

Labor Laws in Nepal: Brief Introduction

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Outline of Presentation

- This presentation is prepared on the basis of the recently passed Labor Act, 2017 (2074) (the “**New Labor Act**”). It was certified by the President on 4 September, 2017 (Bhadra 19, 2074) and has been effective immediately upon certification.
- It has also incorporated the provisions of Labor Rules, 2018 (2075) (“**New Labor Rules**”) which was published in the Nepal Gazette on June 22, 2018 (Asar 08, 2018) which has been provisioned to come into immediate effect.

Applicability of New Labor Laws

- New Labor Act applies to company, private firm, partnership firm, cooperatives, association or other organization ("entity"):
 - in operation, or established, incorporated, registered or formed under prevailing laws
 - regardless of its objective to earn profit or not.

(Section 2(j))

- New Labor Act also applies to individuals even if he/she has engaged a single person in work, domestic workers etc.
- Entity registered in foreign country but engaged in promotion of business, sale of its products or other work in Nepal. (Section 90)

Applicability of New Labor Act and Rules

- Headcount Threshold: No headcount threshold except as for few arrangements. Labor Act 1992 was applicable only to entity having 10 or more employees or workers.
- Where 10 or more employees are engaged:

Provision	Section Reference
Consultation with Authorized Trade Union or Labor Relation Committee for keeping the employees in reserve for more than 15 days	15(3)
Formation of Labor Relation Committee	111
Formation of Collective Bargaining Committee	116
7 days period to present clarification for termination of employee upon their work performance	142 (2)
Applicability of provision on retrenchment	145

Applicability of New Labor Act and Rules

- Headcount Threshold:
- Where 20 or more employees are engaged:

Provision	Section Reference
Formation of Safety and Health Committee	74

Non Applicability of New Labor Act (Section 180)

- Exempted Entity:
 - Civil Service,
 - Nepal Army, Nepal Police, Armed Police Force,
 - Entities incorporated under other prevailing laws or in situated in Special Economic Zones to the extent separate provisions are provided.
 - Working Journalists, unless specifically provided in the Contract.

Hiring

- Modes of Hiring (Section 10):
 - Regular Employment,
 - Work Based Employment: for completion of certain work or rendering certain service,
 - Time Bound Employment: employment for certain time period determined,
 - Casual Employment: employment for seven or less days in a month,
 - Part time Employment: employment for 35 or less hours in a week.

Hiring

- Modes of Hiring:
- **Part Time Worker (Section 19-21):**
 - a. Remuneration on the basis of hours worked, unless otherwise provided in the employment agreement
 - b. No restriction to work in other places
 - c. Entitled to social security benefits
- **Intern (Section 16 & 17) :** As per the agreement with educational institution. They shall be deemed regular employee if engaged in works other than as per their syllabus.

Hiring

- Modes of Hiring: Trainee (Section 18)
 - Trainee: An employee may be appointed as trainee.
 - Training Period: not exceeding 1 year, except where time period has been prescribed by law
 - Entitlement to benefits: to all social security benefits including provident fund, gratuity etc.
 - Appointment as regular employee: Employer does not have an obligation to appoint the trainee as regular employee, however if appointed, he/she should not be put on probation.

Criteria for determination of Regular Employment (Rule 3, Labor Rules)

- Labor Office decides whether an employment is regular or not based on:

For fixed term employment contracts:

- Whether or not the employment requires the continuity upon the expiry of the term,
- If it is required to continue the employment, whether or not another employee is required to be engaged.

For employment without a fixed term:

- If the employee has worked for a continuous period of one year

Hiring Foreign Nationals

- Work Permit (Section 22 & 23): Compulsory except in following conditions:
 - Foreign nationals who are provided diplomatic immunity
 - Arrangement as per treaty or agreement with the Government of Nepal
- General Provision (Section 22):
 - Advertisement in national level Daily Newspaper*,
 - if no skilled human resource Nepali citizen is found, submit an application to obtain work permit.

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

Hiring Foreign Nationals

- Entity with Foreign Investment or operating on foreign aid (Section 24 (a)): Work permit for foreign nationals deployed as chief executive or up to three employees is provided simply by recording.
- Work permit for technicians deployed in work for less than three months for repairing any machinery or installing new technology or similar casual work is provided simply by recording. (Section 24(b))

Hiring Foreign Nationals

- Total ceiling: The Labor Rules limits the number of foreign nationals that can be engaged in an entity. The number of foreign nationals should not exceed 5% of the total employees in 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.

