

Labour Clause regarding the ensuring of employee rights in connection with work executed for Fjernvarme Fyn, rev. A

1. The obligation

1.1 Pay and employment terms

The Provider shall be obliged to ensure that the employee which the Provider and any subcontractors employ in Denmark with the intention to fulfil the contract, shall have pay (including special allowances) and employment terms that are no less favourable than the pay and employment terms that apply to work of the same nature pursuant to a collective agreement entered into by the most representative labour market parties in Denmark of the relevant professional field and which apply to the entire field in Denmark.

For proprietary businesses that execute work under terms similar to employees with the intention to fulfil the contract, the same requirements regarding pay and employment terms as mentioned above shall apply.

1.2 Employment terms and identification

The Provider shall ensure that the at all times applicable Contract of Employment Act, including the requirement to provide a contract of employment to the employee, is complied with.

Furthermore, the Provider shall be responsible for using only employees with valid residence and work permits throughout the supply chain and that the employees can, upon demand, document their identity by producing valid photo ID or other ID. Fjernvarme Fyn shall be entitled to take photos of the employee's ID.

In addition, the Provider shall ensure that all wage payments are made through a digital payment system, e.g. payment via a bank's payment system.

1.3 Information about subcontractors

The Provider shall be obliged to inform Fjernvarme Fyn about the use of subcontractors before the subcontractors are used to execute work in order to fulfil the contract.

The information is provided by way of electronic reporting in Fjernvarme Fyn's agreement management system. The Provider must disclose their own as well as the subcontractor's name, CVR number and contact information as well as when the subcontractor is expected to execute work pursuant to the contract.

1.4 Staying at the workplace

The Provider shall at all times be subject to Fjernvarme Fyn's instructions regarding staying at the workplace. Fjernvarme Fyn can issue instructions on, for example, prohibition against staying overnight at the workplace, etc.

2. Documentation

2.1 Documentation on compliance with the obligation

The Provider shall bear the burden of proof that the obligation, see section 1 of the clause, is complied with. Fjernvarme Fyn can request to see documentation on the Provider's compliance with this.

Fjernvarme Fyn can request the Provider to forward relevant documentation on all employees in the entire supply chain.

For every single employee, relevant documentation must include:

- Contract of employment or letter of appointment
- Pay slips with bank account number for payment of wages
- Documentation on digital payment of wages, e.g. statement from the bank
- Time sheets/time registration with start and end times for the individual days as well as specification of when work has been executed for Fjernvarme Fyn
- E-income receipts from the Danish Tax Agency or similar if the employees pay tax abroad
- Documentation on pension payments
- Documentation on payment of holiday pay/holiday allowance
- Any residence and work permits

Fjernvarme Fyn can also request the Provider to forward other documents, e.g. tenancy agreements, local agreements, company collective agreements, registrations in the Register of Foreign Service Providers (RUT), documentation on valid industrial injuries' insurance, etc.

The Provider shall be obliged to store all relevant documentation for the period of the contract and 12 months after expiry of the contract.

If the Provider does not forward accurate documentation on one or more employees, Fjernvarme Fyn shall be compelled to make an estimate of the employees' pay and employment terms. In this situation, the Provider must allow that this estimate shall be the basis for the conclusion of the control, including sanctioning, see section 3.

Deadline

The documentation must be provided in English or Danish and be in the hands of Fjernvarme Fyn at the latest **five (5) working days** after receipt of the request.

2.2 Statement

Following request from Fjernvarme Fyn, the Provider shall forward a statement on how the Provider has ensured compliance with the Labour Clause.

The statement must minimum contain information on which frame of reference the Provider has used in connection with determining the employees' wage and working conditions, including working hours, overtime payment and wage rates. Moreover, the Provider shall give an account of housing conditions as well as transport and catering when this is part of the employer's responsibility.

If the Provider uses subcontractors, the statement must contain similar information regarding the subcontractors' employees.

The statement must also contain information on how the Provider has ensured that subcontractors know, understand and implement the Labour Clause.

In the specific case, Fjernvarme Fyn can request the Provider to elaborate on other relevant conditions.

Deadline

The statement must be provided in English or Danish and be in the hands of Fjernvarme Fyn at the latest **ten (10) working days** after receipt of the request.

