowhere in the legislation is responsibility regulated for this kind of team. Although the employees as a team are one of the parties to an agreement, the specific workers in question are responsible for performance because a team is not a legal person.

The mutual relationship of employees is central to working in teams. Even wages in many teams are based at least partially on the results of the whole group. From this perspective, changing employees in a team or dismissals from a team are questions that have to be adapted to teams. In an agreement between a team and an employer, the team can be given the right to use the authority of the employer to conduct personnel arrangements. However, an employer cannot transfer the legal responsibility for hiring and dismissing employees to teams. The question is only about the factual transfer of authority. For example, only an employer can legally interfere in the inability of employees to cooperate.

There are no special regulations on teams in the ECA. Thus, changing the terms or terminating a contract of employment is determined therefore according to the normal regulations. The performance of work in the form of a team is significant when evaluating a change to, or termination of, a contract of employment. For example, in relation to the termination of a contract of employment, it is easier to use an employee's ineffectiveness, unsuitability, or inability to cooperate in a team as justification for dismissal than it is elsewhere.

Teamwork is a question of both an employment relationship and management. The responsibility for the appropriate organisation of work and clarifying the relationships of responsibility and authority rests with the higher management. If there are essential changes to these, either the status of employees is protected from unilateral change or an employer is required to inform the employees of the matter and to enter negotiations with the representatives of the personnel.

By "agency labour force" is meant an activity in which an employer sends his or her employees to perform work in a certain user company. In this way, the employer transfers the factual right of use and the related managerial rights for the labour force to another subject in return for remuneration. The use of an agency labour force is different from subcontracting in that those practising renting out the labour force do not produce any products – they simply offer others the means to achieve a certain product or service.

The rental of a labour force has been considered unhealthy, in that the men on loan in a company procuring the labour force work longer hours in the normal work of the company alongside its regular employees and under the same management. In addition, it is considered that contracts of employment should not be given the kind of form in which the question would be over a rental agreement between two independent entrepreneurs, if the issue is in fact a contract of employment. Nowadays, the rental of an agency labour force concerns all kinds of work – from normal services to demanding managerial jobs. Securing an agency labour force in the companies of the

new economy can be a natural solution in many situations. The workers in an agency labour force are trained for their jobs. They perform a specifically agreed job and depart, etc.

To date, one general national collective agreement on an agency labour force has been agreed. According to the ECA, if the employer is not bound to some own collective agreement, the company using agency labour must apply normally or generally binding collective agreements concerning the work which the employees are doing. Only after these, are terms to be applied between an employee and the company practising renting out its employees.

In relation to the atypical forms of work, the legislator has tried to combine, on the one hand, the flexibility needed by working life and, on the other hand, the employee's important experience of stability and assurance — in other words sufficient social protection.

The discussions on flexibility have emphasised a new form of identification for the security of an employee. This would mean more employability on the labour markets than the right to preserve jobs. According to this concept, it is not essential that you keep your job: rather, that there is a great possibility you can get a new one. This kind of employability emphasises the mobility of employees, but low security and poor motivation can also relate to it. In this functional model, employment policy and social welfare would ensure that the welfare of the individual is also sufficient during unemployment and that the party in question would get a new job within a reasonable time. Agreeing on fixed-term contracts of employment has been made easier also in Finland, but there have been no improvements to job security. Simultaneous to easing fixed-term contracts, the labour and training policy has been activated, and social security in fixed-term relationships has been improved.

Over the past few years, subcontractors and other external labour force, have become common. The legislation on contracts of employment does not directly regulate the externalisation of work. However, the regulations on the transfer of an undertaking as well as those for dismissals taking place for economic reasons indirectly concern these situations.

The use of external labour force has traditionally been limited by collective agreements. For example according to an agreement between the central labour organisations a company was to be limited in the use of so-called "command" employees to only balance the peak of work or otherwise be temporally or qualitatively limited to those duties which it could not perform with its own personnel.

An external labour force is traditionally assessed as a threat to preserving the work of the regular personnel. There has been an attempt to face the problems created by an external labour force by developing, among other things, the legislation on cooperation. There has been emphasis on an employer's priority to use his or her own employees first. However, the situation has gradually changed - the trend in the attitude towards an external labour force is that it is a matter belonging to the managerial authority of an employer. In this case, no certain system of priority between the use of one's own or outside employees can be presented.

The self-employed and those selling services also belong to an external labour force. Many small entrepreneurs are connected to the subcontracting, sales, representation and chain agreements of the larger economic organisations as well as through other agreements on cooperation. With respect to many of those performing this type of work, there is no realisation of the traditional concept of entrepreneurial freedom. These entrepreneurs may need the same kind of protection as employees.

The term subcontracting means the production of services for the main manufacturer of objects or goods. There has been an increase in subcontractors and other purchases of work from outsiders over the past few years. The externalisation of work is clearly normal in industry. The externalisation of work since the mid-90s has increased in all sectors. The growth was exceptionally powerful in 1999. (See Työolobarometri 2000.)

When subcontracting does not affect existing relationships of employment, its competent realisation in labour law requires only the observation of the obligations legally set for cooperation in companies, if the company itself falls within the sphere of the said law. The situation changes if the dismissal of one's own employees, working part-time or the laying-off of personnel are related to the transition. In this case, an evaluation will have to consider the relationship between, on the one hand, the managerial authority of the employer and, on the other hand, the requirements for dismissal in accordance with the ECA.

Transferring work to outsiders reduces the amount of work, in that the employer no longer has this work to offer employees. Although the work itself still exists, it can no longer be offered as work in a relationship of employment. From the perspective of ECA, the amount of work may also decrease because of an employer's actions. The regulation on protection against dismissal does not set any barriers to subcontractors, for example. An employer has the right to end, reduce, or expand his or her business activities.

With respect to subcontracting, legal practice has evaluated cost savings as a basis for dismissal and especially subcontracting as the possible transfer

of an undertaking. The dismissal of employees following subcontracting can be based on both economic and productive reasons. Although an employer is not able to show sufficient cost savings from the perspective of dismissal, subcontracting is still a productive basis for dismissal. In relation to subcontracting, an employer may not avoid the regulations on job security. In subcontracting, the question can be of only a slight or temporary transfer of work to be performed by outsiders.

The difficulties of identifying the transfer of an undertaking in relation to subcontracting result from the changes taking place in economic life. In particular, networking has changed the prerequisites for business operations as well as the status of personnel. There is already a transfer from traditional subcontracting to partnerships and networked cooperation occurring in many places. This new mode of cooperation means, for example, common information and planning systems in which the service or actor participates in and commits to product development. Moreover, difficult questions for labour law arise from the sale of companies and their sections abroad.

Central in identifying the transfer is the transfer of an undertaking whilst preserving its identity. The transfer of an undertaking is not the issue when only tasks or other activities are transferred to subcontractors. Neither is it an issue if a company resorts to subcontracting for only a slight part of a certain total operation. The deciding factor in any evaluation is whether the transfer largely comprises the sections that were earlier handled by the company's own staff. Unless this is so, the issue is not one of the total transfer of an undertaking. For example, the transfer of certain duties is not the total transfer of operations. (See Koskinen 1997b, 291—299; Valkonen 1999, 121—125 and 138—140.)

**Job security**

One description for "job security" in the new work is that fast learners are rewarded and the slow ones are dismissed. On the other hand, job security is also described through the changing forms for the performance of work; the job security related to contracts for an undetermined period continually relates to an ever smaller number of employees. The demand for flexibility along with continually expanding changes in a company affects the core labour force of that company within the framework of employment relations. However, dismissals especially affect employees on the periphery. In addition, the regulations concerning the job security of fixed-term employees affect the abandonment of the renewal and non-renewal of contracts. (See Schienstock 1999, 4—9.) With respect to employees, the question is also one of eliminating pointless expenses (re-engineering). An employee that does not bring sufficient additional value is dismissed. (See Blanpain 1999, 60.)

Employers have often resorted to rescind a contract of employment instead of giving notice of dismissal. This is considered to have arisen from the fact that

these employers do not see themselves capable of employing the employee concerned during the period of notice (six months at the maximum). Here, the question is often one of new and demanding work that requires the total input of the employee, his or her care and multiple performance, etc. The demands that have arisen in relation to the new work thus appear to lead, from the perspective of an employee, to forceful means instead of using more lenient measures. For example, the rescission of an inefficient employee's contract may be a economic alternative for an employer, from the perspective of the company. In this manner, the interests of an employer relate especially to the costs of the "illegal" act.

The growth in the significance of the intensity of knowledge and expertise as well and the continuous pressure set on employees to renew these has caused situations concerning the circumstances when evaluating an employee's dismissal for inefficiency and ignorance.

> Reading inefficiency to an employee as a fault requires the mistake or negligence of that employee. An employer does not have, based on the perspective of moderation, the right to refuse to receive the deficient performance of work regardless of the quality, amount, or any other corresponding factors, of the faults in question. For example, a slight deficiency is not sufficient grounds for giving notice but it is normally sufficient grounds to intervene into the behaviour of the employee though other more lenient means.
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> The inefficiency of an employee is assessed at the general level. The measures in any assessment include the degree to which the results of the work have declined when compared with the results of other employees in the service of the same employer, with national statistics or with the earlier objectives and results of the employee, the length and repetitiveness of the decline in the work, etc. The sufficiency of grounds is considered through a comprehensive assessment. Before the termination of a contract, an employer first has to try all factual and judicially possible means to preserve the employment relationship.
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> The inefficiency of a normal employee is as such an undisputed basis to intervene into the behaviour of the employee. On the other hand, leaving results unachieved does not entitle the termination of a contract of employment. (In the collective agreements of some professions, there are regulations that entitle this kind of dismissal in contracts with specified requirements, see, e.g., the Vehicle and Machine Sales Workers' Union collective agreement for 2000—2001.) Dismissal normally requires the fault or neglect of the employee in question. The fault or neglect of that employee should be essential as sufficient grounds for dismissal. In addition, the employer's knowledge of the employee's working ability is significant, as is how exactly the employee has been committed to a defined result. In any assessment, the employee's ability and skills in relation to the set duties and

normal rate of performance is also significant. Normally, these situations require that a warning of dismissal also be given.

With respect to those in managerial positions, the responsibility for producing results is already ground for intervening in the position of an inefficient employee. With respect to other employees, the points of view that emphasise efficiency have not changed, at least yet to an essential degree, from the traditional evaluation by labour law. However, the current obligation to achieve a result increasingly affects different groups of employees. In the majority of cases, an evaluation still occurs by observing at least traditional legal criteria. These are the essentiality of the digression from the normal rate of work, the significance of the knowledge of the employer, the provision of a warning, etc. (See Koskinen 1990, 79—81 and 87.)

Dismissals based on economic grounds have arisen in situations in the networked economy. Technical development, tightening competition, and the rise in the level of education, for example, have changed jobs. Company structures have networked and become more complex. External labour forces perform work more than ever before. Most changes are based on an employer's use of managerial authority. Employers have adapted their decision-making on company operations to outside events.

The aim of employers has been to make contracts of employment flexible and to agree on as extensive job descriptions as possible. The needs for protection experienced by employees and securing the prerequisites for an employer's production have often been in opposition to one another. In changing economic and productive conditions, it has been necessary to resolve whether a job belongs to the performance obligation of an employee, whether the work on offer has come to an end, whether an employer has the right to change the terms of a contract of employment, etc. In the changing world of business, it has been necessary to evaluate the ECA within the new operational environment.

Earlier, courts were not forced to evaluate cases where jobs were combined or to assess extensive reorganisations. In these cases, the grounds for dismissal (especially the reduction in work) were evaluated primarily as a decline in the work of an employee. With the change in the business world in the 1990s, it was no longer possible to examine the reduction of work simply as a decline in the work of an employee. Whether an employer had work to offer formed the core of the issue. (See Valkonen 1998, 906-909.)

**The status of supervisors**

The status of a supervisor essentially changes in a new work. These changes have been described as the loss of one's independent position and as changing to become part of a network cell or process team (as a "trainer"). An equivalent development is seen with respect to employees in their increased power of decision-making over their "own" affairs. With respect to employees, the issue includes separate increasing authority to act both internally and externally as representatives of the company (the status of a contact-person). The "trainer" status of supervisors requires many different evaluations of employees (finding strengths and weaknesses, participation in the formation of teams, participation in handling relocation and training, helping to solve problems, etc.).

Current trade union organisation and many collective agreements are based on the possibility of identifying a supervisor. Changing the above-mentioned into a part of other activities hampers this identification. From the perspective of collective agreements, changing the duties of a supervisor is especially problematic. This development calls making collective agreements for supervisors into question. At a concrete level, the issue is generally of the difficulties to agree on the regulations specifically concerning one's own supervisors.

The general duty to care associated with the above-mentioned "trainer" status has been emphasised in the duties of supervisors. One part of this duty is to ensure industrial cooperation at the place of work. Those with the status of supervisor, for example, have to support and advise personnel and otherwise act so that sufficient personal relations for all personnel groups are preserved at work. Another part of this duty to care is to act so that an employer can preserve his trust in that supervisor. Whatever the case, the duty in question emphasises the obligation of the supervisor to ensure operational ability at work and in the working community (flexibility, achieving results, the performance of work, etc.). The question is over a certain comprehensive responsibility for an employee. In principle, it affects all parties in the working community. With respect to employees, in practice its significance is currently the greatest for those in positions of management. (See Koskinen 1997a, 172.)

It is not possible generally to present the different duties or responsibilities of a supervisor or the extent to which these should be seen in the realisation of his or her role. For example, the responsibility to produce results can be organised in different ways in companies. If the strategy of a company is to direct the responsibility to produce results only for those in higher positions in the organisation, this does not remove the normal status of a supervisor at the lower levels. The responsibility to produce results, however, is to some degree one typical part of the status of a supervisor. Removing the responsibility to produce results from a supervisor brings him or her closer

to a normal employee, but not yet necessarily to the same status as them. Differentiating between a supervisor and a normal employee is problematic, especially when the status of the supervisor is not complete but, on the other hand, the responsibility of the employee is increased. However, an employee cannot achieve the status of supervisor without the specific action of an employer. The status of supervisor is based on an agreement that is made with an employer and also on the fact that the employee performs the duties of a supervisor, as intended in collective agreements, on the instructions of an employer. (See Koskinen 1995, 120—122.)

The duties of a supervisor are emphasised in different ways in different companies. An employer can stress the duties of a supervisor differently than earlier, even in a noticeably divergent manner. Changes that exceed the status of supervisor are however essential and require grounds for dismissal. For example, automation and networking can reduce the amount of a supervisor's concrete managerial work. From the perspective of totality, even the loss of the responsibility for producing results may only be a slight change. In those situations where the duties of subordinates and supervisors are combined, the status of the supervisor is still strong, in that his or her earlier duties cover the work of the subordinates, and not vice-versa. (See Koskinen 1995, 122—123.)

**The status of employees' representatives**

The new forms of work have also created new problems at the collective individual level. The increased possibilities for local agreements have emphasised the status of shop stewards, in turn the individual agreement described above has declined it. The status of shop stewards in working life has however changed over the past few years. Organisation is still powerful in traditional jobs. The situation is however changing, especially in information technology and in the other fields of the new work. The system of shop stewards requires the assurance of the employees' statuses for it to function. Employees that have no certain permanent position (fixed-term employees or those with changeable positions), or those who continuously aspire for another position, are not enthusiastic to organise into trade unions.

In modern new companies, formal representation based on a certain status (a shop steward) appears to be losing its position to representation by a more flexible ad hoc-type of employee group. This is seen clearly in the ECA: besides regulating the status of shop stewards, the position of elected employee representatives is also regulated. Elected representatives would represent employees in those cases where, by virtue of a collective agreement, the employees are not entitled to select a shop steward or where there are

no regulations on shop stewards in the collective agreement. Employee representatives would be elected for each personnel group.

A representative for each personnel group is traditionally elected based on the Act on Cooperation On Companies. The more closely an employee forms a relationship to his or her company, the more likely it is that representation will be as informal as possible. This idea for representation can, in the long-term, lead to everyone representing himself or herself. On the other hand, different teams or groups, for example, represent themselves rather than delegate their representation to shop stewards.

Moreover, in the negotiations over jobs, a new kind of flexible method of working produces new situations. Employees may emphasise their own input in negotiations more than they did earlier. Thus, a collective presentation can become more seldom than it was earlier. Mutual solidarity is also difficult to realise. All kinds of collectivity become the focus for informed purposeful consideration more than they were earlier. Membership in trade unions etc. becomes based on whether membership brings some kind of concrete benefit that is known in advance. In addition, collective disputes in the new fields may decline simply for the reason that it is difficult for employees to find common interests that are sufficiently great and effective in the long term.

Collective labour law has been in a strong position in Finland. This status is based on the collective modes of operation on the labour markets. A great part of future working life can certainly continue to be described through collective features, collective agreements, national labour organisations for both parties, etc. On the other hand, the new working life in the future can also be described through the attributes of individualism, personal agreement, tactical organisation or allegiances, etc.

## The level of the employer

From the perspective of an employer, the new work has brought many different kinds of questions to the fore. The issue has included situations related to the creation of networks (different memorandums of association, etc.), the transition to flexible organisation and modes of production (externalisation, division into profit centres, self-direction, etc.), the organisation of supervision (a learning organisation, network teams, development groups, etc.), the limits of entrepreneurship (incorporation, merging, subcontracting, partnerships, decentralising the organisation, etc.), and employment relations policy (employee/team/partner, changing duties, the decision-making authority of employees, the status of a supervisor, job training, relocation, key employee policy, projects, etc.).

In the background to the changes taking place are especially the increased small business-like modes of operation in large companies (incorporation, departmentalisation, and shared responsibility), and the bipartite division of a

company structure into an internationally large company and flexible small businesses. Between these, the issue is over advancing many different kinds of networked cooperation (making subcontractors competitive, cooperation in subcontracting, partnership cooperation, and strategic network cooperation).

> In recent years, company structure has perused flexibility: a low and changing organisation in its hierarchy. The modern organisation is a certain kind of amoeba that has no permanent structure; it lives according to its operational environment. An extreme example is a virtual company that does not even have its own production facilities, stores, equipment, etc. Here, the concept of a company becomes grey, the allocation of obligations becomes more difficult, the identification of employers can be problematic, etc.
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> The business world has networked. Companies concentrate on their basic expertise, and the functions that support it are often bought from others. Large companies form the core of economic life; the companies that support their operations form the periphery. In this setting, the companies on the periphery are subordinated to the companies at the core (subcontractors). Companies have also decentralised internally. The thought has been to create small entrepreneurial-like units within a company that would be more innovative than the parent company. From the perspective of employers, incorporation means the dismemberment of the employer subject. Real entrepreneurship and its legal forms do not necessarily come together in this way.
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> Different company networks, transfers of employees, and the division of employers hamper the identification of the relationship between an employer and an employee. A contract of employment, for example, could be agreed with a company in a group that only has the function of taking care of personnel matters and management within the group - without the company itself having any independent business operations. In this case, the concrete content of an employment relationship is formatted in the other companies of the group.
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> The task of an employer is to build the operational prerequisites for the performance of work (procure resources, co-ordinate cooperation, set objectives). In this way, the content of an employment relationship is determined by many other actors rather than simply by the relationship between an actual employer and an employee. The commissioning of work is often stamped by the existence of a complicated network of cooperation. Through this route, the concept of an employer has already extended into the internal questions of groups. In the future, even more often the question, when setting obligations at the level of contracts of employment, will be about the status of an employer's contractual partners. (See Huhtala 2000, 84—85, 134—135 and 330.)

Franchise companies are one example of the new type of networked companies. As a network, they represent quite a simple model. Their related problems in labour law have especially concerned the identification of the employer (franchise entrepreneur or franchise provider), the status of a franchise entrepreneur (a real entrepreneur or only an independent entrepreneur compared with employees), and transitions to franchising (starting new business operations or the transfer of an undertaking).

> A franchise entrepreneur is legally an independent entrepreneur, even though a quite detailed agreement might have been made in a contract with the franchise provider on, for example, the business idea, the trade mark, entrepreneurial training, cooperation with the franchise provider and the franchise chain, etc. At least the type of entrepreneur that has his or her own employees cannot be compared with the employees. The franchise provider normally has an external relationship to the employees of a franchise entrepreneur. The instructions coming from the franchise provider concerning business operations can only temporarily affect the personnel policy practised by the franchise entrepreneur.
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> Seeing the transition to franchising as the transfer of an undertaking requires that the economic entirety has been transferred to from one legally defined subject to another, who uninterruptedly begins to continue the business operation in question. The issue will be over a change in employer. A transition to franchising does not generally mean the transfer of an undertaking – rather it simply means transferring the requirements (the business concept) for a business. If, however, the operational totality itself is transferred in connection with the same transition (for example, operations continue on the same premises with the same equipment and employees) the issue is of a two-phased transfer between the previous and new entrepreneurs. This two-phased nature of transfer is based on the fact that the transition takes place via the franchise provider. The franchise provider, if that provider does not begin to practice the operation in question, is thus however an outsider with respect to the transfer of the business.

At the level of the employer, the new work has problematised the traditional use of an employer's power of decision-making. Nowadays, the issue is the human-centred management, which is to be realised from bottom to top. (See Fahlbeck 1997–98, 1027.)

> Whilst self-direction has been emphasised in the organisation of work, the employers right of direction is realised indirectly. The possibilities of guidance and supervision in direction have emphasised teamwork factors, etc. The role of the employer in creating operational prerequisites is emphasised in the guidance of a company's labour force. However, an employer retains his or her duties with respect to legal responsibility. For example, when examining

> the extent of the right of direction beyond the limits of legal persons in a company group, consideration has to be given to its factual realisation. The solidarity of companies in a group is based on the fact that some have the possibility to direct others. If only the existence of the possibility for management and supervision is central, no formal detachment of companies in the group could provide any significance in identifying the right of direction. (See Huhtala 2000, 148.)

Changes have also been seen, among other things, as an increase in the contacts between companies, and as the ascendancy of small to medium-sized businesses. Nowadays, it is not necessarily simple to resolve who is the employer, who decides what and how the cooperation of employers or even cooperative employment is to be evaluated in each case. Moreover, the creation of network contacts has essential significance when evaluating, for example, the composition of the authoritative body in a company, calculating the number of employees in a company, or when identifying a bankrupt company and generally the limits to its economic ill-effects. (See Fahlbeck 1997—98, 1022—1024.)

> The term employer describes the simplest model in which an employer operates as an individual and separate organisation or as a natural person. In the total employer -concept, there are several actors that form such a tight entirety that there is reason to treat them as one party of an employee. The term total company describes situations in which the creation of totality generally requires the support of special regulations (for example, the obligation to relocate an employee within the other parts of the entire company). The problems relating to these are seen in labour law especially in relation to focussing responsibility and identifying the transfer of an undertaking.

The creation of employer networks has further hampered the identification of a factual employer. For example, networks can agree mutually and with the proper employees that the employees work for different working cooperatives in accordance with the needs of the work in question. Legally, this in principle limits the freedom of independent organisations. This has led to many problems for labour law about, for example, the notices of dismissal and the relocation of employees.

> Traditionally, there is only one employer as a partner in an employment relationship. In this case, the obligations of an employer do not extend beyond the legal procedural limits of a company. However, certain requirements regarding the common responsibility of several employers in fulfilling the obligations of an employer have been accepted in legal literature and in practice. In these cases, the question for labour law has been one of

> initially considering formally independent companies as factually the same employer (total employer) or otherwise answerable for certain obligations in defined conditions with respect to their employees (total company.)
>
> The legal forms of companies do not have any independent significance in determining the totality of a company. On the other hand, authority simply based on ownership is not sufficient to extend the obligations of an employer from one company to another. The totality of a company should form a business and operational economic entirety. The use of authority should also cover the general personnel policy observed in the company. Simply the existence of a subcontracting relationship between companies does not mean that the companies should be treated as one entirety. If companies do not have one single person that performs work simultaneously in several companies belonging to the same totality, it generally indicates the separate nature of operations. (See Valkonen 1998, 69 and 84—88.)

Companies have also moved closer to one another in their personnel policies as a result of internationalisation and networking. Although there are many problems associated with hiring commonly shared employees, these arrangements are in use. Shared employment can be used, for example, in the relationships between networks of companies as with those companies that have subcontracting relationships. In practice, common employees or the transfer of employees especially between those companies with subcontracting relationships can be expedient.

> An employment relationship has long been characterised as a bilateral relationship. This traditional point of departure only partially works with shared employment, and correspondingly with making contracts for teamwork. If, for example, shared employment only means the common assembly of independent actors simultaneously to make a contract of employment with one employee, it does not form an independent entirety.
>
> The agreements between those with employer status on the use of an employee (realisation of the right of direction, the formal fulfilment of an employer's obligations, etc.) in relation to shared employment are particularly central. On the side of the employees, shared employment corresponds to a teamwork contract (join commitment to perform a certain job or achieve a certain result). A teamwork contract is broken up into separate contracts of employment.

The decentralisation of decision-making has also been emphasised in relation to the new economy. The legislation on labour law has traditionally brought forth cooperation in companies and the representation of personnel in the administration of companies. A new feature in relation to the organisation of teams is the canalisation of the employers' power of management and responsibility downward. In labour law, the ultimate responsibility set in legislation on an employer is born by that employer. An employer cannot transfer this responsibility to his or her

employees. Overall, the question is that the representatives of an employer get more responsibility in his or her organisation. For example, those in managerial positions can have a tight commitment to the management of a company in different income-related systems.

> The attempt to lower hierarchy relates to the decentralisation of decision-making. Lowering hierarchies has affected, for example, the level of the supervision of work, in other words the representation of an employer. Groups, cells, and teams have been given greater operational possibilities than earlier. Lowering the hierarchy is a matter that belongs to the unilateral decision-making authority of an employer. It usually has an essential influence on the status of personnel and therefore it is normally handled through procedural cooperation. However, the identification of an employer is a prerequisite for a working community. The powerful extinguishing of a hierarchy makes this more complicated. On the other hand, it has been emphasised that the decision over the rights of employees often requires the decision of an actual employer. Other employees are not suitable to decide on these issues.

The questions related to the authority for the management and supervision of work have arisen with the rise in the new work. Literature has dealt with, among other things, employees who put the creation of new information into practice. Their work is seen as requiring greater freedom (autonomy) than that of normal employees. It has even been stated that an employer should offer more opportunities than limitations to those innovation-oriented employees. In many ways, current technology also enables the supervision of what an employee achieves. Employers no longer need to concretely supervise and direct the performance of work to the same extent as they did earlier. On the other hand, autonomy increases the need to demand loyalty from an employee. Achieving the use of the silent knowledge has been considered especially central. On the one hand, the question has been about respecting the practices at the place of employment and, on the other hand, about knowingly profiting from the earlier skills of the individual.

> As with an entrepreneur, an employee can also fail as a result of increased autonomy. Punishing a failed attempt is not applied to the culture of the working community, where it is hoped that employees are innovative and seek something new. On the other hand an employer has undisputed authority to give notice of dismissal, for example, because of the misuse of networks, excesses of authority, and so on. There are strong and weak links in every organisation. The objective of an employer is naturally to reduce weaknesses and to increase the strong links. However, the legislation on labour law has traditionally set the liability for social employment as the threshold for the dismissal of an employee.

Organisations are not in themselves innovative. However, an organisation can ease the creation and progress of innovation. Active people and styles of leadership are central to the creation of innovation. Senior management and its leadership of the participating people create the prerequisites for development. The refinement of ideas and the creation of new knowledge require both official and unofficial discussion and communication. Moreover, success requires active people at different levels of hierarchy. Process-like entireties that pay attention to management, structured modes of operation, clear decision-making processes, and consider a trusting and supporting atmosphere ease the progress of development. On the other hand, barriers between departments, interference from responsible personnel or their indefinite determination, poor mutual familiarity as well as excessive urgency and resource problems hamper the progress of development. (See Forss 2000, 23—29.)

> The promotion of innovation relates to the means for defining the internal relations of an organisation (e.g., responsible personnel), duties (e.g. to produce information, to communicate), the organisation of industrial cooperation, the representation of personnel on the organs of management, etc. On the other hand, the issue is also simply of the means to act, such as for different bonus or idea incentives (unofficial work culture). The ECA does not however include any direct or related obligatory regulations on development.

The externalisation of work in company operations has included different situations of subcontracting: transferring to subcontracting, changing a subcontractor, and ending subcontracting. The use of a labour force by a company has clearly divided into a core labour force, periphery employees, and an outside labour force. The latter includes those in the service of subcontractors, agency employees, and the self-employed. Because of this differentiation of the labour force, the decision-making authority of an employer has become more complex. Moreover, many situations have been created that are legally difficult to identify. For example, in connection with subcontracting and its related competition in making offers, there has been a long discussion about the nature of the actions as a transfer of an undertaking.

> Besides decision-making becoming more difficult, the problems in identifying the nature of actions have increased. Nowadays, business life takes new methods into use more often than it did earlier, even before their legal content has been clarified. The question is of the primary nature of economic decision-making. These problems also exist in relation to a network. For example, a network agreement has a diversified legal character in labour law.
>
> Reorganisation has also dimmed the traditional borderline between employer and entrepreneur. This situation is also seen in the use of current

concepts (compared with an employee, self-employed, quasi-entrepreneur, a contract labour force, etc.). Numerous intermediary forms have been created between an employee and an entrepreneur. This situation is even seen in networks, where the labour force on offer is ready to do any work in whatever legal form. This has awoken conflicting thoughts in labour law. On the one hand, in relation to the unclear situation there is the desire to respect the individual solutions of the parties involved and in turn to contract the mandatory aspects of labour law. On the other hand, it has been presented that the aspects of labour law should be expanded so that, with respect to the party in the weaker position, the performer of work could be protected. (See e.g. Supiot 1999.)

Making the decision-making authority of an employer compatible with the rights of employees is a central requirement in the new managerial culture. Here, the issue is over balancing between flexibility and social security. This same problem presents itself even in relation to the freedom given to employees in their work. Freedom does not necessarily bring social security. Generally, talk has begun about identifying the social conditions and requirements of working life. For this purpose, the strengths of the Nordic welfare state, among other things, have been emphasised.

# The new work and its regulation

## New demands

Evaluation resting upon the traditional performance of work have become problematic as a result of multi-skilling, team and project working, an external labour force, etc. The borders between the different forms for the performance of work have dimmed. For example, several different alternatives have been presented for drawing the borderline between an employer and an entrepreneur. Matters of this kind have increased the need to form a new framework for performance of work. The possibilities of the current regulatory system to face the questions created by this new situation have generally been presented above. The questions of labour law form only a part of the regulatory system. In this context, it is possible to concentrate only on these and to leave the questions of taxation, unemployment, and pensions out of the presentation.

The central issue in the new "information technology" is primarily the spread of so-called network-like modes of work. Although the performer of work is formally in the service of someone, he or she increasingly performs work at least

intermittently for another. Team and project working, as with independent operations, increase the objective for continual individual learning and refreshment by combining entrepreneurial-like activity and individual experience. Another great change relates to the content of work. With the markets, the question is of a fight for brains. In itself, an employment relationship is understood as one expense among many others. Employees themselves have to create increased value in a determined market according to the needs of customers (e.g., customers increasingly want certain kinds of experiences). The question is over continually removing expenses (re-engineering). A third central issue is flexibility. The traditional factors intended for the protection of employees such as a minimum wage, the regulation of working hours, and the regulations on job security are often seen as barriers to the growth of a company.

Market forces indirectly require bringing down production costs. At the same time, the question is over increasing the freedom of company management. This is seen at the individual level as an increase in short-term contracts, as the growth in working part-time or for a fixed term and being called to work as necessary, as the hiring of an agency labour force, as the growth in individual remuneration, as the dimming of the borderline in working hours, as the increase in night and weekend shifts, and as the accentuation of the conflict between work and family life, etc. This development at the collective level means a reduction in belonging to a trade union and in the power of the trade union movement as well as more decentralised, individualised, and independent negotiations than earlier. (See Blanpain 1999, 57—66.)

> The recommendations for the reform of labour law concerning the new work are frequently restricted by the rejection or the dismissal of regulation. Particularly regulation in the teleworking and labour markets is presented in relation to the deregulation. At the same time, emphasis is placed on, among other things, the promotion of the culture of entrepreneurship and easing the establishment of new companies, as well as on supporting companies in their efforts to cut expenses, improve their flexibility, and use technology.
>
> The protection of an employee and the traditional principles of the welfare state do not, from this point of view, represent values that can be preserved. The issue is more of automation and the reduction in the need for a labour force, the individualisation of companies, the use of information in production and the globalisation of markets. Knowledge and information now function as the motors for productivity, evaluation, and competitive ability. The infrastructure of the new economy formed through networks has neither a centre nor values: the most important thing is the performance required by customers. (See Wilenius 2000.)
>
> Supervising the interests of others is no longer such a matter-of-fact as it was earlier. The public and visible discussion on flexibility, the economic recession, and the more forceful commitment than earlier to one's employer

> have together created a situation in which even an employer breaking the law is understood. We are perhaps moving from the realisation of the principle of protection of an employee towards "the principle of understanding an employer". (Vuorinen 2000, 7.)

With the increase in the possibilities for making local agreements, the generalisation of transitions and commitments, and the diversification of activities in working life, the guidance of labour law has become more problematic. Correspondingly, the significance of making a contract has grown. Management and supervision have become the focus for different arrangements. Thus, the traditional nucleus of labour law has been broken — at least for some work and employees. This development already essentially hampers the content of labour law and its status among the different means for regulation.

## The new operational environment

Labour law has an important position in the regulation of working in networks. Regulations are needed for, among other things, the relationships between the different actors. The issue is not only over actual legal norms and over different official or unofficial regulations but it is also over the dominant practices at both the collective and individual levels. In Finland, also the Employment Contracts Act preserves regulations and even increases them. On the other hand, the means for the flexibility of working life have created pressure to re-evaluate the regulations for labour law. Hardly any consideration has been given to this point in the ECA. For example, the problems of classification created by flexible forms for the performance of work are not handled in the Act, even though the problems in question have been presented publicly and an incorrect resolution in this matter can possibly result in large economic consequences.

The nature of relationships between employers and employees in the new work has been discussed in recent years. The continual shambles both generally in economics and at the level of entrepreneurship appears to increase the desire and the trust for cooperation. The fast changing life of business especially requires the possibility to agree on matters quickly. On the other hand, in this situation the existing social prerequisites for activities has to be ensured through a general framework.

The EU-regulation has, to some degree, affected the national labour law. These effects have been seen by us especially in connection with the transfer of an undertaking. It is worth noting that this question has been emphasised in EC law as for the protection of employees. When interpreting the directive on the transfer of an undertaking, the interests of business life and employees are combined.

> The Treaty of Amsterdam states the fundamental rights and non-discrimination as the points of departure in respect to working life. The focus in EU law has been on the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour as well as the development of human resources with a view to lasting high employment and the combating of exclusion. A Coordinated Strategy for Employment, the Employment Guidelines for 1998, the European Works Council Directive (1994) and the new Directive on Collective Redundancies (1998), among other things, have been accepted in respect to working life. Moreover, the Framework Agreements on Part Time (1999) and Fixed Term Work (1999) was approved as a result of the social dialogue among labour organisations. (See Blanpain 1999, 70—84 and 121.)

Many parts of the labour law have to be re-evaluated. Which questions and what kinds of regulation are significant in the future? How can a changing working life be best directed? For example, the arrangements for agreements have become emphasised in many ways. Many new modes of operation (networks, for example) have hampered the identification of the traditional relationships and issues of labour law. For example, the borderline between employee and entrepreneur has become unclear, identifying an employer has become more difficult. Entrepreneurship has received new closely parallel forms for the work of an employee (for example, contract labour). In relation to the new work, it has become more difficult to conduct the traditional activities of trade unions (e.g., transitions and multi-skilling prevent commitment). Also the spread of teamwork has affected the traditional hierarchy of jobs by changing, among other things, the status and role of supervisors. The right of employers to the management and supervision of work has received new content as a result of the increased autonomy of employees. Supervision is no longer the concrete issue of instructions. The new working community-like modes of operation have been seen especially in the KIBS fields. The similar direction is seen also in many other activities.

Internationalisation has increased both the voluntary operations of associations and the role of state authorities (legislation). Economic growth is thought to take place on the global international market. Internationalisation has also made the status of labour market organisations more difficult. Economic changes increasingly occur simultaneously everywhere. Mutual dependency also makes national labour policy increasingly difficult. These affects are also seen at the business and individual levels. Companies transfer either totally or at least partially from one country to another. At the level of the individual, the issue has especially been over the international networking and subsequently over the new forms of jobs.

## Flexibility and protection

The central difficulties for labour law in the new economy can be approached by assessing the compatibility of flexibility and protection through, among other things, local agreements, continual employment, and the activities of safety nets. Here, the central criteria for an evaluation of operations are economic efficiency, social justice, and equality. (Kasvio & Nieminen 1999, 153–156.) The development of the system for employment relations requires the preservation of assurance and the ability to forecast on the labour markets from the perspective of employees, and equanimity in the development of costs from the perspective of employers (Kasvio & Nieminen 1999, 186). A network economy also requires trust between the respective parties. If this trust does not exist then everything will have to be assured through complex legal agreements. (Kasvio & Nieminen 1999, 213.)

Several regulations in labour and social legislation do as such have at least a theoretical link to the flexibility of the labour markets. These regulations concern, for example, hiring employees, fixed-term contracts of employment, working hours, dismissal, and lay-offs; social legislation includes regulations on early retirement, health insurance (e.g., maternity allowance), and family leave. The compatibility of flexibility and protection becomes concrete, for example, in project working.

Project careers have become more common in Finland, even though the trade union movement has been critical of so-called short-term work. There are also good aspects to project working (easing employment, increasing capital knowledge, etc.). Moreover, the legislator has improved the status of those performing short-term work: equality for the different forms of the performance of work has increased, obtaining benefits has eased, etc. On the other hand, companies themselves are more committed that they were earlier to their key personnel (sharing ownership, partnerships, long-term contracts, additional pension benefits, etc.). The differentiation of the labour force at the level of contracts of employment is seen as increasing the flexibility of remuneration and hampering the solidarity of wage policy. (See Kasvio & Nieminen 1999, 225—230.)

The new society is based on elements that differ from its earlier ones. A developing network economy includes (in the idyllic model) a light state, an active civic society, well-functioning household economies, and a high rate of participation by the population in the performance of work. A high degree of trust and benefiting from the use of social capital is required by all these partial systems. (Kasvio & Nieminen 1999, 239.) The new society in working life requires both the flexibility of the labour markets and sufficient mechanisms for protection: the project-like performance of work, unlimited working careers, a growth in social capital expertise, and the preservation of safety nets. The development of networking requires a new attitude to the use of an external labour force, to the transition to subcontracting, as well as to self-employment. Even with the questions of collective agreements, an increase in flexibility requires fulfilling the traditional criteria in

matters relating to, for example, social capital and relationships of trust. (Kasvio & Nieminen 1999, 331—335; Suomi tietoyhteiskunnaksi 1997, 10.)

With respect to the regulation of employment policy and labour administration, the issue is over development in accordance with changeable conditions and objectives. Here, the central points are the new means for performing work, unlimited careers and the training services that support them, flexibility in working life and the labour markets, as well as the employability of the citizens (Kasvio & Nieminen 1999, 198). The issue is also over emphasising the factors of success. These include good internal and external communication, innovation as a duty affecting an entire company, strong key personnel, high-level management, as well as commitment and loyalty. (See Miettinen, Lehenkari, Hasu & Hyvönen 1999, 12—14.) The matters central to the performance of work in the new work include digital knowledge, multi-skilling, social competencies, management competencies, quality consciousness, creativity and entrepreneurship. (Schienstock 1999, 4.)

> The central problem of labour law created by the new work is to combine the special status of the performer of work and different transitions. Currently, our legislation does not regulate the transitions of an employee. The regulation of transition is seen indirectly only through the regulations concerning the loyalty and competitive activities of an employee. The less there is of this kind of regulation, the more the decision-making authority on allowing and enabling concrete transition rests with officials. Recently, legal literature has emphasised the possibility of a party to agree, in some situations, on the status for the performance of work. However, the current situation causes insecurity and uncertainty with those who concretely have to ensure the correct forms for the work.

The realisation of a certain concept of justice is central in state organisation. The state is responsible for ensuring that the legislation on employment relations, social security, and the general attitude at the national level ("social solidarity") are sufficient. The state is also responsible for a sufficient level of legislation on cooperation (especially the realisation of the obligation to consult and inform). The state is also responsible to ensure that both flexibility and social protection are optimally realised at the level of employment contracts. The question is of the general, not the detailed or concrete, responsibility of state authority.

The combination of the flexibility and sufficient protection requires legislation, and the cooperation of collective agreements and contracts of employment. The question may be of building trust, of regulating commitment, etc. Many special situations and fields have to be considered when regulating the issue. For example, with respect to the KIBS fields, it is necessary to evaluate the share taken by collective agreements (are they needed and if so, what kind), the significance of labour law legislation (which regulations on contracts are necessary, etc.), and the content that should be included in contracts of employment (the terms, etc.).

This kind of regulation attempts to achieve a flexible social system of production

and a high level of social peace between the labour force and employers. The most concrete issue includes ensuring job security and long-term employment relations and their related questions of loyalty and input. The issue is also over the realisation of trust as well as the realisation of vision and modes of management. (See Hollingsworth 1997.) In many ways, this system of management resembles company welfare capitalism. The essential parts of this system are intensive familiarisation with the company as well as training at work, aspiring for unanimity in decision-making, employee loyalty and long-term contracts of employment, taking advantage of benefits based on the duration of an employment relationship, safe rotation in jobs, flexibility combined with protection, and sufficient collective agreement and participation.

Each new system includes the old. The traditional perspective in labour law is the protection of employees, and, in turn, the achievement of a new flexibility. Their combination is possible and many aim for it. The issue in balancing between the protection of employees and flexibility is also about bringing together determination and agreement (cooperation) and individual and collective interests.

> For example, Blanpain has stated that on-top fundamental social rights (the prohibition of child labour an of forced labour, trade union freedom, free collective bargaining, equal treatment) and on-floor minimum standards are the principles of regulation (see Blanpain 1999, 91).

## The prohibition on discrimination (basic rights)

The right to get organised, the right to negotiate and the right of industrial action as well as the neutrality of state power have traditionally been emphasised on the collective level as basic rights of working life. On the individual level, central points of departure have included limited freedom of contract, protection of employees as well as mutual loyalty. These have a central position also in today's working life. In addition to these, however, in recent years general obligations mainly affecting the employer, such as prohibition of discrimination and the demand for equal treatment have started to be emphasised.

> The basic rights of working life have appeared in many international documents. For instance a declaration of basic rights has recently been approved in the EU. It includes articles on human rights, rights concerning working life, social security, environmental protection and consumer protection. In the summer of 2000 the OECD approved recommendations broadly affecting the activities of business, such as rights concerning working life, environmental protection, consumer protection, bribery as well as issues such involving science, technology and competition.

The ILO accepted a declaration in 1999, which includes central basic working rights. These include the right to organise, the prohibition of forced labour, prohibition of the misuse of child labour as well as prohibition of discrimination in working relationships. The Universal Declaration of Human Rights of 1948 affects human rights broadly, ranging from security and freedom of opinion to democratic government. In addition, in 1999 Secretary General of the UN Kofi Annan proposed the initiative "Global Compact" for the development of human rights, working conditions and environmental protection.

The general obligation of an employer as well as the prohibition on a discrimination and the requirement for impartial treatment are believed to have an important position in defining good working practices, particularly in the future. Moreover, the growing flexibility and atypical employment relationships increase the need to evaluate whether an employer treats his or her employees impartially. In the argumentation of labour law, the general obligation in question also relates to the discussion over the status of fundamental rights or the perspectives for fundamental-type rights. Although an emphasis on individualisation in working life – in other words, different treatment – an employer, on the other hand, has to respect the prohibition on discrimination and, moreover, he or she has to be impartial. From the perspective of an employer, impartial treatment is demanding obligation because it extensively affects his or her daily activities.

According to the new Constitution, no one may be given a different status because of gender, age, origin, religion, conviction, opinion, health, disability, or because of any other reason related to the individual, without acceptable grounds. There are also regulations on the prohibition of discrimination in several international agreements to which Finland is committed. These include the Covenant on Civil and Political Rights, the Council of Europe Convention on Human Rights, the European Social Charter, the Convention on Economic, Social and Cultural Rights, and the ILO Convention on Discrimination on the Labour Market and in the Practice of a Profession.

According to the Convention on Civil and Political Rights, all people are legally equal and entitled, without any form of discrimination, to the equal protection of the law. The law will prohibit any form of discrimination and guarantee people equal and efficient protection against discrimination due to race, the colour of one's skin, gender, language, religion, political or other belief, national or social origin, possessions, and birth, or against any other basis for discrimination in status.

The EU reached a decision on a new directive prohibiting racism in June year 2000. However, the directive dealing with discrimination at work still has to be handled. The directive prohibiting racism is applicable in both the public and private sectors. The aim is to promote fundamental rights and equality for minorities based on their racial origins or ethnicity in the fields of, for example, working life, social security training and health services as well as in obtaining and offering goods and services. The aim of the proposal

for a directive on discrimination at work is to ensure impartial treatment in working life.

