

*MAJOR HIGHLIGHTS on*

# Employment and Labor LEGISLATIONS



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# Inside We Have -

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- ❖ Highlights of different provisions
- ❖ Obligation of Employer
- ❖ Obligation of Employees

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# Constitution and Employment in Nepal

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- Guarantee of Fair Labor Practice,
- Guarantee of Proper Remuneration,
- Guarantee of Contribution based Social Security,
- Freedom of Association and Collective Bargaining,
- Right to equality
- End of bonded Labor and Child Labor
- Right against Exploitation
- Equal pay for equal work

# Types of Employment (Sec 10)

- **Regular Employment** “नियमित रोजगारी” : Employment other than working, time bound, casual and part-time employment
- **Working Employment** “कार्यगत रोजगारी” : Assignment of particular work and service
- **Time bound Employment** “समयगत रोजगारी” : Time specific work or service
- **Casual employment** “आकस्मिक रोजगारी” : Any employment which is not more than 7 days in a month
- **Part-time Employment** “आंशिक रोजगारी” : Any employment which is not more than 35 hours in a week

# Employment

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- Employer can hire employee on its will and hunt.
- No employee should be engaged with out employment agreement
  - Exception is for short term employee.
- Employment contract must state:
  - a. Remuneration ( Clarity of Basic and allowances),
  - b. Benefits
  - c. Type of employment
  - d. Main work to be done by such employee
  - e. Time and date of agreement and the
  - f. date of effectiveness
  - g. The by-law of the organization to be considered as an integral part
- Appointment letter must be given.

# Major Highlights 1/7

Sec	Proviso	Detail Provision
13	Probation Period	<ul style="list-style-type: none"><li>• Six month probation period.</li><li>• If performance is not satisfactory, employment can be terminated</li><li>• If not terminated, his/her employment contract will be continued</li></ul>
16	Work from Intern	<ul style="list-style-type: none"><li>• Internship can be done in agreement with educational institute</li><li>• Persons working under internship are not employee</li><li>• If internship is done in area other than approved curriculum, such internship is assumed to be employment contract</li></ul>
18	Trainee employment	<ul style="list-style-type: none"><li>• For the period of one year only other than specific assignment of law</li><li>• Minimum salary, leave encashment, PF, Gratuity and insurance provision will apply for trainee</li><li>• After completion of one year, trainee can not be continued as employee unless hired by employer. If hired, probation period will not be counted.</li></ul>

# Major Highlights 2/7

Sec	Proviso	Detail Provision
19-21	Part-time employee	<ul style="list-style-type: none"> <li>• Salary will be hourly basis or as per agreement done</li> <li>• Overtime, 1.5 times of normal salary should be given</li> <li>• No restriction can be imposed to work other place to part-time employee (Sec 20)</li> <li>• Employee on part-time is eligible for PF, Gratuity, SS and other benefit on the basis of Basic Salary (Sec 21)</li> </ul>
22-27	Provision of Labor Permission	<p>22. <b>No employment to foreigner without permission of Department of labor</b></p> <p>23. Every foreigner should take labor permission as assigned</p> <p>26. Remuneration can be repatriated on FC to his country</p>
28-33	Provision for working time	<p>28. Per day 8 hours and 48 hours in week with interval of half an hour after continuous working of 5 hours</p> <p>29. No compulsion to work more than 48 hours expect life threatening, security of employee or loss to employer</p>



# Major Highlights 3/7

Sec	Proviso	Detail Provision
28-33	Provision for working time	<p>30. Max extra time of working will be 4 hours a day and 24 hours in a week.</p> <p>31. Remuneration of extra time working will be 1.5 time of normal remuneration. If, in employment contract there is provision for extra facility for extra working for employee, this rules will not discourage the same.</p> <p>32. Working hours is as determined by Employer or mentioned on employment contract</p> <p>33. Provision of transportation for working before sun rise and sun set to lady employee</p>
34-39	Provision for Remuneration	<p>34. Every employee is eligible for minimum Remuneration as stipulated from the day of working</p> <p>35. Payment of salary will be made as determined by Employer but interval of payment will not be more than a month. In case of any employment of less than one month, within 3 days from completion of work and in case of casual employee, after completion of work</p> <p>36. Annual grade is ½ day basic salary of employee who have completed a year of service</p> <p>37. Festival Allowance: Equal to 1 month basic salary. If working period of one year at payment date is not completed, proportionate basis of work period</p>