2.3 Passing on of information

In accordance with applicable rules on data protection and following a specific assessment, Fjernvarme Fyn can pass on information that serves as documentation on compliance of the requirements in the Labour Clause, see section 2, to the Danish Tax Agency, the Danish Working Environment Authority, the police or other relevant authorities if the passing on of the information is assessed as being of significant importance for the authorities' activities.

2.4 Personal information

The Provider shall not anonymize the documentation that is forwarded to Fjernvarme Fyn. It is of significant importance for Fjernvarme Fyn's control that the individual employee which the documentation regards can be identified.

Fjernvarme Fyn draws attention to the fact that the Provider shall be obliged, on their own initiative, to comply with the legal data protection rules including compliance with the duty of disclosure to employees.

3. Sanctions

Significant violation of the Labour Clause by the Provider or subcontractors shall be considered as significant breach of the contract and entail that Fjernvarme Fyn shall have the option to cancel the contract wholly or in part.

Significant violations shall be understood as, e.g. gross or repeated violations of the provisions stated in sections 1 and 2 of the Labour Clause. For repeated violations, a plurality of violations shall also be included which are ascertained under this contract and other contracts between the parties.

If the Provider incurs the sanctions below, it shall not be exempt from the obligation to fulfil the contract.

If a subcontract violates section 1 of the Labour Clause, the Provider shall be responsible to ensure that the subcontractor corrects the conditions. If the subcontractor grossly or repeatedly violates section 1 of the Labour Clause, the Municipality can demand that the Provider discontinues using the subcontractor in question for fulfilment of the contract. This does not entitle the Provider to compensation or extension of the contract's deadlines.

3.1 Sanctions for insufficient compliance with the obligation in section 1

3.1.1 Retroactive payment

If the employee has not had pay and employment conditions that are in accordance with the obligation in section 1.1, the Provider shall be obliged to ensure that following Fjernvarme Fyn's instructions, retroactive payment to the employee within the deadline set by Fjernvarme Fyn shall be made and that the conditions are corrected going forward.

Fjernvarme Fyn shall be entitled to withhold payment to the Provider as security for retroactive payment and/or with a view to taking into consideration entitled claims from employees of the Provider or subcontractor.

If retroactive payment is not made to the relevant employees within the deadline set by Fjernvarme Fyn, the withheld payment shall fall definitively to Fjernvarme Fyn.

3.1.2 Penalty for insufficient compliance with the obligation in section 1

In the event of violation of section 1 of the clause, the Provider shall incur a penalty of DKK 1,000 per violation per commenced working day on the project.

To clarify what comprises a violation, the following examples are highlighted:

- Every employee who has not received pay or other of the conditions stated under section 1 that are similar to the collective agreement, shall comprise one violation.
- Every subcontractor that is not disclosed on time in Fjernvarme Fyn's agreement management system, see section 1.3, shall comprise one violation.

“Commenced working day” shall be understood as those days when the employee/subcontractor, in relation to which violations of section 1 have been ascertained, has executed work on the project.

The penalty amount can be offset against the Provider’s payment.

3.2 Penalty for insufficient compliance with the obligation in section 2

The Provider shall incur a penalty in the event of violation of section 2 of the clause if the Provider does not forward a statement or accurate documentation within the deadlines stated under sections 2.1 and 2.2 or if the Provider completely omits forwarding all, or parts, of the requested documentation/statement.

The minimum penalty shall comprise DKK 1,000 per employee and/or statement per commenced working day until the Provider has met Fjernvarme Fyn’s request.

The penalty amount can be offset against the Provider’s payment.

The penalty can maximum be accumulated for delayed documentation and/or statement for two months after the expiry of the deadline(s). Fjernvarme Fyn shall then be entitled to make an estimate of pay and employment conditions with a view to sanctioning for violation of section 1, see section 2.1.

3.3 Option for reducing a penalty

Fjernvarme Fyn can exceptionally choose to reduce a penalty if the conditions specifically speak in favour of this. In this regard, Fjernvarme Fyn will place importance on the nature and scope of the violation, the Provider’s possibility and effort to prevent violations of the nature in question, the Provider’s contribution to the discontinuation of the violation as well as the Provider’s compliance with the requirement for retroactive payment.

4. Control measures

For the contract period, Fjernvarme Fyn shall implement various control measures in order to ensure compliance with the Labour Clause, e.g. by performing unannounced visits to the workplace.