

Labour Act 2017







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HIGHLIGHTS OF THE NEW LABOUR ACT 2017



Highlights of the Labour Act 2074 (2017)

BACKGROUND

The new Labour Act 2017 (Act) applies to companies, private firms, partnership firms, cooperatives, associations or other organizations ("entity") in operations, or established, incorporated, registered or formed under prevailing laws to undertake industry or business or provide service with or without profit motive.

It is also applicable to entities registered in foreign countries and engaged in the promotion of business, sale of products or promotion of other works in Nepal. (Section 90)

HEADCOUNT

The Act is applicable to all entities regardless of the number of laborers/workers.

However, the threshold of 10 or more laborers/workers are required to constitute a collective bargaining committee, labour relations committee, etc.

THE ACT IS NOT APPLICABLE TO (SECTION 180):

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

TYPES OF EMPLOYMENT (SECTION 10)

- *Regular*: Persons hired for work or service other than work based, time bound, casual or piece rate employment.
- *Work Based*: Persons hired for rendering a specific service.
- *Time Bound*: Persons hired for rendering service for a definite time period.
- *Casual*: Persons hired for seven days or less than seven days a month.
- *Part-time*: Persons hired for 35 hours or less than 35 hours a week.

PART TIME WORKERS (SECTION 19-21)

Part-time workers shall be remunerated based on hours worked, unless otherwise specified in the employment contract. They cannot be prohibited from working elsewhere and shall be entitled to social security benefits.

INTERN (SECTION 16 & 17)

Any person may be allowed to work as an intern pursuant to the approved syllabus of an educational institution, and after concluding an agreement with that educational institution.

TRAINEE (SECTION 18)

A trainee may be appointed for a period of training not exceeding 1 year, unless otherwise prescribed by law. All trainees shall be entitled to social security benefits including provident fund and gratuity.

The employer is not obliged to appoint the trainee as a regular employee upon the completion of training. However, if such trainee is appointed, he/she shall not be under probation.

HIRING FOREIGN NATIONALS

No foreign national can be engaged in work without an employment agreement entered into either in language understandable by the foreign national or in English. Unless otherwise provided in the agreement, the employment agreement continues for 3 years.

A work permit shall be compulsory for all foreign nationals except for foreign nationals having diplomatic immunity or for those exempted from work permit under the treaty or agreement entered into with the Government of Nepal. (Section 22 & 23)

General provision (Section 22)

Prior to employing a foreign national, the entity must publish an advertisement in national-level daily newspaper to fulfill vacant positions with Nepali citizens. If no application is received or if no local skill-set is available, a foreign national can be hired for the work with the approval of the Department of Labour.

Entities with foreign investment or entities operating on foreign aid

Work permit to the foreign nationals hired as the chief executive may be provided by simply recording them at the Department of Labour.

Work permit for technicians for short period

Technicians engaged for less than 3 months to carry out repairing of any machinery or for installing new technology or similar casual work, may be provided work permit simply by recording them at the Department of Labour.

Repatriation of income

Foreign nationals can repatriate their income in convertible foreign currency.

OUTSOURCING

Outsourced labour can be engaged in works other than the core works of the entity. The work

that can be carried out by the outsourced laborers is prescribed in the Nepal Gazette.

Obligation of main employer (Section 64)

- The main employer should obtain laborers from a licensed labour supplier. Employees cannot be obtained from a labour supplier with whom the employer or employer's proprietor, director or family members are engaged. If outsourced employees are not from a licensed labour supplier, or if engaged in work against the provisions of the Act, they are deemed to be employees of the main employer.
- The main employer may engage laborers having an agreement with the labour supplier. The agreement should ensure that the laborers will not be provided remuneration and facilities below the minimum remuneration and benefits prescribed in the Act.
- The main employer should regularly obtain information on whether the labour supplier is providing such remuneration and benefits regularly.
- The main employer is required to inform the labour office or Department if the labour supplier has not provided outsourced laborers the prescribed remuneration and benefits.
- The main employer is required to arrange for occupational health and safety measures.
- The main employer is required to adjust the increment if the minimum remuneration and benefits are increased in accordance with the laws.

