

# Labour Law Reformation in Nepal: Impact on the Labour Market

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## 1. Introduction

Legal labour reform demands a proper balance of interest of the employer and the employee, nevertheless, in the developing country like ours, the government ensures the labour welfare as the main agenda of the labour reformation process. The Labour Act 1992 was condemned by the employers for being more pro-labour with the protective provisions for the labourers only, and had not ensured the labour flexibility at all. While the trade unions claimed that the social security net provided by the old labour act was not enough and did not ensure job security for the workers. Hence, there was a need for the reformation of the labour law to address the issues in the Nepalese Labour market<sup>1</sup>.

Nepal, recently, has gone through the labour reformation process which contemplated to regulate the labour market, to guarantee employment opportunities with a decent job environment and sound industrial relation to ensure increased productivity as well as industrial peace by ensuring job security and flexibility. The New Labour Act, 2074 was enacted on 19 of Bhadra, 2074, has brought both some of the hopes and the apprehensions among the stakeholders. Foremost, this act was enacted through the social dialogue process between employers and employees and they agreed to ensure “flexicurity”. Labour market reformation objective is to protect the worker’s right, end all forms of labour exploitation and develop a sound robust

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<sup>1</sup> 11 Points Agreement between FNCCI and Trade Union on 2067/12/10

industrial relation between employer and employee to ensure the investment-friendly environment. Its goal is not only the accountable employer but also, a duty bounded worker, working together for the betterment of the economy. The current labour reformation has envisioned flexicurity that is social security for worker and flexibility for the employer to have an investment-friendly environment for sound industrial relations.

We are aware that labour legislation is legislation based on the notion of a welfare state. State foremost duty is to protect and promote labourer rights. Nepal is no exception at all. Nepal also enacted the new labour act with pro-labour attitude; it is pro-labour legislation. Nevertheless, the government has made an attempt to balance the interest of employer's as well. The legislation envisions not only protection of workers' rights but also to facilitate the sound industrial relations in Nepal. We can be optimistic the current labour legislation will balance the interest of both the employer and the employee and clinch worker's rights as well as sound industrial relation within Nepal.

The preamble of the new labour Act articulates that it is enacted to protect labourer's rights, and to provide benefits and facilities, also, balancing the interests between the workers and employers by securing their rights and duties by promoting sound industrial relation, and eliminating all forms of exploitation and assuring industrial productivity<sup>2</sup>. In this reference, the Supreme Court of Nepal has also pronounced in the case of Hulas Metal Craft vs. Ministry of Industry and Commerce that there requires the balancing of the relation between employer and employee as the disputes will have a potential risk in the national economy<sup>3</sup>. Looking back at the nostalgic history of the labour unrests, which resulted in closures of multinational companies as Colgate Palmolive and Surya Garments, similarly, withdraw of the investment by Pizza Hut has flagged the concern that consideration must be given to the balancing of interest of employer and employee for better industrial relation. These examples delineated that to ensure economic prosperity, we need to make efforts to ensure foreign investment and ensure that they do not get affected by labour unrest. The coverage of Labour Act is employee-employer relations, the law relating to conditions of work, laws on wages and remuneration, laws on labour welfare and social security, laws on occupational health and safety and laws on industrial relations.

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<sup>2</sup> Labour Act , Preamble, (2017)

<sup>3</sup> Saroj Ghimire. "Labour Law 2017." Nepal Taxation Online, 28 Aug.2017, <https://nepaltaxonline.com/blog/labour-law-2017-and-impact>, accessed 1<sup>st</sup> September, 2019

The New Labour Act 2017 has widened the coverage of the labour law. It has foreseen labour market flexibility. Likewise, the scope of labour law on applicability has changed. It has integrated both the formal and informal sector. The definition of “enterprise” includes company, a private firm, partnership firm, cooperative, association and other organization in operation, or established, incorporated, registered or formed under prevailing laws to undertake industry or business or provide service with or without profit motive<sup>4</sup>. It has removed the headcount threshold limit as in the Labour Act 1992. It is applicable to all entities regardless of the number of labourers. Indeed, it has widened its applicability in both the formal and informal economy in Nepal. Furthermore, it is also applicable to domestic workers in Nepal<sup>5</sup>.

