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Guidelines on Legal Aid

1 Legal aid granted by the Industrial Union ('Union') is a significant membership benefit

Individual employees are often in a challenging position when defending their own rights based on legislation and collective agreements. Shop stewards, local trade unions, and the Union's experts on labour and social law support members in resolving various problems in their employment relationships. The aim is always to resolve all disputes primarily through instructions and advice, and by agreement. However, if a matter cannot be settled by negotiations, a member can receive legal aid from the Union if the other preconditions are met.

According to the rules of the Industrial Union, a member can obtain assistance from the Union with managing legal matters that have arisen in employment matters or from the member's activities at the Union and the local trade union. Legal aid is a significant membership benefit because, in employment disputes, legal costs can amount to tens of thousands of euros. Legal aid covers a member's legal expenses without a deductible or limitations on the maximum amount of legal costs.

If the employer is not organised

In the event of a problem, a member working for an employer that is not a member of an employer association can ask for advice from the shop steward at the workplace, the Union's central office or the nearest regional office. If the matter cannot be resolved through local negotiations or with the Union's instructions and requires more thorough investigation, the member can apply for legal aid in the matter by completing the *application for legal aid* available on the Union's website. The Union's expert and local trade union can instruct the member on completing the application. The application for legal aid and its enclosures must be delivered to the Union's legal unit at the central office. Once the application has been received, the Union's expert examines the matter and, if necessary, discusses it with the employer. If the matter cannot be resolved through negotiations and the Union believes that the case can succeed in court, the matter is referred to an *assessment of legal aid*.

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If the employer is organised

Disputes in the employment relationship of a member working for an employer that is a member of an employer association are processed *in the order of negotiations required by the collective agreement*. If a mutual understanding cannot be reached on the matter at the local level, the local parties prepare a *memorandum of disagreement* on the matter and submit it, including its enclosures, to the Union's legal unit at the central office. After this, the matter is negotiated between the employer and employee associations. If the matter cannot be resolved through negotiations between the associations and the Union believes that the case can succeed in court, the matter is referred to an *assessment of legal aid*.

Matters concerning occupational accidents and diseases

In matters concerning *occupational accidents and diseases*, legal aid must always be applied for with an *application for legal aid*, regardless of whether the employer is organised. The order of negotiations in the collective agreement is not applied to such situations.

Assessment of legal aid

An assessment of legal aid is prepared and a decision on the granting of legal aid is made by the Union's legal unit, in accordance with the grounds confirmed by the Board of the Union and described in these guidelines. However, the majority of the matters never proceed to an assessment of legal aid but are resolved at a much earlier stage. The processing of an application for legal aid and a memorandum of disagreement by the Union can end before an assessment of legal aid with, for instance, the signing of a settlement, or a statement according to which the employer has, on the basis of information obtained on the matter, acted in accordance with the law and the collective agreement.

Working abroad

The Union also represents and assists members who are assigned or posted to work in a foreign country. The requirement is that the assignment to work abroad and the terms of the employment have been agreed upon in writing. If a member moves to a foreign country to work and signs an employment contract with a foreign employer to work in a country other than Finland, the Union does not protect their interests or provide them with legal aid. In such situations, a member should seek help from the local employee organisation or the authorities.

Further information about legal aid provided by the Union

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This publication contains detailed information about legal aid provided by the Union, the preconditions for granting it, and how to apply for legal aid. Further information about legal aid provided by the Union is available from the on-call number of the interest protection unit (tel. 020 690 447 from 1 January 2018), the on-call number of the working environment unit (tel. 020 690 449 from 1 January 2018), and from regional offices.

2 General preconditions for legal aid

The nature of the matter, membership requirement, and payment of membership fees

According to the rules of the Industrial Union, a member of a local trade union can obtain assistance with managing legal matters that have arisen in employment matters or from the member's activities at the Union and the local trade union. The requirement is that the individual's membership has lasted at least three (3) months before the event for which legal aid is applied for, the event that is the reason for the application for legal aid occurred while the individual was a member, and that the member has paid their membership fees according to the rules of the Union. In an individual case, the legal unit can make an exception to the requirement of membership for a substantial reason.

