

# NEPAL LABOR ACT 2074

Highlights of Changes brought by New Labor Law

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## INTRODUCTION

The Labor Act, 2074 has received the assent of president and become effective from the date Bhadra 19, 2074. The Labor Act, 2074 has replaced the previous labor law completely i.e. Labor Act, 2048 has ceased to be in effect. The New Labor Act has been passed for provisions for the rights, interest, facilities and safety of workers and employees working in enterprises of various sectors.

The New Labor Act has passed by the Parliament according to sec 296(1) of the Constitution of Nepal.

The major differences between both laws has been highlighted here in the slides:

## NO OF WORKERS FOR THE APPLICABILITY OF LABOUR ACT

LABOR ACT, 2048	LABOR ACT, 2074
Labor Act, 2048 was applicable only to the entity where 10 or more employees or workers were engaged in the work.	Labor Act, 2074 is applicable to all entities regardless of number of workers/employees.

## HIRING

Sect 10 of the New Labor act has provided the flexibility in the modes of hiring as per the requirements of the entity:

1. Regular Employment
2. Work Based Employment : for completion of certain work or rendering certain service.
3. Time Bound Employment: employment for certain time period determined.
4. Casual Employment: employment for seven or less days in a month.
5. Part time Employment: employment for 35 or less hours in a week.

## INTERN(Sec 16 & 17 )

The new labor act has introduced the concept of intern according to which any person may be allowed to work as intern pursuant to the approved syllabus of any educational institution. They shall be deemed regular employee if engaged in works other than as per their syllabus. There was no any provision in the previous act related to intern and the modes of hiring.

## PROHIBITION OF ENGAGING NON-NEPALESE PEOPLE AT WORK

The New Labor act also prohibits Non-Nepalese citizen to be engaged at work in any of the posts which is same as per the previous act.

The New Labor Act continues the general terms of hiring of foreign nationals by a local entity that the foreign nationals can only be hired if the Nepalese citizen could not be available for any skilled technical post even after publishing an advertisement in the national level public newspapers and journals.

## HIRING FOREIGN NATIONALS

Foreign nationals need to obtain the work permit for being engaged in the work in Nepal as per sec 22 and 23 of the Labor Act, 2074 except in the following conditions:

- Foreign nationals who are provided diplomatic immunity.
- Arrangement as per treaty or agreement with the Government of Nepal.

This provision is similar to that of the previous act.

## SAFETY AND HEALTH AGREEMENT

Where 20 or more employees are engaged, employer shall constitute a Safety and Health Committee as per sec 74 of the New Labor Act. There were no such provisions in the previous act.

Where 10 or more employees are engaged in the entity, employer shall also constitute the Collective Bargaining Committee as per sec 116 of the New Labor Act.

## COLLECTIVE AND BARGAINING COMMITTEE

The new labor act excludes certain matters from the collective demand and such matter includes:

- If it is contrary to the constitution of Nepal
- If it is against the interest of others due to being baseless allegation
- If it is prejudicial to the personal conduct of any worker or employee
- If it is unrelated to the entity
- If it is without expiry of the time of the collective bargaining agreement
- If it is about the rate and benefit prescribed for social security.

## SECRET BALLOT NOT REQUIRED FOR STRIKE 11

The new labor act does not require to go for a secret ballot to go for a strike As per the previous act, it was required to create a secret ballot to go for a strike. As per the new act, they can go for strike by simply giving the notice to the management and other security agencies.

## WORKING HOURS

LABOR ACT, 2048	LABOR ACT, 2074
As per sec 16 of Labor Act, 2048, no worker or employee shall be deployed in work for more than 8 hrs. per day or 40 hrs. per week.	Working hours continue to be 8 hours a day and 48 hours a week as per section 28 of Labor Act, 2074.
As per sec 19(1), if any worker or employee is engaged to work for more than eight hours in a day or 48 hours a week, he/she shall be paid overtime wages at the rate of one and half time of his/her ordinary rate of wages	The overtime wages is also continued to be one and half time of his/her ordinary rate of wages as per sec 31 of Labor Act, 2074
Sec 19(2) states that the maximum overtime is 4 hours a day and 20 hours a week.	As per sec 30 of the new act, the maximum overtime has been increased to 24 hours a week.



