

The Labour Act, 2017 (2074)

Date of Authentication:

4 September 2017 (19 Bhadra 2074)

Act number 14 of the year 2017 (2074)

An Act Made for the Amendment and Consolidation of the Laws Relating to Labour

Preamble:

Whereas, it is expedient to amend and consolidate the laws relating to labour in order to provide for rights, interests and benefits of labours, develop good labour relations by making explicit provisions on the rights and duties of labours and employers and increase productivity by ending all forms of labour exploitation;

Now, therefore, the Legislature-Parliament referred to in clause (1) of Article 296 of the Constitution of Nepal has enacted this Act.

Chapter-1

Preliminary

1. **Short title and commencement:** (1) This Act may be cited as the "Labour Act, 2017 (2074)."
 - (2) This Act shall commence forthwith.
2. **Definitions:** Unless the subject or the context otherwise requires, in this Act:
 - (a) "Basic remuneration" means the basic remuneration to be received by a labour for employment, and this term also include amount of increment in remuneration after completion of one year of the employment period.
 - (b) "Chief Executive" means a person who bears the final responsibility for the activities of the enterprise.
 - (c) "Workplace" means the place or location where a labour works, and this term also includes a place or situation where a labour has to stay or visit in the course of the work.
 - (d) "Office" means the Labour Office.

- (e) "Lockout" means the closure of any enterprise or workplace by the employer to prevent fully or partly the labours from performing their regular work.

Provided that this term does not refer to a situation where the labours are held in reserve or where the work is stopped because of the occurrence of an immediate danger.

- (f) "Prescribed" or "as prescribed" means prescribed or as prescribed in the rules framed under this Act, and this term also includes a notice published in the Nepal Gazette as provided for in this Act or the rules framed under this Act.
- (g) "Inspector" means the senior labour inspector, labour inspector, senior occupational safety and health inspector and occupational safety and health inspector, and this term also includes any other employee deputed for inspection.
- (h) "Council" means the Central Labour Advisory Council formed pursuant to Section 102.
- (i) "Remuneration" means the basic remuneration to which a labour is entitled, and this term also includes an allowance.
- (j) "Enterprise" means any company, private firm, partnership firm, cooperative organization or association or other organization which is established, incorporated, registered or formed or operated in accordance with the prevailing law with the objective to carry on any industry, business or service, with or without profit motive.
- (k) "Ministry" means the Ministry of Labour and Employment, Government of Nepal.
- (l) "Main employer" means an employer who employs labours through a labour provider.
- (m) "Employer" means any person or enterprise that employs labours, and this term also includes a manager in the case of an enterprise, and a labour provider in the case of a labour supplied pursuant to this Act.
- (n) "Employment contract" means an agreement entered into between an employer and a labour in relation to the service, conditions and

benefits of employment, and this term also includes the letter of appointment given by the employer to the labour.

- (o) "Employment period" means the period during which a labour is employed with an employer, and this term also includes the following period:
 - (1) Period held in the reserve,
 - (2) Period of leave with remuneration,
 - (3) Period of unpaid leave taken for maternity or maternity care,
 - (4) Period of leave taken for medical treatment in case of accident during or while working for the employer.
- (p) "By-law" means the by-law relating to conditions of service of the labours framed by an enterprise pursuant to Section 108, and this term also includes the financial administration by-law of the enterprise.
- (q) "Department" means the Department of Labour.
- (r) "Manager" means the chief executive of an enterprise. and this term also includes the chief of any section or unit so appointed as taking or exercising the final responsibility or authority.
- (s) "Managerial level labour" means a labour appointed to a post at the managerial or higher level thereof entrusting the authority to evaluate, control and supervise the work of labours on behalf of the employer, and this term also includes the manager.
- (t) "Social Security Fund" means the Social Security Fund established pursuant to the prevailing law.
- (u) "Collective agreement" means an agreement entered into between the employer or employers' association and the trade union or Collective Bargaining Committee on remuneration, conditions of service, benefits of the labours or matters of common concern to the employer and the labours.
- (v) "Collective Bargaining Committee" means the Collective Bargaining Committee referred to in sub-section (1) of Section 116.
- (w) "Labour Court" means the Labour Court formed pursuant to Section 151.

- (x) "Labour" means a worker or employee or a person employed with any job title who performs a physical or intellectual work for the employer.
- (y) "Labour supplier" means a person or body having obtained the license pursuant to Chapter 11 to supply labours.
- (z) "Strike" means a situation where labours collectively refuse to perform their regular work partially or completely.

Provided that a situation where labours are on leave or stopped the work as a result of the occurrence of an immediate danger or have become unable to attend or perform the work due to a situation beyond the control of labours shall not be considered as a strike.

Chapter-2

Basic Provisions Relating to Labours

- 3. **To remain as minimum standards:** (1) This Act shall remain as minimum standards for labours and on matters relating to labours.
 - (2) Where an employment contract is entered into between an employer and a labour with provisions to pay or receive remuneration or benefits lesser than the remuneration or benefits set forth in this Act and the rules framed under this Act or in contravention of the conditions set forth in this Act, such an employment contract shall be deemed to be contrary to this Act, and it shall, to that extent, be void.
- 4. **Prohibition on employing in forced labour:** (1) No person shall employ any labour in forced labour, directly or indirectly.
 - (2) Notwithstanding anything contained in sub-section (1), the following work or service performed by a labour shall not be deemed to be forced labour:
 - (a) Any work or service required to be performed under the duties of citizens as and when the nation so requires,
 - (b) Any work or service required to be performed by any person in consideration for the sentence imposed by a decision or order of a court,

- (c) Any work or service required to be performed as a member of a community for the interest of such a community.

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

- 5. **Prohibition on employment of children:** No person shall so employ a child in any work as to be contrary to law.
- 6. **Prohibition on discrimination:** (1) No employer shall discriminate any labour on the ground of religion, colour, sex, caste, tribe, origin, language, ideological conviction or other similar ground.
 - (2) Notwithstanding anything contained in sub-section (1), the following act shall not be considered as discrimination:
 - (a) To give preference to any person for employment on the basis of inherent requirement of a work or service,
 - (b) To engage a female labour who is pregnant in any work or service which is easier and suitable to her physical condition, without any reduction in the remuneration and benefits, or
 - (c) To give preference to a labour with physical disability for such job responsibility as is suitable to his or her physical condition.
- 7. **Prohibition on discrimination in remuneration for equal work:** (1) No discrimination shall be made between the labours in remuneration for equal value of work on the ground of sex.
 - (2) For the purpose of sub-section (1), whether the work is of equal value shall be determined on the basis of the nature of the concerned work, the time required for its performance, labour, skill and productivity.
- 8. **Right relating to trade union:** (1) Every labour shall, subject to this Act and other laws, have a right to form and operate a trade union, acquire the membership of, or get affiliated with, such union or involve in other activities relating to trade union.
 - (2) While exercising the right relating to labour pursuant to this Act and other laws, the labour shall be dutiful and responsible towards the employer.

9. **Right to remedy:** In the event of infringement of any right conferred by this Act and other law to a labour, such a labour can get remedy pursuant to this Act or other law.

Chapter- 3

Provisions Relating to Employment

10. **Types of employment:** (1) An employer may engage a labour in any type of the following employment:

- (a) Regular employment,
- (b) Work-based employment,
- (c) Time-based employment,
- (d) Casual employment,
- (e) Part-time employment.

Explanation: For the purpose of this Section, -

- (1) “Regular employment” means employment of any type whatever other than that set forth in clauses (b), (c) and (d).
- (2) “Work-based employment” means employment that the employer provides or has provided specifying any particular work or service for performance.
- (3) “Time-based employment” means employment that the employer provides or has provided to the labour specifying a certain period on the condition that the labour has to provide any service or perform any work within that period.
- (4) “Casual employment” means employment that the employer provides or has provided to the labour on the condition that the labour has to provide any service or perform any work, for seven days or less within a period of one month.
- (5) "Part-time employment" means employment that the employer provides or has provided to the labour on the condition that the labour has to perform a work in thirty-five hours or less than thirty-five hours in a week.

(2) If there arises a question as to whether any employment is regular or not, it shall be determined as prescribed on the basis of the nature of the work, notwithstanding anything contained in the employment contract.

- 11. Prohibition on employment without entering into employment contract:** (1) No employer shall employ a person without entering into an employment contract.
- (2) Notwithstanding anything contained in sub-section (1), it shall not be necessary to enter into an employment contract in writing for a casual employment.
- (3) While entering into an employment contract pursuant to sub-section (1), remuneration, benefits to be received by the labour, conditions of employment and other matters as prescribed shall be set out in such a contract.
- 12. Employment relationship to be established:** (1) Where the employer enters into an employment contract with a labour or employs a labour verbally or engages a worker on casual employment, the employment relationship between the employer and the employee shall be established, or in the case of the casual employment, such relation is established from the date or time when the labour is employed or he or she provides the service.
- (2) Where there arises a dispute as to whether the employment relationship has existed between an employer and a labour, such a dispute shall be settled by the Office.
- (3) Where the dispute referred to in sub-section (2) is also included in any issue that is *sub judice* in the Department or a Court, such a dispute shall also be settled by the Department or Court.
- (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 remains in his or her custody, and if the employer does not submit such evidence or document in pursuance of the order, the employment relationship between the employer and the labour shall be deemed to have been established.
- 13. Provision relating to probation period:** In entering into an employment contract with a labour, the employer may so enter into the contract that he or she remains in a probation period for six months, and terminate the employment contract with the labour if his or her work is not satisfactory during the probation period. After the end of the probation period of a labour in respect of whom the employment contract has not been so terminated, the employment relation shall *ipso facto* be deemed to be valid.
- 14. Continuity of existence of the employment relationship despite change in ownership:** (1) In the case of a change in or transfer of ownership of any work or

business or any part thereof of any employer or hand over of such a work or business to another person for its operation or creation of a new enterprise or business as a result of the merger of two or more enterprises or businesses, the employment relationship of the labour working in such an enterprise or business the ownership of which has been so changed or transferred or which has been so handed over to the other person for its operation or in the enterprise or business which has been merged shall continue to exist.

