

NB: Unofficial translation
Ministry of Employment and the Economy, Finland
March 2011

**Act on the Labour Council and Derogation Permits
Concerning Labour Protection (400/2004)**
(as amended by several acts, including No. 223/2010)

Chapter 1 — Jurisdiction and organization of the Labour Council

Section 1 — (1527/2009) Status of the Labour Council

The Labour Council is an independent specialized authority subject to the Ministry of Employment and the Economy, which issues opinions on the application and interpretation of acts coming within the sphere of labour legislation referred to in section 7. The Labour Council also processes and resolves appeals against decisions concerning derogation permit matters issued by the Regional State Administrative Agency as referred to in section 9.

Section 2 — Composition

The Labour Council shall comprise a part-time chairman and at least eight part-time members, each of whom, with the exception of the chairman, shall have two personal deputies. The members shall be familiar with labour legislation and employment conditions.

The chairman and one member and that member's deputies shall be qualified for judge's office and be persons who cannot be considered to represent either employer or employee interests. If the chairman is prevented from attending to his/her duties the above-mentioned lawyer member or his/her deputies shall chair the Labour Council. One other member and his/her deputies shall hold a suitable degree and be persons familiar specifically with labour protection issues who likewise cannot be considered to represent either employer or employee interests. The rest of the Labour Council shall comprise equal numbers of persons representing employer and employee interests and be persons familiar with employment relationships and public sector service relationships.

All members of the Labour Council and their deputies shall be at least twenty years of age. The Labour Council shall have one post for a secretary. The secretary shall be qualified for judge's office and be a person familiar with labour legislation.

Section 3 — Appointment

The Government shall appoint the members of the Labour Council and their deputies for three years at a time. One of the members shall be appointed by the Government as chairman of the Labour Council. Before the members familiar with labour protection issues are appointed, the Ministry of Social Affairs and Health shall be granted an opportunity to state its opinion. Members and their deputies representing employer and employee interests shall be appointed on the basis of proposals by the central organizations that best represent employer's associations and central organizations that best represent employees. In order to be considered, the above-mentioned proposals of the central organizations shall include nominations of twice as many candidates as there are members to be appointed. A declaration demonstrating the willingness of the persons to become members shall be attached to the proposals. If, however, the organizations do not submit the appropriate proposals within the stipulated time, the members and their deputies shall be appointed by the Government.

Resignation of a member and deputy member shall be granted by the Government. At the same time, the Government shall appoint a new member or deputy member for the remaining term in compliance with the procedure laid down above in this section. The Government can only release a member of the Labour Council from his/her duties if he/she no longer fulfils the qualifications laid down in section 2, subsection 2 or if he/she requests resignation him/herself. If a member or deputy member of the Labour Council dies before the end of his/her term, the Government shall appoint a new member or deputy member for the remainder of the term in compliance with the procedure laid down in this section.

Section 4 — Status of the members of the Labour Council

The members and deputy members of the Labour Council shall operate subject to public liability

Section 5 — Quorum and decision-making

The Labour Council shall be convened by the chairman. The Labour Council shall be quorate when the chairman or his/her deputy and at least four other members or deputy members equally representing employer and employee interests are present.

The Labour Council shall process an appeal against a decision concerning a derogation permit as referred to in section 9 in a special composition comprising the chairman or his/her deputy, a member qualified for judge's office or his/her deputy, a person familiar specifically with labour protection issues or his/her deputy and one member representing employer interests and one member representing employee interests or their respective deputies.

The Labour Council shall take a decision on the submission. The Labour Council's secretary, chairman or his/her deputy shall act as referendary. If differences of opinion arise when resolving a matter, the issue will be decided by taking a vote, following the same procedure as in a court with a panel of judges.

The chairman or, in his absence, his/her deputy can alone resolve an appeal against a decision concerning a derogation permit as referred to in section 9 if the matter is urgent or if the decision can be based on one issued earlier by the Labour Council on a similar matter. The chairman shall without delay place his/her decision before the Labour Council for scrutiny. The decision of the chairman shall be complied with until the Labour Council resolves the matter. Pursuant to this subsection, the decision of the chairman cannot be appealed separately.

Section 6 — Procedures at the Labour Council

The Administrative Procedure Act (434/2003) shall be observed in procedures at the Labour Council, unless otherwise laid down by this Act.

Chapter 2 — Labour Council opinions

Section 7 — Issuing an opinion

It is the function of the Labour Council to issue opinions at request on the application and interpretation of the Working Hours Act (605/1996), the Annual Holidays Act (272/1973), the Occupational Safety and Health Act (738/2002), the Young Workers' Act (998/1993) and the Act on the Employment of Household Workers (951/1977) and on whether the Act on Co-operation within Undertakings (334/2007) or the Act on Co-operation within Finnish and Community-wide Groups of Undertakings (335/2007) applies to a particular company. (336/2007)

The request for opinion shall be submitted in writing.

