

# Labor Laws and Practice of Nepal

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# 1. Related Legislation

- Labor Act, 2048 and Labor Rules, 2050
- Bonus Act, 2030 and Rules, 2039
- Trade Union Act, 2049 and Trade Union Rules, 2050
- Industrial Apprentices Act, 2039
- Child Labor (Regulation and Prohibition) Act, 2056

# ILO Conventions Ratified by Nepal

- Weekly Rest (Industry), 1921 (No. 14)
- Forced Labour Convention 1930 (No .29)
- Right to Organize and Collective Bargaining 1949 (No. 98)
- Equal Remuneration 1951 (No.100) ratified in 1976
- Discrimination (Employment and Occupation), 1958 (No.111)

# ILO Conventions Ratified by Nepal

- Abolition of Forced Labour Convention 1957 (105)
- Minimum Wage Fixing, 1970 (No. 131)
- Minimum Age, 1973 (No. 138)
- Tripartite Consultant (International Labour Standard), 1976 (No. 144)
- Worst Forms of Child Labour, (No. 182) 1999 ratified in 2002
- Indigenous and Tribal Peoples Convention, 1989 (169)

# Scope of Labor Laws

- Labor Laws apply to a factory, company, organization, institution, firm or its group:
  - having established as per the existing law,
  - with the object of undertaking an industry, business or providing service,
  - Where tenor more worker/employees work.
- It also applies to Tea Estates and any industry established in the Industrial Estate even if less than 10 workers/ employees work there.

## 2. Hiring and Confirmation

### Hiring of Employees

- Classify the position available in the organization and inform the same to the labor office.
- Advertisement is required to fill up vacant post.
- Appointment letter should be given while hiring in service.
- Approval of Labor Department is required to hire foreign national.

# Hiring Options

- Permanent Employment
- Temporary Employment /Contract
- Piece Rate
- Out sourcing
- Apprentice

# Probation

- Organization should hire worker/employee on probation for regular/permanent job.
- Probation period:
  - ⇒ 240 days in a normal enterprise
  - ⇒ Continuous work during a season in case of seasonal enterprise
- Public holidays and weekly day offs are counted while computing probation period



# Confirmation

- Organization may terminate probationer's service at any time, without compensation and prior notice unless otherwise provided in contract.
- Confirmation letter should be given to the employee satisfactorily completing probation period.
- Confirmation letter should contain the detail terms of service such as facilities, remuneration etc.

# Employment on Contract

- The Labor Act permits hiring of worker/employees on contract :
  - If the production/service is required to be increased immediately
  - For specific period and for specific job
  - Specifying the terms and benefits for the employee.
- The Labor Act does not envisage hiring of employees on contract for a regular job.

# Outsourcing

- This mainly refers to out-sourcing regular activity of a company to another company providing such services.
- The most common in practice is security personnel, driver, messenger, cleaning, gardening services.
- The Supreme Court has in its recent judgment recognized the practice of out-sourcing in Nepal.

# Project Basis Employment

- This option is used in a case the employee is needed for specific project.
- This mode of hiring normally used by the Not-for-profit/social organizations for such employees hired for specific project.
- This option may be adopted if there is any specific projects in the company.

# Maintenance of Record

- Separate record to be maintained of each employee
- Personal Record should include:
  - ⇒ name, address, date of birth and details of citizenship
  - ⇒ date of appointment, post, nature of work,
  - ⇒ salary and mode of payment,
  - ⇒ department/section, leave record and other facilities
- Organization should maintain attendance register.

# Conclusion-Hiring

- Assess the need of organization to adopt proper mode of hiring.
- Do not put an employee on probation if hired temporarily.
- Do not use long term contract while hiring employee on contract.
- While outsourcing employees the outsourcing contract to be drafted carefully to avoid contingent liabilities .
- For project staff, link their term to the project.
- Issue fresh contract rather extending the term.

# 3. Working Hours and Time

- Working hours and time
  - Maximum Working Hours:
    - For Adult: 8 hrs a day or 48 hrs a week
    - For Minor (below 16): 6 hrs a day and 36 hrs in a week.
  - Maximum Overtime:
    - 4 hrs a day and 20 hrs a week
  - Working Time for Female and Minor:
    - 6 am to 6 pm unless otherwise agreed with them
  - Tiffin break: 30 minute break in a day
  - Weekly off: one day off in a week

# Working Hours-Conclusion

- Ncell may contract out of maximum working hours provision in the employment letter for such staffs whose nature of service or post requires the work for indefinite period.
- In practice, overtime is not paid to the staffs working in higher level.



## 4. Salary/Remuneration

- Minimum pay, time to pay, permissible deduction
  - Minimum pay- at least prescribed by government.