## 2. The major attributes of the Labour Act, 2017

The Labour Act 2017 is an attempt to justify our international commitments that we have ratified through inclusion of the international labour standards as equal value of work<sup>6</sup>, no discrimination in terms of remuneration<sup>7</sup>, no discrimination in any form<sup>8</sup>, additional maternity leaves, determination of hours of work, a tripartite mechanism to determine the minimum wage, the presumption of employment, the prohibition of all forms of exploitation as child labour<sup>9</sup> and forced labour<sup>10</sup>.

**2.1 Flexibility in hiring:** The Labour Act, 2017 provides flexibility in hiring of workers. It provides various modes of hiring as per the need of the change in the world of work. On the basis of nature of employment, the act classifies the employment into five categories as regular employment, task-based employment, time-based employment, casual employment, and part-employment<sup>11</sup>. Likewise, it envisions the other types of labour practices as apprentice and training-based employment.

**2.2 Regular employment** is mentioned as employment other than work-based employment, time-based employment and casual employment<sup>12</sup>.

**2.3 Task-based employment** is an employment provided to complete specific work or to render specific service<sup>13</sup>.

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<sup>4</sup> Labour Act, Sec. 2, (2017)

<sup>5</sup> *Ibid*, Sec. 88

<sup>6</sup> *Ibid*, Sec. 7

<sup>7</sup> *Ibid*, Sec. 7

<sup>8</sup> *Ibid*, Sec. 6

<sup>9</sup> *Ibid*, Sec. 5

<sup>10</sup> *Ibid*, Sec. 4

<sup>11</sup> *Ibid*, Sec. 10 (1)

<sup>12</sup> *Ibid*, Sec. 10

<sup>13</sup> *Ibid*, Sec. 10

**2.4 Time-based employment** is an employment provided to complete specific task or to render specific task in a stipulated time<sup>14</sup>.

**2.5 Casual employment** is an employment for 7 days or less than 7 days in a month<sup>15</sup>.

**2.6 Par-time employment** is an employment for 35 hours or less than 35 hours in a week<sup>16</sup>. Apprentice is a welcome provision for both the employer as well as the unskilled worker as the employer receives free labour, while the unskilled worker gets the opportunity to enhance his/her skills. The employer can recruit an apprentice after entering into an agreement with the education organization based on the curricula. Nonetheless, such an apprentice is not termed as an employee under this Act<sup>17</sup>. A Trainee is a person hired for one year for training purposes, but, is not the employee of the enterprise. Though not an employee; he/she is an entitlement to benefits as minimum wages, sick leave, gratuity, provident fund, and social security benefits. The employer shall not be compelled to provide employment upon completion of the training. However, if kept as an employee, the probationary period shall not be applicable to such employee<sup>18</sup>.

**2.7. Hiring of Foreign worker:** The Labour Act 2017 also forbids the employment of foreigners without obtaining a work permit from the Department of Labour. Nonetheless, the employer can employ highly skilled foreign worker or technical expert on unavailability of skilled manpower or technical expert in Nepal after the publication of advertisement in national level daily newspaper<sup>19</sup>. Labour Act, 2017 is more liberal compared to the labour act 1992, here, foreign nationals can be recruited in technical or expert positions without advertisement if there is an investment agreement between the company and Ministry, Department, Investment Board of Nepal, also; entities have full or partial ownership of the Government of Nepal.

**2.8 Additional benefits and leave facilities:** Leave is not a right but is only privilege<sup>20</sup>. The employee needs to take prior approval except in

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<sup>14</sup> *Ibid*, Sec. 10

<sup>15</sup> *Ibid*, Sec. 10

<sup>16</sup> *Ibid*, Sec. 10

<sup>17</sup> *Ibid*, Sec. 16(2)

<sup>18</sup> *Ibid*, Sec. 18

<sup>19</sup> *Ibid*, Sec. 22

<sup>20</sup> *Ibid*, Sec. 51

emergency. If an employee takes leave without prior approval for continuous 30 days, it is a ground for termination<sup>21</sup>. The leaves are as following<sup>22</sup>:

Headings	Number of Days
Public Holidays	13 days including May Day and International Women's Day as an additional one-day holiday for female worker
Annual Leave	1 day for every 20 worked days
Sick Leave	12 days (Fully Paid)
Maternity Leave	98 days (60 days fully paid)
Paternity Leave	15 days (Fully Paid)
Mourning Leave	13 days (Fully Paid)
Accumulated Leave	Annual Leave can be accumulated up to 90 days Sick leave can be accumulated up to 45 days

The Act has mentioned additional leave facilities as maternity leaves have been increased from 60 days to 98 days and the additional leave the paternity leave has been included. The paternity leave is for 15 days. Furthermore, the act also envisioned that in case of miscarriage during 7 months of pregnancy, the female worker is also entitled to receive the maternity benefits.