# Major Highlights 4/7

Sec	Proviso	Detail Provision
38	Deduction from Remuneration	<ul style="list-style-type: none"><li>• TDS and fee</li><li>• PF, SS contribution, Insurance</li><li>• Deduction from court order</li><li>• Any extra facility given by employer like vehicle etc.</li><li>• Remuneration of absent day</li><li>• Intentional damage of goods i.e. cash or kind of employer</li><li>• Deductible as per common agreement</li><li>• Membership fee of Trade Union</li><li>• Advance by employer</li></ul>
39	Remuneration for Reserved Employee	<ul style="list-style-type: none"><li>• Half salary</li><li>• No daily attendance unless determined to do so by Employer</li></ul>

# Major Highlights 5/7

Sec	Proviso	Detail Provision
40-51	Provision for Leave	<p>40. Weekly leave – Once in a week i.e. Saturday</p> <p>41. Public holidays-Male-13 days, Female 14 days</p> <p>42. Replacement Leave- leave against working on Saturday and public holidays, within 21 days of working</p> <p>43. Home Leave: One day for every 20 worked days. No Home leave for educational institution who gets winter or summer leave</p> <p>44. Sick Leave: 12 days in a year with proof of sick</p> <p>45. Maternity Leave: 14 weeks (Before or after maternity), if health condition is bad, one more month leave can be given, 8 week (2 week before and 6 week after) maternity is compulsory) 60 days are with pay and rest is not payable, 15 days paternity leave is available.</p> <p>46. Birth certificate to be submitted</p> <p>47. If any amount is received from SSF, no salary under maternity leave is given by employer</p>

# Major Highlights 6/6

Sec	Proviso	Detail Provision
40-51	Provision for Leave	<p>48. Mourning Leave: 13 days with pay</p> <p>49. Leave to be accumulated: Home leave-90 days, Sick Leave 45 days, payment will be made on retirement or resignation on the basis of last drawn basic salary. Leave encashment more than above will be paid at the end of every FY on the basis of basic salary.</p> <p>50. Calculation of year for leave purpose will be made as per law, regulator body, employment contract or Calendar of Nepal Government</p> <p>51. Leave is not right, facility only.</p>

# Major Highlights 7/7

Sec	Proviso	Detail Provision
52-57	Provision regarding PF, Gratuity and Insurance	<p>52. 10% of basic salary, from the date of work start, to be deposited on SSF, before establishment of SSF, on any approved RF, If due to any reason no PF is deposited, should be paid to employees</p> <p>53. Gratuity: 8.33 % of Basic Salary, from the date of work start, to SSF, if any employees is getting pension, no Gratuity is paid.</p> <p>54. Medical insurance of 1 lakh for every employee at employer cost</p> <p>55. Accidental insurance: 7 lakh per employee at employer cost</p> <p>56. Cost to be paid by employer</p> <p>57. As per social security Plan: if contribution on SSF has been made for PF, Gratuity, Medical insurance made by employer, no medical insurance and accidental insurance will be paid by employer.</p>

# Salary Structure

Items	Rs
Basic Salary	XXXXXXXXXX
Grade (1/2 day basic salary of every year)	XXXXXXXXXX
Total Basic Salary	XXXXXXXXXX
Add: Allowances	XXXXXXXXXX
Add: PF 10% of Basic Salary	XXXXXXXXXX
Add: Gratuity 8.33 % of Basic Salary	XXXXXXXXXX
Add: Insurance 1.67 % of basic Salary	XXXXXXXXXX
Add: Leave encashment (calculated on the basis of basic salary)	XXXXXXXXXX
Gross Remuneration	XXXXXXXXXX

# OUTSOURCING:

<b>Labor Act, 2048</b> >>>>	<b>Labor Act, 2075</b>
There were no such provisions related to Outsourcing in the previous Labor act.	As per Sec 58 of the act, Outsourced employees can be engaged in the work as prescribed by the Ministry by publishing a notice in Nepal Gazette upon recommendation of Central Labor Advisory Council. Such outsourced employees shall be engaged in the works which is other than the core works of the entity.

