

The Labour Act, 2017 (2074)

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Act number 14 of the year 2017 (2074)

An Act Made for the Amendment and Consolidation of the Laws Relating to Labour

Preamble:

Whereas, it is expedient to amend and consolidate the laws relating to labour in order to provide for rights, interests and benefits of labours, develop good labour relations by making explicit provisions on the rights and duties of labours and employers and increase productivity by ending all forms of labour exploitation;

Now, therefore, the Legislature-Parliament referred to in clause (1) of Article 296 of the Constitution of Nepal has enacted this Act.

Chapter-1

Preliminary

1. **Short title and commencement:** (1) This Act may be cited as the "Labour Act, 2017 (2074)."
 - (2) This Act shall commence forthwith.
2. **Definitions:** Unless the subject or the context otherwise requires, in this Act:
 - (a) "Basic remuneration" means the basic remuneration to be received by a labour for employment, and this term also include amount of increment in remuneration after completion of one year of the employment period.
 - (b) "Chief Executive" means a person who bears the final responsibility for the activities of the enterprise.
 - (c) "Workplace" means the place or location where a labour works, and this term also includes a place or situation where a labour has to stay or visit in the course of the work.
 - (d) "Office" means the Labour Office.

- (e) "Lockout" means the closure of any enterprise or workplace by the employer to prevent fully or partly the labours from performing their regular work.

Provided that this term does not refer to a situation where the labours are held in reserve or where the work is stopped because of the occurrence of an immediate danger.

- (f) "Prescribed" or "as prescribed" means prescribed or as prescribed in the rules framed under this Act, and this term also includes a notice published in the Nepal Gazette as provided for in this Act or the rules framed under this Act.
- (g) "Inspector" means the senior labour inspector, labour inspector, senior occupational safety and health inspector and occupational safety and health inspector, and this term also includes any other employee deputed for inspection.
- (h) "Council" means the Central Labour Advisory Council formed pursuant to Section 102.
- (i) "Remuneration" means the basic remuneration to which a labour is entitled, and this term also includes an allowance.
- (j) "Enterprise" means any company, private firm, partnership firm, cooperative organization or association or other organization which is established, incorporated, registered or formed or operated in accordance with the prevailing law with the objective to carry on any industry, business or service, with or without profit motive.
- (k) "Ministry" means the Ministry of Labour and Employment, Government of Nepal.
- (l) "Main employer" means an employer who employs labours through a labour provider.
- (m) "Employer" means any person or enterprise that employs labours, and this term also includes a manager in the case of an enterprise, and a labour provider in the case of a labour supplied pursuant to this Act.
- (n) "Employment contract" means an agreement entered into between an employer and a labour in relation to the service, conditions and

benefits of employment, and this term also includes the letter of appointment given by the employer to the labour.

- (o) "Employment period" means the period during which a labour is employed with an employer, and this term also includes the following period:
 - (1) Period held in the reserve,
 - (2) Period of leave with remuneration,
 - (3) Period of unpaid leave taken for maternity or maternity care,
 - (4) Period of leave taken for medical treatment in case of accident during or while working for the employer.
- (p) "By-law" means the by-law relating to conditions of service of the labours framed by an enterprise pursuant to Section 108, and this term also includes the financial administration by-law of the enterprise.
- (q) "Department" means the Department of Labour.
- (r) "Manager" means the chief executive of an enterprise. and this term also includes the chief of any section or unit so appointed as taking or exercising the final responsibility or authority.
- (s) "Managerial level labour" means a labour appointed to a post at the managerial or higher level thereof entrusting the authority to evaluate, control and supervise the work of labours on behalf of the employer, and this term also includes the manager.
- (t) "Social Security Fund" means the Social Security Fund established pursuant to the prevailing law.
- (u) "Collective agreement" means an agreement entered into between the employer or employers' association and the trade union or Collective Bargaining Committee on remuneration, conditions of service, benefits of the labours or matters of common concern to the employer and the labours.
- (v) "Collective Bargaining Committee" means the Collective Bargaining Committee referred to in sub-section (1) of Section 116.
- (w) "Labour Court" means the Labour Court formed pursuant to Section 151.

- (x) "Labour" means a worker or employee or a person employed with any job title who performs a physical or intellectual work for the employer.
- (y) "Labour supplier" means a person or body having obtained the license pursuant to Chapter 11 to supply labours.
- (z) "Strike" means a situation where labours collectively refuse to perform their regular work partially or completely.

Provided that a situation where labours are on leave or stopped the work as a result of the occurrence of an immediate danger or have become unable to attend or perform the work due to a situation beyond the control of labours shall not be considered as a strike.