(2) For the purpose of sub-section (1), the employer who so undertakes the ownership or acquires the ownership by way of transfer or undertakes responsibility to operate the work or business or, in the case of a merger of businesses or enterprises, the new enterprise or business created from such merger or, in the case of the transfer of the ownership and liability of a project in accordance with the prevailing law relating to private investment in the building and operation of infrastructures, the enterprise undertaking such ownership and liability shall bear the liability under this Act or the rules framed under this Act or the collective agreement, if any, entered into.

Provided that if any agreement on interim management has been made between the previous employer, new employer and union of the concerned enterprise, the provisions of the agreement shall apply.

- 15. Continuity of existence of employment relationship during the period held in reserve:** (1) If any special circumstance arises in the workplace, the employer may suspend the work and hold the worker in reserve.

Explanation: For the purpose of this Section, "special circumstance" means a situation involving the shortage of electricity, water, raw materials or lack of financial resources or inability to reach the workplace or work or operate the workplace because of the occurrence of any situation beyond control.

(2) Where any labour is held in reserve pursuant to sub-section (1), the employment relationship between such an employer and worker shall continue to exist.

(3) Any employer employing ten or more labours may hold the labour in reserve for a period not exceeding fifteen days, pursuant to sub-section (1). Provided that if it is necessary to hold in reserve for more than the said period, the employer shall consult with the authorised trade union or labour relation committee.

(4) Other provisions relating to holding the labour in reserve shall be as prescribed.

Chapter-4

Provisions Relating to Trainees and Apprentices

16. Trainees may be engaged in work: (1) Any enterprise may, by making an agreement with any educational institute, employ any person as an apprentice in accordance with the approved curriculum of such an institute.

(2) The apprentice referred to in sub-section (1) shall not be deemed to be a labour for the purpose of this Act.

Provided that if the person is employed contrary to the approved curriculum, he or she shall be deemed to be a labour in the regular employment.

17. Provisions relating to labour to be applicable: (1) Notwithstanding anything contained in Section 16, in employing an apprentice pursuant to this Chapter, he or she shall not be engaged in work for more than eight hours a day and forty-eight hours a week.

(2) The provisions relating to occupational health and safety shall apply to the apprentices as if they were labours.

(3) Where an apprentice meets with an accident in the course of performing the work of the enterprise, the enterprise shall, unless otherwise agreed between the enterprise and the educational institute, have medical treatment of such an apprentice, and provide compensation to him or her if he or she suffers grievous hurt, as if he or she were a labour.

(4) The matters other than those set forth in sub-sections (1), (2) and (3) shall be as mentioned in the agreement between the enterprise and the educational institute.

18. Engagement in work as trainee labour: (1) An employer may employ any person as a trainee providing on the job training.

(2) The period of training referred to in sub-section (1) shall not be more than one year.

Provided that any period is specified by the prevailing law for a specific work or specific training period is required for it, a trainee may accordingly be employed for that period.

(3) The employer shall provide the person employed a trainee pursuant to this Section with at least such facilities as may not be less than the minimum remuneration and other social security benefits including the sick leave, gratuity, provident fund and insurance.

(4) The employer shall not be compelled to continue the employment of the trainee after the completion of the training period.

Provided that if the same employer engages the trainee in work, the probation period shall not apply to him or her.

Chapter-5

Provisions Relating to Part-Time Labours

19. Part-time employment: (1) An employer may employ a labour for part time.

Provided that a worker who works full time shall not be employed in part-time work without his or her consent.

(2) The remuneration of part time labours shall be fixed generally on the basis of working time (hours) or on the basis of the employment contract entered into between the two parties.

(3) While fixing the remuneration of the part time labours pursuant to sub-section (2), such remuneration shall be fixed on the basis of at least the monthly remuneration of the labours working full time at the same level for the work of same nature.

(4) Where a labour employed part-time pursuant to this Section is employed in the overtime work, such a labour shall be provided with a remuneration that is 1.5 times of the remuneration to which he or she is entitled under sub-section (2).

20. Not to restrain from working elsewhere: No part time labour shall be restrained from working elsewhere.

21. Provisions relating to social security: In the case of a part-time labour who works for more than one employer, each employer shall, on the basis of the basic remuneration to which the labour is entitled, make contribution for gratuity, provident fund or other social security related benefits.

Chapter-6

Provisions Relating to Work Permit

- 22. Restriction on employment of foreigners:** (1) No employer shall employ any foreign citizen as a labour without obtaining the work permit from the Department.
- (2) Notwithstanding anything contained in sub-section (1), the employer may, if the skilled labour that it needs cannot be supplied from among Nepali citizens, employ a foreign labour subject to this Section.
- (3) Prior to employing a foreign labour pursuant to sub-section (2), the employer shall publish an advertisement in a national daily newspaper in order to acquire the required skilled labour from among the Nepali citizens. If, in spite of such an advertisement, no application is received from any Nepali citizen as prescribed or any Nepali citizen cannot be selected, the employer may make an application, accompanied by the evidence thereof, to the Department for the work permit for employing a foreign labour.
- (4) The Department may, if it deems reasonable upon inquiring into the application received under sub-section (3) and the evidence attached therewith, issue a work permit for the employment of a foreign skilled labour.
- (5) Any employer who employs a foreign labour by obtaining the work permit pursuant to sub-section (4) shall make arrangement for making Nepali citizens skilled and gradual replacement of foreign labours.
- (6) The fees and other provisions relating to the work permit shall be as prescribed.
- 23. Foreign citizen to obtain work permit to work in Nepal:** (1) A foreign labour shall obtain the work permit as prescribed in order to work in Nepal.
- (2) Notwithstanding anything contained elsewhere in this Act, any foreign citizen who work in Nepal shall, except where he or she is entitled to diplomatic immunity or is not required to obtain a work permit under any treaty or agreement concluded with the Government of Nepal, obtain a work permit as prescribed.
- 24. Work permit may be issued:** Notwithstanding anything contained in Sections 22 and 23, the Department may, upon maintaining the records, issue the work permit to foreign nationals in the following circumstance:

- (a) The chief executive of an enterprise with foreign investment or operated with foreign assistance and such number of labours as prescribed to work in that enterprise,
- (b) Any technician who comes to repair or maintain any machinery object or install any new technology or to do similar other unforeseen work for a period of three months or less than three months.
- 25. Language of the contract:** While entering into the employment contract with a foreign labour and providing information relating to the work to be performed by him or her, conditions of his or her service and benefits, the employer shall enter into, or cause to be entered into, such a contract or provide such information in such a language that he or she understands or in the English language.
- 26. Remuneration may be repatriated in convertible foreign currency:** Any foreign labour who has obtained the work permit pursuant to this Chapter shall be allowed to repatriate to his or her country the amount of remuneration earned by working in Nepal in a convertible foreign currency.
- 27. Remuneration, conditions of service, benefits of and other provisions relating to foreign labours:** (1) The remuneration to which a foreign labour is entitled for the work performed, conditions of service and benefits of him or her shall be so mentioned in the time-based or task-based employment contract entered into between the employer and the labour as not being less favourable than the standards set by this Act or the rules framed under this Act.
- (2) The employment contract shall remain valid for such a period as mentioned in that contract, and failing such a provision, for a period not exceeding three years.
- (3) Other provisions relating to foreign labours shall be as prescribed.

Chapter-7

Provisions Relating to Working Hours

- 28. Working hours:** (1) No employer shall employ labours to work more than eight hours a day and forty-eight hours a week.
- (2) The labours shall be provided with half an hour rest after five hours of continuous work.
- (3) In the cases of work which is not to be stopped and is to be carried out continuously, labours shall be provided with such a rest time turn by turn.

(4) The rest time to be provided pursuant to sub-sections (2) and (3) shall be counted in the working hours referred to in sub-section (1).

29. Not to compel to work overtime: (1) No employer shall compel a labour to work more than the hours set forth in sub-section (1) of Section 28.

(2) Notwithstanding anything contained in sub-section (1), if the non-performance of a work is likely to cause an adverse effect on the life, safety and health of any person or a serious loss or damage to the employer, the concerned labour may, subject to sub-section (1) of Section 30, be caused to work overtime.

30. Provisions relating to overtime: (1) Where an employer needs to cause any labour to work for more than the working hours specified subject to Section 28, such a labour may be caused to work not exceeding four hours a day and twenty-four hours a week.

(2) The work which any labour has been caused by the employer to perform without giving the substitute leave pursuant to Section 42 shall be deemed to be an overtime work.

31. Additional remuneration to be paid: (1) While employing any labour to work overtime pursuant to Section 30, the employer shall pay to the labour remuneration at a rate of 1.5 times of the basic remuneration receivable during regular hours of work.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Section shall bar the collective agreement to provide for certain benefits or the providing of such benefits as mentioned in the employment contract in the case of the labour of managerial level, in lieu of the additional remuneration receivable for an overtime work.

32. Fixation of working hours: (1) Where an employment contract specifies the 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) Other provisions relating to working hours shall be as prescribed.

33. Arrangement for transportation to be made: In employing a female labour where the working hours begin after the sunset or before the sun rise, the employer shall make necessary arrangement for transportation to and from the workplace.

Chapter-8

Provisions Relating to Remuneration

34. Entitlement of labours to remuneration: (1) Each worker shall be entitled to receive the remuneration and benefits from the date on which he or she starts the work.

(2) The remuneration and benefits which a labour is entitled to shall be so specified in the employment contract as not to be less than that specified in this Act and the rules framed under this Act.

(3) Except as mentioned in the collective agreement between the employer and the labour, the remuneration and benefits being received and enjoyed by the labour shall not be decreased.

35. Payment of remuneration: (1) In paying the remuneration to the labour, the employer shall make such payment in accordance with the provision, if any, mentioned in the employment contract to that effect, and failing such a provision, at such a time as determined by the employer.

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

(a) In the case of a labour working for a period of less than one month, within three days from the date of completion of the work.

(b) In the case of a labour employed in a casual work, immediately after the completion of the work.

(2) Notwithstanding anything contained in sub-section (1), the interval between the dates for payment of remuneration shall not be more than one month.

36. Entitlement to annual increment in remuneration (grade): Any labour who has completed one year of service period shall be entitled to an annual increment in remuneration (grade) each year in an amount equal to at least half a day remuneration based on the monthly basic remuneration to which the labour is entitled.

37. Entitlement to festival expense: (1) Each labour shall be entitled to an amount equal to the basic remuneration of one month as the festival expense each year for the festival to be celebrated according to his or her religion, culture and tradition.

