

NB: Unofficial translation
Ministry of Employment and the Economy, Finland
May 2010

Act on Cooperation Ombudsman (216/2010)

Section 1 - Cooperation ombudsman

The Cooperation ombudsman works in conjunction with the Ministry of Employment and the Economy for the purpose of supervising compliance with the Act on Co-operation within Undertakings (334/2007), the Act on Co-operation within Finnish and Community-wide Groups of Undertakings (335/2007), the Act on Personnel Representation in the Administration of Undertakings (725/1990), the Act on Employee Involvement in European Companies and in European Cooperative Societies (758/2004) and the Act on Personnel Funds (814/1989).

A cooperation ombudsman's required qualification is to have a higher university degree in law and be acquainted with the duties required for serving in this public office. The cooperation ombudsman is appointed by the Government for a fixed period, at a maximum of five years at a time.

The cooperation ombudsman acts independently in performing supervisory duties.

Section 2 - Duties

The cooperation ombudsman's duties are as follows:

- 1) to supervise compliance with the acts mentioned in section 1;
- 2) to promote and improve cooperation between employers and employees, and the implementation of other personnel involvement systems, through various initiatives and instructions;
- 3) to monitor the attainment of the objectives of the Acts mentioned in section 1;
- 4) to advise on applying the Acts mentioned in section 1;
- 5) pursuant to section 8 of the Act on the Labour Council and Derogation Permits Concerning Labour Protection (400/2004), to request an opinion on whether the Act on Co-operation within Undertakings or the Act on Co-operation within Finnish and Community-wide Groups of Undertakings should be applied to an undertaking or group of undertakings;
- 6) to supervise that the activities and administration of personnel funds comply with the Act on Personnel Funds and fund bylaws;
- 7) to maintain a personnel fund register and, for that purpose, to receive and examine notifications and other documents pertaining to funds.

Section 3 - Office

The cooperation ombudsman has an office, with the necessary number of officials acting as referendaries, and other staff.

Section 4 - Obligation to provide information to the cooperation ombudsman

Confidentiality obligations notwithstanding, for the purpose of carrying out supervision and to the extent so required, the cooperation ombudsman has the right to obtain from the employer, free of charge and within a moderate time limit, the information and documents necessary for supervising legal compliance.

The cooperation ombudsman may impose a conditional fine on the employer in order to encourage compliance with the obligation as referred to in subsection 1. The provisions of the Act on Conditional Fines (1113/1990) shall apply to the imposition of the conditional fine.

Section 5 - Right to carry out an inspection

The cooperation ombudsman, or an official assigned by the ombudsman, has the right to carry out an inspection of an enterprise, to the extent necessary for the purpose of executing supervisory duties. The inspection shall be carried out in such a manner as to avoid unnecessary harm or costs. Insofar as possible, the employer and personnel representatives concerned shall be informed in advance of the inspection.

The inspection may not be carried out on premises used for the purposes of permanent residence.

Section 6 - Issuance of an improvement notice

If it becomes apparent that the employer is violating this Act or any of the acts referred to in section 1, or the provisions or regulations issued by virtue thereof, or continues or repeats an illegitimate procedure, the cooperation ombudsman shall issue a written improvement notice to remedy the illegitimate procedure or prevent its recurrence.

The improvement notice shall specify the applicable provisions and regulations and the defects that have been observed as to compliance with them. Moreover, the improvement notice shall specify a deadline, if necessary, by which the employer must make the situation comply with the provisions and regulations.

The cooperation ombudsman must inform the personnel representatives concerned of the improvement notice. If there are no elected personnel representatives for the workplace in question, the employer must inform the workplace of the improvement notice in the appropriate manner.

Section 7 - Taking the matter to court

If there are probable grounds for suspecting that an act specified as punishable under section 67 of the Act on Co-operation within Undertakings, section 46 of the Act on Co-operation within Finnish and Community-wide Groups of Undertakings, section 39 of the Act on Employee Involvement in European Companies and in European Cooperative Societies or section 4 of Chapter 47 of the Penal Code (39/1889), has been committed, the cooperation ombudsman shall notify the police of the act for preliminary investigation. Such a notification can be waived if the act can be considered minor in view of the circumstances and the public interest does not require a notification.

The cooperation ombudsman shall have an opportunity to be heard in preliminary investigation of an act as referred to in subsection 1 above. The public prosecutor shall provide the cooperation ombudsman with an opportunity to give a statement before the consideration of charges is completed. When the case is handled in court, the cooperation ombudsman has the right to be present and speak.

Section 8 - Conditional fine

The cooperation ombudsman may require that the court oblige the employer or enterprise to meet their obligations within a time limit and that it impose a conditional fine in order to encourage compliance with the obligation in question, if it is apparent that

- 1) the plan regarding personnel and training objectives, as referred to in section 16 of the Act on Co-operation within Undertakings, cannot be considered in the cooperation negotiations as referred to in Chapter 4 of said Act;

- 2) the undertaking or employer has failed to comply with the obligations as referred to in the Act on Personnel Representation in the Administration of Undertakings;
- 3) the participating company or employer as referred to in section 3 of the Act on Employee Involvement in European Companies and in European Cooperative Societies has failed to comply with the obligations laid down in said Act.

Section 9 - Special provisions concerning a personnel fund

The cooperation ombudsman has the right to check the accounting and administration of a personnel fund, and inspect fund activities in other respects.

If the cooperation ombudsman notices that the personnel fund has acted contrary to the Act on Personnel Funds or fund bylaws, or neglected the obligations as specified by law, the cooperation ombudsman may order the fund's Board to take actions to rectify the situation, or may forbid the execution of an erroneous decision.

Upon the request of the cooperation ombudsman, a court of law may impose a conditional fine on members of the fund's Board in order to encourage compliance with an order or prohibition as referred to in subsection 2.

Section 10 - Concealment of information on informants

When the cooperation ombudsman has received a notice of a suspected violation of provisions and regulations falling under the ombudsman's supervision, the identity of the informant, and the fact that the enforcement action has been carried out due to a notification, shall be concealed. However, the informant's identity may be disclosed, if it is necessary for enforcement purposes and the informant has given his/her consent thereto.

Information as referred to in subsection 1 above may, without the informant's approval, be given to police authority in order to solve a crime.

Section 11 - Entry into force

This Act enters into force on 1 July 2010.

Measures necessary for the implementation of this Act may be undertaken prior to the Act's entry into force.