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Work Ability Allowance Act

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Amended by the following acts

Passed	Published	Entry into force
25.11.2015	RT I, 17.12.2015, 1	20.12.2015, in sections 1, 2, 5–13, 15–21, 23 and 27 the word "person" [inimene] has been replaced throughout the text by the word "person" [isik] in the appropriate case form.
09.12.2015	RT I, 30.12.2015, 5	01.01.2016, partially 01.07.2016

Chapter 1 General Provisions

§ 1. Purpose and scope of application of Act

(1) The purpose of this Act is to support employment and access to employment of persons with reduced work ability caused by long-term health damage and to ensure an income for them under the conditions and to the extent provided by law.

(2) This Act establishes the bases for assessment of work ability and the conditions of and procedure for grant and payment of work ability allowance.

(3) The provisions of the Administrative Procedure Act apply to the administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

(4) If an international agreement entered into by the Republic of Estonia includes provisions concerning the grant or payment of the allowance provided for in this Act which are different, the international agreement applies.

§ 2. Entitled persons

(1) The following persons between the age of 16 and the pensionable age are entitled to of work ability assessment and work ability allowance provided for in this Act:

- 1) Estonian citizens residing in Estonia or aliens residing in Estonia on the basis of long-term residence permit or permanent right of residence;
- 2) aliens residing in Estonia on the basis of temporary residence permit or temporary right of residence;
- 3) persons enjoying international protection staying in Estonia or asylum seekers staying in Estonia who have the right to take employment in Estonia under the conditions provided for in the Act on Granting International Protection to Aliens;

(2) Residents of Estonia specified in clauses (1) 1) and 2) of this section whose residence is in several states are entitled to work ability assessment and work ability allowance if they are residents for the purposes of subsection 6 (1) of the Income Tax Act or if they reside permanently in Estonia for the purposes of the Aliens Act.

(3) In the cases provided by law, work ability of persons under 16 years of age or persons of pensionable age shall also be assessed.

§ 3. Organising authority

Work ability shall be assessed and work ability allowance shall be granted and paid by the Estonian Unemployment Insurance Fund (hereinafter *unemployment insurance fund*).

§ 4. Financing of work ability allowance

Work ability allowance is financed from the state budget through the budget of the Ministry of Social Affairs.

Chapter 2 Assessment of Work Ability

§ 5. Bases for assessment of work ability

(1) By assessment of work ability, the level of work ability of a person with long-term health damage shall be established.

(2) Upon assessment of work ability, the state of health of a person and restrictions on activity and participation arising from the state of health, and the prognosis and estimated duration of such restrictions shall be taken into account.

(3) As a result of the assessment of work ability, the level of work ability of a person shall be established as follows:

- 1) work ability has not reduced if his or her working is not hindered taking into account the circumstances specified in subsection (2) of this section;
- 2) partial work ability if his or her working is partially hindered taking into account the circumstances specified in subsection (2) of this section;
- 3) no work ability if he or she is unable to work taking into account the circumstances specified in subsection (2) of this section.

(4) The conditions of assessment of work ability and the list of states of health precluding work ability shall be established by a regulation of the minister responsible for the area.

§ 6. Application for assessment of work ability

(1) A person shall submit a conforming application for assessment of work ability to the unemployment insurance fund. Upon submission of an application for assessment of work ability, the person gives his or her consent for using his or her data in the health information system for assessment of work ability.

(2) A person may submit an application for assessment of work ability to the unemployment insurance fund through the Social Insurance Board if the application is submitted together with an application for determination of the degree of severity of disability submitted to the Social Insurance Board on the basis of the Social Benefits for Disabled Persons Act.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(3) The minister responsible for the area shall establish by a regulation the list of information to be set out in the application for assessment of work ability which shall include:

- 1) the name, date of birth and sex or personal identification code and contact details of the person applying for assessment of work ability, information concerning his or her education and employment, use of technical aid and personal assistance, and rehabilitation;
- 2) the list of conditions precluding work ability and the list of restrictions on activity which characterise the physical and mental abilities of a person necessary for working.

(4) A person shall have visited his or her family physician, the medical specialist who is mainly treating the person or an occupational health doctor (hereinafter *doctor*) within six months before submission of an application for assessment of work ability.

