

Translation from Finnish

Legally binding only in Finnish and Swedish

Ministry of Economic Affairs and Employment, Finland

Seafarers' Wage Guarantee Act

(1108/2000; amendments up to 897/2022 included)

By decision of Parliament, the following is enacted:

Chapter 1

General provisions

Section 1 (762/2011)

Purpose and scope of application of the Act

The purpose of the Seafarers' Wage Guarantee Act is to ensure the payment of claims of employees referred to in the Seafarers' Employment Contracts Act (756/2011) arising from an employment relationship in the event of the employer's insolvency.

Section 2 (1553/2015)

Authorities

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

Chapter 2

Conditions for receiving wage guarantee

Section 3 (762/2011)

Claims payable as wage guarantee

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

Section 3a (897/2022)

Claim based on default judgment or settlement

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

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

Section 4

Time limit for the application

A claim shall be applied for as wage guarantee during the validity of the maritime lien as provided in chapter 3, section 2, subsection 1 of the Maritime Act (674/1994).

Compensation for damage or reparation based on law or a contract which has no specific due date and is no longer subject to the lien mentioned in subsection 1 shall be applied for as wage guarantee within three months of the date when the judgment became final or a contract was concluded in compliance with established labour market practice.

Section 5

Employer's insolvency

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

- 1) the employer has been declared bankrupt;
- 2) it has been established that the employer is unable to pay debts that are subject to recovery procedure;
- 3) the employer has neglected to pay the statutory pay-as-you-earn taxes or employer contributions on time;
- 4) the employer cannot be contacted or has terminated the operations and the claim cannot be paid from the employer's funds; or

5) in cases comparable to those mentioned above, the employer's insolvency can be clearly established by the wage guarantee authority.

Section 6

Lodgement obligation

If the employer has been declared bankrupt, to retain the right to wage guarantee the employee shall lodge a claim in the employer's bankruptcy as specified in chapter 12, section 6 of the Bankruptcy Act (120/2004). However, a lodgement obligation does not exist if the claim is included in the list of employment relationship claims referred to in section 11 of this Act, drawn up by the administrator of the estate. In addition, in order to retain the right to wage guarantee, the employee shall lodge a claim, including the maritime lien, at a forced sale of a ship. (136/2004)

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

Section 7

Prevention of irregularities

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

- 1) the employee's claim is based on a contract or arrangement which was clearly made in order to obtain wage guarantee;
- 2) the claim applied for as wage guarantee is obviously disproportionate to what is to be considered reasonable in view of the work done and other circumstances;
- 3) the employee is repeatedly applying for claims on the same employer as wage guarantee;
- 4) the employee has continued in the employment relationship even after the employee must have known, due to failures of wage payment, that the employer was unable to pay wages. (1158/2016)

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

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

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

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

Section 8

Maximum amount of compensation for damage or reparation payable as wage guarantee and maximum amount of pay for waiting time in certain cases

The maximum amount of the compensation for damage or reparation referred to in section 4, subsection 2 of this Act for one employee on the grounds of work done for the same employer is 19,000 euros. (679/2021)

The amount of pay for waiting time referred to in chapter 2, section 18 of the Seafarers' Employment Contracts Act shall not exceed the amount of claims paid as wage guarantee from whose delay the obligation to pay for waiting time arises. (762/2011)

Section 8a (1258/2006)

Working time banking claim payable as wage guarantee

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

account and when they were made can be verified from the working hours and pay bookkeeping.

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

Section 8b (1634/2009)

Travel or other expenses incurred from performing the work

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

Chapter 3

Application for wage guarantee and the processing of applications

Section 9

Application and applicants

An application for wage guarantee shall be submitted to an Employment and Economic Development Office or the Centre for Economic Development, Transport and the Environment. Abroad, an application for wage guarantee can also be submitted to a Finnish diplomatic mission. (1634/2009)

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

The Government may decree which employee organisations referred to in subsection 2 have the right to represent their members in wage guarantee matters even without separate authorisation.

Section 10

Hearing

Before the matter is resolved, the employer and the employee shall be given an opportunity to be heard in accordance with section 34 of the Administrative Procedure Act (434/2003). A condition for determining a partner in a general partnership and a responsible partner in a limited partnership and another party responsible for paying the claims as liable for repayment as specified in section 15 is that this person has also been given an opportunity to be heard with regard to the application. (939/2004)

Where the employer does not own the ship on which the work that is the basis for the claims of the seafarer applied for as wage guarantee was performed, the application shall be notified also to the shipowner, when the owner is known, to the Centre for Economic Development, Transport and the Environment and notification can take place without undue effort. (1634/2009)

For the hearing the party concerned shall be allowed 7–14 days to give a statement or explain the matter. Upon application the time allowed may be extended to 21 days. (939/2004)

Section 11 (1634/2009)

List of employment relationship claims of the administrator of the estate

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

Chapter 4

Decision on and payment of wage guarantee

Section 12

Decision on wage guarantee (939/2004)

A decision on an application for wage guarantee shall be issued in writing. Justification of the decision shall be provided as specified in section 45 of the Administrative Procedure Act. (939/2004)

Subsection 2 was repealed by Act 1634/2009.

