

Labor Rules, 2018 (2075) - Major Highlights

July 01, 2018

The Government of Nepal (“GoN”) has framed the Labor Rules, 2075 (2018) (“**Labor Rules**”) by exercising the power conferred to it under Section 184 of the Labor Act, 2074 (2017) (“**Labor Act**”) which was passed by the Council of Ministers on May 28, 2018 (Jestha 14, 2075). The Labor Rule has been published in Nepal Gazette on June 22, 2018 (Asar 08, 2018) with immediate effect and has repealed the then Labor Rules, 1994 (2050) (“**Previous Labor Rules**”). Major highlights of the Labor Rules have been briefly described in the following paragraphs.

1. On Hiring & Employment Contract

1.1. Criteria for Determination of Regular Employment

- 1.1.1. The Labor Rules has set out the criteria for determining if any dispute arises on whether or not an employment is regular employment. Rule 3 of the Labor Rules provides for such criteria.
- 1.1.2. Pursuant to the Rule 3 the issue as to whether or not the employment is of regular nature is determined on the basis of whether or not (a) the employment requires continuity upon expiry of the term and, if it is required to continue whether or not another Employee is immediately required, and (b) the Employee has worked on a regular basis for a period more than one year in the case if no term of employment has been specified.

1.2. Matters to be covered in the Employment Contract

- 1.2.1. Section 11 (3) of the Labor Act provides for the employment contract and the matters to be covered under the employment contract. Section 11 (3) of the Labor Act requires the employment contract to include (a) remuneration, (b) benefits, and (c) terms of the employments of the Employee and such other matters as prescribed.
- 1.2.2. The Labor Rules has specified the additional matters to be covered under the Employment Contract. Rule 4 of the Labor Rules requires the Employment Contract to cover (a) nature of employment, (b) primary work of the Employee and his/her position, (c) statement that the Employees' Service Rule will be integral part, (d) date, time, place of contract and its effective date, (e) Other important terms and conditions related to the work or service of the Employee.

2. Lay Off

2.1. Notice to be provided for lay off

- 2.1.1. The Labor Rules requires the Employer to provide notice to the Employees for lay off. The Notice should cover (a) reason of lay off and its duration, (b) details of Employee such as name, position, branch or division and job description, (c) information that mentions payment of half remuneration during lay off, (d) other matters as required by the Employer. The Labor Rules also requires the Employer to lay off the Employee on rotation if the layoff is partially enforced. The notice should also cover the lay off by rotation in such situation.
- 2.1.2. The Labor Rules also requires the Employer to notify to the outsourcing company if the Employee availed by outsourcing company is laid off. The Employee availed by the outsourcing company is entitled to the remuneration (half remuneration) and benefit from their Employer.

2.2. Work during lay off

- 2.2.1. The laid off Employees may be engaged in the work of any department or unit within the entity or another entity under such entity. However, consent of the Employee is required to put the Employee on work (a) in a position lower than his current position, or (b) paying less salary benefits.
- 2.2.2. The Labor Rules also allows the entity to put its Employees on work on the other day or in other time should the work of the entity be halted on any day or time due to any reason. This replacing work is not applicable where the work is ceased due to the reason subject to lay off.

3. Hiring Foreign Nationals

3.1. Document requirements to hire foreign nationals

- 3.1.1. The Labor Rules specifies the documents requirement for work permit. The application for work permit may be submitted by the Employer or by the foreign national in individual capacity. Separate document requirement is prescribed for work permit initiated by the Employer and the foreign national in individual capacity. The Labor Rules also prescribes the document requirements for work permit renewal. The requirement of the document and details is as described in the table.

S.N.	Application by Employer	Application by Foreign National
1.	Original copy of advertisement* published in the	Notarized copy of passport

	daily newspaper which should cover (a) position, number of Employees required by the entity and main job, (b) minimum educational background, experience and training; (c) selection method; (d) deadline and place to submit an application; (e) other required documents to be attached with the application.	(should be valid up to minimum six months)
2	Notarized copy of passport (should be valid up to minimum six months)	Notarized copy of the certificate of academic qualification, training, experience, if required for the work
3	Bio-data	Employment offer letter given by the Employer to the Employee
4	Employer's tax clearance certificate	A copy of consent of Ministry of Home Affairs, if required
5	If job application submitted by Nepalese citizen, short brief on their qualification, experience and selection process.	--
6	Action plan to replace the foreign nationals by Nepali national.	--
7	A copy of consent by the Ministry of Home Affairs, if required	--
For Work Permit Renewals		
1.	Performance appraisal of the foreign national	
2.	Copy of consent from the Ministry of Home Affairs, if required	
3.	Progress report of action plan to replace the foreign national	
4.	Receipt of payment of applicable fee	
5.	Other documents and details as deemed necessary by the Department of Labor	