Member's obligation of contribution

A requirement for granting legal aid is that the member fulfils his or her own obligation of contribution in the resolution of the case. In order to do so, the member must, without delay, provide accurate and complete information about circumstances relevant to the case, be available for contact with the contact details reported to the Union, keep these contact details up to date, and otherwise contribute to a resolution in all ways necessary.

The Union processes the member's matter on the basis of an assignment

Another general requirement for legal aid is that, after giving the Union an assignment for handling the employment matter, the member does not continue to process the matter personally or with the assistance of a third party, or agree upon the matter with the employer without the Union's contribution. A member can, at any time, terminate the assignment given to the Union, if they so wish, by reporting this in a verifiable manner to the Union expert processing the matter.

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Any deficiencies in the general preconditions for legal aid will prevent legal aid from being granted.

3 Content of legal aid

Legal aid covers a member's legal expenses without a deductible or limitations on the maximum amount of legal costs. If a member loses the case and is ordered to pay the opposing party's legal costs, the Union will pay such expenses on the member's behalf. If, on the other hand, a court of law obliges the opposing party to reimburse the member's legal costs, they will be awarded to the Union as compensation for the legal aid provided, according to the rules of the Union.

The member is obliged to pay the Union's membership fee from wages due to them as a consequence of legal proceedings or otherwise, e.g., on the basis of a settlement, and from damages payable due to the loss of earned income and comparable income.

4 Settlement of disputes before an assessment of legal aid

4.1 Member companies of an employer association

Local negotiations

At an enterprise that is a member of an employer association, disputes concerning the application, interpretation or violation of the collective agreement are resolved in accordance with the *order of negotiations required by the collective agreement*.

Disputes concerning the pay and employment terms of an employee must be primarily settled through *local negotiations* between the employee and their supervisor. If the dispute cannot be resolved, the matter is referred for negotiations *between the shop steward and the employer*.

Negotiations between associations, and preparation of a memorandum of disagreement

If a dispute cannot be resolved locally, it can, at either party's request, be referred for *resolution by the associations*. For negotiations between the associations, the shop steward and the employer prepare a *memorandum of disagreement*, which indicates the subject of the dispute

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and the parties' views of the matter. The memorandum of disagreement is signed by the chief shop steward or, if there is no chief shop steward, by the member(s) themselves.

A template for the memorandum of disagreement is available on the Union's website. A completed memorandum of disagreement must be delivered to the Union's legal unit, including all enclosures relevant for the case, as well as an *unlimited power of attorney* (in triplicate) from each party concerned.

With the aforementioned document, the member authorises the Union and its designated persons to resolve and process their matter in the way deemed to best protect the member's interests. This can mean signing a settlement, pursuing the case in a court of law, or terminating the processing of the matter if there are no preconditions for continuing it in the light of facts that have emerged in the case. Any proposal for a settlement is always specifically discussed with the member before it is accepted.

If the associations cannot reach an understanding

If an understanding cannot be reached through negotiations between the associations, and the Union believes that the case can succeed in court, the matter is referred to an *assessment of legal aid* by the Union's legal unit. In such a case, the member need not complete a separate application for legal aid. However, the processing of most matters by the Union ends before an assessment of legal aid with, for instance, the signing of a settlement, or a statement according to which the employer has acted in accordance with the law and the collective agreement.

4.2 Enterprises that are not members of an employer association

Local negotiations

At an enterprise that is a member of an employer association, disputes related to the employment relationship should be primarily resolved through *local negotiations between the employee and their nearest supervisor, or between the shop steward and the employer's representative*.