Hiring Foreign Nationals: Validity Period of Work Permit

- Validity period of the Employment Agreement (Section 27): 3 years, unless otherwise provided in the Employment Agreement
- The general rule of validity period of work permit: work permit is issued not exceeding the term specified in the consent letter issued by the Ministry of Home Affairs.
- The maximum period of Work permit: 5 years for the expert in technical field and 3 years for others.
- Extension of validity period of the work permit: 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.

Hiring Foreign Nationals: Work Permit Fees

Duration	Fee	Remarks
Up to 6 months	NRs. 15,000	The amount should be paid in the convertible currency if the application for work permit is submitted in the Nepalese embassy or any diplomatic agency.
More than 6 months	NRs. 20,000	

- Work permit fee is not required for (a) foreign nationals who enjoy diplomatic immunity; or (b) if the exemption is provided in the agreement with the Government of Nepal.

Hiring Foreign Nationals

- Employment Agreement: Compulsory
- Language of Employment Agreement (Section 25): in language understandable by the foreign employee or in English language
- Repatriation of Income (Section 26): The foreign nationals can repatriate their income in convertible foreign currency.

Hiring Foreign Nationals: Conditions for cancellation of Work Permit

The work permit may be cancelled in following conditions: (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.

Outsourcing

- Works where the outsourced employees can be engaged (Section 58(1)): As prescribed by the Ministry by publishing a notice in Nepal Gazette upon the recommendation of Central Labor Advisory Council
- Nature of Work (Section 58(2)): Works other than core works of the entity

Outsourcing: Obligation of Main Employer (Section 64)

- No employees can be obtained from the labor supplier where the employer or employer's proprietor or director or family members are engaged,
- Conclude agreement with labor supplier,
- Ensure the employees are provided minimum remuneration and facilities,
- Collect information regarding whether the employee is provided with remuneration or facilities regularly or not,

Outsourcing: Obligation of Main Employer (Section 64)

- Request the labor supplier to provide the employee with remuneration and facilities if they are not provided with such and inform the Department or Labor Office thereof,
- Inform Department or Labor Office if the outsourced employees are not provided remuneration and facilities, even after requesting,
- Arrange for occupational health and safety measures,
- If the rate of minimum remuneration or facilities is altered after the conclusion of agreement with the Labor Supplier, the main employer should pay such additional amount to outsourced employees.

Outsourcing: Obligation of Main Employer (Section 64)

- Main employer must obtain the employees from licensed labor supplier.
- If outsourced employees are not from the licensed labor supplier, they are deemed to be employees of the main employer.
- If outsourced employees are engaged in work against the provisions of New Labor Act, those outsourced employees are deemed to be the employees of Main employer.

Outsourcing: Obligation of Main Employer (Rule 33)

- Main employer must not discriminate between its employees and outsourced employees in providing any benefits other than the remuneration and allowance,
- Maintain the personal details and attendance of the outsourced employees,
- Pay the amount as agreed in the outsourcing agreement to the outsourcing company in the agreed timeline, or where no agreement is made in this regard, pay the amount in the monthly basis,
- Inclusion of the outsourced employees in health and safety committee.

Outsourcing: Obligation of Labor Supplier

- Must be incorporated as company as per prevailing laws (Section 59(1)),
- No labor supplier company can outsource employees for more than two work or service (Section 59(4)),
- Obtain a license (Section 59(1)),
 - For the purpose of obtaining the license, an application along with applicable fee, required documents as prescribed should be submitted to concerned Labor Office.
 - Such application should be submitted to Department if the Labor supplier supplies employee in areas under more than one Labor Office.

Outsourcing: Obligation of Labor Supplier (Section 59 & 60)

- Furnish bank guarantee or security necessary to obtain license,
- Entities outsourcing employees at the time of enforcement of New Labor Act must be incorporated as company and obtain license as labor supplier within 6 months from the date of the enforcement of New Labor Rules i.e. before Dec 22, 2018,
- Licensed Labor Supplier should submit the details by the end of the month Poush every year to the Department or Labor Office, details should include (a) detail of the outsourced employee and main employer, (b) details of remuneration, benefits, allowances and the amount deposited in the social security fund of the outsourced employees, (c) labor audit report, and (d) details of company and the directors, if changed.

Outsourcing: Obligation of Labor Supplier (Section 61)

- Conclude an agreement with Main Supplier,
- Payment of remuneration and other facilities to outsourced employees ensuring that such is not below the minimum remuneration and other facilities prescribed,
- Collect information on occupational health and safety arrangements made by the Main Employer,
- If such arrangements are not made, recommend Main Employer to do so,
- If the Main Employer does not make such arrangements even after recommendation, inform the Department or concerned Labor Office.