* *Copy of vacancy advertisement published in the daily newspaper should be uploaded in the Job Portal of the Ministry of Labor.*

3.1.2. Application for Work Permit: The Employer should submit the application for work permit before the Department of Labor. The Labor Rules provides the flexibility to submit the application by the foreign national in individual capacity. The foreign nationals may submit an application to (a) Department of Labor, or (b) Nepalese Embassy or Nepalese Diplomatic Agency located in the country of such foreign nationals or having competence to the country of the foreign nationals.

3.2. Work Permit fees

3.2.1. Labor Rules has prescribed the fees for work permit. The fee is prescribed on the basis of the length of the work permit. The fee for work permit prescribed by the Labor Rules is as per the table below.

S. N	Duration	Fees	Remarks
1	Up to 6 months	NRs. 15,000/-	The amount should be paid in convertible foreign currency in case the application is submitted to Nepalese Embassy or Diplomatic Agency
2	More than 6 months	NRs. 20,000/-	

3.2.2. The work permit fee is not required to be paid for certain foreign nationals. Pursuant to the Labor Rules the Work Permit fee is not required to be paid if (a) the Employer has diplomatic immunity, or (b) the work permit fee is waived under the agreement entered into with the GoN.

3.3. Maximum Numbers/Ceiling:

3.3.1. The Labor Rules specifies the maximum number of foreign nationals that can be hired. The maximum number/ceiling is as follows:

- Ceiling to provide work permit by way of Recording- The maximum number of foreign nationals that may be hired under this category is as provided in the agreement entered into with the GoN. If there is no agreement as such then three (3) foreign nationals including CEO can be hired. The work permit by way of recording is granted to the entity having foreign investment or running from foreign aid as provided in Section 24 (1) of the Labor Act.
- Total Ceiling: The Labor Rules limits the number of foreign nationals that can be hired in the entity. The number of foreign nationals should not exceed 5% of the total Employees of the entity. There is no clarity as to whether or not the total ceiling applies to the foreign nationals to whom the work permit is issued by way of recording.

3.3.2. The Labor Rules however, provides specific exception to the ceiling for certain Employers. The ceiling does not apply to hire foreign nationals (a) by the Employer having diplomatic immunity or (b) under the agreement entered into with the GoN.

3.4. Validity Period of Work Permit and Extension

- 3.4.1. The general rule of validity period of work permit is that the work permit is issued not exceeding the term specified in the consent letter issued by the Ministry of Home Affairs.
- 3.4.2. The maximum period of Work permit is for five (5) years for the expert in technical field and for three (3) years for others.
- 3.4.3. The Labor Rules also provides conditions for the extension of validity period of the work permit. The validity period of the work permit is extended in very limited situation. As provided in the Labor Rules, the validity period of the work permit may be extended for further 2 (two) years by the Department of Labor with the approval of the Ministry of Labor in case of foreign nationals who has made notable contribution (a) in fields like country's educational, social, scientific, technical, NGO, or (b) for national and public welfare in special circumstances. The Labor Rules does not define special circumstance for this purpose. The Labor Rules requires foreign nationals to renew the work permit prior to 30 days of its expiry.

3.5. Conditions for cancellation of work permit:

- 3.5.1. The Labor Rules has laid down the conditions on which work permit of foreign nationals. Rule 14 provides for such cancellation criteria.
- 3.5.2. The work permit may be cancelled where (a) the consent given by the Ministry of Home Affairs is cancelled, (b) the Employer or Employee subject to work permit fails to pay tax, revenue, fees or any amounts payable to the Government of Nepal, (c) the foreign national is convicted from the court for criminal offence, (d) it is inappropriate to allow foreign national to work in Nepal in view of national security, (e) the foreign national fails to meet his/her obligations as per the prevailing laws, or acts against the code or public morality etc.

4. Work Hours and Deduction of Salary

4.1. Flexibility to fix work hours

- 4.1.1. Rule 16 of the Labor Rules provides flexibility to the Employer to determine the work hours. The Employer can determine the work hours on the basis of the nature of the

work of the entity. The notice of the work hours however, should be given to all the Employees.