(5) If a person has not visited a doctor within six months before submission of an application for assessment of work ability, the unemployment insurance fund shall inform the person of the requirement to visit a doctor and shall set a term for fulfilment of the requirement.

(6) The unemployment insurance fund has the right to make an inquiry to the health information system in order to:

- 1) monitor the fulfilment of the requirement provided for in subsection (4) of this section;
- 2) verify whether information concerning the person has been entered in the health information system;
- 3) obtain the given name and surname of the doctor who submitted the information.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(7) The date on which the application for assessment of work ability is submitted to the unemployment insurance fund or in the case specified in subsection (2) of this section to the Social Insurance Board shall be

deemed to be the date of submission of the application. If the application for assessment of work ability is sent by post, the date on the date stamp of the place from which the application was sent is deemed to be the date of submission of the application.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

§ 7. Assessment of work ability

(1) The unemployment insurance fund shall assess the work ability of a person by involving health care providers and other experts for expert opinion if necessary.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(2) The unemployment insurance fund shall enter into a civil law contract with a health care provider specified in subsection (1) of this section. Value added tax shall not be imposed on expert opinions for the purposes of clause 16 (1) 2) of the Value Added Tax Act.

(3) If it is impossible to assess the work ability of a person on the basis of existing information, the unemployment insurance fund has the right to refer the person to a health care provider specified in subsection (1) in order to obtain an opinion concerning the work ability of the person. If a person is referred to a health care provider, the unemployment insurance fund shall compensate the person for the additional expenses caused by the special needs in connection with visiting the health care provider or shall pay such expenses for the person. If a person fails to appear at the health care provider for a visit without good reason, the unemployment insurance fund may refuse to review the application for assessment of work ability.

(4) An employee of the unemployment insurance fund who has completed medical training and a health care provider specified in subsection (1) of this section who are assessing work ability have, with the consent of the person, access to the following personal data in the health information system necessary for assessing the work ability:

- 1) information concerning the submitter of information;
- 2) information concerning out-patient visits and hospitalisations;
- 3) information concerning medicinal products.

(5) The list of information in the health information system necessary for assessing work ability and the periods for inquiries in the case provided for in subsection (4) of this section shall be established by a regulation of the minister responsible for the area.

(6) If there is no information specified in subsection (4) of this section in the health information system or the information is insufficient to assess work ability, the doctor shall forward the information requested by the unemployment insurance fund to the health information system or the unemployment insurance fund within ten working days as of the receipt of the relevant request from the unemployment insurance fund.

§ 8. Term for which partial or no work ability is established

(1) The unemployment insurance fund shall establish that a person has partial or no work ability as of submission of the application for assessment of work ability for up to five years but not for longer than until the pensionable age unless otherwise provided by law.

(2) The unemployment insurance fund shall establish that a person has no work ability as of submission of the application for assessment of work ability until the pensionable age if, taking into account the nature and estimated duration of the health damage of the person, the condition precluding work ability is unchanging or progressive.

(3) The unemployment insurance fund shall establish that a person has partial or no work ability as of the day following the end of the term for which partial or no work ability has been established by the previous decision concerning the assessment of work ability if the person submits an application for assessment of work ability within 50 working days before the last day of the term for which partial or no work ability has been established by the decision concerning the assessment of work ability in force.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

§ 9. Term for making of decision concerning assessment of work ability and communication of decision

(1) The unemployment insurance fund shall make a decision concerning the assessment of work ability within 30 working days as of receipt of the application for assessment of work ability. The unemployment insurance fund may, with good reason, extend the term for review of the application. The unemployment insurance fund shall immediately notify the applicant of extension of the term together with the reasons for extension.

(2) The unemployment insurance fund shall send a decision specified in subsection (1) of this section to a person by electronic means or registered letter or make the decision available at the local department of

the unemployment insurance fund, depending on which of the above options the applicant indicated in the application for assessment of work ability, within five working days as of making the decision.

§ 10. Certificate of partial or no work ability

The unemployment insurance fund shall make the information concerning partial or no work ability established for a person available to the person electronically or issue a respective document to the person on request.

Chapter 3 Work Ability Allowance

§ 11. Work ability allowance

Work ability allowance shall be paid on the conditions provided for in this Act to a person who has been established to have partial or no work ability in order to ensure an income for the person.

