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ACT NO. 14 OF THE YEAR 2074 (2017)

## **A bill made for amendment and consolidation of the laws relating to labour**

### **PREAMBLE**

Whereas it is expedient to amend and consolidate the laws relating to labour so as to make provisions for rights, interests and benefits of workers and make clear provisions relating to the rights and duties of employers in order to promote good industrial relation and end all forms of labour exploitation for the growth of productivity, the Constitution Assembly, in accordance with Article 296(1) of the Constitution of Nepal, has enacted this Act.

### **CHAPTER 1**

#### **Preliminary**

#### **1. Short title and commencement**

- 1) The Act may be called the "Labour Act, 2074"
- 2) This Act shall come into force with immediate effect.

#### **2. Definitions:** Unless the subject or context otherwise requires, in this Act:

- a) "Basic Salary" means basic salary which a worker is entitled to receive for employment and it shall also mean salary increment entitled to receive after one year of employment period.
- b) "Chief Executive" means a person who takes the final responsibility of the activities relating to the enterprise.
- c) "Work place" means the place or location where a worker works and includes any place or situation where a worker needs to stay or go in relation to the work.
- d) "Office" means the Labour Office.

- e) "Lockout" means closure of any enterprise or workplace by the employer prohibiting its workers from carrying out their regular work partially or completely.

Provided that the word shall not mean the situation where the workers are laid off or the stoppage of work because of an immediate danger.

- f) "Prescribed" or "As prescribed" means prescribed or as prescribed in the rules made under the Act and it shall also mean the notices issued in the Nepal Gazette pursuant to this Act or the rules made under this Act.
- g) "Inspector" means senior labour inspector, labour inspector, senior occupational safety and health inspector and occupational safety and health inspector and it shall also mean other employees deputed for inspection.
- h) "Council" means Central Labour Advisory Council formed pursuant to section 102.
- i) "Remuneration" means basic salary which a worker is entitled to receive and it shall also mean allowances.
- j) "Enterprise" means any company or private firm or partnership firm or cooperative organization or association or any other organization established or incorporated or formed or operated pursuant to the prevailing laws with an objective to carry on any industry or occupation or service with or without any motive to make profit.
- k) "Ministry" means Ministry of Labour and Employment, Government of Nepal.
- l) "Main Employer" means employer who employs workers through a labour provider.
- m) "Employer" means any person or enterprise who employs workers and it shall also mean managers for the purpose of enterprise and labour provider for the purpose of workers supplied pursuant to this Act.
- n) "Employment Contract" means any agreement entered into between an employer and a worker regarding his/her employment service, conditions and benefits and it shall also mean appointment letter given to workers by the employer.
- o) "Employment period" means the period during which a worker is employed with an employer and shall include the following periods also :
- a lay off period ;
  - b period of leave with full remuneration ;

- c period of leave taken without remuneration for maternity or maternity care;
- d period of leave taken for medical treatment in case of accident during or while working for the employer.
- p) "By-law" means by-law relating to employment service and conditions of the workers made by an enterprise pursuant to section 108 and it shall also mean financial administration regulation of the enterprise.
- q) "Department" means Labour Department.
- r) "Manager" means Chief Executive of an enterprise and it shall also mean a head of any division or unit taking final responsibility or authority to act.
- s) "Managerial Level Worker" means a worker appointed in a position at the managerial or higher level entrusting the authority to evaluate, control and supervise the tasks of workers and it shall also mean managers.
- t) "Social Security Fund" means Social Security Fund established pursuant to the prevailing laws.
- u) "Collective Agreement" means an agreement signed between an employer or employers' association and trade union or Collective Bargaining Committee on matters relating to remuneration, service conditions, benefits of the workers or issues common to employer and workers.
- v) "Collective Bargaining Committee" means Collective Bargaining Committee formed pursuant to section 116(1).
- w) "Labour Court" means Labour Court established pursuant to section 151.
- x) "Worker" means any worker or employee or any person employed with any job title performing physical or mental work for an employer.
- y) "Labour Provider" means any person or organization having a license to supply workers pursuant to Chapter 11.
- z) "Strike" means a situation where workers collectively refuse to perform their regular work partially or completely.

Provided that, it shall not mean the act of staying on leave or stoppage of work as a result of immediate danger or inability to attend or execute the work due to situations beyond the control of workers.

## CHAPTER 2

### **Fundamental Provisions Relating to Workers**

#### **3. Minimum standard**

- 1) This Act shall act as minimum standard for workers and on matters relating to the workers.
- 2) Where any employment contract between an employer and a worker is made with provisions to pay or receive remuneration or benefits lesser than the remuneration and benefits prescribed by the Act or rules made under this Act or in contravention to the conditions prescribed in the Act, such employment contract shall be deemed to have violated the Act and to that extent, it shall be null and void.

#### **4. Prohibited to engage in forced labour**

- 1) A person shall not directly or indirectly employ any person in forced labour.
- 2) Notwithstanding anything contained in sub-section (1), the following act or service carried out by workers shall not constitute forced labour:
  - a) any work or service to be performed as civil obligations when nation requires;
  - b) any work or service required to be performed by any person as a consequence of punishment given by a decision or an order of a court ;
  - c) any work or service required to be performed in the interest of a community as its member.

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

#### **5. Prohibition on employment of children**

Employment of children in any work by any person against the prevailing laws is strictly prohibited.

#### **6. Discrimination is prohibited**

- 1) No employer shall discriminate any worker on the ground of religion, colour, sex, caste, tribe, origin, language, ideological conviction or any other similar ground.
- 2) Notwithstanding anything contained in sub-section (1), the following acts shall not be considered discrimination:
  - a) to give preference to any person for employment on the basis of inherent requirement of a job or service;
  - b) to engage a female worker who is pregnant, in any work or service which is easier and suitable to her condition without any reduction in the remuneration and benefits; or
  - c) to give preference to any physically challenged worker in any job responsibility suitable to his/her physical condition.

**7. Discrimination is prohibited in the payment of remuneration for equal work**

- 1) Workers must not be discriminated in the payment of remuneration for equal value of work on the basis of their sex.
- 2) For the purpose of sub-section (1), the nature of the related work, the time required for the performance of the work, labour, skill and productivity shall be duly considered in determining whether the work is of equal value or not.

**8. Rights relating to trade unions**

- 1) Subject to the provisions of this Act and other prevailing laws, every worker shall have a right to form trade union, carry on its activities, acquire its membership or get affiliated with or involve in other union activities.
- 2) Workers, when using their rights relating to labour pursuant to this Act or other laws, shall be dutiful and responsible towards their employer.

**9. Right to remedy**

Every worker shall have a right of remedy under this Act or any other law in case his/her rights entitled under this Act or any other law are violated.

## CHAPTER 3

### Provisions Relating to Employment

#### 10. Types of employment

##### 1) Employer may engage a worker in any of the following employment:

- a) Regular employment
- b) Task based employment
- c) Time based employment
- d) Casual employment
- e) Part time employment

**Explanation :** For the purpose of this Section:

- 1) “Regular employment” means any employment other than those specified in sub-sections (b), (c) and (d)
  - 2) “Task based employment” means an employment to be given or given in which a particular task or service specified by the employer is required to be accomplished.
  - 3) “Time based employment” means an employment to be given or given in which a worker is required to provide a service or accomplish a task within a period fixed by the employer.
  - 4) “Casual employment” means an employment to be given or given in which a worker is engaged for seven or less than seven days within a period of one month to provide any service or accomplish a task given by the employer.
  - 5) "Part time employment" means an employment to be given or given in which a worker is engaged by the employer for thirty five hours or lesser than thirty five hours in a week to accomplish any work.
- 2) Notwithstanding anything mentioned in the employment contract, where a question arises as to whether an employment relationship is regular or not, it shall be determined on the basis of the nature of the work as prescribed.

#### 11. Prohibition on employment without employment contract

- 1) No employer shall employ any worker without entering into employment contract.
- 2) Notwithstanding anything contained in sub section (1), it shall not be necessary to enter into written employment contract for casual employment.
- 3) When executing an employment contract pursuant to sub section (1), remuneration, benefits, employment conditions and other matters as prescribed shall be stated in such contract.

## **12. Formation of employment relationship**

- 1) Where an employer executes an employment contract with a worker or employs a worker verbally or engages a worker on casual employment, an employment relationship between the employer and the worker shall be deemed to have been formed from the date or time such worker is employed or the service is provided by such worker.
- 2) Where any dispute arises with regard to the existence of an employment relationship between an employer and a worker, such dispute shall be settled by the Office.
- 3) Where any dispute pursuant to sub section (2) is included in any issue sub judice in the Department or Labour Court, such dispute shall also be resolved by the Department and the Court accordingly.
- 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 is in his/her care and in case such evidence or document is not produced as ordered, the employment contract between the employer and worker shall be deemed to have been formed.

## **13. Provision relating to probation**

Any employer when executing an employment contract with a worker may keep him/her in probation for a period of six months and the contract with such worker may be terminated if his/her work is not satisfactory. The employment contract with such worker, if not terminated, shall be deemed valid automatically after the ending of the probation period of such worker.

## **14. Continuity of employment relationship in the change of ownership**

- 1) Where there is a change or transfer of ownership of any work or business or any part of such work or business of any employer or hand over of the work or business to any other person for operation or formation of a new enterprise or business as a result of merger of two or more than two enterprises or businesses, the employment relationship of the workers working in such enterprise or business in which the ownership has been changed or transferred or business has been handed over for operation or the enterprise or business which has been merged shall continue.
- 2) For the purpose of sub section (1), in case of liability as per the Act or the rules made under this Act or collective agreement if it has been entered into, the employer taking the ownership or acquiring the ownership after the handover or operating the activities or business shall be responsible. Similarly, a new enterprise or business entity formed after the merger of enterprises or businesses or any enterprise taking the ownership and liability in case of transfer of ownership and liability of a project under the law relating to the private sector investment in the infrastructure development and operation shall be responsible.

Provided that if any agreement on provisional arrangement among the main employer, new employer and trade union of the concerned enterprise has been made, the provisions in such agreement shall be applicable accordingly.

## **15. Continuity of employment relationship during lay off period**

- 1) Employer may stop the work and lay off the workers in case special circumstances arise.  
Explanation: For the purpose of this section, "special circumstance" means shortage of electricity, water, raw material or lack of fund or inability to reach the workplace or work or operate the workplace because of any situation beyond control.
- 2) During the lay off period pursuant to sub section (1), the employment relationship between the employer and workers shall continue.
- 3) Any employer employing ten or more than ten workers may lay off workers for a period of maximum fifteen days. In case the workers need to be laid off for more than fifteen days, the employer shall be required to consult the authorised trade union or labour management committee.
- 4) Other provisions relating to lay off of workers shall be as prescribed.





## CHAPTER 4

### **Provisions Relating to Trainees and Apprentices**

#### **16. Trainees may be hired**

- 1) Any enterprise, by signing an agreement with any educational institution, may hire any person as a trainee pursuant to the requirement of the approved syllabus of such institution.
- 2) Any person hired pursuant to sub-section (1), for the purpose of this Act, shall not be considered as worker.

Provided that the person hired in contravention to the approved syllabus shall be deemed to be a worker under the regular employment relationship.

#### **17. Applicability of labour provisions**

- 1) Notwithstanding anything contained in section 16, trainees hired pursuant to this Chapter shall not be required to work more than 8 hours a day and 48 hours a week
- 2) Provisions relating to occupational health and safety shall be applicable to trainees also.
- 3) Where a trainee meets with an accident during the work, unless otherwise agreed between the enterprise and the educational institution, the enterprise shall provide medical treatment and compensation, which a worker of such enterprise is normally entitled to under this Act, if injured.
- 4) In case of matters other than those provided in sub-sections (1), (2) to (3), the agreement between the enterprise and the educational institution shall be applicable.

#### **18. May be employed as apprentices**

- 1) An employer may employ any person as apprentice providing on the job training.
- 2) Training period pursuant to sub-section (1) shall not be more than one year.

Provided that a specific training period is prescribed for a specific nature of work under the prevailing law or specific training period is required, an apprentice may be accordingly employed for such prescribed period.

- 3) Any employer, when employing a person as an apprentice pursuant to this section, shall provide, at the minimum, the benefits equivalent to the minimum wage and other social security benefits including sick leave, gratuity, provident fund and insurance.
- 4) The employer shall not be under compulsion to continue the employment of the apprentice after the completion of the training period.

Provided that the employment of such apprentice, after the training period, is continued by the employer, the provision of probation period, in his/her case, shall not be applicable.

## CHAPTER 5

### **Provisions Relating to Part Time Workers**

**19. Part time employment**

- 1) An employer may employ any worker for part time only.

Provided that any worker working full time shall not be employed in part time work without his/her prior approval.

- 2) Remuneration of part time workers, generally, shall be fixed, either on the basis of working hours or on the basis of the employment contract entered between the two parties.
- 3) When determining the remuneration of the part time workers pursuant to sub-section (2), the monthly remuneration of a worker working full time in the same position and same nature of work shall be taken as the basis for calculation.
- 4) Where any part time worker employed pursuant to this section is required to work overtime, such worker shall be paid remuneration at the rate of 1.5 times of the remuneration he/she is entitled to under sub-section (2).

**20. No restriction to work for others**

Part time workers shall not be restricted from working elsewhere for others.

**21. Provisions relating to social security**

In relation to a part time worker working for more than one employer, each employer shall, on the basis of basic salary the worker is entitled to receive, make contribution for gratuity, provident fund and other related social security benefits.

## **CHAPTER 6**

### **Provision Relating to Work Permits**

#### **22. Restriction on employment of foreign nationals**

- 1) No employer shall employ any foreign national in any enterprise without acquiring work permit from the Department.
- 2) Notwithstanding anything contained in sub section (1), the employer, if unable to acquire skilled workers from among Nepali citizens as required, may employ foreign workers by staying within the scope of this Act.
- 3) Before employing foreign workers pursuant to sub section (2), the employer, in order to acquire skilled workers from among the Nepali citizens, shall publish an advertisement in national daily newspapers. On failure to receive applications from Nepali citizens as specified in the advertisement or Nepali citizens could not be selected, the employer may give an application along with the supporting documents for work permits to the Department for hiring foreign workers.
- 4) Upon receipt of an application under sub-section (3), the Department may issue work permits for the appointment of skilled foreign workers, if the application and other supportive documents are found reasonable upon examination.
- 5) The employer employing foreign workers after acquiring the work permits pursuant to sub section (4), shall make arrangement for the gradual replacement of foreign workers by Nepali workers.
- 6) Fees and other provisions relating to the work permits shall be as prescribed.

#### **23. Requirement of work permits for foreign nationals to work in Nepal**

- 1) Any foreign national seeking to work in Nepal is required to take work permit as prescribed.
- 2) Notwithstanding anything contained in the Act, every foreign national desirous of working in Nepal shall be required to take work permit as prescribed unless such work permit is exempted under diplomatic immunity provision or any treaty or agreement entered with the Government of Nepal.

#### **24. Work permits may be issued**

Notwithstanding anything contained in sections 22 and 23, the Department may, after maintaining proper record, issue work permits as follows to foreign nationals:

- a) an executive chief and specified number of workers in an enterprise operated with foreign investment or foreign assistance;
- b) any technician required for repairing or maintenance of any machine or installation of any new technology or any other unforeseen work for the period of three or less than three months.