Applications for legal aid

If a matter cannot be resolved through local negotiations or with advice from the Union's experts, a member can submit an application for legal aid to the Union to resolve the matter. The *application for legal aid* is

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available on the Union's website. The Union's experts at the central office and regional offices, as well as local trade unions can instruct the member on how to complete the application for legal aid and determine the enclosures needed. Before submitting an application for legal aid, you should always ensure that the general requirements for the granting of legal aid are met.

The application for legal aid constitutes a basis for further resolution of the matter, so the member should complete the application as carefully as possible. The application should indicate the *subject of the disagreement and the problems experienced by the member* as precisely as possible, and it should include a *detailed explanation of the background of the matter*. All the *enclosures requested* should be included in the application, if possible. In addition to the enclosures requested, the application should also include all *other information that might be relevant to the case*. If the disagreement pertains to wages due, the application for legal aid should also include, if possible, the member's own *calculation of wages due*.

The application for legal aid must always include an *unlimited power of attorney signed by the member* (in triplicate) from each party concerned. With the aforementioned document, the member authorises the Union and its designated persons to resolve and process their matter in the way deemed to best protect the member's interests. This can mean signing a settlement, pursuing the case in a court of law, or terminating the processing of the matter if there are no preconditions for continuing it in the light of facts that have emerged in the case. Any proposal for a settlement is always specifically discussed with the member before it is accepted.

If an understanding cannot be reached in the case

If the employer is unorganised, the matter will not be separately negotiated on between associations. The Union's expert will examine the matter and endeavour to discuss it with the employer. If an understanding cannot be reached and the Union believes that the case can succeed in court, the matter will be referred to an *assessment of legal aid* by the Union's legal unit. However, the majority of the cases are resolved by the Union even before an assessment of legal aid.

4.3 Matters concerning occupational accidents and diseases

A member of the Industrial Union who has had an occupational accident leading to a permanent or other significant disability can be granted legal aid. A requirement for granting of legal aid is that the case is obviously headed for a trial, either as a criminal matter through the

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prosecutor or as an action brought by the Union for compensation of damages for an accident. A member can also be granted legal aid when the seriousness of an occupational disease requires a claim for damages from the employer.

An *accident* refers to a sudden and unexpected event caused by an external factor that causes an injury or illness to an employee.

An *occupational disease* refers to an illness that has been primarily caused to an employee due to exposure to a physical, chemical or biological factor at work.

A *claim for damages* can be submitted at several different phases during the processing of a case. Damages can be claimed for pain and suffering, other temporary disability or for a permanent functional disability. Compensation for an occupational accident or an occupational disease requires that there be a causal connection, i.e. a cause-and-effect relationship, between the injury or illness being compensated for and the occupational accident or exposure at work.

Applications for legal aid

In matters concerning occupational accidents and diseases, legal aid must always *be applied for by using an application for legal aid*, regardless of whether the employer is organised, because the order of negotiations in the collective agreement is not applied to such situations. An application for legal aid should primarily be prepared at the working environment unit, on the basis of an assessment made there and the unit's expertise. The legal unit processes and confirms such cases of legal aid in a simplified procedure.

Detailed information about cases of occupational accidents and diseases is available in a brochure called 'Serious occupational accidents and diseases', available on the Union's website

Appeals concerning social security

The Union's working environment unit also advises and assists members in appeals concerning social security, as necessary. Such situations do not require the submission of a specific application for legal aid.

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5 Assessment of legal aid, and decisions on legal aid

The legal unit assesses the preconditions for granting of legal aid in light of the information presented on the matter, and makes a decision on whether to grant legal aid by means of an overall assessment that takes into account the case's potential for success in court, the financial interests related to the case, and the matter's significance in principal for the members of the Union.

Legal aid can only be granted if the general preconditions for legal aid are met. Legal aid is not granted if the case, in light of the information presented, does not have sufficient potential for success in court, or if any benefit expected from contesting the case is unreasonably small in view of the risk related to it and the potential costs incurred from the matter. Legal aid can also be refused if the member has received an appropriate offer for a settlement accepted by the Union's legal counsel and rejected it.