§ 12. Right to receive work ability allowance

(1) A person with partial work ability has the right to receive work ability allowance if the person meets at least one of the following conditions:

- 1) is working based on an employment contract, contract for services, authorisation agreement or another contract under the law of obligations for provision of services, or is in public service;
- 2) is a person specified in clauses 2 (3) 1)–8) and 11) of the Public Service Act or the chairman or deputy chairman of a council of a local government working in a remunerative position or a member of a rural municipality or city government working in a remunerative position, including a rural municipality or city mayor;
- 3) is engaged in a profession in public law as independent person;
- 4) is a member of the management or supervisory body of a legal person;
- 5) is registered as a sole proprietor;
- 6) is entered in the register of taxable persons as the spouse participating in the activity of the sole proprietor's enterprise;
- 7) is registered as unemployed pursuant to the Labour Market Services and Benefits Act and performs the obligations imposed on an unemployed person provided for in the Labour Market Services and Benefits Act;
- 8) is acquiring basic, secondary, vocational or higher education;
- 9) is raising at least one child under three years of age;
- 10) cares for a family member with a severe or profound disability or a disabled person who needs assistance on the basis of § 26 of the Social Welfare Act;
[RT I, 30.12.2015, 5 - entry into force 01.07.2016]
- 11) receives support for creative activity from the artistic association;
- 12) is placed in a social welfare institution to receive the 24-hour special care service without his or her consent;
- 13) involuntary treatment or another substitutive punishment or sanction provided by law is applied due to which the person is unable to meet the conditions specified in clauses 1)–11) of this subsection;
- 14) is in compulsory military service, alternative service or reserve service.

(2) A person with no work ability has the right to receive work ability allowance.

(3) On the basis provided for in clause (1) 9) of this section, one parent, guardian or caregiver raising at least one child under three years of age with whom a written foster care contract has been entered into has the right to receive work ability allowance.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(4) A person who is paid pension, the allowance of a rescue worker waiting for old-age pension, prosecutors' work ability allowance or spouse allowance on the basis of the Foreign Service Act or the Public Service Act does not have the right to receive work ability allowance.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(5) A person with partial work ability who is on academic leave does not have the right to receive work ability allowance unless the person is on academic leave for health reasons or meets at least one of the conditions provided for in subsection (1) of this section.

(6) A person who is serving a sentence in prison or is held in custody does not have the right to receive work ability allowance.

(7) A person does not have the right to receive work ability allowance for the days the person is serving a sentence in a house of detention.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

§ 13. Amount of work ability allowance

(1) Calculation of work ability allowance shall be based on the daily rate of work ability allowance provided for in § 14 of this Act (hereinafter *daily rate*).

- (2) The amount of allowance per calendar day shall be:
- 1) for a person with partial work ability – 57 per cent of the daily rate;
 - 2) for a person with no work ability – 100 per cent of the daily rate.

(3) If the income of a person with partial or no work ability during the calendar month preceding the payment of work ability allowance exceeds 90 times the daily rate in force, the amount of his or her allowance shall be recalculated by reducing his or her allowance for the month of payment of work ability allowance by an amount which is half of the difference between his or her income and 90 times the daily rate.

(4) The month of payment of work ability allowance is the calendar month for which the allowance is paid.

(5) The income during one calendar month specified in subsection (3) of this section shall be calculated taking into account the information of the Tax and Customs Board concerning the remuneration on which social tax is paid on the basis of clauses 2 (1) 1), 3), 4), 6) and 9) of the Social Tax Act, and information concerning remuneration received from a foreign state. Unemployment insurance benefit, parental benefit, benefit for temporary incapacity for work and sickness benefit paid by employer are deemed to be income.

(6) If work ability allowance is granted to a person with partial or no work ability for the period for which the person was paid unemployment allowance, the work ability allowance paid for the same period shall be reduced by the amount of the unemployment allowance.

(7) Work ability allowance shall be reduced by the amount of the allowance, pension or other monetary compensation paid by a foreign state for the same purpose as work ability allowance.
[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

§ 14. Amount of daily rate

(1) The daily rate of work ability allowance is 11.25 euros.
[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(2) The unemployment insurance fund shall index the amount of daily rate on 1 April each year by the index of state pensions established on the basis of subsection 26 (6) of the State Pension Insurance Act based on the daily rate in force on 31 March of the given calendar year. Upon calculation of the daily rate, the amount shall be rounded after indexation to the accuracy of one cent.

