

Fundamentals of New Labor Enactments

Presenter

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+ Background and Objective



Background

- Labor Act, 2017 effective from 04 Sept. 2017 (19 Bhadra 2074)
- Contribution Based Social Security, 2017 published in Nepal gazette on 13 August 2017 (29 Shrawan 2074)
 - Effective from 91th day - 11 November 2017 (25 Kartik 2074)
- Labor Regulations, 2074- Opinion collection on draft

Objective

- Highlight significant provisions- mostly the departure

+ Applicability

- Applicable to all businesses – irrespective of number of employees
 - Applicability on Banks and Financial Institution?
- Unorganized sector – domestic labor
- Liaison/branch office of foreign entity
- Included trainees and interns
 - Follow approved syllabus - Interns
 - On the job training – up to one year, minimum pay, sick leave, gratuity, PF, leave and social security to provide, No probation period

+ Types of Employment

- Regular Employment – Employment other than following Employments
 - Work Based Employment: specific assignment
 - Time Bound Employment: fixed term
 - Casual Employment: 7 days or less in a month
 - Part-Time Employment: 35 hours or less in a week
- Old Act: Probationary, Permanent and Contract
- Direct implication of new classification- No scope of hire and fire of contract employees
 - Practically hire and fire only on casual employees

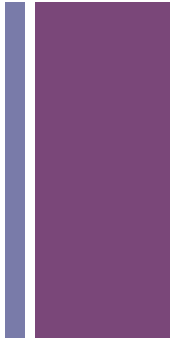
+ Employment Agreement and Probation

- Agreement is a must other than for casual employee
 - Include remuneration, benefits, employment conditions and many more as proposed in Regulations
 - Draft Rules - Include dispute resolution mechanism-rationality ?
- Probation period 6 months- earlier 240 days
- Casual employee not restriction to work in other enterprises

+ Expat Employees

- More stringent provisions on hiring foreign employees
 - Two types of approval –
 - Foreigners employment approval by employer
 - Work permit by employee
 - Proposed Rules-
 - General knowledge of Nepali language – avoiding clause
 - Cap on numbers – 2 foreigners for 20 employees; 5 foreigner for more than 20 employees, and 5% for more than 100
 - One year at once- previously 2 years
 - Maximum 3 years; in case of specialist 5 years- previously 5 and 7 years

+ Expat Employee (Cont. ...)



- Exceptions to FDI business with record keeping
 - No process for CEO and prescribed number of expats
- No process for technicians for less than 3 months – repair, installation or casual work
- Remittance of remuneration - relaxation of 75% ceiling circular of central bank ??
- Work permit for Indian nationals ??

+ Outsourced Employees



- Acceptance to the market trend and court rulings
- Heavily regulated
 - License; renewal – to be obtained within 6 months from commencement of Act
 - Not allowed to more than 2 sectors
- Market trend squeezed
 - Sectors to be defined – list of works to be published in Gazette
 - Not allowed in core sector of business- core defined (but not clear)
- Supplier as an employer and Receiver is an ultimate employer
 - Supplier to monitor ultimate employer about occupational health and security
- Ultimate employer's employee if no license

+ Payments to Employees

- Minimum salary
- Festival allowance – one month basic salary
- Social security fund-
 - Gratuity – 8.33%; equal contribution from employer; start from the day of service
 - PF – 10%; equal contribution from employer; start from the day of service
 - PF and gratuity - transferred to security fund
 - Direct monthly payment of PF and gratuity

+ Employees Benefits



- Insurance – compulsory
 - Accident – NPR 700K
 - Health – NPR 100K; equal contribution
- Housing fund- not continued ??
- Occupational deceases –
 - Treatment cost on employer for one year
 - If not cure, compensation

+ Leave and Holidays

- Weekly Holiday – 1 day per week
- Public Holiday – 13 days including May Day and for female employee 14 days including International Woman’s Day
- Home Leave – 1 day per 20 worked days
- Sick Leave – 12 days per year. 1 year not completed – proportional basis
- Maternity Leave – 14 weeks (60 days paid and remaining unpaid) – at least 2 weeks before expected delivery date and at least 6 weeks after delivery date

+ Leave/Holidays (Cont.)

- Paternity leave – 15 days
- Mourning leave – 13 days
- Exchange leave – (weekly and Public holidays) within 21 days
- No special leave
- Accumulation of Leave and encashment-
 - Home Leave 90 days
 - Sick Leave 45 days
 - If exceeded - Payable at the end of every year

+ Disciplinary Actions



- Punishment
 - Warning
 - One day remuneration deduction
 - Withholding annual increment or promotion
 - Termination
 - Suspend removed – now as a process

+ Punishment Procedure

- Seeking clarification by giving 7 days period
- Authority to punish - CEO or authorized management employee
- Commence proceedings within 2 months; complete 3 months

+ Termination (Cont.)

