

Act of 4 June 1993 No. 58 relating to general application of collective agreements, etc. (The General Application Act)

Last amended by the Act of 19 June 2009 No. 42.

Section 1 Purpose of the Act

The purpose of the Act is to ensure foreign employees terms of wages and employment which are equivalent to those of Norwegian employees, and to prevent distortion of competition detrimental to the Norwegian labour market.

Section 2 Scope of the Act

1. (Employees in Norway)

The Act is applicable to determination of terms of wages and employment for employees who perform work in the service of another in Norway. The Ministry shall issue regulations concerning the application of the Act to posted employees, cf. section 1-7 of the Working Environment Act.

2. (Employees on ships, etc.)

The Act applies to employees on ships and mobile installations under Norwegian flag. However, the Act does not apply to employees on ships registered in the Norwegian International Shipping Register pursuant to the Act of 12 June 1987 No. 48.

3. (Petroleum activities)

The Act applies to petroleum activities which take place in Norwegian inland waters, in Norwegian territorial sea and on the Norwegian part of the continental shelf in respect of exploration, exploration drilling, production, utilisation and pipeline transportation, and installations intended for such activities. With these limitations the Act also applies to mobile installations under a foreign flag. The Act applies to manned underwater operations in the petroleum activities carried out from a vessel or installation.

The Ministry may decide that the Act shall apply to petroleum activities carried out under Norwegian flag on the continental shelf of another country as well as vessels under a foreign flag which are carrying out construction, pipelaying or maintenance activities on the Norwegian continental shelf.

The Act shall also be applicable to activities and installations as mentioned in No. 3, first paragraph, in areas outside the continental shelf to the extent this follows from international law or from a special agreement with a foreign state.

4. (Svalbard)

The Act does not apply to Svalbard.

5. (Inderogability in private international law)

The Act applies to employment relationships as referred to in this section regardless of whether the employment relationship in other respects is regulated by the legislation of another country.

Section 3 The Tariff Board

The King appoints a Tariff Board. The Tariff Board shall have a chairperson and four other permanent members. The members, with personal deputies, are appointed for

three years. One of the members shall represent the interests of the employees and one shall represent the interests of the employers.

In addition the Ministry shall appoint one member from the organisation that has submitted a claim to the Board and one member from the opposite party to the collective agreement for which general application is claimed, unless both parties are among the permanent members of the Tariff Board, cf. the first paragraph. These members shall be appointed for each individual case as proposed by the parties.

Section 4 Claim for general application of collective agreements, etc.

In order that the Tariff Board shall accept a claim for general application for consideration, it is a condition that the claim has been submitted by an employees' or employers' organisation which is party to the agreement and is entitled to submit nominations pursuant to section 11 (1) of the Act of 5 May 1927 No. 1 relating to labour disputes. Only such organisations may require a decision from the Tariff Board on a claim for general application.

Organisations as referred to in the first paragraph must submit documentation substantiating that the conditions of the Act for deciding general application have been complied with, cf. section 5.

The Tariff Board may on its own initiative make a decision concerning general application when such regulation is required in the public interest.

Section 5. Decisions concerning general application of collective agreements, etc.

The Tariff Board may decide that a nationwide collective agreement shall apply in full or in part to all employees who perform work of the kind specified by the agreement, within an industry or part of an industry, with the limitations provided by or pursuant to section 1-7 of the Working Environment Act.

The Tariff Board may make such a decision if it is documented that foreign employees perform or may perform work on terms that, based on a total assessment, are less favourable than those that apply pursuant to nationwide collective agreements for the trade or industry concerned or what is otherwise normal for the place and occupation concerned.

Section 6. Content of the decision

A decision concerning general application pursuant to section 5 may only apply to those parts of the collective agreement that regulate the terms of wages and employment of the individual employees. In special cases the Tariff Board may stipulate other terms of wages and employment than those following from the collective agreement.

If the Tariff Board finds it necessary to stipulate terms of wages and employment in areas also regulated by other legislation, specific grounds shall be given. In addition to the information referred to in section 38, first paragraph (a) and (b), of the Public Administration Act, the decision of the Board shall contain:

- a) a specification of the provisions of the collective agreement made generally applicable and of the provisions regarding terms of wages and employment that are laid down pursuant to the first or second paragraph above,
- b) provisions on the date of entry into force of the decision.

The terms of wages and employment laid down in a decision of the Tariff Board shall apply as invariable minimum terms of the employment relationship between an employee covered by the decision and his or her employer.

Section 7 Period of validity of a decision

A decision pursuant to section 5 shall apply until a new decision is made by the Tariff Board. The decision shall however cease to apply if the parties to the collective agreement have failed to request a new decision within one month after the collective agreement has been replaced by a new agreement.

Section 8. Conditions for renewal of decisions concerning general application of collective agreements, etc.

If a party to a collective agreement which is made generally applicable submits a claim for renewal of such a general application decision, the Tariff Board may make such a decision without requiring submission of new documentation of the terms of wages and employment in the industry concerned.