*Agreement would be void if made agreeing less salary than prescribed by government.*

  - Increment - once a year @ 1/2 day salary.
  - Overtime payment- one and half salary
  - No gender-based discrimination on salary
  - Salary payment gap-maximum 1 month

# Current Rate of Minimum Remuneration

The current rate of minimum remuneration as specified by the Government of Nepal is as follows:

## 1. Employees

- Minimum salary: NRs. 5,100
- Dearness Allowance: NRs. 2,900
- **Total Rs. 8,000/-**

## 2. Wage

- Minimum daily wage: **Rs. 318**

## 5. Leave and Benefits

- Leave
- Gratuity and Provident Fund
- Compensations
- Profit Sharing (Bonus)
- Setting up funds

# Leave and Holidays

- Public Holidays:
  - 13 days annually (fully paid)
- Home Leave:
  - 19 days annually (20:1) (fully paid)
  - Can be accumulated up to 60 days
- Sick leave:
  - 15 days after completion 1 yr service (half paid)
- Mourning leave:
  - 13 days after completion 1 yr service (fully paid)

- **Maternity Leave:**
  - 52 days (fully paid)
- **Special Leave:**
  - 6 months during service period not exceeding 30 days in a year for regular employee who has no leave in his leave account (without pay)
- **Some principles related to leave recognized by Law:**
  - 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.
  - Going for leave without approval is misconduct.

# Gratuity and Provident Fund

- **Gratuity**
  - Eligibility:
    - Completion of 3 years permanent service
  - Disqualification:
    - Employee dismissed from service on the ground of serious misconduct
  - Rate:
    - 1/2 salary for every year service rendered for the service for 7 years
    - 2/3 salary for each year of service for more than 7 to 15 years of service
    - 1 month salary for each year of service for more than 15 years

## ■ Provident Fund

### ✓ Eligibility:

- Permanent employees are eligible

### ✓ Contribution:

- by both employer and employee @ 10% of salary.

### ✓ Amount:

- as deposited in his/her PF account

### ✓ Leave Encasement:

- up to 60 days if home leave is accumulated

# Compensation

- **Death Compensation:**
  - Lump sum amount equal to 3 years salary.
- **Disability Compensation:**
  - As per the percentage of disability. In case of 100% disability an amount equal to 5 years salary.
- **Medical Reimbursement:**
  - On actual basis
- **Condition for Compensation:**
  - Compensation is provided if employee injured or died while on duty.
  - No compensation if death and disability on duty by natural catastrophe
  - No compensation for off-duty death or disability.



# Bonus

- **Allocation:** 10% of net profit
- **Eligibility:** employees working half a period during a year.
- **Not-eligible:** employee committing (a) theft, or (b) involving in illegal strike, or (c) carrying violent activities or breaching
- **Contract Employees:** if it is payable under contract .
- **Ceiling:** Maximum equivalent to (a) Rs. 6 months salary for employee drawing monthly salary upto Rs. 5000/-, (b) 4 months salary for employee receiving monthly salary Rs.5001/- to Rs.15,000/-, and (c) 3 months salary for the employee receiving monthly salary above Rs.15,000/-.

# Establishment of Funds

Welfare fund: to deposit -70% amount remaining after distribution of bonus

Housing fund: Enterprise should allocate at least 5% gross profit to deposit in the housing fund.

Gratuity fund - to deposit the gratuity of each workers.

Provident fund: equal contribution by both employer/employees @ 10% of basic salary of the employees

National level welfare fund (NLF): to deposit 30% amount remaining after distribution of bonus. Government sets up NLF.

## 6. Termination of Service

- Retrenchment :
  - on defined grounds with approval
- Voluntary Resignation:
  - at the desire of the employee
- Compulsory Retirement:
  - after attaining the age of 55 years
- Dismissal:
  - on the ground misconduct defined under the law
- Employee hired on Contract or Project Basis:
  - expiry of contract or project
- Disability or Long Term Injury:
  - if he/she is disabled or not recovered from injury for 1 year

# Retrenchment and Layoff

- Grounds for retrenchment-
  - ⇒ Damage in the machine, shortage of raw materials lack of supply of fuel, stockpiling of goods and natural catastrophe etc.
  - ⇒ Compensation at the rate of 30 days salary for each year of service should be paid to the retrenched employee.
  - ⇒ The employee will have choice between the retrenchment compensation or the gratuity.

# 7. Misconduct and Punishment

- Activities falling under misconduct
- Types of punishment for misconduct
- Procedure for awarding punishment

# Punishment for Misconduct

- Types of punishment
  - ⇒ Reprimanded/Warning
  - ⇒ Withholding annual grade increment
  - ⇒ Suspension up to 3 months
  - ⇒ Dismissal from service

# Grounds for Dismissal

- Causing bodily harm or injury or detaining the officials of organization with or without arms or causing any violence or destruction or assault within the premises.
- Stealing the property of the company
- Being absent on duty for more than 30 days without notice
- Divulging the secrecy of the company to unauthorized person
- If punished for criminal offence involving moral turpitude
- If punished twice for any misconduct. But reprimand shall not be counted after completion of 3 years.

