

## Implementation of Labor Act 2074 (2017)

### Introduction

On September 4, 2017, the President of Nepal authenticated the Labor Act 2074 (2017) ("New Labor Act"), repealing Labor Act 2048 (1992) ("Old Labor Act"), which came into effect immediately. The New Labor Act has been implemented after prolonged discussions among business entities, trade unions, labor groups and other stakeholders. The New Labor Act has amended several provisions of the Old Labor Act and introduced various new provisions. The New Labor Act aims to eliminate ambiguities experienced in the implementation of the Old Labor Act.

### Applicability

The New Labor Act has broadened the scope of its applicability. It is applicable to any company, private firm, partnership firm, co-operatives or association or other organizations established, incorporated, registered or constituted pursuant to the prevailing law for the purpose of operating any industry, profession or service with or without the motive of profit. Further, it applies to an enterprise regardless of number of workers. It is also applicable to representatives or workers hired by a foreign enterprise which is registered in a foreign country and is undertaking promotion of sales and market activities in Nepal. The representatives or workers hired by the foreign enterprise may file a complaint before the Labor Office or the Labor Court if such enterprise violates the terms and conditions of the employment agreement. The New Labor Act is also applicable to domestic workers. The New Labor Act requires that the minimum remuneration and public and weekly holidays of such domestic workers should also be as prescribed.

### Exemption

The New Labor Act is not applicable to civil servants, Nepal Army, Nepal Police, Armed Police Force, enterprises incorporated under other special laws or situated in Special Economic Zones to the extent that separate provisions are provided, and working journalists, unless specifically provided in the agreement.

In addition, the New Labor Act has incorporated many provisions from the Labor Rules 2050 (1993) ("Labor Rules"). Key differences between the New Labor Act and Old Labor Act/Labor Rules are summarized in the table below:

## Comparison Between Old Labor Act/Labor Rules and New Labor Act

Headings	Provisions Under Labor Act 2048 (1992)/ Labor Rules 2050 (1993)	Provisions Introduced by Labor Act 2074 (2017)	Changes Introduced by Labor Act 2074 (2017)
<b>Definition</b>		Basic Remuneration, Lock-Out, Main Employer, Employment Agreement, Employment Period, Collective Agreement, Collective Bargaining Committee, Labor Suppliers, Strike. §2	The New Labor Act introduces several new definitions that provide clarity in its interpretation.
<b>Definition of Enterprise</b>	Any factory, company, organisation, association, firm, or group thereof established under the prevailing laws for the purpose of operating any industry, profession or service. <i>Labor Act 1992, §2(b)</i>	Any company, private firm, partnership firm, co-operatives or association or other organization established, incorporated, registered or constituted pursuant to the prevailing law for the purpose of operating any industry, profession or service with or without the motive of profit. §2(j)	<ul style="list-style-type: none"> <li>• Applicable to all enterprises including enterprises operating for profit as well as non-for-profit enterprises.</li> <li>• Labor market is now more regulated.</li> </ul>
<b>Threshold of Enterprise</b>	Applicable only to enterprises that employ ten (10) or more workers. <i>Labor Act 1992, §2(b)</i>	Applicable to all enterprises regardless of the number of workers. §2(j)	<ul style="list-style-type: none"> <li>• The New Labor Act has broadened the scope of applicability.</li> <li>• Labor market is now more regulated.</li> </ul>
<b>Foreign Enterprise</b>	[No such provision for foreign enterprises]	A representative or worker hired by a foreign enterprise, undertaking promotion of sales and market activities in Nepal, may approach to the Labor Office or the Labor Court in the event of violation of terms and conditions of the employment agreement. §90.	The New Labor Act widens its scope as it is applicable to foreign enterprises that hire workers in Nepal.
<b>Minimum Standard</b>	[No such provision]	The New Labor Act is considered as providing minimum standards with regard to workers. §3	The New Labor Act is considered as a minimum standard that employers must comply with.
<b>Types of Employees</b>	1) Permanent Employment 2) Contractual (Temporary) Employment	1) Regular Employment 2) Work Based Employment 3) Time Based Employment 4) Casual Employment 5) Part-time Employment. §10	The New Labor Act introduced several new categories of employment based on the nature of the work.
<b>Interns and Trainees</b>	[No such provision]	<ul style="list-style-type: none"> <li>• An enterprise may employ interns upon entering into an agreement with an educational institution as per the approved syllabus of such institution. §16(1)</li> <li>• However, if an intern is deployed in a manner that contradicts the approved syllabus, such intern shall be considered as a worker employed in regular employment. §16(2)</li> <li>• Interns shall not be deployed in work for more than eight hours per day and 48 hours per week. §17(1)</li> <li>• Employer may deploy trainee workers for a maximum period of one year. §18(2)</li> </ul>	The New Labor Act has special provisions relating to interns and trainees. This would benefit both provisions of employers and employees.