## 2.9 Special provision made for female employee

Light work during pregnancy<sup>23</sup>: The employer should make pregnant female labour to do light work during pregnancy that does not have an adverse impact on her health. Maternity leave is up to 14 weeks with fully paid leave for 60 days. And, the remaining 38 days shall fall under the social security schemes. Transportation facility is provided to female workers, if any female worker starts her shift before sunrise or after sunset<sup>24</sup>. Childcare provision: The enterprises having more than 50 women workers need to allocate childcare center and a nurse. Breastfeeding time: Lactating female worker should be provided half an hour to lactate her baby during working hours. In relation to lifting heavy weight: During pregnancy female workers are not asked to carry heavy

<sup>21</sup> *Ibid*, Sec. 131(4)

<sup>22</sup> *Ibid*, Chapter 9

<sup>23</sup> *Ibid*, Sec. 81(2)

<sup>24</sup> *Ibid*, Sec. 33

weight goods. *Sharmila Parajuli and others v. His Majesty's Government et.al*, Writ No.3434 (2002), the Supreme Court of Nepal issued the directive order to enact appropriate legislation to address the sexual harassment in the workplace. Indeed, the act has attempted to be more gender friendly, which is a warm welcome.

Sexual harassment in the workplace is addressed in the Labour act and in the separate act<sup>25</sup>. This will encourage more female workers participation in the world of work. The act envisages termination of employment on the ground of serious sexual harassment offences<sup>26</sup>.

### 2.10 Outsourcing of the workers

Labour Act, 2017 includes the new concept of outsourcing. The provision allows the hiring of workers through outsourcing in all works except the core job of the enterprises from the third-party suppliers<sup>27</sup>. The list of workers who can be outsourced as drivers, security personnel, cleaning staffs so on is listed on the Nepal Gazette. There is a clear demarcation of responsibilities of the outsourcing companies and the main employers. Now, the outsourced workers are under the jurisdiction of the Act.

### 2.11 Social Security for all

International Labour Organization defines Social Security as: "Social security is the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner." The Labour Act 2017 along with the Contributory Social Security Act, 2018 envisions the vertical dimension of social security for Nepalese workers both in the formal and informal economy. The terminal benefits as provident fund and gratuity along with the other basic social protection as accidental insurance, sickness benefits and death compensation are enlisted in the act.

### 2.12 Terminal Benefits

**Provident Fund:** Provident fund also known as contributory fund is a retirement saving schemes, where the employer and employee

<sup>25</sup> Sexual Harassment Prevention Act, 2015 came into effect on February 20, 2015

<sup>26</sup> Labour Act, Sec. 132 (2), (2017)

<sup>27</sup> *Ibid*, Sec. 58 (2)

contributes 10 per cent of the basic salary. Prior this act, only permanent workers were eligible for provident fund while now each employee is eligible for provident fund from the first day of appointment service<sup>28</sup>.

**Gratuity:** Gratuity is a lump sum amount paid by an employer to an employee for rendering a long-term service to an enterprise. It is payable to an employee on his superannuation or on his resignation or retirement.

The Labour Act, 2017 mentions each employee is eligible for gratuity from the first day of appointment service and the rate of gratuity is 8.33 percent of the basic salary<sup>29</sup>.

**Other benefits:**

**Accidental Insurance:** The employer shall make an accidental insurance of Rs. 7 hundred thousand per annum. The full premium amount be paid by the employee only.

**Medical Insurance:** The employer shall make a medical insurance of Rs. 1 hundred thousand per annum. The half premium shall be paid by the employee and the half shall be paid by the employer.

### 2.13 Provisions of Labour Welfare

**Child Care Centre:** Where more than fifty female workers are engaged the employer should provide a childcare center and a trained women nurse and necessary toys. **Relaxing Room** where more than fifty workers are engaged the employer should provide a relaxing room. **Canteen** where more than fifty workers are engaged the employer should provide a canteen.