Obligation of labour supplier (Section 59 & 60)

- Labour supplier must obtain a license to operate its business. (Section 59 (1))
- Only after the labour supplier furnishes the security or bank guarantee, the labour office or Department issues the license.
- Labor supplier shall not outsource workers for more than one type of work or service. (Section 59 (4))
- Labour supplier shall provide remuneration and other facilities for outsourced workers and shall ensure that remuneration is not below the minimum prescribed.

- The license of the labour supplier can be terminated for non-payment of remuneration and other benefits.
- The labour supplier shall collect information on occupational health and safety arrangements made by the main employer, and if such arrangements are not made, it shall recommend the main employer to make such arrangements.
- If the main employer does not make such arrangements even after recommendation, the labour supplier shall inform the Department or concerned labour office.

PROBATION PERIOD (SECTION 13)

The probation period is reduced to 6 months under the Act, from the previous 240 days.

WORKING HOURS

Working hours continue to be 8 hours a day and 48 hours a week. Overtime has been increased to 24 hours per week from 20 hours a week. Overtime pay is 1.5 times the regular remuneration.

30 minutes' break is provided after 5 hours of work, where the work can be interrupted. Where the work cannot be interrupted, break is provided after shifts.

Facility of replacement (in-lieu-of) leave is available for workers working 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 half day salary.
- **Festival expenses**
Amount equivalent to the monthly remuneration is provided once a year as festival expenses.

PAYMENT OF REMUNERATION (SECTION 35)

Nature of workers	Terms of payment
Engaged in work for less than a month	Within 3 days from completion of work
Engaged in casual employment	Upon the completion of work
Other employees	Payment periods should not exceed 1 month

LEAVE AND HOLIDAYS (SECTION 40-48)

There have been major changes in maternity leave, sick leave and accumulation of leave in the Act. It also provides additional category of leave, such as paternity leave which was not included in the Previous Act.

Particulars	New Labour Act
Weekly holiday	1 day every week
Public holiday	13 days for male employees 14 days, including International Women Labour Day for female employees
Annual leave	1 day for every 20 days worked
Sick leave	Fully paid up to 12 days, eligible on a proportional basis for those employees who has not completed 1 year of service
Maternity leave	Up to 14 weeks, fully paid for 60 days Compulsory maternity leave from 2 weeks before the delivery up to at least 6 weeks after the delivery
Paternity leave	Up to 15 days, fully paid
Mourning leave	13 days
Replacement leave	For laborers who work on public holidays or weekly holidays
Special leave	None
Accumulation	Home leave - 90 days Sick leave - 45 days Excess accumulation - encashed every year

General principles (Section 51)

Leave is not regarded as a matter of right, but of privilege. The approving authority may accept or decline a leave request or curtail an approved leave.

- Prior leave approval may be required except in cases of urgency.
- Taking a leave without approval may be considered misconduct.

TERMINAL BENEFITS

There have been major changes in the terminal benefits provided to the employees, so that the benefits are provided to each worker irrespective of length of service or nature of employment. The previous Labour Act provided terminal benefits to the permanent employees and benefits such

as gratuity to only those employees who have completed a certain year of services. These eligibility criteria have been removed by the Act. Changes have also been made to the benefit rates of gratuity and leave encashment.

The following terminal benefits are proposed:

Particulars	New Labour Act
Provident fund (Section 52)	<p>Contribution: 10% of the basic remuneration of the concerned employee by employer and 10% by employee</p> <p>Eligibility: Permanent employee from the first day of employment.</p> <p>The amount should be deposited in the Social Security Fund.</p>
Gratuity (Section 53)	<p>Gratuity: 8.33% of basic remuneration on a monthly basis.</p> <p>Eligibility: From the first day of employment.</p> <p>The amount should be deposited in the Social Security Fund.</p>
Leave encashment (Section 49)	<p>Accumulated annual leave up to 90 days and sick leave up to 45 days can be encashed at the time of discontinuation of service.</p>
Severance compensation (Section 145)	<p>Contribution: 1-month salary for every year of service. For employees employed for less than 1 year, the compensation shall be provided on a proportionate basis.</p> <p>Eligibility: Employees shall not be entitled to severance compensation if he/she is entitled to unemployment allowance under the Social Security Act.</p>

OTHER BENEFITS

Particulars	New Labour Act
Medical insurance (Section 54)	<p>Coverage: At least NPR 100,000 per year per employee.</p> <p>Premium to be borne at the ratio of 50:50 by the employer and the employee.</p>
Accident insurance (Section 55)	<p>Coverage: at least NPR 700,000 for every employee.</p> <p>Premium: Fully paid by employer.</p>
Death compensation	<p>The nearest successor is entitled to the amount of accident insurance.</p>
Bonus	<p>10% of net profit</p>

Particulars	New Labour Act
Housing fund	Removed
Festival allowance	Amount equivalent to the monthly remuneration to be paid once a year. The employee not completing 1 year of service is entitled to the allowance on a proportional basis.
Disability compensation	As recovered from the insurance amount on the basis of degree of disability.
Compensation against injury	As recovered from the insurance amount.