- Fixed Term Employment – upon expiry
- Work Based Employment – upon completion
- Resignation – to be approved within 15 days
- Based on Performance – Continuous 3 appraisals
- Based on health – recommendation of doctor / occupational health
- Compulsory Retirement – 58 years
- Notice period for Termination (at least 1/7/30 days)

+ Major Compliances



- Labor Audit –
 - Up to 50 employees- by management
 - Above 50 employees – Independent Labor Auditor
- Develop health and occupational policy- register with Office
- Constitute security and health committee – In case 20 or more employees
- Constitute labor relation committee – In case 10 or more employees
- Preparation and submission of Employee Rules

+ Grievances Redresses



■ Individual Claim

- Claim before employer – settled within 15 days (may be extended)
- If not settled application at Office – Discussion – 21 days for settlement
- If not settled with negotiation - to be settled within 15 days, if not may request the office for mediation
- Appeal – Labor Court

+ Grievances Redresses



■ Collective Bargaining

- 10 or more staff
- Collective Bargaining Committee (3-11) is entitled for collective bargaining
- Negotiation within 7 days
- If not amicably settled within 21 days may apply to office
- Office – Mediation – 30 days
- If both agrees, special zone, Emergency services – Arbitration Tribunal – this may be established by the government
- Arbitrators – Ministry, Employer and Employee
- Labor Court – Tribunal – appeal in the issues decided by Office and Department

Social Security Act 2074

+ Background

- Social Security Act 2074 (2017) is the new law and is published in Nepal gazette on 13 August 2017
- The Act states that it will be commence from 91 days from the date it is published in Nepal gazette. The Act commenced from 11 November 2017



Listing in Social Security Fund



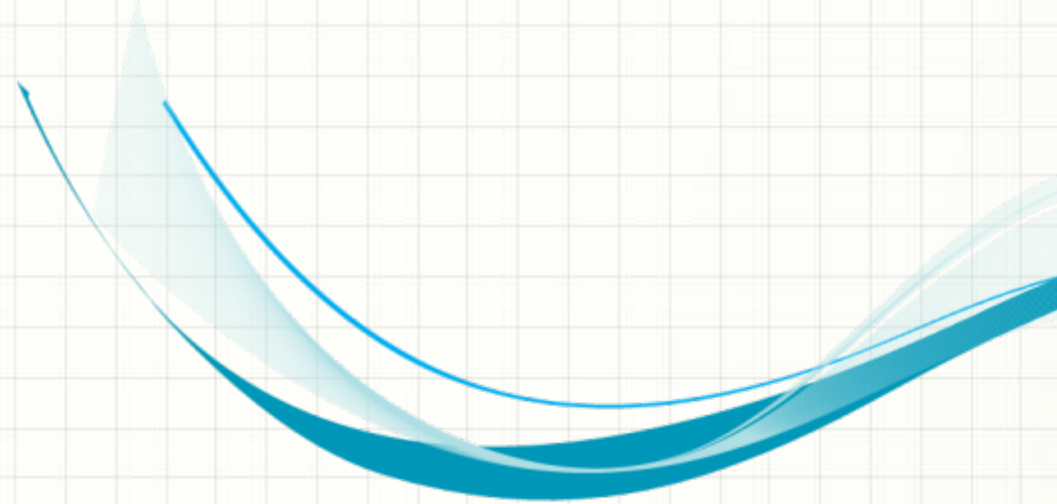
- Effective of Act: Ministry with published a gazette notification specifying the employer that need to listed in the fund
- Employer to be listed in fund within 6 months from the notification and should receive listing registration number
- Employee working in the listed Employer need to list in fund within 3 months from the listing of the employer and shall also receive social security number
- Employee working in informal sector and self employed person may also be listed
- Government Employee may also be listed in fund

+ Social Security Schemes

- Medical and health scheme
- Maternity protection scheme
- Accidental protection scheme
- Disable protection scheme
- Old age protection scheme
- Dependent Family Protection scheme
- Unemployment Support Scheme
- Other social scheme prescribed by the fund

+ Suggestions to the Employer

- To prepare or amend the employee rules/HR Policy
- Submission of Employee Rules at concerned Labor Office
- Classification of Employees
- Amendment in Appointment Letters
- To carryout annual labor audit



Thank You