A decision on granting of legal aid is made separately for each court instance. When making a decision, the legal unit appoints a legal counsel from the Union or an outside law firm to handle the matter.

The majority of the applications for legal aid and memorandums of disagreement sent to the Union never reach an assessment of legal aid, because most matters are resolved at a much earlier stage, by the Union's sectors of interest protection, the working environment unit or the legal unit.

6 Cancellation of legal aid that has been granted, and recovery of legal costs from a member

From the Union's perspective, legal proceedings always involve a significant risk of costs. For this reason, legal aid that has been granted can be cancelled if the member does not fulfil their obligation of contribution in the resolution of the matter, details that constituted the basis for the decision and are significant for the case prove erroneous or details affecting it have been concealed, the member rejects an appropriate offer for a settlement made by the opposing party and accepted by the Union's legal counsel, or if the member has initiated legal proceedings in the same matter.

The Union can collect from the member the actual costs arising from the legal proceedings and preparations for them if the member does not fulfil his or her obligation of contribution in the resolution of the case, suspends the processing of the matter, prepares for legal action with a

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third party without agreeing on this with the Union, or if it turns out that the member has intentionally neglected to notify the Union of facts material to the resolution of the matter or has provided the Union with erroneous information about such facts.

7 Exceptions to the guidelines on legal aid

In an individual case, the legal unit can make an exception to these guidelines for a substantial reason.

8 If the employer is insolvent or is declared bankrupt

8.1 Wage guarantee

If the employer neglects its obligation to pay, the member should, without delay, submit an application for wage guarantee to secure their right to wages due. The wage guarantee system secures the payment of claims arising from an employee's employment relationship in the event of the employer's insolvency.

A condition for receiving wage guarantee is that the employer is insolvent. An application for wage guarantee must be submitted within three (3) months of the due date of the claim. Claims arising from an employment relationship become due for payment, as a rule, by pay period, and final pay at the end of the employment relationship. If the employer has become bankrupt, wages due and other claims arising from the employment relationship become due for payment on the date of the declaration of bankruptcy. If an application has not been submitted before the deadline, the claim cannot be paid as wage guarantee.

The maximum amount of claims payable as wage guarantee, per employee, on the basis of work done for one employer is €15,200. This is usually sufficient for ordinary wages due.

An application for wage guarantee can be submitted by using a form that is currently available at TE Offices and on the websites of the TE Office and the ELY Centre. To establish the claims, the application for wage guarantee must include copies of the employment contract, work certificate, and pay slips. An application for wage guarantee can be submitted to any ELY Centre or TE Office.

An application for wage guarantee can be submitted by the employee, an administrator of the bankruptcy estate, or a local trade union to which the employee has referred the pay for collection. The deadline for an application for wage guarantee is rather short, so in most cases

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the employee should submit the application personally. The wage guarantee authority (currently the ELY Centre), and the Union's regional offices and central office can provide assistance, if necessary, with questions related to an application for wage guarantee and the preparation of a calculation of wages due.

If a member's application for wage guarantee has been rejected or if the wage guarantee authority requests further information on the matter, the member should contact the Union, to be on the safe side. A decision on wage guarantee always includes instructions for appeal, and a member can receive help with an appeal from the Union. If the employer has contested claims applied for via wage guarantee, the member can apply for legal aid from the Union in the case. The deadline for action according to the Wage Guarantee Act is only six (6) months from the decision, so quick action must be taken on the matter.

8.2 Employer's bankruptcy

The Union also assists members if the employer becomes bankrupt and the member has unpaid wages due from the employer. In ordinary cases, the administrator of the bankruptcy estate submits an application for wage guarantee and pays the employees their wages for the period of notice. However, in case of a bankruptcy, it must be ensured that all claims based on an employment relationship – even ones that have expired with regard to wage guarantee – are recorded in a list of employment claims or secured in the employer's bankruptcy. The Union discusses the matter with the administrator and assists the member, if necessary, with securing their claims.