Traditionally, many have had a restrained reaction to the fact that objective-oriented obligations should be commonly expressed in law. However, according to the ECA, an employer shall first promote his or her relations with employees and mutual relations among employees. The latter is intended to mean, for example, those activities that promote a good working atmosphere. Secondly, according to the general obligation, an employer shall ensure that, in individual relationships of employment and when altering the modes of production and working methods, employees can perform their work in the new conditions. This means, for example, guidance, familiarisation, and training as demanded by the changes in the work. The obligation does not affect simply those employees threatened with dismissal; it affects all employees in all the phases of their careers. Thirdly, an employer shall otherwise aspire to promote the opportunities for an employee to develop according to his or her ability in order to promote his or her career. Thus, caring for an employee's career is also an employer's obligation.

The general obligation describes the current activities of a good employer. However, not necessarily all employers operate in this way. The general obligation is not presented in criminal law as sanctionable. It is, however, in force as a contractual obligation. Moreover, it can later be used as an additional basis for its related sanctionable obligations, for example, work discrimination, as well as be used for possible offences against the obligations in an employment relationship. The general obligation for example can hamper an employment contract being terminated on the basis of an inability to cooperate. It can also affect assessing the realisation of job security, sufficient familiarisation with work to avoid dismissal, compensation for training costs, etc.

The general obligation affects all employers and all those acting on behalf of an employer. It has an affect at all levels in an employer's organisation. An employer shall arrange his or her organisation so that it will pay attention to the obligation in question and so that its realisation will be supervised. The general obligation requires an employer to monitor and know what takes place in his or her place of employment.

According to the ECA, an employer may not, without justifiable reason, set different statuses on employees because of age, health, national or ethnic origin, sexual orientation, language, religion, opinion, family relationships, trade union or political activity, or for any other comparable factor. The prohibition on discrimination based on gender will be presented for further regulation in the law on equality between women and men. An employer also has to observe the prohibition on discrimination when hiring employees. The list of bases for discrimination is not exhaustive. Giving employees different statuses without a

justifiable reason because of any other factors comparable to those in the list is also a prohibited discrimination.

> The regulations in the Constitution and the criminal code are the background to the prohibition on discrimination. The point of departure in the Constitution is the requirement for judicial impartiality and factual equality (similar treatment in similar cases). Impartiality is significant both in granting benefits and in setting obligations. Any comparison is usually carried out between the employees in the service of the same employer. However, the points of focus can also be the employees in the service of other employers – in other words, the common treatment of employees.
>
> Setting different statuses requires a justifiable reason related to the work. For example, the nature of the work may entitle giving employees different statuses (religious teachers for example). Moreover, discrimination is not prohibited for the positive special treatment of employees or groups of employees that are considered to have special needs of protection because of age, foreign identity, disability, family obligations, or social status. The prohibition on discrimination is also applicable in terminating a contract of employment. The prohibition is also significant in the decision-making on the duration of an employee's contract of employment (for example, the division of tasks and the allocation of employment benefits).

According to the ECA, no terms of employment that are more disadvantageous than in any other employment relationship may be applied simply because of a fixed-term or part-time relationship of employment unless there is a justifiable reason. This regulation is based on the directives for part-time and fixed-term work.

> With respect to both part-time and fixed-term employees, the principles according to which rights and obligations are defined in relation to the working hours performed should be observed according to the possibilities available. However, a certain period of service, the duration of work or earnings can be set by Member States on a formal basis as the requirements for certain terms and conditions of employment. Member states, however, must aspire to prevent the misuse of repeated fixed-term contracts of employment. Impartiality in the status of fixed-term and part-time employees is also secured though obligations of an employer to offer work to part-time employees and to provide information about available jobs to both part-time and fixed-term employees. An employer, according to possibilities, also has to promote the opportunities for fixed-term employees to participate in supportive training for professional skills, career development, and professional mobility.

The new regulation aim to normalise the atypical forms of the work in question. Despite this, employers can still agree on part-time and justifiable fixed-term contracts of employment whenever they like. The regulations on impartial treatment do not alter the basis for agreeing on the contract in question. In the ECA, employers are given the obligation also to otherwise treat their employees impartially. An exception from the requirement for impartial treatment is only possible for an acceptable reason.

> The obligation for impartiality requires consistent action and decisions on the part of an employer with respect to his or her employees. The regulation is significant, for example, when evaluating whether the grounds for terminating a contract of employment have been fulfilled. Here for example, the practice of warnings has to be observed consistently and sensibly. On the other hand, the use of incentive wage systems is still acceptable if discriminatory or other inappropriate reasons do not affect the determination of remuneration. Different treatment can be based on the nature of the work or the working conditions.

An offence against the requirement for impartial treatment cannot be punished. An offence against the requirement is, however, a breach of contract and leads accordingly to consequences. For this reason, the extent and daily obligation of the requirement in question is significant at the level of employment contracts. With respect to the realisation of this obligation, as in relation to the general obligation, an employer should closely monitor his or her own practices.

The prohibition on discrimination has long been emphasised both nationally and internationally. Moreover, the last few years have seen emphasis on the requirement for impartial treatment. Both obligations have gained a central significance with the diversification and increased flexibility in employment relations and working life. In practice, the requirement for impartial treatment however extends the prohibition on discrimination even further into the daily issues at places of employment. From the perspective of employees, the general obligations presented above form a significant basis for demanding both fair and consistent treatment. From the perspective of an employer, the issue is also one of significant obligations. An employer also has to follow his or her own practices. At the general level, the regulations describe a flexible social means of production. Besides general fairness, they give an employer the fundamental type of legal obligation to ensure the interests of his or her employees.

## The new points of emphasis

Continuous improvement, incremental innovations and continuous learning have been stressed as the new points of emphasis for the system of regulation. The means for this kind of development includes the division of work and promoting

transitions within work. In particular, the connections between the policies for innovation and the labour market should be increased (e.g., the state should act as a cooperative partner and should support different training and innovation processes in companies more than it did earlier). (See Schienstock 1999, 19—21.)

> The number of actors affected in working life also increases in a new work. For example, in his evaluation of the effects of the information society on working life, Fahlbeck has distinguished 12 different actors: (1) employer, (2) employer organisations, (3) job applicants, (4) employees, (5) trade union members, (6) trade unions, (7) consumers, (8) manufacturers, (9) citizens, (10) government, (11) legislators, and (12) the courts. Moreover, many different consultants, single entrepreneurs, agency labour forces, and actual entrepreneurs have to be remembered, so that everything in one way or another associates with regulation as a totality. (See Fahlbeck 1997—98, 1025—1026.) As such, the actors mentioned by Fahlbeck are also traditional in working life but in the new work, the connections between them are more routine than they were earlier.

One point for the new regulation is accepting the status and interests of the other party. Employees and their associations have to recognise the need for modernisation in order to preserve competitiveness and, on the other hand, management has to recognise the significance of employees and the trade union movement in modernisation and the development of competitive ability. A deficiency in company management and experience, a lack of resources, poor wages and working conditions, as well as the poor protection of employee rights are usually the "secret" for the poor achievement of a company. However, training and decentralised decision-making correlate positively with innovation and the success of a company. For example, the favourable nature of entrepreneurship and the inclusion of employees in the administration of a company are not contrary to one another. (See e.g. Fashoyin 2000, 8—9.) Result-related income, individualised working hours, leaves for holidays, sabbaticals, and relaxation, the obligation for professional training, the right to a good working community, investments in health, voluntary pensioning, etc., are central to future working life.

> Legislation as well as different agreements and practices regulate the demands on working life set by the new work. The Employment Contracts Act defines the main features for making a contract (freedom of form, notification of its central terms, a separate agreement on a trial period, a fixed-term contract of employment on justifiable grounds, etc.). The same Act also determines the rights and obligations of employers and employees (the obligation of an employer to provide work and pay a wage, the obligation to observe job security, contractual commitment, the obligation to observe generally binding collective agreements etc., the obligation of an employee to follow the instructions of an employer within the framework

of the employer's right of direction, the obligation not to initiate competitive activities, the duty to be loyal, etc.).The ECA also sets certain limits to changing a contract of employment (minor changes by virtue of the right of direction, essential grounds by the termination of a contract of employment). The Act also determines the grounds for terminating a contract of employment (personal, as well as economic grounds).

A collective agreement is usually agreed between employer and employee organisations at the national level. In turn, a generally binding collective agreement is intended to affect unorganised employers operating in the field in question. There are nowadays many regulations in collective agreements about the right to agree otherwise, and some regulations about the performance of personnel arrangements. The multi-skilling and flexibility required by the new work are taken into consideration to some degree in the regulations on remuneration in the collective agreements.

The arrangements for personnel have generally had no central significance in collective agreements. Usually, it only states an employer's right to make changes based on his or her right of direction or dismissal and the affect of these changes on an employee's wage. However, the regulations on wages in collective agreements do enable more consideration of an employee's personal factors than they did earlier. The wage regulations in most collective agreements are based on a division into task-oriented and personal wages. This system became more common at the end of the 90s and it is observed in different fields. However, there are also field-specific differences existing in this salary system.

Cooperation between an employer and personnel is based either on the Act on Cooperation on Companies or an agreement. With respect to cooperation, the principle rule is that an employer has the final decision-making authority on matters falling within the sphere of consultative procedure. According to the Act, there has to be consultation about, among other things, any changes that essentially affect the status of the personnel.

Concrete jobs, working hours, the place of employment, and wages are agreed in a contract of employment. Nowadays, there is an attempt to ensure flexibility when making a contract. Employers also favour the multi-skilled ability of an employee in many different ways. Binding practices and the instructions of an employer also belong to the labour law. Labour law gives significance to the approved practices. The significance of an employer's instructions is determined according to what other sources have not regulated for matters related to the performance of work.

The Employment Contracts Act is centrally an answer to the problems of present working life. As such, it hardly takes the new, however already visible,

factors into consideration. These factors include group and teamwork, service work and the growth of atypical employment relations, the continual change and internationalisation of business operations, and the increased demands for expertise. With respect to job security, these signify the need to improve re-employment and the possibility of an employee to transfer to another job. The change in business operations also requires the obligation to realise continual training. In basing the information society on expertise, the mental atmosphere (bullying at work, inappropriate behaviour, concealing information, etc.) is a central factor from the perspective of productivity and profitability. The new economy requires attention to be paid to the development of the content of work and generally to the realisation of reciprocal and active loyalty.

The relationship between labour law and general civil law has often been examined over the past few years. The closeness of their legal segments has been emphasised especially in drawing the borderline between an employee and an entrepreneur. For the perspective of labour law, the issue is over the criteria for its independence. The independence of labour law can be realised at least in three different ways. First, a border, the concrete location of which can be changed, can be drawn between labour law and civil law (commercial law). Second, a kind of grey zone can be formed for their border areas. This grey zone can include those matters that do not belong to either labour or civil law. Third, the sphere of labour law can be expanded by forming a certain general "labour law" that covers the performance of work. (See Supiot 1999.) These questions affecting the status of labour law are also familiar in the networked society. Labour law has had a significant role in the welfare state and the protection of employees. Nowadays, these rights have partially remained in the background and therefore it is necessary to re-evaluate the status of labour law regulation.

The expansion of the borders of labour law regulation has come to the forefront in, for example, the regulation of working hours (the freedom of agreement between an employer and his or her employees has increased), and the regulation of atypical employment relationships (agreeing on a fixed-term contract of employment was made easier through temporary changes). A grey zone has appeared in Finland especially in drawing the borderline between an employee and an entrepreneur (the concept of an independent entrepreneur to compare with an employee has been taken into use in some laws, and agreements between the parties and in accordance with their long-term practices have been respected in borderline cases). "General labour law" has become visible in, for example, the new constitutional law, where an attempt is made to generally protect the performance of work (e.g., no one, without a legally justifiable reason, may be dismissed from the work). Moreover, the international regulation of work is based on securing the general protection of work (e.g., fundamental rights, EU regulation for the freedom of movement of the labour force). (See Supiot 1999.)

# Policy goals of the labour legislation

## Introduction

The objectives of labour legislation can be defined both generally and concretely. On the general level the definition of objectives depends on various issues affecting the general development of working life, which are difficult to connect, e.g. how new and old economy are taken into consideration, how flexibility is implemented, how those performing work are to be secured, how to incorporate international and national activities, how to promote the sensitivity to change of company activity, how to promote innovations etc. As far as these aspects are concerned it is possible to propose non-corresponding visions at least to some extent.

On the concrete level objectives can be expressed unambiguously, but still there may be justified disagreements on their content. Concrete objectives can be presented either by themselves (e.g. the drawing of the line between employee and entrepreneur should be clarified or then it should include more emphasis than before on the parties' own agreements) or in accordance to general theory (e.g. by emphasising the project work perspective).

First the objectives of labour legislation drawing upon presentations about the development of working life will be assessed. The literature used as a source for this presentation is social scientific and portrays both theoretically and empirically the changes that have taken place in recent years in the economy as well as in working life. This literature is quite abundant and it is not possible to present it broadly here. At the end of the presentation the observations will be summed up from the perspective of labour legislation. At the same time the issue will be assessed from the point of view of how labour law could be made to correspond to the new situation.

## Social goals

The point of departure for assessing the new employment and social legislation is tripartive consultation. For this purpose, Finland has ratified the International Labour Organisation Convention of 1976 (No. 144). In practice, tripartive consultation means that consultation takes place between employer and employee organisations and the state power.

With respect to the above, one point of departure is that social partners do not cooperate in reforms that diminish insider power, e.g. by reducing employment protection, curtailing union power, or lowering replacement rates. Such situations emphasise the need for the independent regulation and supervision of social security. Secondly, social partners are not only bystanders of labour market reforms. Thirdly, informal institutional change (i.e., changes in bargaining behaviour not based on changes in laws and regulations) also have an important role when making new practices. Fourthly, tripartite consultation has to combine the

perspectives of the centralised consultation and decentralisation. The role of centralised consultation has changed from binding central agreements to broad guidelines that can be implemented in a flexible manner at the sectoral level. (Gelauf & Pomp 2000, 418 and 423—424.)

Broadly understood, the regulation of working life includes labour market regulations disciplining the hiring and firing decisions of firms, product market regulations restricting firm decisions over entry and output, and direct interventions of the state in resource allocation, especially through public ownership and control of business enterprises (Boeri, Nicoletti & Scarpetta 2000, 325). In this context, the first of the above-mentioned is the most central. When examined from the European perspective, there has been a tendency towards the deregulation of temporary contracts, while only modest changes have been recorded for permanent contracts. In a number of countries, fixed-term contracts can now be used in a wider range of situations than at the beginning of the 1990s. (Boeri, Nicoletti & Scarpetta 2000, 337—338.)

Indicators of employment protection legislation and of various dimensions of product market regulation suggest that OECD countries remain characterised by widely different approaches to regulating product and labour markets. Overall, countries tend to adopt similar approaches: where product markets are adverse to competition and state interference in the business sector is high, labour markets tend as well to have tight legislation protecting the employed pool. A widespread tendency to reform product market regulation can be observed in European countries. Policies, institutions, and regulations affecting the labour market move in largely idiosyncratic ways, with most countries implementing largely marginal reforms. (Boeri, Nicoletti & Scarpetta 2000.)

According to Lundvall and Borras the most successful strategies are obviously those which succeed in creating organisations able to cope with rapid change and able to impose change on their environment. Such strategies focus on the development of new skills, on competencies to cope with new problems and on developing new products when the demand for old one's is faltering. Firms that are most successful in these respects emphasise horizontal communication within the firm and build network relationships with external organisations. Inside the firm it involves reducing the number of levels in the hierarchy and delegating responsibility to lower levels. (Lundvall & Borra´s 1997, 90—102 and 157.)

One major task of management according to Lundvall and Borra´s is to select and motivate employees that they can and want to take responsibility and that they have the necessary social skills as regards communication and cooperation. This will mean moving towards more horizontal communication, more intense communication inside and outside the firm, and delegating responsibility to the workers. Another major task is to support the creation of, and manage and renew, network relationships with external partners. The firms that have gone furthest toward the new mode of organisation are more demanding in terms of social skills and work virtues. The firms can operate as a "bazaar" where there is a mixture of formal and informal contracts and contacts and where new alliances are formed.

Any attempt just to copy what is going on in another national system is dangerous. For example in Denmark there are almost no restrictions on firing personnel and there is high mobility between jobs and employers. The Danish system promotes learning by a combination of other institutional characteristics. There is an extensive publicly financed system of training and retraining, there are possibilities to go on paid leave to obtain extra training, and the unemployment benefits are higher than in most other countries, so that workers' fear of change is reduced.

The new organisational context points to new tasks for the formal education and training system. There is a need to increase the effort in certain fields, such as providing skills in using information technology and in communicating and cooperating across national borders. The need to engage in life-long training will require other institutional changes. The new economy is one where broad participation and trust is fundamentally important for economic performance. It is difficult to implement organisational change without a minimum of support from employees. A whole set of specific measures to support the low-skilled and slow learners is also needed in order to counter the tendencies toward social polarisation.

It is possible to present policy implications for labour market as single reforms or as part of a system. The latter-mentioned approach is especially demanding because different concepts generally prevail in the points of departure for the system.

Osterman has presented following five starting points to a system, what we should try to build.

1. Efficiency: The labour market should do a good job of allocating people to the firms and to the occupations where they will be most productive, and the market should provide the appropriate incentives and mechanisms to facilitate this movement as well to encourage people to obtain the appropriate level of skills.
2. Equity: In a rich nation it is hard to accept that there is no limit to the appropriate gap between the top and the bottom.
3. Opportunity: The labour market should be structured in a way that permits people to make the most of their abilities and in which everyone has a chance to move ahead.
4. Voice: A real opportunity to be heard and to participate seems fundamental.
5. Security: The principle that through a combination of public and private policy some level of insurance should be available to ensure that there is a floor below which no one need fall. (Osterman 1999, 15—16 and 184—185.)

According to Osterman it is not easy to demonstrate just how thoroughly the labour market system has been shattered. Taken as a whole, the indicators add up to a consistent story and conclusion. Norms regarding layoffs and "community" have been undermined, the wage structure has been shattered, and the market forces have much greater impact on compensation than they have had in the past. Some of the institutions that provided a framework for the old labour market,

unions and a corporate governance structure that implicitly recognised stakeholders, have changed dramatically. (Osterman 1999, 67.) The new labour market is according to Osterman in the USA (also in many other countries) good news for some people. There is, unfortunately, also plenty of room for concern. More people have experienced flat earnings growth, for most people who are dislocated the consequences are quite negative, the majority of people in agency temporary or on-call temporary jobs would prefer another arrangement etc. (Osterman 1999, 89.)

Events within firms are in the new labour market complicated and point in different directions. The spread of HPWOs (High Performance Work Organisations) has been dramatic and shows that managers have widely accepted the view that these innovations lead to higher productivity and quality. At the same time companies have also been widely engaged in restructuring. Organisational innovation has even been a prime driver of restructuring. Employment decisions and organisational change are driven as much by the softer innovations as by the spread of information technology and shifts in capital markets. Workers prefer the higher level of responsibility and the greater opportunities for creativity that these work systems entail. These systems also require employees to increase their skills. But in the same time mutual gains have not been realised and the balance of power between managers and employees has shifted. (Osterman 1999, 114—115.)

In the new labour market people will have to change jobs a great deal more often than in the past. One objective of policy should be to enable people to do better in an economic environment of increased mobility. The growing imbalance in the power of employees and employers has shaped how organisations have responded to new pressures and opportunities. The second objective of policy is therefore according to Osterman to ensure that employees have more voice and power than is true now. (Osterman 1999, 186—187.)

Under a regime of transitional labour markets, the question of legal or collective regulation has to be considered anew. Especially the principle of "entitlements to transitional employment" has to be legitimised against the laissez-faire philosophy (labour relations should be left to voluntary negotiations between private parties). The theory of regulation has pointed out various situations in which market failures are likely to occur; transaction costs, externalities, economies of scale, and prisoners` dilemma. (Schmid 1998, 32—35.)

According to Schmid transitional labour markets presumably increase transaction costs due to the requirement of more detailed, individually differentiated and flexible contract arrangements. General procedural rules as well as individual bargaining in specifying the contracts will be necessary to overcome possible mistrust between labour and capital and to arrange for risk sharing if the transition leads to a break in the employment relationship. In these markets, new positive as well as negative externalities might arise. In the positive case, job rotation can induce a virtuous circle, which means a spiral of upward mobility. Negative

externalities shift the burden of adjustment to weaker subcontractors and their employees. Thus, rules for fair subcontracting or for lateral risk-sharing might be necessary.

Norms and internalised standards may further increase overall efficiency if the enforcement of private contracts is very costly and collective agreements or legislation could provide enforcement at a lower cost. Standardisation can be viewed as a way to reap the fruits from economies of scale. Manufactured risks are common on the transitional labour markets. Monitoring contractual compliance becomes more difficult, contract terms may be vague and give rise to conflictual interpretations, damages resulting from non-compliance are difficult to measure, and causation of damages or harms is difficult to establish. This process produces a high degree of legal uncertainty for both sides. Substantive central regulation will have to be deregulated, according to Schmid, in favour of decentralised contracting, a process that might be dubbed "reflexive deregulation".

Transitional labour markets may also be prone to new forms of prisoner´s dilemma due to moral hazard or adverse selection. Firms offering job rotation schemes might be confronted with free-riders poaching away the better trained employees, or firms practising alliances for work might experience quits from the most efficient workers. So far new configurations of prisoner´s dilemma are arising, labour market policy would have to invent corresponding new measures e.g., by providing incentives (for instance cofinancing job-rotation schemes) or by establishing universal norms (for instance the entitlement to training leaves).

According to Schmid by enhancing a greater variety in working time and employment status, transitional labour markets would enforce the employment intensity of growth. This means, first, to look at the conditions of a greater working time flexibility that enables people to combine work with other useful activities or a greater flexibility that enables people to combine dependent work with gainful self-employment or to ease transitions in both directions between the status of dependent work and entrepreneurship. Second, increasing variety in employment relations means also to search for institutional arrangements that support greater mobility or transitions between education or training and employment (the institutionalisation of life-long learning). Third, high and persistent long-term unemployment requires institutional arrangements, especially active labour market policies. To implement this strategy, special attention has to be given to the modernisation of public and private employment services and to networks that foster cooperation among key actors at the local and regional level. (Schmid 1998, 34—35.)

The challenges and problems of the new work affecting social security involve the structural changes which have taken place; internationalisation, increasing mobility, fast continuing changes, flexible organisations, fragmentation of job duties and companies, new forms of working time and working relationships and growing demands. Challenges involving workforce are thus, among others, ageing, working skills, working capacity and continuation, mobility, the segmentation of the working career and the maintenance of working ability.

Professions and duties change several times during the working career and new professions are created as the old professions disappear. The content and methods of work change. The working ability demanded by modern society differs considerably from that demanded by the industrial society. As each profession's special know-how is emphasised, general professional requirements are needed on a broader scale than before, for example in language skills, communication, interaction and cooperation. The lack of professional skills required by new working life is, on an individual basis, one of the greatest causes of stress. Simultaneously it is a stronger exclusive factor than physical health and thus a factor, which increases marginalisation. The structural changes in working life also affect for example the requirements of working environment (the ergonomy of light work, health and safety questions of knowledge-intensive work, the necessary new arrangements of new work, the problem of electromagnetic radiation, new chemical and biological risk factors). (Cf. Rantanen 2000, 5—7.)

Socially safe flexibility emphasises the social responsibility of companies. In Finland this type of approach is presented in the report by the Confederation of Finnish Industry and Employers concerning the social responsibility of companies. According to this report the company's responsible activity is a requirement for long-term profitability and success in the market. Social responsibility is active responsibility based on the company's own starting points. It is composed of an economic, environmental and social element. Economic responsibility requires that the company's activity is efficient, profitable and competitive. Environmental responsibility means the responsibility for the environment and natural resources. In respect to this, central social responsibility signifies that the company acts openly, follows correct procedures in all interest group relationships and respects the views of these interest groups. (Cf. The Confederation of Finnish Industry and Employers: Social Responsibility of the Company 2001; Koroma 2001.)

According to the report, the elements of social responsibility are the well-being and skills of the employees, product security and consumer protection, good procedures and cooperation in the company network, cooperation with nearby communities as well as the support of generally useful activities. Among the other ways of exercising social responsibility are the principles, instructions and systems of the company as well as dialogue with interest groups.

Aspects also affecting the well-being and skills of employees are in turn occupational safety, occupational healthcare and other activities involved with the maintenance of working ability, the level of satisfaction and work motivation of employees, the attractiveness of the job, training and rewarding of employees, the non-discriminative nature of employee policy as well as the consideration of the views of the employees in the activities of the company. For instance, employee structure, accidents, absenteeism as well as investment in training, act as gauges for these matters. Issues included in proper procedures and cooperation in company networks are for example the company's relationships with clients and partners, evaluation of subcontractors, suppliers of raw materials and contractors, responsibility for good flow of information, refusal of bribery as well as respect for industrial rights and copyrights.

## Goals of the labour law

Labour law is meant to correspond to all types of issues regarding both old and new work. Its exhaustiveness is generally broad. For these reasons the answers to be found in the legislation for new questions are not necessarily detailed and their aptness contentwise can be problematic. In terms of legislation, one should not set one's hopes too high. The slight antiquity of labour legislation may be a good counterforce to the overemphasis of the new work. Throughout history new issues have arisen that have changed the old system. Today's new economy does not form an exception in this sense. However, labour legislation should not be changed in a certain direction, when the first pressures are felt. On the other hand, at least certain single regulations can slow down development.

Although changes are not made to legislation, its content changes constantly. The interpretation of general clauses happens typically for each period. For example regulations of secrecy, prohibition of competing activity and agreements on the prohibition of competing activity were interpreted differently in the 1990's than in the 1970's. In a limited manner, the interpretation of general clauses can be guided by the wording of the regulation. The interpretation of these types of regulations requires at least to some extent a congruent set of society-level goals. Today, the existence of society-level goals seems questionable in the light of labour law (e.g. employee or entrepreneur, the dimension of the obligation to secrecy, the extent of the prohibition of competing activity etc.).

From the perspective of labour law regulation the new and old work hardly differ at all. No specific laws have been regulated for either one. Nevertheless, labour legislation today (including collective agreements) should also sufficiently take into account the demands of the new work. Central issues emphasised today are internationality, flexibility and sensitivity to change. The aim is, with help from these, to secure the adopting and application of the ideas developed in different places as quickly as possible. For this reason, a new kind of openness and leadership (the transfer and moving of ideas as well as their collective development) may be the important factor in the new economy. Corresponding demands are evident also on the individual level.

The aforementioned new (and also a significant part of so-called old work) objectives are not visible as such from labour law regulation. On the other hand, it encompasses many regulations, which complicate the realisation of these issues. Labour legislation as such does not necessarily prevent these types of issues from being emphasised, although it does not emphasise them either. This does not mean that it is not necessary to do anything in terms of labour legislation. Legislation also plays a guiding role and it also reflects the values held important at any given moment. Now, labour legislation does not guide into a new work, nor does it indicate that it holds its values as important, either.

The new labour legislation requires new general theories. One central approach to the activities of the new work is to assess it from the project perspective. Even the performance of work no longer functions solely on individual or company level activity. Work is performed progressively both inside the company as well as between companies in different projects. In this context, by a project is meant a collective project, in which several parties pursue together a goal, which has been commonly set with previously agreed activities.(Cf. e.g. Pöyhönen 2000.)

Project situations involve many different functional possibilities. Projects are characterised by their flexible transformation in the manner demanded by the surrounding conditions. Projects are characterised by flexible transformation in accordance to surrounding conditions. In conjunction with the assessment of the projects, the concepts of the working environment, the total arrangement, the interest party as well as the concepts of the risk position are central. Using the working environment the assessed situation is placed as part of social and economic practices. The total arrangement demands an evaluation of the situation from the viewpoint of the unity formed by the relationships between different parties. Different interest parties form part of the total planning. These interest parties have different risk positions or possibilities for activity, with which they are able to sustain and carry out their benefits in accordance to the commonly set goal. (Cf. Pöyhönen 2000, XVII and 140—186.)

To a great extent, the general theories of the new work may form through and around the concept of the project. This type of approach also corresponds to the present activity of the economy. Thus, it appears that labour legislation should be drawn up from this perspective even more consciously than before. This would be significant for example in regard to regulations affecting the agreement of contracts of employment, the rights and obligations of the employer and employee as well as the termination of contracts of employment. The Employment Contracts Act does not, however, follow this approach. As a general law it does not prevent it, either.

> The project perspective includes both the performing and the organisation of work. On the level of performing work it connects the individual performers of work as a unit. The same unit may include, for instance, employees of several employers as well as entrepreneurs. Often in the leading of projects the main issue is the tying together of the work being performed by the company's own employees and outside work performers. Today, projects are often international and should be flexible as well as sensitive to outside changes. They are not permanent but, on the other hand, with their help an increasing amount of permanent duties are taken care of. Projects can also be made to compete in prices. In addition, they involve strong internal entrepreneurship, because projects and therefore one's own salary must be acquired from a market with strong competition.
>
> Especially in project networks, many problems concerning labour law

may surge; for instance, ambiguity about the actual employer. In situations of ambiguity, according to employment contract doctrine the employer stated in the contract of employment has been considered the distinctive characteristic. The employer is the party to the contract in addition to the employee. Parts of the legal status of the employer are, at least, the right to obtain the unit of work to his / her benefit, the obligation of compensation and the employer's right to supervise. The situation can be, for instance, that the network use only the right to management and supervision while the other employer rights remain with the original employer. These types of divisions of employership are common for instance in the hiring of the workforce. The employer status, however, is not transferred to the one hiring the workforce. For this reason, the transfer of undertakings in the framework of the network is usually not possible. The networks remain solely as a cooperation of different companies. For this reason networking is not a justification for the standardisation of the terms of work for those working within it. It is different if the network is made into a legal entity. The employer does not necessarily have to be a legal person, but should still be organised as an employer and have his/her own employees.

While traditional labour law is portrayed by the relationship between a single employee and a single employer, the starting point for the new labour law corresponding to the new work is project-based work. Unlike traditional labour law, it does not emphasise single subjects but a certain course of action. In this sense it can be connected to other fields of law and economy better than traditional labour law. Presently, project-based work is characterised by all kinds of activity and it should be visible also in labour legislation. The project perspective does not represent all the goals involved with the new work. It can, however, be considered an essential starting point in the formation of regulative objectives, making it concrete. In this sense it is both an essential content of regulation as well as an instrument for its evaluation. When present labour legislative regulation is examined from this perspective, it does not correspond to the requirements placed by project working in the new work.

Project working is an important starting point also from the viewpoint of innovations. Whereas beforehand, for instance, innovations made in work have been regulated from the perspective of the individual actor, regulation should now emphasise the prerequisites set by project working. The position of business and trade secrets, competitive activity and prohibition of competition is defined by project work differently than if working alone. Project working affects the contents of all intellectual property rights in numerous ways.

> Emphasising the perspective of a project provides the opportunity to bind the forms of atypical work (fixed-term and part time contracts of employment, the external performers of work, etc.) into becoming part of the entire question. The prerequisites to agree a fixed-term contract or to work part time can thus be evaluated as part of the project needs (whether the offer of work within the framework of the project is possible). Likewise, the status of outside entrepreneurs as factual parties can be studied on the basis of a project agreement. If the forms for the performance of atypical work remain outside projects, the basis for agreeing a fixed-term contract of employment, for example, is evaluated generally on the basis of the factual needs of the employer in question. Such grounds can be, for example, the seasonal nature of the work, a specific order or substitution, and the instability of demand, etc. To the same extent, the unilateral creation of part time employment generally requires an employer to have grounds for dismissal, etc.

Besides these general goals we have to help laws and the institutions adapt to the high speed of change. (See ILO World Employment Report 2001.) The market will not solve the problems that will inevitably accompany the benefits of the new work. The organisations and institutions through which social dialogue can occur and social choices be made are particularly important in periods of rapid change and uncertainty. If the new work is to be based on social choice, then attention has to focus on the vitality of those organisations and institutions. Cooperation and agreement can occur other than through collective bargaining, but there will always be the potential for different aims and aspirations between workers and managers to arise, which in turn needs to be represented, articulated, and accommodated.

Another issue is that existing laws and policies may need to be reviewed as new workplace concerns are arising — stress, privacy, intellectual property and so on. As "time-to-market" becomes an increasingly strategic need, upward pressure on working time and blurring of hours of work and hours of leisure can result. There are consequences specific to gender as well arising from the changing nature of working time. Long working hours are inimical to persons with family responsibilities. The new organisation of work characterised by the independence of location also raises issues concerning employment contracts. Employment contracts are typically based on concepts of time and physical location.

The rise of self-employment may be associated with gaps in social protection, and also raises the question of the organisation of the self-employed. At the high end of the skills market, the self-employed worker might be in high demand and able to set terms and conditions to his or her own satisfaction. For others concerns over social protection do exist (the grey area). The distinction between genuine and false self-employment can be unclear. The distinction is important as the self-employed person working under a commercial contract may enjoy less protection

than that offered by a contract of employment. A review of the distinction between employment and work may be a useful policy initiative.

The organisation of work in the new economy sometimes appears to differ little from older industrial models. There is, however, a segment of the new workforce for whom the rules are different than those of the past. Movements from one job to another job, and from enterprise to enterprise, and the alternation between self- and dependent employment are creating a labour market segment with different needs for representation and services. (Legal advice on contracts, for example, could be one of these needs.) A growing number of "e-lancers" move from enterprise to enterprise or project to project, sometimes for months, sometimes for days. In the labour market which is at the forefront of the digital economy, the share of self-employed and temporary workers is far higher than the national average. The skill levels and value to the firm of these individuals are high, but the firm specificity of their knowledge is low.

In the more diversified labour market a growing number of employees no longer define job security with any one enterprise as necessarily desirable. While such employees acquire knowledge and experience in their movement from enterprise to enterprise, there are learning needs facing them, as well, since enterprises, unable to recoup their investments through long-term employment tenure, are reluctant to invest in the transferable skills of temporary workers.

Nor does employment stability now mean employment security; contracts are changing, stress is on the rise, and there is evidence of employment insecurity perceived by workers up and down the organisational hierarchy. Despite dynamic and rapid change, for most workers employment stability with a single employer for long periods continues to be a norm. Instability has been internalised within firms. This internal flexibility gives rise to feelings of insecurity as workers are asked to be more polyvalent and to adapt rapidly to changing tasks and teams. Institutions and the social partners have a role to play in ensuring that this increased internal flexibility is secured in the interest of both workers and employers. It is clear that the need for worker protection remains and is arguably greater in the context of the disruptive changes that are occurring.

Critical to the new organisation of work is the increased need to "tap" the tacit knowledge of the workforce. To do so requires a workplace culture in which trust and experimentation can simultaneously occur. Such behaviour are unlikely to occur between relative strangers in workplaces characterised by a high degree of instability and frequent turnover.

# Conclusion

The approach toward the new economy and the new work has, in recent years, been shaken by a clear-cut division into an old and new system. This type of clear division is artificial. In conjunction with the new work as well the issue seems to be a traditional pattern of activities. First there are struggles against the old way of working, followed by exaggerated expectations of the new way of working – only after these does the new work reach sustainable growth. In the beginning, the new work was met with a phase tremendous enthusiasm, dividing some companies into a certain "clique", while the remainder were left outside of this "clique". However, the new work produces the greatest benefits only when it is applied in its entirety also to traditional production and services. In this sense, the high-level and free mobility of employees as well as transition of ideas as freely as possible without legal limitations is especially central. (Cf. here e.g. Quah 2000.) Indisputably, new work has also given rise to problems (the influx of competitive attitude, the growth of the income gap, work fatigue, the non-existence of working hours etc.). In order to solve these, the rules of the market economy on one hand and the objectives of political decision makers on the other hand should be synchronised. (Cf. Aho 2001; Blom & Melin 2000; Viren 2000. Viren emphasises the merits of market forces in the positive development.)

Changes and different transitions describe the current labour market, production system, and economy. However, the system of industrial relations is still based on certain permanent positions. Since dynamics was first emphasised in specific matters especially in the 1990s, the content of regulation that emphasises the nature of static has become more problematic in recent years than it was earlier. Another significant problem has been that labour market regulation has only indirectly and partially affected the system of innovation. With respect to this issue, the question has also been more about the protection of employee freedoms (e.g., the possibility to practice competitive activity, the limited right to agree on a contract prohibiting competitive activities, innovations by the employee, copyrights) than it has about the protection of an employer.

Companies which actively seek to favourably influence their conditions and which are able to predict and "get with the times" and act practically, are often successes. In these types of workplaces the employees are, at least in part, directly responsible for company matters such as competitiveness, different contracts, reaction to business fluctuations as well as the development of know-how and skills. In traditional workplaces these issues are managed by e.g. different departments and finally the management of the company. The first-mentioned company is capable of taking advantage of the possibilities of its environment faster and more efficiently than a traditional workplace. Success improves possibilities for salary raises, increases the possibilities for employee training as well as the hiring of new professional employees. Cooperative relationships both

within the firm as well as between other interest groups are reinforced in the same way as commitment to the work and the workplace. Success leads itself into a circle of reinforcement. (Cf. Anttila & Ylöstalo 2000, 16—17.)

Labour law primarily regulates the activities of the labour markets, and not economic systems. From the perspective of labour law, these remain within the exclusive decision-making authority of an employer (cf. however, cooperation in companies, the representation of personnel on the managerial bodies of companies, etc.). Labour law regulates, for example, the basic questions for the performance of work (identifying an employer and an employee, making a contract of employment, the obligations of an employee and an employer, employment relations security, etc.), the system of collective agreements, and the social security of employees. The sphere of labour market regulation also includes, for example, employment protection, which has a close relationship with the system of production. On the other hand, the labour law matters concerning the transfer of an undertaking as well as competitive activities and the obligation to maintain a secret are intimately related to economic operations. The regulations of labour law correspond to the general points of departure in western society. In this context, they are traditional. Individual new economic innovations do not affect the basic points of departure for labour law. However, many general clauses in labour law (e.g., the grounds for terminating a contract of employment or the possibilities for competitive activities) can be interpreted differently in new situations.

The central point in new companies is the flexible use of resources, the low profile of the organisation, the utilisation of decentralised networks, concentration on one's own core expertise, and the cooperation. This mode of operation attempts to meet the substance for the continual change of operations and the forecast of certain kinds of non-determination. There is an attempt to connect all kinds of innovations (those concerning organisations and substance) in the internal modes of operation in a company and between companies. The issue also includes developing the systems of coordination within and between companies. The continual change of business and its operational environment emphasises the control of change. (See Koski, Räsänen & Schienstock 1997, 122—131.)

The new business operations have essential mirror effects on working life. Total control, cooperation, and communication in relation to production are emphasised in the duties of the higher management. The utilisation of the information coming from above and the communication of the information from below to the higher level are emphasised in the position of the middle management. Routine duties decrease and job descriptions expand at the level of performance. Team working and subcontracting transfer the task of management to the employees, increases the transitions from one task to another, and expands job descriptions (productive qualifications). Self-direction, personal decision-making authority, and flexibility emphasise individual initiative and commitment to the objectives of the organisation. For their part, cooperation, communication, contact with customers, bearing responsibility, independence, the readiness to seek solutions, the ability to express one's understanding, the elimination of conflicts, helping others, and

management and leadership ability relate to central planning, coordination, and organisational skills (social qualifications) in the new business operations. In turn, active skills in solving problems describe the development of processes from the routine in exceptional and unperceived situations (innovative qualifications). (Koski, Räsänen & Schienstock 1997, 131—135; see also Ollus et al. 1990, 139.)

In the new work, the question for flexibility is especially about making the quantitative (working hours, the total amount of work) and the qualitative (professional skills, the division of work, the organisation of work) compatible. With respect to qualitative flexibility, a difference is still made between the static (multi-skilled, extensive) and the dynamic (learning at work, trainability). In the model based on the flexibility and professional skills of an organisation, the question is of utilising the versatile professional skills of its employees (an employee is a director, optimiser, and developer of production), of minimising the hierarchy, of developing and keeping the core labour force as large as possible, of minimising determined flexibility and rotating employees. (See Ollus et al. 1990, 123.)

At the end of the 1900's so-called quantitative flexibility (overtime work, irregular working hours, part-time work, telework), particularly overtime work, has become increasingly widespread in working life. In 1997 only 21 percent of wage earners were completely outside of quantitative flexibility. For example overtime work is performed in a hurried atmosphere and usually in a work community in which the competitive spirit is present. The hurriedness of work produces stress, increased by overtime work. For the sake of emotional health, special attention should be paid to the reorganisation of work (for new solutions concerning working hours, the hiring of additional employees etc.) in these types of workplaces. (Cf. Kandolin & Huuhtanen 2000, 118—119.)

Earlier, conscientiousness, obedience, and correctness were emphasised as the requirements for professional skills but creativity, compatibility, motivation and the so-called productive qualities (the suitability for company operations) are now current. On show nowadays are extensive knowledge and skills, a systematic relationship to one's own work (unpicking problems and multidimensional), the desire and readiness for training, congeniality, internalising the culture of production, motivation, and the readiness to consult. The objective is high professional qualification and good social ability. The transition from a strategy of replacement (emphasising information technology, the "unmanned factory") towards a meaningful developmental strategy for the re-organisation of work (utilising professional skills, the integration of tasks, "skill-based production") is, along with others, the background to these changes. (See Ollus et al. 1990, 141—153.)

Jeremy Rifkin recently stated that in the new age the markets make space for networks. Ownership is replaced with "availability" or with "the right of use". In order to stay alive, ever more companies sell their real estate, reduce the size of their stocks, rent equipment and externalise their operations. According to him,

there is a new way of thinking in the business world: if you are unsure, give it to others. Nowadays, human capital is in his view the most noticeable force of the new age. The achievement of existing "concepts" in physical form is a characteristic of the networked society. Although, for example, Nike is the leading sports shoe manufacturer in the world, the company does not own any factories, machines or equipment — not to mention real estate. (Rifkin 2000.)

A similar course of development is also to be seen in companies in their relationship to the use of a labour force. An outside labour force, subcontractors, and an agency labour force, etc. have often been used to replace employees. For many companies, it is not necessary to maintain a large number of their own employees. In many situations, it is sufficient to get the temporary right to use a workforce. Therefore, with respect to the general pattern of change characterised by Rifkin, factual development has already observed that kind of use of the labour force.

In the new work it is also necessary to encourage employees. The system of incentives should be interpreted broadly. In addition to the system of salary incentive, for instance finding people in the company the correct duties, encouraging them to do their work at hand and the functioning of the cooperation of the working community are also forms of encouragement. The central role of the system of incentives today is to encourage employees' initiative. Problems arise for example if, as a result to incentives, the employees alienate themselves from one another. For this reason, it is important to support employees' innovation and initiative without disturbing cooperation. Companies possessing knowledge and skill are characterised more by high-level wages than disparity of salaries according to the results of the company or the large pay differentials within the company. Technological development disseminates information and skills more and more widely to the company's employees, causing certain necessary uniformity in salary level. (See Piekkola 2001.)

Assuming responsibility for life at work is everyone´s business. Employees have to take more responsibility for their own employability, for example. It is the responsibility of governments everywhere, along with worker and employer organisations, to steer the course of change through dialogue and social choice, such that participation is equitable and inclusive. A passive policy stance to the challenges of the change will mean, that people, companies, trade unions, and countries as a whole will forego the positive benefits of change without nevertheless being able to escape its negative effects.

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# 3 THE NEW WORK AND THE KNOWLEDGE WORKER

**Hannu Mikkola**

## Introduction

In this chapter I examine the new work and, some of its manifestations: networks and the position of the knowledge worker, as well as their relationship with innovation systems and the processes of the creation of innovations. The perspective is general and judicial. In the study, labour and contractual issues as well as intellectual property rights are emphasised. Here the concept of the new work is broader than presented in recent literature. In this context the new work incorporates, in addition to the electronic network economy, other special features characteristic to today's working life. These include the emergence of networks, performing of work in projects, knowledge work and the new forms of performing work.

The chapter consists of four parts. In the first and second parts I examine the structures of networks and special questions that they implicate. In the definition of labour legislation, the status of the knowledge worker is vague. In the world of projects traditional employment relationships become unclear. The same applies to the position of the employer. In social decision making we are coming to a point where the legislator should take a stand in how labour legislation can protect the employee in the future. An alternative is the decreasing of the bindingness and significance of labour legislation so that working performances can be organised through civil and commercial law. This involves questions such as the role in which the work is performed. The externalisation and outsourcing of activities and the transition to subcontracting affect the fact that work is increasingly performed is an entrepreneur-like way and as an entrepreneur. The normal employment relationship in the knowledge work is not a "normal" temporary employment relationship but something else. It is a combination of the "old" employment relationship with projects, temporary short-term relationships, freelance work etc.

The point of departure of valid labour legislation is still the so-called old economy, which has not succeeded to renew itself in the manner required by the new work.

In the third part of the chapter I will examine the position of the central actor of the new economy, the 'knowledge worker'. Knowledge work, performed either as an employee, an entrepreneur or as a combination of the two, sets new challenges for new work and issues relating to new work which have previously been overlooked are emphasised and will become part of everyday life. These include intellectual property rights, rights to competition, business and professional secrets and questions relating to data protection and security.