Disciplinary action for misconduct

The Act has redefined punishments, as it removed suspension as a punishment and included a salary deduction or a provision to withhold promotion, as a form of disciplinary action.

However, an employee can be suspended (a) for investigation of misconduct or (b) if taken in judicial custody for any office by lawful authority.

Punishment	Misconduct under New Labour Act
Reprimand/ Warning (Section 131 (1))	<p>Unapproved absence from work.</p> <p>Leaving the workplace without obtaining permission from the management.</p> <p>Frequent unapproved delays in reporting to work.</p> <p>Not abiding by the work related orders of the supervisor or employer.</p> <p>Other misconducts as prescribed in the Bylaws.</p>
Deduction of 1 day's remuneration (Section 131 (2))	<p>Not accepting the letter or notice of punishment.</p> <p>Participating on or compelling to participate on an illegal strike.</p> <p>Collectively delaying work.</p> <p>Causing loss to the entity by reducing the production or service through recklessness or negligence.</p> <p>Inappropriate use of facilities by submitting false details.</p> <p>Not using the security instruments provided by the employer.</p> <p>Other similar misconducts as prescribed in the Bylaws.</p>

Punishment	Misconduct under New Labour Act
Withholding annual grade of remuneration or promotion (Section 131(3))	<p>Taking the entity's property outside the entity or unauthorized use of such property.</p> <p>Embezzlement of the entity's transactions.</p> <p>Destruction of the entity's property due to negligence or recklessness.</p> <p>Prevention of the supply of food and water to the entity or obstruction of movement in the entity.</p> <p>Abusing any items kept or arrangements made for interest, health and safety of the workers or employees or causing damage to them intentionally.</p> <p>Other misconducts as prescribed in the Bylaws.</p>
Termination upon misconduct (Section 131(4))	<p>Causing bodily harm or injury to the Proprietor, Manager or Employee of the entity.</p> <p>Accepting or offering bribes.</p> <p>Stealing property of the entity.</p> <p>Embezzlement of property of the entity.</p> <p>Causing damage knowingly to the property of the entity.</p> <p>Unapproved absence from entity for more than 30 consecutive days.</p> <p>Causing damage to secrecy relating to special technology of the entity.</p> <p>Convicted of a criminal offense involving moral turpitude.</p> <p>Presenting false documents for the appointment.</p> <p>Consuming psychotropic drugs or alcoholic drinks.</p> <p>Having been punished twice for other misconducts within 3 years.</p> <p>Other similar misconducts as prescribed in the Bylaws.</p>
Employment termination based on seriousness of offence	Sexual Harassment at Workplace (Section 132)

PROCEDURE FOR DISCIPLINARY ACTION

The employer shall seek an explanation from the employee and provide to the employee in writing:

- A letter stating the misconduct and punishment that are likely to be awarded.
- 7 days' time to submit an explanation.
- *Time limitation for seeking explanation:* within 2 months from the date of committing 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 the employer a resignation letter and serving a notice period as prescribed in the employment agreement.
- **Compulsory retirement (Section 147)**
The employment is terminated by compulsory retirement when the employee reaches the age of 58.
- **Time bound employee (Section 140)**
The employment is terminated upon expiry of the time period prescribed in the employment agreement.
- **Work based employee (Section 140)**
The employment terminates upon completion of the work specified in the employment agreement.
- **Termination due to poor performance (Section 142)**
The employment may be terminated if performance of the employee is found to be unsatisfactory or below standard in 3 consecutive performance appraisals.
- **Termination due to bad health (Section 143)**
The employment may be terminated on the recommendation of a medical practitioner, if the employee is physically or mentally disabled or injured, rendering him/her unable to work, or requiring him/her a long period of medical treatment, therefore affecting the work of the entity.

