

Estonia

A new law on labour contracts was adopted by the Estonian Parliament (Riigikogu) in December 2008 and came into force on 1 July 2009. The new law on labour contracts offers employers more flexibility in organising labour relationships to improve business competitiveness.

- For all new employees, the try-out period will now last four months, which the employer may terminate with two weeks' notice.
- Fixed-term contracts may be concluded for a maximum of five years if this is justified by the nature of the task.
- Pregnant women, employees with children under the age of three and staff representatives who cannot be dismissed without prior authorisation from the labour inspectorate no longer systematically enjoy this protection.
- In some extraordinary circumstances, notably in the event of financial problems, the employer is allowed to temporarily reduce the employees' wages during the contract. To make up for this loss, the amounts paid by the unemployment insurance were increased.
- Restrictive clauses without compensation (compensation used to be the rule) can be included in the labour contract. On the other hand, for restrictive clauses lasting after the termination of the contract, the employer will have to pay monthly compensation for 12 months after the end of the contract (maximum duration of the clause).
- The obligation to pay a special tariff for night work has been removed. However, night work is still paid 25 per cent more than day work.

As far as changes to collective redundancies are concerned, in order to increase labour market flexibility, dismissal procedures have been made easier by reducing the term of advance notice by 30 calendar days to between two weeks and three months, depending on the length of the previous employment contract. To ease the financial burden of redundancies for the employer, the payment of redundancy benefits is shared by the employer and the Estonian Unemployment Insurance Fund. In all redundancy cases, the employer must pay a proportion of the redundancy benefit amounting to one month's average wage of the employee, while the Unemployment Insurance Fund finances the rest of the benefit. In addition, the redundancy benefit amount has been reduced by one month's salary and will remain between one and three months' average wages, depending on the length of previous employment. In the case of people who have been employed for more than 20 years, a five-year transitional period

will be implemented, during which they will retain the existing level of redundancy benefits (four months' earnings).

Finally, to promote the use of flexible forms of employment, the conclusion of fixed-term contracts will be allowed across the board. In the event of the premature cancellation of a fixed-term employment contract due to economic difficulties, the employer must make an additional payment to the worker concerned to compensate them for the income they would have received up to the end of the contract term.

Estonia's new Employment Contracts Act of 2009 was based on a tripartite agreement, but has been severely criticised by the trade unions as well as several political parties, in particular because it emphasises labour market flexibility too strongly and less the security and protection of workers, especially when the government made a number of last minute changes to the act, postponing several provisions that would have increased the spending of the Unemployment Insurance Fund but were part of the 'security' package.¹

In early February 2012 another debate was launched in Parliament about the bill amending the Collective Agreements Act (*kehtiv kollektiivlepingu Seadus*) of 1993 (and as amended in 2009) with a view to allowing businesses to refrain from negotiating a new agreement when the previous one expires. The amendment would change the current system, under which, when a collective agreement expires, the existing agreement continues to apply until the parties sign a new one, with no deadline. Employees can thus demand at any time that the conditions of the previous collective agreement be respected, as long as it has not been replaced. The draft bill now states that companies will no longer be subject to a particular collective agreement throughout negotiations, even if they fail to reach agreement, if the expiry date of the previous agreement has passed. The amendment would also allow employers to withdraw unilaterally from a collective agreement by letting it expire without making any effort to negotiate a new one.

The government hoped that the new regulation might encourage more employers to enter into collective agreements if they knew they could be terminated once they expired. Employers were previously concerned that if a new collective agreement could not be reached, the old one could potentially stay in place forever. The only way to end a collective agreement was for a new one to be signed. This system was found to violate the Estonian Constitution by limiting freedom of entrepreneurship, as it was impossible for employers to withdraw from an expired agreement. The Estonian trade union EAKL argued that not only would such an amendment go against the principles of the European Social Charter and International Labour Organization Conventions, as well as against certain legal principles, such as the principle of legal certainty and proportionality and the protection of employees' principle, but also that the review procedure had been launched without consulting the social partners beforehand and without analysing what consequences amending the law could have.