**25. Language of the agreement**

Any employer, when entering into an employment contract with a foreign worker and providing information relating to his/her job responsibilities and other employment terms and benefits, shall use English or any other language which the foreign worker understands.

**26. Repatriation of remuneration in convertible foreign currency**

Any foreign worker with a work permit acquired pursuant to this chapter shall be permitted to remit the remuneration earned by working in Nepal in any convertible foreign currency to his/her country.

**27. Remuneration, employment conditions and benefits and other provisions for foreign workers**

- 1) Remuneration, employment terms and benefits which a foreign worker is entitled to receive for the work performed shall be as mentioned in the time based or task based employment contract entered between the employer and such worker and they must not be lesser than the standard prescribed by this Act and rules made under the Act.
- 2) Unless otherwise mentioned in the employment contract, the period of employment contract shall be for three years.
- 3) Other provisions relating to foreign workers shall be as prescribed.

**CHAPTER 7**

**Provisions Relating to Working Hours**

**28. Working Hours**

- 1) No workers shall be employed to work more than 8 hours a day and 48 hours a week by an employer.
- 2) Workers shall be provided with half an hour rest after five hours of continuous work.
- 3) Where the work needs continuity without any break, workers shall be provided rest time turn by turn.
- 4) Rest time to be provided pursuant to sub sections (2) and (3) shall be counted within the working hours as prescribed in sub section (1).

**29. No compulsion to work overtime**

- 1) No worker shall be compelled to work more than the hours prescribed in section 28(1) by the employer
- 2) Notwithstanding anything contained in sub-section (1), subject to section 30(1), the workers may be made to work overtime if the non-completion of the work may have an adverse effect on the life, health and safety of any person or serious harm or loss may be caused to the employer or any other person or workers.

**30. Provisions relating to overtime**

- 1) Where an employer requires a worker to work for more than the prescribed hours within the scope of section 28, such worker may be made to work not exceeding four hours a day and 24 hours a week.
- 2) The work performed by any worker without any arrangement for substitute leave under section 42 shall not be deemed to be overtime work.

**31. Remuneration for overtime**

- 1) When requiring any worker to work overtime by the employer pursuant to section 30, the worker shall be paid remuneration at a rate of 1.5 times of the basic salary that the worker receives during regular hours of work.
- 2) Notwithstanding anything contained in sub-section (1), nothing written in this section shall act as a constraint to provide benefits as determined by a collective

agreement or benefits as mentioned in the employment contract in case of managerial workers in lieu of payment for overtime work performed.

**32. Fixation of working time**

- 1) Where an employment contract has provision on starting and finishing time of working hours for workers, it shall be followed accordingly or in its absence, it shall be as determined by the employer.
- 2) Provisions relating to working time shall be as prescribed.

**33. Arrangement for transportation**

When requiring women workers to start or finish the work after the setting of the sun or before the sun rise, the employer shall make an arrangement for transportation to come and go from the workplace.



## CHAPTER 8

### **Provisions Relating to Remuneration**

#### **34. Right of workers to receive remuneration**

- 1) Every worker shall be entitled to receive the remuneration and benefits from the date s/he commences the work.
- 2) Remuneration and benefits that a worker is entitled to receive shall be as specified in an employment contract ensuring that they are not lesser than what is prescribed in the Act and the rules made under this Act.
- 3) Except otherwise mentioned in a collective agreement, the remuneration and benefits received regularly by a worker must not be decreased.

#### **35. Payment of remuneration**

- 1) When paying the remuneration to the workers, if the time is specified in the employment contract, it shall followed accordingly or in its absence, it shall be paid at the time determined by the employer.

Provided that the remuneration to the following workers shall be paid as follows :

- a) Any worker working for less than one month shall be paid within three working days from the date of completion of the work.
  - b) Any worker engaged in a casual work must be paid immediately after the completion of the work.
- 2) Notwithstanding anything contained in sub-section (1), the interval between the dates for payment shall not be more than one month.

#### **36. Payment of annual remuneration increment (grade)**

Any worker who has completed one year of employment service shall be entitled to receive an amount equivalent to, at least, half a day salary based on monthly basic salary every year as annual salary increment (grade).

#### **37. Right to receive festival allowance**

- 1) Every worker shall be entitled to receive an amount equivalent to one month basic salary in a year as festival allowance for the celebration of any festival based on his/her own religion, culture and tradition.
- 2) A worker may give a written request to the employer for the payment of the festival allowance which he/she is entitled to receive each financial year on a major festival based on his/her religion, culture and tradition pursuant to sub section (1). In absence of such request, the allowance shall be provided every year at the time of Dashain festival.
- 3) Any worker who has not completed one year of employment service on the day such allowance is distributed shall be entitled to receive such allowance in proportion to the length of period s/he has worked.

**38. Prohibition on deduction**

- 1) Except under the following conditions, no amount shall be deducted from the remuneration of workers:
  - a) any tax or fees levied under the existing laws ;
  - b) any amount required to be contributed for provident fund and insurance or any other social security benefits;
  - c) any amount to be deducted pursuant to the order of judicial or quasi judicial body or order of the arbitrator or decision ;
  - d) an amount for any specified service or facility provided by the employer to the worker ;
  - e) wage for absenteeism ;
  - f) amount equivalent to the book value of the goods lost or loss in cash or kind caused wilfully or negligently or the amount equivalent to the production cost in relation to the manufactured goods;
  - g) amount as specified for deduction from remuneration in the collective agreement;
  - h) membership fees charged by trade unions; and
  - i) loan or payment made in advance to the worker by employer.
- 2) While deducting the amount pursuant to sub-sections (c), (d), (e), (f), (g), (h) and (i), it shall be deducted from the remaining monthly remuneration after the amount pursuant to sub sections (a) and (b) are deducted.

- 3) Maximum limit, procedure and other provisions relating to the deduction of amount under sub section (2) shall be as prescribed.
- 4) Where a worker dies or his/her service is terminated for any reason whatsoever before the amount pursuant to this section is deducted, such amount may be recovered from any kind of amount payable to such worker by the employer or enterprise.
- 5) Where the amount could not be fully recovered even after all the deductions pursuant to sub section (4) is made, the employer, where the worker has died, shall give 15 days notice to his/her legal heir for the payment of such amount.
- 6) Where the amount is not paid within the limitation period pursuant to sub section (5), the employer may file a case in the court for the recovery of such amount within 35 days from the expiry of such limitation period.

**39. Remuneration for layoff period**

Workers, who are laid off pursuant to this Act, shall be paid half of their remuneration which they are entitled to until the work is resumed by the employer.

Provided that such workers shall not be required to give attendance in the workplace during the layoff period unless the requirement of attendance is mentioned in the notice issued relating to the layoff.

## CHAPTER 9

### **Provisions Relating to Leave**

**40. Weekly holiday**

Every worker shall be entitled to receive one weekly holiday.

**41. Public holiday**

- 1) Every worker shall be entitled to fully paid 13 public holidays including May Day and 14 public holidays including International Women Day in case of women workers.
- 2) Notwithstanding anything contained in sub section (1), where any regulatory authority that regulates any enterprise fixes the public holidays, it shall be accordingly followed. In other situations, the public holidays shall be determined by the employer.

**42. Substitute leave**

- 1) Any worker involved in the work requiring continuity shall be entitled to receive substitute holiday if he/she works during any weekly or public holiday.
- 2) Any worker, if required to work in the weekly or public holiday, shall be provided substitute leave within 21 days from the date of engagement in such work.

**43. Home leave**

- 1) Every worker is entitled to receive fully paid home leave at the rate of one day for 20 days for the period he works.
- 2) Workers employed in educational institutions or workers who get summer or winter holidays shall not be entitled to take home leave.

Provided that the number of such holidays is lesser than the total number of home leave the workers are entitled to, such workers shall be entitled to take shortfall number of holidays accordingly.

**44. Sick leave**

- 1) Every worker is entitled to paid 12 days sick leave annually. Provided that any worker who has worked for one or lesser than one year shall be entitled to receive sick leave proportionately.
- 2) Any worker seeking more than three days of sick leave continuously may require to submit a medical certificate issued by a certified physician.
- 3) Where there is a need to take sick leave because of sudden illness, such worker must inform the employer or the person specified by the employer immediately through available means of means of communication.

**45. Maternity leave**

- 1) A female worker is entitled to receive a total of 14 weeks of maternity leave with a provision to take before and after the date of confinement.
- 2) Such worker must take at least two weeks leave compulsorily before the expected date of confinement and at least six weeks leave after the date of confinement.
- 3) The female worker seeking maternity leave pursuant to sub section (1) shall be entitled to 60 days of fully paid maternity leave and for the remaining period, it shall be unpaid.
- 4) Where a certified physician recommends that the concerned female worker and / or the child need rest for their good health, the employer, in continuity with the maternity leave, shall give approval to one month unpaid leave or with an arrangement to be adjusted with other leave in addition to the maternity leave entitled under sub section (1).
- 5) Where a female worker in a state of seven months pregnancy or more than seven months gives birth to a deceased child or suffers miscarriage, the provision relating maternity leave shall apply.
- 6) Where a mother dies before the completion of sixty days from the day her child is born, the worker whose wife has died may take paid maternity care leave for the remaining number of days from the employer for whom he is working.
- 7) Every male worker, during the confinement of his wife, shall be entitled to 15 days fully paid maternity care leave.

**46. Submission of birth certificate**

Except where a newly born child dies, every female worker who takes maternity leave shall submit a copy of birth certificate as prescribed to the concerned employer.

**47. Remuneration need not be paid**

Notwithstanding anything contained in this Chapter, where a female worker is entitled to receive remuneration for the period of maternity leave from Social Security Fund, the employer, to that limit, shall not be required to pay the remuneration for such period of leave as required under this Chapter.

**48. Mourning leave**

- 1) Where a husband or wife dies or any worker himself is required to mourn pursuant to his core religion or a married female worker is required to mourn on the death of her father/mother or father in law/mother in law, such worker shall be entitled to receive 13 days mourning leave.
- 2) The worker who is on mourning leave pursuant to sub section (1) shall entitled to receive full pay.

**49. Accumulation of leave**

- 1) Workers are entitled to accumulate home leave and sick leave up to 90 days and 45 days respectively.
- 2) Where a worker, for any reason, end his/her employment service or the worker dies, the lump sum amount equivalent to the accumulated home leave and sick leave calculated on the basis of the last drawn basic monthly salary shall be paid to the worker or any family member authorised by such worker.
- 3) Where the accumulated leave exceeds the number of days specified in sub section (1), the amount for such excess number of days calculated on the basis of basic monthly salary at the end of each financial year shall be paid to the concerned worker.

**50. Computation of year**

The basis for the computation of a year for the purpose of leave shall be as follows:

- a) Where the year is determined by any law, it shall be as specified.
- b) Where the year is determined by any regulating authority, it shall be as specified.

- c) Where it is not determined pursuant to sub-sections (a) and (b), it shall be as provided in employment contract.
- d) Where it is not determined pursuant to sub-sections (a), (b) and (c), the financial year used by the Government of Nepal shall be followed.

**51. Leave not as a matter of right**

- 1) All other leave except sick leave, mourning leave and maternity leave which the workers are entitled to receive pursuant to this chapter are normal facilities and shall not be claimed as a matter of right.
- 2) In case of leave other than those mentioned in the sub section (1), the employer may refuse, withhold, deduct or alter the time of the leave that is approved on the basis of the need of the work in the workplace.

## CHAPTER 10

### **Provisions relating to Provident Fund, Gratuity and Insurance**

#### **52. Contribution for provident fund**

- 1) Every employer shall deduct 10 percent of the basic salary of each worker, add 100% amount equivalent to that and deposit the total amount for the purpose of provident fund.
- 2) The amount pursuant to sub section (1) shall be deposited in the Social Security Fund in the name of the concerned worker making effective from the date such worker commences his/her job.
- 3) Notwithstanding anything contained in the sub section (2), the employer, in the following situations, shall deposit the amount of the provident fund as prescribed:
  - a) until the Social Security Fund does not come into operation
  - b) until the law relating to Social Security Fund does not become effective for the concerned employer
- 4) Employers shall contribute the amount for provident fund from the date of the commencement of this Act for those workers for whom the provident fund contribution was not made before this Act became effective.
- 5) The amount contributed for the provident fund in the retirement fund or any other similar fund established under the existing laws or the amount lying under the custody of the employer before the commencement of this Act shall be transferred to Social Security Fund in a prescribed manner after the commencement of this Act.
- 6) Notwithstanding anything contained in the section, the employer shall pay an amount equivalent to 10% of the basic salary in addition to the actual remuneration any worker is entitled to receive, in case the amount for the provident fund could not be deposited in the Social Security Fund pursuant to sections (2) and (3).

#### **53. Right to receive gratuity**



- 1) Every employer shall deduct an amount equivalent to 8.33 % of the basic salary of each worker every month and deposit it for the purpose of gratuity.
- 2) The amount pursuant to sub section (1) shall be deposited in the Social Security Fund in the name of the concerned worker making effective from the date such worker commences his/her job.
- 3) Notwithstanding anything contained in sub section (2), the employer, in the following situations, shall deposit the amount of the gratuity as prescribed:
  - a) until the Social Security Fund does not come into operation
  - b) until the law relating to Social Security Fund does not become effective for the concerned employer
- 4) Employers shall contribute the amount for gratuity from the date of the commencement of this Act for those workers for whom the gratuity contribution was not made before this Act became effective.
- 5) The amount contributed for the gratuity in the retirement fund or any other similar fund established under the existing laws or the amount lying under the custody of the employer before the commencement of this Act shall be transferred to Social Security Fund in a prescribed manner after the commencement of this Act.
- 6) Notwithstanding anything contained in the section, the employer shall pay an amount equivalent to 8.33% of the basic salary in addition to the actual remuneration any worker is entitled to receive, in case the amount for the gratuity could not be deposited in the Social Security Fund pursuant to sections (2) and (3).
- 7) Any worker taking the benefit of pension shall not be entitled to receive gratuity.

**54. Provision of medical insurance**

- 1) Every employer must make a provision for annual medical insurance of at least one hundred thousand rupees for every worker.
- 2) The premium required for the medical insurance under sub-section (1) shall be shared by both the employer and worker equally.

**55. Provision of accidental insurance**

- 1) Every employer must make a provision for accidental insurance of at least seven hundred thousand rupees covering all kinds of accidents for every worker.

- 2) The total premium required for the accidental insurance under section (1) shall be borne by the employer.
- 3) If a worker dies or is completely incapacitated mentally or physically as a result of the accident, such worker or his/her legal heir pursuant to the prevailing law shall receive the 100 % of amount of the insured sum under sub section (1).
- 4) In case, a worker is injured or incapacitated in an accident, compensation shall be provided pursuant to the percentage prescribed in proportion to the injury or incapacity caused.

**56. Payment of amount by the employer**

Where the employer has not subscribed insurance policy for the workers as required under this Chapter or as a result of serious mistake or negligence, the sum insured could not be received by the concerned worker or the dependent legal heir, such employer shall pay an amount equivalent to the sum insured to the concerned worker or the dependent legal heir.