License for Outsourcing Company (Rule 27)

- Outsourcing Companies must submit an application accompanied with following documents to obtain the outsourcing license:
 - Certified copy of the company registration certificate,
 - Certified copy of the Articles of Association and Memorandum of Association,
 - Certified copy of PAN/VAT Certificate
 - Tax clearance certificate
 - Certified copy of the citizenship of company's directors

License for Outsourcing Company

- Work or service for which the company provides outsourcing employees,
- Other details as prescribed by the Labor Office or Department

License for Outsourcing Company

S. No.	Details	Labor Office	Department of Labor
1.	License Fee	NRs. 20,000	NRs. 10,000
2.	Fees for obtaining a copy of license	NRs. 1,000	NRs. 1,000
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.**

License for Outsourcing Company

- Renewal of License: Annually, by the end of month of Asoj,
- Upon failure to renew within the stipulated time, the license can be renewed at any time by paying 10% additional late fee on the renewal fee for each month of the failure to renew the license,
- Required documents for renewal: (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

Employment Agreement

- No person may be engaged in work without providing an employment agreement to the employee.
- A written employment agreement is not required for casual employees.
- The employment agreement may provide for benefits to be provided to managerial level employee in lieu of any overtime hours he/she is required to work.

Employment Agreement

- The employment agreement should specify:
 - the remuneration and other facilities of concerned employee and the terms and conditions of service,
 - types of employment,
 - Position of the employee,
 - Major job responsibilities of the employee,
 - date, place and time of agreement and its effective date,
 - Statement that the Bylaws (HR Manual) will form an integral part of employment agreement,
 - Other conditions of job.

(Rule 4)

Probation Period (Section 13)

- Shortening of Probation Period

Labor Act, 1992	New Labor Act
1 year (240 days)	6 months

Working Hours

- Maximum Working Hours (Section 28): 8 hours a day and 48 hours a week. Employers have flexibility to fix the work hours and also engage employees in shifts.
- Maximum Overtime (Section 30): 4 hours a day and 24 hours a week (Previously, 20 hours a week)
- Overtime Pay (Section 31): 1.5 times the basic Remuneration
- Break (Section 28):
 - 30 minute break after working 5 hours where the work can be interrupted,
 - Where work cannot be interrupted, break is arranged in shifts

Working Hours

- Additional Break (*Rule 17*): additional 30 minutes break for pregnant and other female employees whose child is less than 3 years of age.
- Compensation Leave (Section 42): for making workers work on public or weekly holidays

Remuneration

- Minimum Remuneration (Section 34): As prescribed by the Government of Nepal
- Increment (Section 36): once a year at the rate of ½ day basic remuneration
- Payment of remuneration(Section 35):
 - To workers engaged in work for less than a month: within 3 days from the date of completion of the work
 - To workers in casual employment: upon the completion of the work
 - Other employee: the payment period should not exceed 1 month
- Festival Expenses (Section 37): Amount equivalent to one month's basic remuneration once a year

Leave and Holidays (Section 40-48)

- Weekly Holiday: 1 day every week
- Public Holidays: 13 days including May Day
 - 1 day additional to female employees including International Women Labor Day
- Annual Leave: 1 day for every 20 worked days (18 days in a year)
- Sick Leave: Fully paid 12 days (previously half paid up to 15 days)
 - For those who have not completed one year of service, sick leave is provided on a proportional basis.
- Mourning Leave: 13 days

Leave and Holidays

- Maternity Leave & Paternity Leave (Section 45):

Heading	Labor Act, 1992	New Labor Act
Maternity Leave	52 days Fully paid	98 days Fully paid 60 days
Paternity Leave	Not Provisioned	15 days Fully paid

- Special Leave

Labor Act, 1992	New Labor Act
30 days in a year, not exceeding 6 months in total service period unpaid	Not Provisioned

Leave and Holidays

- General Principles (Section 51):
 - Leave is not regarded as matter of right but privilege. The approving authority may accept or decline leave request or curtail approved leave.
 - Prior approval is required except in case of urgency.
 - Taking leave without approval is misconduct.

Requirement of Birth Certificate for Maternity Leave

- Female employee should submit the birth registration certificate of her child or the birth certificate issued by the hospital or health center within 3 months from the expiry of the maternity leave.
- In the case of the still birth or miscarriage, medical report issued by the hospital or health center suffices for this purpose.
- The employer may disapprove the maternity leave in the event of failure to submit the documents.