The fourth part is a summary of the article with some policy implications concerning the knowledge worker and the network society.

# The new work in networks and in the knowledge economy

**New Work**

- **Knowledge Economy and Knowledge Work**

**Network**

- **Globalisation**
- **Externalisation**
- **Outsourcing**
- **From Competitive Economy to Cooperative Economy**
- **Flexible Network Organisations**

## The network economy

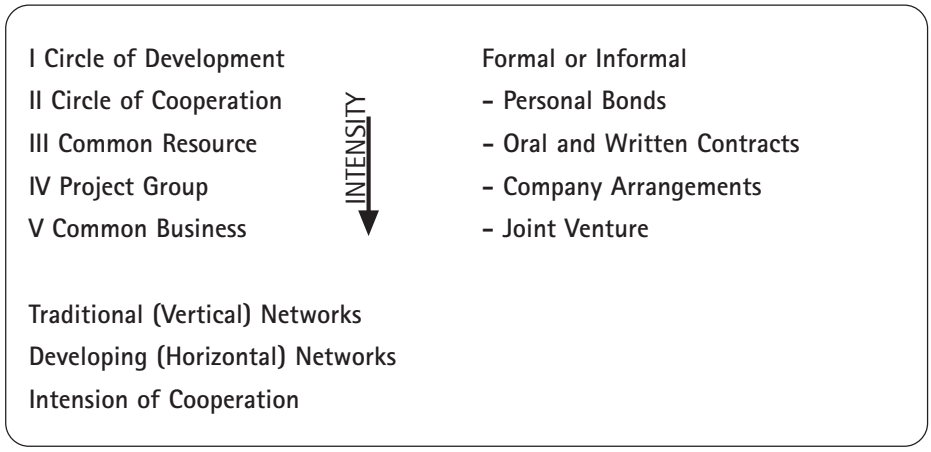
We live in a new society. Worldwide competition for investments and jobs and new communication technologies have made the former concept of social protection, stable jobs and industrial relations obsolete. Globalisation, externalisation and outsourcing are well known factors that the labour markets have to deal with. Their impact is often underestimated and many fail to appreciate that they are almost beyond the control of local, national or even regional (e.g. European) authorities. All of these factors tend to push labour law, collective agreements, minimum wages and social security to the sidelines.

Externalisation means that the services that have earlier been part of the business are now produced from outside markets. This has not always been the case. Earlier, the enterprises paid employees for their time, now they pay for the results. They seek the best quality at the best price and right on time. Outsourcing is a logical extension of this and it has especially confronted several big companies. It is also a question of specialisation. The enterprises have to concentrate on the core of their business in order to compete globally. Most common activities to be outsourced are e.g. cleaning, software, legal counselling, administration of payment, transport, advertising and security. Activities which have a strategic or a confidential character are the least outsourced.

On the other hand the demand set by small local markets (applications in rural areas) has created the change from competitive economy to cooperative economy. Various enterprise networks have also accumulated so-called social capital and created a coordination model which is situated somewhere between the markets and the hierarchies.

The result of creating small companies and externalising is the dispersal of the large hierarchical system into smaller and more independent counterparts that buy and sell products to and from each other. The stiff hierarchical organisation of large companies is being dissolved into a more flexible network organisation. The development of networking is two-way: on one hand, the converging of small businesses, and on the other hand, the fragmentation of larger businesses. Due to the existing situation, it is necessary to search for a new balance between economics and social policy.

## The formality and the intensity of cooperation




The creation of an enterprise network usually begins with a circle of development in which parties share knowledge and information, acquire knowledge and learn from each other. A circle of cooperation follows in which costs are shared. After this a common resource and a "project group" are created, there is a shared idea of common "business" and products are made compatible. The last stage is a common business and the beginning of the new shared business activities and the planning of new common products. The intensity of the network grows at the same time. Networked organisation, more so than in other forms of collaborations designed to facilitate economic exchanges, is frequently infused with social exchange (Ring 1996, 20).

Networks can be formal or informal. They can begin with personal bonds and oral or written contracts. These arrangements can lead to various company and joint venture arrangements. The different networks can be divided into traditional (vertical) and developing (horizontal) networks.

Traditional (vertical) models of networks are:

— suppliers, subcontracting
— licence agreements
— franchising (client entrepreneurship: renting of the business concept)
— consortiums/trusts (consolidated companies)
— one-way minority shareholding
— cross-ownership with minority
— establishing a company form with common resources or cooperation.

Developing (horizontal) networks are based on cooperation and equality:
- cooperation network, e.g. marketing circles
- network company, shared business of various companies
- dispersed company, e.g. network of experts, members situated in different locations
- mini clusters, conglomerates of different fields
- virtual organisations.

The importance of agreements and company arrangements is discovered because the cooperation based on agreements sets goals and is based on long-term plans. A "roof" company, owned by small companies, which owns a small portion of each company, but not sufficiently as to create a trust company as determined in the Corporation Law, is an example of a company network arrangement. Instead of being owned by companies, it may be owned also by persons – especially when a trust -situation is attempting to be avoided e.g. for taxation reasons.

A contract of cooperation may have as its intention the following:
- the sale/acquisition of information/knowledge (license agreements)
- the sale/acquisition of products (subcontracting agreements, marketing agreements, distribution agreements)
- sale/acquisition of business activities (franchising agreements)
- development of know-how (research and cooperative development agreements)
- sale/acquisition of resources (subcontracting agreements, manufacturing agreements).

Virtual organisations are one of the fastest growing "company forms" around the world in the field of the knowledge economy. Characteristic to the organisation structure is that experts of different fields form a virtual company, whose members create numerous different kinds of teams, case-specifically, in order to carry out projects requested by clients. The form of the network depends on the project at hand. It usually offers services for businesses involved with media, journalism, multi-media, new media technologies, management consulting, space and organisation planning, training and research, marketing, business jurisdiction and product development. The basic idea of the network is to change the solid costs into changing costs. The client buys the service for a specific time period for the requested assignment. After the work is finished, the organisation is dissolved. Flexibility also serves as a great advantage, in that the work can be performed independently from place and time. The resources and risks can be shared between the companies and the projects can employ increasingly appropriate workers.

Research activity is also becoming networked. In addition to using researchers within traditional employment relationships, more and more outside researchers and research facilities are being used to conduct research to-order. When earlier it was possible to deal with research contracts relating to commercialisation as

individual and separate contracts, now the networking of research is causing interdependency of contract relationships. Necessary associated contracts are, for instance, contracts of secrecy, consulting and coordination contracts, licence contracts and contracts of cooperation.

## The dependencies of networks

- **Reliability and Interdependence**
- **Specialisation Leads to Growing Dependency**

**Network Leadership**

**Decision making:**

**-"Enlightened Sovereign"**

**-Democracy**

**-Consensus**

**Cluster Economy**

Dependencies inside the network originate from various types of agreements (from concise oral agreements to extensive written contracts) or through conventional, well-established behaviour, which dictate the substances of the relations of the parties involved. These determine the rules in general, procedures that should be used, ownership and distribution of profits, sanctions etc. The nature of these agreements can be formal or informal. Reliability is an important aspect, because no contract or agreement can ever cover all situations or conflicts. Practically the amount of reliability determines the prevailing form of agreement/contract procedures chosen or existing.

The ties in business life may be socio-economic, i.e. based on personal trust or legal contracts. When a client's need to buy and the salesman's need to sell meet repetitively, one may speak of interdependence and long term network dependence which benefits both parts. In practice, cooperation is often informal. From the networking-based point of view, in examining business activities, we consider not only the normal routine aspects, but also many other contacts, connections and dependencies between businesses and people working in business. Common values, a common goal or some other common aspect may be considered as a force that unites, or promotes order in the essence of the network.

Companies may choose flexible specialisation as their working strategy in order to serve the changes occurring in the market. This strategy includes focusing onto the stronger areas of the business activity. This means specialisation in clearly personalised products, of which variations and complete service packages are tailor-made for the client according to what has been ordered. Focus on a narrow market area inevitably leads to internationalisation, especially in rural areas, because a sufficiently large market can only be guaranteed with exportation. Specialisation also requires improved contacts with subcontractors, service providers and clients. This is why the specialisation entails the danger of growing dependency from other companies and organisations.

A small business working as a subcontractor for many clients is free in terms of mobility due to its weak network status. Its network connections are weak and similar to a traditional market relationship. On the other hand, a small business with strong ties to another business or only a few networks may be very vulnerable. In terms of development, the limits of the networks are not essential. It is more important to examine different levels of contacts, connections and dependencies. These indicate the significance of the network to its members and its surroundings. The tax authorities do not always consider enterprises within a common unit as enterprises, but treats them as salary recipients (model of internal entrepreneurship which is situated between the traditional salaried work and the entrepreneurship). At what stage do the independent components gain the status of "employer", or do they gain this status at all? (Cf. e.g. municipalities or townships as employers.)

Network leadership differs considerably from ordinary hierarchical power structures. The position of authority can be decentralised and the relations of authority can be organised in various ways. The role of leadership can be defined as a mediator, process manager or a creator of the network. Leadership involves endless goal fixing, because the problems and goals change constantly. The objective is to create possibilities and direct the structure of interaction. Network leadership is about looking for new members and resources, maintaining conditions for the network, leading chaos. The modern network company may be defined as a body of contracts which serve to define the company's limits and its common surface with the other members. The network in which the company is linked does not have existing limits. A network can multiply the company's resources without the company needing to invest in developing business activity or coordination. Project activity involves e.g. multi-professional work orientation, networking and the application of a so-called voluntary, situation-based organising method. Perhaps for this reason, network management is one of the most complex questions involved in modern business management. In networks there are several options for decision-making. In the hierarchy there is a "enlightened sovereign", a head company which has the authority to give orders. However, when the network leadership is alternated, there might be a demand of democracy or consensus.

In the early stage of innovation, vagueness and openness combined with weak economic expectations evidently facilitate the weakly regulated, open and flexible

exchange of knowledge and expertise. As economic interests become stronger, the task of development is shifted to regulation through contracts/agreements and activity within the sphere of confidential business information. However, the competition between network counterparts may restrain the open exchange of ideas and information vital to development. Also, exaggerated accountability, strict adherence to research contracts and concentration of cooperation in institutions formed by the authorities may limit possibilities for unofficial innovative cooperation.

In order to be successful, the new company, the 'individualised corporation', needs to develop three core capabilities (Blanpain 1999):

— the ability to inspire individual creativity and initiative in all its people, built on fundamental faith in individuals;
— the ability to link entrepreneurial activity and individual expertise by building an integrated process of organisational learning; and
— the ability to continuously renew itself.

The cluster economy is the core of a nation's or economic region's competitive ability. It is completed with a network economy based on small companies. The cluster economy makes use of all the areas in which small-scale and flexible work models are more efficient than large-scale activity. In rationalising the line of business we should leave sufficient living space to the network economy (small, innovative companies). In Finland, excessively large clusters possess excessively large markets, and this in turn prevents the development of an innovative and flexible network economy.

## Employee or entrepreneur

**Remuneration or Fee**

- **Different Criteria Used by Authorities => Uncertainty**
- **Starting Point: Contract of Employment**
- **Roman-Germanic Legal Culture or Common Law Culture**
- **Mixed Test Technique**

## General

In the ancient times it was generally believed that work on someone else's account was contrary to the idea of freedom: a free man acted on his own account, not in order to satisfy another person's needs. This distinction has reflected our present view on the difference between employee and entrepreneur. There was also a difference between remuneration, as the price for work which was bought and sold in the market, and a fee, as connected to the person who performed the work. Many of these ancient ideas are still valid even though, once again, conventional employment is going through rapid change. Signs of this phenomenon such as increased temporary employment, encouraged privatisation of employee services, telework and virtual work are all common subjects of discussion. There is also discussion about whether a person who is performing the task should be considered as an employee, subcontractor, entrepreneur or self-employed.

In the legal system the distinction between an employee and entrepreneur varies. To find out the consistency of this distinction, different fields of legislation have to be under evaluation. The different criteria are used by authorities in labour law, taxation and social security. The reason for unbalanced practice between government authorities is a consequence of their own heterogeneous goals and objectives. This fact might cause uncertainty among employees and entrepreneurs. The differentiation of the two has become more ambiguous than ever.

The importance of the differentiation between wage employment and self-employment has not gained the same level of importance in all countries. However, in most countries the same general principles are being applied. The approach to this differentiation can be either systematic or casuistic, or both, depending on the nation's legal tradition (Roman-Germanic legal culture or common law culture). In most European countries the definition of wage employment stems from the definition of a contract of employment, but a reverse situation is also possible (e.g. Italy). In Spain the exchange for remuneration belongs to "workers voluntarily performing services in exchange for remuneration, within an organisation, and under management of another person, natural or legal, called an employer". Nevertheless, EC legislation is characterised by a casuistic approach and does not contain any standardised definition of a wage employee, contract of employment or employment relationship.

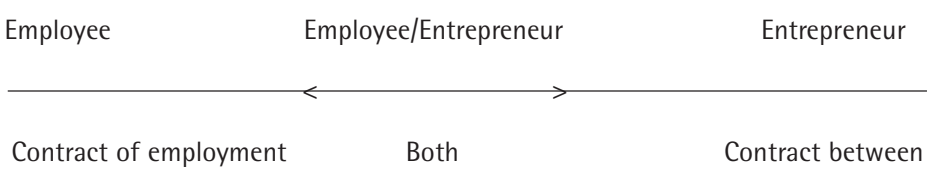
In countries where Roman-Germanic legal culture exists (e.g. Germany), labour law was developed by systematisation. As the result of this, the legal definition of the contract of employment was originated. In common law countries (e.g. Great Britain) casuistic labour law was developed by several judicial decisions. Both of these systems provide different methods and tools for the definition of the status of the employee. The legal technique that is used in Roman-Germanic legal cultures has two main criteria: in order to be an employee, there should exist economic dependence and the employer has the right to supervise and give orders. However, in many cases the legal technique is insufficient, as in the case of qualified workers who enjoy real independence in their work. Usually they are not

economically very dependent on their employer and their competence may be higher than the employer's. This is the case of the highly qualified professionals which are beyond the employer's supervision.

The casuistic approach in labour law is also dominant in Nordic systems, although the legal culture is otherwise Roman-Germanic. The indication of this is the so-called "mixed test technique" which is used e.g. in Finland. In the "mixed test technique" the authorities (e.g. the judge) estimate the general situation. There is a list of factors that support the status of the employee. Others support the status of the entrepreneur/self-employed. The "mixed test technique" is widely used, but this list of indicators differs among countries.

According to Finnish labour law, employment is regulated through legislation and is regarded as imperative law. Parties involved cannot freely decide for themselves whether work received will be done by a person as an employee or as a private contractor. First, it must be determined whether a person has been hired, or whether we are actually dealing with two independent entrepreneurs and their contracts. Cases should be examined separately according to certain criteria in unclear situations. Importance is placed e.g. on the intent of the parties involved, the client's/employer's possibility to supervise, and the matter of who takes responsibility for financial risks and how compensation will be paid. The decision is a sum of several determinants.

In most cases, the role of the person who performs the work is obvious and there is no uncertainty at all about whether the work is done by an employee or an entrepreneur. There are no problems in understanding that e.g. teachers are usually employees but lawyers and architects are often entrepreneurs, because, for one reason, their jobs are considered to be more independent. In certain cases, it is problematic to clearly and legally define the distinction between the terms 'employee' and 'entrepreneur' in law practice. These cases do not fit into the obvious and traditional division between the two. There is a 'grey area' between the entrepreneur and the employee, and it is widening constantly.



entrepreneur



**The "Mixed Test Technique" in Finnish Labour Legislation**
(if the following criteria do not exist, it indicates that the person who performs the work is an employee instead an entrepreneur)

**Material Criteria of the Entrepreneur:**
The concrete way in which the work is performed:
- the entrepreneur supplies the necessary equipment, machinery and materials
- the entrepreneur has his/her own storehouse
- the entrepreneur makes the work in his/her own location which is equipped for the purpose
- the entrepreneur has a right to use a replacement and an assistant without permission
- the entrepreneur may choose his/her working hours
- the way the entrepreneur does the work can be different from the way the others, employed by the same employer, do the work

Payment:
- remuneration is paid according to the results, e.g. by unit or by invoicing
- expenses are not compensated
- remuneration does not include the compensation for holidays or overwork
- remuneration includes social security

The number of assignments:
- several simultaneous assignments
- several consecutive assignments from different clients
- not restricted to work for other clients

The client's right to supervise:
- the client does not have the right to control the work performance
- the entrepreneur has the right to decide the way in which the work is done and organised

**Formal Criteria of the Entrepreneur:**
Business license
Company registering
Advance income-tax note
Taxation history
Company form

**The transition of the status**

New employment trends and policies are developing in the job market. The facilitating of the change in the status of the worker has been the main objective of labour politics in the past years. However, there have also been other social motives for this change. Earlier, the transition of roles was simple and permanent,

but now it is rapid and one can simultaneously occupy several roles of self-employment (e.g. as employee while part-time entrepreneur, entrepreneur while part-time employee). These variations form an essential part of today's employment. When examined internationally, temporary workers and self-employed are on the rise. The high rate of innovation within the ICT sector itself, and the lower threshold for entry of online businesses are indeed incentives for self-employment. Similarly, the specific skill requirements of ICT lead those who possess them to engage in freelance work. However, in Finland the number of new entrepreneurs in general has decreased in recent years. The explanation for this is the improvement of the economic situation. During the depression people were "forced" to employ themselves as entrepreneurs and now that the economic situation has improved and there are vacancies, people are going back to being employees.

Recently, especially in EC member states, the concept of protection against unjustified dismissals has been favoured by the question of employability. While the issue of protection against unjustified dismissals emphasises the employee's possibility to maintain his/her job, employability places the emphasis on the worker's possibility to change jobs or choose the role in which the work is done. For the worker, this means an increase in the number of short-term and temporary contracts and their facilitation. As a result, the transitions, which take place in the labour market are improved, although the situation results in many questions concerning different branches of socio-economic sciences and law.

# The knowledge worker

**New Economy — Knowledge Networks — Knowledge Economy**

**Immaterialisation of Products and Commodities**

**Information and Knowledge — Ideas and Innovations**

- **Intellectual Property Rights IPR**
- **Knowledge Intensive Business Services KIBS**
- **Know-how**
- **Obligation to Secrecy**

**Role of Legislation**

**IPR — Contract Law — Labour Law**

- **Definition of 'Knowledge Worker'**

## General

According to the story, Big Ben stopped. A repairman was called, who got the massive clock machinery to work again solely by tightening a certain screw. The repairman formulated the bill as follows: tightening of the screw, 10 £, the information of which screw to tighten, 100 £. This is the idea of the knowledge work. Knowledge costs.

The central object of exchange in the new work is knowledge. The produced commodities are increasingly immaterial, made in different types of networks. The experts of different fields contribute in order to accomplish a common goal, forming the product of knowledge economy to be sold. Work is usually performed employing electronic knowledge networks. The members of a knowledge economy may work geographically far apart from each other, in different countries and continents. Knowledge work has become global.

When the object of production and exchange is knowledge (information, innovations), new challenges are set for production methods and markets. Certain earlier aspects relating to physical production are left in the background as the aspects arise of new immaterial products are emphasised. Intellectual property rights, obligation to secrecy, data protection, and questions of information safety are essential in terms of the knowledge work. On the level of enterprises, as part of company strategy the importance of patents and other intellectual property rights, for example, have grown.

Legislation aims to take into account the demands set by the knowledge work, but the fast development of technology and new methods of production have left the legislators behind. Legislators attempt to interpret old laws according to the new demands, but it is clear that legislation will never be able to correspond to e.g. the pace of renewing technological applications. On the other hand it can be justifiably asked whether the role of legislation is to regulate the new situations brought about by new technology at all. If these measures are taken, there may be danger of these laws becoming quickly antiquated. Technology and new methods of production are developing even faster, and it is not appropriate to legislate laws that attempt to provide solutions to the conflicts caused by the application of new technology.

Knowledge work is a growing sector of working life, which is nevertheless regulated by normal and traditional working life regulations. In addition to the regulations in working life, new principles have arisen. As far as the new economy and knowledge work is concerned, rules have increasingly been sought from commercial law. This development has taken place due to the privatisation of work: work is done less than before in permanent employment relationships and more in an entrepreneurial fashion. This is why more and more rules from the corporate sphere are being applied also to the performance of work. Although an individual unit of work remains to be factually closer to a normal employment

relationship, if the performer of the work is self-employed (e.g. a freelancer), in some cases the ground rules between two entrepreneurs are applied.

One central field of the knowledge work is the knowledge-intensive business services (KIBS) which is a difficult field to define. However, high-level technology and innovation are characteristic to this field. Both scientific research and information technology are often also used as tools by KIBS. Most clients of KIBS are other companies, from the private as well as the public sector. Products are e.g. research results, consultation and training. KIBS are an essential part of innovation networks, in which new knowledge is produced and applied, and new technology employed. (Järvensivu, Kolehmainen & Tulkki 2000.) A person who works especially in the KIBS field is a knowledge worker.

It is difficult to define a knowledge worker and knowledge work. All work involves knowledge in some ways. Still, a more specific distinction can be made: knowledge workers are those whose work involves not merely the use of knowledge, but who generate ideas and new knowledge. According to one definition: "occupations can be categorised into two main groups: non-information workers and information workers, the latter being divided into two sub-categories, namely those manipulating information (data workers) and those generating ideas (knowledge workers)" (OECD 2000, 4). The network economy will accelerate the growth of the knowledge economy, since the network effects of sharing knowledge expands access to the inexhaustible pool of knowledge from which more knowledge can be created.

The central object of exchange is immaterial property, which involves different intellectual property rights. For this reason, the significance of immaterial rights has grown and continues growing. Immaterial law is often realised as a negative right and it facilitates the negative procedures taken toward the other actors. This way, market leaders are often able to prevent or at least slow down others' entrance into the market, requiring that they also possess the relevant immaterial rights. Immaterial rights affect the creation of innovations in that those with the leading market position in terms of intellectual property rights have the best opportunities to author new inventions and innovations and receive profit for the accomplished developmental work. (Saarnilehto 2000, 138.)

The field of intellectual property rights includes those laws which are e.g. used to author exclusive rights for the author of the innovation to decide the use of the product. On the other hand, these rights also includes competitive legislation, which attempts to develop free competition by warding off monopolies and cartels. At first glance exclusive rights and competitive legislation are in conflict with one another. First, exclusive rights are created and then attempts are made to prevent them. Nonetheless, in regulating exclusive rights a system has been incorporated into them which prevents effects seen as detrimental to the competition of exclusive

rights (e.g. the obligatory licensing system). The exclusive right as such is not a limitation of competition in competitive legislation.

The protection of business secrets is regulated in Finland in the Act on Unsuitable Procedures in Business Operations. Business secrets are all those matters whose secrecy has significance in the business activity of the business at hand. (In the committee hearing of the law, business secrets were understood more narrowly and considered to be important information affecting research work, product development or other results of corresponding activities.) Business secrets can be technical or economic. By 'know-how', on the other hand, is meant all the knowledge and experience needed to practice certain business. The terms 'business secrets' and 'know-how' partially overlap one another. Business secrets are given protection in three situations. First of all, no one should illegally procure or attempt to procure knowledge of a business secret or use or express the knowledge procured in this manner. Secondly, a discovered business secret cannot be used or expressed while in service. Thirdly, the obligation to secrecy can continue through special contracts after the end of the service or commission relationship. (Haarmann 2001.)

## New forms of work

**Immaterial Products**
**Remuneration**
**Working Hours**
**24/7 System of Services**
**Knowledge Workers**
- **Concept of the "Employer"**
- **The Situation Regarding Employees**
- **"Atypical" Employment**

The traditional work is transforming into a knowledge work and products are being produced in private minds or in various groups of minds, instead of machines. This is why the image of work has changed and is very different from the previous context of work. The forms in which work is done have changed, but not the ways the work is managed, nor the administration of work etc. Several facts will affect for instance how the concept of work time, the supervision of work, the self-employed or employee-status and how work itself will be understood in the

future. This will happen when the change of traditional society into an information society is fully understood.

Remuneration is no longer the only measure of work. An employee's salary is often tied together with e.g. options and different benefits that depend on the output produced. There are obligations, possibilities or even hopes tied to a person's salary. Work is measured by the accomplishments and the output of an enterprise or organisation. A company's output is measured e.g. through growth percentage. Work is becoming a way of life and vice versa.

New forms of work are now emerging, particularly as labour markets start to loosen up in many countries. Although one can argue about how these aspects are measured, there is a great deal of evidence that the number of hours worked in the "developed" world has been rising again over the last 5 to 10 years after the long-term reduction of working hours achieved over the last 150 years. The USA leads with the highest number of hours worked and the UK has the highest in Europe. These are also the two western countries with arguably the loosest labour markets. Many sociologists and so-called working life consultants are now claiming that this is mainly due to flexibility, especially of an unbalanced kind (i.e. flexibility for the employers but not the employees).

Knowledge work and new technology have made the 24/7 service system possible. The demands of increasing competition in the new economy are also perceptible in the welfare of the working population. Many empirical studies have been published in the last couple of years (for example by the Joseph Rowntree Foundation in the UK) which show significant increases in stress, "desk rage", arguments and confrontations in the workplace work, absenteeism, depression, etc., all caused by flexibility leading to overwork coupled with rising lack of security in the work place. Telework is cited by many of these studies as one example of how workers can be "exploited", although major studies have recognised that telework, properly implemented, can provide all-round benefits and, ultimately, is not the culprit.

> It would be interesting to study which are the sectors that have increased the working hours most. In case of the self-employed, one reason for this might be the consumer's demand for round-the-clock services. Many services are already available for 24 hours a day and the use of the internet will increase the amount of these services a great deal. We are on our way to a 24/7-system of services in our society. It may be more difficult to adjust this new system as an employee, e.g. because of the working hours regulation. This may also lead to a dual workforce; those who work more will get paid relatively more and those who work e.g. part-time, will get less remuneration/ hour for their input.

The fastest growing sector of economy is the knowledge economy. From this, new kinds of economic questions arise involving information exchange: How should information be exchanged? How can one buy knowledge or information? This

question is emphasised especially in telework, if the work is done as self-employed. To sell information, it should be beneficial to others but difficult to acquire. In addition to knowledge networks, different kinds of databases are also developing strongly. Market knowledge, which has traditionally been in the reach of a few professionals, such as salesmen and professional investors, can now be attained by anyone. In the knowledge economy there is a severe shortage of employees, even though the rate of unemployment is high in several parts of Europe. This is the case especially in e-commerce. There is also a shortage of skilful teleworkers and on-line workers (e.g. in various net-support services). The knowledge economy has decreased the number of jobs, but it has also created them. In addition, the knowledge economy has created new possibilities for the growth of the economy in general.

Knowledge teams are part of the network economy in which several innovations are created. Knowledge workers often work in various teams and groups. The work itself is carried out more and more virtually (using telematics). These virtual knowledge teams are the key actors of the modern knowledge work. It is a matter of making creative use of know-how and experience. The more a person or a team performs creative work, the more creative they become. If work is carried out in this way today as well as in the future, shouldn't we re-determine the concept of work, working hours, supervision of work, self-employed or employee-status etc.? There is also the question of obligations. Work accomplished as self-employed is increasing. A virtual knowledge team may also include "private consultants", and those who are employees may also have an enterprise for part-time entrepreneurship. The distinction between employees and entrepreneurs (self-employed) will become crucial in the case of virtual knowledge teams and in project-based working.

It is probably justified to say that there is no point measuring e.g. working hours in the case of a knowledge worker. This alone and many other factors create new challenges e.g. to the labour legislation that still is based on the industrial model of an employee and work.

## Differentiation between employment and self-employment

In the film "Our Times", Chaplin shows us how a big industrial factory eliminated all the uncertainties connected with the human factor performing labour, dividing it into simple activities, which are measurable and predictable. Such forms of work have not vanished entirely in our time, but new forms of work have been introduced, particularly in the field of information science and communications. The idea of making a wage employee autonomous is a key element in the newest management theories. However, we often find out that these well-intended theories are in conflict with present labour legislation. Or we might say that legislation is not ready for entirely autonomous employees, especially in case of virtual knowledge teams, which are project-based.

The concept of the "employer" has also changed. In some cases it is hard to find the right party acting as employer and taking the corresponding responsibilities. On the other hand, the employer remains the de jure contract partner of the employee, although the various networks and projects that people are working de facto hold the power to manage human resources without any necessity to be legally responsible for their decisions.

Labour law plays a significant role in identification of the parties and organisation of the work. However, the attitude of labour law towards the issue of networks seems to be very unclear, even though it is disclosed in principles regulating the issues of health and security and subcontracts. There is no law on self-employment, but numerous, more or less developed laws, frequently connected with special nature of the subject of performed labour.

Probably the most serious change affecting employees as a result of knowledge work and the virtualisation of company structures is the change in the current legal basis of employment relationships which now happen internationally. There are several examples of this in the labour market. The former standard traditional contract usually meant a full-time job within the company organisation, usually for an indefinite period of time and with social security protection. In place of this "standard contract" the "atypical" work contract will increasingly be offered. Some examples are:

- part-time employment,
- temporary employment (e.g. project-related contracts or other temporary contracts),
- contracting workforce to sub-employers,
- independent small entrepreneurs, freelancers,
- home-work (e.g. telework),
- posted worker contracts (the worker is in a state of preparedness).

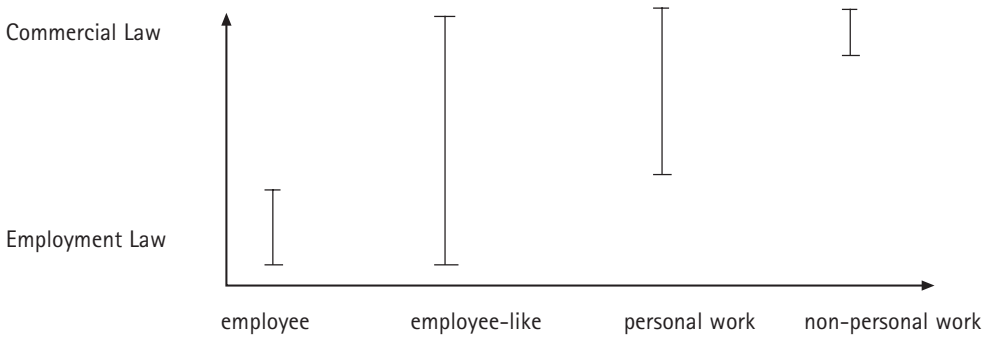
Along with this increase in temporary employment contracts can be seen an increase in "self-employed entrepreneurs" – also called "new self-employment" or "dependent independence" – which comes to have an important place in the context of virtual company structures. Consequently, this new trend will have major effects on employees.

In place of the "standard contract" type of employee, the labour market increasingly includes these "self-employed persons" or "non-wage workers", who have come to form an "invisible workforce". This category also includes specialised employees who have previously been employees in the organisation and have now become self-employed persons. These employees sell their services to the key company while taking on the responsibility and risks for such services (possibly on the basis of part-time work).

## Contractual flexibility

**-Labour Law or Commercial Law?**
**-"The Quasi-employee"**

**EMPLOYMENT LAW AND COMMERCIAL LAW**




(Source: Supiot 1999.)

The virtual company as a temporary network of independent partners is characterised by the joint acting of legally independent companies or individuals. For the individual, this necessitates a high degree of flexibility when arranging contracts of employment. The result is movable, flexible and efficient manpower; a shift in direction away from "classical" contracts for an indefinite period towards result-oriented and project-oriented contracts. Controlling the employee's presence will be replaced by a check of his working results. The independence of freelance jobs and single-contractual arrangements will gain in importance. In some cases, e.g. when the work has become a way of life, the workers do not want, need, or care for the social protection the employment law offers them. They may start to operate as freelancers in order to avoid the employment legislation they find too rigid. On the other hand, the employer may also encourage this development for the same reason. This may lead to an unjust situation, where those how are in a need of the legislative protection are left behind in the labour market.

The criteria of wage employee and self-employed is vague and in many ways effect negatively e.g. the forming of various networks of knowledge workers in the field of professional activity. The main conflict lies between labour law and

civil and commercial laws. To solve this conflict there are two options. One is the thesis supporting the broadening of the "empire" of labour law at the cost of self-employment. This means that we should emphasise the labour law application instead of that of the commercial law. On the other hand, inconsiderate broadening of an employee's status seems improper if it leads to enhancement of that protection onto managers of large enterprises (being independent without taking any risk) or onto workers really working on their own status.

The other option is to narrow the labour law application. The idea is to free enterprises from regulatory constraints with more flexibility. Protective labour measures, such as minimum wage, working-time restrictions and dismissals, are considered as hindrances to growth. Supporters of this option believe that if labour law is adapted too widely, such law hampers economic initiative and the creation of new jobs. Often, the self-employed worker enjoys little or no social protection.

The employee is considered the weaker party in work relationship. This means that when there is, for instance, a conflict between an employee and an employer and it is brought to a court, the case can be solved in favour of the employee if there is equal evidence. This may be one reason why the judges tend to broaden the border of wage employment. The employee's status is usually linked to a higher level of social security.

## The "quasi-employee"

Finally, there is also the question of forming a third kind of labour relationship, between wage employment and self-employment. A third group being introduced into the job market seems to be a combination or alternative employment activity between traditional employment and traditional subcontracting. This "third kind of labour" already exists to some extent in some European countries (Italy, Germany, Holland). Most often it may be seen in the form of partial application of labour law to workers that are legally independent, but economically dependent ("quasi-employees"). These workers enjoy certain provisions of labour law relating for example to collective work conditions. "Dependent self-employed persons" are legally regarded as independent, as long as they work independently from regulations concerning labour protection and social laws. However, in reality and as well as in economic terms they enjoy a relationship of dependence with a single employer.

The worker of tomorrow will perform work in one or more networks, on his/her own, but mostly as part of a team, in the framework of shorter or longer projects, for which he/she will be contracted. He/she may also have a micro-company of his/her own for certain assignments. The client will be able to choose from hiring an employee to making a contract with a company. The "independent worker" will become in a sense his/her own employer. Labour relations will at the same

time be less collective, less uniform, freer, less controllable and controlled. Collective arrangements will be mere frameworks or then simply fade away. In the majority of countries around the world, trade union representation has declined in the past decade. The unionisation rate has dropped by over 20% in over half the 66 countries in which comparable data could be collected. Moreover, in 48 western countries the unionisation rate has fallen, or remained under 20% of the formal, organisable (wage earning) labour force. The same applies to employers' associations. (ILO World Labour Report 1997—1998.)

The idea of the "quasi-employee" is still vague and there may arise fears that the creation of a self-employed worker may "devour" wage employment. There is also a risk of an increase of "falsely self-employed persons" who will only increase the number of the "working poor". Legislation does not make this possible in Finland, but the discussion has already commenced. It is time to seek new methods of solving flexible-based subcontracting and freelance-based ways of working, especially in case of team-based knowledge working and virtual organisations. As far as commercial and social laws are concerned, legislation is greatly needed in this area: the dissolution of the normal employer-employee relationship requires a re-organisation of the entire social security system. There is a choice to be made: We can either leave the market forces to determine how the labour market functions or we can try to control the labour markets, not forgetting social protection by legislation.

## Conclusions concerning the knowledge worker

Along with new technology, work has become liberated from time and place. The significance and proportion of knowledge in the process of production is growing. Self-employment is also on the rise. Particularly in areas in which the digital economy is in a central position, the proportion of self-employed vis-à-vis the workforce in general is noteworthy and above average.

Knowledge workers work in skill-intensive fields, in which expertise plays a central role. These knowledge intensive business sectors (KIBS) include the software and new media field, marketing communications, legal services, technical services, consulting services, personnel services and private research and training services. A great deal of the newest information and knowledge accumulate in these knowledge intensive fields, which is then sold onwards to client companies through training and consulting. KIBS are an essential part of the innovation system. (Toivonen 2001.)

The knowledge worker can hence work as both an employee and an entrepreneur. The possibilities for self-employment are exceptionally good in the case of knowledge workers. This is made possible through companies' growing need for specialisation, concentration of core skills and externalisation of other activities in hope of increase in efficiency of activities and cuts in expenses. Special expertise, which is "produceable" and "suppliable" worldwide in electronic form, is the knowledge worker's capital. Investment in expensive equipment is not necessarily required. The supplying of a ready product to the buyer is fast, cost-efficient, and

through economic electronic knowledge networks. On the other hand, knowledge as capital is quickly becoming antiquated. This sets the knowledge worker a constant requirement for training. It is no longer sufficient that new things are learned, but new ways of learning and adaptation to new requirements should be learned as well. The requirement of flexibility has also become more obvious.

Many employers strive to bind employed knowledge workers, particularly key persons, to their companies. Means used in for this in addition to salary are other employment benefits, stock arrangements as well as agreements of prohibition of competition.

The next passages attempt to take into account central rights and obligations of knowledge workers keeping in mind the duality of this role: the knowledge worker can be either an employee or an independent entrepreneur. Business and professional secrets, regulations concerning prohibition of competition, improper conduct in business activities, rights to innovations and copyright questions are organised in different ways depending on the status of the knowledge worker. This aspect is usually not taken sufficiently into account in activity involving innovation.

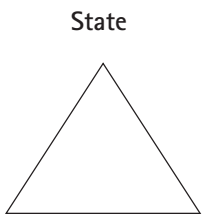
## Business and professional secrets and prohibition of competition

(Hannu Mikkola together with Petri Pitkänen)

Time is Money
- Dynamic Comparative Advantage
- Speed of R&D

Information and Knowledge — Innovations and Ideas — Productivity and Competitiveness
- Information as a Mean of Production

Regulation
- IPR
- Unfair Competition
- Business and Trade Secrets
- WTO — TRIPS 1994




Definition of Business Secret

Mutual or Conflicting Interests

## General

The famous quote, "wisdom is power", by Francis Bacon is almost as worn out as another famed cliché, "time is money". Yet never before have both phrases been more appropriate than now, describing essential features of the new economy and global international trade. Time is money, not only in the traditional sense of effective production and distribution of goods, but also in the sense of dynamic comparative advantage.

The principle of dynamic comparative advantage could be simplified as follows: The first company to exploit global markets by introducing a new technology, an innovation or product novelty is likely to maintain its competitive edge over rivals for some period of time thus maximising profits and producing yield for invested capital. If (purely imaginary) company N can manage to develop an idea from the drawing boards of the R&D department for an innovation to be marketed and commercialised in a shorter timespan than its rivals, the more probable it is for N to gain competitive advantage. Naturally, this requires effective protection of intellectual property and business and trade secrets. The results and products of the costly R&D process need to be kept out of competitors' reach at least until the product is commercialised and subject to reverse engineering by rivals.

The importance of information in productivity and competitiveness has been constantly increasing during the past few decades. Commodities consist of immaterial elements to such a degree that information is claimed to be in a similar position as capital, workforce, tools & machinery and land are as means of production. Nevertheless, information differs from the more traditional means of production in one crucial point: it is an intangible commodity and the use of information does not automatically exclude competitive use as occurs with normal, tangible commodities or property. Nor does information diminish as a result of use – quite often the result is the contrary: the accumulation of information creates innovations, or at least possibilities for innovations.

So why don't we create a sort of utopia with free flow of information and extinguish intellectual property rights and protection of business and trade secrets, securing mobility of the knowledge worker among other great things to come? One answer is quite obvious: investments in R&D would become more than hazardous if no sufficient means were available to protect intellectual property or undisclosed information i.e. business and trade secrets which are essential in the new economy for yield.

Another answer could be that judging from a historical point of view, Adam Smith's famous invisible hand did not prove to be a very successful resolution (maybe because the right hand did not know what the left one was doing) causing more hobbesian ("bellum omnium contra omnes") than liberal or utilitarian effects on society and ending with trusts and monopolies. The need for regulation in the form of anti-trust laws, intellectual property rights, prohibitions of unfair competition etc. became internationally clear in the latter part of the 19th century. Notable examples are also the Paris convention of 1883 (on industrial rights) and

the Berne convention of 1886 (copyrights), of which the former was supplemented in Stockholm 1967 with article 10 concerning protection against unfair competition. Not to mention recent development in form of the 1994 World Trade Organisation TRIPS (Trade Related Aspects of Intellectual Property Rights) Convention.

According to Article 39 of the convention in question, members of the WTO are obliged to ensure effective protection against unfair competition and protection of undisclosed information. The article also states that "natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, or acquired by, or used by others without their consent in a manner contrary to honest commercial practises (e.g. breach of contract, breach of confidence and inducement to breach, acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practises were involved in acquisition) so long as such information is secret ... has commercial value because it is secret ... has been subject to keep it secret ...". Article 39 of the WTO-TRIPS Convention sets the standards for minimum protection of the business and trade secrets that member states are bound to follow when enacting legislation if national regulation is inadequate or non-existing. In "developed" countries, regulation of unfair trade and business and trade secrets has been a common phenomenon since the beginning of the 20th century.

The term "business secrets" is vague and calls for case-by-case evaluation. This is understandable because logically there cannot be exhaustive definition of business secrets covering all possible situations nor can there be such a casuistic list. However basic prerequisites are that a business secret must have economic significance and must not be of common knowledge in the business domain or trade in question. Moreover, a business secret must be intended to be preserved as a secret or confidential, undisclosed information. Examples that could be mentioned are information relating to a company's profitability, turnover, customer base, business practise, costs, prices, market share, production figures, future techniques, know-how, designs, drawings, processes, experimental and development work, inventions, trade secrets, developments, machinery, research activities or plans, software, equipment, prototypes etc.

In search of the competitive advantage through innovations, information and knowledge are vital competitive resources, especially on the company level but also when considering national economy or even the individual, knowledge worker-level. The interests of actors on these three levels are partly mutual, partly conflicting. The state presumably wishes to sustain economic growth. In order to do so in the new economy, the state must offer a suitable environment for companies in the form of necessary infrastructure i.e. high level of education and scientific research for example.

Companies want to achieve better positions, or at least maintain their positions in fiercely competitive global markets. Prohibition of competition, agreements on prohibition of competition and the employee's obligation to maintain business secrets are the means of companies i.e. the employers apply to employees, especially knowledge workers, when trying to accomplish their goals of competitive advantage. However, the state also has an interest to regulate prohibition of competition,

agreements on prohibition of competition and employee's obligation to maintain business secrets. The regulation of these questions has been seen as a manifestation of the employee's principle of protection or in the traditional context in which the tacit knowledge or professional skills obtained through occupation are to be considered as the employee's intellectual property, a human capital belonging to employee and therefore protected against far-reaching contractual limitations. The right to make a living in a job, profession or livelihood of one's choice is namely a fundamental right guaranteed in the Constitution. Any restrictions of fundamental rights have to be regulated by legislation.

Another, quite pragmatic approach to the regulation of prohibition of competition, agreements on the prohibition of competition and employee's obligation to maintain business secrets can be reached if we examine the state as an economic actor. As mentioned above, the basic assumption is that the state wants to sustain economic growth. It has been suggested that ideas and innovations would be of greater importance to growth than earlier supposed, and that it would be profitable for the state to invest in information and knowledge through education, scientific research and even product development (Romer 2000). In an environment of accumulating information and knowledge new ideas and innovations are more likely to emerge. On the other hand, new ideas and innovations are hard to spawn consciously and in a controllable manner. The tacit knowledge and new information obtained by the knowledge worker through occupation could be the vital ingredients for the diffusion of technology i.e. spread of information and knowledge through society thus improving possibilities for the new ideas and innovations to surface. In the long term accumulation of information and the diffusion of technology, which could be intensified by rotation and mobility of knowledge workers, will have a positive effect on competitiveness and economic growth. So the question is as always when legislation is concerned about balancing the pros and cons of the matter i.e. employee mobility vs. protection of business and trade secrets.

**Regulation of business and professional secrets, prohibition of competition and agreements on prohibition of competition**

**Regulation in Labour Law**
**General Obligations**
- **Loyalty, Fidelity and Good Practises**

**Obligation to Secrecy**
**Prohibition of Competition**
**Agreement on Prohibition of Competition**
- **Limitations**
- **Requirements**

**Employee — Entrepreneur**

In national legislation the general regulation concerning business and professional secrets, prohibition of competition and unfair business practises is in the Act on Improper Procedures in Business Operations (1061/1978). According to act in question no one may unlawfully acquire or try to acquire information on business secrets or express or use such information for own benefit or otherwise harmfully (4:1 §). In Chapter 30, Section 5 of the Penal Code intentional and unlawful disclosure or acquirement of business secrets for own benefit or to harm others is criminalised. These statutes are applied to literally everyone, regardless of the position or status under which work is performed. Other relevant statutes are Damages Act (412/1974) and the Act on Legal Acts (228/1929).

In labour legislation the regulation of employee's obligations to maintain business secrets, prohibition of competition and agreements on prohibition of competition is mainly in the Employment Contracts Act (55/2001). Also the Act on Cooperation (725/1990) regulates the obligations of employees and representatives of the personnel to maintain business secrets. In the Employment Contracts Act regulation of aforementioned questions remains fairly similar compared to the former ECA of 1970 and the made adjustments could be described as minor.