**57. Social security scheme shall be applicable**

Any employer or worker making contribution in the social security scheme for the provident fund, gratuity and medical insurance benefits pursuant to the laws relating to Social Security Fund shall not, to that extent, be required to make additional contribution or subscribe insurance under this Chapter

## CHAPTER 11

### **Provisions Relating to Labour Provider**

#### **58. Workers may be hired from labour provider**

- 1) On the recommendation of the Council, the Ministry may publish, through a notification in the Nepal Gazette, a list of services in which workers may be hired from labour providers.
- 2) Any employer, while hiring workers through labour provider pursuant to sub section (1), shall employ them in any work other than the core work of such business or service.
- 3) When inviting or submitting any proposal or tender for the purpose of supplying or causing to supply workers through any labour provider or entering into an agreement for the supply of workers, the remuneration and other employment benefits of the workers to be supplied must not be lesser than those prescribed in this Act.
- 4) Any call made or proposal or tender submitted or agreement signed in contravention to sub section (3) shall be automatically invalid .

Explanation : For the purpose of this section, "core work" means the work and other directly related activities mentioned at the time of registration of the business.

#### **59. Requirement of license**

- 1) Any company interested to supply workers shall be required to take license pursuant to this Act.

Explanation: For the purpose of this Act, "Company" means any company registered pursuant to the prevailing law.

- 2) Any company seeking to take license shall submit an application in the prescribed format along with fees, details and documents as specified in the Office of the concerned area.

Provided that any company interested to supply workers in the area having more than one Office shall submit an application in the prescribed format along with fees, details and documents as specified in the Department.

- 3) The Department or Office, if satisfied with the application after examination, shall take the deposit or bank guarantee as prescribed and issue a license to such

applicant in a specified format along with conditions within 15 days from the date of receipt of the application.

- 4) While issuing the license pursuant to sub section (3), the work, service or scope of the work relating to the supply of workers shall be required to be stated therein.

Provided that a company shall not be permitted to operate as a labour provider for more than two areas of services or works.

- 5) Any organization or person carrying on the business of labour provider at the time of commencement of this Act, shall form a company pursuant to the Company Act for providing the service of labour provider and acquire license within six months from the date of commencement of this Act.

**60. Submission of details by license holder**

Every license holding company shall provide details as specified either to the Office or the Department depending on from where such license is acquired before the end of Poush every year.

**61. Responsibilities of labour provider**

- 1) Labour providers shall not act in violation of the conditions or directions as prescribed under this Act or the rules made under this Act.
- 2) Every labour provider, in the capacity of an employer under this Act, shall provide the remuneration and other benefits regularly to the workers it supplies and such benefits must not be lesser than those determined by this Act.
- 3) Labour providers shall be responsible for regularly acquiring the information on Occupational Safety and Health provisions required to be adopted in the workplace by the main employer. If the workplace lacks such provisions, the labour provider shall recommend the main employer to make such arrangement immediately.
- 4) Where the main employer fails to implement the recommendation made pursuant to sub section (3), the labour provider shall inform the Department or the Office accordingly.

**62. Cancellation of license, suspension or fines**

- 1) The Department or Office responsible for the issuance of license, in the following situations, may cancel the licence of labour provider:
  - a) if a labour provider files a written application for the cancellation of the license ;
  - b) in spite of the fines imposed pursuant to sub section (6), if the labour provider continues to violate the conditions specified and directions issued pursuant to this Act or the rules made under this Act.
- 2) An opportunity shall be given to the concerned labour provider for the submission of an explanation at least 7 days before the cancellation of the license pursuant to sub section (1)(b).
- 3) The decision to cancel the license pursuant to this section shall be informed through public notification.
- 4) Notwithstanding anything contained elsewhere in this section, the labour provider whose license has been cancelled shall not be considered free from any financial liability it has towards the government or any worker on the ground that the license has been cancelled.
- 5) The Department or Office may suspend the license of any labour provider, if such labour provider has not been complying the conditions and directions issued pursuant to this Act or the rules made under this Act.
- 6) The Department or Office, for the first time, may impose a fine up to Rs 25,000/- to any labour provider, if such labour provider has not been complying the conditions and directions issued pursuant to this Act or the uules made under this Act.

**63. Payment of remuneration and other benefits**

- 1) The labour provider, on cancellation of the license, shall pay the amount of remuneration and other benefits to the concerned workers within 15 days from the date of such cancellation
- 2) On failure to pay the amount of remuneration and other benefits within the period prescribed under sub section (1), the concerned Department or Office responsible for the issuance of license shall arrange the payment of such amount from the deposit or bank guarantee given by such labour provider at the time of acquiring the license.

- 3) Where the amount of deposit or bank guarantee under sub section (2) becomes insufficient for the payment of remuneration and other benefits, the payment shall be made proportionately. In case such labour provider is liquidated or dissolved, the payment for the remaining remuneration and other benefits shall be made in accordance with the prevailing law. If the labour provider is continuing other activities without being dissolved or liquidated, the Office may give an order for the payment of such remuneration and benefits from its other properties.

**64. Liabilities of the main employer**

- 1) The main employer, when employing workers through a license holding labour provider, shall follow the agreement entered with such labour provider.
- 2) The main employer, before entering into an agreement, shall ensure that the provisions for the payment of remuneration and benefits not lesser than what is prescribed by the Act or the rules made under the Act are made to the workers.
- 3) The main employer shall acquire regular information on whether the labour provider is regularly providing the remuneration and benefits to the workers hired from such labour provider or not.
- 4) On inquiry pursuant to sub-section (3), if it is found that the remuneration or benefits are not provided to the workers by the labour provider, the main employer shall immediately make a request to such labour provider for the payment of such remuneration and benefits and the Department or Office shall also be informed accordingly.
- 5) If the labour provider does not provide the remuneration and benefits as requested under sub section (4), the main employer shall inform the Department or the Office accordingly.
- 6) On receipt of the information pursuant to sub section (5) or if the information about the non-payment of the remuneration and benefits by the labour provider is received through any other means, the Department or the Office may make the payment from the deposit or bank guarantee kept by such labour provider at the time of acquiring the license.
- 7) The main employer shall make necessary arrangement relating to the Occupational Safety and Health required to be complied with in the workplace.

- 8) If the remuneration and benefits to be provided pursuant to the prevailing law increases after an agreement between a main employer and a labour provider is made, such amount of remuneration and benefits to the extent of increment shall also be paid by the main employer.
- 9) Hiring of workers is prohibited from any enterprise established with the involvement of the main employer or with the involvement of any manager or director or family member on his behalf.
- 10) Other provisions relating to the liabilities of the main employer shall be as prescribed.

**65. Conduct inspection, supervision and monitoring**

- 1) The office shall regularly carry out the act of inspection and monitoring to find out whether the labour provider has been conducting its business in accordance with the directions and conditions as prescribed by this Act and the rules made under this Act or not.
- 2) Through inspection, supervision or monitoring, if it is found that a labour provider is not working pursuant to the directions issued and conditions prescribed under this Act or the rules made under this Act, the Office, in such case, may issue necessary directions as required to the labour provider.
- 3) It shall be duty of the concerned labour provider to follow the direction given pursuant to sub section (2).

**66. Liability of workers on the main employer**

Where any main employer hires workers from a person or company operating as labour provider without taking a license pursuant to this Act or hires workers in violation of the provisions of this Act, such workers shall be deemed to be the workers of the main employer.

**67. Prohibition on taking fees from workers**

Labour provider is prohibited to take any kind of fee or commission from the workers it supplies to other employers.

## CHAPTER 12

### **Provisions relating to Occupation Safety and Health**

#### **68. Formulation of Safety and Health Policy**

- 1) Subject to the provisions of this Act, the rules made under the Act and directions issued pursuant to the Act and rules, every employer shall formulate a policy on safety and health of the workers and other persons in the workplace and implement it.
- 2) The policy formed pursuant to sub section (1) shall be registered in the Office.
- 3) Other provisions relating to the Safety and Health Policy formed by the employer shall be as prescribed.
- 4) The Office shall regularly monitor whether the safety and health policy formed by the employer under this section is complied or not.

#### **69. Duties of employers towards workers**

- 1) Duties of employers towards the workers in respect of Occupational Safety and Health shall be as follows:
  - a) ensure safe environment by making appropriate safety and health provisions at the workplace;
  - b) make necessary provision for the use, operation, storing or shifting of chemical, physical or bio-degradable material or equipments so that the safety and health of the workers are not affected adversely;
  - c) provide necessary information, notice or training relating to the safety and health to the workers;
  - d) provide necessary training and information in an appropriate language to the workers in relation to the equipments and use or operation of chemical, physical or biodegradable material for the work;
  - e) make proper arrangement for the safe entry and exit from the workplace;
  - f) provide necessary personal safety equipments to the workers; and
  - g) make other provisions as prescribed.
- 2) The employer shall not take any fees from workers for providing necessary safety equipments or facilities to the workers.

#### **70. Responsibilities of employer towards non-workers**



- 1) Every employer must make necessary arrangement for the safety and health of every person who walks in and out of the workplace or passes through such workplace.
- 2) Where there is any possibility of causing harmful effect or any risk on the safety and health of any person by the operating system of the workplace, the employer shall make an arrangement for giving signal or giving or keeping information in that respect.
- 3) Any enterprise using or manufacturing chemical products, shall ensure that the flora and fauna, people and environment of the locality are not adversely affected by the chemical substances, gases or any other thing discharged during the operation of such enterprise.

**71. Duties of the responsible person**

- 1) The duty to ensure whether the workplace, equipment, product or material is safe and healthy or not for the concerned work shall lie with the responsible person.

Explanation: For the purpose of this section, "Responsible Person" shall mean any person having the ownership or control over the workplace, equipments, products or material and the word shall also include head of the workplace and any person or organization assigned with ownership or control under the agreement relating to the use of equipments, products or material.

**72. Duties of manufacturers, importers and suppliers**

- 1) Following shall be the duties of manufacturers, importers and suppliers of equipments or material used in the workplace:
  - a) to manufacture, import or supply equipments, products or material found suitable from the examination for the operation and use in the workplace from the viewpoint of safety and health;
  - b) to determine suitable method or process of using or operating such equipment, products or material so that the safety and health of the concerned workers is not affected adversely;
  - c) to identify possible risks of causing adverse effect on the safety and health of the workers by the use of such equipment, products or material;

- d) to conduct necessary research, experiment or test to eliminate or minimize the risks identified pursuant to sub section (c)

Provided that if a research, an experiment or a test conducted earlier by any other person may be relied upon, such research, experiment or test shall be given due recognition.

- e) to prepare a manual in order to provide all the information relating to necessary steps required to be taken during the operation and use of equipments, products or material from the viewpoint of safety and health.
- 2) The person or organization which manufactures or installs any equipment in the workplace must ensure by giving a report in writing that such equipment manufactured or installed for the use of the workplace, if used properly, will not be harmful to the safety and health of the workers.
  - 3) If it is found that the equipment, product or material is not used in accordance with the relevant information or instruction provided by the manufacturer or supplier in relation to their use, such equipment or material, for the purpose of this section, shall not be considered to have been used appropriately.
  - 4) The manufacturer, importer or supplier of any chemical material to be used in the workplace shall provide Chemical Safety Data Sheet relating to such material including other details as prescribed to the employer.

### **73. Duties of workers**

- 1) Duties of workers in relation to Occupational Safety and Health shall be as follows:
  - a) not to perform any act intentionally or carelessly that may cause adverse affect or risk on his/her own safety and health or of others;
  - b) provide necessary cooperation to the employer or any other concerned person for the fulfilment of the duties mentioned in this Chapter;
  - c) acquire information about the manual, instruction or other matters prepared for the operation or use of the equipment, products or material safely and cautiously in the workplace;
  - d) operate or use the workplace, equipment or products or material safely and cautiously by following the manual, instruction or other matters

- prepared for the operation or use of such workplace, equipment, products or material; and
- e) use the personal safety equipments provided by the employer compulsorily.

**74. Formation of Safety and Health Committee**

- 1) Every employer, having 20 or more workers in any enterprise, shall constitute a Safety and Health Committee comprising of representatives of the workers also in the manner as prescribed.
- 2) For the purpose of sub-section (1), the workers hired through a labour provider shall also be considered.
- 3) The powers, functions and duties of the Safety and Health Committee as formed under sub-section (1) shall be as follows :
  - a) to give advice to the employer regularly on the kind of arrangement to be made on the safety and health of the workers and its effectiveness;
  - b) to evaluate the arrangement made on the safety and health in the workplace and draw the attention of the employer for making it more effective;
  - c) in spite of the act of drawing attention, the work is not done pursuant to sub section (b), the office shall be informed about it accordingly;
  - d) to review the Safety and Health Policy formulated pursuant to section 68 every year; and
  - e) to perform other functions as prescribed.

**75. Protection from disciplinary action**

No employer shall, on the following grounds, initiate any disciplinary action against any worker :

- a) For providing any information, notice or filing a complaint or assisting the act of filing a complaint against any employer for failing to make provisions on safety and health;
- b) For acting in the capacity of a member of the Safety and Health Committee formed under section 74; and
- c) For stopping the work under section 76 or 77 because of an immediate danger to the safety and health of the workers.

**76. Stoppage of work in case of immediate danger**

- 1) Where there is a possibility of causing injury or risk or serious effect on the health of the worker or others or causing loss or damage to the equipment or product or material if the work is not stopped immediately, the worker involved in such work shall inform the employer or any responsible person specified under section 71.
- 2) The employer or the responsible person, after receiving the information pursuant to sub section (1), shall immediately give appropriate direction in relation to that.
- 3) Where the employer or responsible person, at that time, is not available for the purpose of giving information under sub section (1), the worker himself/herself may stop the work.
- 4) Where the work is stopped pursuant to sub section (3), the worker involved in stopping the work shall immediately inform the employer or the responsible person through the speedy means of communication.
- 5) The employer or responsible person, after receiving the information pursuant to sub section (4), shall immediately investigate on the matter and take measures to remove or minimize the risks associated with it.
- 6) Where any dispute arises between a worker and an employer in relation to the presence of risk necessitating the stoppage of work or the sufficiency of the measures adopted for the removal or minimization of the risk, any party may, for the settlement of such dispute, give an application to the Office.
- 7) On receipt of the application pursuant to sub section (6), the office, after conducting the investigation and hearing both the parties, shall settle the dispute. The office may also ask for evidences if there is a need to do so.
- 8) The decision given for the settlement of such dispute shall be final and both the employer and the worker shall accept the same.
- 9) Notwithstanding anything contained elsewhere in this section, the work shall not be stopped with an intention to cause loss, give trouble or vengeance to the employer.
- 10) During the stoppage of work under this section, the employer may engage the workers in some other work by staying within the scope of his/her employment terms.

**77. Direction to stop the work**

- 1) During the inspection or on the basis of the information received through any other source, if the Office believes that an immediate danger or risk has arisen in a workplace or there is a possibility of risk on the safety and health of the worker/s or any other person/s, the Office may give direction to the employer to stop the work immediately in such workplace.
- 2) The Office must disclose the causes and basis of such risk while issuing the direction pursuant to sub-section (1).
- 3) When issuing the direction pursuant to sub-section (1), if the Office thinks that any equipment in the workplace is not fit for use or operation, the Office may issue an order prohibiting the use of such equipment and such equipment or any part of it may be sealed.
- 4) The employer shall immediately stop the work following the direction issued under sub section (1) by the Office.
- 5) The employer, if not satisfied with the direction issued pursuant to sub-section (1), may give an application in the department within seven days from the receipt of such direction.
- 6) The Department shall settle the issue within 15 days by acting upon the application submitted under sub section (5).
- 7) It is prohibited to carry on any work during the period under sub section (6).