NOTICE REQUIREMENT

The employee or employer terminating the employment should provide a notice except in the situation of termination by dismissal. The notice requirement is linked to the length of service which is as follows.

Period of employment	Notice period
Up to 4 weeks	1 day
4 weeks to 1 year	7 days
Exceeding 1 year	30 days

If the employer terminates the employment without providing a notice, the employee should be provided remuneration in lieu for the notice period.

RETRENCHMENT (SECTION 145)

The Act has amended the requirement of prior approval of the Department of Labour to retrench employees. As per the Act, the workers can be retrenched as agreed with the Trade Union or with the Labour Relation Committee in the absence of a Trade Union. Where the agreement cannot be reached with the Trade Union or the Labour Relation Committee, the employees can be retrenched by providing information to the Labour Office.

The reasons for retrenchment could be:

- Poor economic conditions,
- Increase in number of employees as a result of merger, causing some employees to be redundant
- Other conditions

PROCEDURE FOR RETRENCHMENT

- The entity must provide a 30 days' prior notice specifying the reasons for retrenchment, possible date of retrenchment and the number of employees to be retrenched, to the authorized trade Union or Labour Relation Committee.
- Employees can be retrenched after reaching a consensus with the Trade Union or Labour Relation Committee.
- Where such trade union or Labour Relation Committee does not exist or where the

consensus cannot be reached, the employees can be retrenched by providing information to the Labour Office.

- The provisions of the Act on retrenchment are not applicable to entities in SEZs or to entities partially or fully closed by the order of the Labour Court or the Government of Nepal.
- The provisions on retrenchment are not applicable to entities with less than ten employees.

OBLIGATION OF EMPLOYERS UNDER SOCIAL SECURITY ACT 2074

- **Enlistment of employers (Section 29)**
The employer in the prescribed industry, service or business should enlist with the Social Security Fund as prescribed in the Nepal Gazette.
 - **Enlisting of workers (Section 30)**
The Act obliges the employer to enlist workers in the Fund within 3 months from the date of appointment of workers.
 - **Obligation of existing employers (Section 30)**
For the employers in existence at the time of the promulgation of the Act, the employers should enlist their workers within 6 months from the date of the enforcement of the Act.
 - **Rate of contribution (Section 17)**
The rate of contribution by the enlisted employer or from the workers' contributable income shall be as determined by the Ministry upon the recommendation of the committee. This information shall be published in the Nepal Gazette and is subject to revision.
 - **Time of contribution (Section 12 (3)):**
The contribution to the Fund should be made on a monthly basis, unless otherwise specified.
 - **Information on discontinuation of employment (Section 34)**
The employer shall inform the Fund within a month if any of its workers has discontinued the service with the employer.
- ## RECOVERY OF CONTRIBUTION AMOUNT (SECTION 18)
- If an employer does not contribute the contribution amount within the time period prescribed, the Fund can recover the amount

along with 10% interest, from the employer.

- However, the employer can submit an application to the fund citing reasons for failure, based on the reasonableness, can be exempted for payment of interest, fully or partially.
- The Fund can take following actions in the course of recovering the contribution amount:
 - Freeze the bank accounts
 - Freeze movable and immovable properties
 - Abrogate all the facilities received as per law
 - Cancel the license
 - Freeze the passport

SETTLEMENT OF DISPUTE

Individual claims (Section 113-115)

- The employee shall submit a written application to the employer.
- Within 15 days of receipt of application, the employer shall settle the dispute through negotiation with the employee.
- This time period can be extended by mutual consent or agreement.
- Upon failure to settle the dispute or upon failure of the employer to provide notice for negotiation, an application should be filed to the Labour Office.
- The Labour Office should facilitate the settlement through discussion between the parties within 21 days. Upon failure to settle dispute through discussion, Labour Office shall issue the decision within 15 days.

AUTHORITY TO SUBMIT THE COLLECTIVE CLAIM (SECTION 116)

Any entity having 10 or more employees should constitute a collective bargaining committee. The committee should be formed by an authorized trade union; however, in the absence of an authorized trade union, by the signatures of at least 60% of the employees.

The Collective Bargaining Committee submits the 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 problem is not settled through discussion within 21 days, an application can be submitted to the concerned Labour Office for mediation.

Mandatory Arbitration of collective disputes

The Act requires that disputed parties settle the dispute by arbitration, under certain situations where the employer and collective bargaining committee agree to settle the dispute by arbitration.

