



Joint and several liability of contracting entities

In sectors subject to General Application Regulations



Labour Inspection Authority
Fact sheet

What is joint and several liability?

Joint and several liability entails that a contracting entity shall be liable for the obligations of contractors further down in the chain of subcontractors to pay wages pursuant to General Application Regulations. This means that all contracting entities in the chain of subcontractors are “jointly and severally” liable to employees furthest down in the chain who do not receive generally applicable wages from their employers.

Joint and several liability applies in all sectors with collective agreements which have been declared generally applicable, such as those of the construction trade and the maritime construction industry. The company ordering a building or a ship (the client) may not however be held liable for employees’ wages. Such liability applies only when the contractor and/or subcontractor is engaged in business activities. A subcontractor that is engaged in business activities shall however be subject to joint and several liability regardless of whether the contractor is another undertaking or a consumer.

The joint and several liability provision entered into force on 1 January 2010. Please note that such liability applies only to contracts entered into after this date.

What can contractors be held liable for?

Contractors can be held jointly and severally liable for wages and overtime pay pursuant to General Application Regulations and holiday pay pursuant to the Holidays Act. If the agreed wage is higher than the minimum wage pursuant to the General Application Regulations, contractors will only be liable for the minimum wage.

When does joint and several liability arise?

Joint and several liability arises when the wages fall due for payment but are not paid or are only partly paid. This is normally the date for payment of wages pursuant to the contract of employment. The employee must file a claim in writing within three months, which must be documented, for example, by a copy of the contract of employment, wage slips, time sheets, account statements or other relevant documentation. The contractor has a time limit of three weeks in which to pay. When there are two or more contracting entities, the employee may freely file a claim to whichever he wishes without first filing a claim to his own employer.

In a chain of subcontractors with two or more liable contracting entities, it may be difficult to control what is paid to an employee on the basis of joint and several liability. In order to ensure that the remaining contracting entities receive adequate information concerning payments, a contractor who has received a claim shall send written notification to the other contractors within two weeks. This is done in order to avoid duplicate payments and to ensure that it is made known that a claim has been filed to a jointly and severally liable contractor.

Recourse

A contractor who receives a claim and meets this has a right to share the liability with the other contracting entities (recourse). In contractual relationships involving two or more guarantors, this follows from long legal practice. The same must be assumed to apply to joint and severally liable contractors. The Norwegian Labour Inspection Authority recommends nevertheless that contracts state that any liability may be distributed between all contracting entities in the chain of subcontractors. It may in addition be appropriate for contracting entities to withhold part of the contractual remuneration as security for a joint and several liability.

Joint and several liability and bankruptcies

In the event of an employer’s bankruptcy the employee must file his wage claim to the Wage Guarantee Scheme. He may not choose whether to file the claim to the Wage Guarantee Scheme or to a jointly and severally liable party. If the contractor has met the employee’s wage claim, he will be able to take over the employee’s claim on the bankruptcy estate.

The role of the Norwegian Labour Inspection Authority

It is for the individual employee to decide whether he has a claim against the contractor. The Norwegian Labour Inspection Authority can provide guidance on the provision. The Norwegian Labour Inspection Authority has responsibility for supervising compliance with pay and working conditions pursuant to regulations on general application of wage agreements. This is effected through the usual measures of the Inspection Authority, i.e. orders, coercive fines and stoppage. The Norwegian Labour Inspection Authority may not however impose payment of wages when this is deemed to be a matter of civil law, which therefore lies outside the jurisdiction of the Inspection Authority.