# MINIMUM WAGE OTHER THAN TEA ESTATE

S. N.	Minimum Remuneration/ Wage	Basic Remuneration (Rs.)	Dearness Allowances (Rs.)	Total (Rs.)
1	Monthly	Rs. 8,455/-	Rs. 4,995/-	Rs. 13,450/-
2	Daily	Rs. 325/-	Rs. 192/-	Rs. 517/-
3	Hourly	Rs 43/-	Rs 26/-	Rs. 69/-

**This minimum wages will reviewed on every two years and implemented on first day of particular fiscal year.**



# Other Health and Safety Arrangements (Rule 45,46,47,49)

Arrangement Details	Explanations
Child Care Center	Workplace where 50 or more female employees are engaged in work
Resting Rooms	Enterprise where 50 or more employees are Engaged
Canteen	Workplace where 50 or more employees engaged in work
First Aid	<ul style="list-style-type: none"><li>• for the primary treatment</li><li>• in case the Employee meets accident</li><li>• all employers</li></ul>

# SANCTION BY LABOR OFFICE: 1/3

<b>Non Compliance</b>	<b>Consequence of Non – Compliance</b>
Deduction of remuneration and other facilities contrary to the prevailing laws.	Indemnify the concerned worker with amount double the deducted remuneration and other facilities.
Obstructing government officer, submitting false details	Fine up to Rs. .20000
Engaging an intern or trainee against the provision of the Act	Fine up to Rs. 10000 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.
Keeping the workers in reserve discriminatorily	Orders to not to do so.
Terminating employment against the provisions of the Act	Issue necessary directives.

## SANCTION BY LABOR DEPARTMENT: 2/3

<b>Non Compliance</b>	<b>Consequence of Non – Compliance</b>
Supplying labor without license and engaging labor in work from such supplier.	Fine up to Rs.200000.
Engaging a foreign national in work without work permit.	Fine up to Rs 200000 depending upon the number of workers; repetition even after being punished shall be fined with the additional fine of Rs.5000 per month.
Discriminating among the workers.	Fine up to Rs.100000 and the order to maintain the equality may be given.
Engaging a worker without appointment letter or employment agreement.	Fine up to Rs. 500000 at a rate of Rs. 10000 per worker; the order to conclude an employment agreement and provide an appointment letter shall also be given.

## SANCTION BY LABOR COURT: 3/3

<b>Non Compliance</b>	<b>Consequence of Non – Compliance</b>
For engaging a bonded labor.	Imprisonment up to 2 years or fine up to Rs. 5,00,000 or both.
If the entity does not make the 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.

# Labor Audit 1/3

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- As per section 100 of Labor, labor audit should be done whether the work has been performed as per labor act, rules and prevailing law
- Ministry of labor, employment and social security has issued the “Labor Audit Standard 2018” on Nov 22, 2018
- The scope of labor audit will be
  - Labor Act 2017 and Rules 2017
  - Social Security Act 2017 and Rules 2018
  - Bonus Act 1973 and Rules 1982
  - Trade Union Act 1992 and Rules 1993
  - Matters to be included on labor audit report as per sch 10 of Labor Rules
  - Internal rules and by-laws of enterprises
  - Other relevant issues

# Labor Audit 2/3

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- Procedure of labor audit
  - Collect and analyze comprehensive details of the concerned enterprises
  - Conduct the onsite visit and investigation
  - Interview
  - Deploying the audit team at enterprises
  - Other appropriate procedures

# Labor Audit 3/3

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- Eligibility for labor auditor
  - Individual, holding bachelor degree, two years managerial working experience
  - Entity- Registered as per law, Objective and working area of audit firm should relate with labor audit, person engaging on labor audit should meet the labor audit qualification
- In case of false audit report, fine up to 20000.00 Rs
- Labor audit report should be given to regulatory authority like NRB, IB, DAO for NGOs, NEA for hydro projects etc i.e for licensing authority
- Above requirement is in addition to concerned Labor and Employment office, Labor Relation Committee, Labor Inspector