Section 12a (939/2004)

Service of a decision on wage guarantee

Service of a decision on wage guarantee shall be effected using the standard service procedure provided in section 59 of the Administrative Procedure Act. If the time period for bringing action concerning the employer's recovery claim starts to run from the service of the decision on wage guarantee, service of a decision on wage guarantee shall be effected to the employer or other party referred to in section 15 that is liable for repayment using the verifiable service procedure provided in section 60 of the Administrative Procedure Act.

The decision shall also be sent to the shipowner referred to in section 10, subsection 2.

Section 13

Payment of wage guarantee

Wage guarantee shall be paid within a week of the decision on wage guarantee. Unless otherwise provided elsewhere by law, pay-as-you-earn tax under the Tax Prepayment Act (1118/1996) shall be levied on the sum paid as wage guarantee and the other contributions deductible under law from the pay of an employee referred to in the Seafarers' Employment Contracts Act shall be withheld from the sum paid as wage guarantee. An execution order against wages and prohibition on paying wages shall also be effective when paying wage guarantee. (762/2011)

The maximum share of the wage guarantee payable to an employee that the Centre for Economic Development, Transport and the Environment may use to set off a counterclaim under this Act or the Wage Guarantee Act (866/1998) is the share of the employee's wages which may be subject to execution under the law. (1634/2009)

Chapter 5

Liability for repayment

Section 14

Transfer of claims to the State

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

Section 15 (939/2004)

Liability for repayment

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

The liability for repayment of a party responsible for the payment of employee's claims shall be resolved in the decision on wage guarantee or by a separate decision concerning the liability for repayment. A decision on the liability for repayment shall be made without delay after the liability for repayment has been established. (1634/2009)

The provisions on the service of a decision on wage guarantee in section 12a apply to the service of a decision concerning liability for repayment, as appropriate. (1634/2009)

Section 16 (1634/2009)

Enforceability of a decision on wage guarantee

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

Section 17 (1634/2009)

Payment reductions

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

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

Section 18 (676/2019)

Specific period of limitation

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

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

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

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

Chapter 6

Requests for review

Section 19

Action against an employer

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

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

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

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

Section 20 (897/2022)

Action against the State

If a claim applied for as wage guarantee which has not been disputed by the employer has been rejected on the basis of section 3 as unproven or unfounded, to retain the entitlement to wage guarantee the employee shall institute declaratory action against the State in a district court concerning the grounds and amount of the claim.

Section 21

Institution of action and legal venue

The time limit for instituting the action referred to in sections 19 and 20 is six months. The time limit is calculated from the receipt of notice of the decision. Action shall be instituted in the court of law where the employer would be required to act as a defendant in a case concerning a wage claim.

Section 22

Settlement of a claim in the employer's bankruptcy proceedings and in the forced sale of a ship

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

An action need not be instituted when the claim is lodged in a forced sale of a ship notified by public notice within the time period for instituting action. If the forced sale is cancelled or lapses, the time period for instituting action shall begin to run from the date on which the public notice indicated that the forced sale would have taken place.

The Centre for Economic Development, Transport and the Environment is entitled to object to a claim lodged in bankruptcy proceedings or a forced sale of a ship which may become payable as wage guarantee. (1634/2009)

Section 23

New application for wage guarantee

A claim based on a judgment or a decision of the enforcement officer in the forced sale of a ship may be paid as wage guarantee if a new application is submitted within six months of the date on which the judgment or decision of enforcement officer became final, provided that the other conditions for receiving wage guarantee are fulfilled.