The general obligations of the employee are regulated in Third Chapter, Section 1 of the Employment Contracts Act. These general obligations can be described as obligations to work, loyalty and fidelity. Normal principles of contractual obligations, mainly loyalty and good practises, are included in contracts of employment like any other contract. Possible negligence of general obligations is not sanctioned but it can be a basis for dismissal (KKO 1985-II-99) or even for damages (KKO 1986-II-110).

The general obligations of an employee may also be a part of the assessment and interpretation when considering other possible breaches or violations of the employee's obligations and employment contract like prohibition of competition or obligation to maintain business and professional secrets.

> It was published in the media in spring 2001 that an employee of ABB Power Systems positioned in Sweden was arrested on the basis of suspected espionage against Sweden. However, a spokesperson for the company stated that the company, as far as they were concerned, had no grounds or reason for dismissal because the person in question had not jeopardised any technical or economic secrets of the company. If the suspect is found guilty of espionage the felony could be considered as an action contrary to employee's obligations of loyalty, fidelity and good practises and therefore constitute sufficient grounds for dismissal.

Chapter 3 Section 4 of the Employment Contracts Act regulates the employee's obligation to maintain the employer's business and professional secrets. The employee may not, under duration of the employment contract, use for own benefit or express to others employer's business and professional secrets. If the

employee has obtained such information unlawfully the prohibition is valid after termination of the employment contract as well. A third party who knew, or should have known that the employee had no right to express the secret is liable for possible damages together with the employee.

Unlawful acquisition and use of business and professional secrets is also regulated in the Act on Improper Procedures in Business Operations. According to the act in question no one may unlawfully acquire or attempt to acquire information about business secrets or express or use such information for own benefit or otherwise harmfully. The obligations under the Act are not limited to the duration of contract or assignment-like employees' obligations normally are when information i.e. business and professional secrets are acquired legally.

If business and professional secrets are intentionally and unlawfully disclosed or acquired in order to gain benefit or to damage others such action may also result in criminal liability. Chapter 3 Section 4 of the Employment Contracts Act regulating business and professional secrets did not change much when compared to former regulation in the ECA of 1970. The prohibition of corruption or to receive bribery was annulled due to regulation in the Penal Code. The interpretation considering former regulation in of the ECA of 1970 has been such, that it does not restrain concluding an explicit and mutual agreement between employer and employee, in which the employee is contractually bound to maintain business and trade secrets of the employer even after termination of the employment contract. Also the Employment Contracts Act will not restrain voluntary agreements on these matters. The regulation in the Act on Legal Acts is applied when evaluating the validity and reasonability of such agreement. So normally the employee's obligation to maintain business and professional secrets is limited to the duration of the employment contract but it can be extended if explicitly agreed or the information in question was obtained illegally.

The prohibition of competition is regulated in the Employment Contracts Act . The employee may not perform such work for a third party, or engage in such activity which would, considering the nature of work and the position of the employee, as a competitive activity presumably damage the employer and be against good practises in employment. The employee may not in duration of the employment engage in such preparing actions of competitive activity that would not be considered acceptable. A third party, who knowingly employs a person against prohibitions in, is liable with the employee to compensate the employer's damages.

The Supreme Court has ruled (KKO 1990:37) that planning of competitive activity is basically allowed, depending on the status of the employee; far-reaching plans including preparing activities on behalf of an employee in a superior position may constitute a violation of obligations to loyalty, fidelity and good practises. The new regulation is not aimed to change the prevailing state of this matter.

In the Employment Contracts Act also the agreement on prohibition of competition is regulated. For special weighty reasons with connection to employer's

activity or the employment contract it is possible, at the beginning of during the employment, to contractually (agreement on prohibition of competition) restrict employee's right to after termination of employment contract make a contract of employment with employer who practises certain kind of competing activity comparable to that of the employer as well as employee's right to practise such activity for one's own benefit. When assessing the aforementioned special weighty reasons for agreement on prohibition of competition to be considered among other things are, the nature of employer's activity and the need for such protection that has a connection to maintaining business and professional secrets or special training arranged by the employer and, the status and duties of the employee.

An agreement on the prohibition of competition may restrict the employee's right to conclude a new contract of employment or right to practise a profession for the maximum period of six months. If the employee can be considered to have received reasonable compensation for the inconvenience caused by the agreement the time period for the restriction of competition may be one year at the most. An agreement on prohibition of competition may contain a clause determining contractual penalty or sanction instead of damages, which may not exceed the sum of wages that the employee has received in less than six months time before termination of the employment contract. An agreement on prohibition of competition is not binding to the employee if the employment contract is terminated by the employer. The aforementioned regulations considering the duration of the agreement on prohibition of competition and contractual penalty do not relate to employee, who based on his/hers duties and position can be considered to perform management of the company, business or institution, or any independent unit of those, or otherwise be in a directly comparable independent position. An agreement on prohibition of competition is invalid on those parts which are made against aforementioned regulations. Otherwise the validity and reasonability of this kind of agreement is to be evaluated on the basis of the Act on Legal Acts.

The regulation emphasises the status, occupational position and the duties of the employee alongside employer's true need for protection as well as possible special training organised by the employer, when the prohibition of competition and agreements on prohibition of competition are to be evaluated. The requirement of special weighty reasons could be fulfilled more easily if i) an employee is in such position that he/she has access to technically or economically important undisclosed information, or ii) the employer is engaged in such a sector of business where the fast renewal of information, knowledge and special know-how are essential factors of productivity and competitiveness, and last but not least iii) if the employer has arranged and financed special training for the employee.

The problematic of business secrets are also noted in the Act on Cooperation. The Act basically states that employees and representatives of the personnel who have acquired knowledge on business and professional secrets of the employer or his/her business or contractual partners are obliged to maintain such secrets if disclosure would harm the employer or partners. The obligation of maintaining

secrets requires a notice or statement on behalf of the employer that information is intended to be kept secret. In this aspect the regulation is different from the Employment Contracts Act in which such a notice is not required considering business and professional secrets.

The Act on Improper Procedures in Business Operations regulates business partners e.g. partners in contractual networks or other companies, entrepreneurs, auditors, legal counsellors, consultants etc. The obligations under the Act are not limited to the duration of contract or assignment – like employees' obligations normally are when information i.e. business and professional secrets are acquired legally. When persons other than the employee have fully legally acquired such undisclosed information that is to be considered a business or professional secret he/she is obliged to maintain secrecy even after contractual relationship has terminated or an assignment has ended.

One of the major issues in contractual networks and project-type work regarding business and professional secrets is the actual status in which the work is performed. If the work is performed as an entrepreneur the protection of business secrets is to be evaluated under the Act on Improper Procedures in Business Operations, meaning that as mentioned above the obligation of maintaining business and professional secrets is not limited to the duration of contract or assignment. If the work is performed within the status of an employee the obligation to maintain business and professional secrets is evaluated under the Employment Contracts Act and basically limited to the duration of employment relationship, unless explicitly agreed otherwise or the information in question is obtained illegally.

The difference between the positions of the employee and the entrepreneur in contractual networks and project-type work is also remarkable in the following situation: if a project and contracts linked to it are cancelled by the original initiator due to e.g. economic reasons, the obligations of the entrepreneur concerning business and professional secrets are defined according to the Act on Improper Procedures in Business Operations. The obligations of the employee to maintain business and professional secrets and the validity of agreement on prohibition of competition are to be considered on the basis of the Employment Contracts Act. Now, if the results of the project so far have economic value as business secrets, an entrepreneur cannot use them in his/her own activities or in future employment but an employee can if his/her employment contract has been terminated by the employer. Under the aforementioned prerequisites a possible agreement on prohibition of competition becomes invalid and is not legally binding for the employee. So the former employee could, under the circumstances described above, be in a more comfortable position when engaging in new professional activities than the entrepreneur.

**Employee mobility and the obligation to secrecy**

**Simultaneous Projects**
- **Information**
- **Secrecy**

**The Weightless New Economy**
- **IPR outdated**

The "New Work" is often defined as work performed making use of knowledge networks. Internet-based companies are the central actors in the new work. It also involves the reorganisation of work and production. At the same time, work has become project-type work, performed in self-managing teams. Various projects begin and end simultaneously, duties are fragmented and case-sensitive. Work may be performed for several clients simultaneously. In addition, employees move a great deal from one project to another and between different teams or clients.

When employees transfer from one duty to another and to the services of different clients, the questions relating to information management and trade secrets are emphasised. Because they are sporadic and clients are numerous, it is difficult to fit together the project-like nature of the duties and the obligation to secrecy.

Especially in terms of competitive activity and prohibition of competitive activity, the question is of the fitting together of two conflicting interests. On the other hand, the company has a justifiable need and right to protect its own specialised know-how. If this were prohibited, the effects would naturally be negative for instance in D&R activities. It is also a question of fair play, because for example the leaking of the contents of agreements made with clients to another company through an employee is not fair toward the employer of the other company. It should be remembered that a large portion of "trade and professional secrets" is by no means technical know-how but knowledge of prices, terms of delivery etc.

On the other hand, the employee has the right to earn his/her living with his/her know-how, and from the employee's point of view, it is not reasonable to limit this right in a wider scope than those interests mentioned above require. The fitting together of these interests has created the regulations in the Employment

Contracts Act concerning competitive activity, agreements on the restraining of competition and the obligation of secrecy. The traditional risk of the entrepreneur, which is a basic distinctive characteristic of the entrepreneur, has been shifted partially to the shoulders of employees and teams with accountability: if the goals set are not accomplished, employees are changed or the activity in question is halted. The risk of the economic success of the activity is thus, in certain cases, taken by the employees. The employer provides the framework for the activity, but the activity is organised so that there are no risks created for the company. Therefore, the status of workers is often "entrepreneurlike", although the work may be performed in an employment relationship.

Danny Quah (EVA letter 1/2000) has coined the term 'weightless' to portray the new economy. He describes the central feature of this 'weightless economy' as the role of ownership rights and the radical change of their significance. Earlier, in the traditional economy, innovative activity aimed mainly at the improvement involving the productive process and ownership rights (e.g. patenting) had an important role in the protection of immaterial capital. According to Quah, just being at the disposal of new technologies is not important or even sufficient as promoting economic development. It is central that consumers and companies are willing to use new technologies. These largely affect how much society will benefit from the new economy.

Quah also claims that the present system of intellectual property rights may be outdated. As such, it facilitates the possibility of monopolies to author innovations and has worked fairly well for the past 150 years. Only the largest multinational corporations can efficiently exploit the protective measures enabled through the system of intellectual property rights, only due to the rigidity and costliness of the system. In the long run, however, a new kind of system used as a catalyst could be more efficient. One method could be a publicly sponsored research programme, which would further distribute the research results at no expense, as was partially done with the US space programme (EVA letter 1/2000).

The economic rationale for the IPR system is that without such protection, the level of innovation would fall below that deemed socially optimal. Innovation involves (often considerable) front-end sunk costs. If these initial expenditures are to be recovered, then post-innovation prices must remain above the level of marginal costs – that is to say some degree of monopoly power is required. IPRs are designed to ensure this outcome. Without such provisions, imitation and copying might quickly compete away any monopoly profits. Innovators would fail to recoup initial costs, and future innovative activity would be discouraged (Shurmer 1996, 48). IPRs are to ensure that the investments are productive and beneficial.

# Innovations made in the employment relationship

**R&D — Innovations — IPR**
- **Competitive Factors**

**Rights of the Innovator — Employment Contract**
- **Patent Law**
- **Labour Law**

## General

Through the rapid development of technology and the internationalisation of law, copyrights, trademarks, patents, business identification and business secrets have risen to become the most central competitive factors in business activity. The requirement for companies in the field of technology and new media is the maintaining of intellectual property rights within the company and their controlled licensing. Intellectual property rights legislation is subject to constant developmental pressure and new international protective systems have facilitated the international protection of innovations. Intellectual property rights are divided into two main groups: industrial rights and copyrights. However, in concrete situations it is possible that a 'work' receiving protection, such as a piece of jewellery, should be secured under design protection which is an industrial right (Saarnilehto 1997). According to the patent law the innovation belongs to the innovator. According to labour legislation the result of the work belongs to the employer. Due to these opposing regulations, a law concerning innovations within the employment relationship has been needed.

Innovative activity has changed rapidly in the past years. A great deal of personnel in large companies and research facilities work in R&D activity, so that it is not always clear who has really participated in the innovation. Simultaneously, research activity is strongly becoming internationally networked. When countries lacking the legislation in question are involved or when the research network includes private consultants without an actual employment relationship, the specification of possible compensations according to the legislation concerning innovations made within the employment relationship is quite difficult.

An innovation in an employment relationship means something made by a person working for another, which can be protected in Finland by a patent. An innovation made within an employment relationship differs from a normal patent prosedure in that the ownership rights of the innovation made within the

employment relationship may belong to the employer, not the innovator, due to the employment relationship of the innovator (Pekari 1993, 6). The employee is required to report the innovation to the employer. A written and dated notification is necessary, so that it can later be verified. Once the notification is submitted, the employee has the right to apply for a patent in Finland, but it is also necessary to submit a written notification to the employer within a week of the deposit of the application of the patent. Unless otherwise agreed, the employer must inform the employee within four months what right the employer will take of the innovation. The employee has the right to receive a reasonable compensation.

The rights of the employer and the employee to innovations made within the employment relationship depend on the relation of the creation of the innovation to the duties. If the innovation or equivalent is created within the employment relationship, both in Finland as well as in most other countries the employer has the right to take the innovation for him/herself with certain prerequisites, taking that it is included in the realm of the employer. An obligation of compensation is created for the employer, if he/she takes the innovation or equivalent as his/her own. In Finland, three different laws regulate how the employer receives the right to the result of the creative work made by the employee. These laws are the law concerning the innovations made by the employee, which concerns innovations which are possible to patent, the copyright law, which affects e.g. written and illustrated works as well as computer programmes, which are within the sphere of copyrights, and the Law on the Exclusive Right of Integrated Model, which applies to the structure of the integrated structure of the model in question.

**The rights of the innovator and employer to the innovation**

**Notification**
**Deadlines**
**Secrecy**
**Compensation**

**Reforms of Law**
- **Needs of Enterprises**
- **Conglomerates**
- **Internationality**

The innovator always has the right to apply for a patent for his/her innovation in Finland once he/she has first notified the employer of the innovation. A written notification must be made about the application for the patent within a week after leaving the application with the patent officials. The employer must inform the employee in written form within four months if the employer wishes to take the right to the innovation for him/herself. Before this four-month deadline, the employee may not express any information involving the project, which would cause the information to come out into the open without the employer's consent.

If the employer takes the rights to the innovation, according to the law the innovator should acknowledge to being the creator of the innovation and pay the employee a reasonable compensation. The employee is entitled to compensation even if it has not been agreed to before the creation of the innovation. The amount of compensation is case-sensitive and depends on the economic benefits gained from the use of the innovation. The employee should demand compensation for the innovation in ten years following the employer's notification of taking into use of the innovation. The employer also has a right to an innovation for which a patent has been applied for during six months following the end of the employment relationship, unless the employee is able to demonstrate that the innovation was created after the end of the employment relationship, or if with a separate contract a longer time has been agreed to, e.g. 12 months.

In complex cases, an employee, an employer, a court or the National Board of Patents and Registration of Finland can request a report from the Board of Inventions within the Employment Relationship, whose statements are authoritative, but do not bind the courts. Innovations made within the employment relationship can be divided into four categories. The exploitation of A innovations is within the realm of the employer's duties and have been created when the innovator has fulfilled his/her work-related duties. The exploitation of B innovations is within the realm of the employer's duties, but the innovations have not been created within the employee's particular work-related duties. The exploitation of C innovations pertains to the duties of the employer, but the innovations have been created without connection to the innovator's employment relationship. The D innovations include those innovations which do not pertain to the A, B or C-type innovations.

The Finnish Law on the Creation of Inventions within the Employment Relationship has been reformed and came into force in January 2001. According to the government's proposal for the law (HE 147/2000) the activity environment is presently different than it was when the law came into force in the 1960's and also when it was reformed in 1980's. There has been a transition from the productive focus of companies to focus on marketing and strategy. Internationalisation, changes in company structures and increasing competition have created additional pressures

on companies' product development and research activity as well as their exploitation in the best possible manner. Innovations have become a part of companies' product development activity. In particular the development of technology has been greatest in the fields involving data processing and biotechnology. The changing of company structures and range of activities has been rapid. There has been a transition from the individual company to independent subsidiaries and affiliates.

According to the government's proposal, regulation in accordance to the law should not become an obstacle in the exploitation of innovations. The objective of the new law is to better take into account the increasingly multifaceted needs of enterprises: "Today, entrepreneurial activity is organised into conglomerates i.e. more and more juridically independent persons either through ownership or other corresponding connections often form quite a solid economic unity. The rationalisations of business fields and company sales are presently everyday activities in business. The changing of the structure of enterprises through mergers and outsourcing also affects the innovations in employment relationships."

According to the law a conglomerate means a conglomerate as well as a municipality or association of municipalities, and the enterprises within their authority. In addition to the enterprises pertaining to the same conglomerate, for example the employer companies' own main company and this company's other subsidiaries, which are affiliates to the employing company. When the criteria of determination is fulfilled, the conglomerate is created.

As a result to the committee's report concerning the reform of the Law on the Creation of Inventions within the Employment Relationship. The Confederation of Finnish Industry and Employers called for more changes and modernisation of the law in its statement. It is important that enterprises and their employees are encouraged as much as possible in innovative and product development activity. The area of activity for enterprises has changed significantly during the past decade. Technology, and with it the nature of innovative activity, has changed in numerous enterprises. Innovative activity today is a part of normal developmental activity: in the early stages of research it is already possible to assume that the result is almost certainly an innovation with potential patent. The structure of entrepreneurial activity has also changed. Enterprises have become networked, versatile and internationalised and they often function like conglomerates. The present law does not take these aspects into account. The legislation requires reform.

**Innovations in universities**

**University Research — Joint Ventures**
- **Innovations**
- **Copyrights**

**Rights of researchers**
- **In companies**
- **In universities**

**Legal Problems**
- **Contracts**
- **IPR**
- **Royalties**
- **Profits**
- **Secrecy**
- **Model Contracts**

The Act Concerning Innovations within the Employment Relationship does not normally apply to university researchers. Although innovations and written works bound by copyright are created in the civil service employment, the university as an employer does not gain the rights to them, and they remain with their authors. However, different types of research groups often include a university or other institute of higher education. When innovations are being made together by different groups of individuals, to which different copyright regulations are being applied, it is difficult to perceive intellectual property rights. For instance there are contracts based on the Act concerning the Innovations in the Employment Relationship for the researchers in companies' product development teams, while this act is not applied to university researchers. Today, the connecting of business life and university research is quite common. Joint projects are formed for research and product development, whose "home base" and juridical status may be a mystery. The same applies to the administration of copyright issues.

Universities may also have established companies for the commercial exploitation of innovations. In this case the Act Concerning Innovations within the Employment

Relationship is normally applied to the researchers working for the company, even if the researcher actually remains in the service of the university. However, in practice, the position of researchers in relation to the company and correspondingly to the university is often unclear. (Saarnilehto 1998a.)

Within universities the research results belong to the researchers and not the universities. In terms of legislation, the situation is theoretically clear and problem-free. In practice, however, the issue has been made into a vague and problematic one. As new forms of cooperation are created, practices have become distinct and common, and established practices have not yet been created. These problems can be solved with an exhaustive agreement procedure or by specifying legislation.

According to the law, "the teacher or researcher of a university, institute of higher education or corresponding scientific educational establishment should not legally be considered an employee", i.e. these are left outside of the application of the law on innovations made within the employment relationship. Besides teaching and research personnel, research and development projects usually include other personnel as well. In addition, in terms of universities one juridical problem is what the field of the university is. This is significant when assessing for instance whether or not a patent for the employer's field will be applied for.

This issue is confused with the situation in which the university or the researcher conducts research e.g. along with a private company. In this case the cooperation in question should be considered triple-based relationship, whose parties are the company, the university and the researcher. Each party has rights and obligations in relation to the two other parties. First of all, the university is juridically treated like the entrepreneur in situations in which business activity is practised. In this case, research and corresponding activity can be compared to e.g. free company consulting. The drawing of the line between traditional university research and teaching based upon it may, on the other hand, be difficult in some situations.

The researcher's relationship with the university is essentially independent of whether the researcher works independently or through a form of company. A form of company may be based for example on the easier control of copyrights. The difference with independent activity may be formed through the company's pure business activities, in which researchers can have areas of economic responsibilities in relation to the university. (Saarnilehto 1998b.)

The position of researchers in terms of innovations made within the employment relationship is resolved in all situations through the research contract. The significance of research contracts has grown a great deal through new forms of cooperation. When both companies and the universities seek to use standard-term contracts, the area of conflict is obvious. The subcontracting activity model and the research model are not compatible. It should therefore be sought to conclude situation-sensitive contracts, in which standard contracts would affect the general terms at the most. The monitoring of research results can be analysed according

to three basic models. When the results are created outside the cooperative project, they belong solely to the researcher. On the other hand, in a cooperative project, the researcher is granted ownership and the client is granted right of use or both are granted mutual right of use. The position of the researcher can, however, be exceptionally agreed in any form.

Problem areas/terms of research contracts are usually:

- the object of the contract
- the individualisation of interest parties
- the definition of background material
- copyrights, patents and royalties
- the control/management of the contract or project
- secrecy and publicity
- the transfer of the agreement and subcontracting
- the rescinding of the contract.

The situations in different countries also vary from one another. If there is absence of a law, the issue must be agreed by contract. In the USA the Bayh-Dole Act has been used to even out disparity of interests between universities/colleges and companies. The EU also has some of its own model contracts dealing with EU funded projects.

**Innovations made in company networks**

Joint product development projects between companies create intellectual property rights mainly for the persons involved. This affects both innovations and copyrights. Unless otherwise agreed, this means that the rights to the work are granted to the person who has performed the work. When an innovation is created in a company which is part of a network, the company does not receive any automatic rights to the innovation unless explicitly agreed through the appropriate network agreements. This is why the company must see that the rights are transferable to the company through an agreement and further agreements should be made on how common results are to be divided between the network companies. This can happen through cross-licensing e.g. so that each company receives access right to the product.

Through license agreements the possessor of the right grants the other party to the agreement rights to access of the product. Usually the right conveyed is a right of use. Licence agreements can be done in connection to e.g. patents, copyright and know-how. Thus, the right of use produces the right to the result of someone else's product in the product development project. This right of use, however, does not entitle to e.g. the further transfer of the product, because only the owner of the product can license the product. Rights to results are rights to the project's common foregrounds. In company networks, in connection with product it is necessary to agree their division between the members of the network beforehand.

## Copyrights in employment relationships

**Copyrights are "automatic"**

**Limitations and Waiving of Rights**

- **Transferred through an Agreement**
- **Moral Rights**

**Copyright and Labour Law**

- **Increased Importance of Precise Agreements**
- **Employment Contracts/Collective Agreements**

**Copyrights in Electronic Networks**

- **Multimedia**
- **Level of a 'Work'**

### Copyrights

Copyrights along with related rights pertain to intellectual properties, which also include industrial properties. According to the General Treaty of Paris on the protection of industrial rights, these are patents, model protection, brands and business indicators, indicators of origin and unfair competition. The new IPRs created together with industrial rights and copyrights are Protection of Computer Programmes and the Plant Breeder's Right. These rights are exclusive i.e. their holder has the right to prohibit others from taking advantage of the object of the protection for a certain period of time. In the broad meaning of the word, a copyright is an exclusive right pertaining to the author of the work for the authorisation of units of its manufacturing and for bringing it to the access of the public. This right and its limitations is regulated in the Copyright Law.

Copyrights are "automatic": they are based on the real fact that someone has created something. There is no need for e.g. registration. Industrial rights, on the other hand, are usually created through a separate application, registration or through establishment. Copyright is recognised in the legislation of most countries. Internationally copyright legislation is more or less the same in each country. Instead, the interpretation of laws in courts may vary from one country to another.

The Copyright Law includes regulations on rights related to copyrights such as the rights to photograph and catalogue protection. In these, the object of protection is quite similar to actual copyright, but there are no requirements for the level of 'work of art' placed upon the object and the protection is also smaller. For instance

the protection of recordings concerns all recordings, and in addition the recording receives broader copyright protection if considered a work of art. Copyrights are rights pertaining to the author of a work which grant, within separately regulated limitations, the author "the exclusive right to authorise the work of art by producing units of it and making it accessible to the public, in unaltered or altered form, as a translation or adaptation, or in another literary or artistic genre or using a different method of preparation". (Copyright Law.) This forms the author's so-called economic rights.

So-called moral rights, which are based on the Copyright Law, are the right of paternity (the author's right to a credit or by-line) and the right of integrity. The right of paternity means that in taking advantage of economic rights the author has the right to demand that his/her name be used as required by good practice. The right of integrity requires, on the other hand, that the work is not be used in an offensive context. Moral rights are most often breached when the work is used without permission. In this case the actual name is being usually not used and the context of use may be offensive. The author can waive his/her moral rights only for a limited use of his/her work in quality and quantity. Moral rights are complemented by the regulation of the protection of classics on the basis of which even after the protective period it is possible to intervene in the use of the this type of work of art which offends the cultural interests (Saarnilehto 1995).

By 'work of art' in the significance pertaining to copyright is meant a product of intellectual creative work. A literary or artistic product is protected by copyright if it can be considered a result of its author's original creative work. In this case it surpasses the level of work of art. There are no additional special requirements for the prerequisites of protection. For instance, a product's literary or artistic level has no significance, nor does the amount of work or knowledge necessary for its accomplishment. According to one definition used for the level of work of art, the minimum requirement for the level is fulfilled if it can be assumed that no one else would have created the same type of creation in undertaking the task. The solution to the fulfilling of the minimum requirement is made by case-sensitive consideration. Copyrights protect both the work as a whole as well as such a part of the work that when considered separately from the rest of the work can be considered the original result of the creative work.

Copyrights are used to protect the manifestation of the work of art. On the other hand, the topic of the work, the method guiding the dealing with the work, the theme, idea, principle or the individual facts included within the work are not protected as such, but in a new form of expression they are freely useable.

> The concept of copyright for example in the USA differs from European and Scandinavian tradition. In the USA, the concept of level of work of art is not recognised. It is sufficient that some one has created the work. Other central differences are the lack of moral rights in the USA system (Rahnasto 1996). However, it is safe to say that in present practice the exhaustiveness of copyright protection and the protective period are presently the same in

the USA as well, i.e. copyrights are closer to the so-called global standard (Saarnilehto 2000, 142).

The most central international general agreement in copyright law is the Berne Convention for the Protection of Literary and Artistic Works which was originally ratified in 1886. The agreement has been revised every twenty years on average and the revisions have taken the convention more in the direction of global copyright legislation. The principles of the Berne Convention are national treatment and minimum protection, or the so-called principle of reciprocal national treatment. Works emerging from other countries participating in the convention should be granted the same protection as granted to their citizens. The Berne Convention is administrated by the World Intellectual Property Organisation. Finland ratified the Berne Convention in 1986.

The protection of the rights relating to copyrights have been organised through international agreements. The General International Convention for the rights of the protection of performing artists, manufacturers of recordings and the protection of radio and television enterprises is intended as the basic agreement for the rights of performing artists, producers of recordings and radio and television enterprises. The convention binds parties to provide national protection in terms of the protection guaranteed within the convention. In addition it guarantees each group possessing rights certain minimum rights. Finland ratified the convention in 1983.

The international system of conventions concerning copyright was completed in 1996 with the signing of the WIPO Copyright Treaty and the WIPO Performances and Phonographs Treaty. With these "internet treaties" of the digital era the copyright system was moulded to better adapt to the internet environment. Finland also joined WTO's 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The agreement, which came into force in 1995, includes regulations regarding the execution of industrial rights and copyrights.

Through membership in the EU, the development of Finland's national copyright legislation has more concretely involved the legislative work being done in the EU. In the EU, there have been five directives standardising copyright so far. The directive concerning e.g. copyrights in the information society is being dealt with.

**Limitations and waiving of rights**

Copyright is narrowed by certain limited rights, such as e.g. the right to manufacture units of a published work for private use, and correspondingly a backup copy of a computer programme for one's own use, the right to photocopying with the permission of the Joint Copyright Organisation for Authors and Publishers, quoting, etc. The most significant exception in the Copyright Law is the permission for the

copying of "a few copies" of a work for private use as well as the right for the showing and exhibition of the works in private events. The more precise limitation of these exceptional cases forms interesting legal problems, which multiply in connection with the digital publication of material in information networks.

It is possible to entirely waive copyright or its holder may grant rights to use or other similar limited rights to the use of the work. Although the author has the exclusive right to make decisions in regard to the work, this right can be entirely or partially transferred, through an exclusive agreement or otherwise to another person or juridical person. Nevertheless, some regulations in the Copyright Law expressly protect the author in the additional case that copyright be otherwise transferred; these moral rights are the 'opposite' of e.g. the right to publication, in which usually the economic party is significant. For instance, when a unit of a work is manufactured, or the work is entirely or partially made publicly accessible, the author must report in accordance to good conduct.

The holder of the rights may transfer his/her economic copyrights to another person. The situation of transferring this right must be distinguished from that in which the holder of the rights grants only rights to use or another limited right to the use of his/her work or other object of protection. Even if the author were to waive his/her economic rights entirely elsewhere, he/she remains with the so-called moral rights. These cannot be waived. An agreement on the waiving of moral rights is not binding. However, the author may waive his/her right to appeal to his/her moral rights if limited use of the work is in question. This is due to the personal nature of moral rights. (Niiranen &Tarkela 1998.)

Haarmann (2001) classifies the limitations of copyrights into three different groups. Regarding the free right to exploit, anyone may exploit a work without acquiring the author's consent and without paying the author any compensation. In the obligatory licensing system there is no need for permission for exploitation, but the author must be paid compensation for exploitation. In the contract licensing system the user agrees the terms of the exploitation with the organisation representing the authors. The agreement binds both the organised as well as the non-organised authors.

**Copyright and labour law**

In labour legislation the point of departure is that the results of the work belong to the employer, while in the regulation of intellectual property rights it is assumed that the result of the creative work (the innovation, work, model etc.) belongs to the author. In accordance with the Copyright Law copyright to the work is always created for its natural author i.e. its maker. In particular the requirements of the new information economy and support for innovative activity demand that these interests are made compatible.

Copyright is created for the author of a work also when the work is made in an employment relationship or under commission. The law does not include any general regulation concerning the transfer of copyright to the employer or

commissioning party, except in the case of computer programmes and databases and in regard to works involved with these. The transfer of copyright is an issue resting on the agreement. Agreements can be done on a number of levels, for instance in a collective agreement in a particular field, an employment contract between an employee and employer or in a separate agreement e.g. involving a certain work. For instance an employee and an enterprise can conclude an exclusive agreement in which the employee authors the work and the enterprise receives the copyright for this work. The waiving or transfer of the copyright is not bound to any particular structure (Niiranen & Tarkela 1998, 126).

Problems arise in conjunction with those cases in which there is no specific agreement between the employee and employer. These must be considered on the basis of general practise and using the total judgement. Each case is examined individually in size and content of the work relationship. In addition, it can be considered that a so-called silent agreement has been made between the parties, i.e. judging from the conditions, both parties have understood or should have understood that they are bound to something. The economic rights of a work created within an employment relationship are transferred to the employer in the scope agreed and which can be judged from the terms of the employment relationship.

The idea according to which the employer, in the absence of agreement, receives the right to use of a work authored by an employee within his/her normal activities can be considered commonplace. The employee may use other copyrights requiring that other obligations involved within the employment relationship, for example prohibition of competition, do not prevent it. This model, which has received widespread support in literature, has never been brought to the consideration of the Supreme Court. Instead, in Denmark, as early as the 1970's, a verdict was passed by the Supreme Court whose core message corresponds well to the model developed mainly in literature: copyright is not transferred to the employer to a greater extent than necessary taking into account the normal activity of the enterprise. That right, which the employer receives according to the aforementioned idea in absence of an agreement to the work of the employee, is usually exclusive. It is difficult to think that the employee possesses the right to compete for the work with the employer.

This general idea does not provide much help for the solution of individual questions of dispute. However, in the case that the employer e.g. as part of the business activity publishes the work, the employment relationship binds the employee in that he/she may not publish the work his/herself nor give the work to a third party to publish in a manner which would signify competition with the employer.

New technology and especially the internet have further complicated questions concerning copyrights in the relationship between employee and employer. For instance the techniques of internet publishing have brought about the question

of whether newspapers have the right to publish articles written by their journalists in the internet as well. In the end, as far as rights in exclusive agreements are concerned, agreements are usually written on the basis of the traditional form of the newspaper. The same applies to all publishing on the internet, unless separately agreed. In the environment of networked knowledge the movement of publications is difficult, sometimes impossible, to perceive. Publications may, after being digitalised and stored onto the computer, be transferred invisibly. Because knowledge can be transferred through networks to any corner of the world, the international questions of copyright have become complex. For instance the right to the publication of a book only applies to the book and not to the publication occurring through the internet. Do we run into new questions in this area as well, such as "What is a book? Can a book be considered a stack of papers or maybe a bit line?"

It would be to the advantage of both employers and employees to seek clearer agreements in regard to the transfer of copyright for instance in the case of duties being exclusively the production of 'works'. This would prevent many problems and disputes. On the other hand agreements should be formulated loosely enough to also take into account new and future forms of publishing works as well as the considerably long period of duration. The increased importance of the agreement is demonstrated by the statement of the Copyrights Commission 1996:12, in which a position is taken in the rights of museums to exploit photographs taken by photographers, which have been saved in the archives of museums:

> ...the Copyrights Commission sees that if the applicant takes photographs on the grounds of a commission by a museum, the right to use of the photographs is determined primarily by the concluded agreements. The right to photographic works or other photographs goes to the photographer, but this right may transfer to the client to the agreed extent. Thus the client receives the right to use of the work or photograph in accordance to the terms of the agreement.
>
> In the case that the rights to the photograph produced within the performance of the commissioned duties have not been expressly agreed, it is necessary to find out whether the rights have been transferred and to what extent they have been transferred to the client. In this case it is necessary to take into account to the intention of the assignment and the content of the duties being performed there, the ordinary usage of the photograph in the business of the client as well as the customary practice concerning the transfer of rights in that particular field. As the museum is the client the question of whether publication activity pertains to, the sphere of activities of the museum must be resolved.

> If the applicant has offered his/her photographs to be purchased by museums, according to Article 27 Paragraph 2 the right according to Article 49 a in the Copyright Law is not transferred along with the photographs, unless otherwise agreed. If the transfer of copyright has been agreed between the parties, according to Article 28 of the Copyright Law the recipient of the copyright or photograph right may not alter the work or waive this right to another party unless otherwise expressly agreed.
>
> A museum which has received a photographic work or other photograph into its possession, lacks the right to grant another party rights to use or other rights without the consent of the bearer of these rights, unless this type of granting of permission is otherwise expressly agreed. Therefore the passing on of the photographs to others for publication can only happen requiring that this type of granting of rights of publication have been expressly agreed between the photographer and the museum. The compensation for the publication or other right to use goes to the photographer.

The copyright is not only transferred to the employer on the basis of someone authoring a work within working hours and using the employer's tools, which in no way is related to his/her duties. It is completely different if the use of working hours for other tasks than the employee's duties constitutes a breach of contract; in this case, the employer can demand compensation for that as well as for the use of the tools. It is clear, however, that in Finland the transfer of copyright to the employer is not as comprehensive as in the USA, where often the position is that so-called work for hire automatically means the transfer of rights to the payer.

The law on the innovations made by the employee defines those preconditions that dictate the situations in which the employer can take the rights to the innovation. According to the law the employee basically has the same rights as any innovator along with the limitations specified separately by the law.

**Copyrights in employment relationships**

The term "employment relationship copyright" means a legal model, according to which the rights to a work are transferred to some extent directly and legally to the employer. According to the model only the copyrights of the computer programme or database and a directly related work are transferred to the employer. In addition, it is required that they are authored in the fulfilling of duties arising from the employment relationship. The same correspondingly concerns the public sector. In terms of other types of works the law does not recognise any particular regulation on the transfer of rights.

General regulations of the Copyright Law and its transferring are also applied to waiving of copyright within the employment relationship in the private and public sector. The duties of the employee and the terms of the employment

relationship can be defined in many ways. Duties can be specified in the employment contract or in the collective agreement applicable to that corresponding field. The definition of duties may be based on a work regulation of the workplace or on the employer's organisational documents. Often, employees are bound to create works and other results of work protected by copyright. The employer always has the right to the use of works as implied in the agreement regardless of whether the employer pays only salary as compensation or if the employee is paid separately for the right to use. In some fields copyright is not even partially transferred to the employer. (Niiniluoto 1987.) This is the situation in university research, although there is increasing discussion on the topic.

The transfer of rights can be agreed. The agreement can be custom-made for a particular case but also in conjunction with the employment contract. The Employment Contracts Act does not include instructions on copyright. (Computer programmes and databases are regulated by sector-specific regulations such as the Computer Programme Directive [91/250/ETY]). It is also possible, within certain boundaries, to agree to whom the copyrights belong in the case that the work is authored within the employment relationship.

In addition it is possible to agree on issues relating to the transfer and waiving of copyright with a collective agreement between the employer and employee party. This has been done e.g. in the collective agreement between the Federation of the Printing Industry in Finland and the Union of Finnish Journalists. This agreement includes regulations on the employer's rights to use works authored by journalists within the employment relationship. In addition, the collective agreements between radio and television include corresponding terms. Collective agreements are, however, limited in duration, although they allow the solution of copyright questions involving the entire field in certain respects. (Niiranen & Tarkela 1998.)

Computer programmes, databases and related works may also be protected by copyright. The terms of the requirements for copyright protection are lower for computer programmes than for other works. This is due to the EC's directive concerning the protection of computer programmes. The directive entails that the author has expressed creativity and originality in formulating the code for the computer programme. The code formulated by the author should thus always be protected by copyright. (Rahnasto 1996.) Exceptionally, there is an express regulation concerning computer programmes, databases and related works, in practice, documents and user instructions:

> "If the computer programme and the work directly related to it have been authored in fulfilment of duties arising from the employment relationship, copyright to the computer programme and the work is transferred to the employer. The same correspondingly applies to a computer programme authored within an employment relationship in the public sector and the work directly related to it." (Copyright Law.)

The copyright to the computer programme is transferred to the employer according to the law only in cases involving the fulfilment of duties arising from the employment relationship in the private or public sector. If the employee authors the programme or participates in the authoring of the programme in the service of another client outside of his/her normal job, the rights are not transferred to the employer on the basis of the regulation, but only through a separate agreement (HE 161/1990, 53—54).

The transfer of rights on the basis of the Copyright Law is bound by the economic rights according to the same law. The transfer remains valid also after the expiration of the employment relationship in the private or public sector. The works directly related to the computer programmes are programme descriptions and support material. The regulation involves a limitation according to which it does not affect the programmes and databases created by persons working independently in teaching or research in institutions of higher education.

The Supreme Court decision KKO 1996:43 deals with the transfer of the copyright of the computer programme in the service relationship. A managing director working in the computer sector had authored a computer programme while in the services of the company. As the company's usual activity was the sale of computer programmes and the managing director's duty in the company had been the authoring of computer programmes, the economic rights of the copyright to the computer programme had been transferred to the company. It was not considered a breach of the programme's copyright. The managing director had handed over the source code i.e. the original version of the programme to another company in the same sector for the manufacturing and distribution of programme copies. The managing director was, however obligated to recompense the company for the damage caused.

**Copyrights in electronic networks**

The central actors in the new economy are different networks, which produce commodities and services. Networks may be company networks, teams, projects etc. Often the produced products are immaterial or at least involve immaterial rights. The most typical products of the network are multimedia products (CD-ROMs, DVDs) which require the cooperation of several professionals. The work contributions vary from creative activity to routine-natured work (e.g. coding).

KIBS enterprises are knowledge intensive company service enterprises. On the basis of different commissions they often design and develop e.g. working procedures for client enterprises and technical manufacturing procedures. Cooperation with the client company may lead to solutions protectable by patent or works protectable by copyright. When the KIBS enterprise gives rise to a protectable innovation, there may be disagreements on the bearer of the rights. Both patent and copyrights are partially or entirely donated to the client enterprise

through agreement. A KIBS enterprise may also patent an invention and thus licence the rights to use of the patent to the client enterprise or other parties. The invention receives patent protection only if it has been registered. If the result of designing or development work that receives copyright protection is in question, the copyrights of the KIBS enterprise to the protected work depend on what the content of the client agreement is.

At the moment there are no countries whose copyright law protects a type of work called "multimedia". This does not mean, however, that multimedia lacks the protection of copyright, but that this protection exists under different names and is case-sensitive. In multimedia, different existing contents are combined to produce a single product or product family. In copyright language works or portions of works are combined in a creative and original manner into one unity, a new work. This type of product can receive protection as a compilation or anthology.

According to the Copyright Law the person who, by combining works or parts of works, has created a literary or artistic compilation has the copyright to the work if the product reaches the level of a 'work'. Compilation should thus embody sufficient originality and creativity. Coincidental or mechanical combination does not rank as a 'work' and it is not protected even if it has involved a great amount of work. It is essential that the protected works and their components have been selected or organised in an original and creative manner. The created unity is subject to the rights of the bearer of the compilation and they do not reduce or limit the rights of the authors of the combined works in any way.

A web site is often the result of the creative work of different authors. The site is composed of a textual portion, images, sounds as well as the fitting together of the coding of the site and its unity. If the different parts of the web site rank as a 'work', their authors also bear the copyrights involved. The situation in regard to copyrights is essentially the same as with other compilations. In addition, the author of the compilation has the copyright to the unity. However, copyrights regarding to web sites involve certain particular questions.

The new marketing channel of enterprises for clients is the web site, which functions as a channel for providing company information. The pages on the web site usually introduce the enterprise, its products, employees etc. The pages include materials which are qualified as 'works'. Thus, the author of the material receives the copyright. If the enterprise's web pages are produced by an employee of the enterprise as part of his/her duties, copyright is automatically created to the material produced, if the material qualifies as a 'work'. The enterprise and the employee can separately agree if the copyright is transfered to the enterprise. In the absence of a separate agreement the situation is examined from the perspective of Copyright Law. Therefore, the requirements of the employment relationship may place certain limitations (e.g. prohibition of competition). Labour legislation and Copyright Law are in slight conflict in that the first places certain limitations on the full-scale application of copyrights.

Unless the transfer of the copyright of the homepage has otherwise been agreed, the copyright of the homepage belongs to the designer. If the work has clearly been commissioned, the copyright is transferred to the party commissioning the work. (Rahnasto 1996.) The designer of the homepage cannot prohibit the use of the homepage to the commissioning party, because the commission of the designing of the homepage automatically involves the right to its original use. If the homepages of the enterprise qualify as a 'work', and they have been produced by the employee without any particular agreement about the transfer of the copyrights to the company, the changing of the pages without the consent of the author causes a breach of copyright. Also when the company wishes to use the designed unity e.g. in printed material, the author has the right to prohibit the use of the material in manners not previously agreed (Rahnasto 1996).

The updating of the pages is typical maintenance of sites, which as such does not offend the author's possible copyright. It is not necessary to obtain consent from the author of the copyright solely for the updating of the site. If the updating occurs in a manner as to change the unity, copyright issues may become an obstacle.

**The settlement of disputes**

Disputes concerning copyright are settled in court. In addition, by request the Copyright Commission can give statements on issues concerning copyright issues. The Council of State appoints a Copyright Commission every 3 years. Its duty is to assist the Ministry of Education in issues regarding copyright as well as to give statements on the application of the Copyright Law. The Committee includes central bearers of the rights regulated in the Copyright Law as well as those using the objects of protection. The chairman, vice chairman and at least one member are nominated from outside of these parties. The nature of the statements are recommendational. They do not legally bind the applicant of the statement nor the opponent of the applicant.

In the regulation of labour legislation the basic point of departure is the results of the work performed being under the ownership of the employer. In regulation of intellectual property rights, the point of departure is the results of the creative work (innovation, work of art, model etc.) belonging to its creator. Therefore, according to the Copyright Law the copyright of a work is always specified to a natural person or its author. On the other hand, the point of departure of the employment relationship is that the employer owns the results of the work performed. The demands of the new knowledge economy and the supporting of innovative activity require the fitting together of these two distinct interests.

# Summary and policy implications

**Need for Direct Market Connections for SMEs**

**Finding the Ways of Lowering the Hierarchies of Company Networks**

**Emphasising the Significance of Agreements in Network Economy**
- **Living Agreement**

**Finding the New Ways of Connecting the Actors of Knowledge Economy**
- **Virtual Critical Mass**

**The Mobility of Employees Needs to be Clarified**
- **In Status**
- **Geographically**
- **In Projects and Network Based Work**

**Employee's (Knowledge Worker) Protection should be Balanced**

**The Role, Status and Accessibility of Public Information should be Clarified**

In the above text I have examined forms of manifestation of the new work, of which two issues rise above the others: the significance of networks and the position of knowledge workers in these networks. In the production of innovations, the knowledge worker is a central actor and networks are this actor's working environment. Legislation is an instrument which attempts to form a framework to this activity. In the new knowledge work certain rights and obligations are emphasised. These are intellectual property rights, business and professional secrets as well as the questions pertaining to contract law in the network.