4.1.2. The Labor Rules also provides that the Employer may put the Employee to work on rotation based on nature of its work. It seems that the Labor Rules envisages to put the Employee in different shifts.

4.2. Additional rest period for certain female Employees

4.2.1. The Labor Rules requires the Employer to provide additional rest period for certain female Employees. The Employer should provide half an hour additional time for female Employees (a) who has baby below 3 years for breast feeding, and (b) who is pregnant.

4.2.2. The rest period can be taken at once or at short intervals.

4.3. Birth Registration Certificate is required for maternity leave

4.3.1. The female Employee is required to submit the birth registration certificate to the Employer within three (3) months from the date of expiry of the maternity leave. The Employee may also submit the birth certificate issued by the concerned hospital or health post in absence of the birth registration certificate.

4.3.2. In the case of still birth, the Employee should submit the birth certificate and in case of miscarriage, medical report issued by the hospital or the health post should be submitted confirming miscarriage.

4.3.3. Rule 18 of the Labor Rules indicate that the Employer may disapprove the maternity leave in absence of such documents.

4.4. Payments and Salary Deductions

4.4.1. The Labor Rules specifically require the Employer to pay the salary to the Employee for weekly off. The Labor Act also authorizes the Ministry of Labor to specify the Employer who should pay the salary to the Employee through banking channel.

4.4.2. The Labor Rules also provides rate for deduction of salary of the Employees. The rate varies on the basis of nature or purpose of deductions. The Labor Rules also defines the amount of salary (base salary) on which the rate is applicable. The rate of deduction applies to such salary which remains after deduction of (a) fee for trade union, (b) collective bargaining fee, and (c) amount to be deposited with the Citizen Investment

Trust. There is no clarity on the deduction (b) and (c) above and their nature and purpose.

5. Provident Fund and Gratuity

5.1. The Rule of Calculation of Gratuity

5.1.1. The Labor Rules has clarified the rule of calculation of gratuity. The Labor Rules clarifies that the gratuity of the Employee who has been working from the past should be calculated on the basis of the laws applicable in the respective period.

5.1.2. For example, pursuant to Rule 23 (3) of the Labor Rules the gratuity of the Employee should be calculated as follows:

- for the period prior to September 04, 2017 (2074-05-19)- as per Rule 23 of Previous Labor Rules (on slab basis), and
- from September 04, 2017 onwards -as per Section 53 of the Labor Act (@ 8.33% of basic pay per month).

5.1.3. The Labor Rules also defines the salary based on which gratuity of the Employee should be calculated for the period prior to Sept. 04, 2017. Rule 23 (3) of the Labor Rules provides that the gratuity of the Employee (prior to Sept.04, 2017) should be calculated on the basis of the salary effective on the day of calculation. The calculation of gratuity is required while transferring the amount of gratuity to the Social Security Fund. However, the Labor Rules is not clear whether the re-calculation is required for the Employee whose gratuity has been allocated and deposited in separate account as required under Previous Labor Rules .

5.2. Excess Gratuity

5.2.1. The Labor Rules also deals with the excess gratuity provided to the Employees under the Previous Labor Rules. The Labor Rules requires the Employer to transfer the gratuity to the Social Security Fund at such rate specified in the Labor Act.

5.2.2. The Employer who has been providing the gratuity in higher rate is required to make necessary arrangement so that the Employee will get the excess amount of gratuity. However, the Labor Rules does not provide any rules or guidance as to how the excess

gratuity should be managed by the Employer. In absence of the clear rule or guidance the management of the excess gratuity may be as agreed with the Employees.

5.3. Time for Transfer of Provident Fund and Gratuity to Social Security Fund

- 5.3.1. The Labor Rules requires the Employer to transfer the amount of provident fund and gratuity of the Employees to Social Security Fund ("SSF").
- 5.3.2. The obligation to transfer the provident and gratuity to SSF is subject to enlisting requirement of the Employer. If the Employer is required to be enlisted with the SSF as per the Social Security Act, 2017 (2074) (under the Gazette Notice) then the obligation to transfer the fund arises.
- 5.3.3. **The time for transfer of the amount of Provident Fund and gratuity to SSF varies. The amount of provident fund should be transferred within 6 (six) months from the date of the Employer being enlisted with the SSF. The amount should be transferred in a single payment or maximum in three (3) installments.**
- 5.3.4. The amount of gratuity may be transferred within two (2) years from the date of enlisting of the Employer with the SSF. The amount may be transferred in single payment or maximum in four (4) installments.