(2) A labour may make a written request to the employer for the payment of the festival expense referred to in sub-section (1) at one time in one fiscal year on the occasion of the main festival to be celebrated according to his

or her religion, culture and tradition. In the case absent such a request, the festival expense shall be provided at the time of Dashain festival every year.

(3) A labour who has not completed one year of service period on or before the day of payment of the festival expense shall be entitled to such expense in proportion to the period of service he or she has completed.

38. Prohibition on deduction of remuneration: (1) Except in the following circumstance, no amount shall be deducted from the remuneration receivable by the labour:

- (a) Any tax, fees leviable under law,
- (b) Any amount of contribution required to be made for provident fund or insurance or any other social security,
- (c) Any amount required to be deducted pursuant to the order or decision by any judicial or quasi-judicial body or arbitration,
- (d) Such amount as prescribed for such service or facility provided by the employer to the labour as prescribed,
- (e) Amount of remuneration for the period during which the labour remains absent from the work,
- (f) In the event of loss of or damage to cash or in-kind of the employer with ulterior motive or recklessly, such amount as mentioned in the cash or in-kind book or the amount equivalent to the production cost in the case of a manufactured good,
- (g) Such amount as specified in the collective agreement to be deductible from remuneration,
- (h) Membership fee chargeable by the trade union,
- (i) Amount of loan or advance provided or paid to the labour by the employer.

(2) While deducting the amount pursuant to sub-section (c), (d), (e), (f), (g), (h) or (i), it shall be deducted from the monthly remuneration that remains after deducting the amounts set forth in sub-sections (a) and (b).

(3) The limit of, procedure and other provisions relating to the amount deductible under sub-section (2) shall be as prescribed.

(4) Where a labour dies or is relieved of service for any reason whatsoever before the amount deductible pursuant to this Section is deducted, such an amount may be deducted from any amount whatsoever payable to such a labour.

(5) Where the amount to be deducted cannot be recovered even after making deductions pursuant to sub-section (4) and the labour has died, the employer shall give a notice of fifteen days to his or her heir under the law for the payment of such an amount.

(6) Where the amount is not paid even within the period referred to in sub-section (5), the employer may make a petition to the court for the recovery of such an amount within thirty-five days of the expiry of the period.

- 39. Remuneration for reserve period:** Where a labour is held in reserve pursuant to this Act, the employer shall pay half the remuneration which he or she is entitled to until the work is resumed.

Provided that such a labour shall not be required to make attendance in the workplace during the reserve period unless the requirement of attendance is mentioned in the notice on holding the labour in reserve.

Chapter- 9

Provisions Relating to Leave

- 40. Weekly leave:** A labour shall get the weekly leave of one day in each month.
- 41. Public leave:** (1) Each labour shall each year get a paid public leave of thirteen days including the May Day, and fourteen days including International Women Labour Day in the case of a female labour.
- (2) Notwithstanding anything contained in sub-section (1), the public holidays in the case of an enterprise shall be as determined by the regulatory authority, if any, that regulates such an enterprise and as determined by the employer in the other situations.
- 42. Substitute leave:** (1) A labour who is involved in a work that must not be stopped or must be done continuously shall get the substitute leave in consideration for having worked on any day of weekly or public leave.
- (2) Any labour who has been engaged in work on a day of weekly or public leave shall be provided with the substitute leave within twenty-one days of the date of engagement in work.
- 43. Home leave:** (1) Every labour shall get paid home leave at the rate of one day for twenty days of the period he or she has worked.
- (2) A labour who is employed in an educational institution or who gets summer or winter leave shall not get home leave.

Provided that where such leave is lesser than the period of home leave, the labour shall get home leave for such number of days as is so lesser.

44. Sick leave: (1) A labour shall get paid sick leave of twelve days a year.

Provided that a labour who work for a period of one year or lesser than one year shall get the sick leave proportionately.

(2) A labour who seeks the sick leave for more than three consecutive days shall submit a certificate on his or her medical check-up by a recognized doctor.

(3) Where a labour has to take leave because of sudden illness, the labour shall inform the employer or the person specified by the employer through the fastest means to the extent available.

45. Maternity leave: (1) A pregnant female labour shall get a maternity leave of a total of fourteen weeks before or after delivery.

(2) A pregnant labour shall compulsorily take leave from at least two weeks before the expected date of delivery to at least six weeks after the date of delivery.

(3) A female labour who takes the maternity leave referred to in sub-section (1) shall get full remuneration for sixty days and shall not get remuneration for the remaining period.

(4) Where a recognized medical doctor recommends that the female labour who has delivered a baby needs further rest for her or her baby's health, the employer shall approve unpaid leave of up to one month in addition to the period referred to in sub-section (1) or sanction such leave to be adjusted with other leave, in continuity with the maternity leave.

(5) Where a female labour in a state of seven months' pregnancy or more than seven months gives birth to a deceased child or suffers miscarriage, she shall get leave as if she made normal delivery.

(6) Where the mother dies before the completion of sixty days of the birth of her child, the labour whose wife has so died may take paid leave for the remaining period for the care of the child from the employer for whom he is working.

(7) If a male labour's wife is going to deliver a baby, he shall get paid maternity care leave for a period of fifteen days.

- 46. Birth registration certificate to be submitted:** Except where a newly born child dies, a female worker who is on maternity leave shall submit a copy of such birth registration certificate as prescribed to the employer.
- 47. Remuneration need not be paid:** Notwithstanding anything contained elsewhere in this Chapter, where a provision is made that a female labour is to receive remuneration for the period of maternity leave from the Social Security Fund, the employer shall not be required to pay, to that extent, the remuneration referred to in this Chapter to the labour for such a period of leave.
- 48. Mourning leave:** (1) Where a labour himself or herself has to mourn according to his or her religion or because her husband or his wife dies or a married female worker has to mourn on the death of her father or mother or father-in-law or mother-in-law, such a labour shall get a mourning leave of thirteen days.
- (2) The labour who goes on the mourning leave referred to in sub-section (1) shall get full remuneration.
- 49. Accumulation of leave:** (1) A labour is entitled to accumulate the home leave and the sick leave for up to ninety days and forty-five days, respectively.
- (2) Where a labour is relieved of the service for any reason or dies, he or she or such family member of him or her as prescribed shall get the lump sum amount to be set by the last basic remuneration being drawn by him or her for his or her accumulated home leave and sick leave.
- (3) A labour whose accumulated leave exceeds the period specified in sub-section (1) shall, at the end of each year, get the amount to be set by his or her basic remuneration for the leave of such excess period.
- 50. Computation of year:** A year shall, for the purpose of leave, be computed on the following basis:
- (a) Where it is determined by law, it shall be in accordance with such law,
 - (b) Where it is determined by the regulatory body, it shall be in accordance with such provision,
 - (c) Where it is not determined pursuant to clause (a) or (b), it shall be as set out in the employment contract,
 - (d) Where it is not determined as set forth in clauses (a), (b) and (c), it shall be in accordance with the financial year of the Government of Nepal.

51. Leave not as a matter of right: (1) All leaves except the sick leave, mourning leave and maternity leave which the labour is entitled to pursuant to this Chapter are only facility and cannot be claimed as a matter of right.

(2) In the case of leaves other than that mentioned in sub-section (1), the employer may, for the reason to be specified, refuse, withhold, deduct or alter the time of the approved leave, on the basis of the need of the work at the workplace.

Chapter-10

Provisions Relating to Provident Fund, Gratuity and Insurance

52. Contribution for provident fund: (1) The employer shall deduct ten percent of the basic remuneration of each labour, add cent percent to that amount and deposit the total amount for the purpose of provident fund.

(2) The employer shall deposit the amount referred to in sub-section (1) in the Social Security Fund in the name of the concerned labour, with effect from the date on which he or she started to work.

(3) Notwithstanding anything contained in the sub-section (2), the employer shall, in the following circumstance, deposit such provident fund amount as prescribed:

(a) Until the Social Security Fund is established and comes into operation, or

(b) Until the law relating to the Social Security Fund becomes applicable to the concerned employer.

(4) In the case of a labour for whom the amount for provident fund was not contributed before the commencement of this Act, the employer shall contribute the amount for provident fund from the date of the commencement of this Act.

(5) The amount for the provident fund deposited in the retirement fund or any other similar fund established under the laws in force at the time of the commencement of this Act or held in the custody of the employer shall be transferred to the Social Security Fund as prescribed after the commencement of this Act.

(6) Notwithstanding anything contained elsewhere in this Section, the employer shall make payment of an additional amount equivalent to ten percent of

the basic remuneration of such a labour if the amount for the provident fund cannot be deposited pursuant to Section (2) or (3) for any reason.

53. To receive gratuity: (1) The employer shall deduct an amount equivalent to eight point three and three (8.33) percent of the basic remuneration of each labour each month and deposit it for the purpose of gratuity.

(2) The amount referred to in sub-section (1) shall be deposited in the Social Security Fund in the name of the concerned labour with effect from the date on which such a labour begins to work.

(3) Notwithstanding anything contained in sub-section (2), the employer shall, in the following circumstance, deposit such amount of gratuity as prescribed:

(a) Until the Social Security Fund is established and comes into operation, or

(b) Until the law relating to the Social Security Fund is applicable to the concerned employer.

(4) The employer shall provide the gratuity referred to in sub-section (1) from the date of the commencement of this Act in the case of a labour whom the gratuity is not required to be paid to before the commencement of this Act.

(5) The amount for gratuity deposited in the retirement fund or any other similar fund established under the laws in force at the time of the commencement of this Act or held in the custody of the employer shall be transferred to the Social Security Fund as prescribed after the commencement of this Act.

(6) Notwithstanding anything contained elsewhere in this Section, the employer shall pay to a labour an additional amount equivalent to eight point three and three (8.33) percent of the basic remuneration of such a labour if the amount for gratuity cannot be deposited for any reason pursuant to sub-section (2) or (3).

(7) Any labour who is entitled to pension shall not get the gratuity referred to in this Act.

54. Medical insurance to be made: (1) The employer shall procure make an annual medical insurance of at least one hundred thousand rupees for each labour.

(2) The premium required for the medical insurance referred to in sub-section (1) shall be borne by both the employer and the labour on pro rata basis.