## OUTSOURCING

### LABOR ACT, 2048

There were no such provisions related to Outsourcing in the previous Labor act.

### LABOR ACT, 2074

As per sec 58 of the act, Outsourced employees can be engaged in the work as prescribed by the Ministry by publishing a notice in Nepal Gazette upon recommendation of Central Labor Advisory Council.

Such outsourced employees shall be engaged in the works which is other than the core works of the entity.

## PROBATION PERIOD

### LABOR ACT, 2048

As per Labor Act,1992, the worker and employees appointed under section 4(1) shall be kept on probation period unless he/she completes the continuous period of one year. Further, the continuous period of 1 year means the period of 240 days engaged at a work during the period of twelve months in an Enterprise or a period served continuously in a Seasonal Enterprise.

### LABOR ACT, 2074

The New Labor Act has shortened the period of probation to 6 months only.

## LEAVE AND HOLIDAYS

NATURE OF LEAVE	LABOR ACT, 2048	LABOR ACT, 2074
	No of days	No of days
<b>Weekly Holiday</b>	– 1 day every week	– 1 day every week
<b>Public Holiday</b>	– 13 days .	– 13 days including May day. Additional 1 day to female employees including Intl Women Labor Day.
<b>Annual Leave</b>	– 1 day for every 20 worked days	– 1 day for every 20 worked days.
<b>Sick Leave</b>	<ul style="list-style-type: none"> <li>– Fully paid up to 12 days .</li> <li>– Eligibility: Proportionate basis for those who has not completed 1 year of service.</li> </ul>	<ul style="list-style-type: none"> <li>– Half paid up to 15 days.</li> <li>– Eligibility : Completion of 1 year of service.</li> </ul>
<b>Mourning Leave</b>	– 13 days	– 13 days
<b>Leave in lieu</b>	– No	– For the laborers put in work on public holiday or weekly off.
<b>Maternity Leave</b>	– 52 days. Fully paid	– 98 days. Fully paid up to 60 days.
<b>Paternity Leave</b>	– Not provisioned	– 15 days. Fully Paid
<b>Special Leave</b>	– 30 days in a year, not exceeding 6 months in total service period unpaid.	– Not Provisioned

**BENEFITS**

BENEFITS	LABOR ACT, 2048	LABOR ACT, 2074
<p><b>Provident Fund Section : 52</b></p>	<ul style="list-style-type: none"> <li>- Employer’s Contribution: 10% of basic remuneration.</li> <li>- Employees Contribution: 10% of Basic remuneration.</li> <li>- Deposited to Enterprise Level Fund or Retirement Fund.</li> <li>- Eligible for the permanent employee.</li> </ul>	<ul style="list-style-type: none"> <li>- Employers Contribution : 10% of basic remuneration.</li> <li>- Employees Contribution : 10% of basic remuneration.</li> <li>- Deposited to Social Security Fund.</li> <li>- Eligible since the first day of employment.</li> </ul>
<p><b>Gratuity Section : 53</b></p>	<ul style="list-style-type: none"> <li>- For the first 7 years of service: Half of month salary for each year of service.</li> <li>- For 7-15 years of service : 2/3rd of month salary for each year of service.</li> <li>- Eligible after the completion of 3 years of service.</li> <li>- Amount to be deposited to Enterprise Level Fund or Retirement Fund.</li> </ul>	<ul style="list-style-type: none"> <li>- There is no such restriction for the duration of service in the entity for the calculation of the amount of Gratuity as per the new act.</li> <li>- Rate : 8.33% of basic remuneration every month</li> <li>- Eligible from the first day of employment.</li> <li>- Amount to be deposited to Social security Fund.</li> </ul>
<p><b>Leave Encashment Section:49</b></p>	<ul style="list-style-type: none"> <li>- Accumulated annual leave up to 60 days can be encashed at the time of discontinuation of service.</li> </ul>	<ul style="list-style-type: none"> <li>- Accumulated annual leave up to 90 days and sick leave up to 45 days can be encashed at the time of discontinuation of service</li> </ul>
<p><b>Severance Compensation Section: 145</b></p>	<ul style="list-style-type: none"> <li>- Rate : 30 days salary for each year of service.</li> <li>- Eligible only for a permanent employee.</li> </ul>	<ul style="list-style-type: none"> <li>- Rate : 1 month salary for every year of service</li> <li>- Eligible on a proportionate basis.</li> <li>- Not entitled to severance compensation if he/she is entitled to unemployment allowance under Social Security Act</li> </ul>