Terminal Benefits: Provident Fund (Section 52)

- Provident Fund

Labor Act, 1992	New Labor Act
<p>Eligibility: Permanent worker or employee</p> <p>Contribution of employee: 10% of basic remuneration</p> <p>Contribution of employer: 10% of basic remuneration of worker</p> <p>Deposit in: Enterprise level fund or retirement fund</p>	<p>Eligibility: From the first day of appointment</p> <p>Contribution: Continues the same rate of contribution</p> <p>Deposit in: Social Security Fund.</p>

Terminal Benefits: Gratuity (Section 53)

Labor Act, 1992	New Labor Act
<p>Eligibility: completion of 3 years of service</p> <p>Rate of Gratuity:</p> <ul style="list-style-type: none">a. For the first 7 years of service: $\frac{1}{2}$ of monthly salary for each year of serviceb. For 7-15 years of service: $\frac{2}{3}$rd of monthly salary for each year of servicec. For service exceeding 15 years: a month salary for each year of service <p>Deposit in: Enterprise level Fund or Retirement Fund</p>	<p>Eligibility: since the first day of employment</p> <p>Rate of Gratuity: 8.33% of basic remuneration every month</p> <p>Deposit in: Social Security Fund</p>

Terminal Benefits: Leave Encashment (Section 49)

- Leave Encashment

Labor Act, 1992	New Labor Act
<ul style="list-style-type: none">• Accumulated annual leave up to 60 days can be encashed at the time of discontinuation of service.	<ul style="list-style-type: none">• Accumulated annual leave up to 90 days and sick leave up to 45 days can be encashed at the time of discontinuation of service. Any unused annual or sick leave in excess of the limit of accumulation shall be encashed at the end of each year.• Encashment shall be done at the rate of basic remuneration during such payment.

Other Benefits

- Medical Insurance (Section 54):
 - Coverage: at least one hundred thousand rupees (Rs. 100,000) per year for every worker
 - Premium: equally paid by the employer and worker
- Accident Insurance (Section 55):
 - Coverage: at least seven hundred thousand rupees (Rs. 700,000) for every worker
 - Premium: fully paid by employer
- Death Compensation: the nearest successor is entitled to the amount of accident insurance.
- Housing Fund: provision has been removed

Other Benefits

- Resting Room (*Rule 46*): where there are 50 or more employees,
- Canteen (*Rule 47*): where there are 50 or more employees,
- Child Care Center (*Rule 45*): where there are 50 or more female employees. Such arrangement can be done by the employer either on its own or in association with other employer,
- First Aid: when the employee meets accident or for emergency primary treatment. The cost incurred should be completely borne by the employer.

Calculation of Gratuity

- For the period prior to September 04, 2017: As per Rule 23(3) of previous Labor Rules,
- For the period after September 04, 2017: 8.33% of basic remuneration.
- If any employer had been providing the gratuity at the rate higher than required by the law, such benefits should be adjusted as agreed with the employees. However, no higher amount can be transferred to the social security fund.

Transfer of Provident Fund and Gratuity

- The employer is required to transfer the amount of the provident fund and gratuity to the social security fund upon fulfillment of requirement to enlist the employer with the Fund after the publication of the notice.
- The amount of gratuity can be transferred within 2 years from the date of enlisting the employees. It can be transferred in single payment or 4 installments.
- The amount of provident fund should be transferred within 6 months from the date of enlistment of the employer with the Fund. The amount may be transferred in a single payment or 3 installments.

Deposit of Provident Fund and Gratuity in transitional period

- Until the period the Social Security Fund is effective to the employer,
 - The amount of provident fund should be deposited in: (a) Employee's provident fund, or (b) approved retirement fund, or (c) a separate account maintained by the employer.
 - The amount of gratuity should be deposited in : (a) Citizens' Investment Trust, or (b) approved retirement fund, or (c) a separate bank account maintained by the employer.

(Rule 22 & 23)

Misconduct & Disciplinary Action

- Misconduct
- Disciplinary Action for misconduct
- Procedure for Disciplinary Action

Disciplinary Action for Misconduct

Labor Act, 1992	New Labor Act
Reprimanded/ Warning	Reprimanded/Warning
Withholding Annual Grade Increment	Withholding Annual Grade of Remuneration or Promotion
Suspension for up to 3 months	Deduction of one day's remuneration
Termination	Termination

- As per New Labor Act, suspension is not a disciplinary action. However, an employee can be suspended for the period he/she is imprisoned or for up to three months during the investigation for misconduct for which the service can be terminated.