<b>Employment Agreement</b>	[No such provision]	An employment agreement is mandatory.  <u>Exception:</u> No need for a written agreement for a casual employment. §11	<ul style="list-style-type: none"> <li>The New Labor Act makes an employment agreement mandatory.</li> <li>Terms and conditions of employment must be specified in the employment agreement.</li> </ul>
<b>Probation Period</b>	Continuous service period of one year (240 days). <i>Labor Act 1992, §4(2)</i>	Continuous period of six months. §13	Probation period has been reduced from one year to six months.
<b>Outsourcing</b>	[No such provision]	<ul style="list-style-type: none"> <li>Workers may be employed through outsourcing agencies (third party suppliers). §58</li> <li>However, such workers may be employed only in those activities that fall outside the scope of the main business or services of the employer §58(2).</li> <li>Outsourcing agencies (third party suppliers) must obtain a license from the Department of Labor or the Labor Office. §59</li> <li>The New Labor Act prescribes the responsibility of the main employer and the third party labor supplier. §61 and §64.</li> </ul>	The New Labor Act has introduced a provision allowing hiring of workers through outsourcing from third party suppliers and also outlines the responsibility of the main employer and the third party supplier.
<b>Work Permit</b>	<ul style="list-style-type: none"> <li>Foreign workers can be hired in <b>skilled technical positions</b> only upon obtaining of a Work Permit.</li> <li>Work Permit shall be granted for a maximum period of upto five years not exceeding two years at a time and for a period upto seven years in the specialized and skilled technical positions. <i>Labor Act 1992, §4A</i></li> </ul>	<ul style="list-style-type: none"> <li>Foreign workers can be hired in <b>skilled positions</b> only upon obtaining a Work Permit. §22 &amp; §23</li> <li>The employment agreement of foreign workers shall remain valid for three years unless provided otherwise in the employment agreement. §27</li> </ul>	<ul style="list-style-type: none"> <li>The type of position for which foreign national can be hired has been changed from "skilled technical position" to "skilled position", making it easier to hire foreign workers in non-technical position.</li> <li>The Old Labor Act prescribed the maximum time period of work permit. Under the New Labor Act, the time period of employment agreement of foreign workers shall be as prescribed in the employment agreement.</li> </ul>
<b>Repatriation of Remuneration</b>	[No such provision]  [Provided in the separate law]	Foreign workers with Work Permit may repatriate the remuneration earned in Nepal to their home country in convertible foreign currency. §26	<ul style="list-style-type: none"> <li>The New Labor Act ensures guarantee of repatriation of remuneration by foreign workers.</li> <li>Prior to the New Labor Act, the arrangement for repatriation of remuneration was made by separate laws.</li> </ul>
<b>Overtime</b>	The duration of overtime shall not exceed four hours per day and <b>20 hours</b> per week. <i>Labor Act 1992, §19</i>	The duration of overtime shall not exceed four hours per day and <b>24 hours</b> per week. §30	The permissible period of overtime has been increased from 20 hours to 24 hours per week which is consistent with six working days in a week.
<b>Festival Allowance</b>	[No such provision]	Each worker shall be provided with a festival bonus (as per his/her religion, culture and tradition) each year of an additional amount equivalent to one month's basic remuneration. §37	Previously, festival bonus was not required by law, but was a widespread business practice. The New Labor Act codifies this practice.