### 2.14 Means of settlement of the industrial dispute

Industrial Dispute is “any dispute of difference between employers and employers or between employers and workmen; or between workmen and workmen, which is connected with the employment or no-employment or the terms of employment or with the conditions of labour of any person.”<sup>30</sup> Individual disputes are right based issues disputes and they cannot be termed as industrial disputes. The disputes are owned and taken up as collective interest issues by authorized trade

<sup>28</sup> *Ibid*, Sec. 52 (1)

<sup>29</sup> *Ibid*, Sec. 53(1)

<sup>30</sup> Industrial Dispute Act, Sec. (2) (k), (1947)

union.<sup>31</sup> Labour Act has mentioned about both the individual disputes and the collective disputes settlement process. Social dialogue is taken in account as an effective means to settle disputes.

**Social dialogue as the main mantra of the settlement of the dispute;** Labour Act is an outcome of tripartite social dialogue. And, the Act, also, envisions in resolving disputes through Social Dialogue. It has emphasized on the formation of Labour Relation Committee, Collective Bargaining Committee and Occupational Health and Safety Committee which facilitates to settle any forms of disputes through social dialogue.

**Formation of Collective Bargaining Committee;** Enterprise having 10 or more than 10 employees shall have a committee on collective bargaining which will submit the demand that relates to the overall benefit of employee to the employer. The act mentions the committee shall be the authorized trade union or the representative group appointed by the consent of all trade union in the enterprise in absence of authorized trade union or the representative group formed by the signature of 60 per cent of workers in the absence of any trade union in the enterprise<sup>32</sup>.

**Procedure for Settlement of Collective Dispute:** The Collective Bargaining Committee submits the collective interests in writing to the employer. Upon the receipt of the collective interest, the employer must call a meeting within 7 days mentioning the place and time for discussion. If the employer does not call a meeting for the discussion within 7 days or the negotiation is not settled within 21 days, the employee can submit the application to the concerned Labor Office for mediation. If the dispute is not settled through mediation within 30 days, the employees can voluntary opt for arbitration. Under the following circumstances<sup>33</sup>, the employee providing 30 days prior notice to the employer can go for strike, unlike the Labour Act 1992 where the employee had to conduct a secret ballot to go for a strike.

- a) No agreement reached during arbitration
- b) No formation of arbitration committee by Ministry of Labour and Employment within 21 days

<sup>31</sup> *Central Province Transport Service v. Raghunath Gopal Patwardhan*, AIR, (1957) S.C. 104

<sup>32</sup> Labour Act, Sec. 116, (2017)

<sup>33</sup> Ibid, Sec. 121 (1)



- c) No decision made within stipulated time
- d) Noncompliance of arbitrary award by the employer

**Mandatory Arbitration for Collective Disputes<sup>34</sup>:** The Act discourages the settlement of the dispute through the formal dispute resolution method and emphasized on the compulsory arbitration process. The Labour Act forbids right to strike in the entity providing essential services also in the Specific Economic Zone and during the state of Emergency declared as per the Constitution, hence, the entity having collective disputes must settle the dispute through arbitration. The Act also envisions about the Arbitration Tribunal; it is composed by the Ministry constituting representatives of workers, employer and Nepal Government. Any agreement between the Collective Bargaining Committee and Employer regarding collective dispute or award of the arbitration tribunal is binding upon both the parties.

**Remuneration during Strike and Lock Out<sup>35</sup>:** Though there was huge negotiation during the labour reformation process for “No work No Pay” principle by the employer, however, the employees are entitled to half remuneration during lawful strike or lawful Lock Out. The employees are not entitled to any remuneration only during unlawful strike.

**Sectorial Collective Bargaining:** The New Labor Act also provides that the collective bargaining may be placed and settled not in each individual entity but jointly for all the industries in the same sector in the association level. The association of the industries of one sector may enter into the collective bargaining agreement with the association of trade union active in such business sector. In the situation, the individual industry is not required to deal with collective demand separately. The collective agreement is valid as equivalent to law until 2 years and remains valid if it is not changed by next CBA. Labour act has ensured labour flexibility to address the demands of the employers. They argued prior act was very rigid, they could not terminate the employment of worker during an economic crisis or when they had the very low performance of the worker. The new act provides flexibility in retrenchment, lay off and there are some additional grounds for termination on the ground of performance evaluation and health.