- 55. Accidental insurance to be made:** (1) The employer shall procure accidental insurance of at least seven hundred thousand rupees covering all kinds of accidents for each labour.
- (2) The whole premium required for the accidental insurance referred to in sub-section (1) shall be borne by the employer.
- (3) If a labour dies or gets completely incapacitated mentally or physically as a result of an accident, such a labour or his or her legal heir under the prevailing law shall get for compensation the cent percent of the amount of insurance referred to in sub-section (1).
- (4) If a labour gets injured or incapacitated in an accident, he or she shall get compensation on the basis of the percentage of incapacitation as prescribed.
- 56. Amount to be paid by the employer:** Where a labour or his or her dependent heir is not able to obtain the amount of insurance because of the failure of the employer to procure insurance referred to in this Chapter or any recklessness or error made in the making of insurance, the employer shall pay an amount equivalent to the insurance to such a labour or dependent heir. \
- 57. Social security scheme to be applicable:** Any employer or labour who so makes contribution in the social security scheme as to be entitled to the benefits including the provident fund, gratuity and medical insurance pursuant to the law relating to the Social Security Fund shall not be required to make additional contribution or insurance under this Chapter, to the extent of such contribution.

Chapter- 11

Provisions Relating to Supply of Labours

- 58. Labours may be employed through supplier:** (1) The Ministry shall, on recommendation of the Council, publish a list of works in which labours may be employed through labour suppliers, by publishing a notification in the Nepal Gazette.
- (2) While employing a labour through a labour supplier pursuant to sub-section (1), the employer shall employ him or her in any work other than the core work of the business or service.
- (3) While inviting or submitting any kind of proposal or tender for the purpose of supplying or causing to supply a labour through a labour supplier or

entering into an agreement for the supply of labour, such proposal or tender or agreement shall be invited or submitted or entered into so that the remuneration and other benefits of the labour to be supplied shall not be less than that specified in this Act.

(4) Any proposal or tender invited or submitted or agreement entered into contrary to sub-section (3) shall *ipso facto* be invalid.

Explanation: For the purpose of this Section, "core work" means the work mentioned while establishing the business and work directly related thereto.

59. License to be obtained: (1) A company that wishes to supply labours shall obtain a license pursuant to this Act.

Explanation: For the purpose of this Chapter, "company" means any company incorporated in accordance with law.

(2) A company that wishes to obtain a license shall make an application in the prescribed format, accompanied by such fees, details and documents as prescribed, to the Office of the concerned area.

Provided that a company that wishes to supply labours in an area with more than one Offices shall make an application in the prescribed format, accompanied by such fees, details and documents as prescribed, to the Department in order to obtain the license.

(3) If the content of an application received pursuant to sub-section (2) seems to be reasonable upon its examination, the Department or Office shall, by taking such a deposit or bank guarantee as prescribed, issue the license to such an applicant on such conditions and in such a format as prescribed not later than fifteen days.

(4) While issuing a license pursuant to sub-section (3), the work or service and scope of work relating to the supply of labours shall be mentioned in such a license.

Provided that the same company shall not be allowed to supply labours for more than two works or services.

(5) Any organization or person carrying out labour supply related business at the time of commencement of this Act shall, not later than six months from the date of commencement of this Act, incorporate a company carrying out the business of supplying labours in accordance with the prevailing company law and obtain the license pursuant to this Section.

- 60. Submission of details by licensee:** A licensee who has obtained a license from the Office shall submit to the Office, and a licensee who has obtained a license from the Department shall submit to the Department, such details as prescribed before the last day of the month of Poush (mid January) each year.
- 61. Obligations of labour supplier:** (1) The labour supplier shall not perform acts and actions contrary to the conditions or directions as prescribed under this Act or the rules framed under this Act.
- (2) The labour supplier shall, in the capacity of the employer referred to in this Act, provide such remuneration and other benefits regularly to the labour it supplies as may not be less than that determined under this Act.
- (3) The labour supplier shall regularly obtain information as to whether or not the main employer has taken or made such measures and provisions or arrangements as required to be taken or made in the workplace for occupational safety and health of the labour, and recommend for making such arrangements immediately if it is found that such arrangements have not been made.
- (4) Where it is found that the main employer has not implemented the recommendation referred to in sub-section (3), the labour supplier shall give information thereof to the Department or concerned Office.
- 62. Revocation, suspension of license or fine:** (1) The Department or Office issuing the license may revoke the licence of a labour supplier in the following circumstance:
- (a) If the labour supplier makes an application in writing for the revocation of his or her license, or
- (b) If, in spite of the fine imposed pursuant to sub-section (6), the labour supplier continues to violate the conditions specified or directions issued pursuant to this Act or the rules framed under this Act.
- (2) Prior to the revocation of a license pursuant to clause (b) of sub-section (1), the concerned labour supplier shall be provided with an opportunity of at least seven days to furnish his or her explanation.
- (3) A notice on the decision made to revoke the license pursuant to this Section shall be published publicly.
- (4) Notwithstanding anything contained elsewhere in this Section, if it appears that the labour supplier whose license has been revoked has any financial liability towards the Government of Nepal or any labour, he or she shall not get

immunity from the performance of such liability by the reason of the revocation of the license.

(5) The Department or Office may suspend as prescribed the license of any labour supplier if such a labour supplier fails to comply with the terms specified in and directions given under this Act and the rules framed under this Act.

(6) If any labour supplier fails to comply with the terms specified in and directions given under this Act and the rules framed under this Act, the Department or Office may impose on such a labour supplier a fine not exceeding twenty-five thousand rupees for the first time.

63. Payment of remuneration and other benefits: (1) In the event of revocation of the license of a labour supplier, such a labour supplier shall pay such amount of remuneration and other benefits as is payable to a labour within fifteen days.

(2) In the event of failure to pay the amount of remuneration and other benefits receivable by a labour within the period specified in sub-section (1), the Department or Office that has issued the license shall arrange the payment of such amount from the deposit or bank guarantee furnished or given by such a labour supplier to such a labour at the time of obtaining the license.

(3) Where the amount of deposit or bank guarantee is not sufficient to pay the remuneration and other benefits pursuant to sub-section (2), the payment shall be made on pro rata basis. If such a labour supplier body is liquidated or dissolved, payment of the remaining remuneration and other benefits shall be made in accordance with the prevailing law. If such a body is continuing other activities without being dissolved or liquidated, the Office shall give an order for the payment of such remuneration and benefits from its other properties.

64. Obligations of the main employer: (1) The main employer shall, while employing a labour through a licensee labour supplier, so employ him or her in accordance with the agreement entered with such a labour supplier.

(2) The main employer shall, before entering into the agreement, arrange for the provision of such remuneration and benefits as may not be less than that specified in this Act or the rules framed under this Act to the labour.

(3) The main employer shall regularly obtain information as to whether or not the labour supplier has provided the remuneration and benefits regularly to the labour employed through such a labour supplier.

(4) If, while obtaining information pursuant to sub-section (3), it is found that the labour supplier has not provided the remuneration and benefits to the labour, the main employer shall immediately recommend the labour supplier to provide such remuneration and benefits and give information thereof to the Department or Office as well.

(5) If the labour supplier fails to provide the remuneration and benefits to the labour in spite of the request made pursuant to sub-section (4), the main employer shall give information thereof to the Department or Office.

(6) If information is received pursuant to sub-section (5) or information is received through any other means about the labour supplier's failure to provide the remuneration and benefits to a labour, the Department or Office may make payment from the deposit or bank guarantee furnished by such a labour supplier at the time of obtaining the license.

(7) The main employer shall take or make such measures and provisions or arrangements as required to be taken or made at the workplace for occupational safety and health.

(8) If the remuneration or benefits to be provided to the labour pursuant to the prevailing law increase after the agreement between the labour supplier and the main employer has been made, the main employer shall add and pay such increased remuneration or benefits.

(9) No labour shall be supplied from any enterprise established with the involvement of the main employer or of any manager or director or family member, on his or her behalf.

(10) Other provisions relating to the obligations of the main employer shall be as prescribed.

65. To make inspection, supervision and monitoring: (1) The Office shall regularly make inspection and monitoring as to whether or not the labour supplier has acted in accordance with this Act or the rules framed under this Act and the directions and conditions given and prescribed pursuant to this Act and the rules framed under this Act.

(2) If it is found from an on-site inspection, monitoring or any other means that any labour supplier has not acted pursuant to this Act and the rules framed under this Act or the conditions specified as applicable to him or her, the Office may give necessary direction to the labour supplier.

(3) It shall be the duty of the concerned labour supplier to comply with the direction given pursuant to sub-section (2).

- 66. Liability of labours to rest on the main employer:** Where any main employer employs any labour by supplying such a labour through a person or company who has not obtained the license to supply labours pursuant to this Act or contrary to the provisions of this Act, such a labour shall be deemed to be a labour of the main employer.
- 67. Prohibition on collecting fee from labour:** No labour supplier shall collect any kind of fee or commission from any labour whom it has supplied.

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 framed under this Act and directions given pursuant to this Act and the rules framed under this Act, the employer shall formulate and implement a policy on safety and health of the labours and other persons at the workplace.
- (2) The policy formulated pursuant to sub-section (1) shall be registered with the Office.
- (3) Other provisions relating to the safety and health policy to be formulated by the employer shall be as prescribed.
- (4) The Office shall regularly monitor as to whether or not the safety and health policy formulated by the employer under this Section has been complied with.
- 69. Duties of employer towards labour:** (1) The duties of the employer towards the labour in respect of occupational safety and health shall be as follows:
- (a) To make safe environment for work by making appropriate safety and health arrangements at the workplace,
 - (b) To make provision for the use, operation, storing and transportation of chemical, physical or biological materials or equipment so that it would not adversely affect the safety and health,
 - (c) To provide necessary information, notice and training relating to the safety and health to the labour, as required,

- (d) To provide necessary training and information in an appropriate language to the labour in relation to the use and operation of the equipment or chemical, physical or biological materials related to the work,
- (e) To make proper arrangement for the safe entry and exit from the workplace,
- (f) To provide personal safety means to the labour, as required, and
- (g) To make such other provisions as prescribed.

(2) The employer shall not collect any fee or charge from a labour in consideration for the provision of any safety related facility or equipment to the labour.

70. Duties of employer towards non-labour: (1) The employer shall make such provision as may be necessary to avoid any adverse effect on the safety and health of any non-labour who walks in and out of, or passes through, the workplace.