(3) The unemployment insurance fund shall publish the amount of the daily rate in force on its website.

§ 15. Application for work ability allowance

(1) A person who has been established to have partial or no work ability shall submit an application for work ability allowance to the unemployment insurance fund. An application for work ability allowance may be submitted together with an application for assessment of work ability.

(2) In the case provided for in subsection 6 (2) of this Act, an application for work ability allowance may be submitted together with an application for assessment of work ability to the unemployment insurance fund through the Social Insurance Board.

(3) An application for work ability allowance shall set out the following information:

- 1) the name, personal identification code or date of birth, contact details and bank account number of the applicant for the allowance;
 - 2) information concerning the circumstances provided for in § 12 of this Act.
- [RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(4) If the information specified in clause (3) 2) of this section cannot be obtained from databases, the unemployment insurance fund has the right to request from the applicant documents which certify the circumstances provided for in § 12 of this Act.
[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(5) The date on which the application for work ability allowance is submitted to the unemployment insurance fund or in the case specified in subsection 6 (2) of this Act to the Social Insurance Board shall be deemed to be the date of submission of the application. If the application for work ability allowance is sent by post, the date on the date stamp of the place from which the application was sent is deemed to be the date of submission of the application.

§ 16. Grant of work ability allowance

(1) Work ability allowance shall be granted to a person as of the date of submission of the application for work ability allowance but not earlier than as of the date of meeting the conditions provided for in this Act until the end of the term for which partial or no work ability has been established.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(1¹) Work ability allowance shall be granted to a person as of the day following the end of the period of payment of work ability allowance in force if the application for work ability allowance is submitted within the term specified in subsection 8 (3) of this Act.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(2) Work ability allowance shall be granted to a person as of the date of extinguishment of the right to receive sickness benefit pursuant to subsection 57 (1) of the Health Insurance Act until the end of the term for which partial or no work ability has been established if:

1) the person submits the application for work ability allowance during the period for which he or she has been issued a certificate for sick leave for the purposes of the Health Insurance Act and

2) the unemployment insurance fund has not previously established that the person has partial or no work ability on the basis of § 8 of this Act or the person is not permanently incapacitated for work on the basis of the State Pension Insurance Act during application for work ability allowance or the person's category of disability has not been determined for an unspecified term on the basis of the State Allowances Act and

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

3) the person meets the conditions provided for in this Act.

(3) The unemployment insurance fund shall make a decision on the grant of work ability allowance to a person specified in subsections (1) and (1¹) of this section within ten working days as of the date of receipt of the application for work ability allowance and documents appended thereto but not earlier than within ten working days as of the date of making the decision concerning the assessment of work ability.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(4) The unemployment insurance fund shall make a decision on the grant of work ability allowance to a person specified in subsection (2) of this section within ten working days as of the date of extinguishment of the right to receive sickness benefit pursuant to subsection 57 (1) of the Health Insurance Act but not earlier than within ten working days as of the date of making the decision concerning the assessment of work ability.

(5) The unemployment insurance fund shall send a decision on the grant of work ability allowance specified in subsections (3) and (4) of this section to a person by electronic means, unregistered letter or registered letter or make the decision available at the local department of the unemployment insurance fund, depending on which of the above options the applicant indicated in the application for work ability allowance, within five working days as of the date of making the decision.

§ 17. Payment of work ability allowance

(1) The unemployment insurance fund shall pay work ability allowance monthly by the tenth day of the given calendar month for the previous calendar month.

(2) Work ability allowance shall be paid according to the request of the person:

1) to the bank account of the person in Estonia at the expense of the payer;

2) on the basis of a written application prepared at the unemployment insurance fund, a digitally signed electronic application or a notarially authenticated application of the person, to the bank account of another person, including a local government, in Estonia at the expense of the payer;

3) as home delivery by post at the expense of the recipient; or

4) to the bank account of the person in a foreign state at the expense of the recipient.

(3) Upon submission of a justified request, the unemployment insurance fund shall pay work ability allowance to a person with a profound disability whose movement is restricted or who lives in low density area and who has scarce access to bank services as home delivery by post at the expense of the unemployment insurance fund.

(4) If a person was held in custody but was acquitted, the work ability allowance shall be paid retroactively for the period the person was held in custody.