5.4. **Deposit of provident fund and gratuity in transitional period**

- 5.4.1. The Labor Rules also deals with as to how the amount of provident fund and gratuity should be deposited for transitional period i.e. until the SSF is established.
- 5.4.2. The Labor Rules requires the Employer to deposit the amount of provident fund in the Employee's Provident Fund, approved retirement fund or in a separate account maintained by the Employer itself.
- 5.4.3. The amount of gratuity can also be deposited in the same manner as that of the provident fund. However, the Labor Rules includes the Citizen's Investment Trust as one of the entity in which the gratuity may be deposited which has not been specifically mentioned for the provident fund.

5.5. **Payment of Gratuity and Provident Fund**

- 5.5.1. The Labor Rules envisages the payment of the provident fund and gratuity in certain conditions to the Employee or his/her legal heir.

- 5.5.2. The provident fund and gratuity may be paid if (a) the service of the Employee is terminated or Employee dies prior to the transfer of the provident fund and gratuity to SSF and (b) the Employer has deposited the provident fund and gratuity opening separate account.
- 5.5.3. There is no clarity on the payment of the provident fund and gratuity to the Employees upon transfer of the same to SSF. This issue may be clarified in the Social Security Rules to be framed by the government. Further, there is also no clarity as to whether or not the Employer may pay the provident fund and gratuity to the Employee whose service has been terminated or who dies prior to the transfer of the same to SSF however, the amount is deposited to the Employees' Provident Fund or Citizen Investment Trust or in other retirement funds.

5.6. Settlement of Loan from Provident Fund and Gratuity

- 5.6.1. The Labor Rules also deals with the situation where the amount of provident fund and gratuity is in dispute or where the Employee has availing loan to the Employees from the provident fund or the gratuity.
- 5.6.2. The Labor Office is authorized to issue instructions for the settlement of the provident fund and gratuity in such situation in consultation with the Employer and the Employee. The Employer is required to settle the amount of provident fund and gratuity within two (2) years once the Labor Office instructs to do so. However, the Labor Rules is not clear as to how the amount is settled.

6. Outsourcing

6.1. Application and document requirements for license

- 6.1.1. The Labor Rules has set out procedures for companies willing to obtain license to work as an outsourcing company.
- 6.1.2. An application should be submitted to the concerned labor office or to the Department of Labor if the company provides its service in the jurisdiction of more than one labor office.
- 6.1.3. The Labor Rules specifies the details and documents to be submitted along with the application. The documents and details include (a) copy of company registration

certificate, (b) copy of Articles of Association and Memorandum of Association of the company, (c) copy of PAN/VAT Certificate, (d) tax clearance certificate, (e) copy of citizenship certificates of the company's directors, (f) details of the work or service for which Employees are availed, (g) other details, documents as specified by the Labor Office or Department of Labor.

6.2. Additional Grace period for License

6.2.1. The Labor Act required the outsourcing agencies to obtain license within six (6) months from the date of commencement of the Labor Act i.e. Sept. 04, 2017 (2074-05-19). In view of this, the license should have been obtained by March 03, 2018 (2074-11-19). However, the licensing arrangement was not in place due to the lack of the Labor Rules which was published in Nepal Gazette only on June 22, 2018 (2075-03-08).

6.2.2. The Labor Rules has provided additional grace period to obtain license for the existing outsourcing agencies. Rule 28 (5) of the Labor Rules requires the existing outsourcing agencies to obtain license within 6 (six) month from the effective date of the Labor Rules. The Labor Rules is effective from June 22, 2018 (2075-03-08). Therefore outsourcing companies should obtain the license within December 22, 2018 (2075-09-07).

6.3. License Fee and Security/Bank Guarantee

6.3.1. The Labor Act prescribes the amount of fees and security or bank guarantee required to be provided to the Labor Office or Department of Labor.