Reprimand/Warning (Section 131(1))

- absence from the work without obtaining permission,
- leaving the workplace without obtaining the permission from the Managerial level,
- coming late frequently without obtaining permission,
- not abiding the order of the senior or employer with regard to work,
- other misconducts as prescribed in Bylaws.
- abuses any items which has been kept for the interest, Health and safety of the workers or employees or causes damage to them intentionally
- Misbehaves with the customer
- Intentional violation of order or directive under Act

Deduction of one day's remuneration (Section 131(2))

- not accepting the letter or notice of punishment,
- participation or compelling to participate in illegal strike,
- collectively delaying in the work,
- causing loss to the entity by reducing the production or service recklessly or negligently,
- trying to take facilities by submitting false details,
- not using the security instruments provided by the employer,
- Other similar misconducts as prescribed in Bylaws.

Withholding Annual Grade of Remuneration or Promotion (Section 131(3))

- taking the entity's property outside the entity or allowing unauthorized person to use such without the permission of the competent person,
- embezzlement with the entity's transactions,
- destroying the entity's property due to negligence or recklessness,
- preventing the supply of food and water in entity or obstructing movement in the entity,
- abusing any items kept or arrangements made for interest, health and safety of the workers or employees or causing damage to them intentionally,
- Other misconducts as prescribed in Bylaws.

Withholding Annual Grade of Remuneration or Promotion (Section 131(3))

- participation or compelling to participate in unauthorized or illegal strike,
- striking without fulfilling the legal requirements,
- intentionally slowing down the work against the interests of the Entity

Termination upon Misconduct (Section 131(4))

- causing bodily harm or injury to Proprietor, Manager or Employee of the entity,
- **accepting or offering bribe,**
- stealing property of anyone in the entity,
- embezzlement of property of the entity,
- **causing damage to the entity's property knowingly**
- absence from entity for more than a consecutive period of 30 days without getting the leave approved
- causing damage to secrecy relating to special technology of the Entity,

Termination upon Misconduct (Section 131(4))

- convicted on a criminal offence involving the moral turpitude,
- presenting false documents for appointment,
- consuming the psychotropic drugs or alcoholic drinks,
- Having been punished twice for other misconducts within 3 years,
- Other similar misconducts as prescribed in prevailing Nepal laws.

Sexual Harassment at Workplace (Section 132)

- The service may be terminated on the basis of seriousness of offence.

Procedure for Disciplinary Action

- Seek an explanation from the employee:
 - give a letter stating the misconduct and punishment that is likely to be awarded,
 - provide 7 days time to submit the explanation
- Time limitation for seeking explanation: within 2 months from the date of having obtained the knowledge of occurrence of misconduct
- Time limitation for Punishment: within 3 months from the date of requiring of explanation. (Previously, within 2 months)
- Authority to issue Punishment: Chief Executive Officer or the managerial level employee authorized by the Employee Bylaws.

Other Grounds of Termination

- Voluntary Resignation (Section 141): The employee can terminate the employment voluntarily by providing employer a resignation letter and a notice of days as prescribed.
- Compulsory Retirement (Section 147): Applicable only for regular employees:

Previous Labor Act	New Labor Act
At 55 years of age	At 58 years of age

Other Grounds of Termination

- Time Bound Employee (Section 140): After the expiry of the time period provided in the employment agreement
- Work Based Employee (Section 140): After the completion of the work specified in the employment agreement

However, the employment may be continued if the time period for the project is extended.

- Casual Employee: At any time by the employer or the employee voluntarily.

Other Grounds of Termination

- Lack of Performance (Section 142): underperforming in 3 or more consecutive performance appraisal
- On the ground of Bad Health(Section 143): The employer may terminate the employment of an employee upon the recommendation of a medical practitioner if
 - employee is physically or mentally disabled or injured
 - rendering him/her unable to work or
 - requiring a long period for medical treatment effecting in the work of the entity.

Notice Period (Section 144)

- Employer or employee is required to furnish notice as provided below to each other before terminating the service except in dismissal upon misconduct:

Period of Service	Notice Period
Up to 4 weeks	1 day prior
4 weeks- 1 year	7 days prior
Exceeding 1 year	30 days prior

Retrenchment (Section 145)

- Reasons of Retrenchment:
 - Due to harsh economic conditions,
 - Due to increment in number of employees as a result of merger,
 - Due to other conditions.
- Notice: 30 days prior notice specifying the reasons for retrenchment, possible date of retrenchment and likely number of employees to be retrenched should be provided to Labor Office and authorized trade union of the entity, if any or effective trade union or Labor Relation Committee.