# Grounds for Suspension

- Creating or causing to create disturbance within the premises of the organization with the intention of affecting the service or works or preventing the supply of food, water and electricity or connection of telephone or obstructing entry or exit.
- Accepting or offering the bribes
- Coming to the duty consuming alcohol



# Grounds for Withholding Salary Increment

- Dishonesty in the transaction of the organization.
- Participating or compelling others to participate in any unauthorized strike or in a strike which is declared illegal
- Participating strikes without fulfilling the legal requirements or slowing down of work intentionally against interest of the company
- Destroying intentionally any property of the organization or causing any damage thereon and making unauthorized use of organization's property.

# Grounds for Warning/Reprimand

- Violating any provisions of labor law, regulation, by-laws or any instruction given there under or misbehaving the customers.
- Being frequently absent or late coming without permission.
- Misusing of or damaging the equipment/tools installed for the safety or security of the employees.

# Procedure for Punishment

- Seek an explanation from the employee:
  - give a letter providing 7 days time to submit the explanation
  - state misconduct and punishment that may be awarded in the letter
- Time limitation for seeking explanation:
  - explanation should be sought within 2 months from the date of committing misconduct.
- Time limitation for Punishment:
  - Punishment should be awarded within 2 months from the date of requiring of explanation.
- Who can ask for Explanation and award punishment:
  - Normally the person who hire or issues appointment letter/employment contract

# Punishment-Conclusion

- Action to be initiated by authorized person.
- Make sure that time line has not been lapsed.
- While seeking explanation ensure that the minimum requirement is fulfilled.
- Make sure that the punishment is not excessive as per the law.

## 8. Disputes and its Settlement

### ○ Types of Labor Disputes

- Right Disputes- dispute over the interpretation of existing rules governing condition of employment
- For example- unfair treatment, other personal grievances etc.
- Interest Disputes- dispute arising generally in connection with collective bargaining over the economic interest of workers.
- Interest disputes mainly relate to what rules should govern the condition of employment in future.

# Settlement of Right Disputes

## ○ In respect of personal grievances

- ⇒ Dispute should be submitted to management in writing
- ⇒ The dispute should be settled negotiating with concerned worker/employees within 15 days.
- ⇒ In case the dispute remains unsettled concerned worker/employees may file petition to the Labor Office
- ⇒ Labor Office is also required to negotiate with both worker/ employees and management and settle the dispute within 15 days.
- ⇒ In case the dispute cannot be settled through negotiation Labor Office should give its decision on it.

- In respect of facilities/benefits
  - In case the enterprise fails to pay the benefits and facilities to be given to the employees or delays its payment compliant may be filed to the Labor Office
  - Such compliant should be filed within 6 months from the date when the facilities/benefits becomes due.
  - Labor Office makes enquiry and examine the proofs and gives its decision
  - It may also ask the enterprise to pay compensation in case the delay or non payment of facility is proved.

- In respect of non compliance
  - Labor Department is authorized to impose punishment for non compliance of any provision of Labor Act, Rules or instruction given by itself
  - Any act of an enterprise inconsistent with Labor Law or Labor Rules would be void by the order of Labor Department
  - Any petition for non compliance of Labor Act or Rules should be filed within 3 months from the date of commission of such act



# Appeal

- Court of appeal hears the appeal upon any order passed by the Labor Department.
- Labor Court hears the appeal upon any order or punishment issued or awarded by management or other officers or Labor Office
- Appeal should be filed within 35 days from the date of receipt of such decision or order.

# Settlement of Interest Disputes

## ○ Collective Bargaining

- ⇒ Charter of demand to be submitted to management with signature of at least 51% worker/employees if there is no trade union formed in the enterprise.
- ⇒ If there is union, it is authorized to submit charter of demand on behalf of worker employees.
- ⇒ Agreement to be made within 21 days from the date of submission of charter of demand.
- ⇒ If both parties cannot reach an agreement Labor Office negotiates and tries to settle the dispute
- ⇒ If the negotiation held before labor office cannot resolve the matter then disputed parties have two options:

## Adopt Coercive measures:

- ⇒ Worker/employees may go on strike
- ⇒ Management may lock out the enterprise

## Adopt Other Options:

- ⇒ The dispute may be settled by the arbitrator appointed by both worker/ employees or Tripartite Committee in case workers/employees fail to appoint arbitrator but agrees to form such committee.
- ⇒ Any party not satisfied with the decision of such arbitrator/ committee may appeal to the government