The networking is "a two-edged sword". On one hand, it accelerates the creation of innovations, enables the specialisation required by globalisation, flexibility and swiftness, but on the other hand, business fluctuations are emphasised in networks. Most strongly they affect the SME sector. In Finland the SME sector is in an important position. Companies are small and these enterprises in particular are, in

most cases, dependent on the success of large industrial enterprises, which are situated at the top of the chain, in export markets. When the network forms a chain of subcontractors, whose final products aim toward export, the decline of the export market has multiple effects on subcontractors. The lower we go in the network, the bigger the effects of changes are in the market. SMEs are unstable in traditional subcontractor networks, but not as much as the SMEs in the narrow sector specialised in export. SMEs in sparsely populated areas should aim for the opening of direct market connections as well as toward the creation of production networks corresponding to demand. Information technology and the global economy now provide the opportunity for this.

The intensity of networks varies. Regionally variations are caused by local subcontracting culture and the fields of concentration of skill. Cultural aspects are tied to tradition. In areas in which enterprises have had previous cooperation, a culture favouring subcontracting and networking is considered a natural form of activity. Certain fields of business are more dependent on networking than others. Particularly information technology is structurally network-like.

The nature of networks varies. The information technology cluster is an example of so-called vertical networking. A large subcontracting network has formed "below" large leading enterprises, which is dependent on the leading enterprise's export markets. Variations in international fluctuations have immediate effect on subcontractors. The so-called programming cluster, on the other hand, is an example of the horizontal network, which does not have as much of a dependency relationship with fluctuations and the export markets of one leading enterprise. In the case of vertical clusters, we should find ways of lowering the hierarchies. The amount and quality relationships of commissioning are, however, limited by strict legal regulation involving professional secrets and competition.

Agreements are crucial in company networks; cooperation between the companies can be promoted with a consistent method of agreement. Often companies' common development projects remain disorganised and objectives, responsibilities and rights are not recorded with sufficient accuracy. The agreement tradition in conjunction with SME development projects is undeveloped. Development projects are often agreed only on a level of objectives or even orally, nor are these perspectives necessarily taken into account. Especially in areas with undeveloped agreement tradition there exists a "you can count on a man's word" mentality and there is no willingness to recognise the necessity of individual and written agreements. There may be negative attitudes toward agreements, particularly written ones, because they are considered fettering and they communicate distrust. Common R&D agreements between SMS companies are often complex processes which live on and develop along the way. It is also problematic that the originally perfectly good intentions may change along the way, because their content changes. In the beginning of the project it is not possible to perceive all the possibilities brought about by the project. Agreements which attempt to organise an aspect not yet known, fetter creative activity and innovations. Many network projects in

the SME sector have failed or suffered of obvious absence of objective and vagueness of playing rules.

An agreement practice and tradition should be created for the support of SMEs common development projects, based on the idea that all the measures aiming toward the common goal and the objectives should always be automatically recorded. Through this unity is formed a so-called living agreement, which enables flexible network cooperation, but simultaneously organises the parties' rights and obligations. This new agreement method would create a base for SM enterprises' even more successful participation in the development of regions. The network agreement would be constantly updated and the new course of action would be self-evident to all. This would mean the launch of a new technique of agreement to areas and fields with an undeveloped agreement culture.

In order to survive, SMEs should find their own status in the network. This requires specialisation in global markets. The SM company as a productive unit is often too small and dependent on a unilateral subcontracting relationship. Especially in sparsely populated areas, SM companies should organise the surrounding company network and find its place in this network. For this activity it is necessary to create a networking strategy, which enables coherent business development (attached there is an example of a networking strategy for SMEs, see the Annex).

It would be beneficial to find ways to apply e.g. the experiences in Silicon Valley to a corresponding Finnish context of innovations. Since we do not have such large concentrations of experience, know-how, funding and so on, we should find the ways to utilise the possibilities of the internet in order to author virtual knowledge networks. If face-to-face and social interaction between human beings is almost obligatory in processing innovations, maybe we should seek new methods of socialising on the net, especially in business (web-cameras, voice mail, group net-meetings etc.). On the other hand, maybe the famous Finnish anti-social nature will be a strength in the network society when peoples' interaction is more remote and digital by nature because of widespread use of the internet.

Finnish innovation networks should be based on the international and national level of interaction. The geographical facts (remoteness and long distances between companies) should be taken into consideration when designing the Finnish model of innovation networks and knowledge clusters. We should find new ways of connecting the actors of the knowledge society while taking into consideration the nation-wide scale. We will never find the same quantity of resources physically connected, which is a self-evident fact elsewhere. In seeking the adequate "critical mass", it is essential to take into account all of the geographic areas in Finland, including rural areas.

European innovation policy is based on institutional trust over personal trust and good subjective knowledge of capabilities of individual researchers. On a larger scale, this may have some effects on society's innovation climate, especially since, in many cases, European research institutes are still funded by the public

sector and the nature of these institutes may be inflexible and in some cases even bureaucratic. The different national regulations of the different EU member states could, in terms of competition legislation, affect international corporate cooperation. There are researchers who consider the competition legislation in the USA more developed than the corresponding legislation in EU member states. This is partially due to differences in national legislations, which affect the international cooperative relations between corporations. The World Trade Organisation (WTO) aims to do its part in harmonising the member states' legislation in this sense as well.

One of the preconditions of the successful development of an innovative environment is the rotation of workers and experts i.e. the mobility of employees. Here, again, the legislator's intervention is needed in order to define the limits of obligation of professional secrecy. Perhaps in the early years there was little confidential information among the companies compared to the present situation, or then they did not want to protect themselves for one reason or another. Nowadays the situation is different.

The facilitating of the change in the status of the worker has been the objective of labour politics in the past years. New employment trends are developing in the job market and now it is time to seek new methods of solving flexible-based subcontracting and freelance-based ways of working, especially in case of team-based knowledge working. The status in which the work is performed defines and affects the intellectual property rights in general and in each individual case.

The current labour law does not make a difference between continual, indefinite and fixed-term contracts of employment on matters discussed above. In the Employment Contracts Act it is a point of departure that different types of employment contracts should not affect the rights, duties and obligations of an employee (principle of equality and prohibition of discrimination).

The new work is claimed to have a tendency to emphasise freedom of contracts, contract law and even the principle of laissez-faire over regulation and labour law, including the principle of employee protection. So what happens if an employee signs a fixed-term contract of employment for a duration of one month, with a clause where competitive activity is prohibited for the following six months? Is such restriction valid according to labour law, or according to the Act on Legal Acts? Is the duration of employment a factor when evaluating employee's obligations, the agreement and its reasonableness?

The example above is not so far-fetched as one might think. It highlights the problems that arise from the new work and project-type work in relation to the possibly inadequate regulation in the present and especially future labour law. The problem is also related to the contexts of employee's protection, constitutional rights and macroeconomic viewpoint discussed in the article.

The willingness to use agreements on prohibition of competition is quite understandable in the nationally significant IT sector or cluster in which the speed of research and development are perhaps the most important means of competition along with sufficient protection of the results of R&D i.e. business and professional

secrets. However, the project-type work typical to the IT field is actually one way to ensure protection of business secrets; it is mainly the key personnel who are usually committed to the company in seek of monetary remuneration who have access to all the technical (or economic) data which is handled by the project group. So could the routinely, agreements on the prohibition of competition regarding employees be too restrictive?

It is not very probable that an individual bound by an agreement of prohibition of competition will risk compensation of damages to the former employer, especially when the principle of full compensation is adopted in the Employment Contracts Act (if not limited by mutual agreement). Although the cases and situations call for case-by-case evaluation an employee is not likely to risk a costly process in a possible conflict situation with the former employer even if there would be sufficient grounds. So the state has a reason to intervene through regulation on maintaining business protection and prohibition of competition.

The economic growth of the USA, which lasted over 10 years and has since come to a halt, has challenged European development. The enthusiasm of American consumers and the willingness toward the use of new technology as well as the positive economical effect of the multinational corporations have enabled the dynamic exploitation of innovations. Long traditions of mobility and unified culture making this possible have also had their effects on the efficiency of American society.

European tradition has different points of departure. Some European countries even actively seek isolate themselves from global development by opting out of integration. The spectrum of cultures and the limitations formed by linguistic differences play their part in the relatively low level of mobility of the workforce. In addition, European intellectual property law is more rigid than in the corresponding American legislation (significance of moral rights etc.). Methods and instruments for the lifting of European integration to a new level need to be created. Multiculturalism should be seen as an asset, not an obstacle for efficient cooperation.

Intellectual property rights are society's way of protecting the rights of the authors of creative works and innovations and thus encouraging their creation. The system is central in aiming to find a balance between the bearer of the rights and the common good of society. Excessively broad protective rights may contribute to slowing down development, but insufficient protection on the other hand, does not encourage e.g. product development activity or other economic contribution for the creation of innovations. The present system of European intellectual property law is antiquated and does not necessary correspond to the requirements placed by the new work. Information is becoming increasingly charged for. For the creation of innovations knowledge in different forms is an essential requirement. Although electronic knowledge networks democratise the accessibility of information, certain types of information cost more. In addition the protective systems of innovations

are heavy and require resources. This causes the gradual monopolisation of innovative activity. Only those having the resources and capacity for the production of new information, receive sufficient payoff for their product development efforts. The role, status and accessibility of so-called public information are the main challenges of the near future. Even researchers can no longer access information easily or inexpensively.

Finnish technological policy is largely based on the linear model of innovation. The creation of innovations is considered a chain of events, which has a beginning and an end, and between them a group of events and measures. Technological policy on the other hand, attempts to support the linearity of the system. In terms of technological innovations, the question is often of adjustment. Large industrial enterprises decide amongst themselves about standards which others should comply with in practice. There exists the danger that the policy's conception of the system of innovation is too simplified, and the varying nature of the creation of innovations is not sufficiently perceived. Technological policy based on the linear model may even impede the creation and commercialisation of innovations.

Society should create favourable circumstances for innovation activity and the creation of innovations. The circumstances are created through i.e. high level of education, the availability of information and high-level technology and its innovative application. In terms of legislation this means the flexibility of the structures of the network, the encouragement and taking into account of new forms of performing work, as well as the re-examination of the international intellectual property legislation.

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# 4 THE NEW WORK AND NEW LABOUR LAW

**Seppo Koskinen**

## Introduction

This chapter examines the relationship between new work and labour legislation from two perspectives. First, the significance of the Employment Contracts Act in the regulation of new work is considered, both in the light of specific questions and generally. Second, the same issues are dealt with from the perspective of national collective agreements. Finally, a concluding summary is given on the content and significance of these specific methods of regulation.

Due to the below mentioned limitations the analysis made is a broad outline in terms of the relationship of new work and labour legislation. The chapter affects two central aspects of regulation. The study of the Employment Contracts Act is a current issue due to the fact that the new act has shortly come into effect. Collective agreements in turn have not been earlier evaluated from this perspective in literature.

The particular questions which have been selected for examination are based on what the researcher considers possible to find from the two sources. They do not portray the relationship of new work and labour legislation in its entirety. However, the issues found in literature concerning flexible working life are discussed.

The chapter deals with existing regulations. At the end of this study these will be assessed for example according to how the new work can be regulated (how the relationship of legislation and collective agreement is defined, what the relationship is between centralised and local or individual regulation, whether collective agreements form only general frameworks for company-level regulation) and what the role of flexibility is in the Scandinavian labour law system (socially safe flexibility).

The study discusses the assessment of the Employment Contracts Act and collective agreements from a perspective of new work. There are other corresponding perspectives to legislative regulation as well.[1] This type of assessment does not only involve direct legal scholarship (legal dogmatism). Labour legislation and collective agreements often involve many different kinds of objectives. In this sense, both are compromises. For this reason, assessment made from only one perspective may give a more negative picture than usual of the content of the unity being examined.

# The Employment Contracts Act (1970) and the New Act (2001)

## New labour law rules

Currently, a new Employment Contracts Act have been regulated. The earlier law was from 1970. During the past 30 years, working life has undergone significant changes. In reforming the legislation it is necessary to assess the content of the regulation from many different points of view. One problem concerns how and to what extent it is necessary to deal with past, present and future problems. Because the law is meant to be in force for several years, estimations should be made and conditions set also for the management of future problems.

One major legislative question also concerns which kind of regulation should be used in the new act. When analysing this question a dichotomy has been introduced on material contra procedural regulation, one concerning internal and the other primarily methodological regulation. The Employment Contracts Act has previously included both kinds of regulations. In the new act diverse approach is also maintained.

The Employment Contracts Act regulates all types of matters involving the relationship between the employee and employer. All of these matters do not have significance in estimating the requirements placed on employees of the network economy or in connection with new work in general. A few key questions have been collected in the following presentation involving the problem at hand. Of the regulations in the Employment Contracts Act, not one directly relates to what in this presentation is referred to as "new work". On the other hand, many regulations do concern this topic indirectly.

The topic at hand is touched upon, at least indirectly, in the regulations in the Employment Contracts Act involving the recognition of the statuses of employer and entrepreneur, the general obligations of employers and employees as well as

regulations concerning atypical employment relationships, job security, the transfer of an undertaking and international contracts of employment. On the basis of these regulations, the answers to the challenges of new work give us a picture which is quite fragmented.

First, the problem of classification resulting from the many forms of performing new work will be examined. This problem particularly involves the border between the employee and entrepreneur. There is also the question of new ways of performing work, such as homework and teamwork. The second problem concerns the responsibilities of the employer and employee as well as the regulation of their relations. Traditionally the Employment Contracts Act has embodied many regulations involving these issues. These regulations have, for example, concerned the employer's responsibility to observe the general collective agreement, non-discrimination and many responsibilities involving payment of salary. On the part of the employees, the case has been, for example, of the responsibility to comply with the employer's orders given from his/her position as the superior, the protection of business and professional secrets and the regulation and prohibition of competition.

Many issues concerning so-called atypical (flexible) contracts of employment have been considered in both legislation and jurisprudence. This has involved mainly part-time, fixed-term and hired workforce as well as so-called distance workers, who work at home. The Employment Contracts Act has traditionally regulated the status of fixed-term employees in particular. Over the past few years, the changes in the regulation in this question have been numerous. Considerably less regulation has been done regarding other forms of contracts of employment.

Job security relates to all forms of performing work. Furthermore, it has a substantial effect in connection to new work. The motives for annulment may be of a personal or economic nature. Job security is closely intertwined with the employer's obligation to offer the employee another job or train him/her for a new job if the employee is under the threat of dismissal. Recently, the dimensions of the aforementioned obligations have been assessed particularly in terms of different company units.

The transfer of an undertaking involves reorganising the production of work and many kinds of externalisation of work (subcontracting, price competition etc.). Networks and new ways of performing work have complicated the identification of the transfer of an undertaking. Problems have surged particularly in situations in which the parties, i.e. during the transactions, have not considered them as transfers of undertakings.

## Some examples

### The problem of classification

The classification of the form in which work is performed is a traditional problem in labour law. The application of labour law implies the recognition of the employer and employee. Equally, company and civil law are founded on the status of the execution of work typical to these sectors (entrepreneur, performer of assigned duty etc.).

The Employment Contracts Act (1970) defines the employee and employer (the parties to the contract of employment). According to this regulation, a contract of employment is a contract in which the other party to the contract, the employee, obliges to perform work under the control and supervision of the other party, the employer, in exchange for remuneration. In the new Employment Contracts Act, the basis is of the current regulation is naturally maintained. In an employment relationship, the work being done is performed on account of the employer under his/her control and supervision.[2]

In the Employment Contracts Act 1970 there has been no final regulation dictating the outcome about whether or not an employee performing work at home or any other location of his/her choice is considered an employee. The ECA 1970 is based on the fact that working at home does not prove the existence of an contract of employment. This is resolved, at the latest, according to whether the employer applies work management and right to supervise. In the Employment Contracts Act 2001 the same basis is observed. According to this Act, the application of the law is not avoided by the sole fact that the work is done in the home or other location of the employee's choice.

An essential feature of working in networks is that the work can be performed in many different locations. Often, the location is left to the employee's discretion. The typical requisite for the location is normally that the conditions are most favourable for the work in question. In this issue, neither the old law nor the new law contains actual restrictions. On the other hand, neither offers help when assessing the status of work management and right to supervise the work at hand. The new act do not decrease the insecurity involving this kind of work.

Over the past years, there has been a great deal of talk about teamwork. Teamwork has been especially associated with new methods of performing work. However, in the law only workers' collective regulations touch on teamwork. Still, these only cover a small portion of actual work teams. Actually, in these regulations, it is only acknowledged that a contract of employment is concluded between each member of workers collective and the employer and salary is paid primarily according to the factors informed by the workers collective. No regulations are also in a new Employment Contracts Act concerning team-work.[3]

Members of workplace teams are usually comprised of employees with employment relationships. Nevertheless, a working team can also be established as

a "legal person", employing its owners as well as those employed by it. In this case, the problem is the aforementioned "personality of the legal person". Workers' collectives such as orchestras ("bands") may be entrepreneurs or its members may be employees. In the first case the question is, however, not of an employees' collective anymore, but of some type of company form. The Employment Contracts Act 1970 or the new act does not solve the drawing of this border. The regulations stem "only" due to the fact that employees can also commit to work together as a collective (or other group).

The problems involved with team-working affect the establishment, activity and dissolution of teams. In this respect, neither the Employment Contracts Act 1970 nor the new act provide answers to questions that have already originated from practice. Nor does the law intervene in the practising of the right to supervise or in the questions of liability in performing this type of work.[4]

The Employment Contracts Act attempts to regulate only the relations between the employer and employee. For this reason it does not regulate, for example, external workforce or subcontracting. In the new Employment Contracts Act there is still regulation of the status of hired workforce.

**The nature of interactions**

In new work, the relationship between the employer and the employee are important. The employer and employee are dependent upon each other. Traditionally, regulations have taken into consideration issues common to both parties (obligation to loyalty and fidelity) as well as possible conflicts (prohibition of competition, the protection of business and professional secrets). Today, more and more emphasis is given to matters joining both parties.

In new work the relationship between employer and employee is made closer at least as far as the core workforce is concerned. The situation is not necessarily different on the part of peripheral employees, either. The legislator has sought to equalise the statuses all kinds of workforce as far as possible. So far, this effort has been apparent especially in that the cost of the workforce (e.g. sick-leave salary, retirement benefits etc.) is not to depend on the length of the employment. The new Employment Contracts Act seeks to find even more advanced solutions in this aspect (e.g. the obligation to inform of job openings also applies to part-time and fixed-term employees etc.).

The more responsible the employer is of the employee and vice versa, the more emphasis is given to their common obligations. The Employment Contracts Act 1970 does not contain regulations concerning common obligations. Nor does the new ECA include these types of regulations.[5]

Common obligations have become a current issue due to the reality that employees now have more freedoms and obligations involving their own work than before. The relationships at the workplace are no longer regulated by the obligations of the employer. In the old law as in the new act this issue is not taken into consideration.

In the law, the employer's general obligations concerning fair treatment of employees are emphasised along with the prohibition of discrimination during the contract of employment as in the process of hiring. According to the terms of the contract of employment, the central obligation regulated in the Employment Contracts Act affects the observance of the generally binding collective agreement.

Along with the aforementioned obligations of the employer, the new act includes a new unsanctioned general obligation. According to this obligation, the employer should thoroughly develop his/her relationships with the employees as well as encourage this amongst the employees. The employer must ensure that the employee can carry out his/her duties even when the company's activities, the work in question or the working methods are undergoing change or development. The employer should strive to expand the employee's possibilities to develop according to his/her abilities to advance in his/her career. The new act also suggests that fixed-term and part-time contracts of employment should not include unfavourable terms in comparison to other employment relationships in regard to duration of the contract or the amount of working hours, unless there exists a justified, objective reason. A significant addition to the old law is that, the employer, in an contract of employment with hired workforce, should (at least) apply the collective agreement normally binding the company or otherwise abide to the regulations of the generally binding collective agreement, unless the hired workforce in question is already bound to these types of collective agreements. A regulation for a provision for minimum salary in the absence of a collective agreement has also been made.[6]

The obligations of the employer in the old law have been regulated in rather many different ways in comparison to the new act. In the old law, the general obligations of the employer have not been presented as extensively as in the new Employment Contracts Act. Moreover, in the new act, the employer's general obligations are not directly sanctioned.

The employer's general obligations portray the typical nature of new work; for example, attending to the employee's management of his/her new and changing assignments, developing in the work and advancing in his/her career. In this sense, the new Employment Contracts Act includes new issues in comparison with the old law. On the other hand, the new law only states the obligation without directly sanctioning its violation.

The employee's obligations have traditionally been based on the subordinated status of the employee (the obligation to observe the general provisions stated in the framework of the right to supervise) as well as the contrasting interests of the employer and the employee (the prohibition of competition, the obligation to protect business and trade secrets, the right to make a restraint of trade agreement). The basis of the new Employment Contracts Act concerning the aforementioned obligations is coherent with the old law. In fact, with the new act it is only regulated, according to legal practice, an exclusion against preparing competing activity.

A general obligation for the employee has also previously been regulated. According to the new regulation, the employee should perform the assigned duties carefully following the guidelines that the employer has supplied within his/her authority. In performing the work, the employee should avoid everything in conflict with his/her position within reasonable limits in correspondence with the appropriate procedures.

The general obligations of the employee emphasise the subordinate status of the employee and the authority of the employer. In this sense it does not bring out for example their independence, decisionmaking capacity, teamwork etc., mentioned in regard to new work. From this standpoint, the basis of employee obligation is somewhat archaic. On the other hand, new work has been linked with ideas of the employee's mobility (transitions) from one employer to another and the possibility to move from being employee to being entrepreneur. Judging from this point of view, making competitive activity more difficult by the addition of the prohibition of planning competitive activity to the law is incoherent.

Also, the right to limit the employee's right to make a new contract of employment or to practice his/her profession after the cessation of the employment is problematic both in regard to the emergence of new employment as well as to all kinds of transitions. Ultimately, the question is how strong is the prohibition of competition in question and under what conditions it can be made. Even in the new act, the conclusion of a contract of prohibition of competition requires especially substantial reasoning. In considering the substantial reasoning of this contract, the following, among other things, should be taken into account, such as: the quality of the employer's activities and necessity of protection due to the need to maintain business/trade secrets or the special training arranged for the employee by the employer. Besides these aspects, the employee's status and duties should be considered.

**Atypical (flexible) employment**

Atypical (e.g. flexible) employment relationships are a part of recent development of the labour market. The definition of the duration of the employment (temporary/ fixed-term) has been a central issue in labour law for a long time. In the 1980's, for the first time, the Employment Contracts Act was made to include regulations concerning the conditions for the conclusion of the fixed-term contract of employment. Later, precisely this issue has been the object of numerous regulations. On the other hand, regulations on other flexible forms of working (part-time work, hired work etc.) are rare or non-existent in the Employment Contracts Act 1970.

In the Employment Contracts Act 1970, the conclusion of fixed-term work contracts requires justifiable reason, of which the law provides examples (the nature of the work, substitution, training). If the fixed-term contract of employment has been made consecutively under different conditions or without justifiable reason, the contract is considered an indefinite contract of employment.

The new Employment Contracts Act no longer makes reference to hypothetical situations of fixed-term employment; instead, it sets motivated reasoning as the requirement for this type of employment. On the other hand, the new act binds the employer to similar treatment of those with fixed-term contracts of employment and those with indefinite contracts, unless there exists justifiable reason for differing treatment. In the new act, it is recognised that part-time contracts, under certain conditions, create a continual employment when assessing the benefits originating from the length of the employment. In this Act, the employer has the obligation to inform the employee of job openings, even if dealing with a fixed-term employee. On the other hand, the employer has the right to dismiss a fixed-term employee if the employee who the fixed-term employee is replacing could be laid off.

Regulation applying to fixed-term employment has recently significantly brought closer to "normal" workers, i.e. those who have indefinite contracts. The new reforms maintain a similar stance (e.g. fair treatment, information about job openings). From the standpoint of transitions in working life and of new work, this stance is justified. The decision-making of the employee is thus based more on the work itself than on the concluded employment contract and its duration. The safe application of fixed-term employment contracts naturally presupposes that the employee in question easily engages in new (e.g. fixed-term) work.

There are hardly any special regulations concerning part-time work, because part-time work only differs from normal work in the number of working hours. There are regulations in the law concerning unilateral part-time employing (requires justifiable reason for dismissal) as well as the part-time employee's right to additional work and to training. According to the new Employment Contracts Act, the same regulations on fair treatment and job openings must be applied to part-time employees as fixed-term employees.

The line of development of regulation is similar on the part of part-time and fixed-term employees. Both "atypical" forms of performing work have been normalised. In addition to this, also EU regulation requires that the new law should include regulation that would normalise these forms of working. From the perspective of new work these reforms are worthwhile. To some extent they increase the security of those who enter flexible contracts of employment. Besides this, they strengthen peripheral workers' solidarity with their own work community.

There are no specific regulations concerning hired workforce in the Employment Contracts Act 1970. Nevertheless, the hired employee and his/her employer are in a normal employment relationship with one another from the perspective of the Employment Contracts Act. This way, the same regulations are applied to the hired workforce unless otherwise agreed. In the old Employment Contracts Act there are no regulations concerning collective agreement which apply to the hired workforce. According to the new ECA in the absence of a normal or general binding collective agreement, the collective agreement affecting the user-company has to be observed.

The new act brings hired workforce and the workforce of the user-company closer to one another. It proceeds from the fact that the only exclusive contract concerning hired workforce (normal or general binding collective agreement) leads to a different conclusion. If there is no such agreement about hired workforce, the parties concerned do not have freedom of contract but have the obligation to apply the agreements binding the user-company. Hired workforce is thus expected to observe the collective agreement in two separate respects: in the first place, in relation to his/her employer and in second place in relation to the user-company.

The new aforementioned regulation clearly protects hired workforce. On the other hand, it emphasises collective agreements, and does not leave very much room for individual agreements. Judging from this aspect, the new act corresponds to traditional methods of labour legislation of protection of the employee. As is, this Act does not limit the employment of hired workforce. From the viewpoint of hired workforce, it can be seen as a way of eliminating today's judicial insecurity.

**Job security**

The grounds for the termination of the contract of employment have traditionally been the central component of the Employment Contracts Act. In this manner, they affect, for instance, the necessities of reduction of workforce due to reorganisation of activities. The grounds for terminating the contract restrict the employer's right to unilaterally terminate the employment relationship.

New work, like networking, often involves the need to reorganise activities, for example, to externalise activities, undertake subcontracting, discontinue subcontracting, etc. In recent years, in conjunction with decisive factors, what work the employer actually has to offer has also been taken into account. On the other hand, the employer's obligation to retrain and newly place the employee within the company has been emphasised.

From the perspective of modern working life, the previously mentioned obligation is essential. According to the ECA 1970, the employer has the right to dismiss a working relationship if the employee cannot be reasonably newly positioned or retrained for new duties due to his/her professional skills (or lack of them) or his/her abilities. In the new Employment Contracts Act it has been taken into account that in the termination process, the employee should be primarily offered a job equivalent to his/her contract of employment. If there is no such job, the employee should be offered a job corresponding to his/her education, professional skills or experience. The employer should arrange the employee training necessary for new kinds of work, which both parties should consider appropriate and reasonable.

In this aspect, both acts correspond to the principles of modern working life. The employer has the obligation to uphold the employment relationship by retraining and newly positioning employees. The changes affecting the employer's business activities do not directly justify the employer in dismissing employees in

order to hire new employees for duties that the earlier employees are suitably and reasonably trained to perform. In this manner, the changes in productive activity and the transitions in working life are linked.

In the Employment Contracts Act 1970 there is no regulation concerning the employer's obligations of replacing the employee within the employer-group. In accordance to current legal practice, a regulation concerning this issue is now in the Act. According to this, if the employer who uses real authority in personnel questions in another company or organisation on grounds of ownership, contract or other arrangement, cannot offer the employee the work in question, he/she should determine whether or not he/she can fulfil his/her obligation of retraining and newly positioning of the employee by offering work in other companies or organisations under his/her administration.

The new act "formalises" protection of the employee in the networked business world on the level of regulations as well. The question is now of piercing the "corporate veil" (each organisation is defined only by its formal borders). The central issue is the actual congruity and activity of the unity of the company structure. In spite of the obligation of investigation, the question is actually about the obligation of newly positioning the employee.[7]

The obligation of newly positioning and retraining implicating the company entity is labour law's answer to the intertwining of company activity. Its contents correspond to the nature of the activity itself. If the activity is intertwined, then employees cannot be considered separately. Nevertheless, the question is only the obligation of the employer. The employee has no analogous obligation to transfer to another company, if his/her contract of employment does not allow it. In this sense, not even the new act corresponds to the needs of business activity, but still continues to protect the employee by justifying him/her to appeal to his/her previous contract.

**Transfer of an undertaking**

In the Employment Contracts Act 1970, there is no definition of concept of the transfer of an undertaking. However, in the law there are regulations about the transfers of rights and obligations as well as dismissals in conjunction with or due to the transfer of an undertaking.

Over the past years, the recognition of the transfer of an undertaking has been present in numerous court decisions in Finland as well as the EU. Several times, the issue has been externalisation involved with new work (subcontracting, competition, etc.). According to the new legal practice this particular definition of the transfer of an undertaking has been taken to the new act. According to this definition, by the transfer of an undertaking is meant the transfer of a company, business organisation or foundation or a functioning part of the aforementioned entity to another employer, provided that the primary or secondary activity of the transferred part remains the same or similar after the transfer. The definition of the transfer of an undertaking corresponds to the legal practice of the European Court of Justice to date.

From the perspective of new work, the new act clearly emphasises the transitions of the functional unity and the maintaining of its identity. The recognition of the identity of the functional unity is not usually possible in the network economy. Undoubtedly, there may occur the transfer of an undertaking but also smaller transfers of business activity. The aforementioned aspects have not been specifically regulated in the Employment Contracts Act. In this case, the recipient of the transfer of an undertaking is not bound to the contracts binding the previous holder, because this dependency requires the transfer of the active functional unity. The recipient of the smaller active unit is entitled to re-employ the necessary workforce as new employees.

**International contracts of employment**

The Employment Contracts Act 1970 regulates the contracts of employment with international dimensions including a partial regulation on the status of employees sent abroad. As a rule, in a contract of employment agreed upon by two or more countries, the parties apply the legislation of the country agreed upon by the parties. The problems arising with international contracts of employment are solved mainly with the legal references to national laws and the limits within the contracts made within the framework of legislation.

In the new global economy, international connections are increasing even in contracts of employment. The point of departure in labour law is that the parties involved already know quite extensively how to agree on the conditions of the contract at hand.

The minimum conditions and working conditions of employees sent to Finland are regulated in the Law on Workforce Sent Abroad (1999). An employee sent abroad is an employee, who normally performs work in countries other than Finland, whose employing company situated in the other country sends him/her to Finland for a limited period of time, providing cross-border services. In addition, it is required that 1) the employee is sent under authority and on account of the company and according to the contract between the employer and the service receiver in Finland, 2) the employee is sent, to work in a company which belongs to the same group of companies, 3) the employer is sent to work under another company, and the employer is a company which hires out a temporary workforce.

The law on workforce sent abroad defines those regulations in Finnish law which should be applied to an employee when applying another country's law, if they are more advantageous than the regulations would be otherwise, by application of the required law. These rules and regulations apply to e.g. compensations and salary increases relating to working hours, adherence to work and leisure time, annual vacations, determination of vacation salary and annual vacation salary, determination of salary as well as employee housing in certain situations of incapability of working and family vacancies. The employee sent abroad should be

paid minimum salary according to the so-called general binding collective agreement. The Occupational Safety Act, the Occupational Health Service Act and the Equality Law shall also be applied to this type of employee.

International working life is considerably regulated. The law behind employees sent abroad is the need of the international community to protect the employee from exploitation. This objective extends to affect e.g. the employee sent to a position that belongs to the same company group.

**Circumvention of the law**

In the Employment Contracts Act 1970, there is no regulation about circumvention of the law, nor is this kind of regulation in the new Employment Contracts Act.

The law in general includes a prohibition of circumvention of the law. If, in order to avoid a binding obligation or to acquire a work-related benefit, an arrangement involving use of workforce has intentionally been given a form different from its actual idea or nature, the court may leave this kind of judicial action or arrangement completely without judicial effects.

In the increasingly complicated new work, a regulation prohibiting circumvention of the law could have a significant preventive effect. The emergence of new forms of performing work is raising questions concerning the true significance and nature of the arrangement affecting the use of workforce (e.g. using on call employees) The courts have traditionally resolved the contract of employment according to its real content. The increasing vagueness of the actual content of legal acts complicates the aforementioned role of the courts.

**General binding nature of collective agreements**

The general binding nature of collective agreements regulated in the Employment Contracts Act is a central obligation affecting employers. This places the unorganised employers of a certain field in the same position as employers who belong to an association that has signed this collective agreement. The fact of being generally binding requires that the collective agreement in question is a agreement, which is considered a general (representative), national collective agreement. In this case, as a minimum, the unorganised employer should apply certain conditions of the collective agreement in question, including those concerning salary. Thus, general binding nature emphasises collective agreements and limits individual freedoms of employers in certain fields of collective agreements.

In the preparation of the new Employment Contracts Act, the regulation concerning general binding nature of the collective agreement received both strong support (especially from the wage earner side) and fierce resistance (especially entrepreneurial organisations). The arguments mainly concerned the general justification for being generally binding and not for example the suitability of the

regulation in the conditions of the new work. Despite intense disputes and arguments the point of departure of the system of being generally binding does not change in the new law.

The general binding nature of the collective agreement is based on the static approach to the existence and preservation of the fields of collective agreements. It does not take into account for instance the intertwining or versatility of the fields of professions. General binding nature is problematic also from the perspective of recognising new fields of activities. For example, from the viewpoint of the new work it is not very easy to determine what activity or activities form a field. The development into a field of activities requires a type of duration and congruence of activities, that entrance into them in the traditional sense is not even probable e.g. in the network economy.

The general binding nature of the collective agreement is in a kind of conflict with law-level requirements of regulation as well as with citizens' (also legal persons) self-determination. The system formerly came into existence as a type of "minimum wage legislation" and in this aspect is still emphasised. Actually, the question is however of the power of certain private legal subjects who have adapted to a type of system commanding others to act in a similar manner.

**Other issues**

The Employment Contracts Act 1970 and the new ECA regulate the new work and especially the problems of the network only generally and randomly. The point of view of labour legislation toward the issues being regulated is still different from what network economy or, for example, the transitions of the employee and many simultaneous roles demand.

In its present condition, the Employment Contracts Act 1970 as well as the new ECA are comprehensive. On the basis of the Employment Contracts Act, it is also possible to resolve new situations. For instance, the regulations affecting job security apply to all types of conclusions of contracts of employment. Nevertheless, many central issues involved with the gathering, use and distribution of information are left in the background of the Employment Contracts Act. Such problems have emerged especially after the termination of employment relationships, because the restraint of trade agreement does not secure sufficient secrecy of certain information on the part of the employer. On the other hand, the problem has also been the overuse of the prohibition of competing activity in order to restrict the rightful liberties of the employee.

The ever-changing sphere of working life is in need to also regulate the transition of the performers of work from one position or status to another as well as the possession of various roles. Labour legislation regulation still holds onto the idea of the "static employee", as only performing work in one position or status.

## Summary

The new Employment Contracts Act can be summarised from two perspectives. The first concerns the regulation of the flexibility of contracts of employment and the other how the act regulates company arrangements. Both questions are central and were focused on in the Parliament when the act was passed. On the basis of their consideration it is possible to assess, for instance, what kinds of issues the new Employment Contracts Act emphasises and what is for instance the relationship between the protection of employees and the freedoms of employers. (There exist also other viewpoints on the new act, but in this context it is not possible to deal with them.)

### The new ECA and the flexibility of the working relationship

The new Employment Contracts Act regulates both the functional as well as the quantitative flexibility of working relationships. On the other hand, the third central form of flexibility, salary flexibility, is not dealt with in the Employment Contracts Act.[8]

Central issues in conjunction with functional flexibility are the right to change the terms of the working relationship such as duties as well as the right to create part-time and fixed-term working relationships and the obligation to create full-time and permanent working relationships. Central issues in conjunction with quantitative flexibility, on the other hand, are the right to conclude fixed-term and part-time contracts of employment, grounds for termination as well as the right to switch to the use of external workforce or a subcontractor.

In conjunction with functional flexibility, freedom of contract forms a starting point for evaluation. According to the new Employment Contracts Act as well, the agreement on the content of the contract of employment is essentially free. For example, an employee can freely conclude a part-time contract of employment. There should also be a justified motive for the fixed-term contract of employment initiated by the employer.

The new act does not generally regulate the changing of the terms of the working relationship. The only regulation concerning this regards changing of working relationships into part-time working relationships. According to this regulation the employer can unilaterally change a working relationship into a part-time working relationship with grounds for dismissal in compliance with the economic and productive reasons adhering to the dismissal period. In other cases the changing of terms is resolved in accordance to contract law doctrine. In this respect the new act does not change the earlier situation.

The new Employment Contracts Act does not include a regulation on making the part-time working relationship full-time or the fixed-term working relationship permanent. However, the act includes numerous indirect regulations affecting these.

First of all, when an employer needs more employees suitable for the duties performed by part-time employees, he/she must offer this work to part-time employees. If the accepting of the work in question requires training that the employer can reasonably arrange considering the suitability of the employee, the employee must be given this type of training. This regulation was also in the earlier Employment Contracts Act, but now the right of the part-time employee to additional work surpasses the employer's obligation to re-employ an employee dismissed on the grounds of economic and productive reasons.

Secondly, the employer must inform of job openings generally in the company or in accordance to the practice of the company in order to assure that part-time and fixed-term employees also have the same opportunities to apply for these jobs as permanent or full-time employees. This regulation is new. Thirdly, the agreement of the fixed-term contract of employment done on the employer's initiative without justified motive and consecutive fixed-term contracts of employment agreed without justified motive are considered in force for an indefinite period. This regulation is a question of making a job permanent with enforcement of the law.

In terms of functional flexibility the new Employment Contracts Act only regulates certain situations. On the other hand, for instance the position of the changing of the terms of the working relationship is central in working life. The unilateral changing of the terms of the working relationship requires grounds for dismissal, which limits considerably the possibilities for unilateral functional flexibility on the part of the employer. In this aspect the new act does not change the earlier judicial situation.

Regarding functional flexibility it is central that the employer has a "slight" obligation to make fixed-term working relationships permanent and part-time working relationships full-time. Many regulations in the new Employment Contracts Act seek to achieve this at least indirectly. The most important regulation intending to establish permanent jobs concerns fixed-term contracts of employment concluded without justified motive. In this question the act exceptionally changes the parties' own contract, because a non-justified fixed-term contract of employment becomes permanent by law. For example in the Law on State Civil Servants as well as in the Law on Job Security of Municipal Civil Servants the consequence for illegal use of the fixed-term working relationship is only indemnity.

In connection with quantitative flexibility the issue is, however, the right to conclude contracts of employment tied to the amount of the work being offered (fixed-term, part-time etc.) as well as, on the other hand the grounds for termination (the economic and productive grounds for dismissal) and the right of the employer to decrease the work being offered (beginning the use of subcontracting, hired workforce etc.).

According to the new act as well, an indefinitely valid contract of employment is the main form of the contract of employment. The fixed-term contract of employment is used in exceptional cases and requires a justified motive. The

Employment Contracts Act no longer includes an exemplary list of justified motives. In any case, there has been unwillingness to change present interpretation of justified motive. The non-existence of a list of justified motives emphasises the general starting points of assessment and evaluation, such as practical need for the conclusion of a fixed-term contract of employment. In addition, if the employer has a permanent need for a workforce, he/she should use indefinitely valid contracts of employment. Fixed-term contracts of employment should not be used to circumvent the issue of job security related to indefinitely valid contracts.

The Employment Contracts Act regulates all types of fixed-term contracts of employment. The traditional (temporary work as a "trap") and modern (temporary work as a "bridge") temporary working have the same status in terms of the act. The fixed-term contract of employment can be carried out in terms of the Employment Contracts Act either as a unique contract or consecutive contracts (e.g. on call). From the standpoint of the act it is central that the contract have a certain justified motive, for example temporary post, seasonal work, a certain work order, the peak of output etc.

The downside of quantitative flexibility is the right to use managerial authority so that a reason for dismissal of employees can be created. The Employment Contracts Act does not limit the employer's managerial decision making authority. In principle, the employer may decide on subcontracting or the use of hired workforce freely adhering to the law concerning cooperation in companies. If these procedures give rise to the need to dismiss existing contracts of employment, the work offered should be decreased significantly and permanently. Both the undertaking of subcontracting and the use of hired workforce can reduce work in the above-mentioned manner. On the other hand, they can also be carried out without meeting the requirements for dismissal.

The new Employment Contracts Act regulates the collective agreement applicable to the working relationships of a hired workforce. The new regulation clearly limits the freedom of contract between the employer in question and his employees. If the employer has hired his/her employees for the work of another employer without the other employer being bound by the collective agreement, the employer should apply at least the regulations (as well as the generally binding collective agreement) of the collective agreement binding the user-company in the working relationship.

Regarding economic and productive grounds for dismissal the new Employment Contracts Act does not intend to change the earlier judicial situation. The employer may dismiss a contract of employment when the offered work has decreased significantly and permanently for economic or productive reasons or due to the reorganisation of the employer's activities. However, the contract of employment may not be dismissed if the employee can be relocated or retrained for new duties in the manner intended by the act. In addition, among other obligations, the employer has the obligation to re-employ dismissed employees.

The regulation regarding dismissal takes into account the interests of both the employer and the employee. In terms of the employer, it is central that dismissal is dependent on the decreasing of the work offered. Employees' interests are protected both by "thresholds" on dismissal (the significant and permanent decrease of work) and the employer's obligation to relocate and retrain employees under threat of dismissal. This is not a question of the employer's free right to dismiss, although, however, the limit has not been placed high. In addition, relocation and retraining may also be held as intentional from economic perspectives from the standpoint of the employer.

In terms of quantitative flexibility the new act includes "thresholds" in the same manner as the Employment Contracts Act 1970. The system does not entirely freely permit for example dismissals on economic and productive grounds or the concluding of fixed-term contracts of employment. The concluding of the part-time contracts of employment, however, is included in the decision making authority of the parties. In regard to the fixed-term contract of employment the deviation from regulations requires that the contract is made by initiative of the employee.

Both functional and quantitative flexibility are realised in the new Employment Contracts Act in line with the Scandinavian tradition. The question is not of an entirely free system with regard to the employer. In some respects requirements have been placed on the activities of the employer. In assessing the entirety, the system of working relationships is both flexible as well as limiting.

In addition to the above-mentioned factors, the flexibility of the system of working relationships is affected by what obligations the new act regulates for the employer and employee. In addition to those mentioned above, the employer's central obligation is the new general obligation. According to this, the employer must see that the employee is able to perform the work when the company's activities, duties or working methods change or develop. In addition, the act includes a prohibition of discrimination as well as an obligation for equal treatment, both applying to the employer. In the general obligations of the employee, the performing of work while carefully abiding to the orders given by the employer in accordance to his/her authority is emphasised. In addition, the employee should in his/her activities avoid everything in conflict with the procedures required by an employee of his/her position within reasonable limits. The employee may not additionally undertake competitive activity against good practise or reveal the employer's business and professional secrets.

The questions affecting flexibility in working relationships are mainly visible in the employer's general obligation regarding the employee's ability to cope in situations of change and development. Formal regulation proceeds from the fact that it is the employer's obligation to see to the employee getting through his/her duties. In reality the question is of the obligations of both parties. For example flexibility cannot take place solely through the obligation of the employer.

## The new ECA and company arrangements

In passing the new Employment Contracts Act the Finnish Parliament demanded that the Council of State provide it with a report on the law, for instance on the development of industry and working life, changes in company procedures of activity and working environments as well as how the new regulations of the act correspond to the changes in company activity and working life.

The parliament's resolution demonstrates that the effects of a new act upon company activity and company arrangements are vague. This is partially because company activity has changed rapidly in recent years. There has been the creation of a number of flexible ways of the company having work done by external sources, for example forming a company from a certain activity, subcontracting, service-providing companies, hired workforce etc. Also within companies, many types of reorganisation is taking place, for example units are being connected and made into chains, conglomerates are being formed and split up, departments are being created and closed down etc.

A new kind of company activity has questioned the starting points of labour law. The recognition of the employer is difficult, as is the definition of who has authority of the management and supervision of the work. The prerequisites for the using of hired workforce and transferring to subcontracting are vague. There are many types of conceptions that arise in the recognition of the transfer of an undertaking. In conjunction with projects one difficulty has been the changing of duties, the agreement of fixed-term working contracts as well as the assessment of the ending of a project as the basis of dismissal. Projects done in cooperation of many companies are especially problematic. In conjunction with the termination of the contract of employment, the assessment of the grounds for dismissal and the obligation of the repositioning of employees also give rise to employer and company entity related problems.