Retrenchment (Section 145)

- Employees can be retrenched after reaching a consensus with the Trade Union or Labor Relation Committee.
- Where such trade union or Labor Relation Committee do not exist or where the consensus cannot be reached, the employees can be retrenched by giving information to the Labor Office.
- These provisions of New Labor Act on retrenchment are not applicable to entities in Special Economic Zone or when the entity is partially or fully closed by the order of Labor Court or Government of Nepal.
- Any of the provisions on retrenchment under Labor Act, 2017 shall not be applicable to entities with less than 10 employees.

Retrenchment (Section 145)

- Priority in Retrenchment: Retrenchment shall be generally done in the following order:
 - a. Foreign Nationals
 - b. Employee subjected to disciplinary action more often in comparison
 - c. Employee with poor work performance
 - d. Employee last appointed among employees engaged in similar nature of work.

However, the employer may retrench an employee appointed earlier by providing reasons thereof.

- Unless otherwise agreed with the trade union, members of Collective Bargaining Committee or authorized trade union shall be retrenched at last.

Severance Compensation (Section 145)

Labor Act, 1992

- Eligibility: Permanent Employee
- Rate: 30 days salary for every year of service
- Employee was provided either the severance compensation or gratuity, whichever is higher.

New Labor Act

- Eligibility: Completion of 1 year of service
- Rate: 1 month basic remuneration for every year of service
- For employees who have not completed 1 year of service, the compensation shall be provided in a proportional basis.
- Employees shall not be entitled to severance compensation if he/she is entitled to unemployment allowance under Social Security Act.
- Severance compensation is compulsory in addition to gratuity and provident fund in the event of retrenchment.

Retrenchment : Employee Recall

- Entity is required to notify the retrenched employees if it resumes operation or requires additional human resource within 2 years from the date of retrenchment.
- Notice: 15 days in prior and published in the national level daily newspaper and job portal of the Ministry of Labor and website of the entity.
- Flexibility to hire fresh employees other than the retrenched employees: if the work cannot be carried out by such retrenched employees due to : (a) installation of new technology, or (b) change in the production process, or (c) age, or (d) physical condition of such retrenched employees.

Transfers (Section 108)

- An employee may be transferred to another office, branch or section of the enterprise without affecting the terms, conditions and benefits of services and nature and position of job.
- The nature and position of job may be altered during transfer in following conditions:
 - a. with the consent of the concerned employee
 - b. transfer due to promotion,
 - c. transfer as per collective agreement
 - d. transfer to the job that matches training or education qualification of the concerned employee.

Settlement of Dispute: Individual Claim (Section 113-115)

- Submit a written application to the employer
- Employer should settle the dispute by negotiating with the employee within **15 days** of receipt of application
- Such time period can be extended on mutual consent or agreement
- Upon failure to settle the dispute or if the employer does not provide notice for negotiation, an application should be filed to Labor Office.
- Labor Office should settle the dispute through discussion between the parties within **21 days**. Upon failure to settle dispute through discussion, Labor Office issues the decision within **15 days**.

Settlement of Dispute: Collective Dispute

- Authority to Submit the Collective Claim (Section 116):
 - Collective Bargaining Committee in an entity with 10 or more employees
 - ❖ Group of representatives nominated by the authorized trade union of the entity
 - ❖ Group of representatives nominated in consensus by all trade unions of the entity, where there is no authorized trade union
 - ❖ Group of representatives supported by 60% or more employees by signing, where there is no group as provided above.

Settlement of Dispute: Collective Dispute

- Submission of collective claim in writing to the employer
- Upon the receipt of the collective claim, the employer must provide a notice in writing within **7 days** specifying the place and time for discussion.
- If the employer does not call for discussion or if the dispute is not settled through discussion within **21 days**, application can be submitted to the concerned Labor Office for mediation.
- The dispute should be settled within 30 days by mediation by Labor Office.

Settlement of Dispute: Collective Dispute

- Arbitration: Where the dispute cannot be settled through mediation, it is referred to arbitration in following conditions:
 - if an agreement is done between the collective bargaining committee and employer to settle the collective dispute through arbitration or
 - in case the collective dispute arises in an entity operating essential services or
 - in case the collective dispute arises in an entity operating in the Special Economic Zone or
 - at the time strike has been prohibited during the time of emergency as per the Constitution.