Section 8 — (1527/2009) Applicant for an opinion and the application procedure

A Labour Council opinion can be requested by:

- 1) a court of law;
 - 2) the Regional State Administrative Agency
 - 3) a central organization for employers or employees;
 - 4) a ministry dealing with the State's labour market policy;
 - 5) the Church Employers' Delegation for Collective Agreements;
 - 6) the Commission for Local Authority Employers; or
 - 7) the Provincial Government of Åland, or the municipal delegation for collective agreements of the Province of Åland,
 - 8) the Cooperation Ombudsman, when the matter concerns the question of whether a company or corporation is governed by the Act on Co-operation within Undertakings or by the Act on Co-operation within Finnish and Community-wide Groups of Undertakings.
- (223/2010)

Chapter 3 — Certain labour protection derogation permits and respective appellate issues

Section 9 — (1527/2009) Derogation permit issues of Regional State Administrative Agency

The Regional State Administrative Agency can grant exceptions on request pursuant to the following provisions:

- 1) Section 14, Subsections 1 and 3 of the Working Hours Act;
- 2) Section 26, Subsection 1, Paragraph 14 of the Working Hours Act;
- 3) Section 27, subsection 1 of the Working Hours Act;
- 4) Section 36, subsection 1 of the Working Hours Act;
- 5) Section 15 of the Young Workers' Act.

Section 10 — (1527/2009) Derogation permit issue procedures in the Regional State Administrative Agency

Before the office of the Regional State Administrative Agency takes a decision referred to in section 9, the employer must grant an opportunity for an oral or written hearing of the appropriate shop steward elected in accordance with a binding collective agreement under the Collective Agreements Act (436/1946), or of the elected representative referred to in chapter 13, section 3 of the Employment Contracts Act (55/2001). If the workplace does not have a shop steward or elected representative, the opportunity for a hearing shall be granted to the occupational safety delegate, and if this does not exist either, the opportunity for a hearing shall be granted to each employee that the decision concerns.

If a final decision on a derogation permit matter cannot be resolved in the Regional State Administrative Agency and it is a case of extending a valid derogation permit, a temporary decision can be issued to remain valid until a final decision can be taken on the matter, at the latest.

A derogation permit that has been granted can be cancelled if the decision to grant the permit was based on incorrect information concerning facts with a bearing on the matter, or if circumstances have changed materially since the decision was issued. When a derogation permit is cancelled, the day on which the permit ceases to be valid shall also be specified. The decision shall be observed despite appeal.

Section 11 — (1527/2009) Appeal against a decision concerning a derogation permit matter issued by the Regional State Administrative Agency

Correction of a decision regarding a derogation permit matter issued by the Regional State Administrative Agency can be claimed in writing from the Labour Council. The decision is unappealable. The period of redress shall be 30 days, counted in the case of an applicant for a derogation permit from the date on which he/she received notice of the decision, and in the case of other applicants from the date on which the decision or a copy of it was made available for perusal at the workplace. The claim for correction shall be addressed to the Labour Council.

The following have the right to claim for correction:

- 1) the derogation permit applicant;
- 2) those employee representatives or employees referred to in section 10, subsection 1, who were heard or should have been heard before a decision taken by the labour protection office in the Regional State Administrative Agency; and
- 3) those parties whose rights, obligations or interests are directly affected by the decision of the labour protection office in the Regional State Administrative Agency.

Section 12 — Processing of a claim for correction at the Labour Council

A claim for correction shall be processed at the Labour Council as urgent.

An oral procedure can include the hearing of parties, the shop steward or elected representative referred to in section 10, subsection 1, an occupational safety delegate and experts as well as obtaining other clarification. The procedure can be restricted to a particular issue, to clarifying the views of parties or the conditions at the work place or in some other corresponding way.

Section 13 — Appeals against a decision concerning an appeal issued by the Labour Council

Appeals against a decision concerning a claim for correction issued by the Labour Council shall be addressed to the Labour Court in writing observing the law laid down here and the Act on the Labour Court (646/1974). The appeal shall be submitted to the Labour Council, which shall submit the appeal documents and its statement concerning the appeal to the Labour Court. Otherwise, what is provided in section 11 concerning the appeal period and rights to appeal will be observed.

Chapter 4 — Miscellaneous provisions

Section 14 — Proposals for developing labour legislation

The Labour Council may make proposals it sees fit in order to develop labour legislation coming within its sphere.

Section 15 — Executive assistance

In order to fulfil its duties in compliance with this Act, the Labour Council shall have the right to request executive assistance from the police and other authorities.

Section 16 — (223/2010) Compensation

Compensation to members of the Labour Council is confirmed by the Ministry of Employment and the Economy.

Section 17 — (1527/2009) Documents and decisions concerning derogation permits issues of the Labour Council

Statements and decisions of the Labour Council and decisions concerning derogation permits issued by the Regional State Administrative Agency shall be provided to those concerned without charge.

Section 18 — Working order

The Labour Council shall approve a working order for itself.

Section 19 — Statutory power

More detailed provisions on submission of the issue, duties of the chairman and secretary, filling the vacancy of the secretary, signing decisions and statements and the contents of the working order of the Labour Council shall be issued by Government decree.

Section 20 — Entry into force

This Act enters into force on 1 June, 2004.

This Act repeals the Act on the Labour Council and Special Permits Concerning Occupational Safety and Health (608/1946) enacted on August 8, 1946, and subsequent amendments.

Measures necessary for the implementation of this Act may be taken before its entry into force.

Section 21 — Transitional provisions

References in other acts or decrees to the Act on the Labour Council and Special Permits Concerning Occupational Safety and Health which was in force when this Act enters into force shall pertain to this Act instead.

When this Act enters into force, the members of the Labour Council and deputies shall continue in their duties for the remainder of the term.

At the entry into force of this Act, matters pending at the Labour Council shall be resolved in accordance with the provisions in force, and matters pending at an exemption section of the Labour Protection Office of the Occupational Safety and Health Inspectorate shall be processed in accordance with this Act as applicable.