Provided that if the office, during the period, informs about the absence of any immediate threat to the safety and health of workers, the work may be resumed.

**78. Special provisions relating to Occupational Safety and Health**

- 1) The safety and health standard of the enterprises engaged in the activities relating to the following matters shall be as prescribed:
  - a) provisions relating to protection of eyes;
  - b) provisions relating to protection from chemical substances;
  - c) provisions relating to operation of pressure plant;
  - d) provisions relating to safeguard of machines;
  - e) provisions relating to lifting of load; and
  - f) any other provision

- 2) Provisions relating to the inspection of pressure plant and boiler shall be as prescribed.
- 3) Other provisions relating to the information about the establishment of any enterprise and Occupational Safety and Health shall be as prescribed.

**79. Information on accident**

Where any accident occurs or any person is injured or dies in the accident or suffers from any occupational disease, the employer shall inform the Office about it immediately.

**80. Provisions relating to prevention of contagious diseases**

- 1) The employer shall make necessary arrangement to prevent contagious disease in the workplace.
- 2) Any worker suffering from any communicable disease may be prohibited from attending the work during the period of medical treatment.
- 3) Where the sick leave is not sufficient for the medical treatment pursuant to sub-section (2), the employer may give direction to such worker to make adjustment with other leave or take special unpaid leave.
- 4) It shall be the responsibility of the worker to follow such direction given under sub section (3).

**81. Engage in easier work**

- 1) Where any female worker is pregnant, she must inform the employer by submitting a medical paper evidencing her health check up.
- 2) On receipt of information pursuant to sub section (1), the employer shall normally engage such female worker in the work which will not have any harmful effect on her health.

**82. Special provisions relating to medical treatment for occupational disease**

- 1) Where any worker contracts any specified occupational disease while working in any enterprise, the prescribed amount of medical expense for the treatment of such disease or compensation, if such disease is incurable, shall be provided to such worker by the enterprise.

- 2) Notwithstanding anything contained in sub section (1), the enterprise shall not be required to pay the medical expense or compensation, if such medical expense or compensation for the occupational disease is to be provided from the Social Security Fund.

**83. Directions may be issued**

- 1) The Office may conduct a sudden or periodic inspection to find out whether the employer has made any arrangement or not in relation to the safety and health of the workers.
- 2) While inspecting pursuant to sub-section (1), if it is found that the employer has not made any such arrangement on safety and health in the workplace required under this Act or other prevailing laws, the Office may issue a direction to the employer specifying a period within which such arrangement to be made.

Provided that if there is a possibility of immediate danger to the safety and health of the workers or other persons or possibility of causing adverse effect on the environment in absence of such arrangement, the Office may issue a direction to make such arrangement immediately stating the reasons for the same.

- 3) The Office may give direction to provide necessary information and details regarding any accident occurred in the workplace, occupational disease or safety and health of workers or any other person.
- 4) It shall be responsibility of the employer to follow or cause to follow the direction issued pursuant to sub section (2) and (3).

## CHAPTER 13

### Provisions Relating to Special types of Industries and Services

#### 84. Provisions relating to tea-estate workers

- 1) The duties of the employers towards the tea-estate workers shall be as follows:
  - a) make an arrangement for suitable quarters within the tea-estate for the workers who do not have their own houses nearby.
  - b) make provision for a trained medical staff, medical items including medicines and free first aid service for the treatment of minor injuries sustained by the workers and their dependent family members.
  - c) make an arrangement for the easy availability of the daily necessities by the workers and employees, in case there is no market near by the tea-estate.
  - d) make an arrangement for sports and entertainment for the physical and mental development of the workers and their dependent family members.

Explanation: For the purpose of this section,

- 1) **"Tea estate"** means any land used for tea plantation and it shall also include a factory and its premises established for the processing of the tea and other related works.
  - 2) **"Worker of tea estate"** means any person who carries out the work of digging, ploughing, levelling, cutting, plucking, scattering, sowing, collecting, uprooting and other similar kinds of work in the tea estate and it shall also include any person engaged in tea processing.
  - 3) **"Dependent family members"** means family members who live with a tea-estate worker and whom s/he has to take care for their livelihood.
- 2) This section shall not be a constraint in entering into an agreement between a tea- estate worker and employer in relation to any work to be accomplished.

#### 85. Provisions relating to construction workers



- 1) The duties of the employers towards the construction workers shall be as follows :
  - a) provide necessary tools and material in sufficient number and quantity required for the construction;
  - b) make arrangement for temporary quarters, clean drinking water and supply of necessary food items to the workers who do not have houses nearby the construction site;
  - c) make necessary safety arrangement at the construction site

**Explanation :** For the purpose of this section,

- 1) "Construction work" means the construction of building, road, bridge, canal, tunnel, internal or interstate waterways or railways or construction of power station, telecommunication or telegraphic stations or installation of related equipment or machines ;
- 2) "Construction worker" means any worker who is engaged in construction work.
- 3) Any person or organization taking responsibility for construction work or contract shall be deemed to be an employer for the purpose of this section.
- 4) When fixing the rate of wage and other benefits for the construction workers, representation of the concerned trade union and Contractors' Association shall be compulsory.
- 5) Other provisions relating to the construction workers shall be as prescribed.

#### **86. Provisions relating to transport workers:**

- 1) The duties of the employers towards the transport workers shall be as follows:
  - a) There must be a compulsory provision of at least two drivers in the vehicles that operate in a long route with an arrangement to drive turn by turn.
  - b) An arrangement shall be made for taking rest in different places for the drivers of vehicles operating in the long route before reaching at the final destination.

- c) Where the workers of the transportation service are required to work more than eight hours a day, they must be paid remuneration at the rate of 1.5 times of their ordinary rate of remuneration.

Provided that, if the workers are paid any trip allowance, food allowance or any other allowance of similar nature, they shall be entitled to receive either the overtime payment or these allowances.

- d) If the vehicle breaks down before reaching the final destination or is required to be stopped in one place for any reason, such worker shall receive only fifty percent of the allowances paid to him.
- e) Necessary medicines and medical treatment items for first aid shall be kept in the vehicles.

**Explanation:** For the purpose of this section,

- 1) "Long Route" means a long route as determined pursuant to the law.
  - 2) "Transportation work" means any work relating to the transportation of people, animal or goods from one place to another.
  - 3) "Transportation worker" means any worker engaged in transportation.
- 2) Workers engaged in driving shall not consume alcohol or drugs at least twelve hours before driving the vehicle until the final destination is reached.
  - 3) Any act in contravention to the sub-section (2) shall be deemed to be misconduct and the concerned worker may be dismissed from the job by the concerned employer. Provided an opportunity to be heard shall be provided to the worker before dismissing him from the service.
  - 4) Where it is necessary to terminate the service of any worker due to the sale of the vehicle or change of ownership of the vehicle, the employer may do so by providing all the benefits in accordance with this Act.

Provided that this provision shall not be applicable to an enterprise operating transportation business.

## **87. Special provisions relating to tourism workers**

- 1) The duties of the employers towards the tourism workers shall be as follows:

- a) provide sufficient quantity of medicine and medical treatment items for first aid when sending workers to the workplace;
  - b) rescue or cause to rescue any worker in case of an accident or serious health problem.
- 2) The worker, when working in the workplace mentioned in sub-section (1), shall be provided either field, food and other similar allowances or remuneration at the rate of 1.5 times of the ordinary remuneration as per his/her choice between these two benefits.
  - 3) The employer operating any hotel, motel, restaurant, jungle safari or any other similar kind of business shall distribute service fees collected pursuant to collective bargaining as prescribed.

**88. Provisions relating to domestic workers**

- 1) The Government of Nepal may fix minimum wage for domestic workers separately.
- 2) Notwithstanding anything written in this Act, provisions relating to public holiday and weekly holiday for domestic workers shall be as prescribed.
- 3) Where the employer has made an arrangement for food and shelter at his house itself or provided financial assistance for the education of the worker, such expense may be deducted from the remuneration of such worker.
- 4) Every domestic worker shall be allowed to celebrate festivals pursuant to his/her culture, religion or tradition by the employer.

**89. Seasonal enterprises**

- 1) The workers of any seasonal enterprise shall be kept in reserve during the period of closure in off season.  
**Explanation :** For the purpose of this section, “Seasonal Enterprise” means any enterprise which can be operated in a particular season only and it also includes an enterprise which cannot be operated for more than 180 days in a year.
- 2) Notwithstanding anything written in this Act, during the closure of any seasonal enterprise in off season, the workers in regular employment shall be paid at least 25 percent of their remunerations which they are entitled to.
- 3) The office shall decide as to a question whether any enterprise is a seasonal or not.

**90. Provisions relating to enterprise incorporated in a foreign country with operation in Nepal**

If any foreign enterprise involved in the promotion of business in Nepal or sale of products or in any other activity acts in violation of the employment contract entered with the representative or worker stationed in Nepal, such representative or worker may file a complaint to the Office or Labour Court in accordance with the Act.

## CHAPTER 14

### **Provisions Relating to Fair Labour Practice**

#### **91. Compliance of fair labour practice**

Employer, enterprise or Trade union, when carrying out their activities, shall observe fair labour practice in their conduct with each other.

#### **92. Deemed to be unfair labour practice**

- 1) Employer or trade union shall not commit or cause to commit any unfair labour practice as specified in sub section (2) and (3).
- 2) Any of the following acts done by employers shall be deemed to be unfair labour practice:
  - a) act of not complying with the laws related to labour or cause others to do so;
  - b) act prohibiting the use of any of the rights conferred by the labour law;
  - c) intentional act of fabricating fake evidence in order to take disciplinary action against any worker;
  - d) any act done with an intention to give trouble or harass a worker;
  - e) act of intervention or cause to intervene in the activities relating to formation, operation and administrative functions of the trade union;
  - f) act of continuing lock out which has been declared unlawful;
  - g) act of assaulting or cause to assault any worker;
  - h) act of provocation or inciting act with an intention to create animosity or rift among the workers;
- 3) Any of the following acts done by trade unions shall be deemed to be unfair labour practice
  - a) act of exerting pressure or threatening any worker to be or not to be a member of a union;
  - b) act of collecting donation or any other assistance forcibly ;
  - c) act of picketing or surrounding the private residence or enterprise of the employer other than the concerned workplace or act of causing to do so;
  - d) act of assaulting the employer or his / her representatives or any worker or committing any unlawful activity for the fulfilment of their demands or act of causing to do so;

e) act of damaging the property of the employer intentionally.

## CHAPTER 15

### **Provisions Relating to Labour Inspection**

#### **93. Provisions relating to office and inspectors**

- 1) For the enforcement of this Act and other prevailing laws relating to labour, the Government of Nepal may establish Labour Offices as required.
- 2) Districts which fall within the jurisdiction of the labour offices formed pursuant to sub section (1) shall be as fixed by the Ministry.
- 3) The Government of Nepal, through notification in the Nepal Gazette, may appoint one or more than one inspectors for any area pursuant to the need.

#### **94. Powers, functions and duties of the Office**

- 1) The powers, functions and duties of the Office shall be as follows:
  - a) to carry out inspection and find out whether minimum wage fixed pursuant to this Act, allowances and benefits entitled to receive pursuant to collective agreement or rights given to the employers and trade unions by the prevailing laws are enforced or not;
  - b) to conduct regular inspection to find out whether this Act or rules made under this Act are being effectively enforced or not and give necessary direction to the concerned party for their enforcement;
  - c) to conduct trainings on standards or codes of conduct as formulated pursuant to this Act or any other prevailing laws and carry out regular inspection to find out whether they are enforced or not;
  - d) to provide necessary technical support to the employers and trade unions if they seek such support for conducting necessary trainings;
  - e) to give direction to employers to produce OSH standards or employee rules or other related documents;
  - f) to enforce collective bargaining agreement entered into between employers and workers or decision of the arbitrator;
  - g) to inspect and find out whether children are employed or not and immediately rescue the children if found employed and take action against such employer accordingly;

- h) to carry out inspection to find out whether the employer has implemented the provisions relating to OSH prescribed in the Chapter 12 of this Act for any enterprise or workplace or not;
  - i) observe and inspect the equipment installed in the workplace, tools, apparatus or objects or material and examine whether such equipment, tools, apparatus or objects or material is of prescribed standard or not and if the test is required, collect samples of the same;
  - j) to conduct or cause to conduct periodic or immediate inspection in the enterprise or workplace;
  - k) to give an order to the concerned enterprise or the officers of such enterprise to produce electronic record including register or written documents and if they are not provided, take control of the original register or written documents by entering into such enterprise;
  - l) to collect required information from the employer, managers and other workers of the enterprise;
  - m) if necessary, seek explanation from the employer, managers or other workers by summoning them to the office;
  - n) to give necessary direction for rectification in case any information is received during the inspection of the workplace or enterprise or from any other source in relation to any activity performed in violation of the Act or the rules made under this Act by the employer or worker or trade union;
  - o) to keep the record of application or documents or any notice received from any other source in the Office or give evidence of the registration of such application or documents or keep the record of the decision, order or compromise or give certified copy of any document if requested;
  - p) to carry any other functions specified by this Act or other existing laws to be executed by the Office;
  - q) to carry out any other functions as may be prescribed.
- 2) The Office may request the local administration, the police or any other concerned body to provide assistance in case it is necessary for using powers given under this section by the Office.



- 3) It shall be the duty of the local administration, police or any other concerned body to provide assistance to the office if requested pursuant to sub section (2)

**95. Powers, functions and duties of inspectors**

- 1) Execution of the functions, performance of the duties and use of the powers for the Office shall be carried out by the inspectors and officers working under them in the prescribed manner.
- 2) Notwithstanding anything contained in sub section (1), the OSH inspectors shall have the powers to carry out those functions which have been clearly entrusted to the OSH inspectors by this Act or any other laws or inspection of factory machinery and equipments or OSH matters or any other technical function for the office.

Provided that nothing contained in this section shall act as a constraint for any office in employing any OSH inspector from another Office or any technical person having knowledge on OSH for inspection in case the office lacks OSH inspectors. The labour inspector may also act accordingly.

**96. Duties of inspectors and officers**

- 1) Duties of inspectors and officers deputed to inspect enterprises and workplaces pursuant to section 95 shall be as follows:
  - a) to enter any enterprise or workplace only after showing identity card;
  - b) to provide receipt while taking control or seizing any register, written documents, records or objects;
  - c) to keep the identity of any complainant confidential if s/he request to do so;
  - d) to fulfil duties without creating any obstruction in the work of the enterprise or workplace;
  - e) to keep all notices, information and data acquired during inspection confidential unless they need to be disclosed under the requirement of the law.
- 2) Where the inspector or the officer deputed to inspect the enterprise or the workplace fails to fulfil the duties pursuant to sub section (1) or acts disrespectfully or acts against the position or causes loss by doing an act with a

wrong intention, the concerned person shall inform the authority through the Office.

- 3) The authority may take departmental action pursuant to the prevailing law if the inspector or officer is found guilty in the investigation conducted as pursuant to sub section (2).

**97. Provide necessary cooperation**

It shall be the duty of the employer, worker and trade union to extend necessary cooperation to the inspector or officer deputed to inspect the enterprise or workplace during investigation.

**98. Submission of report**

Unless otherwise directed, the inspector or officer shall submit a report with details as prescribed to the Office within 15 days from the date of completion of the inspection of the enterprise or workplace as prescribed in this Chapter.