6.3.2. The fee prescribed by the Labor Act for outsourcing is as below:

S. No.	Details	If to the Labor Office	If to Department of Labor
1.	License Fee	Nrs. 20,000	Nrs. 10,000
2.	Fees for obtaining a copy of license	Nrs. 1000	Nrs. 1000
3.	Renewal fee	Nrs. 10,000	Nrs. 5,000
4.	Security or Bank guarantee**	Nrs. 15,00,000	Nrs. 15,00,000

*** If the outsourcing agency avails his Employees in different areas under different labor office, the outsourcing agency is required to provide additional security or bank guarantee of Rs. 5,00,000/- for each working area.*

6.4. Renewal of License:

- 6.4.1. Outsourcing Companies should renew their license on a yearly basis within the end of the month of Asoj.
 - 6.4.2. In case the companies fail to renew their license within the stipulated time and apply for renewal in the ongoing fiscal year, the Labor Office or Department of Labor can renew the license by charging 10% additional late fee on the renewal fee for each month of failure to renew the license.
 - 6.4.3. The company is required to certain documents and details to renew the license. The documents and detail include (a) receipt of tax return of the last fiscal year, (b) the tax clearance certificate of the fiscal year just before the last fiscal year, (c) details submitted to the Labor Office or Department, (d) proof of renewal of bank guarantee, and (e) renewal fee.
- 6.5. **Detail to be submitted**
- 6.5.1. The Outsourcing companies are required to submit details to the Labor Office or the Labor Department from where the license is obtained. The details should be submitted every year within the month of Poush (Mid-January).
 - 6.5.2. The details should include (a) the details of the Employee and the main Employer of the last fiscal year, (b) details of the remuneration, allowances, benefits and amount deposited in Social Security Fund of the outsourced Employees (c) labor audit report, (d) the details of the company and the directors, if changed.
- 6.6. **Additional obligations of the Main Employer**
- 6.6.1. The Labor Rules has set out additional obligations of the main Employer in addition to the obligations stated in the Labor Act.
 - 6.6.2. The additional obligations include (a) not discriminate between the entity's Employees and Employees availed from outsourcing company on the facilities and benefits except the remuneration and allowance, (b) maintain the record and attendance of the Employees availed by outsourcing company, (c) make payments to outsourcing company within such time as agreed or on a monthly basis if the time is not specified, (d) include Employees availed by outsourcing company in the entity's safety and health committee.

6.6.3. There is no clarity as to what sort of facilities and benefits to be provided to the outsourced Employees. In absence of clarity the benefits which are not included in the remuneration package or any allowances of the main Employer however provided to all the Employees at workplace may be provided to the outsourced companies.

7. Occupational safety and health policy

7.1. **Formulation of Health and Safety Policy:** Employers are required to maintain an occupational health and safety policy. The policy should cover different measures in accordance with the entity's nature of business. The policy should be drafted in a way which includes provisions related to arrangements Employee's safety and security, Employee's health, probable accident in workplace, precautions to be taken while operating devices and machines in workplace and precautions to be taken while using chemical substances.

7.2. **Additional duty of the Employer on workplace safety:** The Employer is required to (a) make necessary arrangements to take the Employee to the hospital or health center in case of sickness or accident while working (b) inform the Labor Office regarding the fulfillment of obligations towards the Employees regarding occupational safety and health.

7.3. **Duties of manufacturer, importer and supplier:** Pursuant to the Labor Rules, it shall be the duty of manufacturer, importer and supplier to provide sufficient information to the Employer regarding management and precautions to be taken for chemical substance that may not come into use and regarding safe use and storage of chemical products used in workplace.

7.4. **Formation of Safety and Health Committee:** The Labor Rules requires that a safety and health committee should be formed in every entity where 20 or more workers are engaged in work. The Labor Rules has laid down the works, duties and rights of the safety and health committee. It is further required for the safety and health committee to convene meetings at a time and place decided by the Coordinator at least 4 times a

year. Please also refer to the committee to this brief for the formation and health and safety policy.

- 7.5. **Specific provisions relating to the safety of the works having health hazards:** The Labor Rules has provided the detail safety measures to be followed by Employer such as for the safety of eyes, for the operation of pressure plants, prevention from fire, chemical substance, testing pressure plant and boilers, safety from hazardous machine and equipment's etc. The Labor Act has also prescribes the limits for weight lifting which is (a) 55 kg for adult male, and (b) 45 kg for adult woman. This weight lifting limit is not applicable for lifting of sacks jointly.
- 7.6. **General Environment of Work Place:** The Labor Rules has also specifies certain requirements for work place in terms and health and safety.
- 7.7. The requirement include, among others (a) proper cleanliness, (b) passage of fresh air, proper light and temperature, (c) solid waste management, (d) sound control measures, (e) 15 cubic meter space to Employees to the extent possible as per the nature of work, (f) healthy drinking water, (g) bathroom or modern toilet, (h) tobacco free zone, (g) mandatory medical check up for the entities undertaking health hazardous activities, and (i) provide appropriate time for the lunch/tiffin to the Employees.
- 7.8. **Special provision relating to the Employees performing intellectual work:** Labor Rules requires Employers to arrange suitable environment in workplace in order to prevent fatigue or tiredness of the Employees continuously working on computers for a long time or Employees engaged in mental or intellectual work.