From the perspective of company arrangements, the expectations in regard to the Employment Contracts Act were high. The new act does not fulfil these expectations. It is possible that in labour legislation, there should not be an emphasis of questions outside of labour law. Questions relating to labour law have not been central in company arrangements, either. On the other hand, the economy and working life have come so close together that one can already speak of two sides of the same question. This connection could have been emphasised more in the Employment Contracts Act.

The new Employment Contracts Act affects company arrangements especially through regulations concerning the transfer of an undertaking. These are labour law's "window" to company arrangements. The new act also has regulations concerning the general obligations of the employer in changing the operations of the company, the applicable collective agreement in the working relationships of hired workforce, the reorganisation of the activity of the employer as grounds for dismissal as well as the obligation of offering work and training in the company entity.

By the transfer of an undertaking in the new act is meant the transfer of a company, business, community or foundation or a functional part of these to another employer, if the full or part-time business transferred or a part of it, remains the same or similar after the transfer. The Employment Contracts Act also includes regulations defining the consequences of the transfer of an undertaking in the relationship between the employer and employee. These affect especially the transfer of rights and obligations as well as the right to dismiss in connection with the transfer of an undertaking.

Recognition is central in the transfer of an undertaking. Previous acts have not included regulations on this. The definition included in the law indicates the basic elements of the deliberation of transfer of an undertaking (the functional part, the transfer to another employer, remains the same or similar). Nevertheless, the new regulation does not directly answer the central questions of today's company arrangements; how the transfer to subcontracting, the changing of subcontractor and the ending of subcontracting should be evaluated. The same lack of content affects the transfers of activities which have occurred through price competition and other two-phased transitions. It is clear that all of these should be assessed on the basis of the new regulation.

The most problematic situations of the transfer of an undertaking are often varied in type. For example, the purchase of stocks, which is not a transfer of an undertaking, involves the ceding of business. In two-phased transfers, on the other hand, property of the business does not necessarily pass from one party to another, because the property in question belongs to the party acting as the middleman in the transfer, e.g. the party hiring the premises. Especially problematic have been those situations in which there is no transfer of employees or property but the business activity is transferred from one employer to another.

Two slightly different methods of observation have been used in the assessment or evaluation of the above mentioned company arrangements from the perspective of labour law. One emphasises the total evaluation of the characteristics of the transfer of an undertaking, the other involves the presentation of the characteristics of the transfer of an undertaking.

> The duality of the evaluation of the transfer of an undertaking also manifests itself through decision given by the European Court of Justice (ECJ) concerning Finland and the transfer of an undertaking. The case involved the transfer of regular bus operations from one company to another due to price competition in the area of Helsinki.
>
> First of all, the court found that the directive could be applied in situations in which there is no immediate contractual relationship between the parties, to which a judicial person of the public sector has consecutively ordered the carrying out of transportation services on the basis of competition. In

this respect the interpretation of the court adhered to its previous decisions. Secondly the court observed that the directive concerning transfer of an undertaking could not be applied on in a national court because the companies in question had not exchanged significant material company property. In this case it was not a central aspect that there had been a transfer of employees, because bus transportation could not be considered an especially labour-intensive field. This way, the transfer of employees did not have decisive significance, contrary to the proposal of the Commission of the European Community.

The second part of the decision is significant in at least two ways. Firstly, it placed narrow boundaries on the interpretation of the national court. Earlier the court has observed that the national court should, on the basis of the matters mentioned in the decision of the European Court of Justice, decide the case. In practice, the ECJ decided the case submitted to it by the national court. Secondly, the Court of Justice declared the solution on the basis of one particular point. It involved an essential characteristic, which had not taken place at the moment of the transfer. In its earlier decisions the court had stated the application of the directive only related generally: "As long as there is involved a transfer of a business unit between these companies. The term company entity refers to an organised combination formed by persons and other elements, with which it is possible to practise business activities for one's own independent goals."

The last method of evaluation of the ECJ enables to take into account of numerous questions and the total assessment of the case in abstracto ("it is possible to practise"). The new decision, on the other hand, emphasises the events of the moment of the transfer and facilitates the circumvention of regulations affecting the transfer of an undertaking. The exclusion from regulations should, however, not occur so that the new entrepreneur does not accept employees or significant business property from the prior entrepreneur.

In terms of company arrangements the distinctiveness of methods of evaluation is an indisputable impediment. Judicial problems do not surge at least when the existence of the transfer of an undertaking is assessed on the basis of the abstract need for the transfer of employees and business property. Usually the recipient of the transfer does not possess extra employees or business property, and for this reason this method of observation does not lead to concretely unreasonable results.

At least when the recipient of the transfer has some amount of its own resources but not as much as the new activities demand, the two methods of observation may lead to different results. According to abstract observation the recipient of the transfer must employ all those working in the transferred part and then dismiss the extras. In the case that the transferring part has already rationalised the business into a transferable state the number of extra employees is small.

According to the latest decision of the EC Court of Justice the decisive factor e.g. in the non-labour-intensive field would only be whether significant business property has concretely been transferred.

The view from the window of transfer of an undertaking toward company arrangements is, regardless of the new Employment Contracts Act, cloudy. For example the position of agreements in company arrangements in conjunction with the transfer of an undertaking remains unresolved on regulatory level. In addition, the lines between company law and labour law need to be better defined. Many times the transfer of business activities merely means the transfer of a business opportunity, in which case this should be taken into account in assessment and evaluation. Especially, for instance, the transfer of business property and employees in connection with the transfer of two-phase activity occurring with help from the hiring party requires clarification.

A particular lack in the new Employment Contracts Act is that the position of networks, common company projects and different chains of business activities have not been regulated or even dealt with. Although we are presently living a crisis of new subcontracting and network economy, the different forms of company cooperation will increase in the future. Now that the new ECA does not deal with these issues, they will be resolved though agreements. The adopted solution emphasises corporate and contract law and gradually moves labour law aside in these issues. In terms of labour law regulation it has been essential to prevent the circumvention of regulations intending to serve as protection to the employee. The emphasising of corporate and contract law may dissolve this intention.

**Conclusion**

In many ways, the Employment Contracts Act (1970 and 2001) regulates the flexible performing of work. The law represents the government's way of securing the employee while also taking into account the employer's interests. The issue is a kind of social system of working life. In this case, the social system is composed of different regulations of the Employment Contracts Act and their manner of regulating the productive activities regarding use of workforce.

The social system of use of workforce is extensive and complex. In each country its content is determined by the characteristics of the country. On one hand, the issue is of the use of flexible contracts of employment (for example fixed-term, part-time, and hired workforce) and the terms of flexible contracts (for example multi-professionalism, transfers from one work assignment to another, flexible working hours). On the other hand, the question is of how the users of these contracts and agreements are guaranteed sufficient social security. In this significance, employees can, for example, be trained and relocated i.e. they can maintain the employment relationship as well as seniority, loyalty and long-term contracts of employment.

The elements of a socially secure method of production largely correspond to the principles of the Scandinavian welfare state. Only the principles of the welfare state are now taken into practice on the level of employer (company welfare capitalism). The government's obligation is thus to secure general conditions for the operation of the employer/employee relationship on the company level, for example job security, cooperation, information etc. On the other hand, it should see that the conditions of re-employment are the best possible, by for example ensuring a sufficient general level of education.

The Employment Contracts Act plays a significant role in the social system of flexible production as a whole. Already, the ECA includes such elements, for example regulation of fixed-term contracts of employment, obligations of the employer and employee, job security, etc. The new Employment Contracts Act is not a great improvement in this sense (cf. however, the regulation of hired workforce contracts.) Rather, this Act secures the earlier elements of collective protection by, for example, the reinforcement of the general obligation. In this sense, it does not wholly correspond to the social system of flexible production.

The Experts' Differing Opinion submitted to the report of the committee concerning ECA goes clearly beyond both the Employment Contracts Act 1970 as well as the new act in the creation of a social system of flexible production. It renders possible on one hand flexibility (e.g. the status of the employee) but also emphasises the relationship between the employer and employee (e.g. mutual obligations). The Experts' Proposal represents more expressly the social system of flexible production. How far this proposal goes in this sense is not easily verified.

Thus, the new Employment Contracts Act does not necessarily suit the needs set by the new work. From this perspective, there is a need for new types of regulation. Traditionally, in the regulation of labour legislation the recognition of employee and employer, the formulation of a contract of employment, obligations, duties, working hours and place, salary, and job security have been considered. The Employment Contracts Act has only regulated a portion of these questions.

Many issues of labour legislation have also been organised with other types of legislation (e.g. the Work Hours Act and the Collective Agreement Act). Moreover, EU legislation has played a significant role in some contexts in recent years (e.g. transfers of undertakings, discrimination in the workplace, equal treatment of fixed-term and part-time employees, etc.). It should also be taken into account that local agreements are more possible to make than in the past.

In recent years, the diversity of labour legislation has been emphasised regardless of the fact that the regulatory system has traditionally included various different methods. There has also been talk of, for instance, how the freedom of contract of the parties should be constructed in modern labour legislation. Through this, there have been plans of granting increased importance to the good practices of the parties.

Above, the Employment Contracts Act (1970 and 2001) is discussed from the perspective of new work. Next the similar questions are examined from the standpoint of national collective agreements. The objective is to resolve how the aforementioned issues involving new work have been regulated in collective agreements.

# Collective agreements

## New rules about collective agreements

Collective agreements are, in practice, a significant method of regulating the relationship between the employer and employee. National collective agreements normally include regulations concerning employment relationships (the general obligations of employer and employee, the beginning and dismissals of an employment relationship), working hours (regular working hours, average regular working hours, extra work, free days etc.), leisure time (daily, weekly), salary (remuneration system, separate increases etc.), overtime work and other compensations (overtime work, Sunday work, temporary post, availability etc.), as well as some social issues (sick-leave and maternity-leave salary, medical examinations, annual holiday) and other issues (insurance, deduction of union membership fees, freedom of assembly, local agreements). Furthermore, agreements of central organisations, included as appendices to the collective agreements, regulate i.e. collective activities, job security, training and shop stewards.

The first impression one gets from collective agreements is that they do not closely touch upon new work or the network economy. Collective agreements regulate central issues in today's working life. The regulations in collective agreements affect certain precise issues. They do not actually include issues generally binding the other part (for example the employer) to take questions under consideration. In this respect, however, working hour and salary regulations have become more flexible. Nor is their function to regulate future working life. On the other hand, collective agreements are used in all types of companies and for example regulations in respect to salary can guide in many ways the skills which should be encouraged.

The following presentation uses 180 national collective agreements (70 agreements from the agreement turn in 2000), which have been examined in the same manner as above in respect to the Employment Contracts Act. The question

is to estimate centralised regulation, not local agreements. Special focus is put on special questions as well as the basis for salary. The idea is to generally embody how collective agreements answer the questions raised by new work.

## Some examples

### Certain issues

#### The problem of classification

Collective agreements do not regulate the drawing of the line between employee and entrepreneur. Due to the nature of this question, it is not even part of the realm of collective agreements. Usually collective agreements do not even include regulations concerning the identification of the employee. Collective agreements only use the term "employee". However, some collective agreements clarify the term "employee" by providing limits in applying collective agreements to different employees.[9] In a few collective agreements the term "employee" has been specified in relation to the representatives of the employer.[10]

The many employee unions (e.g. the Union of Finnish Journalists, the Union of Finnish Critics, the Union of Finnish Writers, the Finnish Association of Translators and Interpreters, etc.) with which the Finnish Broadcasting Network and the Finnish Commercial Television Network have concluded a collective agreement concerning fees and other terms of freelance work and assignments applies to contracts of employment and/or contract of purchase as well as framework agreements. In the agreement, the work and contracts of purchase are separated from one another. This particular collective agreement regulates rights of use.

The previously mentioned agreement outlines a situation in which (due to the nature of the topic) performers of work with different statuses are regulated in the same agreement. This type of situation may become common in the future in other fields as well, when organisations begin accepting self-employed persons as members.[11] On the other hand, this agreement does not deal with the classification of the performer of work as employee or entrepreneur.

#### The nature of interactions

Collective agreements include, on one hand, regulations on management and distribution of work as well as the right of assembly, and, on the other hand, regulations on the beginning and end of the employment relationship. The regulations in this case affect some "basic" situations in the working relationship between employer and employee such as formulation and annulment of the contract of employment.

Employers have traditionally emphasised the right to manage and distribute the work in collective agreements ("The employer has the right to manage and distribute the work as well as to take on and dismiss employees"). Correspondingly,

employees have emphasised their right of assembly.[12] In their most simple form, the regulations concerning work relations in the collective agreement only affect the termination of a contract of employment. The regulations concerning work relations have emphasised the employer's obligation of training and guiding the employee in his/her work.[13] In some collective agreements, the employee's own activity or competing activity for another employer is prohibited.[14]

Collective agreements involving "normal" employees do not usually include regulations concerning the general obligations of the employee and the employer. There are, however, exceptions.[15] On the other hand, the collective agreement concerning white-collar employees as well as both normal employees and white-collar employees[16] have general regulations about the obligations of the employer and the employee. According to these regulations, the employee should encourage and supervise the employer's benefits and observe full secrecy in all questions involving the company, such as pricing, planning, testing, research and business relations as well as accurately and prudently managing the resources and other assets trusted to him/her. The employer shall also interact with the employee in a confidential manner, inform him/her of possible decisions affecting him/her, concurrently at the latest, when these decisions are informed to the subordinates as well as support the employee in his/her activities as representative of the employer and confidentially negotiate the issues involving his/her duties in the company. The employer should also clarify to the employee his/her status in the company or position in the organisation and explain the changes in his/her status at the earliest possible stage as well as in all appropriate ways help expedite and support the employee's endeavours which signify the development of the corporation's activities, and when possible support the employee if he/she wishes to improve his/her professional skills.[17]

Although the collective agreement itself does not include regulations directly affecting the relationship between employer and employee, most collective agreements include references to general agreements between central organisations, which also include the aforementioned issues. For example the general agreement between TT and SAK includes regulations regarding collective action in workplaces, the employer's obligation of notification, the employees' mutual activities of notification, training and use of external workforce. According to these regulations, employees and their representatives should, for instance, according to the principles in the agreement, be able to participate in the development of work organisations, technology, working conditions and duties and in the carrying out of changes.

It should also be remembered that the employee's general obligations are evident in the salary regulations insofar as what kinds of skills or abilities are rewarded.[18]

**Atypical (flexible) employment**

The regulations concerning atypical employment can be divided into changing terms or transitions from one duty to another, regulations involving the increasing of flexibility of normal work (working hours, indefinite contract of employment)

and regulations concerning exceptional contracts of employment (fixed-term contracts, part-time contracts, teamwork).

*Changing the terms of the contract of employment.* Regulations of collective agreements stem from the fact that the terms of the contract of employment can be changed, if both parties agree to do so. If an agreement cannot be reached, the change is made with reasons justifying dismissal and adhering to the dismissal period. Often, it is acknowledged that a person can be transferred to other duties maintaining his/her status. However, if this affects his/her benefits negatively, the aforementioned basis should exist and the dismissal period should be adhered to.[19]

Usually, only the employee's obligation to perform other work has been regulated. The same rules also affect, for example, the employee's workplace, e.g. changing the location of the workplace.[20] However, collective agreements do not regulate these issues throughout the agreement. In the absence of regulation, corresponding legislation is applied.

According to the collective agreement regulations affecting the modification of the terms of the working relationship, an employee taken into certain types of work assignments is required to perform other duties within or equivalent to his/her profession if necessary.[21] Some agreements state that the employee has the obligation to perform other work if his/her actual corresponding duties do not exist or if other particular circumstances demand.[22] Some agreements refer to "other work within the person's profession"[23], others refer to duties within the employee's abilities[24]. In some contracts, however, the question is recognised by stating that if the person is employed to perform certain work, he/she is still responsible to perform other work as well if needed.[25]

*Working hours*. In terms of working hours, the usual starting point in collective agreements is that the Working Hours Act and the collective agreement in question are both adhered to. However, present collective agreements include many types of regulations enabling local agreements. For instance, according to the Collective Agreement concerning the Metal Industry, local agreements can involve 1) the maximum duration of regular daily and weekly working hours, 2) the duration of period of stabilisation, 3) the starting time of the working day and working week, 4) the daily working rest-period and 5) changing the hourly work schedule.[26]

Many collective agreements have, however, set certain guidelines for the agreement of working hours.[27] Collective agreements normally require a system previously drawn up for the period in which the working hours are evened out as an average.[28] In collective agreements there are differences especially in respect to after what length of time the work should level out to 8 daily working hours and 40 hours a week.[29] Some collective agreements include a regulation enabling local agreements on flexible working hours.[30] This type of regulation may also affect the lengthening of regular working hours from the hours specified in the collective agreement.[31]

*Fixed-term contracts.* There is a great amount of regulations of fixed-term contracts of employment in collective agreements (in about 40 collective agreements out of 180). Many collective agreements require making this kind of agreement, in which the basis for the "fixed-term" must be mentioned in the contract of employment.[32]

In many collective agreements, it is stated that the foundations for concluding fixed-term contracts of employment are to be determined according to the Employment Contracts Act.[33] In some collective agreements the literal form of the regulation has been adopted into the collective agreement.[34] In some agreements, the grounds for concluding fixed-term contracts of employment have been limited.[35] In some the grounds for concluding fixed-term contracts are mentioned in the instructions of enforcement generally so that they are not affected by the influences of collective agreements.[36]

In a few collective agreements it is explicitly mentioned that a contract of employment bound to calendar time can only be made in exceptional situations.[37] In some collective agreements a particular element is the reference regulation, according to which the central principles regarding the use of a fixed-term workforce are defined in the personnel strategy of the company.[38] According to some agreements the main shop steward has the right to know of any employee taken into a fixed-term contract of employment as well as the grounds for the fixed-term contract.[39]

A fixed-term contract of employment usually ends once the term specified in the contract is over. There are regulations concerning this in many collective agreements. Exceptionally, collective agreements also include regulations on the termination of these types of agreements.[40]

In some collective agreements, contrary to general written agreements a fixed-term contract of employment lasting a maximum of one week can be agreed on orally, requiring that the employee is informed in writing of the duration of the working relationship as well as the regular working hours.[41] Collective agreements include also regulations on the dismissal of fixed-term employees.[42]

Collective agreements include many regulations on fixed-term contracts of employment. Their intention is to protect the employee limiting the employer's right to make this kind of a contract. On the other hand, the employer's rights have been broadened in comparison to the Employment Contracts Act 1970 (e.g. the dismissal of fixed-term employees). In comparison with other atypical ways of performing work, the agreement of the fixed-term contract has been greatly regulated by collective agreements. Different types of situations have also been comprehensively kept in mind.

*Part-time contracts.* There is somewhat broad regulations concerning part-time employees in the Collective Agreement concerning Commerce.[43] Also some other collective agreement have general regulations affecting these employees.[44] Usually, collective agreements have only some regulations on the determination of the part-time employee's salary.[45]

*Teamwork.* Teamwork is regulated mostly through the regulations on salary in collective agreements. For example, if salary is depending on the demanding nature of the duties, the employer may take into account whether the person's duties include coordination of a team/group, without having the status of a superior.[46] Also, in determining the personal portion of the salary, interaction with others shall be taken into account, among other things.[47]

*Hired workforce.* In the area of hired workforce the first national general collective agreement was agreed in June 2000. At that time the Employers' Association of Workforce Services/ Union of Employees of Special Services and the Union of Social Sector Personnel (ERTO) concluded two collective agreements involving hired workforce. One collective agreement concerns the permanent employees of companies that hire a workforce and the other those workers that are hired to the companies that buy their services. The prior contract may be applied to all workforce without the status of employer in companies that hire workforce. The former contract is applied to the previously mentioned persons responsible of financial administration, data processing and secretarial work. Contracts do not affect subcontracting (the relationship between subcontracting and hired workforce is not dealt with in the agreement).

Both collective agreements were concluded with a so-called joining document, which has been used as an appendix to the framework agreement (between the Employers' Union of Special Services and the Union of Employees of Special Sectors). In a contract of employment, the agreements made in the framework agreement should be followed unless otherwise agreed in the joining document. These agreements are significant because, for example, the employee's salary is determined solely between the employer and employee, taking into account the demanding nature of the work, the competence of the employee, and the success of the work as well as the salary generally paid for the work in question.[48]

The regulation on hired workforce through special collective agreements is limited. In addition to the aforementioned national collective agreements, there are a small number of collective agreements applying to a certain sector. Collective arrangements involve relatively few matters and leave the parties with a wide freedom of contract (e.g. salary regulations).

In many collective agreements (especially in industry) there are regulations concerning external workforce (subcontracting and hired workforce). The basis for these regulations is the general agreement between TT and SAK in 1997.[49] In many collective agreements the general agreement has been used as an appendix. In some it has been adopted as a separate agreement or then the collective agreement has included the central regulations from the general agreement.

According to the general agreement, by hired workforce is meant a situation in which the hired workforce hired by a company performs work for another employer under direction and supervision of that employer. According to the agreement, the contracts concerning the hiring of workforce should include a term in which the company hiring the workforce binds to comply with the generally binding collective

agreement of the work sector as well as the labour and social legislation in question. Usually the employer should also inform the main shop-steward of external workforce participating in production and maintenance assignments beforehand.[50]

According to the general agreement, companies should limit their use of hired workforce in order to balance out working peaks, or otherwise for duties with time or quality limits. The hiring of workforce is unhealthy if the delivered workforce of the companies' work in the normal working hours alongside the permanent employees and under the supervision of the same management. Furthermore, the companies employing hired workforce should, if requested, clarify the questions concerning duties of this type of worker to the main appointed representative.

The general agreement between TT and SAK demonstrates the traditional way of dealing with external workforce. The hiring of workforce is seen as a threat against which those working are being protected. The hiring of workforce is thus reduced to narrow and atypical activity, particular to only some fields.

*Subcontracting.* In addition to regulating the methods of use of external workforce, the general agreement between TT and SAK regulates subcontracting. Subcontracting is based on a contract made between two independent entrepreneurs; business contracts, contracts of purchase, job contracts, hiring contracts, commission contracts, etc., in which the necessary work is performed by an external company without the other party being involved in the work performance.

According to the agreement, the contracts involved with subcontracting should include a condition in which the subcontractor obliges to comply with the collective agreement of his/her field as well as labour and social legislation. If, due to the subcontracting, the company's workforce exceptionally has to be reduced, the company must strive to re-place the workers in question to other duties in the company; if this is not possible, the subcontractor should be advised, if in need of workforce, to employ the suitable workers which have been released for the subcontracting work with their prior salary benefits. In addition, according to the agreement, the contract of employment cannot be given such a form that would imply a contract between two entrepreneurs, when the contract of employment is actually in question.

Usually, regulations concerning subcontracting in collective agreements do not exist. In this issue, the customary practice is thus to refer to an agreement between central organisations.

*Distance workers.* There are actually no regulations concerning distance workers in collective agreements. However, in regard to the insurance business, there is an agreement on including a list of instructions concerning distance working to the appendix of the collective agreement. The list of guidelines is intended to supplement the recommendation in respect to this issue made by the unions

concerned in 1991. The list of guidelines establishes the definition of distance work, making distance work contracts, the determination of the conditions of contracts of employment, work security as well as working areas and equipment.[51] The collective agreements concerning the textile and garment industry and the chemistry industry have traditionally included regulations concerning additional salary paid to home workers.[52]

*Summary.* The more atypical ways of performing work affect the status of the normal worker, the more they are regulated by collective agreements. For instance, there are many regulations concerning fixed-term contracts in collective agreements. On the other hand, for example the activities of consultants or other similar forms of external workforce are not regulated in collective agreements. Hiring of workforce and subcontracting form a kind of in-between group, of which there exist regulations particularly in general agreements between central organisations.

In regard to atypical forms of work and increasing flexibility of contracts of employment a portion is regulated in labour law legislation, for example conditions for agreeing fixed-term contracts. In these issues, collective agreement regulation generally corresponds to the law. Otherwise, a significant part of collective agreements corresponds to legal practice and legal literature, for example the modification of the conditions of the employment relationship. In some parts the question is clearly of the protection of normal workers against external workforce. In some collective agreements the question is of finding new solutions (e.g. agreements concerning hired workforce).

Most national collective agreements have only minimal regulations on making contracts of employment more flexible or of the forms of atypical performing of work. Assessing from this perspective, collective agreements do not correspond to the needs of the new work. On the other hand, it can neither be said that these needs would be visible in collective agreements of flexible sectors. In these sectors the union has also sought to protect its working members in normal positions. In regard to hired workforce, the first national collective agreement was not agreed to in a sector in which hired workforce has proved most problematic (the hotel and restaurant sector).

**Job security**

Central labour market organisations have made an agreement on protection from lay-offs and dismissals. The agreement affects dismissal of contracts of employment for reasons pertaining to the worker, as well as those procedures, which are observed in dismissal or lay-offs for economic reasons. Therefore, the agreement does not affect all the job security issues, which have been regulated in the Employment Contracts Act (e.g. justification of dismissal for economic reasons, fixed-term contracts and dissolving trial-period contracts).

According to the general agreement, the employer cannot terminate an employee's contract of employment without a rational good reason. These types of grounds for dismissal are reasons, which are justified by the Employment

Contracts Act for the termination of contracts of employment, in the same way as reasons depending on the employee, such as negligence of work, the violation of orders given within the employer's authority, unjustified absence and obvious carelessness in the work performed.

In dismissing workforce due to economic reasons, if possible, skilled workers that are valuable to the company, and employees who have partially lost their ability to work for the company in question should be dismissed last. In addition to this regulation, attention should be paid to the duration of the work and the amount of duties of maintenance. This type of regulation is not found in the Employment Contracts Act.

Regulations concerning dismissal or rescinding of the contract are not usually regulated separately in collective agreements. In this issue, reference is made to agreements made between the corresponding central organisations[53] or the Employment Contracts Act[54]. The regulations of the agreements usually concern only notices of dismissal and aspects concerning their abidance as well as the termination of fixed-term contracts of employment. In national collective agreements there are, however, differing ways to express the reasons for dismissal. Reasons considered appropriate are those economic reasons responsible for the necessary reduction of staff as well as the reduction of workforce.[55] On the other hand, collective agreements also have regulations in which dismissals are quite straightforwardly bound to social aspects.[56] In a few agreements some general obligations are made in regard to particular issues.[57]

The role of shop stewards is now regulated usually through general agreements between central organisations. For instance, the general agreement between TT and SAK includes regulations in conjunction with the job security of the shop stewards, the economic reasons for dismissals, individual protection, candidate protection and post-protection as well as compensations and substitutes. The same issues have been regulated in agreements concerning shop stewards.[58] In these issues the contract agreements are more exhaustive than the Employment Contracts Act.

Job security has been traditionally regulated in collective agreements. For instance, the protection of shop stewards has become increasingly important. Furthermore, the grounds that are mentioned in agreements as behaviour of employees justifying dismissals are typical minor offences. The reasons for dismissals involving the new work are not mentioned. On the other hand, the reasons for dismissals are not usually emphasised in regulation of collective agreements.

**Transfer of an undertaking**

The changes in business activities, for example the transfer of an undertaking, are present in collective agreements mainly as questions of cooperation. However, these types of regulations are not present in actual collective agreements but in so-called general agreements. The general agreement between TT and SAK follows the law concerning cooperation in companies in those questions not otherwise agreed. In general agreements there are many regulations concerning cooperation, for example activities of development, carrying out collective activities, activities

involved with the maintenance of working ability and the collective activities of the shop stewards, but actually only one regulation concerning cooperation or job security in conjunction with the transfer of an undertaking. According to this agreement, if there is reduction or expansion in the activity of the workplace or transfer of an undertaking, merging of companies or related changes in the organisation, the organisation may be changed to correspond to the altered form and structure of the workplace, accordingly to the agreement.[59]

In collective agreements, questions touching on company management are not considered very much. For instance, the transfer of an undertaking has been left out of the general agreement concerning protection against dismissals and lay-offs. In this issue the Employment Contracts Act is observed. In the general agreement between the central organisations the paragraph on "external workforce" regulates subcontracting, but only in respect to how the employee is to be protected in this type of situation (the employer should seek to place the worker into other duties or advise the subcontractor to employ the released worker.

The changes in company activity that are significant in the new economy are not central in collective agreements.

**International contracts of employment**

Work performed abroad has been regulated (usually, however, only in regard to daily allowance) in collective agreements, which correspond to duties that can be naturally performed abroad (e.g. collective agreements concerning transportation employees). In some collective agreements it has been acknowledged that work performed on trips abroad etc. are to be agreed on before and in each case separately complying with the applicable parts of the collective agreement.[60] In some collective agreements it is only referred to that the terms and conditions of employment contract are agreed on by the employer and the employee before the beginning of the trip. A reference is also made to a recommendation made by the unions.[61] Some collective agreements define the prerequisites of assignments abroad.[62]

The international dimension has not yet been emphasised in collective agreements. Work performed abroad is considered mainly a matter of the contract of employment.

**Circumvention of the collective agreement**

Collective agreements do not usually include regulations on how to circumvent them. This type of regulation, limited to certain fields, can be found in the general agreement between TT and SAK, according to which a contract cannot be given such a form that would make it a contract between entrepreneurs, when it is actually a contract of employment (GA 8.2 §).

## Salary questions

### The system in general

Collective agreements have traditionally been agreements concerning salary and other conditions of work. In collective agreements, the regulations concerning salary are central when dealing with the measurement of a unit of work as well as a means of encouraging a desired behaviour (transitions, versatility, etc.) Remuneration systems have changed a great deal in the 1990's. When in the early 1990's the collective agreements were based mainly on duty-based salary, in the late 1990's approximately every third national collective agreement (50 out of 170) includes a two-part remuneration system. This type of system is normally based on the nature of the work as well as personal competence (added to the duration of the contract of employment). In practice, the system is completed with company-based result-related parts, though not yet widely.

There are new remuneration systems being used in many different sectors, such as the metal industry, computing-services as well as on the other hand, food industry, the paper industry and insurance business. These fields represent the new economy (computer-service companies) as well as traditional business sectors (e.g. food and paper). On the other hand, metal is a traditional business but its sphere includes, for instance, the mobile phone industry.

The metal industry has concluded various national collective agreements, which characterise the new remuneration system well. The freest salary philosophy is represented by the collective agreement concerning employees in administrative positions. According to this agreement, salaries are agreed individually with the employee, in accordance to the demanding nature of the work as well as the employee's training and personal qualifications. The company makes an assessment of the pay policy to be applied to the personnel. Pay policy is individual and rewards innovative ability and ability to cooperate, leadership qualities, initiative and know-how. Pay policy for employees in administrative positions is founded on the basis of the company's business idea and it encourages efficiency, profitability and competitiveness.

In the collective agreement concerning metal industry technical workers, the elements affecting salary are assignment-based, work-based, person-based and company-based as well as annual bonuses. The measurement of the demanding nature of work is done in workplaces on the basis of different factors. These measurements are, for example, necessary knowledge and skills, effects of decisions and resolutions, interaction as well as responsibility in performing duties and management. Ten grades of points are given for duties according to the demanding nature of these duties. Particular personal qualities that are evaluated are cooperation skills, interactive skills, versatility, special skills and readiness to develop. The employee's personal-based salary is 2—20% of the salary.

Similar aspects are also present in the collective agreement concerning employees between the Central Union of Metal Industry and the Metal Industry. According to this agreement, salary consists of work-based salary and personal salary. In defining

personal salaries, attention must be paid to e.g. professional command, versatility, performance and thoroughness. Versatility mainly means ability for different duties and readiness to develop.[63]

The collective agreements concerning computer services and the telecommunications field are both based on similar starting points as the above-mentioned collective agreements in the metal industry. In these agreements, salary is defined as assignment-based and personal bonuses. In the assessment at person-based salary, performance, versatility, language skills, initiative, judgement, responsibility, activity and development capacity are evaluated. Characteristics that are demanded and valued in these fields are interactive skills, independent know-how, cooperation, initiative development, various fields of expertise, ability and will for risk-taking, responsibility, and responsibility of expertise.

Through regulations on salary, the collective agreements include many elements typical to new work and the new economy. Circumstances affecting person-based salary in particular are multi-faceted and modern. On the other hand, person-based salary still composes a rather small part (not more than 20%) of the whole salary. The assignment-based part of the salary remains central. The aforementioned collective agreements are examples of agreements affecting new work. Equivalent agreements exist extensively in today's working life and in principle they cover all types of sectors of activity.

**Some specific issues**

*Flexibility with help of salary.* Today, collective agreements try to increase workers' flexibility in many ways. The traditional group of regulations promoting flexibility affects the transfer of the employee to other duties. In this sense, we talk of mechanical flexibility. Another way to promote flexibility is to reward the employee for skills and knowledge (e.g. multiprofessionalism or versatility). By this option is meant the rewarding of the employee's qualities or internalised flexibility. In the first example, salary is ultimately determined by new work. The second example improves the employee's salary. Employers have traditionally emphasised the need to include employee flexibility to collective agreements as well as regulations enabling and attracting employees to these types of work agreements. Present-day collective agreements are in this manner a compromise between the needs of the employer and the protection of the worker. Through salary regulations collective agreements are a significant manner of implementing flexibility also at the individual level.

*The transfer of the employee to other duties.* Many collective agreements state that the employee does the work indicated by the supervisor/manager who in turn have the right to transfer the employee to other duties, if necessary. The requirements for the transfer are usually regulated in the agreement.[64] Usually the transfer is carried out in the framework of the right to supervision. Another criterion in transferring the employee is the employer's reasons for dismissal.[65] Also, the criteria for transfers that fall between the right to supervise and the reasons for dismissal are regulated in collective agreements.[66] Aside from this,

there exist agreements according to which the concept of transfers and principles of compensation are agreed locally.[67] Some collective agreements refer to procedures of cooperation regarding essential changes.[68]

The starting point for the salaries paid for temporary transfers to other work is that the employee should be paid his/her previous salary for a certain period of time, usually for two weeks.[69] If the transfer continues for a longer period than the aforementioned two weeks, the employee is subsequently paid a salary according to the work performed. In exceptional cases, employees may be paid at once according to their new work position.[70] In some collective agreements this is specified only in that the lower-paid temporary work is compensated equally to the previously paid salary and higher-paid temporary work is compensated according to the nature of the work without specification of the duration of the temporary job.[71]

There are regulations in collective agreements also concerning compensation of temporary posts in addition to regular duties.[72] There are also special regulations protecting certain employee groups in transition.[73]

*Ability to perform many jobs.* There has been a great deal of factors in collective agreements concerning the size of person-based salaries. Some factors have been, for instance, the productivity of the work, working efficiency, cooperation skills, independence, language skills, versatility, punctuality, readiness for special assignments and other similarly justifiable factors of competence.[74]

The factors to be taken into account have been defined in collective agreements.[75] Overall, the question is the relation between the work performance (quantity, quality, results, responsibility), professional ability (control of the work at hand, educational level and experience in relation to the knowledge and skills needed in the work, availability/versatility, development and maintenance of professional skills) as well as personal qualities (reliability, punctuality, interactive/cooperation skills).[76] The aforementioned factors in collective agreements of different fields are usually the same.[77]

Some collective agreements define only a portion of factors relevant to person-based salary. The remaining factors should be taken into account when applying company-based salary policy.[78] The question may also be of the bonuses due to these same factors.[79]

The Metal Industry Collective Agreement is an example of a versatile remuneration system. In the metal industry, the basic salary is composed of the person-based salary and the work-based salary. The work-based proportion of the salary is determined in terms of work performed accordingly to regulations. A three-part system is used for this (extremely demanding duties, demanding duties, and regular duties). The proportion of person-based salary is determined through significant factors. These factors are professional control, versatility, work results and thoroughness. Professional ability is determined by examining the employee's ability to get through decisionmaking situations involving working techniques and methods as well as developing these. Versatility is determined by assessing the

employee's capability and availability in performing different duties within the organisation as well as readiness to develop these abilities. The work result is determined by comparing the accomplished results with the determined normal work results. In assessing thoroughness, the compliance with rules is taken into account as well as the order of the workplace and the observance of working time, in that the working hours cannot be diverged from without acceptable justification. The proportion of person-based salary is at least 2% and at most 17% of an employee's total salary.[80]

The employer makes the personal assessment of qualifications, if not otherwise agreed locally. The determination of proportions is normally performed in accordance to an assessment by a superior. For instance, the employer may draw up a local measurement system. The content is later reviewed with the representatives of the employees.[81] Collective agreements include regulations on the size of person-based salaries, mainly percentile proportion.[82]

*Result-based bonuses.* A result-based bonus is a company-based salary bonus, which does not depend on the collective agreement. Employer organisations have not wished for these types of regulations in collective agreements. Nevertheless, some collective agreements have general guidelines for the determination of result-based salary.[83]

Many collective agreements have regulations regarding fee-based remuneration. Fee-based remuneration includes a fixed share and a changing share, which depends on performance. The size of the share depends on the production, quantity, quality or other factor of production or a combination of these (others are job contracts and partial contracts).[84] Fee-based remuneration is used in work in which the results (amount of production, quality of the product, cost-effective use of raw materials, etc.) depend on the attentiveness, skills, or other aspects of the employee. Fee-based work should be priced so that the earnings are higher than the recommended hourly wages.[85]

## Summary

Collective agreements remain to be rather traditional in Finland, although particularly toward the end of the 1990's they have started to take into account the needs set by the new work (especially flexibility). As far as working hours are concerned, recent years have brought about a more significant increase in flexibility. Moreover, remuneration has given more importance to the employee's personal knowledge and skills. More regulations regarding the forms of atypical work have been included in collective agreements. In this chapter, these regulations are sought in various collective agreements, making the overall picture more positive than any single collective agreement.

In the parts examined, collective agreements of different fields have a striking resemblance to one another. So-called old industry (cleaning, textile and garment

industry) and new industry (metal industry and telecommunications industry) has adopted the same kinds of decisions. Social innovations spread quickly in collective agreements.

Collective agreements represent the social regulation of flexible production. The role of the employee organisations is to protect theirs members and the collective agreements demonstrate this objective. On the other hand, collective agreements are a trade, in which the interests of the employers and the employees are accommodated. In recent years this particular process of accommodation has occurred also taking into account the customer's/client's needs.

The ways in which collective agreements may provide solutions for the needs of new work have not comprehensively been researched. The significance of collective agreement regulations is not clear in regard to this question. Some researchers have proposed that Finland's problem is more the abundance of simple, repetitive jobs than the lack of organisation of new work.[86] In this situation, concerning collective agreements, it may be necessary to concentrate more on the problems of today's work, than shape the setting for new kinds of work.

The role of collective agreements remains to regulate "bad" work as well as traditional conflicts of interest between employers and employees (e.g. job security, obligation of remuneration, the beginning of an employment relationship, the conclusion of fixed-term contracts, etc.). On the other hand, it may be necessary that the regulations in collective agreements are clear, not general clauses. From the perspective of the employer as well, it is good to know that when dealing with up to thousands of employees, what the applicable content of a regulation is. For a large portion of employees, collective agreements remain to represent protection against the employer. From this perspective, collective agreements (their wording) are crucial.

Today, the regulation of new work or networking has not been especially taken into account in collective agreements. This still does not mean that present regulations involve different courses of action. Every system has many similar aspects and on the other hand, many present regulations are flexible. The question is not only of the flexibility of remuneration (e.g. person-based salary), but also of regulations concerning flexible working (fixed-term employees, part-time employees, hired workforce, etc.). In concluding collective agreements it may be necessary to assess in particular how the binding of flexibility mainly to remuneration can be moderated, in other questions besides working hours. Flexibility in this case does not only mean the permitting of local agreement but also the modification of the contents of national collective agreements.

Collective agreement regulations can be divided into assignment-based regulations, working hours regulations, workplace regulations and salary regulations. Collective agreements have regulations facilitating the flexibility of each of these. However, as long as new work is characterised by transfers and interruptions, collective agreements are not made from this point of view. In terms of interruptions in transitions and careers, collective agreement regulations could be developed at least in regard to working assignments. Although these issues are agreed to in

contract of employment as well, leniency could be added to collective agreements as well, in addition to legislation.

The increasing of flexibility of collective agreements does not in itself remove the necessity to achieve more local agreements. Still, even present collective agreements can be described as a compromise between national and local regulations. In present collective agreements remuneration regulation in particular encourage these types of local contracts (employment contract-level flexibility).

The nature of the collective agreement as a document of compromising quality between the employer and the employee naturally leads to exactly this type of solution. However, all forms of flexibility should not be regulated as salary-dependent. A large part of flexibility is already of the type that does not demand changes to salary. This direction has been emphasised in recent years, for example flexible working hours have led to a decrease in over-work remuneration. At this moment, flexibility is not completely left to personal-level agreements.

In new sectors, for example computer-related activities etc., the regulation of collective agreements affects, in addition to contextual problems, also the small amount of exhaustiveness of regulation due to a low level of organisation. Sectors of new work have been described as strongly dependent on the activities of clients/customers and the market. This, in turn, has been seen to increase the need for individual flexibility in terms such as working hours. Correspondingly, the significance of collective agreements has been considered even harmful (e.g. a problem relating to the regulation of hiring workforce in the new Employment Contracts Act). In other ways also, the significance of personal negotiations, instead of negotiations with the shop stewards, and personal behaviour, instead of collective appearance, have increased.

These types of new workers represent a market-oriented idea instead of traditional collective agreement-orientation. These two groups are, however, separate points on the same line. Neither extremity is the realistic option for us. Scandinavian traditions represent some maintenance of protection although the significance of the market is increasing. Moreover, in each country, collective agreements have a strong mutual attachment. In recent years, this has somewhat declined especially in some employee groups (managing employees, executive workers) but also in employees in different sectors of activity.

At the European level two trends are generally apparent in the development of collective bargaining.[87] The first one is a trend towards releasing the decentralised levels from the standards and guidelines negotiated at the centralised levels. This is done by placing greater emphasis on company-level bargaining, limiting cross-industry agreements to framework guidelines, and introducing exemption clauses to enable general provisions to be waived. The second trend is a trend towards increasing collective bargaining. From issues directly related to industrial relations, principally working time and wages, collective bargaining issues have gradually broadened. It has been necessary to integrate safeguarding existing jobs and creating new jobs, which means that general interests outside the company have to be taken into account. At the European level issues related to employability

(vocational training), equal treatment of women and men, and the fight against discrimination are of increasing importance.

The new forms of organisation of work and the significant level of unemployment and social exclusion have on the other side helped to weaken the structures of collective representation. The main effect of this weakening of representative structures is a fall in membership. In most European countries, the State plays a fundamental role in the organisation and operation of the social dialogue. This includes establishing a basic set of rights recognising an area for negotiation, instruments of collective action and the role of social partners. With some exceptions systems of collective labour representation generally have not undergone fundamental changes in recent years.

# The rules

## Regulation of new work

The legal sources of labour legislation (legislation, collective agreements, contract of employment, etc.) regulate the performing of work exhaustively, be it a question of "new" or "old" work. Some legal sources are "permanent" regulations, some depend on the agreement between the parties. Each deed in working life is a right or an obligation from the perspective of some legal source.

All dimensions of working life are not meticulously regulated. For instance, as far as work assignments, the working place and working hours are concerned, the freedom of contract is great. In terms of remuneration, the significance of person-based salary has also grown in recent years.

For these reasons, among others, the lack of regulation of new work is not necessarily a problem. This should be considered also, for example, when regulating the Employment Contracts Act. Likewise, in connection with collective agreements the requirements of new work must be reassessed. The demands of new work should not be left to be based on individual-level agreements exclusively. This is not the situation now either, but higher-level regulation of new work has not been consciously done.

New work has been associated with a real and equal individual-based business transaction in the contract of employment. Certainly many workers are capable of this. On the other hand, inequality in the level of contract of employment is always present, if various applicants are competing for the job. Labour legislation in Scandinavia has been regulated with the perspective that this threat of inequality exists. Although more workers than before are today in an equal position with the employer, the above-mentioned point of exterior regulation can still not be changed. The reason for the presence of the "outsider" is this inequality. If this cannot be

presumed, the existence of legislation and collective agreements can be questioned.

Rules and regulations in labour legislation have traditionally varied in different contexts. Some issues (e.g. job security) have been regulated with general clauses, some (e.g. health security) have been regulated with detail. There cannot be only one type of regulation of labour legislation, after all. Today, the quickly changing conditions have been connected especially to the new work. These changes entail in many ways general regulations. In turn, in a more permanent economy, it has been rendered possible to regulate questions specifically.

Public discourse in connection with new work has emphasised general demands such as flexibility and the consideration of personal differences. Old economy and work have been incorporated with specifically regulated rights and obligations, as well as the formal disposal of personal differences, e.g. behind bonuses from years of service. These starting points emphasise general clauses in new work and specifically regulated rights in old work.

The general or specific nature of regulating depends, in addition to the above-mentioned issues, also on the objectives and needs of the parties in the regulation. The existence of incongruent interests usually leads to compromises. Compromises can also arise from the nature of the problem; for example, job security is regulated by general clauses. One compromise is also that regulations emphasise through general clauses basic rights as well as minimum standards.