**99. Directions may be issued by the Office**

- 1) On receipt of the report pursuant to section 98, if the Office, after conducting a proper examination, feels the need for an improvement in relation to any work, working procedure or any other matter of the enterprise or workplace or worker or trade union, the office may give a directive for improvement or stop any act which is being carried out in contravention to the law.
- 2) The party dissatisfied with the directive issued pursuant to sub section (1) may appeal in the Labour Court within 35 days from the date of issuance of such directive.
- 3) The decision of Labour Court in relation to the appeal filed pursuant to sub section (2) shall be final.

**100. Requirement of labour audit**

- 1) Every enterprise, after conducting a labour audit in relation to the compliance of the Act, rules and any other prevailing law as prescribed, shall prepare a report accordingly.

- 2) The labour audit prepared pursuant to sub section (1) needs to be submitted to the Office or inspector if asked for during inspection carried out under this Chapter or if demanded, at any other time.

**101. Filing of application**

Where there are more than one Office in any area, a worker of any enterprise with its branch or workplace in such area may file an application in any office pursuant to his/her convenience. On receipt of such application, the concerned Office shall conduct hearing acting on the application accordingly.

## CHAPRT 16

### Provisions relating to Council and Committees

#### 102. Formation of Central Labour Advisory Council

- 1) A Central Labour Advisory Council, for the purpose of giving advice on labour matters to the Government of Nepal, shall be established as follows:
  - a) Minister or Minister of State of Labour and Employment.....  
Chairperson
  - b) Secretary, Ministry of Finance.....Member
  - c) Secretary, Ministry of Labour and Employment.....Member
  - d) Secretary, Ministry of Physical Infrastructure and Transportation .....Member
  - e) Secretary, Ministry of Agriculture.....Member
  - f) Secretary, Ministry of Industry.....Member
  - g) Secretary, Ministry of Health.....Member
  - h) Director General, Department of Labour.....Member
  - i) Executive Director, Social Security Fund .....Member
  - j) Executive Director, Vocational Skill Development Training Centre.....Member
  - k) Minimum of five persons including two women from among employers nominated as prescribed by the Ministry .....  
Members
  - l) Minimum of five persons including two women from among trade union federations nominated as prescribed by the Ministry .....Members
  - m) Joint Secretary, (Responsible for the concerned Division),

Ministry of Labour and Employment.....Member  
Secretary

- 2) The tenure of the members nominated pursuant to sub-section (1) (k) and (l) shall be for three years and may be renominated after the expiry of the tenure.
- 3) While nominating members pursuant to sub section (1) (k) and (l), the Ministry shall, on the recommendation of employers associations, in case of employers and Joint Trade Union Coordination Committee, in case of trade union federations, nominate such members.
- 4) The members nominated under sub section (1) (k) and (l) may, in their absence, nominate alternative members for participation in the meetings of the council.

### **103. Powers, functions and duties of the Council**

- 1) The powers, functions and duties of the Council shall be as follows:
  - a) to provide advice and suggestions in relation to labour policies to the Government of Nepal;
  - b) to provide necessary advice and suggestions to the Government of Nepal for appropriate improvement in the laws relating to labour;
  - c) to provide suggestions to the Government of Nepal in relation to the ratification or implementation of any international convention concerned with labour of which Nepal is a party;
  - d) to provide suggestions to the Government of Nepal in relation to the report concerning any international convention on labour which it is required to submit;
  - e) to prepare standards on Occupational Safety and Health and recommend it to the Government of Nepal;
  - f) to prepare code of conduct on fair labour practice and recommend it to the Government of Nepal;
  - g) to provide suggestions in relation to the formulation of policies concerning vocational skill development training;
  - h) to set up necessary coordination with the Government of Nepal, employers and trade unions for the purpose of establishing industrial peace, sound industrial relation and minimization of disputes;

- i) to set up necessary coordination with the Government of Nepal, employers and trade unions for the purpose of employment and productivity growth;
  - j) to frame and issue directive on collective bargaining as required; and
  - k) other functions shall be as prescribed.
- 2) The Council may form required number of committees or taskforce for the purpose of carrying out its functions.
- 3) The powers, functions and duties of the committees or taskforce formed pursuant to sub section (2) shall be as prescribed at the time of formation by the Council.
- 4) A secretariat of the Council shall be located at the Ministry.

**104. Removal from membership**

- 1) The membership of the Council members appointed pursuant to section 102(1)(e) and (f) shall come to an end as follows:
  - a) if a member submits resignation to the Ministry through the chairperson;
  - b) if a member remains absent consecutively in three meetings without giving any notice;  
Provided that this provision shall not be applicable in case any alternative member attends the meeting.
  - c) if the tenure of a member is completed;
  - d) in case of death of a member.
- 2) Before removing any member from the position of the Council pursuant to sub-section (1)(b), an opportunity shall be given for clarification.
- 3) Where the position of any member falls vacant pursuant to sub-section (1), another person from the same sector in which the past member was represented, shall be nominated for the remaining period by adopting the same procedure through which the past member was nominated.

**105. Meetings, quorum and decisions**

- 1) Meetings of the Council shall be held as required on the date, place and time fixed by the Chairperson of the Council.

Provided that the difference between two meetings shall not be more than four months.

- 2) The Chairperson shall call a meeting within 15 days from the date the one fourth of the total number of members in the Council submits a written request for such meeting.
- 3) The Member Secretary of the Council shall circulate a notice along with the agenda of the meeting to all the members at least 24 hours before such meeting is scheduled.
- 4) Presence of more than 50% of the total number of members represented by the government, employers and trade unions in the meeting of the Council shall constitute the quorum.
- 5) The Chairperson of the Council shall preside the meeting of the Council. In his absence, the Secretary of the Ministry shall preside the meeting.
- 6) A labour expert may be invited in the meeting of the Council.
- 7) Decisions in the meeting of the Council shall be taken on the basis of consensus.
- 8) In case, the consensus is not reached pursuant to sub-section (7), the decision shall be taken on the basis of the majority of the members representing the government, employers and trade unions.
- 9) There shall be a separate minute book for recording the decisions of the meeting and such decisions shall be authenticated by the Member Secretary of the Council.
- 10) Other procedures concerning the meeting of the Council shall be as determined by the Council itself.
- 11) Members of the Council shall be entitled to receive meeting allowances as specified by the Government of Nepal.

#### **106. Fixation of minimum wage**

- 1) The Ministry, at the recommendation of Minimum Wage Fixation Committee formed pursuant to section 107, shall fix the minimum wage for workers every two years.
- 2) Notwithstanding anything contained in sub-section (1), the Ministry may fix minimum wage, in case the Minimum Wage Fixation Committee formed pursuant to section 107 fails to recommend the minimum wage due to lack of consensus.

- 3) The minimum wage fixed pursuant to this section, shall be published in the Nepal Gazette.
- 4) The minimum wage fixed pursuant to sub section (3) shall be effective from the 1st of new financial year.

Provided that if any agreement is entered between a trade union and employer concerning the effective date for the implementation of the minimum wage, it shall be followed accordingly.

- 5) When fixing minimum wage in accordance with other prevailing laws of Nepal, the fixation of such minimum wage lesser than the wage fixed pursuant to this Act is prohibited.

#### **107. Minimum Wage Fixation Committee**

- 1) The Ministry shall constitute a permanent Committee consisting of representatives from the Government of Nepal, trade unions and employers' associations for the purpose of recommending minimum wage in the prescribed manner.
- 2) The committee formed pursuant to sub-section (1), when recommending minimum wage for workers, may do so for the whole country or specific region or specific nature of enterprises or industries or employment sector.
- 3) Grounds for the recommendation of minimum wage shall be determined by the Minimum Wage Fixation Committee itself as formed under sub section (1).
- 4) The Minimum Wage Fixation Committee formed pursuant to sub section (1), shall, in every two years, commence the process of reviewing the minimum wage from the month of Baishak.
- 5) Other provisions relating to the meetings of the committee under sub section (1) including procedure shall be as prescribed.



## CHAPTER 17

### **Provisions Relating to Internal Management of Enterprise**

#### **108. Internal management**

- 1) Every enterprise, for the purpose of its internal management, may make a by-law as required.
- 2) Any enterprise, when making a by-law for employment conditions and benefits of workers or any authorised body, when giving approval to the by-law made by any enterprise, shall do so without violating the minimum standard prescribed by this Act and collective agreement.
- 3) The Ministry, for the purpose of sub section (1), may make a model by-law as required.

Provided that it shall not be a constraint for Nepal Rastra Bank, in case of banks and financial institutions and any other regulatory authority, in case of any other enterprise, to make by-law as required.

- 4) One copy of the by-law made by an enterprise shall be registered in the Office and it shall be made available to workers if they want to go through.
- 5) The enterprise, when making or amending a by-law, shall consult the authorised trade union if there is any or in its absence, any other active trade union of the enterprise.
- 6) Where any provision of the by-law made by the enterprise contradicts with this Act, prevailing laws or collective bargaining, the court may declare such provision null and void or give any appropriate order.

#### **109. Provisions on transfer**

- 1) An enterprise may transfer a worker from any of its office, branch or unit to another office, branch or unit without causing any adverse effect on the existing employment conditions and benefits as well as without causing any difference in his/her nature of work or level.

Provided that in the following situations, transfer may be done in spite of difference in the nature of work as well as level:

- a) with the consent of the concerned worker;
- b) placement in a new position through promotion;
- c) as mentioned in the collective agreement; or

- d) act of transferring to any other position suitable to training or skill or educational qualification acquired by the worker.
- 2) Any worker employed in one enterprise may be transferred, with his/her consent, to another enterprise.
- 3) When transferring any worker pursuant to sub section (2), an agreement between the enterprise which is transferring and the enterprise where the worker is being transferred shall be entered into regarding the issue of taking the liability of adding the service period and employment conditions and benefits for such period of such worker by the recipient employer.
- 4) When transferring any worker from the workplace located in the place of his/her permanent residence or to any other place from the regular workplace, the employer shall provide benefits as prescribed.

**110. To be deputed as representative**

- 1) An enterprise may depute any of its worker to another enterprise to work in the capacity of its representative.
- 2) Unless otherwise agreed, the liabilities in respect of all the employment conditions and benefits of the concerned worker shall lie with the enterprise deputing such worker pursuant to sub-section (1).

**111. Formation of Labour Relation Committee**

- 1) Employer of every enterprise having 10 or more than 10 workers shall form a labour relation committee as prescribed.
- 2) Powers, functions and duties of the committee formed pursuant to sub-section (1) shall be as follows:
  - a) to hold consultation for productivity increment and improvement of the operating system ;
  - b) to make an effort to settle any grievance or any probable grievance of the workers in consultation with the concerned party;
  - c) to improve the environment of the workplace;
  - d) to work in the capacity of Occupational Safety and Health Committee until it is formed; and
  - e) to perform other functions as prescribed.

- 3) The meetings of the committee formed pursuant to sub-section (1) shall be held as required without affecting the work of the enterprise.
- 4) Provisions relating to the composition, procedure and meetings of the committee shall be as prescribed.

**112. Performance evaluation of workers may carried out by an enterprise**

- 1) An enterprise may, normally, carry out performance evaluation of workers once in a year.
- 2) The basis and procedure for the work performance evaluation shall be determined based on reasonability and judiciousness.
- 3) The basis and procedure under sub section (2) shall be notified to workers before the time for the work performance evaluation is commenced.
- 4) On completion of the performance evaluation pursuant to sub-section (1), the employer or the person designated by him/her shall consult with the concerned worker in relation to his/her strength and weakness and give a reasonable opportunity to improve the weaknesses.
- 5) Where the worker disagrees with the result of the evaluation done pursuant to sub-section (4), such worker shall be required to sign the evaluation form after providing an opportunity to clarify the points of disagreement.
- 6) Where a worker is dissatisfied pursuant to sub section (5), the enterprise shall accordingly make a provision for appeal.
- 7) Other provisions relating to the work performance evaluation shall be as prescribed.

**CHAPTER 18**

**Provisions Relating to Settlement of Individual Dispute**

**113. Submission of individual claim**

- 1) Any worker having individual claim concerning the right entitled pursuant to this Act, the rules, prevailing laws or collective bargaining may submit an application in writing to the employer.
- 2) The employer shall give a written acknowledgment of the claim received in writing pursuant to sub-section (1).

- 3) The employer, after receiving the claim pursuant to sub section (1), shall settle the dispute relating to the claim within 15 days after consultation with the concerned worker.
- 4) Notwithstanding anything contained in sub section(3), the time for the settlement of dispute may be extended through consent between the employer and the concerned worker.

**114. Application may be filed in the Office**

- 1) Any concerned party, for the settlement of dispute under section 113 through mediation, may submit an application to the office in the following situations:
  - a) if the employer does not give any notice for consultation within 7 days from the date of submission of the application pursuant to section 113(1)
  - b) if an agreement could not be reached after the consultation held pursuant to section 113(3) and 15 days from the date of submission of application to the employer has elapsed.
- 2) After receipt of the application pursuant to sub section (1), the office shall notify the date and time to the employer and the concerned worker for consultation.
- 3) The office shall settle the dispute relating to the claim within 21 days from the date of the receipt of the application pursuant to sub section (1) by holding consultation as required between the employer and the concerned worker.
- 4) Notwithstanding anything contained in sub section(3), the time for the settlement of dispute may be extended through consent between the employer and the concerned worker.
- 5) If an agreement is reached between the employer and worker in the consultation held pursuant to sub section (3), such dispute relating to the claim shall be deemed to have been settled.
- 6) The agreement reached under sub section (5) shall be binding to both the parties.

**115. Decision of the Office**

Where the dispute does not get settled pursuant to section 114, the office shall give decision within 15 days on the basis of evidences.

## CHAPTER 19

### **Provisions Relating to Resolution of Collective Dispute**

#### **116. Submission of collective claims**

- 1) Any enterprise employing 10 or more than 10 workers shall have Collective Bargaining Committee as follows:
  - a) team of representatives appointed for negotiation on behalf of the elected authorized trade union of the enterprise
  - b) where an election for authorised trade union pursuant to sub-section (a) could not be held or the term of the authorised trade union has expired, a team of representatives nominated through a mutual agreement of all the unions in the enterprise;
  - c) where an authorised trade union pursuant to sub-section (a) or the team of representatives pursuant to sub-section (b) could not be formed, a team of representatives supported with the signatures of more than 60% of the workers working in the enterprise.
- 2) The Collective Bargaining Committee, on issues relating to the interest of the workers, may submit collective claims/demands in writing to the employer.
- 3) Notwithstanding anything contained in sub section (2), submission of collective claims / demands on the following matters is prohibited:
  - a) which is contrary to the Constitution of Nepal;
  - b) which may adversely affect the interest of any other person because it is based on groundless allegation without any proof;
  - c) any matter which may affect the personal behaviour of any employer or worker;
  - d) matter which is not related to the enterprise;
  - e) where the collective agreement has been entered and the period specified in the Act for such agreement has not expired yet;
  - f) relating to contribution rate and benefits specified for the social security schemes;
- 4) On the basis of the number of workers, a Collective Bargaining Committee may have a maximum of three to eleven members as specified.

- 5) The Collective Bargaining Committee formed pursuant to this section shall have the power to submit collective claims or demands, enter into agreement, file a case against any person or defend in such case.