(2) Where any operating system of the workplace is likely to cause any harmful effect or risk on the safety or health of any person, the employer shall make arrangement for giving, putting a signal or providing information in that respect.

(3) Any enterprise that uses or manufactures chemical materials shall so manage that the chemical substance, gas or any other thing emitting during the operation of its business does not cause any adverse effect on the local animals, **vegetation**, human beings and environment.

71. Duties of the responsible person: (1) It shall be the duty of the responsible person to ensure whether any workplace, equipment, product or material is safe and healthy for the concerned work.

Explanation: For the purpose of this Section, "responsible person" means any person who has the ownership or control over the workplace, equipment, product or material, and this term also includes any person or organization assigned with the ownership or control in accordance with the agreement, if any, made in relation to the chief of such a workplace, use of the equipment, product or material.

72. Duties of manufacturers, importers and suppliers: (1) The duties of the manufacturer, importer or supplier of any equipment, product or material to be used at the workplace shall be as follows:

- (a) To manufacture, import and supply equipment, product or material found suitable from the examination for the operation and use at the workplace from the viewpoint of safety and health;
- (b) To determine such a method or process for using or operating such equipment, product or material properly so that the safety and health of the concerned persons at the workplace is not affected adversely,
- (c) To identify possible risks of causing adverse effect on the safety and health by the use of such equipment, product or material,
- (d) To conduct necessary research, use or experiment to eliminate or minimize the risks identified pursuant to clause (c),

Provided that where there is a reasonable ground to believe in the results of any research, use or experiment conducted earlier by any other person such a research, use or experiment may be given recognition.

- (e) To prepare a manual in order to provide all the information relating to the necessary measures required to be taken, from the viewpoint of safety and health, during the operation and use of the equipment, product or material to be operated or used at the workplace.

(2) A person or organization that manufactures or installs any equipment to be used in the workplace shall give the employer a report in writing to the effect that such equipment so manufactured or installed, if used properly, will not cause any adverse effect on the safety or health of any person.

(3) If any equipment, product or material is not used in accordance with the information or instruction provided by the manufacturer or supplier providing such equipment, product or material in relation to the use of the equipment, product or material, such equipment or material shall, for the purpose of this Section, not be deemed to have been used properly.

(4) The manufacturer, importer or supplier of any chemical material to be used in the workplace shall provide the employer with such other details including the chemical safety data sheet in relation such material as prescribed.

73. Duties of labour: (1) The duties of the labour in relation to occupational safety and health shall be as follows:

- (a) Not to perform any such act in the workplace intentionally or recklessly that may cause adverse effect or risk on the safety and health of him or her or of others,
- (b) To provide necessary assistance to the employer and concerned person in the fulfilment of any duties mentioned in this Chapter,
- (c) To obtain information about the manuals, instructions and other matters prepared for the operation and use of the equipment, product or material to be operated and used in the workplace safely and cautiously,
- (d) To operate and use the workplace, equipment, product or material safely and cautiously in accordance with the manuals, information and instructions prepared for the operation and use of such a workplace, equipment, product or material, and
- (e) To use compulsorily the personal safety equipment provided by the employer.

74. To form safety and health committee: (1) The employer shall form such a safety and health committee with representation of the labours also as prescribed in an enterprise where twenty or more labours are employed.

(2) For the purpose of sub-section (1), the labours employed through a labour supplier shall also be counted.

(3) The functions, duties and powers of the safety and health committee formed pursuant to sub-section (1) shall be as follows:

- (a) To give advice to the employer regularly on the arrangement on safety and health required to be made in the workplace and on making such an arrangement effective,
- (b) To evaluate the arrangement on safety and health made in the workplace, and draw the attention of the employer for making such an arrangement more effective,

- (c) In the event of failure to do the act in spite of the attention drawn pursuant to clause (b), to give information thereof to the Office,
- (d) To review each year the safety and health policy formulated pursuant to Section 68,
- (e) To perform such other functions as prescribed.

75. Saving from action: No employer shall take disciplinary action against any labour for the sole reason that he or she has committed the following act:

- (a) To give information, notice or make or assist in the making of a complaint against the employer as to failure to make arrangements on safety and health,
- (b) To do any act in the capacity of a member of the safety and health committee referred to in Section 74, or
- (c) To stop the work pursuant to Section 76 or 77 because of occurrence of an immediate danger to safety and health.

76. To stop work in the case of immediate danger: (1) Where it is likely to cause bodily injury or risk to, or serious effect on the health of, a labour or other person or cause unexpected loss or damage to any equipment, product or material if any work is not stopped immediately, the labour involved in such a work shall give information thereof to the employer or responsible person referred to in Section 71.

(2) The employer or responsible person shall, upon receipt of the information referred to in sub-section (1), immediately give appropriate direction in that respect.

(3) Where the employer or responsible person is not available for the time being for the purpose of giving information referred to in sub-section (1), the labour himself or herself may stop such a work.

(4) Where the work is stopped pursuant to sub-section (3), the labour who so stops the work shall immediately give information thereof to the employer or responsible person through the fastest means.

(5) The employer or responsible person shall, upon receipt of the information referred to in sub-section (4), immediately inquire into the matter and prevent or mitigate the risks resulted therefrom.

(6) Where there arises any dispute between the labour and the employer as to whether or not there has arisen any risk necessitating the stoppage of the work and the provision made for the prevention or mitigation of the risk is adequate, any party may make an application to the Office for the settlement of such a dispute.

(7) On receipt of the application pursuant to sub-section (6), the Office shall settle such a dispute upon examining the matter and hearing both the parties, and also examining the evidence if so required.

(8) A decision made for the settlement of such a dispute shall be final and both the employer and the labour shall abide by such a decision.

(9) Notwithstanding anything contained elsewhere in this Section, no work shall be stopped with the intention of causing loss or damage, trouble to or satisfy enmity with the employer.

(10) During the time when the work remains stopped pursuant to this Section, the employer may engage a labour in another work subject to the conditions of his or her service.

77. Direction to stop the work: (1) Where it appears from the inspection or any other source that there exists a ground that an immediate danger has arisen or is likely to arise in the safety and health of the labour or other person in the workplace of any enterprise, the Office may give direction to the employer to immediately stop the work in such a workplace.

(2) A direction to be issued pursuant to sub-section (1) shall set out, inter alia, the reason and ground why such danger has so arisen.

(3) While issuing the direction pursuant to sub-section (1), the Office may, if it appears that it is not appropriate to operate or use any equipment in the workplace, issue an order forbidding the use of such equipment, and while so issuing the order, it may also affix a seal or *Tancha* on such equipment or any part of it.

(4) If the Office gives direction to stop a work pursuant to sub-section (1), the employer shall immediately stop the work.

(5) The employer who is not satisfied with a direction given by the Office pursuant to this Section may make an application to the Department within seven days of the receipt of such a direction.

(6) The Department shall settle the application made under sub-section (5) within fifteen days.

(7) It is not allowed to do the work during the period referred to in sub-section (6).

Provided that if the Office gives information during that period that any immediate threat has not arisen to the safety and health of persons, the work may be resumed.

78. Special provisions relating to occupational safety and health: (1) The safety and health standards to be followed by the enterprise engaged in the work related to the following matters shall be as prescribed:

- (a) Provisions relating to protection of eyes,
- (b) Provisions relating to protection from chemical substance,
- (c) Provisions relating to operation of pressure plants,
- (d) Provisions relating to safeguard of machines,
- (e) Provisions relating to lifting of load,
- (f) Other necessary provisions.

(2) Provisions relating to the inspection of pressure plants and boilers shall be as prescribed.

(3) Provisions relating to information about the establishment of any enterprise and other provisions relating to occupational safety and health shall be as prescribed.

79. To give information: Where any accident occurs or any person is injured or dies in an accident or suffers from any occupational disease in the workplace, the employer shall give information thereof to the Office immediately.

80. Arrangements for control of infectious diseases to be made: (1) The employer shall make necessary arrangements for the prevention and control of infectious diseases in the workplace.

(2) If any labour suffering from any infectious disease needs to undergo treatment, he or she may be prevented from attending the work during the period of treatment.

(3) Where the sick leave of such a labour is not sufficient for treatment pursuant to sub-section (2), the employer may give direction to that labour to make adjustment with any other leave or take the special unpaid leave.

(4) It shall be the duty of the concerned labour to abide by the direction given pursuant to sub-section (3).

81. To engage in easier work: (1) Where any female labour is pregnant, she shall give information thereof, accompanied also by a proof showing her health check-up, to the employer.

(2) If the information referred to in sub-section (1) is received, the employer shall generally so engage such a female labour in work that it does not cause any adverse effect on her health.

82. Special provisions relating to treatment of occupational disease: (1) Where any labour suffers from any such occupational disease as prescribed while doing work of any enterprise, the enterprise shall provide the labour with such treatment expense as prescribed for the treatment of such a disease and such amount of compensation as prescribed, if such a disease is incurable.

(2) Notwithstanding anything contained in sub-section (1), the enterprise shall not be required to provide the amount of treatment expense or compensation referred to in sub-section (1) if the labour is entitled to the amount of expense for the treatment of the occupational disease or compensation from the Social Security Fund.

83. Direction may be issued: (1) The Office may make a sudden or periodic inspection as to whether or not the employer has made safety and health related arrangements.

(2) If, while making inspection pursuant to sub-section (1), it is not found that the employer has made the arrangement on safety and health in the workplace as referred to in this Act or the prevailing law, the Office shall give a direction to the concerned employer specifying the period for making arrangement thereof.

Provided that if it appears that failure to make such arrangement immediately will cause danger to the safety and health of labours or other persons or adverse effect on the environment, it shall give direction indicating the matter to make such arrangement immediately.

(3) The Office may give direction to the employer to provide necessary information and details regarding any accident occurred in the workplace, occupational disease or safety and health of labours and other persons.

(4) It shall be the duty of the concerned employer to abide by or cause to be abided by the direction given pursuant to sub-section (2) or (3).

Chapter-13

Provisions Relating to Industry or Service of Special Nature

84. Provisions relating to tea-estate labours: (1) The obligations of the employers towards the tea-estate labours shall be as follows:

- (a) To make arrangement for suitable quarters within the tea-estate for the labours who do not have their own settlement near the tea-state and their dependent family members,
- (b) To make arrangement for free first-aid-service for the treatment of minor injuries sustained by the labours and their dependent family members and for trained medical staff, medical items for that purpose,
- (c) To make arrangement for the easy availability of the daily consumable goods if there is no market facility near the tea-estate,
- (d) To make proper arrangement for sports and entertainment for physical and mental development of the tea-estate labours and their dependent family members.