7.9. **Other Health and Safety Arrangements**

S.N	Arrangement	Details	Remarks
1	Child Care Center	Triggers where 50 or more female Employees are engaged at work.	Can be arranged by individual Employer or in the association with other Employers
2	Rest Room	Triggers where 50 or more Employees are engaged at work.	-

3	Canteen	Triggers where 50 or more Employees are at the same time at same workplace	-
4	First Aid	For the primary treatment of Employees in case of any accident at workplace. Also triggers in case the Employee meets accident.	Employer should bear all the cost incurred for such treatment.

7.10. **Notice of Accident:** Employer or the representative of Employer should provide notice, within 7 days, to the Labor Office in case any Employee meets accident which results injury or death of such Employee. Such notice should include the details including the date, time, reason and place of accident, and the name, address of the Employee including the name of hospital where treatment takes place.

7.11. **List of occupational disease and compensation:** The Labor Rules authorizes the Government to publish list of the occupational diseases in Nepal Gazette. Any dispute relating to whether or not a disease is an occupational disease can be settled by the committee formed by the Government comprising of specialized medical practitioner as per the criteria set out by International Labor Organization. The Ministry of Labor has the authority to specify the amount of medical costs and compensation to be paid to the Employee by the Employer in the case of occupational diseases.

8. Labor Audit

8.1. The Employer is required to conduct a labor audit by the end of the month of Poush every year (Mid-January). The Labor Audit should be conducted as per the criteria defined by the Ministry of Labor.

8.2. The audit may be conducted by the managerial level Employee of the entity or any other individual or entity associated in the field of labor. If any false details are found in the labor audit report, Department of Labor can impose up to twenty thousand rupees fine on the person providing false details or the management of the entity.

8.3. A copy of the report of labor audit should be provided to the Labor Relation Committee. The report should also be submitted to the following regulatory authorities such as (a) to Nepal Rastra Bank by the bank and financial institutions, (b) to Insurance Board by the

insurance companies, (c) to District Administration Office by Non-government organizations, (d) to the authority establishing or issuing license for approval by other entities.

9. Transfer

9.1. Intra-entity transfer

- 9.1.1. The Labor Rules briefly deals with the transfer of an Employee from one entity to another. The transfer is subject to the consent of the Employee and the host entity.
- 9.1.2. The Labor Rules requires the entities to enter into an agreement for such transfer. The details to be covered in the agreement have been also specified in the Labor Rules.
- 9.1.3. Such agreement should include (a) name and address of both the entities, (b) name and designation of person executing the agreement on behalf of the entities, (c) name, address of the Employee and date of appointment in the new entity, (d) remuneration and benefits of Employee, (e) amount to be deposited in provident fund and Social Security Fund and date of deposit, (f) whether or not the service period prior to transfer is counted after transfer, (f) whether or not the Employee is provided the similar benefit in the new entity. The consent of the Employee is required if (a) the service period prior to the transfer is not counted or (b) the Employee is paid less benefits than he/she is receiving prior to transfer.

9.2. Benefits payable to the Employee in the case of Transfer

- 9.2.1. The Labor Rules provides certain benefits to the Employees who is transferred. The Employee is entitled to the following benefits in the case of transfer (a) transportation fare, (b) amount equivalent to one month's remuneration for accommodation, (c) daily and travel allowance to the Employee and his/her dependents as provided in the Service Rules. The transportation fare (a) above and accommodation cost not required to be paid to the Employees if transportation and accommodation is provided by the Employer.
- 9.2.2. The Employee who is transferred from the place outside his/her residence or existing workplace is also entitled to the out station allowance. The rate of outstation allowance has not been fixed in the Labor Rules. The outstation allowance is as provided in the Employees Service Rules. There is an exception of this outstation allowance. The

outstation allowance is not payable if (a) the Employee can easily travel to the new work station within a day from his residence (b) the transfer is requested by the Employee.

10. Labor Relations Committee

The Labor Rules requires the entity where 10 or more Employees are engaged to form a labor relations committee. Please refer to formation of committees for the formation of Labor Relation Committee.