Chapter-2

Basic Provisions Relating to Labours

- 3. To remain as minimum standards:** (1) This Act shall remain as minimum standards for labours and on matters relating to labours.
- (2) Where an employment contract is entered into between an employer and a labour with provisions to pay or receive remuneration or benefits lesser than the remuneration or benefits set forth in this Act and the rules framed under this Act or in contravention of the conditions set forth in this Act, such an employment contract shall be deemed to be contrary to this Act, and it shall, to that extent, be void.
- 4. Prohibition on employing in forced labour:** (1) No person shall employ any labour in forced labour, directly or indirectly.
- (2) Notwithstanding anything contained in sub-section (1), the following work or service performed by a labour shall not be deemed to be forced labour:
- (a) Any work or service required to be performed under the duties of citizens as and when the nation so requires,
 - (b) Any work or service required to be performed by any person in consideration for the sentence imposed by a decision or order of a court,

- (c) Any work or service required to be performed as a member of a community for the interest of such a community.

Explanation: For the purpose of this Section, "forced labour" means any work or service performed by any labour against his or her will as a result of a threat of taking any action having financial, physical or mental impact if he or she does not perform such a work or service.

- 5. **Prohibition on employment of children:** No person shall so employ a child in any work as to be contrary to law.
- 6. **Prohibition on discrimination:** (1) No employer shall discriminate any labour on the ground of religion, colour, sex, caste, tribe, origin, language, ideological conviction or other similar ground.
 - (2) Notwithstanding anything contained in sub-section (1), the following act shall not be considered as discrimination:
 - (a) To give preference to any person for employment on the basis of inherent requirement of a work or service,
 - (b) To engage a female labour who is pregnant in any work or service which is easier and suitable to her physical condition, without any reduction in the remuneration and benefits, or
 - (c) To give preference to a labour with physical disability for such job responsibility as is suitable to his or her physical condition.
- 7. **Prohibition on discrimination in remuneration for equal work:** (1) No discrimination shall be made between the labours in remuneration for equal value of work on the ground of sex.
 - (2) For the purpose of sub-section (1), whether the work is of equal value shall be determined on the basis of the nature of the concerned work, the time required for its performance, labour, skill and productivity.
- 8. **Right relating to trade union:** (1) Every labour shall, subject to this Act and other laws, have a right to form and operate a trade union, acquire the membership of, or get affiliated with, such union or involve in other activities relating to trade union.
 - (2) While exercising the right relating to labour pursuant to this Act and other laws, the labour shall be dutiful and responsible towards the employer.

9. **Right to remedy:** In the event of infringement of any right conferred by this Act and other law to a labour, such a labour can get remedy pursuant to this Act or other law.

Chapter- 3

Provisions Relating to Employment

10. **Types of employment:** (1) An employer may engage a labour in any type of the following employment:

- (a) Regular employment,
- (b) Work-based employment,
- (c) Time-based employment,
- (d) Casual employment,
- (e) Part-time employment.

Explanation: For the purpose of this Section, -

- (1) “Regular employment” means employment of any type whatever other than that set forth in clauses (b), (c) and (d).
- (2) “Work-based employment” means employment that the employer provides or has provided specifying any particular work or service for performance.
- (3) “Time-based employment” means employment that the employer provides or has provided to the labour specifying a certain period on the condition that the labour has to provide any service or perform any work within that period.
- (4) “Casual employment” means employment that the employer provides or has provided to the labour on the condition that the labour has to provide any service or perform any work, for seven days or less within a period of one month.
- (5) “Part-time employment” means employment that the employer provides or has provided to the labour on the condition that the labour has to perform a work in thirty-five hours or less than thirty-five hours in a week.

(2) If there arises a question as to whether any employment is regular or not, it shall be determined as prescribed on the basis of the nature of the work, notwithstanding anything contained in the employment contract.

11. Prohibition on employment without entering into employment contract: (1)

No employer shall employ a person without entering into an employment contract.

(2) Notwithstanding anything contained in sub-section (1), it shall not be necessary to enter into an employment contract in writing for a casual employment.

(3) While entering into an employment contract pursuant to sub-section (1), remuneration, benefits to be received by the labour, conditions of employment and other matters as prescribed shall be set out in such a contract.

12. Employment relationship to be established: (1) Where the employer enters into an employment contract with a labour or employs a labour verbally or engages a worker on casual employment, the employment relationship between the employer and the employee shall be established, or in the case of the casual employment, such relation is established from the date or time when the labour is employed or he or she provides the service.

(2) Where there arises a dispute as to whether the employment relationship has existed between an employer and a labour, such a dispute shall be settled by the Office.

(3) Where the dispute referred to in sub-section (2) is also included in any issue that is *sub judice* in the Department or a Court, such a dispute shall also be settled by the Department or Court.

(4) For the purpose of sub-section (2), the Office may give an order to the employer to submit any evidence or document relating to the employment which remains in his or her custody, and if the employer does not submit such evidence or document in pursuance of the order, the employment relationship between the employer and the labour shall be deemed to have been established.

13. Provision relating to probation period: In entering into an employment contract with a labour, the employer may so enter into the contract that he or she remains in a probation period for six months, and terminate the employment contract with the labour if his or her work is not satisfactory during the probation period. After the end of the probation period of a labour in respect of whom the employment contract has not been so terminated, the employment relation shall *ipso facto* be deemed to be valid.