Explanation: For the purpose of this Section, -

- (1) "Tea estate" means a tea-estate registered pursuant to the prevailing law, and this term also includes a factory, other physical infrastructures established within the tea-estate and its premises.
- (2) "Tea-estate labour" means a labour who does the work of digging, ploughing, levelling, cutting, plucking, scattering, sowing, collecting, uprooting or similar other work in the land of a tea estate, and this term also includes a labour who is engaged in tea processing and any other work of the tea estate.
- (3) "Dependent family" means his or her family member who lives with a tea-estate labour and whom he or she has to maintain.

(2) This Section shall not be deemed to bar the making of an agreement between the labour working in a tea-estate and the employer in relation to any work of the tea-estate to be performed.

85. Special provisions relating to construction labours: (1) The obligations of the employers towards the construction labours shall be as follows:

- (a) To provide such tools, equipment and material in a sufficient quantity as may be required for construction,
- (b) To make arrangement for temporary quarters to the labours who do not have settlement near the construction workplace, clean drinking water and supply of necessary food items,
- (c) To make appropriate safety arrangement in the construction workplace.

Explanation: For the purpose of this Section, -

- (1) "Construction work" means the construction of a building, road, bridge, canal, tunnel, internal or inter-state waterway, railway, construction work or construction of a power station, telecommunication, telephone or telegraphic structure and similar other structure, and this term also includes installation of any machine, tool or equipment in that structure.
- (2) "Construction labour" means a labour who is engaged in the construction work.
- (3) Any person or organization who takes responsibility or contract for the construction work shall be deemed to be the employer for the purpose of this Act.
- (4) When fixing the rate of remuneration and other benefits for the construction labours, representation of the trade union of the concerned level and of the construction entrepreneurs' association shall be compulsory.
- (5) Other provisions relating to the construction labours shall be as prescribed.

86. Provisions relating to transport labours: (1) The obligations of the employers towards the transport labours shall be as follows:

- (a) To make compulsory provision for at least two drivers to rotationally drive any motor vehicle transporting passengers in a long route,
- (b) To make arrangement for taking rest by drivers of any motor vehicle operating in a long route in different places before reaching the final destination,
- (c) To provide a transport labour who is employed to work for more than eight hours a day with remuneration at the rate of 1.5 times of the remuneration receivable by the transport labour,

Provided that if a trip allowance, food allowance or similar other allowance is to be provided to the transport labour, he or she shall be entitled to only one of such allowance and 1.5 times amount that he or she chooses.

- (d) If the motor vehicle breaks down before reaching the final destination or is required to be stopped in one place for any reason, the labour is to be provided with fifty percent of the allowance receivable by him or her at the time when the motor vehicle is in running condition,
- (e) To keep in the motor vehicle such medicines and medical treatment items as may be necessary for first-aid treatment.

Explanation: For the purpose of this Section, -

- (1) "Long route" means a long route determined pursuant to the law.
- (2) "Transportation work" means the transportation by mechanical means of passengers, animals or goods from one place to another.
- (3) "Transport labour" means any labour engaged in the transportation work.

(2) No transport labour who drives a motor vehicle shall consume alcoholic substance at least twelve hours before driving the vehicle until the final destination is reached.

(3) A labour who acts contrary to sub-section (2) shall be deemed to have committed a misconduct, and the concerned employer may remove him or her from the service.

Provided that an opportunity to submit explanation shall be provided to such a labour before so removing him or her from the service.

(4) If the employer wishes to remove any labour working in a motor vehicle in his or her ownership because of a change in ownership effected from the sale of the vehicle or otherwise, the employer may terminate employment relation by providing him or her with such benefits as payable for retirement.

Provided that this provision shall not apply to an enterprise that operates motor vehicles.

87. Special provisions relating to tourism labours: (1) The obligations of the employers towards the tourism labours shall be as follows:

(a) To provide sufficient quantity of medicines and medical treatment items for first aid when sending labours to the workplace,

(b) To rescue, or cause to be rescued, without delay any labour who gets in an accident or serious health problem.

(2) When sending a labour to the workplace as mentioned in sub-section (1), the employer shall provide the labour with any one of such facility out of a field allowance, food allowance or similar other allowance or 1.5 times remuneration for overtime work that he or she chooses.

(3) The employer operating any hotel, motel, restaurant, jungle safari or other business shall distribute, as prescribed, the service fees collected pursuant to the collective agreement.

88. Provisions relating to domestic labours: (1) The Government of Nepal may fix separate minimum remuneration for domestic labours.

(2) Notwithstanding anything contained elsewhere in this Act, provisions relating to public leave, weekly leave of domestic labours and other provisions related thereto shall be as prescribed.

(3) Where the employer has arranged for food and shelter of a domestic labour in his or her house or assisted in his or her study, the labour may deduct the amount for such purpose from the remuneration of the labour.

(4) The employer shall allow a domestic labour to celebrate festivals as per his or her culture, religion or tradition.

89. Provisions relating to seasonal enterprises: (1) If any seasonal enterprise is closed during the off-season, the labours working in such an enterprise shall be kept in reserve during the period of its closure.

Explanation: For the purpose of this Section, the term “seasonal enterprise” means an enterprise which can be operated in a particular season only, and this term also includes an enterprise which cannot be operated for more than one hundred eighty days in a year.

(2) Notwithstanding anything contained elsewhere in this Act, the employer shall provide a labour who is in regular employment with an amount equal to twenty-five percent of the remuneration to which he or she is entitled during the period of off-season when the seasonal enterprise remains closed.

(3) If there arises a question of whether or not any enterprise is a seasonal enterprise, it shall be as decided by the Office.

- 90. Provisions relating to enterprise which is incorporated in foreign country and operates business in Nepal:** If any foreign enterprise involved in the promotion of any business or sale of any goods or any other activity in Nepal violates the employment contract entered into with its representative or labour in Nepal, such a representative or labour may file a complaint to the Office or Labour Court in accordance with this Act.

Chapter-14

Provisions Relating to Fair Labour Practice

- 91. To observe fair labour practice:** The employer, enterprise and trade union shall observe fair labour practice in their conduct with each other in the course of their respective activity.
- 92. Deemed to be unfair labour practice:** (1) The employer and trade union shall not commit, or cause to commit, any unfair labour practice referred to in sub-section (2) or (3).
- (2) If any employer does any of the following acts, the employer shall be deemed to have committed the unfair labour practice:
- (a) Not to comply with the labour law or cause such non-compliance,
 - (b) To restrict the exercise of any right conferred by the labour law,
 - (c) To create knowingly a false evidence with intent to take action against any labour,
 - (d) To commit any act with the sole intention to trouble or harass a labour knowingly,

- (e) To interfere or cause interference in the formation, operation and administrative functions of the trade union,
 - (f) To continue the lock-out declared unlawful,
 - (g) To assault or manhandle any labour,
 - (h) To provoke or incite any labour with an intent to create enmity or animosity among the labours.
- (3) If the trade union commits any of the following acts, it shall be deemed to have committed the unfair labour practice:
- (a) To pressurize or threaten any labour to or not to become a member of any union,
 - (b) To collect donation or assistance forcibly,
 - (c) To picket or surround the employer's private residence or other enterprise except the workplace or causing such picketing or surrounding,
 - (d) To assault the employer or his or her representative or any labour or do any other illegal activity in order to have their demand fulfilled or causing such assault or activity,
 - (e) To commit any act of damaging the employer's property intentionally.

Chapter-15

Provisions Relating to Inspection

- 93. Provisions relating to Office and inspectors:** (1) The Government of Nepal may, for the implementation of this Act and prevailing Nepal law on labour, establish such Labour Offices as may be required.
- (2) The districts which fall within the jurisdiction of the Labour Offices established pursuant to sub-section (1) shall be as specified by the Ministry.
- (3) The Government of Nepal may, by a notification in the Nepal Gazette, appoint one inspector or more than one inspectors for any area according 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 monitoring as to whether or not the minimum remuneration, allowance fixed pursuant to this Act or benefits

receivable pursuant to the collective agreement and the rights conferred by the prevailing Nepal law to the labours and employers have been implemented,

- (b) To carry out regular monitoring as to whether or not there has been effective implementation of this Act and the rules framed under this Act, and give necessary direction to the concerned party for their implementation,
- (c) To give trainings on the standards and codes of conduct made pursuant to this Act and other prevailing labour laws, and carry out regular monitoring as to whether or not such standards or codes of conduct have been implemented,
- (d) To provide necessary technical assistance to labours and employers if such assistance is sought for conducting necessary trainings,
- (e) To give direction to the employer to provide the occupational safety and health standards or employee bye-laws rules or other relevant documents,
- (f) To implement the collective agreement entered into between the employer and labours and arbitral awards,
- (g) To inspect as to whether or not children have been employed, and immediately rescue them if found employed and take action against such an employer,
- (h) To make inspection as to whether or not the employer has implemented the provisions relating to occupational safety and health provisions referred to in Chapter-12 in the enterprise and workplace,
- (i) To observe or inspect the machine, tool, equipment, goods or material installed in the workplace, and examine whether or not such machine, tool, equipment, goods or material are of prescribed standards, and collect samples thereof if the same needs to be tested,
- (j) To make, or cause to be made, periodic or casual inspection of the enterprise or workplace,
- (k) To order the concerned enterprise or its office-bearers to provide any register, deed and document including the electronic record maintained in the enterprise or workplace, and take control of the

original register, deed or document or a copy thereof upon entering such an or workplace in the event of failure to so provide,

- (l) To obtain information or notice on necessary matters from the employer, managerial level labour or other labour of the enterprise,
- (m) If it appears so necessary, to summon the employer, managerial level labour or other labour of the enterprise to appear in the Office and take his or her statement,
- (n) If such information is received during the inspection of the workplace or enterprise or from any other source that the employer or labour or trade union has acted contrary to this Act and the rules framed under this Act, to give necessary direction to immediately rectify such an act,
- (o) To maintain records of the applications or documents received in the Office or information received from any other sources, give evidence of the registration of such applications or documents or maintain records of the decisions, orders and deeds of mediation or provide a certified copy of any document to one who requests for the same,
- (p) To perform such other functions as specified by this Act and prevailing Nepal law to be performed by the Office, or
- (q) To perform such other functions as may be prescribed.