<p><b>Leave</b></p>	<ul style="list-style-type: none"> <li>• <u>Substitute Leave</u>: [No such provision]</li> <li>• <u>Sick Leave</u>: Half pay for up to 15 days per year upon completion of one year of service. <i>Labor Rules 1993, §31</i></li> <li>• <u>Maternity Leave</u>: Full pay for a period of <b>52 days</b> for pre and post-delivery. <i>Labor Rules 1993, §34</i></li> <li>• <u>Paternity Leave</u>: [No such provision]</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Substitute Leave</u>: Employees involved in works that have to be carried out continuously or without interruption shall be entitled to substitute leave for works done during weekly holiday or public holiday. §42</li> <li>• <u>Sick Leave</u>: Fully paid up to 12 days per year for those workers who have completed one year of service. §44</li> <li>• <u>Maternity Leave</u>: For a period of <b>14 weeks</b> for pre and post-delivery with full pay for 60 days only. §45</li> <li>• <u>Paternity Leave</u>: 15 days with full pay. §45</li> </ul>	<p>The New Labor Act introduces substitute leave and paternity leave, increased sick leave to 12 days (for workers completing one year of service) and increased maternity leave from 52 days to 14 weeks.</p>
<p><b>Gratuity</b></p>	<p>Any permanent employee serving for 3 or more years shall be given lump sum gratuity at the prescribed rate upon retirement. <i>Labor Rules 1993, § 23</i></p>	<p>The employer shall deposit the amount equivalent to 8.33 percent of employee's basic remuneration as a gratuity, each month from the date of commencement of work. §53</p>	<p>Eligibility for gratuity has been changed from "employees serving for more than three years" to "all employees" and the rate for gratuity has been fixed at 8.33 percent of basic remuneration.</p>
<p><b>Health Insurance</b></p>	<p>[No such provision]</p>	<ul style="list-style-type: none"> <li>• Employers must insure workers, with the amount equivalent to minimum NPR 100,000, against medical treatment annually.</li> <li>• The amount for the health insurance shall be contributed by employer (50%) and the worker (50%). §54</li> </ul>	<p>The New Labor Act introduces the requirement of health insurance.</p>
<p><b>Accident Insurance</b></p>	<p>Only certain types of employers were required to insure workers and employee. <i>Labor Act 1992, §46, 47 and 48</i></p>	<ul style="list-style-type: none"> <li>• The employer shall insure workers, with the amount NPR 700,000 at minimum, against any type of accident.</li> <li>• The premiums for the accident insurance shall be borne by employer. §55</li> </ul>	<p>The requirement of accident insurance has been changed from "employees engaged in certain type of work" to "all workers, without reference to nature of works".</p>
<p><b>Domestic Workers</b></p>	<p>[No such provision]</p>	<p>The Government of Nepal may determine a separate minimum remuneration for domestic workers. § 88</p>	<p>The New Labor Act is applicable to domestic workers also.</p>
<p><b>Arbitration</b></p>	<p>[No such provision]</p>	<p>Arbitration is mandatory in the following circumstances:</p> <ol style="list-style-type: none"> <li>1) Where the employer and collective bargaining committee agree to settle the dispute by arbitration,</li> <li>2) Collective dispute arises in enterprises providing essential service,</li> <li>3) Enterprises established in Special Economic Zone,</li> <li>4) In the state of emergency declared as per the Constitution. §119.</li> </ol>	<p>The New Labor Act requires arbitration in certain circumstances.</p>
<p><b>Conduct and Punishment</b></p>	<p>Workers or employees are subject to following punishment for prescribed misconduct:</p> <ol style="list-style-type: none"> <li>1) Reprimand,</li> <li>2) Withholding annual grade increments,</li> <li>3) Suspension, or</li> <li>4) Dismissal from employment. <i>Labor Act 1992, §50.</i></li> </ol>	<p>Any worker performing the prescribed misconduct can be punished with any of the following punishments:</p> <ol style="list-style-type: none"> <li>1) Reprimand</li> <li>2) Deduction of remuneration equivalent to minimum one day</li> <li>3) Withholding annual salary increment and grade increments for one year, or</li> <li>4) Dismissal from employment. §131.</li> </ol>	<p>The New Labor Act has:</p> <ul style="list-style-type: none"> <li>• introduced "deduction of remuneration equivalent to minimum one day",</li> <li>• removed "suspension",</li> <li>• changed "Withholding annual grade increments" to "Withholding annual salary increment and grade increments for one year".</li> </ul>