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<sup>34</sup> *Ibid*, Sec. 118

<sup>35</sup> *Ibid*, Sec. 127

**2.15 Lay Off:** Labour Act envisions that the enterprises can be partially or full be shut down and the employers can lay off workers during economic crisis or when there is increment in number of workers due to merger of one or more enterprises<sup>36</sup>. While putting workers on lay off the employers must notify the labour office, authorized trade union or recognized trade union or labour relation committee along with the causes of lay off, probable time, and probable numbers of workers to be laid off<sup>37</sup>. In the previous labour act the employers had to take prior approval to lay off the workers which was huge hassle, whereas the recent act has ensured flexibility through notification clause.

### **2.16 Flexibility in the Retrenchment**

The Labour Act has amended the requirement of prior approval of the Department of Labour to retrench employee. The workers can be retrenched as agreed with the Trade Union or Labour Relation Committee in absence of trade union, where the agreement cannot be reached with the Union or the Labour Relation Committee the employees can be retrenched by giving information to the Labour office. The employees are entitled to the retrenchment compensation at the rate of one-month salary for each year service. Voluntary termination of employment, compulsory retirement, termination of service of time bound employees, work-based employee, termination on the ground of the poor performance, termination due to health reason

**Voluntary Termination of Employment<sup>38</sup>:** The employee can terminate the employment voluntarily by submitting a resignation letter. The employer must approve the resignation within 15 days and provide a notice thereof to the employee<sup>39</sup>.

**Compulsory Retirement<sup>40</sup>:** The compulsory age of retirement is at the age of 58 years.

**Termination of Service of Time Bound Employees<sup>41</sup>:** The employment of the employee on time-bound employment is terminated after the expiry of the time period prescribed in the employment agreement

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<sup>36</sup> *Ibid*, Sec. 145 (1)

<sup>37</sup> *Ibid*, Sec. 145(2)

<sup>38</sup> *Ibid*, Sec. 141

<sup>39</sup> *Ibid*, Sec. 141(2)

<sup>40</sup> *Ibid*, Sec. 147

<sup>41</sup> *Ibid*, Sec. 140 (a)

**Termination of Service of Work Based Employee<sup>42</sup>:** The termination of employment after the completion of the certain work or render service.

**Termination for Poor Performance<sup>43</sup>:** When the performance of the employee is below the standard in the performance appraisal for three times or more, the employment of such worker may be terminated by the employer

**Termination on the ground of health reason<sup>44</sup>:** In case any employee is physically or mentally disabled or injured rendering him/her unable to work or requiring a long period for medical treatment effecting in the work of the entity, the employer on recommendation of a medical practioner may terminate his/her employment

### 3. Conclusion

Labour Market is largely unregulated and covers mainly the informal sector. Overall coverage of labour law in the formal sector is very limited ( only 10-12% of workers), although the new act envisions to outreach the informal workers mostly relating to social security. Thus, the application of the new act in itself is a huge challenge for the government of Nepal. Furthermore, the scope of labour law is unlimited there is no threshold or headcount under this act, however, types of employment have limited the law with specific provisions as time-based employment, casual employment etc.

Likewise, various progressive and protective measures are enshrined in the new act to create a win and win situation between employer and employer. The major debate is social security for all and flexibility with the demand of employment at will during the labour reform process has been somehow addressed in the act. The social protection benefits from the first day of employment to all the workers have indeed ensured job security. Likewise, flexibility in hiring, retrenchment, termination on the ground of poor performance, poor health condition, notification during lay off so on also ensures flexibility for the employers. Indeed, we are optimistic that the rigidity of Labour Act 1992 has been addressed by the act and it shall facilitate more investment and also create labour friendly environment to ensure employment growth. However, there exists great challenge for the Government of Nepal is regarding the dualism between the formal and informal economy,

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<sup>42</sup> *Ibid*, Sec. 140 (b)

<sup>43</sup> *Ibid*, Sec. 142

<sup>44</sup> *Ibid*, Sec. 143

also the increment of informalization and contractorization within the formal sector that hinders the compliance of the labour law. Nonetheless, the globalization and threat in decrease of foreign investments and minimizing labour unrest are obstacles the government of Nepal needs to handle by balancing the government's attitude from pro-labour to pro-industry. We are optimistic that the new law will help in changing the working dimension of Nepal by ensuring the Nepalese workers have the decent work environment and employers have full faith, trust and confidence towards their investment return without any threats.

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