(2) The Office may, if it appears necessary to obtain assistance of the local administration, police or any other body in exercising the power referred to in this Section, request the local administration, police or concerned body to render such assistance.

(3) It shall be the duty of the local administration, police and concerned body to render such assistance to the Office if so requested pursuant to sub-section (2).

95. Powers, functions and duties of inspector: (1) Performance of such functions and duties and exercise of such powers as to be performed and exercised by the Office shall be made by the inspector and subordinate employee as prescribed.

(2) Notwithstanding anything contained in sub-section (1), if this Act or other law so mentions any function as to be performed by the occupational safety and health inspector himself or herself, the occupational safety and health

inspector shall have the power to perform for and on behalf of the Office such function or inspection of the machineries and tools of the factor, occupational safety and health related function and other technical function.

Provided that nothing contained in this sub-section shall be deemed to bar any Office from engaging any occupational safety and health inspector serving in another office or a technician having knowledge in the concerned subject in the function of inspection and the labour inspector from performing the function accordingly, for and on its behalf, if the Office has no occupational safety and health inspector.

96. Obligations of inspector or employee: (1) The obligations of the inspector or employee deputed to inspect any enterprise or workplace pursuant to Section 95 shall be as follows:

- (a) To enter any enterprise or workplace only after showing his or her identity card,
- (b) To give a written receipt thereof while taking custody of any register, document, record or goods,
- (c) To keep the identity of any complainant confidential if he or she requests to do so,
- (d) To perform the duties of his or her office without causing hinderance in the work of the enterprise or workplace,
- (e) To keep such notice, information or data as received during inspection confidential except as required to be disclosed in accordance with the law.

(2) Where the inspector or any employee who is deputed to inspect any enterprise or workplace fails to perform the duties referred to in sub-section (1), does any act that is disrespectful or contrary to the duties of his or her office or causes any loss or damage by doing any act with mala fide intention, the concerned person shall give information thereof to the competent authority through the Office.

(3) If the inspector or employee is found guilty upon making necessary inquiry pursuant to sub-section (2), the competent authority may take departmental action pursuant to the prevailing law.

- 97. To render necessary assistance:** It shall be the duty of the concerned employer, labour and trade union to render necessary assistance to the inspector or employee deputed to inspect the enterprise or workplace in the function of inspection.
- 98. Report to be submitted:** The inspector or employee shall submit a report setting out such particulars as prescribed to the Office within fifteen days from the date of completion of the inspection of the enterprise or workplace made pursuant to this Chapter, except as otherwise directed.
- 99. Power of the Office to give direction:** (1) On receipt of the report pursuant to Section 98, the Office may, upon studying it as required, give direction immediately to make the improvement, if any, required to be made in relation to any work, working procedure or other matter of the enterprise or workplace or labour or trade union and stop any act, if any, being committed contrary to law.
- (2) A party who is not satisfied with the direction referred to in sub-section (1) may make an appeal to the Labour Court within thirty-five days.
- (3) The decision made by the Labour Court on the appeal made pursuant to sub-section (2) shall be final.
- 100. Labour audit to be made:** (1) Each enterprise shall make a labour audit as prescribed as to whether or not acts and actions are being performed by the enterprise in accordance with this Act, Regulation and prevailing law and prepare a report thereof.
- (2) The report referred to in sub-section (1) shall be provided to the Office or inspector during inspection made pursuant to this Chapter or as and when so demanded by the Office or inspector.
- 101. Making application in convenient Office:** A labour of any enterprise with its branch or workplace in an area where there are more than one Office may make an application to the Office which is convenient to him or her, and the concerned Office shall, on receipt of such an application, conduct hearing on the application.

Chapter-16

Provisions Relating to Council and Committee

- 102. Formation of Central Labour Advisory Council:** (1) There shall be formed a Central Labour Advisory Council as follows for giving advice on labour matters to the Government of Nepal:

(a)	Minister or Minister of State for 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 Transport	-Member
(e)	Secretary, Ministry of Agricultural Development	-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)	Five persons including at least two women nominated as prescribed by the Ministry from amongst the employers	-Member
(l)	Five persons including at least two women nominated as prescribed by the Ministry from amongst the trade union federations	-Member
(m)	Joint Secretary (Responsible for the concerned Division), Ministry of Labour and Employment	-Member-Secretary

(2) The tenure of the members referred to in clauses (k) and (l) of sub-section (1) shall be three years, and they may be re-nominated.

(3) While nominating the members pursuant to clauses (k) and (l) of sub-section (1), the Ministry shall make nomination on the recommendation of the employers' association, in case of employers, and of the Joint Trade Union Coordination Centre, in case of trade union federations.

(4) The members referred to in clauses (k) and (l) of sub-section (1) may nominate their alternative members to take part, in their absence, in the meetings of the Council.

103. Functions, duties and powers of the Council: (1) The functions, duties and powers of the Council shall be as follows:

- (a) To give advice and suggestions to the Government of Nepal on labour policies,
 - (b) To give necessary advice and suggestions to the Government of Nepal for making timely reforms in the labour laws,
 - (c) To give suggestions to the Government of Nepal in relation to the ratification and implementation of any labour related international convention to which Nepal is a party,
 - (d) To give advice and suggestions to the Government of Nepal in relation to the report to be submitted by the Government of Nepal under any labour related international convention to which Nepal is a party,
 - (e) To prepare occupational safety and health standards and recommend the same to the Government of Nepal,
 - (f) To prepare codes of conduct on fair labour practice and recommend the same to the Government of Nepal,
 - (g) To give advice and suggestions to the Government of Nepal for the formulation of policies concerning vocational training and skill development (apprentice) training,
 - (h) To make necessary coordination with the Government of Nepal, employers and trade unions for maintaining industrial peace, sound industrial relation and minimizing labour disputes,
 - (i) To make necessary coordination with the Government of Nepal, employers and trade unions for enhancing employment and productivity,
 - (j) To frame and issue directives on collective bargaining as required, and
 - (k) To perform such other functions as prescribed.
- (2) The Council may form any committee or taskforce, as required, for the performance of its functions.
- (3) The functions, duties and powers of the committee or taskforce formed pursuant to sub-section (2) shall be as specified by the Council at the time of formation of such a committee.
- (4) The secretariat of the Council shall be located in the Ministry.

104. Office of member of the Council to be vacant: (1) The office of any member of the Council referred to in clause (k) or (l) of sub-section (1) of Section 102 shall become vacant in the following circumstance:

- (a) If the member submits resignation in writing to the Ministry through the chairperson,
- (b) If the member remains absent from three consecutive meetings of the Council without giving any notice,

Provided that this provision shall not apply if the alternative member attends the meeting.

- (c) If his or her tenure expires, or
- (d) If he or she dies.

(2) Before removing any member of the Council from his or her office pursuant to clause (b) of sub-section (1), he or she shall be provided with an opportunity to defend.

(3) Where the office of any member falls vacant pursuant to sub-section (1), nomination of another person shall be made for the remainder of tenure from the same sector where that member was nominated from and by following the same procedure.

105. Provisions relating to meetings of the Council: (1) Meetings of the Council shall be held as required at the date, place and time specified by the chairperson of the Council.

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

(2) The chairperson shall call a meeting within fifteen days if one fourth of the total number of members of the Council makes a written request for calling a meeting.

(3) The member-secretary of the Council shall give a notice along with the agenda of the meeting to all the members at least twenty-four hours in advance of the time when such meeting is scheduled.

(4) The presence of more than at least fifty percent of the total number of members, representing the Government of Nepal, employers and trade unions, shall constitute a quorum for the meeting of the Council.

(5) The chairperson of the Council shall preside over the meeting of the Council, and in his or her absence, the secretary of the Ministry shall preside it over.

(6) A labour expert may be invited at the meeting of the Council.

(7) Any decision of the Council shall be taken on the basis of consensus.

(8) If consensus is not reached pursuant to sub-section (7), a decision shall be taken on the basis of majority of the members representing the Government of Nepal, employers and unions.

(9) There shall be maintained a separate minute book for recording the decisions of the meetings of the Council, and such decisions shall be authenticated by the member-secretary of the Council.

(10) Other procedures relating to the meeting of the Council shall be as determined by the Council itself.

(11) Members of the Council shall get such meeting allowance as specified by the Government of Nepal.

106. Fixation of minimum remuneration: (1) The Ministry shall, on recommendation of the Minimum Remuneration Fixation Committee referred to in Section 107, fix the minimum remuneration of labours in every two years.

(2) Notwithstanding anything contained in sub-section (1), the Ministry may fix the minimum remuneration in the event of failure of the Minimum Wage Fixation Committee referred to in Section 107 to recommend the minimum remuneration due to absence of consensus.

(3) The Ministry shall publish the minimum remuneration fixed pursuant to this Section in the Nepal Gazette.

(4) The minimum remuneration fixed pursuant to sub-section (3) shall come into force on the first day of the new financial year.

Provided that if it is otherwise agreed between the trade union and the employer concerning the date of coming into force of the minimum remuneration, it shall come into force accordingly.

(5) When fixing the minimum remuneration in accordance with other prevailing law, such remuneration shall not be so fixed as to be less than the remuneration fixed pursuant to this Act.

107. Minimum remuneration fixation committee: (1) The Ministry shall form a permanent minimum remuneration fixation committee as prescribed, consisting of

representatives from the Government of Nepal, trade unions and employers' associations for the purpose of recommending the minimum remuneration of labours.

(2) The committee formed pursuant to sub-section (1) may, while recommending the minimum remuneration of labours, recommend the minimum remuneration of labours applicable for the whole of Nepal or for enterprises or industries of any specific sector or nature or specific sector of employment.

(3) The grounds for recommendation of the minimum remuneration shall be determined by the minimum remuneration fixation committee itself referred to in sub-section (1).

(4) The minimum remuneration fixation committee referred to in sub-section (1) shall commence the process of reviewing the minimum remuneration from the month of Baishak (mid April) in every two years.

(5) Procedures and other provisions relating to the meetings of the committee referred to in sub-section (1) shall be as prescribed.

Chapter-17

Provisions Relating to Internal Management of Enterprise

108. Internal management may be made: (1) Every enterprise may, for the purpose of its internal management, make a bye-law as required.