# Coercive measures for settlement of Interest disputes

- For Employees -Strike
  - Worker/employees may go on strike if negotiation held in labor office fails to reach settlement.
  - Procedure to be followed to go on strike
    - ✓ Resolution to go on strike should be passed by at least 60% of the total worker/employees
    - ✓ Notice of strike should be given to management at least 30 days in advance stating its reason
    - ✓ Notice should be given to the Labor Department, Labor Office and Local Administration as well

- For Management -Lock out
  - Management may lock out the enterprise in following grounds:
    - ✓ In case strike is called without giving notice or it is continued.
    - ✓ In case the dispute cannot be settled through the negotiation held before labor office
    - ✓ Notice of lock out should be given to the workers/ employees 7 days in advance
    - ✓ Prior approval of government is required to lock out the enterprise except in certain instances.

- During strike, if there is a possibility of damage to the enterprise due to violent or destructive activity of the worker/employees management may lock out the enterprise without prior notice or approval of the government.
- If an enterprise is locked out due to danger of destructive activity as stated above, notice of lock out should be given to the Labor Office and Department within 3 days.
- **Restriction:** Tenure of the collective bargaining agreement is of two years and no new demands can be submitted during the tenure of the collective bargaining agreement.

## 9. Trade Union

- **Main Objectives:**

- To promote the economic and social condition of worker employees
- To work for maintaining good relationship between the worker and the employer
- Help to grow the enterprise increasing its productivity
- To make the workers accountable and disciplined

# Membership and Registration

- Who can join:
  - All workers and employees (except managers, head of department, section or unit) of the concerned enterprise.
- Registration requirement:
  - At least 25% workers should be the member and signature of 10 members is required to form union.
- Restriction:
  - No membership more than one union at a time
- Authorized trade union:
  - If there is more than one trade unions in an enterprise, the union having majority vote of the worker/employees is treated as authorized trade union. The recognition would be effective for 2 years.



# Rights and privileges of the Trade Union

- Privilege:

- No action can be taken against member of executive committee of the trade union even if his action affects the enterprise in course of collective bargaining.

- Rights:

- Enterprise level trade union is authorized to submit demand on behalf of worker employees to the management.
- Members of the executive committee of the trade union can not be promoted or transferred without their consent.

## 10. Labor Relation Committee

- Maximum members- at least 4 not exceeding 20
- Employee of management level to represent the LRC
- Eligibility - completion of 1 yr service and at least 18 years of age.
- Representation- chairman, joint secretary, treasurer from the management and secretary, vice chairman from the worker/ employees
- Tenure- 2 years
- Labor Office should be notified upon its formation.

# Practical issues related to Labor Laws

## 1. Rigidity

- On hiring
  - compulsory confirmation
  - limited options to hire
- On transfer
- On termination
  - Only on the ground of misconduct
  - Ground of misconduct defined under law
  - Once confirmed he/she would be confirmed for all

# Practical issues related to Labor Laws

## 1. On retrenchment and layoff

- Prior government approval is required
- only on limited grounds defined under law
- heavy compensation in retrenchment

## 2. Lack of fair administration

- Labor Court or Laborer's Court
- Attitude of Labor Office and Labor Department

# Practical issues related to Labor Laws

## 3. Irrational Provisions

- Allocation of housing fund at 5% of gross profit
- Allocation of bonus at 10% of net profit
- Uniform law for different jobs
  - manual /factory worker
  - knowledge based worker
  - NGOs/INGOs
- Compulsory increment of salary
- Compulsory confirmation of all type of employees irrespective of nature of job

# Practical issues related to Labor Laws

## 4. Unfavorable to the employer

- No employer can go to the labor office
- Government approval is required to Lock up
- No dismissal except on limited grounds
- Right and benefit only for the employee
- Silent on duties and accountability of the employee

# Challenges

- Impossible in fully complying with the labor law
- Unable in creating peaceful industrial environment
- Unfavorable for foreign investment and to generate employment
- Fails to maintain proper balance of interest of employer and employee
- Lack of proper regulation of trade unions

# Recommendation

- Rationalize the law
  - make different provision for different type of job
  - manual/factory worker-guarantee basic protection
  - for knowledge based worker allow negotiation
  - different mode of hiring to be allowed
  - flexibility on lay off and retrenchment with reasonable compensation and valid grounds



# Recommendation

- Proper regulation on trade union
- Ensure fair administration of labor law
- Integrated social security for manual worker
- Update the grounds of misconduct
- Fix general duty of the employee
- Golden handshake should be allowed
- Recognize the right of the management

# 7. Issues On Labor Law

1. Rigidity
2. Lack of fair administration
3. Irrational Provisions
4. Unfavorable to the employer