Settlement of Dispute: Collective Dispute

- The new Labor Act provides recognition to institutional level collective bargaining which had been in practice before. The trade union federations of the entrepreneurs, service sector, tea estate, travel, tourism, labor suppliers, construction entrepreneurs or industries of similar nature may from an institutional level present a collective bargaining demands to the employers' federation.

Collective Bargaining Agreement

- Following arrangements may be done through Collective Agreement:
 - a. To reduce the remuneration of the employee (Section 34(3))
 - b. Arrangement for Interim Management during the transfer of ownership (Section 14(2))
 - c. To agree on certain facilities in lieu of overtime payment (Section 31(2))
 - d. To determine facilities for which the employer may deduct the remuneration (Section 38)
 - e. To determine the grounds of transfer of employees (Section 109(1))

Collective Bargaining Agreement

- f. Determination of rate of remuneration during the period of legal strike or lock out (Section 127(3))
- g. To add the grounds of termination upon misconduct (Section 133(2))
- h. To determine the alternative option of retrenchment; and criteria and terms of retrenchment (Section 145(3))

Other Means: Collective Dispute

- For Employees: Strike
- For Employer: Lock Out

Strike (Section 121)

- The Collective Bargaining Committee can strike for the settlement of collective dispute only in the following conditions:
 - in the absence of compulsory requirement for arbitration,
 - failure of arbitrators to arbitrate,
 - failure to constitute arbitral tribunal within **21** days after the submission of application to the Ministry for settlement of collective dispute,
 - failure to arbitrate within the prescribed time,

Strike: Contd..

- rejection to implement the arbitral award by the employer or legally challenging the arbitral award, and
- disagreement of either of the parties to the arbitral award except where the arbitration is compulsory.
- Notice of Strike: outlining the claims and specifying the date to effect the strike:
 - **30** days in prior
 - Information to Local Administration Bodies & Labor Office
- Worker appointed or deputed on the duty of control, security and guard of the entity are not entitled to go in a strike during their duty hours.

Lock Out (Section 124)

- The entity may declare a lock out after submitting justifications with its rationale and obtaining the approval of the Department when:
 - a strike has been started or continued without giving prior notice, or
 - if the collective dispute is not settled through the process provided in the New Labor Act
- Notice of Lock Out: a notice for the information of workers and employees seven days in advance specifying the date of effecting the lock-out and announcing that the entity shall be locked-out if the strike is not called off.

Lock Out

- Notice of Lock out: If there is a situation with possibility of damage to the Entity through riot, violence, destruction, etc. from the workers and employees during the strike, the lock-out may be declared.
- In such situation, the Labor Office or the Department and the Local Administration should be informed about the lock-out with reasons within three days.
- The Local Administration should arrange for the necessary security arrangement immediately upon the receipt of such information.

Government Intervention (Section 124(5))

- The Department can declare lock out as illegal at any time if:
 - the lock out appears irrational, or
 - it is likely to cause a breach in peace and security conditions of the country, or
 - it is contrary to the economic interests of country.

Payment of Remuneration during strike or lock out (Section 127)

- Where the workers go in a strike contrary to the provisions of the prevailing laws, such workers are not entitled to any payment of remuneration.
- Where the lock out is declared against the provision of the law, the workers are entitled to the full payment of remuneration for the period of such lock out.
- In legal strike or lockout, the workers are entitled to half the remuneration, unless otherwise agreed in collective agreement.

Regulating & Adjudicating Authority

- Labor Office
- Department of Labor
- Labor Court

Composition of Labor Court

- Member: 1 Chairperson and 2 members
- Qualification of Chairperson & Members:
 - Judge of the High Court, or
 - Person qualified to be the judge of High Court
- Tenure: 4 years except when the judge of the High Court are appointed
- Functions, Duties and Facilities of Chairperson and Members: Similar to those available to judges of High Court

Sanctions: Labor Office or Department

- Supplying Labor without license and engaging labor in work from such supplier : Fine up to NPR. 200,000
- Engaging a foreign national in work without work permit: Fine up to NPR. 200,000 depending upon the number of workers; repetition even after being punished shall be fined with additional fine of NPR. 5,000 per person per month.
- Discriminating among the workers: Fine up to NPR. 100,000 and the order the maintain the equality may be given

Sanctions: Labor Office or Department

- Engaging a worker without appointment letter or employment agreement: Fine up to NPR. 500,000 at a rate of NPR. 10,000 per worker; the order to conclude an employment agreement and provide an appointment letter shall also be given