**117. Hold consultation on collective claims**

- 1) On submission of collective claims or demands pursuant to section 116, the concerned employer shall give a notice in writing to the Collective Bargaining Committee within seven days from the date of submission of such claims or demands stating the place and time for the consultation.
- 2) The members of the Collective Bargaining Committee shall be present for consultation at the place and time stated in the notice given pursuant to sub section (1).
- 3) The dispute relating to the collective claims or demands shall end if any agreement, between the concerned two parties, is achieved.
- 4) The agreement signed pursuant to sub section (3) shall be binding for both the concerned parties.

**118. Settlement through mediation**

- 1) In the following situations, any concerned party may give an application to the Office for the settlement of collective bargaining claims or demands through mediation:
  - a) where the employer fails to give any notice to the Collective Bargaining Committee for consultation within the period prescribed pursuant to section 117(1) ; or
  - b) where an agreement could not be reached in the consultation held pursuant to section 117(3) within 21 days from the date of submission of claims or demands.

Provided that there shall not be a constraint to extend the time through consent of the parties in case there is continuity in the negotiation.

- 2) On receipt of the application for mediation pursuant to sub section (1), the office shall call both the concerned parties and resolve the dispute through mediation.
- 3) The proceeding of mediation under sub-section (2) shall be completed within 30 days from the date of application for mediation.

Provided that it shall not be a constraint to extend the time through consent of the parties in case there is continuity in the negotiation.

- 4) The dispute relating to the collective claims or demands shall end if any agreement, between the concerned two parties, is achieved in the negotiation held in presence of the office under sub section (3).
- 5) The agreement signed pursuant to sub section (4) shall be binding for both the concerned parties.

#### **119. Settlement of dispute through arbitration**

- 1) Where the dispute is not resolved through mediation under section 118, such dispute relating to the collective claims or demands shall be settled through arbitration as follows:
  - a) if the Collective Bargaining Committee and the employer agree to settle the dispute relating to collective claims or demands through arbitration;
  - b) if a collective dispute arises in an enterprise providing essential service;
  - c) if a collective dispute arises in an enterprise located inside the special economic zone; or
  - d) in a situation where the strike is prohibited due to imposition of emergency under constitution.

**Explanation:** For the purpose of this Chapter, ‘essential service’ means any service, if interrupted, may have an adverse impact on the life, health and safety of the people of the entire country or the people living in any part of the country.
- 2) Where the Ministry has a ground to believe that a financial crisis may take place in the country as a result of ongoing or possible strike or lockout or believes that the dispute needs to be settled by arbitration, the Ministry, irrespective of the state of the collective dispute, may give an order for the settlement of the dispute through arbitration.
- 3) For the purpose of sub sections (1) and (2), the Ministry may form an arbitration panel ensuring representations from workers, employers and the Government of Nepal.
- 4) Expenses for the formation of arbitration panel under sub section (3) shall be borne by the Government of Nepal as prescribed.

- 5) Any party wanting to settle the dispute through arbitration shall submit claims in writing to the arbitrator as prescribed.
- 6) On receipt of the claims pursuant to sub section (5), the arbitrator shall send a copy of such claims to the other party and provide an opportunity to such party to file a written statement in response to that.
- 7) When initiating the proceeding pursuant to this section, the arbitrator may consult or take an advice from an expert.
- 8) Hearing shall be conducted by the arbitrator on the specified date, time and place and the arbitration proceeding shall not be stopped simply on the ground that the other party has failed to be present or a written statement has not been filed.
- 9) The arbitrator shall deliver the decision within 30 days from the date of ending of the hearing pursuant to sub section (8).
- 10) The arbitrator shall have power as that of any court under the prevailing laws to take evidence into record, examine witnesses, inspect sites and other related work in connection with the proceeding.
- 11) Except otherwise agreed with the parties, other provisions relating to the proceeding shall be as determined by the arbitrator.

**120. Formation of labour arbitration tribunal**

- 1) The Government of Nepal, for the purpose of settling collective dispute through mediation and arbitration, may form an independent labour arbitration tribunal.
- 2) Where a labour arbitration tribunal is formed in pursuance of this sub section (1), all proceedings relating to mediation and arbitration under this Chapter shall be conducted through the tribunal accordingly formed.
- 3) Other provisions relating to the labour arbitration tribunal shall be as prescribed.

**121. Right to strike for settlement of collective dispute**

- 1) The Collective Bargaining Committee may, where any of following situations prevails, organize strike for the settlement of collective dispute:
  - a) if no condition exists for compulsory arbitration under section 119(1);
  - b) if an arbitrator does not perform the functions of arbitration;



- c) if an arbitration panel could not be formed within 21 days from the date of application in the Ministry or decision is given against the need for arbitration;
  - d) if decision is not given by arbitrators within the prescribed time;
  - e) if the employer refuses to enforce the decision of the arbitrators or challenges such decision on legal grounds;
  - f) except where compulsory arbitration is to be adopted, if any party dissents with the decision given by the arbitrator under section 122(2)
- 2) In order to organize a strike pursuant to sub section (1), a written notice along with claims or demands and the date from which the strike is to commence shall be submitted to the employer 30 days before organizing such strike and the office of the local administration as well as concerned labour office shall also be informed accordingly.
- 3) Notwithstanding anything contained elsewhere in the Act, even in situations where the notice on strike is given pursuant to sub section (2) or the strike is commenced, it shall be withheld and take part in the arbitration process, if the Ministry issues an order to settle the dispute through arbitration pursuant to section 119(2)
- 4) Notwithstanding anything contained elsewhere in the Act, the workers deputed as watchmen or guards for the security of the enterprise shall not be permitted to get involved in strike during the time they are assigned in the work and do any act pursuant to section 125.

**122. Decision of arbitrators and collective bargaining shall be binding**

- 1) If any collective dispute is settled by compulsory arbitration pursuant to section 119(1), the decision so given by the arbitrator shall be binding to the concerned parties.
- 2) Where any party dissatisfied with the decision given by the arbitrators on the dispute referred by the Ministry through an order pursuant to section 119(2) fails to file a note of dissent in writing to the arbitrators within 5 working days from the date of such decision, it shall be deemed to be binding automatically to the concerned party after such specified period comes to an end.
- 3) Collective agreement or decision of arbitrators need to be registered in the office for the purpose of record and enforcement.

- 4) The validity period of collective agreement shall be two years from the date of effectiveness if specified in the agreement or it shall be from the date of signing of the agreement if the date of effectiveness is not mentioned in the agreement or from the date of decision of arbitrator if such decision has been made and it shall have the validity of law.
- 5) Notwithstanding anything contained in subsection (4), unless amended or annulled by another collective agreement or decision of the arbitrators, the provisions in the existing collective agreement or the decision of the arbitrators shall continue to be effective.

**123. Special provisions relating to the submission of collective bargaining claims or demands**

- 1) Trade union associations which are active in the tea estate, carpet sector, construction business, labour provider, transportation sector or any other group of manufacturers producing similar nature of products or service providers providing similar nature of services or businesses as specified may, by forming a Collective Bargaining Committee as prescribed, submit collective bargaining claims or demands to the employers' association of concerned group of industries.
- 2) Methods of submitting claims or demands pursuant to sub section (1), procedure relating to the collective bargaining and provisions relating to the agreement shall be as prescribed.
- 3) In relation to the enterprises where the collective agreement made pursuant to this section is applicable, the act of submitting collective claims or demands and entering into agreement pursuant to this Chapter is prohibited.
- 4) Notwithstanding anything contained in section 122 (4), the Ministry may give an order to submit collective claims or demands and negotiate within a specified time. In case of such order, for one time, the negotiation may happen earlier or later than the time specified in the same section or sub sections.

**124. Right to lockouts**

- 1) Where a strike is organized without giving a notice pursuant to this Act or continues the strike or collective dispute could not be settled through the procedure prescribed in the Act, the management may, by giving justifiable

grounds, lockout the enterprise after acquiring an approval from the Department.

- 2) Before carrying out lockout pursuant to sub section (1), the management shall issue a notice of at least seven days along with a date for lockout to the workers in case they do not end the strike.
- 3) Notwithstanding anything contained in subsections (1) and (2), where there is a possibility of causing loss to the enterprise because of gherao, physical unrest or any such type of act by the workers during the period of strike, the management may lockout the enterprise. The notice along with justifiable reasons regarding such lockout shall be given to the Office or Department or Office of the Local Administration within 3 days.
- 4) On receipt of the notice pursuant to sub section (3), the Office of the Local Administration shall immediately make necessary security arrangement in the workplace.
- 5) The Department may at any time declare the lock-out of an enterprise illegal in case it appears unjustifiable or it is likely to disturb the peace and security of the country or it is likely to cause adverse affect on the economy of the country.
- 6) Notwithstanding anything contained in this section, lockout is prohibited in enterprises providing essential services.

**125. Provisions relating to picketing and mass assembly**

- 1) With the objective of exerting pressure to fulfil the claims or demands when the strike or lockout is continuing, the workers may picket or assemble at the gate of the workplace or enterprise peacefully.
- 2) In situations other than strike or lockout, workers may picket or assemble before or after the working hours or during the rest time without disturbing the work in the workplace or enterprise.
- 3) During picketing or assembling pursuant to sub section (1), the workers shall not be permitted to do any act of prohibiting others from entering or leaving the workplace or enterprise or causing damage to the workplace.

**126. Employment contract will not be violated**

Act of organizing strike or lockout or picketing or filing a complaint in accordance with the law by any worker shall not be considered as violation of his /her employment contract and during the period, the employment contract shall continue to be effective

**127. Remuneration for strike and lockout period**

- 1) Any worker shall not be entitled to receive remuneration for the period of strike if such strike is organized in contravention to the prevailing laws.
- 2) Workers shall be entitled to receive full remuneration for the period of lockout if such lockout is organized in contravention to the prevailing laws by the employer.
- 3) Except otherwise agreed in relation to the payment of remuneration in the collective agreement, workers shall receive half remuneration for the period of strike or lockout organized in compliance with the procedure prescribed in this Act.
- 4) If any dispute in relation to the legality of strike or lockout arises, the Department, after conducting necessary investigation, shall settle the dispute within 35 days.

**128. Prohibition on filing of case against loss**

- 1) Where any financial loss is caused to any employer or worker because of strike or picketing or lockout organised lawfully pursuant to this Act, filing of a case in any court against the workers, Collective Bargaining Committee or trade union or employer involved in such strike or picketing or lockout in relation to the loss so caused is prohibited.
- 2) Notwithstanding anything contained in sub-section (1), a legal proceeding under the prevailing law against any person or group involved in the destruction of the workplace, in the act of arson or destruction of property in any other way or in the act of causing physical damage may be initiated and an amount equivalent to the loss so caused may be recovered.

**129. Collective bargaining or agreement must be achieved in good faith**

- 1) Trade union or Collective Bargaining Committee or employer shall always, when getting engaging in collective bargaining or entering into collective agreement, act in good faith.

- 2) Other provisions relating to collective bargaining or collective agreement shall be as prescribed.

## CHAPTER 20

### **Provisions Relating to Conduct and Punishment**

#### **130. Observance of discipline and duties**

It shall be the duty of every worker to observe discipline and fulfil duties as prescribed under the Act, the rules made under this Act and the by-law.

#### **131. Misconducts and punishment**

- 1) Warning may be given for the following misconducts by any worker:
  - a) act of being absent in the work without approving the leave ;
  - b) act of leaving the workplace without taking permission of the management;
  - c) act of reaching the workplace frequently late without taking permission of the management;
  - d) act of disobeying the order given by the employer or any employee above his/her level in relation to the work; or
  - e) act of doing any other misconduct as specified in the by-law.
  
- 2) Maximum of one day remuneration may be deducted for the following misconducts by any worker:
  - a) act of refusing to accept any letter or notice issued by the employer or officer having the authority to punish;
  - b) act of taking part in an illegal strike or forcing others to do so or adopting go slow tactic collectively;
  - c) act of causing loss to the enterprise by decreasing the production or service negligently or carelessly;
  - d) act of attempting to take benefits by submitting false documents;
  - e) act of not using safety equipments by the worker responsible for using such equipments; or
  - f) act of doing any other misconduct of similar nature specified in the by-law.
  
- 3) Annual salary increment for one year or promotion may be withheld for the following misconducts by any worker:

- a) act of taking and using or causing to use any property outside the enterprise without the permission of a person entrusted with such authority;
  - b) act of attempting to misappropriate the fund in the business of the employer;
  - c) act of damaging the property of the employer negligently or carelessly;
  - d) act of stopping the supply of food, water, telephone, electricity or obstructing the movement in and out of the workplace;
  - e) intentional act of misusing or causing damage or loss to the objects or provisions kept for the benefit or safety and health of the workers;
  - f) act of committing any other misconduct of similar nature prescribed in the by-law.
- 4) Worker may be dismissed for any of the following misconducts:
- a) act of assaulting or injuring an employer or any worker or customer or any person concerned with the workplace or act of keeping in captive or causing unrest or damage in the premise of the enterprise with or without the use of any weapon;
  - b) act of taking or giving bribe;
  - c) act of stealing property of others in the workplace;
  - d) act of financial misappropriation in the enterprise;
  - e) intentional act of damaging the property of the employer under his/her control or which is being used by the employer;
  - f) act of being absent in the work continuously for more than 30 days without approving the leave;
  - g) act of divulging production related formula or any confidential information relating to special technology with an intention to cause loss or damage to the enterprise where he/she is employed;
  - h) act of working in collaboration with a competitive employer in the similar nature of business or carrying any competitive business on his own or providing confidential information about the enterprise where he is employed to any other competitive employer;
  - i) if convicted by the court for any immoral or criminal act during the period of employment;

- j) act of submitting forged or false educational certificates for the purpose of appointment;
- k) act of taking drugs or liquor during working hours or come to the workplace in drunken state;
- l) act of being punished for more than two times for misconducts pursuant to sub section (1), (2) and (3) within a period of three years; or
- m) act of committing any misconduct for which any prevailing law prescribes dismissal as punishment.

**132. Sexual harassment is prohibited**

- 1) No person shall commit any act or cause to commit any act considered as sexual harassment by the law in the work place or during the work through undue influence.
- 2) The employer may even give the punishment of dismissal to the worker involved in the act of sexual harassment by giving due consideration to the condition and gravity of such act.
- 3) Where any employer or chief executive of any enterprise commits any act of sexual harassment, trade union, victim or any family member of such victim may file a complaint in accordance with the law.

**133. Provisions relating to misconducts in the by-law**

- 1) If there are special types of punishment prescribed for special types of misconducts by the respective regulatory bodies for banks or financial institutions, schools, telecom service provider, hospital, airline service, insurance service and special enterprises, such provisions may be incorporated in their by-laws accordingly.
- 2) Provision of dismissal for grievous misconduct may be incorporated in the by-laws of enterprises through collective bargaining or an approval from the Department.

**134. Provisions on suspension**

- 1) Where any worker is detained in the police custody pursuant to the law, such worker, for that period, shall be automatically suspended and shall not be entitled to receive remuneration during that period.



Provided that, if the worker who is detained because of the complaint filed by the employer is proved innocent, he/she shall be entitled to receive the full remuneration for the period.

- 2) In situations other than the one specified in sub section (1), if it is found inappropriate to continue the employment or if there is a possibility of destroying the evidence relating to the misconduct if engaged in the work continuously or if there is a possibility of creating obstruction in the investigation by the worker for whom the punishment under section 131(4) has been proposed, such worker may be suspended by the employer.
- 3) While suspending any worker pursuant to sub section (2), normally he/she shall not be suspended for more than 3 months.