11. Time of Performance Appraisal and Retention Requirement

- 11.1. The Labor Act requires the Employer to conduct performance appraisal of its Employees in accordance with the methods and process provided in the Employees Service Rules.
- 11.2. The performance appraisal should be conducted in each fiscal year. The Employer should provide the Performance Appraisal Form to the Employees in the beginning of each fiscal year to appraise their performance of the last fiscal year.
- 11.3. The performance appraisal form completed by the Employee and evaluated by the management should be kept secure for at least 3 (three) years.

12. Collective Bargaining

- 12.1. **Collective Bargaining Committee:** The Labor Rules deals with the formation of collective bargaining committee in an entity where 10 or more Employees are engaged. The committee should comprise of up to 11 members depending on the number of Employees engaged in the entity. Please refer to the formation committee below for additional details.
- 12.2. **Sector specific collective bargaining committee:** As per the Labor Rules, the trade union associations engaged in tea-estate, carpet manufacturing, construction business, brick industry, cement industry, garment, jute and other industries prescribed by the Ministry that are manufacturing or providing similar types of goods and services can form a committee consisting of 11 members while submitting collective demands to the specific sector's Employer's association. The Labor Rules provides detail procedure for sector specific collective bargaining.

12.3. Conducting collective bargaining in good faith

12.3.1. The Labor Rules requires the Employer and the Employee to enter into collective bargaining agreement with good faith.

12.3.2. The Labor Rules also provides the explanation as to what activities is regarded as good faith.

12.3.3. As per the explanation the good faith activities includes (a) being present on the date, time and place of negotiation, (b) making clear on the authority provided, (c) presenting the grounds of claim and defense by the Employee and Employer, (d) listening the offers seriously and give response/comments politely, (e) conducting negotiation with open, honest and transparent manner and maintaining minute of each agreement and disagreements, (f) appear in a decent and disciplined manner and not to act with an intent to misrepresent or create trouble to the other, (g) not to put new claim or condition so as to trap the other, (h) not to deny to participate in the collective bargaining process once negotiation is initiated (g) negotiate and participate in the process with the objective to settle dispute, (h) consider the information or offer without prejudice and make descent comment if it is wrong, (i) not to be adamant to negotiate with authorized or specific person.

12.3.4. The Labor Rules also provides the remedy if either party disregard the good faith requirement in the collective bargaining process. The aggrieved party may file an application with the Department of Labor to get the collective bargaining conducted in good faith. The Department of Labor can instruct the parties to do the collective bargaining in good faith.

13. Termination of Employment

13.1. Employees Recall:

13.1.1. The Labor Rules requires the entity to notify the Employees who are retrenched from service if the entity resumes its operation or requires additional manpower within 2 years from the date of retrenchment. The Employees should be provided at least fifteen (15) day notice to return to the work. Such notice should be published in national daily

newspaper. It should be also published in the Job Portal of the Ministry of Labor as well as in the website of the concerned entity for at least fifteen (15) days.

- 13.1.2. The Employer may again select the Employee if they return back to the entity as per the notice and the selection may be made on the basis of qualification, experience, and performance.
- 13.1.3. The Labor Rules also provides flexibility to the management in certain situation to hire fresh Employees. The Employer is allowed to hire new Employees if the work cannot be carried out by the previous Employees due to (a) installation of the new technology, or (b) change in the production process or (c) their age or (d) physical condition.

13.2. Payment of Terminal Benefits:

- 13.2.1. The Labor Rules provides the mode of payments of terminal benefits such as accrued salary, amount of leave encashment to the Employees. The terminal benefits may be paid to (a) the concerned Employee in person, or (b) in his bank account if he cannot collect or does not collect in person or (c) to the bank account of his family members the consent of which is granted by the Employee.
- 13.2.2. However in the case of the death of the Employee the accrued benefit may be paid in such order (a) nominated beneficiary, (b) in absence of nominated beneficiary payment in the following order (i) wife or husband living together, (ii) son, daughter-in-law or unmarried daughter living together, (iii) grandson, granddaughter or father, mother or father-in-law or mother-in-law living together, or (iv) husband or wife, son, daughter-in-law or married daughter living separately
- 13.2.3. The Labor Rules also requires the Employer to deposit the terminal benefits of the Employee to the Social Security Fund if (a) the amount cannot be deposited in his bank account and if (b) the Employee and his legal heirs do not claim the terminal benefits within three (3) years from the date of termination of service.