Where the dispute cannot be settled through mediation, it is referred for arbitration under the following conditions:

- For entities providing essential services
- For entities established in SEZs
- When a state of emergency is declared as per the Constitution

STRIKE (SECTION 121)

The Collective Bargaining Committee can go on a strike for the settlement of collective disputes in the following occasions:

- Absence of compulsory requirement for arbitration.
- Failure of arbitrators to arbitrate.
- Failure to constitute an arbitral tribunal within 21 days from the submission of an application to the Ministry.
- Failure to arbitrate within the prescribed time
- Rejection to implement the arbitral award by the employer or legal challenge on the arbitral award.
- Disagreement by either of the parties to the arbitral award except on occasions where the arbitration is compulsory.

Notice of strike

Employees can go on a strike by outlining the claims and specifying the date to effect the strike by giving 7 days' prior notice and by informing the Local Administration Bodies and the Labour Office.

Workers appointed or deputed for the duties of control and security of the entity are not entitled to go on a strike during duty hours.

LOCKOUT (SECTION 124)

When a strike has been started or continued without prior notice, or when the collective dispute is not settled through the process provided in the Act, the entity may declare a lockout by obtaining the approval of the Department of Labour

Notice of lockout

A notice of lockout shall be furnished for the information of workers and employees 7 days prior to specifying the date of effecting the lockout, informing that the entity shall be locked out if the strike is not called off.

During the strike, if there is a possible situation of damage to the entity through riots, violence, destruction, etc., a lockout may be declared.

In such a situation, the Labour Office or the Department and the Local Administration should be reasonably informed about the lockout within 3 days.

The Local Administration should provide necessary security arrangements immediately upon the receipt of such information.

Government intervention (Section 124 (5))

The Department can declare a lockout illegal at any time if the lockout

- Appears irrational, or
- Is likely to cause a breach in peace and security conditions of the country, or
- Is contrary to the economic interests of the country.

Payment of remuneration during strike or lockout (Section 127)

- When the workers go on a strike contrary to the provisions of the prevailing laws, they are not entitled to any payment of remuneration.
- When the lockout is declared against the provisions of the law, the workers are entitled

to full remuneration for the period of such a lockout.

- In a legal strike or lockout, the workers are entitled to half the remuneration, unless otherwise agreed in the collective agreement.

SANCTIONS

Labour Office or Department

Noncompliance	Consequence
Supply of labour without a license and engagement of laborers supplied by an unlicensed supplier	Fine up to NPR 200,000
Engaging a foreign national without a work permit	Fine up to NPR 200,000 depending upon the number of workers; If repetition even after being punished: Additional fine of NPR 5,000 per person per month.
Discriminating among workers	Fine up to NPR 100,000. The order to maintain equality may be given.
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.

LABOUR OFFICE

Noncompliance	Consequence
Deduction of Remuneration and Other Facilities contrary to prevailing law	Indemnify the concerned worker with an amount double that deducted for remuneration and other facilities.
Obstructing a government officer, submitting false details	Fine up to NPR 20,000
Engaging an intern or trainee against the provisions of the Act	Fine up to NPR 10,000 per intern or trainee.
Failure to deposit gratuity amount, provident fund contribution or social security fund contribution, or failure to arrange medical or accident insurance	Indemnify the worker with an amount double that to be paid.
Keeping workers in reserve discriminatorily	The order not to do so.
Terminating employment against the provisions of the Act	Issue necessary directives

LABOUR COURT

Noncompliance	Consequence
Engaging a bonded laborer	Imprisonment up to 2 years or fine up to NPR 500,000 or both. The Labour Court may require that the entity provides the bonded labour with remuneration, allowance and other facilities, as well as indemnify the bonded labour with an amount double the 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. The person suffering the injury should be compensated.

OTHER PROVISIONS

Management level employee

- Managers and management level employees have been prohibited from submitting collective demands on behalf of trade unions, participating in collective bargains and participating in strikes.

Performance appraisal

- The entity can conduct performance appraisal of its workers once a year. The bases and procedure of appraisal should be justifiable and reasonable, and disclosed to workers prior to performance appraisal.

Certificate of work experience

- Upon the termination of service, if an employee requests for the certificate of work experience, he/she should be provided one. The certificate should state the period of service and the position of the employee.

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right size
right solutions

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