Provided that the period of suspension may be extended by one more month if the investigation is not completed.

- 4) The worker shall be entitled to receive half remuneration during the period of suspension pursuant to sub section (2).
- 5) Where a worker who is suspended pursuant to sub section (2) is absolved from the allegation levelled against him/her, he/she shall be entitled to receive all the remuneration along increment in salary if any, after deducting the amount of remuneration he/she has already received during the period of suspension.
- 6) Except in a situation where any worker is kept in police detention at the complaint of the employer himself, the employment of a worker may be terminated by the employer if the period of suspension pursuant to sub section (1) exceeds 90 days. Provided that an opportunity for clarification shall be given to the concerned worker before termination.

### **135. Opportunity for clarification**

Before giving punishment to any worker for any misconduct, the Officer having the authority to punish shall give seven days notice for clarification by clearly stating the facts related to the misconduct and possible punishment if it is proved.

### **136. Officer with authority to punish**

- 1) The power to give punishment for misconducts in case of enterprise shall lie with the Chief Executive of such enterprise.

- 2) Notwithstanding anything contained in sub section (1), any managerial level employee entrusted with the authority by the by-law to take final decision concerning the punishment for any misconduct shall be deemed to have power to investigate and give punishment also.

**137. Time for decision**

- 1) Where any worker is found to have committed any misconduct, the disciplinary action proceeding shall be initiated within two months from the date of notice of such misconduct.
- 2) Decision shall be taken within three months from the date of initiation of such proceeding pursuant to sub section (1)

**138. Remission of punishment**

- 1) Nothing contained in this Chapter shall act as a constraint to give the lower punishment to the worker in place of higher one prescribed for any misconduct.
- 2) Where any enterprise has made a by-law prescribing lower punishment for the same misconduct for which the higher punishment has been prescribed under this chapter, the same provision in the by-law, in relation to the workers of such enterprise, shall be applicable.

## CHAPTER 21

### **Provisions Relating to Termination of Employment Relationship**

#### **139. Employment security**

- 1) Employment of any worker shall not be terminated in any other condition except in accordance with the Act, rules under this Act or by-law.
- 2) Valid and sufficient reasons shall be given when terminating the employment pursuant to sub section (1)

#### **140. Termination of time based and task based employment**

Time based and task based employment of any worker shall end as follows:

- a) Time based employment of any worker shall come to an end when the time specified in the contract expires.  
Provided that, in case of project based employment, the employment shall not end if the period of the project gets extended or the time for the completion of the work gets extended due to the nature of such work.
- b) Task based employment of any worker shall come to an end when the specified work is completed.  
Provided that, in case of project based employment, the employment shall not end if the work in the project is increased or due to the nature of the work, the work is added.
- c) Casual employment shall come to an end at the will of the employer or worker if so desired.

#### **141. Voluntary termination of employment**

- 1) Any worker may, by submitting a resignation in writing to the employer, terminate the employment.
- 2) The employer shall approve the resignation submitted pursuant to sub section (1) within 15 days and inform the worker accordingly.
- 3) Where the resignation is not approved by the employer within the period pursuant to sub section (2), the resignation shall be deemed to have been approved automatically from the day after such period expires.

- 4) Notwithstanding anything contained elsewhere in this section, the resignation may be cancelled through mutual consent between the employer and the concerned worker.
- 5) If the worker continues working in the same enterprise, even after the day his/her resignation is approved, such resignation shall be deemed to have been cancelled.

**142. Termination of employment on the basis of poor work performance**

- 1) When evaluating the work performance of any worker pursuant to the provisions of the Act or the rules made under this Act or by-law, if the work performance of such worker is found unsatisfactory or poor for three or more than three years consecutively, the employment of such worker may be terminated by the employer.
- 2) Before terminating the employment pursuant to sub section (1), the work performance evaluation must have been conducted as prescribed under the Act or the rules made under this Act or the by-law.
- 3) Before terminating the employment of any worker pursuant to this section, the employer of any enterprise employing 10 or more than 10 workers shall be required to give 7 days time to the concerned worker for clarification.

**143. Termination of employment on medical ground**

- 1) Where any worker becomes incapable of working as a result of physical or mental incapacitation or disablement or injury or probability of causing an adverse effect on the business of the employer because of long term medical treatment of the worker, the employer may, on the basis of a recommendation of a doctor, terminate the employment of such worker.
- 2) Notwithstanding anything contained in sub section (1), the employer shall not terminate the employment of any worker during the period he/she is undergoing medical treatment in the hospital because of an accident or occupational disease caused while performing the work or within one year from the date of commencement of treatment at home. The employer shall give full pay during the period of such treatment.

Provided that the employer shall not be required to pay such remuneration if the worker is entitled to receive the remuneration for the treatment period from the Social Security Fund.

- 3) In situations other than those mentioned in sub-section (2), the employer shall not have right to terminate the employment of any worker for a period of six months in case such worker is not able to attend to the work in the enterprise on the ground of medical treatment.

Provided that this sub section shall not be a constraint for the termination of the employment within the period of six months if there is a clear recommendation from the doctor about the inability of the worker to join the work again.

- 4) Notwithstanding anything contained in sub section (1), where there is a possibility, the employer may engage the worker who is physically incapacitated or injured or disabled to any work suitable to the condition of his/her health.

#### **144. Notice period**

- 1) Any employer or worker, while terminating an employment contract in situations other than the termination of employment on the ground of misconducts, shall serve a written notice to each other as follows:
  - a) at least before one day, in case of employment for a maximum period of four weeks;
  - b) at least before seven days, in case of employment for a period of four weeks to one year ;
  - c) at least before 30 days, in case of employment for a period of more than one year .
- 2) Where the employer terminates the employment without giving notice pursuant to sub section (1), the equivalent amount of remuneration in lieu of notice shall be paid to the concerned worker.
- 3) Where a worker terminates the employment without giving notice pursuant to sub section (1), the employer may deduct an amount equivalent to the remuneration for such notice period from the remuneration of the concerned worker which he/she is entitled to receive.

## 145. Retrenchment

- 1) Where an enterprise faces financial problems in its operation or the workers become redundant because of merger of more than one enterprises or because of any other reason the enterprise needs to be closed down partially or completely, the employer may retrench workers.
- 2) When retrenching the workers pursuant to sub section (1), the employer, at least 30 days before the date for retrenchment, shall provide notice with information on the grounds for retrenchment, probable date for retrenchment and probable number of workers to be retrenched to the Office and authorised trade union of the enterprise or in absence of such authorised trade union, to any trade union which is active or labour relation committee of such enterprise.
- 3) After serving the notice pursuant to sub section (1), the employer shall consult the concerned trade union or the labour relation committee in relation to the matters concerning alternatives to the retrenchment of workers and the grounds and conditions for the selection of the workers for retrenchment. If an agreement is reached, the employer may retrench the workers accordingly.
- 4) Where the trade union or the labour relation committee does not want to hold any consultation pursuant to sub section (3) or fails to reach to an agreement in the consultation, the employer, after informing the Office about it, may retrench the workers accordingly.
- 5) While retrenching the workers pursuant to this section, normally it shall be done in the following order;
  - a) foreign workers;
  - b) comparatively, those workers who have received more punishments for misconducts;
  - c) workers with poor work performance standard;
  - d) workers who are hired at the last from among the workers in the same category of work;

Provided that the workers who were appointed earlier may be retrenched first by stating the grounds for doing so without following the rule of retrenching the workers first who were hired last.

- 6) Notwithstanding anything contained in sub section (5), unless otherwise agreed with the trade union, the office bearers of the Collective Bargaining Committee and the authorized trade union shall be retrenched last.

- 7) When retrenching the number of workers, the employer shall pay a lump sum amount as compensation calculated at the rate of one month basic salary for number of years served to those workers who have completed at least one year of employment in such enterprise.

Provided that, if the service period is less than one year, the compensation shall be paid proportionately.

- 8) Notwithstanding anything contained in sub section (7), the worker shall not receive the compensation pursuant to sub section (7), if he/she is entitled to receive unemployment benefit under the social security laws.
- 9) Where any enterprise is required to close down partially or completely in pursuance of the law or order of the Government of Nepal or Labour Court or any enterprise in the special economic zone is required to retrench its workers, the provisions of sub sections (1), (2), (3) and (4) shall not be applicable.
- 10) Notwithstanding anything contained elsewhere in this section, the provision in this section relating to retrenchment shall not be applicable to any employer who employs ten or less than ten workers.

#### **146. Resumption of operation**

- 1) Where any enterprise, after the workers are retrenched, resumes operation within two years or needs to hire more workers, the preference for employment shall be given to the workers retrenched pursuant to section 145.
- 2) Notwithstanding anything contained in sub section (1), any other persons may be hired, if the workers who were retrenched fail to come in spite of notice issued as prescribed.
- 3) Where the employer does not issue any notice or does not hire the workers who were retrenched, the concerned worker may, within 35 days, submit an application in the Labour Court.
- 4) Other provisions relating to this matter shall be as prescribed.

#### **147. Compulsory retirement**

Any worker in regular employment, after completing the age of 58, shall retire compulsorily.

Provided that if there is a need to give retirement to workers before the prescribed age of 58 for special nature of work, a provision to that effect may be made in the by-law by acquiring approval from the Council as prescribed.

**148. Payment of remuneration and benefits**

- 1) In any case of termination of employment resulting from disciplinary action or any other reason, the employer shall pay the remuneration, benefits and all other sum of money to the concerned worker which he /she is entitled to receive within 15 days from the date of such termination.
- 2) The employer shall give necessary assistance to the worker for the payment of such amount or benefit which he/she is entitled to receive from the Social Security Fund, insurance or any other agency.
- 3) Where the remuneration or benefits which the worker is entitled to receive is not paid within the period pursuant to sub section (1) or assistance is not provided pursuant to sub section (2), the worker, until such payments are made, shall continue receiving the remuneration as if his/her employment is not terminated.
- 4) Where the concerned worker does not come to receive the remuneration or benefits, the employer may deposit the amount in his/her account or to the Office directly.
- 5) Other provisions relating to the deposit and payment pursuant to sub section (4) shall be as prescribed.

**149. First priority to be given to workers**

Notwithstanding anything contained in any other prevailing law, on closure or liquidation of any enterprise, the remuneration and other benefits which are due to the workers shall be paid first on the basis of priority.

Provided that, where the Insolvency law is applicable, it shall be followed accordingly.

**150. Issuance of certificate of experience**

Where the worker whose employment is terminated requests for an experience certificate, the employer shall provide such certificate stating the period of service and the position he worked in.



## CHAPTER 22

### **Provisions Relating to Labour Court**

#### **151. Establishment of Labour Court**

- 1) The Government of Nepal, through notification in the Nepal Gazette, shall establish required number of labour courts.
- 2) The jurisdiction and territory of the courts established pursuant to sub section (1) shall be as prescribed in the same notice published in the Nepal gazette.
- 3) The Labour Court shall consist of one Chairperson and two members.
- 4) Any sitting judge of the High Court or any person having the qualification of becoming a Judge of the High Court shall be qualified to be Chair-person or member of the Court.
- 5) Except when a sitting judge of the High Court is appointed as a member of the Court, the tenure of the Chair-person and other members shall be four years.
- 6) The employment conditions and benefits of the Chair-person and members of the court shall be the same as to that of judges of the High Court.

#### **152. Majority decision shall prevail**

- 1) All the three members shall use the powers of the court jointly.

Provided that the bench comprising of two members in absence of the Chairperson or any one of the members, can also initiate the court proceeding and decide a case.
- 2) The decision based on the majority of members shall be the decision of the court.
- 3) In case of a bench comprising of two members, if the opinions of the members differ, such issue shall be referred to the third member and the opinion supported by such member shall be the final decision of the court. If the opinions of the Chairperson and other members differ, the opinion of the Chairperson shall be the decision of the court.

#### **153. Jurisdiction of the court**

The Labour Court, apart from the powers specified in the Act or the rules made under this Act, may use the following powers in the course of deciding a case:

- a) Witness examination;
- b) Seek necessary explanation from respondent treating it as written statement;
- c) The Labour Court, on the basis of application or nature of the case, suo moto may give an order to summon any party during the hearing even though such party has not been made neither defendant nor respondent in the case and if necessary make him a party to the case.
- d) Inspect places or workplace relating to the dispute;
- e) If an application filed by any party to the case to keep a case sub judice in the Labour Court in pending or give continuity till it is finally decided and disposed is found reasonable, notwithstanding the state of the case, the Labour Court may issue an interlocutory order against any of the parties to stop any act for a specified time or give continuity to any act with or without fixing a period;
- f) Confirm or invalidate or alter any directive or decision or order given by the Office or an employer;
- g) The Labour Court, when carrying out the court proceeding and disposing the case, shall be the powers as prescribed over the matters specified in the Act or the rules made under this Act and in other matters, it shall have the powers equivalent to that of any other District Court.

**154. Proceeding against contempt of Court**

- 1) The Court may initiate a legal proceeding for contempt.
- 2) Where an act of contempt is established in the proceeding carried out pursuant to sub section (1), such offender may be imposed a fine of up to rupees ten thousand or six months imprisonment or both by the Labour Court.

Provided that, if the accused satisfies the court by seeking pardon, the Labour Court, through an order, may forgive or absolve the punishment if already pronounced or reduce or put the punishment in pending on the prescribed conditions and accordingly give an order against the enforcement of the punishment if such conditions are fulfilled.

**155. Bank guarantee or deposit may be demanded**

In the process of deciding a case filed under this Act, if there is a possibility of succeeding a claim on any amount by one party against the other party and it is probable that such party will not pay such amount, in such case, the Labour Court, in order to execute such decision may require the concerned party to deposit amount equivalent to the claim amount or require to give bank guarantee sufficient enough to cover such claim amount.

**156. Order to pay interest**

- 1) Where an order is passed requiring a party to pay compensation or any other amount to the other party, such compensation or amount must be paid within 2 months from the date of notice of such order or decision.
- 2) Where the compensation or the amount is not paid within the period prescribed in sub-section (1), an amount equivalent to 15% interest per annum charged on such compensation or amount from the date of decision of the case shall be required to be paid or deposited.

**157. Case may be compromised**

- 1) Notwithstanding the state of the court proceeding relating to the case in the Labour Court under this Act, on the basis of the application filed by any concerned party, the Labour Court may give a permission to compromise or keep in pending or revoke the case.
- 2) When executing compromise or keeping the case in pending or revoking, no fines or fees shall be charged.

**158. High Court may undertake the functions of Labour Court**

- 1) Notwithstanding anything contained elsewhere in this Chapter, the Government of Nepal may, through a notification in Nepal Gazette, assign the functions of the Labour Court to any High Court determining its jurisdiction.
- 2) The High Court as assigned pursuant to sub section (1) may use all the powers of the Labour Court when carrying out the court proceeding and disposing the case.

**159. Transfer of case to the body having the jurisdiction**

If the Labour Court or the Office lacks jurisdiction over the case filed in such court or the Office as per the Act and the rules made under this Act, the Labour Court or the Office, when giving a decision on the lack of jurisdiction, shall send the documents relating to such case to the concerned authorized body for the decision specifying the date for hearing.

**160. Case related procedure**

Other provisions relating to proceeding of the cases filed in the Labour Court shall be as prescribed.