14. Miscellaneous

- 14.1. **Method of Calculation of Basic Salary for Task Based Employee:** The basic salary of Employees hired in a work based employment will be equal to 60% of their three (3) month's average salary.

- 14.2. **Method of Determination of Payment on Piece Rate Employees:** The determination of piece rate of the Employees working on the basis of piece rate should be on the following basis (a) as agreed between the Employer and Employee, (b) in absence of the agreement considering per hour payment calculated on the basis of the minimum remuneration.
- 14.3. **Maintenance of personal records and retention of such record:** As per the Labor Rules the Employer should maintain personal and attendance record of the Employees. The record should include name, address, family details, copy of citizenship certificate, contact number, email address and other important details of the Employee working with the Employer. The Employer is required to retain the records of Employee's remuneration and attendance for at least five (5) years.
- 14.4. **Distribution of Service Charge in Hospitality Sector:** The Labor Rules also provides for the rules of sharing of the service charge collected by hospitality industries from their customers. The service charge should be shared as follows (a) as per the agreement with the trade union, (b) in absence of the agreement (i) 71% to the Employees including trainees and outsourced Employees, (b) 24% for the Employer for breakage and operational leakage, (c) 2.5% each to the Employer's association and Employees trade union association.
- 14.5. **Public Holiday and Weekly Off of Domestic Workers:** The Labor Rules provides that domestic workers are entitled to twelve (12) day paid public holiday and one (1) day paid weekly off every week. If the worker is engaged in work on weekly off or public holiday, the Employer should provide replacing holiday within 21 days or overtime payment for such work.
- 14.6. **Operation of Welfare Fund:** The Labor Rules requires the Employer to establish an enterprise level welfare fund to deposit seventy (70) percent of the amount remaining after distribution of bonus. The amount in the welfare fund can be used for the purpose of treatment, or educational development, sports or entertainment of all types of Employees of the entity including their family members. Similarly, the amount can be used for other activities that are in the interest of all Employees. The Labor Rules also provides the rule of distribution of the amount remaining in the welfare fund if the entity is liquidated or total retrenchment of the workforce of the entity. In such retrenchment

or liquidation the amount remaining in the welfare fund should be distributed to all the Employees who were in the service of the company one year prior to the commencement of such liquidation.

14.7. Use of Housing Fund: The Labor Rules also deals with the utilization of the housing fund of the entity where the amount of housing fund allocated as per the previous Labor Act still remains. The entity can use the housing fund for management of the residence of the Employees or in any other schemes which are beneficial to the Employees. The Labor Rules also provides that the amount remaining in the housing fund should be equally shared between the Employer and the Employee if the entity having such fund is closed down or liquidated. The fifty (50) percent of the amount goes to the Employer and remaining fifty (50) percent to be distributed among the Employees working with the entity at the time of closing down or liquidation.

15. Formation of Various Committees

The Labor Rules requires formation of various committees depending upon the number of Employees in an entity. The committee formation requirement is as follows:

No. of Employees	Committee	Members	Remarks
10 or more	Labor Relations Committee	<ul style="list-style-type: none"> • The main Employer or a managerial level Employee nominated by the Employer - Coordinator • Two (2) persons of Managerial Level nominated by the Main Employer - Members • Four (4) Employees including one female nominated by the authorized trade union -Members • Entity's Head of Administration - Member-Secretary 	Two (2) more members from the management and 2 (two) from the Employees can be added if the total headcount exceeds 300.
10 or more	Collective Bargaining Committee	<ul style="list-style-type: none"> • In an entity having total headcounts up to 20 —three (3) members • In an entity having total headcounts 20-100—5 members • In an entity having more than 100 Employees—one additional member for each 50 Employees (up to 11 members) 	To be formed by the Employees.

20 or more	Health and Safety Committee	<ul style="list-style-type: none"> • The Employer or a Managerial Level Employee nominated by the Employer -Coordinator • Maximum three (3) persons including one female nominated by the authorized trade union of the entity -Members • There (3) persons including a health workers nominated by the management of the entity -Members • One senior Employee among the Employees responsible for the entity's safety/security -Member 	The Employer can add 3 more Employees to the committee in case of more than 300 Employees.
-------------------	------------------------------------	--	--

****DISCLAIMER: This document is prepared for general understanding and should not be taken for any legal purpose without consulting legal professionals. ****

The copyright of the document is vested with PLA.