# Miscellaneous Provision

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- As per section 124, employer can lock the enterprises if employee make the strike without information.
- 7 days notice of locking should be given to employees
- No pay for illegal strike period
- No pay for valid locking period by employer



# Miscellaneous provisions

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- Bad code of conduct and penalty
  - Circumstances of warning
    - Absent without leave approval
    - Leaving work place without approval of management
    - Late entry frequently without prior approval
    - Not obeying direction by superior
    - Other misconduct as stipulated on organization own by laws
  - Circumstances of deduction one day remuneration
    - Showing unwillingness to accept letter given by management or punishing officer
    - Participation on illegal strike, encourage to other to participate, creating environment of slow working
    - Causing loss or damage to enterprises by carelessness
    - Attempt to have amenities producing false report
    - Not using security equipment
    - Other misconduct as stipulated on organization own by laws

# Miscellaneous provisions

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- Bad code of conduct and penalty
  - Circumstances of one year's grade and promotion stoppage
    - Use of enterprise property without approval
    - Misuse of the fund of enterprises
    - Cause to loss of property of enterprises and misuse
    - Blockage of food, water, telephone, electricity and movement of person
    - Misuse or loss to the property kept for welfare of labor
    - Other misconduct as stipulated on organization own by laws
  - Circumstances of termination of employment
    - Hurting physically to any person related to employer, labor, service expectants of enterprise by using weapons or without weapons
    - Taking bribe
    - Stealing property of any person at working place
    - Misuse of fund of enterprises

# Miscellaneous provisions

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- Bad code of conduct and penalty
  - Circumstances of termination of employment
    - Causing the damage of property of enterprise willingly
    - Absent at working place without approval of leave more than 30 days
    - Any work relating to transfer of knowhow of enterprises
    - Working with rivalry of same nature business, doing own business similar to enterprise business, and giving any secrete information to rivalry party
    - Adjudged under criminal law of moral turpitude
    - Producing false academic or professional certificates
    - Having alcoholic products or drug abuse at working place
    - Suffering more than two cases of above three circumstances within three years
    - Any misconduct done under other Acts and Rules

# Miscellaneous provisions

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- Other provision of termination of employment
  - Time-bound and assignment based working (Working employment) sec 140
  - Voluntarily termination by employee sec 141
  - Termination of employment on the basis of lack of efficiency for continuous three times or more sec 142
  - Termination due to health reason sec 144
  - If employment period is more than one year, 30 days advance notice should be given before termination. In case of misconduct no, advance notice is necessary

# Miscellaneous provisions

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- Basic Salary as per section 170:
  - this section says that basic salary can be determined as stipulated
  - Rule 77 : Basic salary will be 60 % of average remuneration of three months
  - Basic salary should not be less than minimum remuneration

# Bonus provision as per latest amendment

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- If Monthly remuneration is up to two time of min remuneration;8 month remuneration
- If monthly remuneration is more than two months min remuneration; 6 months remuneration
- Earlier rule was
  - 1-5000= 6 month remuneration
  - 5001-15000= 4 month remuneration
  - More than 15000= 3 months remuneration

# Listing and contribution on social security Fund

- First notice on Nepal Gazette: within 6 Magh 2075 (Notice published on 2075.7.26) by labor, employment and social security ministry
- Second notice Social Security Fund; till Ashad 2076 (Notice published on 2075.12.29)
- Social Security Fund has been recognized as Recognized Retirement Fund by Income Tax Act (As amended by Finance Act 2076)
- As per above provision
  - We have to listing first with SSF, if we don't listing on SSF, SSF can direct to listing (Sec 17 of SSF 2074)
  - Online listing system is there. After listing Employer get listing no and employee get Social Security No)
  - PF amount should be deposited within 6 months from date of listing Rule 22 of Labor Rule (in three installment)
  - Gratuity amount should be deposited within 2 years from listing Rule 23 of Labor Rule (in 4 installment)

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# Thank You !

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