## OTHER BENEFITS

OTHER BENEFITS	LABOR ACT, 2048	LABOR ACT, 2074
<b>Festival Expenses Section : 37</b>	– No any provisions as such.	– Amount equivalent to the monthly remuneration once a year. The employee not completing one year is entitled to the expenses on the proportional basis.
<b>Housing Fund</b>	– 5% of gross profit is allocated to provide housing to the worker/employees.	– The provisions related to the housing fund has been removed in the new act.
<b>Compensation against injury</b>	– In case a worker or employee is injured while doing the work designated by the Enterprise, the whole amount incurred on the treatment need to be paid by the Proprietor on the recommendation of the medical practitioner recognized by the Government of Nepal.	– Compensation is to be provided from the insurance amount.
<b>Disability Compensation</b>	– Employee or an worker shall be paid the disability compensation as per the percentage of disability. In case of 100% disability, lump sum amount equivalent to 5 years salary shall be paid by the proprietor.	– Employee or worker shall be paid from an insurance amount on the basis of degree of disability.
<b>Death Compensation</b>	– Proprietor need to pay the lump sum amount of 3 years of remuneration to the nearest heir of the deceased worker or employee in case of the death of the worker during the treatment as a result of an accident while doing the works designated by the enterprise.	– The nearest successor is entitled to the amount of accident insurance as per the new act.
<b>Medical Insurance</b>	– No any provisions as such.	– Coverage : At least 1 Lakh per year for every worker. Premium to be paid equally by the employer and worker.
<b>Accident Insurance</b>	– No any provisions as such.	– Coverage: At least 7 Lakh for every worker. Premium to be paid fully by the employer.
<b>Bonus</b>	– 10% of Net Profit.	– 10% of Net Profit.

## PENAL PROVISIONS FOR MISCONDUCT

PUNISHMENTS	LABOR ACT, 2048	LABOR ACT, 2074
<p><b>Condition for Reprimanded/Warning Sec 131(1) of Labor Act, 2074</b></p>	<ul style="list-style-type: none"> <li>- Violating any provisions of labor law, regulation, bylaws or any instructions given or misbehaving with the customers of the enterprise,</li> <li>- Being frequently absent or coming late without permission,</li> <li>- Misusing of or damaging the equipment/tools installed for the safety or security of the employees.</li> </ul>	<ul style="list-style-type: none"> <li>- Other misconducts as prescribed in By laws,</li> <li>- Leaving the workplace without obtaining the permission from the managerial Level,</li> <li>- Coming late frequently without obtaining permission,</li> <li>- Not abiding the order of the senior or employer with regard to work.</li> </ul>
<p><b>Condition for Deduction of one day's remuneration</b></p>	<ul style="list-style-type: none"> <li>- No any provisions as such.</li> </ul>	<ul style="list-style-type: none"> <li>- Not accepting the letter or notice of punishment,</li> <li>- Participation or compelling to participate in illegal strike,</li> <li>- Collectively delaying in work,</li> <li>- Causing loss to the entity by reducing the production or service recklessly or negligently,</li> <li>- Trying to take facilities by submitting false details,</li> <li>- Not using the security instruments provided by the employer</li> <li>- Other similar misconducts as prescribed in Byelaws.</li> </ul>