The combining of old and new work can happen by regulating an "iron minimum", onto which a better, more complete working life can be built. In the changing conditions, it is necessary to remember the permanent values and objectives in working life. It is especially important to stress that the basic values of working life are not the same as the values of the market economy. Although there is not a fundamental conflict between the two, each sector in society has its own relative autonomy.

Neither the Employment Contracts Act nor collective agreements in Finland are based on setting only minimum standards and focusing on procedural rules. In their present state, the law and collective agreements are minimum regulation. Better terms may be agreed upon. However, the level of minimum regulation itself can be set on different levels. In Finland, the minimum level is high. The Employment Contracts Act and collective agreements are also exhaustive mechanisms of regulating working life. They also serve to complement one another in that the central elements of a working relationship are regulated by the Employment Contracts Act and the concrete terms of the working relationship, such as salary, are agreed to by collective agreements. Despite wishes to the contrary, the significance of material regulation has not been reduced in recent years.

In terms of content, national collective agreements have also been extensive, in contrast to many European countries. For instance, salaries have not been left to local-level decision. Besides working time regulation, collective agreements do not form a general framework for the terms of a working relationship. There has been no need for the dissolving of regulations of exhaustive collective agreements i.e. the removal of certain issues on behalf of the parties to the contract of

employment. It is improbable that the parties will undertake this in the future, either. The second issue is that organisations can increase general regulation in certain questions.[88]

Although the Employment Contracts Act and collective agreements complement one another, in some aspects they also include overlapping of regulation (e.g. fixed-term employment contracts, some aspects of job security). While overlapping regulation has been able to pursue the growing of the information content, it has also been able to pursue that conflicts in respect to these questions can be resolved in Labour Court. Therefore, the relationship of the information content of the law and collective agreements cannot be assessed without taking into account the different processes relating to these regulations. In addition, the relationship between these two methods of regulation differs in subject matter. In some issues the agreements between organisations improve legislation, for example the job security and operating prerequisites of shop stewards, others contain almost identical regulations, for example fixed-term contracts and dismissals due to personal reasons. The duality of regulations affecting the same issues has given rise to problems especially when regulations are bound to one another and one source has been changed.[89]

The existence of two exhaustive methods of regulation has been a long tradition in Finland. There is no reason for making quick changes to the mutual relationship of these regulations. The regulation of a new Employment Contracts Act indicates that the law does not aim to remove already existing regulations. Nor does the new turn of collective agreements reduce regulation. Even from an external perspective, it is difficult to realistically propose the withdrawal of regulation in this kind of situation. The question is more likely to be that both the Employment Contracts Act and collective agreements leave unregulated many questions that have been brought forward by new work. These are for example the transitions of the employee to different external positions and back, the training of the employee, job rotation, profit share, team working etc. At the moment, many of these questions ultimately pertain to the scope of the employer's authority.

At the moment it is central to assess the relationship between issues regulated at the level of the workplace and on the other hand by the Employment Contracts Act and the collective agreements. Today, the "gap" between these is significant from the perspective of new work. New work has emphasised new issues at the level of the workplace, particularly issues non-pertaining to the sphere of Employment Contracts Act and collective agreements regardless of the fact that regulation in Finland is widespread. This kind of situation can lead to pressures and change traditional labour legislation (the law and collective agreements) to take into account also these issues. This does not necessarily require the changing of this regulation, nor does it appear very probable today. This consideration can happen for instance in that regulation be extended with the help of different existent general clauses to issues concerning new work. This line of development is possible. Concretely this would take place through the gradual increase of appeals to existing general clauses in legal disputes concerning new work.

The above mentioned approach can mean the recognition of new work through legal disputes. This does not necessarily represent the mainstream of issues. In recent years the values of the market economy have emphasised the authority of the employer. Possibly for this reason there are no notable counterforces to this line of development, excluding legal disputes. The significance of legal disputes in turn defines itself according to who dares or wants to file a suit in certain issues. At the moment it seems that the decrease of the number of legal disputes will cut the significance of this method.

## Socially safe flexibility

The "concretisation" of flexibility is the most central question of employment market policy in the near future. It affects legal sources in labour legislation (legislation, collective agreements, contracts of employment), the relationship between the employer and the employee as well as the rights and obligations of both. On the concrete level, the question is of the increase of flexibility of work duties, working hours, workplace and the increase of flexibility of salaries. In general, the sources of regulation should increasingly emphasise the facilitation and execution of changes and different kinds of transitions. Simultaneously, personal knowledge and skills should be increasingly taken into account.

The question is not necessarily of the reduction of the importance of legislation and collective agreements and increasing the importance of the contracts of employment. In order to arrange socially safe flexible production, an outside authority is required to achieve a minimum level of legislation and collective agreement activity. The general rights of the employer and employee are, for example, questions that can by external regulation secure the social system of flexible production. In the same way, national collective agreements can, for example, regulate an individual basis for salary.

With a framework based on exterior regulation, it can be avoided that the demands of working life depend on an employer's "orders" in the form of slogans, such as "You have to be flexible". The social system of flexible production demands that for example an employee's obligations are clear enough that he/she recognises the possibility to refuse work exceeding his/her duties (the possibility to say "no"). Also, the adaptation of working life and family life requires the existence of limits on working life. In some way it should be possible to differentiate normal work and overtime work.

In regard to working life, the social system of flexible production is the modernised version of the Scandinavian welfare state. The facilitation of flexibility is not accomplished by using more straightforward methods in this objective. In terms of means, traditional external sources such as legislation and national collective agreements are also respected. Presently, these are being used more than before in the creation of social conditions for flexible production. Traditionally, external sources have directly defined the activities in question. The issue is not of

a leap into a new system, but, as usual, the coexistence of the old system and the new system.

Socially secure flexible production has been approached in many questions in recent years. These issues have been for example working time regulation with the Work Hours Act and national collective agreements as well as the remuneration system in many collective agreements. Within the European employment strategy vocational training has a very central role. Collective bargaining has also become an important factor in the development of training. In the 1990s, for example the word employability appears in collective bargaining. It qualifies the ability of an employee to be mobile because of the skills acquired through in-company training.[90]

Flexibility in collective agreements has been carried out mainly unilaterally so that when concluding the contract of employment, the employer has made demands regarding flexibility which concern the duties, working place, etc. Especially in questions regarding contracts of employment, new kinds of regulations are necessary. Unfortunately, the recently accepted Employment Contracts Act cannot be described as an important way to create a socially secure system of flexible production.

## Some policy considerations

The changes in the form and content of work cannot really be distinguished from the Employment Contracts Act, even from the recently approved new act. The Employment Contracts Act regulates first of all the duration of the contract of employment (fixed-term or indefinitely valid contracts). The new act now partially regulates also, for example, the terms of the working relationships of hired workforce. Collective agreements contain a bit more dispersion in terms of the performance of work (these are mainly in the remuneration regulations). Regulation in labour legislation is general in that its starting point is the position of the employee. The Finnish language does not even recognise different ways of performing work in the same way as for example the English language (e.g. labour, work, job). This, however, does not prevent the bringing of new methods of performing work also into the sphere of regulation.

In terms of ideology of regulation a central question concerns the relationship between general and casuistic regulation. In Scandinavian countries the general nature of regulation has been emphasised. New work along with its particularities can, however increase the need to decentralise regulation. For instance telework and also some other forms of work performed in a network may need to be regulated, at least its framework, general starting points etc. In conjunction with the forms of performing new work the parties have to make many kinds of agreements, for which instructions are not really provided by legislation and collective agreements.

Especially in the field of the European Communities recent years have brought emphasis to the regulation of the working forms associated with new work.

Community law has recently accepted directives concerning fixed-term and part-time workers. In addition, there are on-going negotiations regarding hired workforce and so-called contract labour work. The significance of EU law has been central for the labour legislation reforms that have been made for example in Finland in the past few years. From this point of view, the decrease of national legislation does not seem probable. This view is supported by the fact that in Finland the terms of the use of hired workforce were even regulated in the new Employment Contracts Act before this issue was negotiated in an international agreement. Also in terms of fixed-term working contracts many of Finland's own decisions have been made in a short span of time.

A second alternative is to emphasise the freedoms of the parties and to leave the new issues consciously outside of regulation. Important arguments can be made on behalf of this course of action. One central argument is the fear that the regulation can have negative effects on the development and changing of these issues. In addition, one difficulty is finding a sufficiently concrete and correct method of regulation in terms of the nature of the issue. The question is, after all, of the new and changing forms of performing work. From this perspective there may be justification for the Finnish general method of regulation to be maintained in the future as well.

Judicial regulation in the past years has emphasised the freedoms of parties in many ways. This general line of development should be noticed in the regulation of labour legislation as well. The most natural way to follow this development is to leave the regulation general and to abstain from precise regulation of new phenomena. This could even mean that these new forms of work should not even be regulated frameworks in legislation. For practical reasons, in collective agreements these issues are dealt with especially in remuneration regulations, for example concerning how the salary is to be counted. This may be the basis for the fact that legislation and collective agreement regulation may already start separating from one another more than earlier.

Conversely, although in principle it is tempting to favour the parties' own agreements and general legislation, some kind of opening exists between the regulation of the phenomena of new work and the set of norms of labour legislation (Employment Contracts Act and collective agreements). Although the labour law required by the new work can not yet be defined, present regulation focuses on situations of the "old economy". The varying or changing forms of performing work specific to the new work or network-based working are not in a central position in present regulation. For example the perspective of transition has not actually been brought into the realm of regulation of labour legislation. Today, transitions have been left mainly to rely on the decisions of authorities. Also, for example regulations concerning competitive activity, agreements of prohibition of competing activity and trade secrets have been used to limit transitions and the spreading of knowledge and know-how. Network-based working is in turn left entirely outside of regulation.

Closely tied to the lack of the perspective of transition is the fact that project work has not been separately regulated in the Employment Contracts Act or

collective agreements. Today, project work is the regular way of performing work. It is related to many aspects connected to new work and the new economy. The non-regulation of project work completely affects the interpretation of labour regulations, for example the line between employee and employer, fixed-term work contracts, business and trade secrets, competitive activity etc. The perspective of project work can justifiably be held as a point of departure for new general theories of new work. These developmental efforts may justifiably be considered a central challenge in current labour legislation.[91]

## Conclusion

In both the old and new Employment Contracts Act the regulation of the issues dealt with in this chapter are partially only general or incomplete, for example the drawing of the line between employee and employer and atypical working relationships such as telework or network. A portion of the issues also significant in regard to the new work have been meticulously regulated either in legislation or at least in legal praxis, although mostly taking into consideration current situations (fixed-term work contracts, job security, the transfer of an undertaking). Some have also been emphasised in the recent years (the relationships between employers and employees, international working relationships).

On the level of collective agreements the new questions arising from the new work are visible mainly in remuneration regulations, although the present agreements make possible for instance the modifications in the terms of contracts of employment as well as broad working hour agreement. Nevertheless, the remuneration system with its task-based and personal salaries seems to be the central mechanism for the implementation of changes, also those required by new work. With remuneration it is possible to promote employees' flexibility, transitions to other duties, versatility and productivity. This type of result does not even seem very surprising. With economic temptations changes are often made easiest.

In the parts examined, the employment contract legislation and collective agreements depict different approaches. The Employment Contracts Act forms a judicial framework for different issues while barely prioritising them at all. In fact, the Employment Contracts Act does not portray any single social goal or objective very well. On the other hand, collective agreements demonstrate at least the notion that economic issues (remuneration regulations) remain to possess a central position. Thus, they confess the basic factor in the carrying out of changes, i.e. the power of money.

Collective agreements may form a more realistic and more easily understandable means of carrying out desired changes than the Employment Contracts Act. In short, this means tempting with money. This sort of final conclusion may be criticised at least in its oversimplification and cynicism. Then again, neither the old nor the new Employment Contracts Act offers corresponding methods of implementing the requirements set by the new work. Examined from this perspective

the Act is a more remote instrument for the implementation of changes in comparison with collective agreements.

The assessment of the relationship between the Employment Contracts Act and collective agreements is also affected by the fact that the Employment Contracts Act has recently been regulated, and will not be changed in the next few years. Instead, collective agreements are negotiated nearly every year. In conjunction with the collective agreement negotiations in recent years there has been an effort to seek new matters. For example, the unions have proposed negotiations on result-based salaries. Another question is how other labour legislation develops in terms of the new work. However, at the moment there are no legislative reform underway for example concerning innovations made in the working relationship, copyrights or working hours legislation.

Although collective agreements can be defended in the above-mentioned manner, they remain problematic in their use. The chief problem is that labour market organisations do not necessarily recognise in an agreed manner the requirements of new work. Although this direction has been adopted in the remuneration regulations in collective agreements, this direction is not permanent and recognised. Otherwise, collective agreements may represent the course of action of the old economy, and for this reason be a means to be avoided instead of used.

In conjunction with collective agreements it has also been problematic that in the so-called knowledge sector there are numerous collective agreements and interest organisations. At the moment there are ongoing negotiations about the integration of protection of interests of this sector. Employers in the knowledge sector pertaining to the Confederation of Finnish Industry and Employers are aiming to merge the confused labour market fields of telecommunication technology and information technology beneath one umbrella organisation. The objective is also to standardise the terms and conditions of employment by the end of 2003. The side of the employees is facing the same kinds of problems. In Finland the knowledge field has at least six trade unions under all the central organisations. In this way, the new field would join the sphere of traditional interest protection.[92]

At least in the fields of collective agreements the future requirements of working life will be solved when negotiating the system of remuneration. The significance of this matter has still not been well realised. For instance the contents and results of remuneration regulation of collective agreements have hardly been studied. In fields outside of collective agreement, how the employee and employer agree on their relationship (their rights and obligations) may be a central issue. In this case, labour legislation as well has a formative role in the negotiation of such issues.

This chapter only examines two traditional methods of regulation, legislation and collective agreements. It has not outlined and estimated for instance local agreements. In Finland in some contexts the possibility for the creation of local labour markets has been proposed. With this is meant for example the third sector

composed by local units and networks. Presently, the labour markets in question mainly work in the field of organisations and are directed primarily toward those employed through financial subsidies. Due to the exhaustive nature of collective agreement and legislative regulation third sector labour markets are not free in Finland. On the other hand, present legislation and collective agreements allow broader local agreement than earlier. Although local agreements have been researched a great deal in past years[93], the research has not focused on the perspectives of the new work. Only after this it is possible to create a realistic overall picture of the relationship between regulation and new work.

Finland's strengths in economic competitiveness are, among other factors, clear social norms and work-related values as well as agreement-based labour market system. Among the possible threats are the low regard toward consumer services and service professions, the incompleteness of the reform of the structures of the agreement-based society, the low amount of encouragement for entrepreneurship as well as the general lack of possibilities for becoming wealthy through one's own work.

Many of these issues have traditionally been outside of legislative and collective agreement regulation. On the other hand, the regulation of work today is an essential component of the regulation of the practice of economic activity. Economic activity cannot be regulated in labour legislation and collective agreements. This is presumed by the logic of different legislation as well. Instead, the closeness between regulation of labour law and economic activity should be taken into account more precisely than earlier. For example, the promotion of entrepreneurship is in many ways tied to both salary (e.g. personal portion of salary and result-based salary) as well as to the forms of work (e.g. the prevalence of project work) among others.

Especially in local agreements, labour legislation and economic regulation can be connected in a more detailed manner than in national regulation. Although one main goal of local agreements is the improvement of the competitiveness of company activity, there has been no real activity involving these types of agreements in this area. In local agreements the central issues regarding employees (the consideration of the strenuous nature of the work, the evaluation of the job requirements, the regulation of working hours, the possibilities for employees to have influence on decisionmaking, new methods of performing work etc.) could be linked to the central needs in regard to the company (economic situation, build-up and overproduction, the changing of duties, multiprofessionalism etc.). Local agreement can also involve a more significant appreciation of the position of professions. In this sense, local agreement could mean the increase of regulation of professions with intention of linking those working in a certain profession and the needs of companies.

The increasing of local agreements alone does not signify the decreasing of regulation. In any case, local agreements allow the parties a broader sphere of activities than national regulation. Through this can even be created situations without applicable collective agreements. Another alternative would be that the new fields should be left entirely outside of collective agreements. This alternative

is also realistic at this moment. Not even today is the new work completely beneath the jurisdiction of collective agreement regulation. It is also possible that national collective agreements take into account the situations of the new work more significantly than before. It is probable that in the near future this issue will be of the concurrent realisation of several different alternatives.

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Matkatoimistoja koskeva työehtosopimus
Meijereiden erikoiskoulutuksen saaneiden ja teknisten toimihenkilöiden työehtosopimus
Metalliteollisuuden työehtosopimus
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Terveyspalvelualan työehtosopimus
Toimistoteknisen alan työehtosopimus
Tradekan ja Elannon myymälä- ja osastopäälliköiden työehtosopimus
Työehtosopimus elokuvateatterit
Työehtosopimus tietotekniikan palveluala
Vakuutusalan työehto- ja palkkasopimukset
Valojäljentämöalan työehtosopimus
Varasto- ja kuljetusesimiesten työehtosopimus
Vartiointialan työehtosopimus
Vähittäiskaupan esimiesten työehtosopimus
Yhtyneet-sopimus Yleisradio MTV
Yksityisen sosiaalialan palveluyksiköitä koskeva työehtosopimus

## Notes:

[1] For instance the recently published assessment of the Employment Contracts Act from the perspective of realisation of equal rights: Vaikuttaako sukupuoli? Työsopimuslakiesityksen arviointia tasa-arvonäkökulmasta. Tasa-arvojulkaisuja 2000:8.

[2] The Experts' (Labour Law professors in the Committee) Differing Opinion 1:2.2 § submitted to the report of the Employment Contracts Act Committee proposed the partial increase of flexibility of the basis of the Employment Contracts Act. According to the Differing Opinion, work can be done as an employee even if the work includes managerial duties (KM 2000:1 Appendix 1). A remarkable addition to the aforementioned Differing Opinion is that a so-called incorrect interpretation would not necessarily lead to the nonapplication of a previous interpretation from the first instance.

The Experts' Differing Opinion aims at recognising those issues, which seem important in terms of new work and the network economy. The central point is the uncertainty of the correct status ("correct" as seen by the authorities) that surges from the multifarious forms of today's work. In the future, these types of problems involving classification will be even more commonplace. Likewise, in modern working life, as in for example working-teams, the exercising of different rights of management and supervision of work, formerly entitled to the employer, are stressed in the tasks of the employee. Furthermore, the decrease of the importance of so-called middle management emphasises the managerial position of "normal" employees.

[3] The Experts' Differing Opinion for the new Employment Contracts Act proposed a regulation for a group contract of employment. According to the Differing Opinion, employees could contract to work together as a collective or other group. Each member of the group would be required to separately enter into an contract of employment with the employer. In negotiating the organisation of work and the payment of salary the group would be represented by a member delegated to work as a representative on behalf of the group. The responsibility of the members of the group would be specified by the contract and their status.

[4] The Experts' Differing Opinion proposes regulations for this question as well. On the other hand, from the perspective of teamwork, this proposal is modest as well. For instance, the problematic question of liability is only recognised. It is determined by the contract as well as the status of the persons part to the contract. In this sense this proposal goes a long way in leaving the liability to broadly depend upon contracts.

[5] Instead, the Experts' Differing Opinion suggests two such regulations. According to one suggestion (concerning loyalty and information), when fulfilling their respective obligations and exercising their rights, both parties should take into account the benefits of the other party. Thus, bearing in mind protection of information and privacy, it is appropriate that the effects changing the other's status are informed to the other party and the other party is to be given the opportunity to express his/her opinions on these effects. According to the other regulation concerning general obligations the employer, his/her representative and the employee should also otherwise treat one another and others in the workplace appropriately and behave accordingly in regard to their position and duty. The employer should develop his/her relationships with the employees as well as encourage this among the employees.

[6] The Experts' Differing Opinion concerning the employer's general obligation proposes that it shall be made more concrete in order to apply it to the orientation of the employee and training and well as sanctions for violation of this obligation. According to the proposal, the employee should be acquainted to the work in question and to the working environment in order to facilitate the performance of his/her duties. The employer is to secure that the employee has the appropriate readiness for carrying out the new and changing duties. In addition, the employer should, according to his/her capabilities, organise work and free time so that the employee, if wanting to, has the opportunity, through training, to continue the work, develop in the work, and advance in his/her career.

[7] In the Experts' Differing Opinion this is acknowledged more clearly than in the report of the committee: "The obligation of repositioning and retraining belongs to the natural person or legal person acting as employer. The obligation extends itself also to a legal person, over whom the employer has real authority on grounds of ownership, contract or other arrangement or is within the sphere of this level of authority, requiring that the decision making of these legal persons concerning personnel questions is mutual."

[8] In terms of salary, the act regulates only minimum wage in the absence of a collective agreement, sick-leave salary, salary in the case of inability to perform work, time and period of salary payment, salary payment period after the termination of the working relationship, the exceptional outstanding of salary payment, the payment of salary as well as the employer's right to refuse payment of salary due to the employee's debts.

[9] See for example the Collective Agreement concerning Technical Personnel in the Construction Industry, 21.1.2000—31.1.2001 1 §.

[10] See e.g. Collective Agreement concerning Travel Agencies, 1.2.2000—31.1.2002 1 §.

[11] E.g. the Union of Textile and Garment Industry Workers changed their regulations in this way in June, 2000.

[12] A normal regulation in this respect is: The right to assembly is mutually inviolable. If the employee sees that he/she has, in violation to this article, been given notice of dismissal due to membership to a union, he/she should, before any other measures are taken, request an investigation of the question via of his/her union.

[13] Cf. e.g. Collective Agreement concerning Textile Industry Maintenance Workers, 2000 4.4 §: The employee should be trained for the work and the changes taking place in the work. The new employee should be familiarised with the company/organisation and its principles of action as well as personnel policy and possible working rules.

[14] Cf. Collective Agreement concerning the Sheet Metal and Industrial Insulation Field, 20.1.2000 - 31.1.2001 3 §: During the time period in which the employee is in the service of the employer, he/she has no rights to contract for him/herself or perform work of his/her profession for another employer.

[15] For instance, according to the collective agreement concerning the Finnish Broadcasting Network, the Union of Service Industries and the Union of Technical and Special Professions, the corporation should clarify to a new employee which collective agreement and salary agreements are being applied to his/her contract of employment, as well as the system of shop-stewards and negotiation. The corporation should interact with the employee in a confidential manner, inform him/her of the decisions affecting him/her, confidentially negotiate with the employee in questions pertaining to his/her duties in the corporation as

well as inform the employee of his/her status duties and obligations in the organisation of the corporation and any changes in these as soon as possible as well as promote and encourage the employee's endeavours for the development of the corporation's activities. Correspondingly, the person should perform the assigned duties carefully following the guidelines that the employer has supplied in regard to the performing, the quality and the extent of the duties as well as the time and place given within the authority of the employer. In performing the work, the employee should avoid everything in conflict with his/her position within reasonable limits in correspondence with the appropriate procedures that would cause damage or harm to the employer. (The employee obligations correspond to the text in the Employment Contracts Act.)

16 E.g. Collective Agreement concerning Automobile and Allied Service Personnel, 2000-2991 5 §.

17 Cf. e.g. Union of Service Industries, Collective Agreement concerning Personnel 8.2.2000-31.1.2001 2 § and the Construction Industry Technical Workers' Collective Agreement 21.1.2000-31.1.2001 2 §.

18 Cf. e.g. Collective Agreement concerning Technical Trades, 2000 12 §: Person-based salary may be paid on the following grounds: work results, trainability, versatility, initiative, responsibility, cooperational skills, efficiency and creativity.

19 Cf. e.g. Collective Agreement concerning Construction Industry Technical Personnel, 21.1.2000-31.1.2001 3 §.

20 Cf. e.g. Collective Agreement concerning Travel Agencies, 1.2.2000 - 21.1.2002 4.5 § and the Collective Agreement concerning S-Group's Shop Managers, Department Managers and Station Caretakers, 1.3.2000-28.2.2001 5.4-5 §. Cf., however, the same collective agreement 5.6 §, which regulates exceptions to the main rule.

21 E.g. Collective Agreement concerning Commerce, 1.3.2000-28.2.2001 2.3 §.

22 E.g. Collective Agreement concerning Foodstuff Vehicle Operators, 5.4.2000-1.1.2001 4.3 §, Collective Agreement concerning Vehicle Operators in Commerce 3.4.2000-31.1.2001 2.2 §, instead of using the term "regular work", the term "customary work" is used.

23 Collective Agreement concerning Travel Agencies, 1.2.2000-31.1.2002 4.4 §.

24 Collective Agreement concerning Road Transport Workers, 2000-2001 5.2 §.

25 Collective and Salary Agreements concerning the Insurance Field, 1.1.1998-31.12.2000.

26 Cf. Collective Agreement concerning Metal Industry 2000 13.2 §.

27 For example, according to the Collective Agreement concerning Textile and Garment Industry, regular weekly day-work and shift-work hours can also be arranged so that it adds up to an average of 40 hours a week for a maximum of 7 weeks. In locally agreed collective agreements the period of stabilisation may be for a maximum of 26 weeks. During the period of levelling out, the regular working hours cannot surpass 10 hours a day or 50 hours a week. Cf. Collective Agreement 2000-2001 6 §.

28 E.g. Chemical Industry, Construction Industry, etc.

29 According to the Collective Agreement concerning the Basic Chemical Industry, concerning working time, the lengthening of the average daily working hours is 52 weeks and the average weekly working hours is 26 weeks, cf. Collective Agreement 23.3.2000-31.3.2003 6 § paragraphs 3 and 4. According to the Collective Agreement concerning the Foodstuff Industry, the period of levelling out of regular weekly working hours is 6 weeks at most and for

temporary lengthening of working hours 3 weeks at most, cf. Collective Agreement 13.3.2000-28.2.2003 6 § paragraphs 3 and 5.

30 Cf. Collective Agreement concerning Special Industries 26.1.2000-31.1.2001 6.1.3 §: Local agreements can be made concerning flexible working hours. The use of flexible working hours should also be formally agreed between the employer and employee.

31 Cf. Collective Agreement concerning Computing Services 16.1.2000-31.1.2001 6.2 §: Local agreements can fix the regular working hours as a maximum of 8 hours daily and a maximum of 40 hours weekly, in which case the weekly working hours are shortened to an average of 37,5 hours (agreed in the collective agreement, addition by SK) weekly in accordance to Appendix 3.

32 Cf. e.g. the Financial Field's Terms and Conditions of Employment, 2000 3 §, Collective Agreements and Remuneration Agreements concerning the Insurance Field, 1.1.1998-31.12.2000 2.7 § and Collective Agreement concerning Performance Engineering, Finnish National Opera, 29.3.2000-28.2.2002 5.3 §.

33 E.g. in the Collective Agreement concerning Commerce, 1.3.2000-28.2.2001 4 §, Collective Agreement concerning Opticians 1.3.2000-28.2.2001 4 § and Collective Agreement concerning Organisations in the Social Field 1.2.2000-31.1.2001 3 §.

34 E.g. Collective Agreement concerning the Basic Chemical Industry, 23.3.2000-31.3.2001 5.3 §, in which the literal form corresponds to the temporary modification in ECA 2 §, not the literal form of the regulation which came into effect in the beginning of 2000.

35 E.g. Collective Agreement concerning the Finnish Broadcasting Network, 25.1.2000-31.1.2001 4 §: In the work included in the field of application of this collective agreement, fixed-term contracts of employment are used only for exceptional reasons or reasons of the nature of the work.

36 Cf. e.g. Collective Agreement between Foodstuff Industries, 13.3.2000-28.2.2003 7 §.

37 E.g. Note 2.7 in Collective Agreement concerning the Insurance Business, Collective Agreement concerning Travel Agencies, 1.2.2000-31.1.2001 5.2 §.

38 See Collective Agreement concerning Travel Agencies 5.4 §.

39 E.g. Collective Agreement concerning the Foodstuff Industry, 7 §.

40 Cf. Collective Agreement concerning the Health Services Field, 1.2.2000 - 31.1.2001 4.5 report entry: A fixed-term contract of employment lasting over eight months may be dismissed with the aforementioned dismissal period unless the employer and the employee have agreed otherwise. A fixed-term contract lasting a maximum of 8 months may be agreed to with at least 8 weeks dismissal period.

41 E.g. the aforementioned Collective Agreement concerning Health Services, 3.2 § and the aforementioned Collective Agreement concerning the Social Field 3.2 §.

42 This right is been taken to the new Employment Contracts Act. Cf. Collective Agreement concerning Automobile and Machine Industries, 2000-2001 6.2 § The fixed-term employee can be laid off only if he/she is substituting a permanent employee that the employer would have the right to lay-off if he/she was working.

43 Cf. Collective Agreement concerning Commerce, 1.3.2000-2000-28.2.2001 Report concerning Part-time Employees, in which the part-time employee is defined and which includes explicit regulations about the employee's working hours, free-time, salary, sick-leave, holiday salary and compensations as well as holiday bonus.

[44] Collective Agreement concerning the Basic Chemical Industry, 23.3.2000-31.3.2003 1 § and the Collective Agreement affecting the Finnish Broadcasting Network 25.1.2000-31.1.2001 1 §.

[45] Cf. e.g. Collective Agreement and Remuneration Agreement concerning the Insurance Field, 1.1.2998-31.12.2000: Remuneration Agreement concerning Office Personnel 5 §.

[46] Cf. e.g. Collective Agreement concerning Organisations in the Social Field, 1.2.2000-31.1.2001: Remuneration Agreement 4 §.

[47] See e.g. Collective Agreement concerning Information Technology Services, 16.1.200-31.1.2001: Appendix: the Application of the Remuneration System and Collective Agreement concerning Technical Professions 2000 12 §. In some collective agreements there are also regulations on the transition to small cell-oriented or self-oriented groups. Cf. Collective Agreement concerning Textile and Garment Industry, 2000-2001 19 §.

[48] Later, the parties make a report for the development of the remuneration system of the sector.

[49] See Chapter 8: The Use of External Workforce.

[50] General Agreement, Chapter 5.

[51] Collective Agreements and Remuneration Agreements concerning the Insurance Field, 1.1.1998-31.12.2000.

[52] Cf. Collective Agreement concerning Textile and Garment Industry, 2000-2001 4 § and the Collective Agreement concerning Basic Chemical Industry, 23.3.2000-31.3.2003 1 §.

[53] Agreement on Protection against Dismissal, Metal Industry, 1996. Also the Construction Industry's Agreement on Dismissals and Lay-offs, 1997.

[54] E.g. Collective Agreement concerning Travel Agencies, 1.2.2000-31.1.2002 7.1 §.

[55] E.g. Collective Agreement concerning Construction Industry Technical Personnel 21.1.2000-31.1.2001 7 §: In assessing the targeting of dismissal, special attention should be paid to employees' professional skills and versatility as well as to remaining duties. The final result should not be, however, discrimination towards anyone on the basis of the duration of the contract of employment, sex or social factors.

[56] See e.g. Collective Agreement concerning Bus Stations, 2000 8 §: "If possible, the regulation ordaining that those in longer contracts of employment, invalids, and those with large families should be the last to be dismissed, should be complied to.

[57] Cf. e.g. Contract on Protection of Dismissal and Lay-offs in the Construction Industry 6 §: The obligation to offer work during the employment relationship.

[58] Cf. e.g. Agreement on Shop Stewards, Metal Industry, 1990 4 §.

[59] General Agreement, Chapters 1, 2 and 3.

[60] Collective Agreement concerning the Finnish Broadcasting Network, 25.1.200-31.1.2001 35 §.

[61] Collective Agreement concerning Basic Chemical Industry, 23.3.2000-31.3.2003 24 §.

[62] Cf. aforementioned Collective Agreement concerning the Chemical Industry 24 §: "An employee cannot be assigned duties abroad without his/her consent, unless the matter concerns an employee with whom a contract of employment has been made that requires travelling abroad or whose normal duties have previously required this, or unless the assignment has not previously been possible due to technical reasons or unless the assignment is urgent due to technical productive reasons.

[63] In this respect the Union of Metal Industry has made a corresponding collective agreement with the Union of Electricity Industry.

[64] Cf. e.g. Collective Agreement of Textile and Garment Industry, 2000-2001 19 §.

[65] Cf. e.g. Collective Agreement concerning S-Group's Shop Managers, Department Managers and Station Caretakers, 2000-2001 19 §.

[66] Cf. e.g. S-Group Collective Agreement 5.6 §.

[67] Cf. e.g. Collective Agreement concerning the Foodstuff Industry, 13.3.2000-28.2.2003 14 §, which also states that procedures relating to transfers cannot be affected by despotism or pressure on individual employees.

[68] E.g. the Meat Industry and Security Field Collective Agreements.

[69] Other time periods are also used, cf. e.g. Collective Agreement concerning the Finnish Broadcasting Network 25.1.2000-31.1.2001 28 § and the Financial Field, Terms and Conditions of Employment 2000 21 §.

[70] Cf. e.g. Collective Agreement concerning Special Industries, 26.1.2000-31.1.2001 8.6 §, Collective Agreement concerning Basic Chemical Industry, 23.3.2000-31.3.2003 17 §.

[71] Cf. e.g. Collective Agreement concerning Performance Engineering in the Finnish National Opera, 29.3.2000-28.3.2002 22 §.

[72] E.g. Collective Agreement concerning Construction Industry Personnel, 21.1.2000-31.1.2001 30 §.

[73] E.g. According to the Collective Agreement concerning the Wood Industry and Electricity Industry Unions, if an employee aged 50 or over has been in the contract of employment for at least 20 years, is transferred to a lower paid job, his/her salary cannot be lowered for 1,5 years.

[74] Hence the Collective Agreement concerning the Cleaning Industry, 1.3.2000-31.1.2001 8.7 §.

[75] E.g. According to the Collective Agreement concerning Textile and Garment Industry 2000-2001 10 §, the employee can be paid a higher salary on grounds of work results, versatility, special expertise necessary in work, initiative, thoroughness, or other elements considered valuable in the workplace.

[76] See for example the Collective Agreement concerning the Photocopying Industry 21.1.2000-31.1.2001.

[77] Cf. e.g. Collective Agreement Act concerning Information Technology Services 16.1.2000-31.1.2001 10 §, in which, following the assessment of the classification of the demanding nature of the work, the grounds for the determination of salaries are know-how and professional skills (work experience, professional knowledge, maintaining/development of professional skills, necessary training for the work, versatility/availability, customer service/interaction, a maximum of 45%), and freedom of activity (application/solving of problems, responsibility for activities/product, a maximum of 25%).

[78] Cf. e.g. Collective Agreement concerning Construction Industry Workers, 21.1.2000-31.1.2001 33 §, which directly defines the importance of experience and educational level. Other qualities, such as leadership, ability to take initiative and ability for cooperation are only considered possible factors of salary. On the issue of gender, it is only established that it is not a factor affecting person-based salary.

[79] E.g. assignment and qualification-based bonuses such as in the financial field, cf. Terms and Conditions of Employment, 2000 23-24 §; the grounds for qualification-based bonuses may be the employee's skilful customer service, initiative, independence and versatility that are seen as additional assets.

[80] Collective Agreement concerning Metal Industry 2000 8 §.

[81] Cf. e.g. Collective Agreement concerning Metal Industry 2000 8 §.

[82] For example, according to the Collective Agreement concerning Organisations in the Social Field 1.2.2000-31.1.2001, person-based salary is at least 5 % of the person's minimum wage on that difficulty level. Collective agreements also mention some general "goal-oriented" guidelines in determination of salaries. Cf. e.g. Collective Agreement concerning Basic Chemical Industry, 23.3.000-31.3.2003 14 §: In terms of the selected factors of the employee's success or development, assessment must be done systematically and fairly. Employees' commitment and acceptance in relation to development of skills, competence and performance will be reached when the content of the objectives and the selected factors of assessment to these objectives as well as fulfilment of this assessment are discussed with the employees and/or their representatives as early as in the planning of the system. The factors used in the assessment of competence and performance are clarified as well and the worker may personally inquire the results of the assessment if desired.

[83] E.g. The Collective Agreement concerning the Textile and Garment Industry, 2000-2001 includes the following regulation 10.7 § on result-based bonuses: "The result-based bonus is a company-based salary bonus. It does not depend on the collective agreement. It entails the risk that it will not be paid if the set goals are not accomplished. Result-based bonuses may be paid by decision of the company as a reward for good results, e.g. as a Christmas bonus. In this case, it is not agreed upon with the employees, but the decision is made by the company. This type of result-based bonus is made through a single decision of the employer and is granted once or twice a year. It is not taken into consideration in the annual holiday salary or the average hourly wages, unless separately agreed. If a regularly-paid result-based bonus is in question, which is given e.g. in addition to regular salary, and in conjunction with its introduction certain objectives have been agreed to with the staff as preconditions for its payment, it is taken into account in annual holiday bonuses and average hourly salaries. In the selection of a measure for result-based bonus, clarity and simplicity should be taken into consideration. The forms of result-based bonuses vary. In addition to result-based bonuses, different kinds of surplus bonuses are used. If the not otherwise specified, the bonus paid is a result-based bonus." Illustrative handbooks on collective agreements drawn up by unions also mention result-based bonuses. Cf. e.g. The Cleaning Industry Remuneration System and Guide to Application of Remuneration System p. 4: Companies may also use result-based salary at their own discretion. It may be directed to all personnel/staff or a portion of it. These result-based bonuses should generally be based on the company's profitability and its development.

[84] Cf. e.g. Collective Agreement concerning the Sheet Metal and Industrial Insulation Industries, 20.1.2000-31.1.2001 6.5 §.

[85] E.g. according to the Collective Agreement concerning Food Industry, 13.3.2000-8.2.2003 12 § 15 % higher. According to the Collective Agreement concerning Repair Shops 8 § the contract-incomes should rise 20 % higher than the minimum wage in the collective agreement. According to the Collective Agreement concerning the Automobile and Machine Industry, 2000-2001 25 §, it should provide income by the normal level of work, which is higher than minimum wage. According to 9.3 § of the Collective Agreement concerning Metal Industry, the job contract should exceed the work-based hourly salary by 20 % and remunerative work by 10 %.

[86] Cf. Kevätsalo, K. (1999) pp. 124-130 and same author, HS 15.5.2000: e.g. 41 % of Finnish workers work in jobs which require only a few weeks training, over a third of the workers are capable of performing more challenging work, about 28 % perform repetitive jobs, etc.

[87] Industrial relations in Europe 2000 p. 39-40.

[88] In connection with the last round of negotiations (2001), the wage earners side proposed widening of the regulation of collective agreements that means the regulation of profit-shares with collective agreements. However, the employer side did not agree to this. However, a collective recommendation will possibly be made in this issue.

[89] For instance, in collective agreements reference can still be made to regulation in the old Employment Contracts Act.

[90] Industrial relations in Europe 2000 p. 44. Other similar social questions are for example early retirement and initiatives to integrate minorities.

[91] The project perspective is also emphasised in the new general theories of other juridical sectors as well, cf. Pöyhönen, J. (2000).

[92] Cf. Helsingin Sanomat 5.1.2001.

[93] E.g. Uhmavaara, H., Kairinen, M. & Niemelä, J. (2000); Timonen, S. (2000); Ilmonen, K. (2000).

# 5 SUMMARY

**Seppo Koskinen**

## The new work

Evaluation resting upon the traditional performance of work has become problematic as a result of multi-skilling, team and project working and use of external labour force, which consist of the self-employed, an agency labour force and contract work. The borders between the different forms for the performance of work have dimmed. Several different alternatives have been presented for drawing the borderline between an employer and an entrepreneur. Matters of this kind have increased the need to form a new framework for performance of work. The possibilities of the current regulatory system to face the questions created by this new situation have generally been presented in this work.

The central issue in the new work is primarily the spread of network-like modes of work. Although the performer of work is formally in the service of someone, the work is increasingly performed at least intermittently for another. Team and project working, as with independent operations, increase the objective for continual individual learning and refreshment by combining entrepreneurial-like activity and individual experience. Another great change relates to the content of work. With the markets, the question is of a fight for brains. The employment relationship is understood as one expense among many others. Employees have to create increased value in a determined market according to the needs of customers. The question is over continually removing expenses by re-engineering functions. A third central issue is flexibility. The traditional factors intended for the protection of employees, such as a minimum wage, the regulation of working hours and the regulations on job security, are often seen as barriers to the growth of a company.

The central object of production and exchange in the new work is knowledge in its various forms. The nature of produced commodities and services has become increasingly intangible and immaterial. Accessibility of information has been

democraticised but on the other hand access to information has become more difficult. An important part of the new work is the concept of knowledge economy, in which work is performed by knowledge workers. The new economy has also spawned new work, which is performed in new and alternative forms. Typical work in the new economy is knowledge-intensive. Traditional employer and employee – arrangement no longer responds to demands set by the new work. Quantum leap in information technology and the global economy require different ways of working.

The growing number of knowledge workers consist of employees, self-employed and entrepreneurs. Employees perform their tasks in a more independent manner than previously, without direct control and supervision. Hierarchic organisations of supervision have been replaced by autonomous and result-responsible teams. It could be claimed that the risk carried by the entrepreneur has in many cases been transfered to employees. At the same time the criteria for entrepreneur has been blurred.

Especially considering knowledge workers the distinction based on the status under which work is performed has become more difficult. The traditional definition of entrepreneur in labour law has included financial risk. In the definition of employee it is a point of departure that the work is performed under control and supervision. The status under which work is performed may even vary between those of entrepreneur and employee, although the task itself does not change. Even the performer of a given assignment might not always be conscious of the role or status he is currently working in. A new form of labour is emerging from the grey area between entrepreneur and employee, a form which is not based purely on employment relationship nor assignment between two entrepreneurs. This development is accelerated by outsourcing of work and functions. Also the state on its part aims to promote entrepreneurial activity, and self-employment is seen as one answer to unemployment.

# Regulation

Labour law has an important position in the regulation of work. Regulations are needed for, among other things, the relationships between the different actors. The issue is not only over actual legal norms and over different official or unofficial regulations but it is also over the dominant practices at both the collective and individual levels. In Finland, also the new Employment Contracts Act preserves regulations and even increases them.

Legislation as well as different agreements and practices regulate the demands on working life set by the new work. The Employment Contracts Act defines the main features for making a contract of employment. The same Act also determines the rights and obligations of employers and employees. The Employment Contracts

Act also sets certain limits to changing a contract of employment and the Act also determines the grounds for terminating a contract of employment on personal, as well as economic grounds.

The new Employment Contracts Act is centrally an answer to the problems of working life. As such, it hardly takes the new, however already visible, factors into consideration. These factors include group and teamwork, service work and the growth of atypical employment relations, the continual change and internationalisation of business operations, and the increased demands for expertise. With respect to job security, these signify the need to improve re-employment and the possibility of an employee to transfer to another job. The change in business operations also requires the obligation to realise continual training. In basing the information society on expertise, the mental atmosphere at places of employment is a central factor from the perspective of productivity and profitability. The new work requires attention to be paid to the development of the content of work and generally to the realisation of reciprocal and active loyalty.

On the other hand, the means for the flexibility of working life have created pressure to re-evaluate the regulations for labour law. Hardly any consideration has been given to this point in the Employment Contracts Act. For example, the problems of classification created by flexible forms for the performance of work are not handled in the Act, even though the problems in question have been presented publicly and an incorrect resolution in this matter can result in large economic consequences.

Traditionally labour law has emphasised the mandatory status of legislation and collective agreements. With the increase in the possibilities for making local agreements, the generalisation of transitions and commitments, and the diversification of activities in working life, the guidance of labour law has become more problematic. Correspondingly, the significance of making a contract has grown. Management and supervision have become the focus for different arrangements and reorganisation. Thus, the traditional nucleus of labour law has been broken — at least for some work and employees. This development already essentially hampers the content of labour law and its status among the different means for regulation.

## Status of the labour law

The questions affecting the status of labour law are also familiar in the new work. Labour law has had a significant role in the welfare state and the protection of employees. Nowadays, these rights have partially remained in the background and therefore it is necessary to re-evaluate the status of labour law regulation. The expansion of the borders of labour law regulation has come to the forefront in, for example, the regulation of working hours (the freedom of agreement between

an employer and his or her employees has increased), and the regulation of atypical employment relationships (agreeing on a fixed-term contract of employment was made easier through temporary changes). A grey zone has appeared in Finland especially in drawing the borderline between an employee and an entrepreneur. The concept of an independent entrepreneur to compare with an employee has been taken into use in some laws, and agreements between the parties and in accordance with their long-term practices have been respected in borderline cases. "General labour law" has become visible in, for example, the new constitutional law, where an attempt is made to generally protect the performance of work (e.g. no one, without a legally justifiable reason, may be dismissed from their work). Moreover, the international regulation of work is based on securing the general protection of work.

The nature of relationships between employers and employees in the new work has been discussed in recent years. The continual shambles both generally in economics and at the level of entrepreneurship appears to increase the desire and the trust for cooperation. The fast changing life of business especially requires the possibility to agree on matters quickly. On the other hand, in this situation the existing social prerequisites for activities has to be ensured through a general framework. The EU-regulation has, to some degree, affected the national labour law. These effects have been seen by us especially in connection with the transfer of an undertaking. It is worth noting that this question has been emphasised in EU law as for the protection of employees.