<b>Work Evaluation</b>	[No such provision]	Enterprises shall carry out the work evaluation of workers once a year. §112.	The New Labor Act introduces the provision of work evaluation.
<b>Termination of Employment</b>	<ol style="list-style-type: none"> <li>1) Termination by prior notice before or on expiry of contract if the term of the contract provides for such an option.</li> <li>2) Termination by retrenchment (closure) - An employer must show grounds and obtain approval from the Department of Labor. <i>Labor Act 1992, §12.</i></li> <li>3) Termination by compulsory retirement at the age of 55. <i>Labor Act 1992, §15.</i></li> <li>4) Termination by disability or long-term injury caused by work-related accident. <i>Labor Rules, §16 and §21.</i></li> </ol>	<p>Termination of employment of workers shall be as follows:</p> <ol style="list-style-type: none"> <li>1) <u>Time Bound Employment</u>: Upon the expiry of the time mentioned in the agreement. §140(a).</li> <li>2) <u>Work Based Employment</u>: Upon the completion of the work mentioned in the agreement. §140(b).</li> <li>3) <u>Casual Employment</u>: As per the willingness of the employer or worker. §140(c).</li> <li>4) Termination by compulsory retirement at the age of 58 years. §147.</li> </ol>	The New Labor Act introduces events of termination that are applicable to various types of employment arrangements. Similarly, the retirement age for regular employment has been increased from 55 years to 58 years.
<b>Sanction</b>	<p>The Department of Labor may impose punishment in the following circumstances:</p> <ol style="list-style-type: none"> <li>1) Various misconducts as prescribed.</li> <li>2) The management engages a minor in work. <i>Labor Act, § 32A.</i></li> <li>3) In case enterprise contravenes or disobeys this Act or the Rules made hereunder or any order or directive issued thereunder,</li> <li>4) In case the Enterprise is closed or the workers or employees are retrenched in contravention of this Act;</li> <li>5) In case a lock-out declared illegal is continued;</li> <li>6) In case any worker or employee is assaulted or manhandled; or</li> <li>7) In case enterprise performs any activity to incite or provoke the workers or employees in order to create dissension or enmity among the workers or employees</li> </ol>	<p>The Labor Office, Department of Labor and the Labor Court prescribes various sanctions for the violation of the New Labor Act as follows:</p> <ol style="list-style-type: none"> <li>1) Deduction of remuneration and other facilities contrary to prevailing laws,</li> <li>2) Obstructing government officer, submitting false details,</li> <li>3) Engaging an intern or trainee against the provision of the Act,</li> <li>4) Failure to deposit the gratuity amount, or in provident fund or social security fund, or to arrange medical or accident insurance,</li> <li>5) Keeping the workers in reserve discriminatorily,</li> <li>6) Terminating employment against the provisions of the Act,</li> <li>7) Supplying labor without license and engaging labor in work from such supplier,</li> <li>8) Employing a foreign national without Work Permit,</li> <li>9) Discriminating among workers,</li> <li>10) Engaging a worker without appointment letter or employment agreement,</li> <li>11) For engaging a bonded labor,</li> <li>12) If the entity does not make health and safety arrangements knowingly and as a result the worker dies or suffers physical or mental injury. §163 and 164.</li> </ol>	The New Labor Act has broadened the scope of sanctions that can be imposed by the Department of Labor.
<b>Power of the Ministry of Labor</b>	[No such provision]	The Ministry of Labor ("MOL") may decide upon cases pending at the Labor Office or the Department of Labor for long period of time or if it is appropriate for the MOL to make a decision due to complex nature of such cases. §176.	The New Labor Act has granted special power to the Ministry of Labor to make decisions on certain types of cases.

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