§ 18. Suspension of payment of work ability allowance to person with partial work ability who is registered as unemployed

(1) Payment of work ability allowance to a person with partial work ability who is registered as unemployed shall be suspended before the end of the period specified in subsections 16 (1)–(2) of this Act for ten calendar days if for the first time the person:

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

1) fails to appear for a visit at the unemployment insurance fund at the time appointed to him or her – as of the day following the date on which the person fails to appear for the visit;

2) refuses without good reason to comply with the individual action plan provided for in § 10 of the Labour Market Services and Benefits Act or the suitable work provided for in subsections 12 (3) and (4) of the same Act – as of the day following the date on which the circumstances which affect the right to receive the allowance arise.

(2) Payment of work ability allowance to a person with partial work ability who is registered as unemployed shall be suspended before the end of the period specified in subsections 16 (1)–(2) of this Act for thirty calendar days if for the second time the person:

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

1) fails to appear for a visit at the unemployment insurance fund at the time appointed to him or her – as of the day following the date on which the person fails to appear for the visit;

2) refuses without good reason to comply with the individual action plan provided for in § 10 of the Labour Market Services and Benefits Act or the suitable work provided for in subsections 12 (3) and (4) of the same Act – as of the day following the date on which the circumstances which affect the right to receive the allowance arise.

(3) If the registration as unemployed and payment of work ability allowance of a person is terminated during the time the payment of his or her work ability allowance was suspended and the person is re-registered as unemployed, the person shall have the right to receive work ability allowance after the end of the period of suspension.

(4) The unemployment insurance fund shall make a decision on suspension of the payment of work ability allowance within five working days as of the date of becoming aware of the circumstances which constitute the basis for suspension.

(5) The unemployment insurance fund shall deliver a decision specified in subsection (4) of this section to a person with partial work ability by electronic means, unregistered letter or registered letter or make the decision available at the local department of the unemployment insurance fund, depending on which of the above options the applicant indicated in the application for work ability allowance, within five working days as of the date of making the decision.

§ 19. Termination of payment of work ability allowance

(1) Payment of the allowance to a person with partial work ability shall be terminated before the end of the period specified in subsections 16 (1)–(2) of this Act if:

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

1) the person's registration as unemployed is terminated – as of the day following the date of termination of the person's registration as unemployed on the basis of the Labour Market Services and Benefits Act; or

2) the person does not meet any of the conditions provided for in clauses 12 (1) 1)–6) and 8)–14) of this Act – as of the day following the date on which the circumstances which constitute the basis for termination arise.

(2) Payment of work ability allowance to a person with partial work ability shall not be terminated if, not later than after 14 calendar days, the person:

1) is registered as unemployed as of the date the person no longer meets the conditions provided for in clauses 12 (1) 1)–6) or 8)–14) of this Act;

2) meets at least one of the conditions provided for in clauses 12 (1) 1)–6) or 8)–14) of this Act as of the date the registration as unemployed is terminated; or

3) as of the date the person no longer meets a condition provided for in clauses 12 (1) 1)–6) or 8)–14) of this Act, meets the same or another condition provided for in the referred clauses.

(3) Payment of work ability allowance to a person with partial or no work ability shall be terminated before the end of the period specified in subsections 16 (1) and (2) of this Act if:

1) the person does not have the right to receive work ability allowance pursuant to subsections 12 (4)–(6) of this Act – as of the day on which the circumstances which constitute the basis for termination arise;

2) at the request of the person – as of the day following the submission of an application; or

3) upon his or her death – as of the day following the date of death;

4) the person does not comply with the requirements provided for in subsections 2 (1) and (2) of this Act – as of the date of ascertaining the non-compliance;

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

5) the work ability of the person is assessed during the period of duration of partial or no work ability, unless the application for work ability allowance was submitted within the term provided for in subsection 8 (3) of this Act – as of the date of the beginning of the period of reassessment of work ability and work ability allowance related thereto.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(4) The unemployment insurance fund shall make a decision on termination of the payment of allowance within 15 working days as of the date of becoming aware of the circumstances which constitute the basis for termination.

(5) The unemployment insurance fund shall deliver a decision specified in subsection (4) of this section by electronic means, unregistered letter or registered letter or make the decision available at the local department of the unemployment insurance fund, depending on which of the above options the applicant indicated in the application for work ability allowance, within five working days as of the date of making the decision.