## PENAL PROVISIONS FOR MISCONDUCT

PUNISHMENTS	LABOR ACT, 2048	LABOR ACT, 2074
<p><b>Conditions for Withholding of Annual Salary Increment for one year or Withholding Promotion for one year</b></p>	<p>Sec 50 of labor act states the condition for withholding of annual grade increment as follows</p> <ul style="list-style-type: none"> <li>- Dishonesty in the transaction of the organization.</li> <li>- Participating or compelling others to participate in any unauthorized strike which is declared illegal.</li> <li>- Participating in strikes without fulfilling the legal requirements or slowing down the work intentionally against the interest of the company.</li> <li>- Destroying intentionally any property of the entity or causing damage thereon and making unauthorized use of entity's property.</li> </ul>	<p>Sec 131(3) of the new act states the condition for withholding annual grade of remuneration or promotion as follows:</p> <ul style="list-style-type: none"> <li>- Taking the entity's property outside the entity or allowing the unauthorized person to use such without permission of the competent person.</li> <li>- Embezzlement with the entity's transactions.</li> <li>- Destroying the entity's property due to negligence or recklessness.</li> <li>- Preventing the supply of food and water in the entity or obstructing movement in the entity.</li> <li>- Abusing any items kept or arrangements made for interest, health and safety of the workers or employees or causing damage to them intentionally.</li> <li>- Other misconducts as prescribed in By Laws.</li> </ul>
<p><b>Condition for Suspension up to 3 months</b></p>	<ul style="list-style-type: none"> <li>- Creating or causing to create disturbance within the premises of the organization with the intention of affecting the service or works or preventing the supply of food, water and electricity or connection of telephone or obstructing entry or exit.</li> <li>- Accepting or offering bribes.</li> <li>- Coming to the duty by consuming alcohol.</li> </ul>	<ul style="list-style-type: none"> <li>- There is no such disciplinary action.</li> <li>- The employee can be suspended             <ol style="list-style-type: none"> <li>1. For investigation of misconduct or</li> <li>2. If he/she is taken in judicial custody for any office by lawful authority.(But this is not the form of punishment)</li> </ol> </li> </ul>

## PENAL PROVISIONS FOR MISCONDUCT

PUNISHMENTS	LABOR ACT, 2048	LABOR ACT, 2074
<p><b>Condition for Dismissal from service</b></p>	<ul style="list-style-type: none"> <li>- Causing bodily harm or injury to Proprietor, Manager or Employee of the entity.</li> <li>- Stealing property of the entity.</li> <li>- Absence from entity for more than a consecutive period of 30 days without notice.</li> <li>- Imprisoned on being convicted on a criminal offence involving moral turpitude.</li> <li>- Causing damage to secrecy related to special technology of the Entity Production Formula.</li> </ul>	<ul style="list-style-type: none"> <li>- Causing bodily harm or injury to Proprietor, Manager or Employee of the entity.</li> <li>- Accepting or offering bribe.</li> <li>- Stealing property of the entity.</li> <li>- Embezzlement of property of the entity</li> <li>- Causing damage to the entity’s property knowingly.</li> <li>- Absence from entity for more than a consecutive period of 30 days without getting the leave approved.</li> <li>- Causing damage to secrecy relating to special technology of the Entity.</li> <li>- Convicted on a criminal offence involving the moral turpitude.</li> <li>- Presenting false documents for appointment.</li> <li>- Consuming the psychotropic drugs or alcoholic drinks.</li> <li>- Having been punished twice for other misconducts within 3 years.</li> <li>- Other similar misconducts as prescribed in By laws.</li> </ul>

**SEXUAL HARASSMENT- SEC 132 OF LABOR ACT, 2074****LABOR ACT, 2048**

There were no such provisions related to Sexual Harassment in the previous Labor act.

**LABOR ACT, 2074**

As per sec 132 of the act, The service may be terminated on the basis of seriousness of offence.



## RETIREMENT

### Compulsory Retirement

#### **Before the Amendment:**

As per the sec 15 of Labor act, 2048 the proprietor may compulsorily retire any worker or employee who has crossed the age of fifty five years. Provided that he/she may extend the period of service of any worker of employee by five years, in case the worker or employee is indispensable for the operation of the functions .

#### **After the Amendment:**

As per sec 147 of the New Labor Act, it has increased the age of compulsory retirement and can be retired after the age of 58 years.