Sanctions: Labor Office

- Deduction of Remuneration and Other Facilities contrary to prevailing laws: Indemnify the concerned worker with amount double the deducted remuneration and other facilities
- Obstructing government officer, submitting false details: Fine up to NPR. 20,000
- Engaging an intern or trainee against the provision of the Act: Fine up to NPR. 10,000 per intern or trainee
- Failure to deposit the gratuity amount, or in provident fund or social security fund, or to arrange medical or accident insurance: Indemnify the worker with an amount double the amount to be paid

Sanctions: Labor Office

- Keeping the workers in reserve discriminatorily: Order to not to do so
- Terminating employment against the provisions of the Act: Issue necessary directives

Sanctions: Labor Court

- For engaging a bonded labor: Imprisonment up to 2 years or fine up to NPR. 500,000 or both. The Labor Court can require the entity to provide such bonded labor with remuneration, allowance and other facilities, as well as to indemnify the bonded labor with an amount double such remuneration, allowance and other facilities.
- If the entity does not make health and safety arrangements knowingly and as a result the worker dies or suffers physical or mental injury: Imprisonment up to 2 years, except otherwise provided. Such person suffering the injury should be compensated.

Issuing necessary orders

- Supplying labors without having obtained license or availing workers from such labor supplier
- Discriminating among the workers/employees
- Engaging an employee in work without appointment letter of employment agreement
- Inappropriate labor practice
- Transfer of employees in contrary to legal provision
- Promotion of employees against the provisions of Bylaws
- Engaging a trainee or an intern against the provisions of law
- Non payment of provident fund, gratuity or other social security benefits
- Keeping employees in reserve discriminatorily
- Wrongful Termination of Employment

Sanctions: Fine

- Supplying labors without having obtained license or availing workers from such labor supplier
- Engaging a foreign national without having work permit
- Discriminating among the workers/employees
- Obstructing government official, submitting false details, undue influence etc.
- Engaging Trainee or Intern against the provisions of law
- Engaging a bonded labor
- Engaging an employee in work without appointment letter of employment agreement

Indemnify

- Deducting any remuneration or benefits of employee against the provisions of law
- Non Payment of Provident or Gratuity or other social security benefits or insurance
- Engaging a bonded labor

Sanction: Imprisonment

- Engaging a bonded Labor
- If any worker or employee dies due to failure of the employer to arrange for health and safety provisions as required by the law.

Appeal

- Any decision or order of the Department or Labor Office can be appealed at Labor Court within 35 days of such order or decision.
- Any decision of the entity terminating the employment or on disciplinary action can be appealed at Labor Court within 35 days of having obtained the notice of such decision.
- The appeal on the case originally tried and settled by the Labor Court is placed at Supreme Court. Any decision rendered by the Labor Court on appeal is final.

Labor Audit

- Employer is required to conduct the labor audit annually by the end of the month of Poush (mid January).
- Authority to conduct labor audit: managerial level employee of the entity, or any other entity or individual associated in the field of labor.
- False details in the labor audit report is subject to fine up to NRs. 20,000.
- Submission of Labor Audit Report: Report should be submitted to : (a) Labor Relation Committee, (b) Nepal Rastra Bank by banking and financial institutions, (c) Insurance Board by insurance companies, (d) such authority providing license for approval for other entities.

Other Provisions

- **Managerial Level Employee:** Manager and managerial level employee have been prohibited from submitting collective demands on behalf of trade union, taking part in collective bargaining and taking part in strike.
- **Performance Appraisal:** once in a year in general, in the beginning of the fiscal year to appraise the performance in the last fiscal year.
- **Certificate of Work Experience:** Upon the termination of service, if an employee asks for the certificate of work experience, it should be provided stating:
 - Period of service,
 - Post of the worker.

Other Provisions

- Period of Service: Following period shall be computed in period of service: a. Reserve Period, b. Remunerated Leave, c. Unpaid Leave during extended maternity leave, d. Period of Leave during medical treatment of any injuries suffered while in work for the employer.
- Bylaws: An entity may frame Bylaws for its internal management in consultation with authorized trade union, if any or active trade union in the entity. The Bylaws should be registered at Labor Office.

Other Provisions

- Repeal:
 - Labor Act, 1992 (2048)
 - Labor Rules, 1993 (2050)
 - Industrial Trainee Training Act, 1982 (2039)
 - Retirement Fund Act, 1985 (2049)

For Further Information:

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