(6) During proceedings in a matter, the unemployment insurance fund is required to establish the facts relevant to the matter and, if necessary, collect evidence on its own initiative for such purpose for the purposes of § 6 of the Administrative Procedure Act. The unemployment insurance fund shall not suspend or terminate the payment of work ability allowance before establishing the facts specified in subsections 18 (1) and (2) or 19 (1) of this Act.

§ 20. Reclamation of overpaid work ability allowance

(1) The unemployment insurance fund may reclaim from the recipient the work ability allowance granted and paid without legal basis.

(2) According to a written agreement entered into with the person, the person shall repay the allowance paid without legal basis at once or in parts according to a repayment profile or it shall be withheld from the allowance paid for the following calendar months at once or in parts.

(3) If a written agreement is not reached or the person fails to fulfil the agreement, the unemployment insurance fund has the right to withhold the overpaid amount from the work ability allowance at once or in parts. Upon withholding work ability allowance, at least 50 per cent of the amount payable shall be retained.

(4) On the basis of subsections (2) and (3) of this section, 50 per cent of the amount payable may be withheld from work ability allowance. With the written consent of the person, more than 50 per cent of the amount payable may be withheld.

(5) If payment of work ability allowance is terminated before repayment of the overpaid amount and the recipient of work ability allowance fails to repay the overpaid amount, a precept together with a warning shall be issued for reclamation of the overpaid amounts. Upon failure to comply with the precept within a term set out in the warning, the unemployment insurance fund has the right to issue a precept for compulsory enforcement pursuant to the procedure provided in the Code of Enforcement Procedure.

(6) The unemployment insurance fund shall deliver the precept together with a warning to the recipient of work ability allowance by electronic means, unregistered letter or registered letter or make the precept available at the local department of the unemployment insurance fund within five working days as of the date of issue of the precept and the warning.

§ 20¹. Reclamation of work ability allowance from responsible insurer

The unemployment insurance fund shall reclaim the work ability allowance paid to a person from an insurer engaging in motor third party liability insurance if the right of claim against the insurer engaging in motor third party liability insurance arises for the person who receives work ability allowance.
[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

§ 21. Notification obligation

A person is required to immediately notify the unemployment insurance fund of circumstances which affect his or her right to receive work ability allowance and the amount thereof, including settlement or commencement of employment in a foreign state and remuneration, unemployment insurance benefit, parental benefit, benefit for temporary incapacity for work, pension, and benefit, pension or allowance related to work ability received in a foreign state.

Chapter 4 Database of Work Ability Assessment and Work Ability Allowance, and Exchange of Information

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

§ 22. Database of work ability assessment and work ability allowance

(1) Database of work ability assessment and work ability allowance (hereinafter *database*) is a database within the state information system which is maintained for the assessment of work ability, payment of work ability allowance and payment of social tax for an employee with partial or no work ability in special cases.

(2) The chief processor of the database shall be the unemployment insurance fund.

(3) The following information shall be maintained and processed in the database:

- 1) information concerning the person applying for assessment of work ability and work ability allowance – the name, date of birth and sex or personal identification code, contact details, citizenship, expiry date of the residence permit or right of residence and the status of the person enjoying international protection or the asylum seeker;
- 2) information concerning the assessment of work ability;
- 3) information concerning work ability allowance;
- 4) information on keeping account of special cases of paying social tax.

(4) The database and its statutes shall be established by a regulation of the minister responsible for the area.
[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

§ 22¹. Exchange of information

(1) The Social Insurance Board has the right to receive the following information from the unemployment insurance fund for the performance of its functions provided by legislation:

- 1) for the determination of the degree of severity of a disability – the expert opinion provided upon assessment of work ability, information of the application for assessment of work ability and the decision concerning the assessment of work ability, and the information of the application for determination of the degree of severity of a disability submitted together with the application for assessment of work ability allowance;
- 2) for the grant and payment of state pension, prosecutors' work ability allowance and support on the basis of the Sport Act – the information of the decision concerning the assessment of work ability, granted and paid work ability allowance, and the allowance, pension or other monetary compensation paid by a foreign state for the same purpose as work ability allowance;
- 3) for the grant and payment of compensation of victim of crime – the expert opinion provided upon assessment of work ability, information of the decision concerning the assessment of work ability and information concerning granted and paid work ability allowance;
- 4) for the grant and payment of compensation for damage caused as a result of an accident at work or an occupational disease and for processing of data on the basis of an international agreement – the expert opinion provided upon assessment of work ability, information of the decision concerning the assessment of work ability and information concerning granted and paid work ability allowance;
- 5) for the provision of the social rehabilitation service – the expert opinion provided upon assessment of work ability and the information of the decision concerning the assessment of work ability;
- 6) for the provision of special care services – the expert opinion provided upon assessment of work ability, except for the information of the health information system specified in subsection 7 (4) of this Act contained in the opinion, and the information of the decision concerning the assessment of work ability;
- 7) for the payment for a technical aid – the expert opinion provided upon assessment of work ability, except for the information of the health information system specified in subsection 7 (4) of this Act contained in the opinion, and the information of the decision concerning the assessment of work ability;
- 8) for declaring of a decision concerning permanent incapacity for work invalid and termination of the payment of state pension – the information of the decision concerning the assessment of work ability;
- 9) for the payment of compensation to an employer for the part of annual holiday prescribed for an employed person by § 57 of the Employment Contracts Act which exceeds 28 calendar days – the information of the decision concerning the assessment of work ability;
- 10) for the grant and payment of family benefits and parental benefits to a person residing in another Member State of the European Union or the European Economic Area or in Switzerland – information concerning granted and paid work ability allowance;
- 11) for the establishment of a connection between the level of work ability provided for in specific Acts and injuries or illnesses occurred upon the performance of duties or other functions provided by law – the expert opinion provided upon assessment of work ability and the information of the decision concerning the assessment of work ability.

(2) The unemployment insurance fund has the right to receive the following information from the Social Insurance Board for the performance of its functions provided by legislation:

- 1) for the grant and payment of work ability allowance – the information concerning the grant and payment of state pension, prosecutors' work ability allowance, parental benefit, the allowance, pension or other monetary compensation paid by a foreign state for the same purpose as work ability allowance and information concerning the placing of the person in a social welfare institution without his or her consent to receive the 24-hour special care service and information concerning the degree of severity of the disability of the person under curatorship;
- 2) for the home delivery of work ability allowance – the information concerning the degree of severity of disability;
- 3) for the assessment of work ability – the information concerning permanent incapacity for work and category of disability determined for an unspecified term and the information of the application for assessment of work ability submitted together with the application for determination of the degree of severity of disability;
- 4) for the determination of the amount of work ability allowance – the information concerning permanent incapacity for work, date of re-examination and amount of the pension for incapacity for work paid.

(3) In the cases provided by law, health care providers, persons who have completed medical training or other persons have the right to process the information of the health information system specified in subsection 7 (4) of this Act contained in the expert opinion provided upon the assessment of work ability.
[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

Chapter 5 Settlement of Disputes

§ 23. Jurisdiction over disputes

A person who finds that his or her rights are violated or his or her freedoms are restricted in the course of assessment of work ability or grant and payment of work ability allowance may file a challenge with the unemployment insurance fund.

Chapter 6 Administrative Supervision

§ 24. Administrative supervisory authority

The Ministry of Social Affairs (hereinafter *administrative supervisory authority*) shall exercise administrative supervision over the performance of the obligations of the unemployment insurance fund provided for in this Act. The administrative supervisory authority has the right to involve experts in the exercise of administrative supervision.

§ 25. Competence of administrative supervisory authority

(1) The administrative supervisory authority has the right to:

- 1) examine the evidence and information in the possession of the unemployment insurance fund, which enable to ascertain the circumstances important for the performance of the duties of the administrative supervisory authority, and to obtain copies or extracts from the documents;
- 2) issue precepts to the unemployment insurance fund for the termination of violations of the requirements provided by this Act or legislation established on the basis thereof, for prevention of further violations and elimination of the consequences of violations.

(2) In the performance of its duties, the administrative supervisory authority is required to be impartial in its assessments and to base its decisions on legislation and reliable information.

(3) Upon failure to comply with a precept, the administrative supervisory authority may impose a penalty payment pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act. The upper limit for a penalty payment is 640 euros.

§ 26. Precept

(1) A precept shall contain:

- 1) the grounds for issuing the precept together with a reference to the corresponding provision of legislation;
- 2) the date of issue of the precept;
- 3) the term for compliance with the precept;
- 4) the name, position and signature of the official exercising administrative supervision;
- 5) the possibilities, terms and procedure for contestation of the precept.