14. Continuity of existence of the employment relationship despite change in ownership: (1) In the case of a change in or transfer of ownership of any work or

business or any part thereof of any employer or hand over of such a work or business to another person for its operation or creation of a new enterprise or business as a result of the merger of two or more enterprises or businesses, the employment relationship of the labour working in such an enterprise or business the ownership of which has been so changed or transferred or which has been so handed over to the other person for its operation or in the enterprise or business which has been merged shall continue to exist.

(2) For the purpose of sub-section (1), the employer who so undertakes the ownership or acquires the ownership by way of transfer or undertakes responsibility to operate the work or business or, in the case of a merger of businesses or enterprises, the new enterprise or business created from such merger or, in the case of the transfer of the ownership and liability of a project in accordance with the prevailing law relating to private investment in the building and operation of infrastructures, the enterprise undertaking such ownership and liability shall bear the liability under this Act or the rules framed under this Act or the collective agreement, if any, entered into.

Provided that if any agreement on interim management has been made between the previous employer, new employer and union of the concerned enterprise, the provisions of the agreement shall apply.

- 15. Continuity of existence of employment relationship during the period held in reserve:** (1) If any special circumstance arises in the workplace, the employer may suspend the work and hold the worker in reserve.

Explanation: For the purpose of this Section, "special circumstance" means a situation involving the shortage of electricity, water, raw materials or lack of financial resources or inability to reach the workplace or work or operate the workplace because of the occurrence of any situation beyond control.

(2) Where any labour is held in reserve pursuant to sub-section (1), the employment relationship between such an employer and worker shall continue to exist.

(3) Any employer employing ten or more labours may hold the labour in reserve for a period not exceeding fifteen days, pursuant to sub-section (1). Provided that if it is necessary to hold in reserve for more than the said period, the employer shall consult with the authorised trade union or labour relation committee.

(4) Other provisions relating to holding the labour in reserve shall be as prescribed.

Chapter-4

Provisions Relating to Trainees and Apprentices

16. Trainees may be engaged in work: (1) Any enterprise may, by making an agreement with any educational institute, employ any person as an apprentice in accordance with the approved curriculum of such an institute.

(2) The apprentice referred to in sub-section (1) shall not be deemed to be a labour for the purpose of this Act.

Provided that if the person is employed contrary to the approved curriculum, he or she shall be deemed to be a labour in the regular employment.

17. Provisions relating to labour to be applicable: (1) Notwithstanding anything contained in Section 16, in employing an apprentice pursuant to this Chapter, he or she shall not be engaged in work for more than eight hours a day and forty-eight hours a week.

(2) The provisions relating to occupational health and safety shall apply to the apprentices as if they were labours.

(3) Where an apprentice meets with an accident in the course of performing the work of the enterprise, the enterprise shall, unless otherwise agreed between the enterprise and the educational institute, have medical treatment of such an apprentice, and provide compensation to him or her if he or she suffers grievous hurt, as if he or she were a labour.

(4) The matters other than those set forth in sub-sections (1), (2) and (3) shall be as mentioned in the agreement between the enterprise and the educational institute.

18. Engagement in work as trainee labour: (1) An employer may employ any person as a trainee providing on the job training.

(2) The period of training referred to in sub-section (1) shall not be more than one year.

Provided that any period is specified by the prevailing law for a specific work or specific training period is required for it, a trainee may accordingly be employed for that period.

(3) The employer shall provide the person employed a trainee pursuant to this Section with at least such facilities as may not be less than the minimum remuneration and other social security benefits including the sick leave, gratuity, provident fund and insurance.

(4) The employer shall not be compelled to continue the employment of the trainee after the completion of the training period.

Provided that if the same employer engages the trainee in work, the probation period shall not apply to him or her.

Chapter-5

Provisions Relating to Part-Time Labours

19. Part-time employment: (1) An employer may employ a labour for part time.

Provided that a worker who works full time shall not be employed in part-time work without his or her consent.

(2) The remuneration of part time labours shall be fixed generally on the basis of working time (hours) or on the basis of the employment contract entered into between the two parties.

(3) While fixing the remuneration of the part time labours pursuant to sub-section (2), such remuneration shall be fixed on the basis of at least the monthly remuneration of the labours working full time at the same level for the work of same nature.

(4) Where a labour employed part-time pursuant to this Section is employed in the overtime work, such a labour shall be provided with a remuneration that is 1.5 times of the remuneration to which he or she is entitled under sub-section (2).

20. Not to restrain from working elsewhere: No part time labour shall be restrained from working elsewhere.

21. Provisions relating to social security: In the case of a part-time labour who works for more than one employer, each employer shall, on the basis of the basic remuneration to which the labour is entitled, make contribution for gratuity, provident fund or other social security related benefits.