Many parts of the labour law have to be re-evaluated. Which questions and what kinds of regulation are significant in the future? How can a changing working life be best directed? For example, the arrangements for agreements have become emphasised in many ways. Many new modes of operation, like networks, have hampered the identification of the traditional relationships and issues of labour law. The borderline between employee and entrepreneur has become unclear and identifying the actual employer has become more difficult. Entrepreneurship has received new closely parallel forms for the work of an employee such as contract labour. In relation to the new work, it has become more difficult to conduct the traditional activities of trade unions on questions of transitions and multi-skilling prevent commitments.

Especially in the field of the European Communities recent years have brought emphasis to the regulation of the working forms associated with new work. Community law has recently accepted directives concerning fixed-term and part-time workers. In addition, there are on-going negotiations regarding hired workforce and so-called contract labour work. The significance of EU law has been central for the labour legislation reforms that have been made for example in Finland in the past few years. From this point of view the decrease of national legislation does not seem probable.

One alternative is to emphasise the freedoms of the parties and to leave the new issues even consciously outside of regulation. Important arguments can be made on behalf of this course of action. A central argument is the fear of the

negative effects of regulation on the development and changing of these issues. In addition, one difficulty is finding a sufficiently concrete and correct method of regulation in terms of the nature of the issue. The question is, after all, of the new and changing forms of performing work. From this perspective there may be justification for the Finnish general method of regulation to be maintained in the future as well.

Judicial regulation in the past years has emphasised the freedoms of parties in many ways. This general line of development should be noticed in the regulation of labour legislation as well. The most natural way to follow this development is to leave the regulation general and to abstain from precise regulation of new phenomena. This could even justifiably mean that these new forms of work should not even be regulated through frameworks in legislation. For practical reasons, in collective agreements these issues are dealt with especially in remuneration regulations, for example concerning how the salary is to be counted. This may be the basis for the fact that legislation and collective agreement regulation may already start separating from one another more than earlier.

Conversely, although in principle it is tempting to favour the parties' own agreements and general legislation, some kind of gap exists between the new work and the set of norms of labour legislation (Employment Contracts Act and collective agreements).

## The new forms of work

Although the labour law required by the new work can not yet be defined, present regulation focuses on situations of the "old economy". Neither the varying and changing forms of performing work specific to the new work or network-based working and knowledge work particularly are in a central position in present regulation. For example the perspective of transition has not actually been brought into the realm of labour legislation. Today, transitions have been left mainly to rely on the decisions of authorities. Also, for example regulations concerning competitive activity, agreements of prohibition of competing activity and trade secrets have been used to limit transitions and the spreading of knowledge and know-how. Network-based working is in turn left entirely outside of regulation.

Also the project-type work has not been separately regulated in the Employment Contracts Act or collective agreements. Today, project work is the regular way of performing work. It is related to many aspects connected to new work and the new economy. The non-regulation of project work completely affects the interpretation of labour regulations, for example the drawing of the line between employee and employer, fixed-term work contracts, business and trade secrets, competitive activity etc.

During the past few years the spread of teamwork in Finland has affected the traditional hierarchy of jobs by changing, among other things, the status and role of supervisors. The right of employers to the management and supervision has received new content as a result of the increased autonomy of employees. Supervision is no longer the concrete issue of instructions. The new working community-like modes of operation have been seen especially in the fields of knowledge-intensive business services (KIBS). The similar direction is seen however in many other activities.

The new business operations have essential effects on working life. Total control, cooperation, and communication in relation to production are emphasised in the duties of the higher management. The utilisation of the information coming from above and the communication of the information from below to the higher level are emphasised in the position of the middle management. Routine duties decrease and job descriptions expand at the level of performance. Team working and subcontracting transfer the task of management to the employees, increases the transitions from one task to another, and expands job descriptions (productive qualifications). Self-direction, personal decision-making authority, and flexibility emphasise individual initiative and commitment to the objectives of the organisation.

For their part, cooperation, communication, contact with customers, bearing responsibility, independence, the readiness to seek solutions, the ability to express one's understanding, the elimination of conflicts, helping others, and management and leadership ability relate to central planning, coordination, and organisational skills (social qualifications) in the new business operations. In turn, active skills in solving problems describe the development of processes from the routine in exceptional and unperceived situations (innovative qualifications).

# Flexibility

In the new work, the question for flexibility is especially important about making the quantitative (working hours, the total amount of work) and the qualitative (professional skills, the division of work, the organisation of work) compatible. With respect to qualitative flexibility, a difference is made between the static (multi-skilled, extensive) and the dynamic (learning at work, trainability). In the model based on the flexibility and professional skills of an organisation, the question is of utilising the versatile professional skills of employees, of minimising the hierarchy, of developing and keeping the core labour force as large as possible, of minimising determined flexibility and rotating employees.

The combining of old and new work can happen by regulating an "iron minimum", onto which a better, more complete working life can be built. In the changing conditions, it is necessary to remember the permanent values and

objectives in working life. It is especially important to stress that the basic values of working life are not the same as the values of the market economy. Although there is not a fundamental conflict between the two, each sector in society has its own relative autonomy.

The "concretisation" of flexibility is the most central question of employment market policy in the near future. It affects legal sources in labour requlation (legislation, collective agreements, contracts of employment), the relationship between the employer and the employee as well as the rights and obligations of both. On the concrete level, the question is of the increase of flexibility of work duties, working hours, workplace and salaries. In general, the sources of regulation should increasingly emphasise the facilitation and execution of changes and different kinds of transitions. Simultaneously, personal knowledge and skills should be increasingly taken into account.

The question is not necessarily of the reduction of the importance of legislation and collective agreements and increasing the importance of the contracts of employment. In order to arrange socially safe flexible production, an outside authority is required to achieve a minimum level of legislation and collective agreement activity. The general rights of the employer and employee are, for example, questions that can by external regulation secure the social system of flexible production. In the same way, national collective agreements can, for example, regulate an individual basis for salary.

With a framework based on exterior regulation, it can be avoided that the demands of working life depend on an employer's "orders" in the form of slogans, such as "You have to be flexible". The social system of flexible production demands that for example employee's obligations are clear enough that he/she recognises the possibility to refuse work exceeding his/her duties (the possibility to say "no"). Also, the adaptation of working life and family life requires the existence of limits on working life. It should be possible to differentiate normal work and overtime work.

In regard to working life, the social system of flexible production is the modernised version of the Scandinavian welfare state. The facilitation of flexibility is not accomplished by using more straightforward methods in this objective. Traditional external sources such as legislation and national collective agreements are also respected. Presently, these are being used more than before in the creation of social conditions for flexible production. Traditionally, external sources have directly defined the activities in question. The issue is not of a leap into a new system, but, as usual, the coexistence of the old system and the new system.

On the level of collective agreements the new questions arising from the new work are visible mainly in remuneration regulations, although the present work contracts make possible for instance the modifications in the terms of contracts. Nevertheless, the remuneration system with its task-based and personal salaries seems to be the central mechanism for the implementation of changes, also those required by new work. With remuneration it is possible to promote employees' flexibility, transitions to other duties, versatility and productivity. This type of

result does not even seem very surprising. With economic temptations changes are often made easiest.

## Legislation and collective agreements

The employment contract legislation and collective agreements depict different approaches. The Employment Contracts Act forms a judicial framework for different issues while barely prioritising them at all. In fact, the Employment Contracts Act does not portray any single social goal or objective very well. On the other hand, collective agreements demonstrate at least the notion that economic agreements (remuneration regulations) remain to possess a central position. Thus, they confess the basic factor in the carrying out of changes, i.e. the power of money.

Collective agreements may form a more realistic and more easily understandable means of carrying out desired changes than the Employment Contracts Act. In short, this means tempting with money. This conclusion may be criticised at least in its oversimplification and cynicism. Then again, neither the old nor the new Employment Contracts Act offers corresponding methods of implementing the requirements set by the new work. For instance, in remuneration regulations, in the Employment Contracts Act it is not possible to weigh different alternatives (pros and cons). Examined from this perspective the Act is a more remote instrument for the implementation of changes in comparison with collective agreements.

The assessment of the relationship between the Employment Contracts Act and collective agreements is also affected by the fact that the Employment Contracts Act has recently been regulated, and will not be changed in the next few years. Instead, collective agreements are negotiated nearly every year. In conjunction with the collective agreement negotiations there has been an effort to seek new matters. For example the unions have proposed negotiations on result-based salaries. Another question is how other labour legislation develops in terms of the new economy and new work. However, at the moment there are no legislative reform projects underway for example concerning innovations made in the working relationship, copyrights or working hours legislation.

Although collective agreements can be defended in the above-mentioned manner, they remain problematic in their use. The chief problem is that labour market organisations do not necessarily recognise in an agreed manner the requirements of new work. Although this direction has been adopted in the remuneration regulations in collective agreements, this direction is not permanent and recognised. Otherwise, collective agreements may represent the course of action of the old economy, and for this reason be a means to be avoided instead of used.

Clear social norms and work-related values as well as agreement-based labour market system have been considered as Finland's competitive advantages

economically. Among the possible threats have been the low regard toward consumer services and service professions, the incompleteness of the reform of the structures of the agreement-based society, the low amount of encouragement for entrepreneurship as well as the general lack of possibilities for becoming wealthy through one's own work.

Many of these issues have traditionally been outside of legislative and collective agreement regulation. On the other hand, the regulation of work today is an essential component of the regulation of the economic activity. Economic activity cannot be regulated in labour legislation and collective agreements. This is presumed by the mutual content-based logic of different legislation as well. Instead, the closeness between regulation of labour law and economic activity should be taken into account more precisely than earlier. For example, the promotion of entrepreneurship is in many ways tied to both salary (e.g. personal portion of salary and result-based salary) as well as to the forms of work (e.g. the prevalence of project work) among others.

In local agreements labour legislation and economic regulation can be connected in a more detailed manner than in national regulation. Although one main goal of local agreements is the improvement of the competitiveness of company activity, there has been no real activity involving these types of agreements in this area. In local agreements the central issues regarding employees (the consideration of the strenuous nature of the work, the evaluation of the job requirements, the regulation of working hours, the possibilities for employees to have influence on decisionmaking, new methods of performing work etc.) could be linked to the central needs in regard to the company (economic situation, build-up and overproduction, the changing of duties, multiprofessionalism etc.). Local agreement can also involve a more significant appreciation of the position of professions. In this sense, local agreement could mean the increase of regulation of professions with intention of linking those working in a certain profession and the needs of companies.

# Innovations and new work

**Hannu Mikkola**

Two manifestations of the new economy rise above others: the importance of networks and the position of a knowledge worker. In the production of innovations, the knowledge worker is a central actor and networks are this actor's working environment. Legislation is an instrument which attempts to form a framework to this activity. In the new knowledge economy certain rights and obligations are emphasised. These are intellectual property rights, business and professional secrets as well as the questions pertaining to contract law in the network economy.

Different projects of a knowledge worker may overlap one another. Various projects begin and end simultaneously, duties are fragmented and case-sensitive. Work may be performed for several clients simultaneously. In addition, employees move from one project to another also between different teams or clients. When employees transfer from one duty to another and to the services of different clients, the questions relating to information and professional secrets are emphasised. It is difficult to fit together the duties' project-like nature and obligation to secrecy. Especially in terms of competitive activity and prohibition of competitive activity, the question is of the fitting together of two conflicting interests.

The central object of exchange in new work is immaterial property, which involves different intellectual property rights. The significance of immaterial rights has grown and continues growing. Immaterial law is often realised as a negative right and it facilitates the negative procedures taken toward the other actors. This way, market leaders are often able to prevent or at least slow down others' entrance into the market, requiring that they also possess the relevant immaterial rights. Immaterial rights affect the creation of innovations in that those with the leading market position in terms of immaterial rights have the best opportunities to new inventions and innovations and receive profit for the accomplished developmental work.

Immaterial rights are society's way of protecting the rights of the authors of creative works and innovations and encourage their creation. The system is central in aiming to find a balance between the bearer of the rights and the common good of society. Excessively broad protective rights may contribute to slowing down development, but insufficient protection on the other hand, does not encourage e.g. product development activity or other economic contribution for the creation of innovations.

The nature of networks varies. The information technology cluster is an example of so-called vertical networking. A large subcontracting network has formed enterprises, which are dependent on the leading enterprise's export markets. Variations in international fluctuations have immediate effect on subcontractors. The so-called programming cluster is an example of the horizontal network, which does not have as much of a dependency with fluctuations and the markets of one leading enterprise. In the case of vertical clusters, we should find the ways of lowering the hierarchies. The amount and quality relatioships of commisioning are, however, limited by strict legal regulation involving professional secrets and competition.

Society should create favourable circumstances for innovation activity and the creation of innovations. The circumstances are created through i.e. high level of education, the availability of information and high-level technology and its innovative application. In terms of legislation this means the flexibility of the structures of the network economy, the encouragement and taking into account of new forms of performing work, as well as the re-examination of the international intellectual property legislation system.

## Suomenkielinen tiivistelmä

Seppo Koskinen

# Uusi työ

Perinteinen työn suorittamisen päämuotoon nojaava arviointi on ongelmallistunut muun muassa siirtymien, moniammatillisuuden, tiimi- ja projektityöskentelyn sekä ulkopuolisen työvoiman johdosta. Rajat työn tekemismuotojen välillä ovat hämärtyneet. Myös työntekijän ja yrittäjän rajanvetoon on esitetty useita eri vaihtoehtoja. Uudet ilmiöt ovat lisänneet tarvetta muodostaa uusi hahmottamiskehikko työn suorittamiselle. Ylimalkaan esillä ovat olleet nykyisen sääntelyjärjestelmän mahdollisuudet vastata uusien tilanteiden synnyttämiin kysymyksiin.

Keskeinen asia uudessa työssä on networking-tyyppisen työn yleistyminen. Vaikka työn suorittaja on muodollisesti jonkun palveluksessa, hän enenevästi tekee töitä myös toisille. Tiimi- ja projektityöskentely samoin kuin itsenäinen toiminta lisääntyvät tavoitteena jatkuva yhteisöllinen oppiminen ja uudistuminen yhdistämällä yritysmäinen aktiviteetti ja yksilölliset kokemukset. Toinen suuri muutos liittyy töiden sisältöön. Markkinoilla kyse on aikaisempaa enemmän taistelusta aivoista. Itse työsuhde ymmärretään liiketoiminnan kustannuksena muiden kustannusten joukossa. Työntekijöiden on itse luotava lisäarvoa asiakkaiden tarpeiden mukaan määräytyvillä markkinoilla. Kyse on jatkuvasta turhien kustannusten poistamisesta. Kolmas keskeinen asia on joustavuus. Perinteiset työntekijöiden suojelua tarkoittavat asiat kuten minimipalkka, työaikasääntely ja työsuhdeturvasäännökset katsotaan enenevästi esteeksi yritysten kasvulle.

Uuden työn keskeinen vaihdannan kohde on tieto eri muodoissaan. Tuotteet ja palvelut ovat tulleet luonteeltaan aineettomiksi eli immateriaalisiksi. Tiedon saatavuus on demokratisoitunut mutta samalla myös vaikeutunut. Uuden talouden osana on alettu puhua tietotaloudesta, jossa tietoammattilaiset tekevät työtehtävät. Uudesta taloudesta on syntynyt myös uutta työtä, jota tehdään toisin ja aiemmasta poiketen. Luonteenomaista uudelle työlle on sen tietointensiivisyys ja uudenlainen organisoituminen. Perinteinen työnantaja ja työntekijä -asetelma ei enää täytä uuden talouden asettamia vaatimuksia. Informaatioteknologian huikea kehittyminen ja globaali talous edellyttävät aikaisemmasta poikkeavaa työn teke-

misen tapaa.

Tietoammattilaisten kasvava joukko koostuu työsuhteisista työntekijöistä sekä ammatinharjoittajista ja yrittäjistä. Työntekijät tekevät työnsä itsenäisemmin kuin aiemmin ilman työnantajan välitöntä johtoa ja valvontaa. Hierarkkisen työnjohto-organisaation tilalle ovat tulleet itseohjautuvat ja tulosvastuulliset tiimit. Voidaankin sanoa, että työnantajan riski on monissa tapauksissa siirtynyt työntekijöille. Samalla eräs yrittäjyyden kriteereistä on hämärtynyt.

Erityisesti tietoammattilaisten kohdalla rajanveto työn suorittamisen statuksen suhteen on vaikeutunut. Yrittäjän määritelmään työoikeudessa on perinteisesti kuulunut ns. yrittäjäriski. Työntekijän aseman määrittelyssä taas lähdetään siitä, että työ tehdään johdon ja valvonnan alaisena. Työn suorittajan status saattaa vaihdella jopa siten, että välillä hänet katsotaan itsenäiseksi yrittäjäksi ja välillä työsuhteiseksi työntekijäksi, vaikka tehty työ ei itsessään muutu. Aina edes työn suorittaja itse ei ole tietoinen roolistaan, jossa työtä kulloinkin tekee. Yrittäjien ja työntekijöiden hämärään välimaastoon on syntymässä uusi työn tekemisen muoto, joka ei perustu puhtaasti työsuhteeseen eikä myöskään kahden yrittäjän väliseen toimeksiantosuhteeseen. Tätä kehitystä ovat vauhdittamassa työn ja toimintojen ulkoistamiset. Myös valtiovalta pyrkii osaltaan edistämään yrittäjyyttä ja itsensä työllistäminen nähdäänkin eräänä työttömyydenhoitokeinona.

# Työelämän säädökset

Työn sääntelyssä on työoikeudella ollut merkittävä asema. Sääntöjä tarvitaan koskien muun muassa eri toimijoiden välisiä suhteita. Kyse voi olla paitsi varsinaisista lakinormeista ja erilaisista virallisista tai epävirallisista säännöistä myös vallitsevista käytännöistä sekä kollektiivisella että individuaalisella tasolla. Suomessa uusi työsopimuslaki säilyttää ja jopa lisää sääntelyä.

Uuden työn asettamia vaatimuksia sääntelevät lainsäädäntö sekä erilaiset sopimukset ja sitovat käytännöt. Työsopimuslaki määrittelee pääpiirteet sopimuksen tekemiselle (muotovapaus, keskeisten ehtojen ilmoittaminen, koeaika sovittava erikseen, määräaikainen työsopimus vain perustellusta syystä jne.). Työsopimuslaki määrittelee myös työnantajan ja työntekijän oikeudet ja velvollisuudet. Se asettaa lisäksi rajat työsopimuksen muuttamiselle ja ilmaisee työsopimuksen päättämisperusteet.

Uusi työsopimuslaki on keskeisesti vastaus nykyisen työelämän ongelmiin. Siinä otetaan osittain huomioon jo näköpiirissä olevia uusia seikkoja. Tällaisia ovat muun muassa ryhmä- ja tiimityön lisääntyminen, palvelutyön ja epätyypillisen työsuhdetyön kasvu, yritystoiminnan jatkuva muutos ja kansainvälistyminen sekä korostuneet osaamisvaatimukset. Työnantajana toimivissa yhtiöissäkin suoritetaan enenevässä määrin rakenteellisia muutoksia, liikkeen luovutuksia, toiminnallisia verkottumisia ja rypäleenomaisia organisoitumisia. Työsuhdeturvan kannalta nämä mer-

kitsevät muun muassa tarvetta parantaa työntekijän uudelleentyöllistymistä ja mahdollisuutta siirtyä toiseen työpaikkaan. Yritystoiminnan muutos edellyttää myöskin velvoitetta kouluttaa jatkuvasti. Osaamiseen perustuvassa tietoyhteiskunnassa myös työpaikkojen henkinen ilmapiiri on keskeinen tekijä tuottavuuden ja kannattavuuden näkökulmasta. Uusi työ edellyttää huomion kiinnittämistä työn sisältöjen kehittämiseen sekä ylimalkaan vastavuoroista ja aktiivista lojaliteettia.

Uudet työelämän johtamistavat ovat synnyttäneet paineita arvioida uudelleen myös työoikeudellisia sääntöjä. Uudessa työsopimuslaissa tosin ei tällaisiin kysymyksiin juurikaan kiinnitetä huomiota. Siinä ei käsitellä esimerkiksi työnteon joustavista muodoista syntyneitä klassifiointiongelmia, vaikka julkisuudessa on usein tuotu esille kyseiset ongelmat ja väärän ratkaisun mahdollisesti suuretkin taloudelliset seuraamukset.

Perinteisesti työoikeudessa on korostunut lainsäädännön ja kollektiivisten sopimusten pakottavuus. Paikallisen sopimisen mahdollisuuksien lisääntyessä, siirtymien ja sidonnaisuuksien yleistyessä ja työelämän toimintojen moninaistuessa työoikeuden ulkoapäin tapahtuva ohjailu on tullut aikaisempaa ongelmallisemmaksi. Vastaavasti sopimusjärjestelyjen merkitys ja arvo ovat kasvaneet. Johdosta ja valvonnasta on tullut sopimusten ja erilaisten teknisten järjestelyjen kohde. Työoikeuden perinteinen ydin on murentunut, ainakin eräiden töiden ja työntekijöiden osalta. Tämä kehityspiirre vaikuttaa jo nyt työoikeuden sisältöön ja asemaan erilaisten säännöstyskeinojen joukossa. Työoikeus on vain yksi monista työelämän sääntelytavoista.

# Työoikeuden merkitys

Työoikeus on ollut merkittävä osa hyvinvointivaltio-oikeutta ja työntekijäin suojelua. Nykyisin nämä lähtökohdat ovat osittain jääneet taustalle ja siksi työoikeudellisen sääntelyn asema on joutunut uudelleen arvioitavaksi. Työoikeudellisen sääntelyn rajojen vapauttaminen on tullut esille esimerkiksi työaikojen (työnantajan ja työntekijöiden välistä sopimusvapautta on lisätty) ja epätyypillisten työsuhteiden sääntelyssä (määräaikaisten työsopimusten tekemistä helpotettiin väliaikaisilla muutoksilla). Ns. harmaa välialue on vuorostaan tullut Suomessa esille erityisesti työntekijän ja yrittäjän välisessä rajanvedossa. "Yleinen työoikeus" on taas näkynyt muun muassa uudessa perustuslaissa, jossa pyritään suojelemaan työn tekemistä yleisesti. Myöskin kansainvälinen sääntely perustuu työn tekemisen yleiseen turvaamiseen.

Viime vuosina on keskusteltu työnantajien ja työntekijöiden välisten suhteiden luonteesta. Jatkuvat myllerrykset sekä taloudessa yleisesti että yritystasolla ovat lisänneet sekä halukkuutta että myös luottamusta yhteistyöhön. Nopeasti muut-

tuva yrityselämä edellyttää mahdollisuutta sopia asioista paikallisesti. Toisaalta myös tällaisessa tilanteessa on huolehdittava siitä, että on olemassa toiminnan sosiaaliset edellytykset oikeudenmukaisella tavalla turvaava yleinen kehikko. Viime vuosina EU-normiston tällaiset vaikutukset ovat meillä näkyneet erityisesti liikkeen luovutuksen yhteydessä. EY-oikeudessa on tässä kysymyksessä korostettu työntekijöiden suojelemista.

Työoikeuden rooli joudutaan uuden työn yhteydessä monin osin arvioimaan uudelleen. Missä kysymyksissä ja millaisella työoikeudellisella sääntelyllä on tulevaisuudessa merkitystä? Kuinka muuttuvaa työelämää voidaan parhaiten ohjata? Viime vuosina sopimusjärjestelyt ovat monin tavoin korostuneet työelämässä. On puhuttu jopa siirtymisestä vain toiminnan puitteita luovaan sääntelyyn. Myös monet uudet toimintatavat, kuten verkostot, ovat vaikeuttaneet perinteisten työoikeudellisten suhteiden ja asioiden tunnistamista. Esimerkiksi työntekijän ja yrittäjän välinen raja on hämärtynyt ja työnantajan tunnistaminen on vaikeutunut. Yrittäjyys on saanut uusia työntekijätyöhön läheisesti rinnastuvia muotoja. Perinteinen ammattiyhdistystoiminta on uuden työn yhteydessä vaikeutunut, koska esimerkiksi siirtymät ja moniammatillisuus estävät sitoutumista.

Erityisesti Euroopan yhteisöjen piirissä on viime vuosina korostunut uuteen työhön liitettyjen työntekomuotojen sääntely. Yhteisöjen oikeudessa on vastikään hyväksytty määräaikaisia ja osa-aikaisia työntekijöitä koskevat direktiivit. Lisäksi vuokratyöntekijöiden ja ns. contract labour -työn osalta käydään parhaillaan neuvotteluja. EU-oikeuden merkitys on ollut keskeinen myös esimerkiksi Suomessa viime vuosina toteutetuille työlainsäädännön uudistuksille.

Toisaalta on korostettu asianomaisten vapauksia ja uusien työntekomuotojen jättämistä sääntelyn ulkopuolelle. Tällekin toimintatavalle voidaan esittää painavia perusteita. Keskeisin näistä on pelko sääntelyn haitallisuudesta kyseisen asian kehittymiselle. Lisäksi vaikeutena on löytää sopivan konkreettinen ja oikea sääntelytapa. Kysehän on uusista ja koko ajan muuttuvista työn suorittamismuodoista. Tästä näkökulmasta suomalainen yleinen sääntelytapa saattaa olla syytä säilyttää tulevaisuudessakin.

Asianomaisten vapauksia korostava kehityslinja on syytä huomioida myös työoikeudellisessa sääntelyssä. Luonnollisin tapa toimia näin on jättää sääntely yleiseksi. Tämä voisi tarkoittaa jopa sitä, että uusille työn suorittamisen muodoille ei lainsäädännössä säädetä edes puitteita. Työehtosopimuksissa kyseiset asiat joudutaan kuitenkin ottamaan huomioon erityisesti palkkausmääräyksissä. Tämä voi johtaa siihen, että lainsäädännöllinen ja työehtosopimussääntely uusien työn suorittamismuotojen osalta erkaantuvat toisistaan aikaisempaa enemmän. Toisaalta, vaikka on houkuttelevaa suosia asianomaisten omia sopimuksia ja yleistä lainsäädäntöä, jonkinlainen sääntelyaukko on silti olemassa uuden työn ilmiöiden ja työoikeudellisen normiston välillä.

# Työn tekemisen uudet muodot

Vaikka uuden työn edellyttämää työoikeutta ei vielä voida kovin tarkkaan määritellä, nykyinen sääntely keskittyy vanhan talouden tilanteisiin. Uudelle työlle keskeiset moninaiset ja vaihtuvat työn suorittamismuodot sekä erityisesti verkosto- ja tietotyö eivät ole nykyisin keskeisessä asemassa. Muun muassa siirtymiä ei ole juurikaan käsitelty työoikeudellisessa sääntelyssä. Ne on nykyisin jätetty etupäässä viranomaisten ratkaisujen varaan. Lisäksi esimerkiksi kilpailevaa toimintaa, kilpailukieltosopimuksia ja liikesalaisuuksia koskevilla säännöksillä on etupäässä vain rajoitettu siirtymiä sekä tietojen ja taitojen leviämistä. Verkostotyö on vuorostaan kokonaan sääntelyn ulkopuolella.

Myöskään projektityöhön liittyviä erityiskysymyksiä ei ole juurikaan säännelty työehtosopimuksin tai työlainsäädännöllä. Silti projektityö on nykyisin yleinen tapa tehdä työtä. Projektityön sääntelyn tarve näkyy esimerkiksi määriteltäessä työntekijän ja itsenäisen työn suorittajan rajanvetoa, oikeutta solmia määräaikainen työsopimus, kilpailevan toiminnan ulottuvuutta tai liike- ja ammattisalaisuuksien suojaa.

Viime vuosina yleistynyt tiimityö on vuorostaan vaikuttanut työpaikkojen perinteisiin hierarkioihin muuttamalla muun muassa sekä työntekijöiden että työnjohtajien asemaa ja roolia. Työnantajalle kuuluva työn johto- ja valvontaoikeus on työntekijöiden autonomian lisääntymisen johdosta muuttunut. Valvonta ei ole eikä enää voikaan olla konkreettista päivittäistä käskyjen antamista. Uudenlainen työyhteisömäinen toimintatapa on näkynyt erityisesti ns. KIBS-aloilla ("tietoperusteinen liike-elämän palvelu").

Uudenlaisella yritystoiminnalla on olennaisia heijastusvaikutuksia työelämään. Ylimmän johdon tehtävissä korostuvat kokonaisuuksien hallinta, yhteistoiminnallisuus ja viestittäminen suhteessa tuotantoon. Välijohdon asemassa korostuvat ylhäältä tulevan tiedon operationalisointi ja alhaalta tulevan tiedon oikea välittäminen ylöspäin. Perinteisen työnjohdon tarve pienenee ja alihankinnan lisääntyminen vähentää työtä. Suorittavalla tasolla rutiinitehtävät vähenevät ja toimenkuvat laajenevat. Tiimiyttäminen ja alihankinta siirtävät työnjohdolta tehtäviä työntekijöille, lisäävät siirtymiä tehtävistä toisiin ja laajentavat tehtäväkuvia. Oma-aloitteisuus ja sitoutuneisuus organisaation tavoitteisiin korostavat itseohjautuvuutta, omaa päätösvaltaa ja joustavuutta. Yhteistyö, kommunikointi, yhteydenpito asiakkaisiin, vastuunkanto, itsenäisyys, valmius etsiä ratkaisuja, kyky ilmaista käsityksensä, ristiriitojen poistaminen, muiden auttaminen sekä johto- ja johtamiskyky liittyvät vuorostaan uudessa yritystoiminnassa keskeiseen suunnittelu-ja organisointitaitoon. Prosessien kehittäminen rutiineista poikkeavissa ja ennakoimattomissa tilanteissa kuvastaa vuorostaan aktiivista ongelmanratkaisutaitoa.

# Joustavuus

Uudessa työssä kyse on joustavuuden osalta erityisesti määrällisen (työaika, työn kokonaismäärä) ja laadullisen (ammattitaito, työn jakaminen, työn organisointi) yhteensovittamisesta. Laadullisen joustavuuden osalta on vielä tehty ero staattisen (monitaitoisuus, laaja-alaisuus) ja dynaamisen (työssä oppiminen, koulutettavuus) välillä. Organisaation joustavuuteen ja ammattitaitoon perustuvassa toiminnassa kyse on erityisesti työntekijöiden ammattitaidon monipuolisesta hyödyntämisestä, hierarkioiden minimoinnista, ydintyövoiman kehittämisestä ja pitämisestä mahdollisimman suurena, määrällisen jouston minimoimisesta ja työntekijöiden kierrättämisestä.

Uuden ja vanhan työn joustava sovittaminen yhteen voi tapahtua esimerkiksi säätämällä minimiturva, jonka päälle voidaan erilaisin sopimuksin rakentaa "parempi" työelämä. Muuttuvissa olosuhteissa on paikallaan jatkuvasti muistuttaa työelämän pysyvistä arvoista ja tavoitteista. Erityisesti on syytä tuoda esille se, että työelämän perusarvot eivät ole samoja kuin markkinatalouden arvot. Vaikka näiden välillä ei ole perustavaa laatua olevaa ristiriitaa, yhteiskunnan eri toiminta-sektoreilla on kuitenkin oma autonomiansa.

Joustavuus on lähiajan keskeinen työmarkkinapoliittinen kysymys. Se koskee myös työoikeudellisia oikeuslähteitä, työnantajan ja työntekijän välisiä suhteita sekä molempien oikeuksia ja velvollisuuksia. Konkreettisella tasolla kyse on työtehtävien, työajan, työpaikan ja työpalkan joustavoittamisesta. Joustavassa sääntelyssä painottuu nykyistä enemmän muutosten ja erilaisten siirtymien mahdollistaminen. Samalla tulee myös henkilökohtaiset tiedot ja taidot ottaa huomioon aikaisempaa enemmän.

Joustavuutta korostavassa sääntelyssä ei välttämättä ole kyse lainsäädännön ja työehtosopimusten merkityksen vähentämisestä ja toisaalta työsopimusten merkityksen kasvattamisesta. Joustavan tuotannon sosiaalisesti turvallinen järjestäminen edellyttää esimerkiksi työnantajien ja työntekijöiden yleisten oikeuksien ja velvollisuuksien minimitason turvaavaa lainsäädäntöä ja työehtosopimustoimintaa. Vastaavassa tarkoituksessa voidaan valtakunnallisissa työehtosopimuksissa säädellä esimerkiksi yksilöllisen palkan puitteet.

Minimipuitteet säätämällä voidaan estää se, että työelämän vaatimukset liiallisesti perustuvat työnantajan yksinvallan mahdollistaviin lähtökohtiin. Sosiaalinen joustavan tuotannon järjestelmä edellyttää, että esimerkiksi työntekijän velvollisuudet ovat siinä määrin selviä, että hänellä on mahdollisuus kieltäytyä velvollisuutensa ylittävistä töistä. Myös työ- ja perhe-elämän sovittaminen yhteen edellyttää työelämän rajojen olemassaoloa. Jollakin tavoin on turvattava mahdollisuus erottaa myös normaalityö ja ylityöt.

Sosiaalinen joustavan tuotannon järjestelmä on nykyaikaistettu muoto pohjoismaisesta hyvinvointivaltiosta. Joustavuuden mahdollistamisessa ei käytetä tämän tavoitteen kannalta suoraviivaisimpia keinoja. Sääntelyssä kunnioitetaan pe-

rinteisiä ulkopuolisia lähteitä kuten lainsäädäntöä ja valtakunnallisia työehtosopimuksia. Nyt näitä käytetään aikaisempaa enemmän joustavan tuotannon sosiaalisten ehtojen luomisessa. Perinteisesti kyseiset lähteet ovat määränneet niiden kohteina olevien toimintaa. Kyse ei kuitenkaan ole harppauksesta uuteen järjestelmään vaan vanhan ja uuden järjestelmän yhtäaikaisuudesta.

Työehtosopimuksissa uuden työn kysymykset näkyvät etupäässä palkkamääräyksissä, vaikka jo nykyiset työehtosopimukset mahdollistavat myös esimerkiksi muutokset työsopimuksen ehdoissa sekä laajan työaikasopimisen. Palkkausjärjestelmä tehtävä- ja henkilökohtaisine palkan osineen on keskeinen keino toteuttaa uuden työn edellyttämiä muutoksia. Palkkauksella voidaan muutoinkin edistää työntekijöiden joustavuutta, siirtymistä toisiin tehtäviin, monitaitoisuutta ja tuloksellisuutta. Tällainen lopputulos ei ole kovin yllättävä.

# Lainsäädäntö ja työehtosopimukset

Työlainsäädäntö ja työehtosopimukset kuvaavat erilaisia lähestymistapoja. Työsopimuslaki muodostaa oikeudellisen kehikon erilaisille asioille priorisoimatta niitä juuri lainkaan. Se ei kuvaa kovin hyvin mitään yhteiskunnallista tavoitetta tai pyrkimystä. Työehtosopimukset sen sijaan osoittavat ainakin sen, että palkkamääräyksillä on edelleen keskeinen asema. Ne tunnustavat perustavaa laatua olevan piirteen muutosten aikaansaamisessa eli rahan voiman. Hieman kärjistäen työehtosopimukset muodostavat työsopimuslakia realistisemman tavan toteuttaa muutoksia.

Arvioitaessa työsopimuslain ja työehtosopimusten välistä suhdetta tulevaisuudessa, on huomattava, että työsopimuslakia on juuri uudistettu. Sitä ei näin ollen tulla muuttamaan moneen vuoteen. Työehtosopimukset taas neuvotellaan uusiksi lähes vuosittain. Neuvotteluissa on pyritty huomioimaan myös uusia olosuhteita. Toinen asia on muiden työelämään vaikuttavien säädösten uudistaminen uuden työn näkökulmasta. Tällä hetkellä ei kuitenkaan ole lainsäädännöllisiä uudistushankkeita, jotka liittyisivät esimerkiksi työsuhdekeksintöihin, tekijänoikeuksiin tai työaikalainsäädäntöön.

Vaikka työehtosopimuksia voidaan edellä esitellyllä tavalla puolustaa, silti niiden käyttämiseen liittyy monia ongelmia. Keskeisin niistä on se, että työmarkkinajärjestöt eivät välttämättä tunnista uuden työn vaatimuksia. Vaikka niiden suuntaan on esimerkiksi työehtosopimusten palkkamääräyksissä menty, välttämättä kyseinen suunta ei ole pysyvä ja tiedostettu.

Suomen vahvuuksina taloudellisessa kilpailussa on pidetty muun muassa selkeitä yhteiskuntanormeja ja työhön liittyviä arvoja sekä sopimiseen perustuvaa työmarkkinajärjestelmää. Uhkakuvina on vuorostaan pidetty muun muassa kuluttajapalvelujen ja palveluammattien heikkoa arvostusta, sopimusyhteiskunnan ra-

kenteiden uudistamisen keskeneräisyyttä, yrittäjyyteen kannustamisen vähäisyyttä sekä omalla työllä vaurastumisen mahdollisuuksien puutteellisuutta.

Monet näistä asioista ovat olleet laki- ja työehtosopimussääntelyn ulkopuolella. Nykyisin työnteon sääntely on kuitenkin olennainen osa taloudellisen toiminnan harjoittamisen sääntelyä. Työlainsäädännössä ja työehtosopimuksissa ei voida säädellä varsinaista taloudellista toimintaa. Tästä huolimatta työoikeudellisen sääntelyn ja taloudellisen toiminnan harjoittamisen välinen sisällöllinen läheisyys tulisi ottaa huomioon nykyistä tarkemmin. Esimerkiksi yrittäjyyden edistäminen on monella tavalla sidoksissa muun muassa sekä palkkaukseen että työn muotoihin.

Paikallisessa sopimisessa voidaan valtakunnallista sääntelyä yksityiskohtaisemmin yhdistää työoikeudellista ja taloudellista sääntelyä. Vaikka paikallisen sopimisen tavoitteeksi on mainittu yritystoiminnan kilpailuedellytysten parantaminen, tätä koskevaa sopimustoimintaa ei juurikaan vielä ole. Paikallisessa sopimisessa voidaan yhdistää toisaalta työntekijöiden kannalta keskeiset asiat (esimerkiksi työn rasittavuuden harkinta, työvaatimusten arviointi, työaikojen sääntely, henkilökunnan vaikutusmahdollisuudet, uudet työn suorittamismuodot jne.) yritysten kannalta keskeisiin tarpeisiin (taloudelliseen tilanteeseen, ruuhkiin ja ylituotantoon, työtehtävien muuttumiseen, moniammatillisuuteen jne.). Paikallisessa sopimisessa voisi olla kyse myös eri ammattien nykyistä merkittävämmästä huomioonottamisesta. Se voisi tältä osin merkitä sääntelyn lisääntymistä tarkoituksena kyseisessä ammatissa toimivien elämänhallinnan ja yritysten tavoitteiden yhdistäminen.

# Innovaatiot ja uusi työ

**Hannu Mikkola**

Innovaatioiden edistämisen kannalta uudessa työssä nousee kaksi oikeudellista seikkaa muiden yläpuolelle: verkostojen merkitys sekä tietoammattilaisen asema niissä. Innovaatioiden tuottamisessa tietoammattilainen on keskeinen toimija ja verkostot ovat hänen toimintaympäristönsä. Tietotaloudessa tietyt oikeudet ja velvollisuudet korostuvat. Niitä ovat immateriaalioikeudet, liike- ja ammattisalaisuudet sekä verkostotalouden sopimusoikeudelliset kysymykset. Viimeksi mainitut koskevat erityisesti tietoammattilaisen asemaa, oikeuksia ja velvollisuuksia.

Tietoammattilaisten työssä erilaiset työprojektit menevät usein limittäin sekä työtehtävät ovat sirpaleisia ja tapauskohtaisia. Työsuorituksia tehdään usealle toimeksiantajalle samanaikaisesti ja projektista siirrytään toiseen saman tai toisen työnantajan toimeksiannosta. Näissä tapauksissa erityisesti tietotyössä on ymmärrettävää, että liike- ja ammattisalaisuudet ovat keskeisessä asemassa. Liiaksi korostuneet salassapitovelvollisuudet ovat kuitenkin ristiriidassa tietoammattilaisuuden edellyttämän joustavan verkostomaisen toimintatavan kanssa.

Tietotalouden keskeinen vaihdannan kohde on aineeton omaisuus, kuten erilaiset immateriaaliset oikeudet. Immateriaalioikeuksien merkitys on kasvanut ja kas-

vaa edelleen. Ne toteutuvat usein kielto-oikeuksina ja mahdollistavat muihin toimijoihin kohdistuvat negatiiviset toimenpiteet. Näin markkinajohtajat usein kykenevät estämään tai ainakin hidastamaan muiden markkinoille pääsyä. Lisäksi niillä, joilla on johtava asema immateriaalioikeuksien suhteen, on usein parhaat mahdollisuudet tehdä uusia innovaatioita sekä saada investoimalleen kehitystyölle tuottoa.

Immateriaalioikeudet ovat yhteiskunnan keino suojata luovan työn ja innovaatioiden tekijöiden oikeuksia ja edistää niiden syntymistä. Järjestelmä on keskeinen pyrittäessä löytämään tasapaino oikeuksien haltijan ja yhteiskunnan yhteisen hyvän välillä. Liian laajat suojaoikeudet saattavat hidastaa kehitystä, mutta riittämätön suoja taas ei kannusta esimerkiksi tuotekehitystoimintaan tai muuhun taloudelliseen panostukseen innovaatioiden synnyttämiseksi.

Verkostojen luonne vaihtelee. Tietoliikenneklusteri on esimerkki kärkiyrityksen markkinoista riippuvasta vertikaalisesta alihankintaverkostosta. Vaihtelut kansainvälisissä suhdanteissa vaikuttavat välittömästi alihankkijoihin. Ohjelmointiklusteri on taas esimerkki horisontaalisesta verkostosta, joka ei ole yhtä suuressa riippuvuussuhteessa suhdannevaihteluihin ja yhden kärkiyrityksen vientimarkkinoihin. Varsinkin vertikaalisten klustereiden osalta tulisi kehittää menetelmiä, joilla hierarkioita voitaisiin madaltaa. Toimeksiantosuhteiden määrää ja laatua rajoittavat kuitenkin tiukat käytännöt koskien esimerkiksi liikesalaisuuksia ja sopimuksia toisten kanssa.

Yhteiskunnan tulee luoda otolliset puitteet innovaatioiden synnylle ja hyödyntämiselle. Puitteet syntyvät muun muassa korkeasta koulutustasosta, uuden tiedon mahdollisimman laajasta saatavuudesta, korkeasta teknologisesta osaamisesta sekä tiedon innovatiivisesta soveltamisesta. Lainsäädännön osalta tämä tarkoittaa erityisesti verkostotalouden rakenteiden joustavuuden turvaamista, työn tekemisen uusien muotojen rohkaisemista sekä kansainvälisen immateriaalioikeusjärjestelmän huomioimista.

# Annex

**Innopolis of Lapland ®**

**The drawing up and implementation of the network strategy fot the small company**

A networking strategy is drawn up for individual companies seeking a company network. Networking starts from the natural needs of the company and should by economically profitable. Along with the entrepreneur, the "bottlenecks" are sought out, which impede activity. Through cooperation between entrepreneurs, models are sought which bring the company added value, and which provide solutions to the problem areas in business.

**1. Screening**
The company's activities are observed and it is decided, whether or not the company is the correct type as to benefit from cooperation. Simultaneously, the immediate needs of the entrepreneur are found out. If it is seen that the needs of the company are such that can not be supported by network solutions, and the company is not otherwise suitable for networking either, the company may be directed to other spheres of company services.

**2. Present-state analysis**
In the present-state analysis the existing contacts to clients, partners, competitors and company service units are mapped out.

**3. Survey of needs**
The needs of the company are allocated and resolved.

**4. Network analysis**
A tailor-made and suitable network solution is prepared for the entrepreneur. The existing networks and their possible added value are mapped out, and the possibility of new individual partners for the client company is explored, creating new networks. Possible international networks are always explored.

Network models:
Traditional (vertical) networks:
– subcontracting
– licence agreements
– franchising (client entrepreneurship: the hiring of a business concept)
– consortiums/conglomerates
– one-way minority share (growing companies)
– minority shareholding cross-ownership
– corporatisation of resources/cooperation

Developing (horizontal) networks:
– based on cooperation
– cooperative network, e.g. market ring
– network company, common company owned by various companies
– decentralised company, e.g. network of experts, dispersed shareholders/partners
– mini clusters, combination of different fields

**4. Setting a goal**
Certain realistic goals are set together with the entrepreneur for the company and the development of its business activity. Expense calculations and comparative calculations caused by voluntary and deliberate networking are drawn up.

**5. Planning of measures**
The measures for the accomplishment of the goals are planned. A schedule is also drawn up. Measures also include training programmes.

**6. Network agreements**
Negotiations are organised between the network parties and the necessary networking agreements are drawn up. Questions involving information protection and trade secrets should be considered..

**7. The launching of activity**
The launching of the networking solution is supported through constant follow-up and consultations.

**8. Evaluation**
The evaluation of the network solution is carried out constantly and the final evaluation is done in a predetermined period, which is sufficiently remote and only after the activity has been established and stabilised. If deficiencies or defects are seen in the network cooperation, they are dealt with immediately.

**9. Duplication**
If the carried out network solution has turned out successfully, it is studied whether a corresponding construction could work elsewhere as well.