On 12 March 2012, the Estonian Parliament adopted the amendments to the Collective Agreement Act making it easier for employers to terminate collective agreements. Under the new regulations, each party to a collective agreement has the right to unilaterally terminate it once it has expired. A collective agreement is turned, by default, into an open-ended contract if one of the parties does not give written notice to the other party that they do not

¹ For instance, unemployment insurance benefit has been maintained at the current level until 2013 – that is, at 50 per cent of previous average remuneration during the first 100 days of unemployment and at 40 per cent after that, instead of the planned increase to 70 per cent and 50 per cent, respectively. Moreover, people who terminate their employment relationship voluntarily or by agreement will not be eligible for unemployment insurance benefit until 2013. In addition, some parental leave provisions have been changed to reduce public expenditure.

wish to extend the collective agreement at least three months before the expiry date. Employers and employees are now required to comply with the conditions of the open-ended collective agreement until they have reached a new agreement or until it is cancelled by one of the parties. Furthermore, a collective agreement that has become open-ended can be terminated by either party as long as they give least six months' notice. As of the announcement of termination, the parties are no longer obliged to refrain from calling a strike or a lock-out. The amendments took effect on 1 May 2012 and also apply to collective agreements concluded prior to that date.

EAKL remained opposed to the changes and also questioned why these amendments for this one piece of legislation had to be rushed through parliament, considering that the Ministry of Social Affairs had started negotiations with the social partners on 18 May 2012 over a comprehensive industrial relations reform in Estonia. The reform covers different aspects of industrial relations, including collective agreements at company and sector level, labour disputes, strike action as well as the role of Public Conciliators' Office ([Riiklik Lepitaja](#)).

On 8 May 2012, the Estonian Parliament approved an act that doing away with proposals made in February 2012 by its Legal Affairs Committee that would have widened eligibility for unemployment insurance benefits. The background to this was the Employment Contracts Act adopted in December 2008 by the Estonian parliament ([Riigikogu](#)) which took effect on 1 July 2009 and included a measure to improve labour market security for employees by extending eligibility for unemployment insurance benefit to people who left their [employment relationship](#) voluntarily or by agreement with their employer. The eligibility conditions proposed in February 2012 were stricter for people in this new category, with workers being required to have been in employment for at least four years during the previous five-year period, compared to employment of at least one year during the previous three-year period. The aim of the original measure had been to protect people who appeared to have formally left work voluntarily or by agreement with the employer, but in reality had been forced to resign. However, due to the economic crisis the government decided in June 2009 to postpone these measures until 2013. In the context of the new amendments adopted in May 2012, it was argued that the main reasons behind burying the planned changes were to ensure the sustainability of the Unemployment Insurance Fund, to avoid the risk of people feeling motivated to remain unemployed, and to decrease periods of unemployment between jobs. It was furthermore argued that under the Employment Contracts Act, employees could choose whether or not they agreed to end the employment contract, and employers would have to take into account that illegal dismissal, including forcing an employee to resign, could result in court proceedings and an obligation to pay additional benefits to the employee.

The trade unions and parliamentary opposition parties heavily criticized the abolition of the extension. Whereas the trade unions referred to the fact that the government had unilaterally changed a tripartite agreement concluded in April 2008 and of which the extension formed part, the opposition parties mainly referred to the fact that the initiative to introduce these changes came from the parliamentary commission rather than the government itself and that the government was thus ducking out of political responsibility, discrediting both its own and the Parliament's credibility.

References/sources

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Contributions by ETUC affiliated organisations:

ETUC Litigation network (meetings 29 June 2012 and 10 December 2012)

ETUC Social Policy and Legislation Ad hoc working group (Meetings 13 November 2011, 5 April 2012, 24 October 2012).

ETUC Legal Experts Network NETLEX (Annual Conference 1-2 December 2011, 11–12 December 2012)