(2) The administrative supervisory authority shall send the precept to the unemployment insurance fund within ten working days as of the issue of the precept.

(3) If the unemployment insurance fund does not agree with the precept, the unemployment insurance fund has the right to file a challenge with the minister responsible for the area within one month after the receipt of the precept.

Chapter 7 Implementing Provisions

§ 27. Transitional provisions

(1) This Act shall apply from 1 July 2016 until 31 December 2016 to a person who has not been declared permanently incapacitated for work on the basis of the State Pension Insurance Act after 1 July 2010 or whose category of disability has not been determined for an unspecified term on the basis of the State Allowances Act.
[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(2) A person who has been declared permanently incapacitated for work for a period of at least two years on the basis of the State Pension Insurance Act by the last examination for establishing permanent incapacity for work and who submits an application for assessment of work ability on the basis of this Act at the latest on the date of re-examination set out in the results of the examination for establishment of permanent incapacity for work and who is established to have partial or no work ability or a person whose category of disability determined for an unspecified term on the basis of the State Allowances Act has been deemed to correspond to the permanent incapacity for work determined until the pensionable age with a 40 to 100 per cent loss of capacity for work pursuant to § 58 of the State Pension Insurance Act shall be paid work ability allowance in an amount equal to the pension for incapacity for work last paid to the person on the basis of the State Pension Insurance Act per calendar day if the work ability allowance paid on the basis of this Act per calendar day is less. The amount of pension for incapacity for work paid on the basis of the State Pension Insurance Act per calendar day is calculated by dividing the total amount of the pension for incapacity for work paid for one month by 30.

(3) The provisions of this Act concerning work ability allowance apply to work ability allowance paid in the amount provided for in subsection (2) of this section.

(4) Work ability allowance paid in the amount provided for in subsection (2) of this section shall not be indexed.

(5) If the unemployment insurance fund establishes also by a re-assessment that a person specified in subsection (2) of this section has partial or no work ability, subsections (2)–(4) of this section shall apply to the amount of work ability allowance paid to the person.

(6) If the work ability of a person has been assessed on the basis of this Act and the person submits an application for work ability allowance during the period of duration of permanent incapacity for work established by the Social Insurance Board, the work ability allowance shall be granted as of the day following the date of extinguishment of the right to receive pension for incapacity for work or national pension paid on the basis of incapacity for work.

(7) The unemployment insurance fund shall make an advance payment of work ability allowance to a person specified in subsection (6) of this section who has been granted work ability allowance at the latest by the tenth day of the month following the calendar month of making the decision concerning the assessment of work ability in order to ensure an income for the person upon the transfer from the payment of pension for incapacity for work to the payment of work ability allowance, except in the case where the right of the person to receive a pension for incapacity for work or a national pension on the basis of permanent incapacity for work extinguished before making the decision concerning the assessment of work ability.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(8) The amount of the work ability allowance specified in subsection (7) of this section shall be equal to the work ability allowance granted to the person for one calendar day multiplied by the number of the calendar days of the month of payment thereof.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(9) Upon payment of the work ability allowance specified in subsection (7) of this section, the provisions of subsection 12 (1) and subsections 13 (3) and (5)–(7) of this Act shall not apply.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

§ 28. –§ 72.The provisions on amendment of other Acts omitted from this translation

§ 73. Support of persons with reduced work ability in labour market

The Government of the Republic shall organise the planning of a policy for the employment of at least 1000 persons with reduced work ability in the general government sector by the year 2020 pursuant to the procedure for preparation and implementation of development documents provided for in legislation.

§ 74. Entry into force of Act

(1) This Act enters into force on 1 July 2016.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(2) Clause 49 4) and clauses 55 6)–8) and 15) of this Act enter into force on 1 January 2015.

(3) Clauses 46 1)–4) and 6), clause 55 14), clauses 57 1)–5), 8), 9), 11)–22), 24)–32) and 34) and § 58 of this Act enter into force on 1 January 2017.

[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(4) Clause 57 35) of this Act enters into force on 1 January 2017.

(5) Clause 48 3) of this Act enters into force on 1 July 2021.
[RT I, 17.12.2015, 1 - entry into force 20.12.2015]

(6) Clauses 66 2) and 3) of this Act enter into force on 1 January 2016.
[RT I, 17.12.2015, 1 - entry into force 20.12.2015]