Section 9 Administrative procedures

Cases handled by the Tariff Board shall be subject to the Public Administration Act, however with the provision that the clarification of such cases may take place in hearings. The King may lay down further regulations concerning the administrative procedures of the Tariff Board, including provisions deviating from the provisions of the Public Administration Act.

Section 10 Duty to provide information

When so ordered by the Tariff Board, public authorities are obliged, regardless of the duty of secrecy, to provide all information concerning terms of wages and employment that the Board deems it necessary to gain access to in the preparation of cases. The same applies to the employer, anyone managing the undertaking on the employer's behalf, employees of the undertaking and any other person associated with the undertaking.

Section 11 Supervision of terms of wages and employment

The Norwegian Labour Inspection Authority supervises compliance with terms of wages and employment following from decisions concerning general application. The Norwegian Labour Inspection Authority also supervises compliance with the obligations of main contractors laid down pursuant to section 12.

The Norwegian Labour Inspection Authority shall issue such orders and otherwise make such individual decisions as are necessary for the implementation of decisions concerning general application and obligations pursuant to section 12. Section 18-6, first, second, sixth, seventh and eighth paragraphs, and sections 18-7 and 18-8 of the Working Environment Act shall apply correspondingly to supervision pursuant to the present Act. Any main contractor shall also be informed of orders and other individual decisions.

Anyone who is subjected to supervision pursuant to this provision shall, when so required by the Norwegian Labour Inspection Authority and regardless of the duty of secrecy, provide information deemed necessary for performance of the inspection.

Such information may also be demanded from other public inspection authorities regardless of the duty of secrecy that otherwise applies. The Norwegian Labour Inspection Authority may report violations to the police.

The Petroleum Safety Authority has within its jurisdiction supervisory responsibility and authority corresponding to that referred to in the first, second and third paragraphs.

Anyone subjected to supervision pursuant to the first paragraph shall, when so required by trade union representatives of the main contractor and regardless of the duty of secrecy, provide information concerning the terms of wages and employment of employees of undertakings that perform work subject to decisions concerning general application. Access to information may be demanded by trade union representatives who represent the organisation that is party to the collective agreement which is given general application.

The trade union representative has an obligation to maintain secrecy concerning information that he or she receives pursuant to the fifth paragraph. The duty of secrecy shall not apply in relation to the supervisory authorities, cf. first and fourth paragraphs. Trade union representatives may only invoke the right of access to investigate compliance with decisions concerning general application.

The Ministry may in regulations issue further provisions concerning the right of access to information, the duty of secrecy and any use of advisers.

Section 12. *The obligation of main contractors to provide information and to ensure compliance*

The Ministry may issue regulations imposing that in contracts with subcontractors the main contractor shall provide notification of obligations pursuant to current regulations concerning general application of collective agreements, and that the main contractor shall ensure that subcontractors comply with their obligations.

Section 13. *Joint and several liability of contracting entities*

Contractors and subcontractors that contract out work or hire employees shall be liable in the same way as an absolute guarantor for payment of wages and overtime pay pursuant to general application regulations and accrued holiday pay, cf. the Act of 29 April 1988 No. 21 relating to Holidays, to employees of the undertakings' subcontractors.

An employee must submit a claim in writing to the jointly and severally liable contractor at the latest three months after the due date for the payment. The due date for holiday pay is regulated by the Act of 29 April 1988 No. 21 relating to Holidays. The jointly and severally liable contractor shall pay the claim within three weeks after the claim is received. The jointly and severally liable contractor shall as soon as possible and at the latest within two weeks notify the other responsible contractors and subcontractors of the claim.

The jointly and severally liable contractor may refuse to cover the claim if the employee was aware that the condition for the assignment was that wages, etc. should wholly or partly be covered by a jointly and severally liable contractor.

The Ministry may issue further regulations concerning the formulation of the liability in regulations. The Ministry may also issue regulations stipulating that the undertaking

that orders a product or a result shall be subject to joint and several liability if special considerations so indicate. This shall not apply to an orderer who is a consumer.

Section 14 *Boycott*

An organisation as referred to in section 4 may initiate boycott aimed at forcing an employer to fulfil his obligations according to decisions made pursuant to section 5 regardless of the limitations following from the second and third alternatives given in section 2 (c) of the Boycott Act.

The provisions of the Boycott Act shall otherwise apply.

Section 15. *Penalties*

An employer who wilfully or negligently fails to comply with a decision made by the Tariff Board shall be liable to fines. The same applies to anyone managing the undertaking on behalf of the employer.

Affected employees or their trade union may institute private prosecution pursuant to the rules of chapter 28 of the Criminal Procedure Act.

Failure to comply with orders as referred to in section 7 shall be liable to fines.

Section 16 *Entry into force*

This Act shall enter into force on the date decided by the King.¹

¹ From 1 January 1994 pursuant to the Decree of 18 June 1993 No. 535.