#### **Time Bound Employee-Sec140:**

As per the new act, the employee can be terminated after the expiry of the time period provided in the employment agreement.

#### **Work Based Employee-Sec 140:**

According to the new act, the employee can be terminated after the completion of the work specified in the employment agreement.

#### **Lack of Performance-Sec 142:**

The employment of a worker may be terminated by the employer if the performance of the employee is found unsatisfactory in the performance appraisal for three or more times.

## RETIREMENT

### On the ground of bad health-Sec 143:

The employer may terminate the employment of an employee upon the recommendation of a medical practitioner if:

- employee is physically or mentally disabled or injured
- rendering him/her unable to work
- requiring a long period for medical treatment effecting in the work of the entity.

### Termination by Notice-Sec 144:

The employee or employer terminating the employment should provide the notice except in the situation of termination by dismissal.

Period of Employment	Notice Period
1. For up to 4 weeks	1 day
2. 4 weeks to 1 year	7 days
3. Exceeding 1 year	30 days

## SANCTIONS

The New Labor Act provides more stringent sanctions for the violation of the provision of such act. The sanctions include fine, imprisonment or both. The authority to impose sanction also depends upon nature of violation. The brief outline of sanctions as provided in the New Labor Act is as follows:

### SANCTION BY LABOR OFFICE

Non Compliance	Consequence of Non Compliance
Deduction of remuneration and other facilities contrary to the prevailing laws.	Indemnify the concerned worker with amount double the deducted remuneration and other facilities.
Obstructing government officer, submitting false details	Fine up to Rs. .20000
Engaging an intern or trainee against the provision of the Act	Fine up to Rs. 10000 per intern or trainee
Failure to deposit the gratuity amount or in provident fund or social security fund or to arrange medical or accident insurance	Indemnify the worker with an amount double the amount to be paid.
Keeping the workers in reserve discriminatorily	Orders to not to do so.
Terminating employment against the provisions of the Act	Issue necessary directives.

## SANCTION BY LABOR DEPARTMENT

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

## SANCTION BY LABOR COURT

Non Compliance	Consequence of Non Compliance
For engaging a bonded labor	Imprisonment up to 2 years or fine up to Rs. 500000 or both. The Labor court can require the entity to provide such bonded labor with remuneration, allowance and other facilities , as well as to indemnify the bonded labor with an amount double such remuneration, allowance and other facilities
If the entity does not make the health and safety arrangements knowingly and as a result the worker dies or suffers physical or mental injury	Imprisonment up to 2 years, except otherwise provided. Such person suffering the injury should be compensated.

## COMPOSITION OF LABOR COURT- LABOR ACT, 2074

Criteria/Requirement	Requirement
<b>No of chairperson and members</b>	– 1 chairperson and 2 members
<b>Qualification of Chairperson and members</b>	<ul style="list-style-type: none"> <li>– Judge of the high court, or</li> <li>– Person qualified to be the judge of High Court</li> </ul>
<b>Tenure</b>	– 4 years except when judge of the High Court are appointed.
<b>Functions, Duties and Facilities of Chairperson and Members</b>	– Similar to those available to judges of High Court

## APPEAL

As per sec 60 of previous act, any party not satisfied with the punishment may file an appeal within thirty five days from the date of such punishment or receipt of order .

The period of appeal within thirty five days is similar to the previous act. Any decision or order of the department or labor office can be appealed at Labor Court within 35 days of such order or decision as per the new act.

## REPEAL

- Labor Act, 2048
- Industrial Trainee Training Act, 2039
- Retirement Fund Act, 2049

## NON APPLICABILITY OF THE ACT

### LABOR ACT, 2048

There were no any provisions related to the non applicability of the Labor Act.

### LABOR ACT, 2074

As per sec 180 of the act, it is not applicable to the following entities:

- Civil Service
- Nepal Army, Nepal Police, Armed Police force.
- Entities incorporated under other prevailing laws or situated in the Special economic Zones to the extent separate provisions are provided.
- Working journalists, unless specifically provided in the contract

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