**161. Appeal in the Supreme Court**

- 1) Any party dissatisfied with the order or decision of the Labour Court in a case looked into by the court from the beginning to the end may appeal in the Supreme Court within 35 days from the date of announcement of such order or decision.
- 2) Any decision given on appeal by the Labour Court shall be final.

## CHAPTER 23

### **Provisions Relating to Complaint, Punishment and Appeal**

#### **162. Right to file complaint**

Where any person, employer, worker or officer acts in violation of the Act or the rules made under this Act, the person affected by such act or the concerned trade union with a written consent of the affected person may file a complaint pursuant to section 163 or 164 to the authority having decision making power within 6 months from the date of such act.

#### **163. Power of the Department or Office to decide**

- 1) The Department, after conducting necessary inquiry into the complaint on the following matters, may act as follows:
  - a) impose a fine of up to two hundred thousand rupees and issue necessary order within the scope of this Act to any labour provider supplying workers without acquiring any license to do so or any person who hires workers from such labour provider and employs them in the work;
  - b) impose a fine of up to two hundred thousand rupees to any person on the basis of number of foreign workers he/she has employed in any work without taking work permit and an additional fine of Rs five thousand per person per month in case such person continues to employ the foreign workers in spite of the punishment imposed earlier.
  - c) impose a fine of up to one hundred thousand rupees and issue an order for equal treatment to any person who discriminates workers at the time of hiring or during employment in violation of Chapter 2;
  - d) impose a fine of up to five hundred thousand rupees at the rate of Rs 10000 per person and issue an order to give an appointment letter or execute an employment contract to any person who employs any worker without giving an appointment letter or executing any employment contract;
  - e) take a departmental action pursuant to the prevailing law against any inspector who causes loss or damage through any act done negligently or wrongfully pursuant to Chapter 15;

- f) issue necessary order in case any person does any unfair labour practice or transfers any worker in an unjustified manner in violation of this Act or carries on activities relating to promotion in violation of the by-law of the enterprise;
  - g) issue necessary direction to the Office in case it does not perform any task within 30 days from the date of ending of the period prescribed in the Act or the rules made under this Act for the accomplishment of such act.
  - h) carry out necessary work for the settlement of dispute if such dispute relating to remuneration and benefits to be provided to workers arises between a labour provider and a main employer;
- 2) The office, after conducting necessary inquiry in relation to the application on the following matters, may act as follows:
- a) make the employer pay the deducted amount and a compensation equivalent to two times of such deducted amount to the concerned worker if such worker is paid below the minimum wage or any remuneration or benefit is deducted in violation of the Act or the rules made under this Act.
  - b) impose a fine up to Rs 20000 to any employer or worker or person who obstructs the performance of duty by government employees or gives false description or statement or influences or attempts to influence in a wrong way;
  - c) impose a fine at the rate of Rs 10000 per apprentice or trainee to the employer who engages any person as an apprentice or trainee in violation of the Act and issue an order to employ such apprentice or trainee on regular employment and pay the remuneration and benefits accordingly.
  - d) issue an order to the employer, who does not pay the amount of gratuity and provident fund or contribute the amount to the social security fund or pay medical expense or does not subscribe insurance for the purpose of compensation which workers are entitled to receive under the Act or the rules made under this Act to pay compensation and a fine equivalent to an amount which is two times more than such compensation

- e) issue a direction to the employer not to lay off workers in violation of this Act or in a discriminatory manner, if he/she is doing so;
  - f) issue necessary direction to the employer who terminates the employment or prohibits any worker from attending the work in violation of the Act, the rules made under this Act or the by-law.
- 3) Notwithstanding anything contained elsewhere in this Act, it shall not be a constraint for any worker to submit an application to the employer under the procedure prescribed for settlement of individual dispute and settle such dispute accordingly.
  - 4) Proceeding and decision of the complaint filed in the Department or the Office shall be as prescribed.

**164. Decision may be made by Labour Court**

- 1) If any person is engaged in forced labour, the person doing so may be punished by the Labour Court with imprisonment up to two years or a fine up to five hundred thousand rupees or both and may require such person to pay remuneration and other benefits including a damage equivalent to two times of the such amount.

Provided that if any person is engaged in forced labour outside the territory of Nepal, the person involved in such act shall be ordered to pay the expense incurred to bring the affected person to Nepal.

- 2) In case of death or disablement of any person as a result of non-compliance of provisions relating to Occupational Safety and Health under this Act or the rules made under this Act or death of any person as a result of occupational disease caused due to performance or non performance of any act or any part of the body is disabled or physical or mental state is adversely affected, the person involved in the act shall be punished pursuant to the provision in the prevailing law or in absence of such provision in the prevailing law, such person may be punished with imprisonment up to two years and make such person pay appropriate compensation to the affected person.
- 3) Where a corporate body commits any offence punishable under this Act, such body shall be punished with fines and if imprisonment is also prescribed for such offence, Chief Executive of such corporate body shall be imprisoned.

**165. Right to appeal**

- 1) Any person dissatisfied with the order or decision given by the Department or Office under this Act or the rules made under this Act may file an application for appeal in the Labour Court within 35 days from the date of such decision.
- 2) Any worker dissatisfied with the decision relating to the termination of employment or punishment given for misconduct, such worker may appeal in the Labour Court within 35 days from the date of notice of such decision or punishment.
- 3) Notwithstanding anything contained in sub section (2), if there is any provision in the by-law of any enterprise on internal appeal mechanism, nothing shall act as a constraint for making an appeal accordingly.
- 4) In pursuant to sub section (3), the affected party may appeal in the Labour Court within 35 days from the date of receipt of the notice of the decision given by the body with authority to hear appeal or from the date of failure to receive the notice about the decision within 60 days from the date of appeal.

**166. Execution of decisions**

- 1) Where the decision or judgment given by the Labour Court pursuant to this Act becomes final or the limitation period for appeal ends, the concerned party shall enforce the decision against the other party.
- 2) Any agreement reached in respect of individual or collective claim between any worker/trade union and employer or in presence of the Office or any other authority or officer or any decision of arbitrator shall be enforced in good faith by the concerned parties.
- 3) Where the agreement or decision pursuant to sub-sections (1) and (2) is not enforced, the affected party itself or through a trade union or an employers' association, an application may be filed in the Office.
- 4) On receipt of the application pursuant to sub-section (3), the Office shall write to the concerned worker or employer for the enforcement of such agreement or decision or judgment.
- 5) On receipt of such written direction pursuant to sub-section (4), the concerned worker or employer shall enforce such agreement, decision or judgment within 15 days from the date of receipt of such direction.



**167. Powers of Office in relation to enforcement of agreement and decisions**

- 1) Where the decision, judgment or agreement could not be enforced pursuant to section 166, the concerned party may file an application in the Office.
- 2) On receipt of application pursuant to sub section (1), the Office, may enforce such decision, judgment or agreement against the concerned employer or worker by adopting any or all of the following means stated below:
  - a) write to the concerned authority or officer to freeze the immovable property of the concerned party or auction the property ;
  - b) write to the concerned authority to freeze the bank account of the concerned party;
  - c) write to the concerned authority to suspend or withhold all the concessions or facilities provided to the concerned party pursuant to the prevailing law;
  - d) write to the concerned authority to suspend the labour permit or license of the concerned party;
  - e) issue any other appropriate order.
- 3) The concerned authority shall act accordingly if the Office makes a request in writing pursuant to sub section (2).
- 4) If the decision or judgment is not executed within three months from the date of filing of application pursuant to sub section (1) or within 15 days from the completion of the process under sub section (2) and (3) or such decision or judgment is challenged, in such case, a complaint may be filed for punishment pursuant to section 168 in the Labour Court.

**168. Provision for punishment for non-execution of decision, compromise or agreement**

- 1) The Labour Court, for the purpose of execution of decision given by the Labour Court or Supreme Court on labour issues, shall issue a notice prescribing the time limit to the concerned worker.
- 2) The Labour Court may impose a fine up to one hundred thousand rupees or maximum of one year of imprisonment to any employer or worker who refuse or delay or linger the execution of the order of the Office issued for the enforcement of the order or decision given by the Labour Court or decision of an arbitrator or an agreement entered into between an employer and workers pursuant to this Act.

Provided that if the order, decision, compromise, agreement or contract is executed within the period prescribed by the Labour Court, the Labour Court may annul such punishment or give partial or full exemption in the enforcement of such punishment if already pronounced.

## CHAPTER 24

### **Miscellaneous Provisions**

#### **169. Procedure relating to period and notice**

- 1) Any notice or period of limitation sent by the employer to any worker or to the employer by any worker shall be immediately acknowledged and proof of such acknowledgment shall be provided.
- 2) Where such notice or period of limitation could not be delivered pursuant to sub section (1), one copy of such notice or period of limitation certified by three witnesses shall be sent through courier or postal service at the given address and one copy shall be put up at the workplace. Such notice or period of limitation shall be deemed to have been notified on time if the Office is informed about such certified notice or period of limitation.

Provided that the application or notice given by the worker need not be put up at the workplace.

- 3) Where any worker refuses to accept such period of limitation or notice, it may be sent through fax or email any other electronic means of communication. It shall be deemed to have been notified unless proved otherwise.
- 4) Any notice on any matter required to be informed to all the workers collectively shall be deemed to have been received by the workers once it is put up on the notice board of the workplace and the trade union which is active in the enterprise is informed in writing accordingly.

#### **170. Fixation of basic remuneration**

- 1) Basic remuneration of any worker employed on task based employment contract shall be determined as prescribed.

Provided that if the basic remuneration is not determined, the minimum wage fixed for the workers shall be regarded as basic remuneration.

- 2) In case of workers based on piece rate payment, rate of wage per piece shall be determined on the basis of the monthly minimum wage fixed pursuant to this Act.

#### **171. Special provisions relating to managers or managerial level workers**

- 1) Notwithstanding anything contained elsewhere in the Act, anything written in the Act shall not be a constraint in hiring a managerial level worker working in the capacity of Chief Executive on time based employment contract, fix employment conditions and benefits and terminate his/her service.
- 2) Managers and managerial level workers are prohibited to submit collective demands or take part in collective bargaining or take part in strike on behalf of any trade union.

**172. Remuneration and other benefits**

- 1) Where a worker, who is terminated from the employment, is reinstated by the Office or Department or the order or decision of the Labour Court, such worker shall be entitled to receive the remuneration and other benefits from the employer for the period starting from the date of termination to the date of reinstatement.
- 2) Nothing written in this Act shall act as a constraint to give a decision enabling the worker to receive reasonable amount as compensation in addition to the amount entitled under sub section (1) from the employer instead of reinstating such worker on the basis of the main issue of the dispute.

**173. Increment of insurance amount**

The Government of Nepal, on the recommendation of the council, may periodically increase the medical and accidental insurance amount specified in this Act through notification in the Nepal Gazette.

**174. Delegation of authority**

The Ministry or Department or Office may delegate any of its partial or full authority entrusted by this Act to any office or officer through a notification in the Nepal Gazette.

**175. Protection for acts done in good faith**

No legal proceeding shall be initiated against any labour inspector, occupational safety and health inspector or any officer or employer or worker deputed in inspection, in case any loss or damage is caused to any person as a result of any act done or attempted in good faith in the process of fulfilling his/her duties.

Provided that, such person shall be personally liable if such act is done intentionally or with ill intention.

**176. Special powers of the Ministry**

Except the issues sub judice in the Labour Court under this Act, nothing in this Act shall act as a constraint for the Ministry to give a decision acting on any application submitted to the Office or Department, in case the action in relation to the application has been pending for a long time making the situation irksome to the concerned party or if it becomes appropriate for the Ministry to act and decide because of complexity of the issue involved. The decision given on such matter shall be deemed to have been made by the body which is responsible at the first instance and the party dissatisfied with such decision may appeal in the Labour Court.

**177. Labour Coordination Committee**

- 1) There shall be a central level Labour Coordination Committee comprising of members determined under the chairmanship of the Director General of the Department.
- 2) The functions, duties and powers of the committee shall be as prescribed

**178. Transitional provisions**

- 1) The workers, who have been working on permanent status at the time of commencement of this Act, shall be automatically deemed to be in regular employment pursuant to this Act.
- 2) Workers employed on contract, daily wage or any other type of employment mode at the time of commencement of this Act shall be required to execute employment contracts as prescribed in the Chapter 3. Nothing contained in this Act shall act as a constraint to adjust, within three months from the date of commencement of this Act, the remuneration and benefits payable to the workers at the time of executing such employment contracts with the amount of provident fund and other benefits payable under this Act.
- 3) Nothing mentioned in this Act shall adversely affect on higher employment conditions and benefits any worker is receiving than those entitled under the prevailing law or collective bargaining agreement at the time of commencement of this Act.

- 4) For the purpose of sub section (3), after paying the prescribed benefits in the prescribed agency pursuant to this Act, the remaining benefits shall be adjusted in other headings accordingly.
- 5) Where any decision of the Office, Labour Court or any other court made under the Labour Act, 2048 and Trade Union Act, 2049 before the commencement of this Act has not been enforced, such judgment, decision or order, if application is filed within one year from the date of commencement of this Act, shall be enforced in accordance with this Act.
- 6) The Welfare Fund established under Section 37 of the Labour Act, 2048 and section 13 of the Bonus Act, 2030 shall continue its operation until separate laws relating to social security are made.
- 7) The Labour Court which is in existence at the time of commencement of this Act shall be continued until labour courts pursuant to this Act are established.

**179. It shall be as prescribed in the Act**

In relation to the provisions contained in this Act, it shall be as prescribed and in other matters, the prevailing laws shall be applicable.

**180. The Act shall not be applicable**

- 1) On the following matters, it shall be as follows
  - a) In relation to Nepal army, Nepal police, armed police force and national research, this Act shall not be applicable.
  - b) In relation to the civil service, the prevailing law relating to civil service shall be applicable.
- 2) Where the employment conditions and benefits in relation to the service established under special law or special economic zone are specified in the prevailing laws, such service shall be governed by the same provisions accordingly.
- 3) Where the prevailing laws have no provisions in relation to remuneration, employment conditions and benefits of any worker, this Act shall be applicable automatically in relation to those matters.
- 4) When giving any decision or order or judgment on inapplicability of this Act in relation to any worker, the applicable law under which the rights and benefits

provided by this Act are entitled must be stated clearly in such decision or order or judgment.

- 5) Where any employer of an enterprise governed by Working Journalist Act, 2051, executes any employment contract pursuant to this Act or any agreement between the employer and the workers of such enterprise is executed making this Act applicable, in relation to such worker, the provisions of this Act shall be effective.

**181. Making of Directive and working procedure and their implementation**

- 1) The Ministry may, for the purpose of enforcement of the Act or the rules made under this Act, make necessary directive and working procedure and implement them.
- 2) Employers' commodities associations or federations and trade union associations or federations may make code of good conduct on policy matters relating to labour and implement them.

**182. Powers to make rules**

- 1) The Government of Nepal may make necessary rules for the effective enforcement of the Act.
- 2) When making rules pursuant to sub-section (1), separate rules for businesses, services and industries having special characteristics or informal sector may be made.

**183. Repeal and savings**

- 1) The following Acts have been repealed:
  - a) Labour Act, 2048
  - b) Industrial Apprenticeship and Training Act, 2039
  - c) Pension Act, 2042
- 2) Cases sub judice in the courts filed under the Acts specified in the sub-section (1) shall be transferred to Labour Court.
- 3) Anything done under the Acts specified in the sub-section (1) shall be construed as done under this Act.