Section 24

Administrative appeal

A decision on wage guarantee by which a claim has been rejected on grounds other than those mentioned in sections 19 and 20 or by which a claim has been ruled inadmissible is eligible for review by appeal by the employee to the Social Security Appeal Board. The request for review shall be submitted to the Centre for Economic Development, Transport and the Environment not later than 30 days after receiving notice of the decision. The Centre for Economic Development, Transport and the Environment shall send the letter of appeal, its opinion and the relevant documents to the Social Security Appeal Board without delay. (842/2019)

A decision of the Social Security Appeal Board is eligible for judicial review by appeal to the Insurance Court as provided in the Administrative Judicial Procedure Act (808/2019). Service of the decision is effected by standard service. (842/2019)

The provisions of chapter 13 of the Administrative Judicial Procedure Act shall apply to extraordinary request for review of a wage guarantee decision referred to in subsection 1 or 2. (842/2019)

A decision on wage guarantee may not be appealed by an employer or other party liable for payment. (939/2004)

Section 25

Employer's action concerning recovery

An employer or other party liable for payment may apply for recovery concerning a decision on wage guarantee or liability for repayment in the court of law where the employer would be required to act as a defendant in a case concerning a wage claim. Action concerning recovery shall be instituted within 60 days of receiving notice of the decision on wage guarantee or liability for repayment. (1634/2009)

If the employer or other party liable for payment has been declared bankrupt or is declared bankrupt during the period for instituting action for recovery, disputes concerning liability for payment may be resolved in the bankruptcy proceedings. Disputes may also be resolved in the context of forced sale procedure when the relevant public notice has been issued within the time period for instituting action for recovery.

Chapter 7

Miscellaneous provisions

Section 26 (897/2022)

Obligation of party to contribute and to provide information

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

Section 26a (897/2022)

Obligation to provide information on behalf of a legal person

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

- 1) a person who is a member of the board of directors or a comparable body, or is the chief executive officer or has a comparable position;

- 2) a person who is personally liable for the commitments of the legal person;
- 3) a person who is entitled to sign for the legal person alone or jointly with another person;
- 4) a person who, in view of the circumstances, is effectively managing the operations of the legal person or attending to its administration or the administration of its assets.

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

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

Section 26b (897/2022)

Conditional fine and executive assistance

The wage guarantee authority may order an employer or a person referred to in section 26a to surrender the following materials or equivalent information on pain of a fine as provided in the Act on Conditional Fines (1113/1990):

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

The provisions of subsection 1 apply also to a party in respect of which the need has arisen to determine whether the party is liable for the claims applied for as wage guarantee as the assignee referred to in chapter 1, section 10 of the Seafarers' Employment Contracts Act or on the basis of section 11 of the Seafarers' Annual Holidays Act (433/1984).

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

Section 26c (897/2022)

Obtaining information from non-parties

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

Notwithstanding secrecy provisions and other restrictions concerning access to information, the Centre for Economic Development, Transport and the Environment is entitled to obtain information indispensable to deciding a wage guarantee matter from the accounting firm of the wage guarantee applicant's employer. The employer's accounting firm is entitled to receive reasonable compensation from the Centre for Economic Development, Transport and the Environment, within the limits of the available appropriation, for costs arising from compliance with the obligation to provide information.

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

Section 26d (897/2022)

Disclosure of information

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

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

- 1) the criminal investigation authorities in order to prevent, detect and investigate criminal offences and bring these to the prosecution authorities for consideration of charges;
- 2) the prosecutor for the duties laid down in section 9 of the Act on the National Prosecution Authority (32/2019);
- 3) the Financial Intelligence Unit for the duties laid down in section 2 of the Act on the Financial Intelligence Unit (445/2017);
- 4) the Tax Administration for the duties laid down in section 2 of the Act on the Tax Administration (503/2010);
- 5) the occupational safety and health authority referred to in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006) for statutory occupational safety and health enforcement duties.

Section 27 (939/2004)

Undue wage guarantee benefit

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

Section 28

Penal provisions

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

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

Section 29

Financing

The Unemployment Insurance Funds referred to in the Act on Financing Unemployment Benefits (555/1998) shall pay to the State retroactively the difference between the amounts

paid to employees as wage guarantee and the principal collected from employers on an annual basis in accordance with an invoice sent by the ministry. However, amounts that have not been collected from employers or other parties liable for payment as specified in section 17 are deducted from the difference. If the payment is delayed, interest for late payment of 16 per cent shall be paid on it.

Section 30

Further provisions

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

Chapter 8

Entry into force and transitional provisions

Section 31

Entry into force

This Act enters into force on 1 January 2001.

This Act repeals the Seafarers' Wage Guarantee Act of 21 December 1979 (927/1979) with subsequent amendments.

Section 32

Transitional provisions

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

Provisions in force upon the entry into force of this Act shall apply to new applications for wage guarantee under section 23 of the Act, if a claim based on a judgment has for the first time been applied for as wage guarantee when the repealed Act was in force and this is without prejudice to the application of provisions on requests for review in subsection 1.

State claims based on decisions on wage guarantee made before the entry into force of this Act shall expire no later than at the end of 2010.