(2) Any enterprise, when making a bye-law on service, conditions and benefits of labours, or any competent body to approve the bye-law made by any enterprise, when approving such a bye-law, shall do so make or approve as not to be contrary to the minimum standards set forth in this Act and the collective agreement.

(3) The Ministry may, for the purpose of sub-section (1), make a model bye-law as required.

Provided that it shall not be deemed to bar the Nepal Rastra Bank, in the case of banks and financial institutions, and the regulatory authority, in the case of other enterprises, from making bye-laws.

(4) One copy of the bye-law made by an enterprise shall be registered in the Office, such a bye-law shall be made available to any labour if he or she wishes to look at.

(5) The enterprise shall, when making or amending the bye-law, consult the authorised trade union, if any, in the enterprise and an active trade union if there is no such authorized trade union.

(6) Where any provision of the bye-law made by the enterprise contradicts with this Act, prevailing laws or collective agreement, the court may void such a provision of the bye-law or give other appropriate order.

109. Transfer may be made: (1) The enterprise may transfer a labour from one office, branch or unit of the enterprise to another office, branch or unit without causing any adverse effect on the conditions of service and benefits of him or her and without making difference in the nature and level of his or her work.

(2) Provided that transfer may be made in a manner to make difference in the nature and level of work in the following circumstance:

- (a) With the consent of the concerned labour,
- (b) Where the labour is promoted and placed,
- (c) As mentioned in the collective agreement, or
- (d) To transfer the labour to other work related to the training or skill or educational qualification acquired by him or her.

(2) Any labour employed in any one enterprise may, with his or her consent, be transferred to another enterprise.

(3) When making transfer pursuant to sub-section (2), an agreement shall be made as prescribed between the enterprise making transfer and the enterprise where the labour is transferred to on the matter that the service period of the employee to be so transferred shall be added and the enterprise where the labour is transferred to shall bear all benefits to the receivable on the basis of the service period and on other conditions of service.

(4) When transferring any labour from the workplace located in the place of his or her permanent residence or to any other place from the existing workplace, the employer shall provide benefits as prescribed.

110. To be deputed as representative: (1) Any enterprise may depute its labour to another enterprise to work in the capacity of its representative.

(2) Except as otherwise agreed when making deputation pursuant to sub-section (1), the obligations relating to the service and benefits of such a labour shall be vested in the enterprise making such deputation.

111. Formation of labour relation committee: (1) The employer of an enterprise where ten or more than ten labours work shall form a labour relation committee as prescribed.

(2) The functions, duties and powers of the committee formed pursuant to sub-section (1) shall be as follows:

- (a) To hold discussion as required for productivity increment and improvement in the operating system,
- (b) To make an effort to settle any grievance in discussion with the concerned party if the labour has or is likely to have such a grievance,
- (c) To improve the working environment of the workplace,
- (d) To function in the capacity of occupational safety and health committee until it is formed, and
- (e) To perform such other functions as prescribed.

(3) The labour relation committee referred to in sub-section (1) shall meet as required without adversely affecting the working hours of the enterprise.

(4) Provisions relating to the formation, procedure and meeting of the committee shall be as prescribed.

112. Performance evaluation of labours by enterprise: (1) An enterprise may have performance evaluation of its labours generally once in a year.

(2) The basis and procedure for the performance evaluation referred to in sub-section (1) shall be determined in a just and reasonable manner.

(3) The basis and procedure referred to in sub-section (2) shall be notified to the labours before the period for the performance evaluation commences.

(4) Upon completion of the performance evaluation pursuant to sub-section (1), the employer or the person designated by him or her shall discuss with the concerned labour about his or her strengths and weaknesses and give a reasonable opportunity to improve the weaknesses.

(5) Where the concerned labour disagrees with the evaluation made pursuant to sub-section (4), such a labour shall be required to sign the evaluation form after providing him or her with an opportunity to note down disagreement.

(6) Where a labour notes down disagreement pursuant to sub-section (5), the enterprise shall make a provision for its review.

(7) Other provisions relating to the performance evaluation of the labours shall be as prescribed.

Chapter-18

Settlement of Individual Disputes

113. Submission of individual claims: (1) If any labour has an individual claim on any matter related to the right conferred by this Act, Regulation, prevailing laws or collective agreement, such a labour may make an application in writing to the employer.

(2) In the event of receipt of the application referred to in sub-section (1), the employer shall receive the application and give its receipt to the labour.

(3) In the event of receipt of the application referred to in sub-section (1), the employer shall settle the dispute relating to such a claim within fifteen days upon holding discussion with the concerned labour.

(4) Notwithstanding anything contained in sub-section (3), the period for the settlement of dispute may be extended through consent between the employer and the labour.

114. Application may be made to the Office: (1) The concerned party may, in the following circumstance, make an application to the Office for the settlement by mediation of the individual claim referred to in Section 113:

(a) If the employer does not give a notice for discussion within seven days from the date on which the application was made pursuant to sub-section (1) of Section 113, or

(b) Failing an agreement upon discussion held pursuant to sub-section (3) of Section 113, after fifteen days from the date on which the original application was made to the employer.

(2) In the event of receipt of the application pursuant to sub-section (1), the Office shall give the concerned employer and the labour a notice specifying the date and time for discussion.

(3) The Office shall settle the dispute relating to the claim within twenty-one days from the date of receipt of the application pursuant to sub section (1), by holding negotiations as required between the employer and the labour.

(4) Notwithstanding anything contained in sub-section (3), the period for the settlement of dispute may be extended through consent between the Office, employer and labour.

(5) If an agreement is reached between the concerned employer and the labour upon the negotiations referred to in sub-section (3), such a dispute relating to the claim shall be deemed to have been settled.

(6) The agreement reached pursuant to sub-section (5) shall be binding on the concerned party.

115. Decision to be made by the Office: Where the problem could not be solved pursuant to Section 114, the Office shall, on the basis of the available evidence, make a decision within fifteen days.

Chapter-19

Settlement of Collective Disputes

116. Collective claim may be submitted: (1) Any enterprise employing ten or more than ten labours shall have a collective bargaining committee as follows:

(a) A team of negotiating representatives designated on behalf of the elected authorized trade union of the enterprise,

(b) In cases where election to the authorised trade union referred to in clause (a) could not be held or where election has been held but its term has expired, a team of negotiating representatives nominated through mutual agreement of all the unions in the enterprise,

(c) In cases where there is no authorised trade union referred to in clause (a) or team referred to in clause (b), a team of representatives supported with the signatures of more than sixty percent of the labours working in the enterprise.

(2) The collective bargaining committee may submit collective claims or demands in writing to the employer on issues relating to the interest of the labours.

(3) Notwithstanding anything contained in sub-section (2), no collective claims or demands may be submitted on the following matters:

(a) A matter which is contrary to the Constitution of Nepal,

(b) A matter which contains an allegation with no evidence or basis and is thus contrary to the interest of any one,

- (c) A matter which affects the personal conduct of any employer or labour,
- (d) A matter which is not related to the enterprise,
- (e) Until the period specified in this Act lapses in cases where the collective agreement has been made,
- (f) A matter relating to the rate of contribution and benefits specified for the social security scheme.

(4) The collective bargaining committee may consist of a maximum of three to eleven members as prescribed, on the basis of the number of labours.

(5) The collective bargaining committee formed pursuant to this Section shall have the powers including that to submit collective claims or demands, enter into agreement, file a case against any person or defend a case.

117. To hold negotiations on collective claims, demands: (1) In the event of submission of collective claims, demands pursuant to Section 116, the concerned employer shall, not later than seven days of the date of submission of such claims or demands, give a notice in writing to the collective bargaining committee, stating *inter alia* the venue and time for negotiation.

(2) Where a notice is given pursuant to sub-section (1), the members of the collective bargaining committee shall be present for negotiations at the venue and time stated in the notice.

(3) If, while conducting negotiations, any understanding or agreement is reached between both the parties, the disputes relating to the collective claims, demands shall be settled.

(4) The understanding or agreement made pursuant to sub-section (3) shall be binding for the concerned parties.

118. Settlement through mediation: (1) The concerned party may, in the following circumstance, make an application to the Office for the settlement of collective claims, demands through mediation:

- (a) Where the employer fails to give a notice to the collective bargaining committee for negotiations within the period referred to in sub-section (1) of Section 117, or
- (b) Where an agreement could not be reached upon negotiation held pursuant to sub-section (3) of Section 117 not later than twenty-one days from the date of submission of claims, demands.

Provided that nothing shall be deemed to bar the extending of the said period with the consent of the parties in cases where the negotiation is going on.

(2) In the event of receipt of an application pursuant to sub-section (1), the Office shall summon the presence of the concerned parties and settle the dispute through mediation.

(3) The mediation proceeding referred to in sub-section (2) shall be completed not later than thirty days from the date of receipt by the Office of the application.

Provided that nothing shall be deemed to bar the extending of the said period with the consent of the parties in cases where the negotiation is going on.

(4) The dispute relating to the collective claims, demands shall be settled if an agreement is reached between both the parties upon the negotiation held in presence of the Office pursuant to sub-section (3).

(5) The agreement made pursuant to sub-section (4) shall be binding for the concerned parties.

119. Settlement of dispute through arbitration: (1) Where mediation does not succeed pursuant to Section 118, the dispute relating to the collective claims, demands shall, in the following circumstance, be settled through arbitration:

- (a) If the collective bargaining committee and the employer agree to settle the dispute relating to collective claims, demands through arbitration,
- (b) If a collective dispute arises in an enterprise providing essential services,
- (c) If a collective dispute arises in an enterprise within the special economic zone, or
- (d) If the strike is prohibited by imposition of a state of emergency in accordance with the Constitution.

Explanation: For the purpose of this Chapter, the term “essential service” means any service which may, if interrupted, have an adverse impact on the life, health and safety of the people across the 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 arise in the country as a result of ongoing or possible strike or lockout or that

the dispute needs to be settled by arbitration, the Ministry may give an order for the settlement of any collective dispute through arbitration irrespective of the stage of such a dispute.

(3) For the purpose of sub-sections (1) and (2), the Ministry may form an arbitration panel comprising representations from the labour, employer and Government of Nepal.

(4) Expenses of the arbitration panel to be formed pursuant to sub-section (3) shall be borne by the Government of Nepal as prescribed.

(5) Any party wishing to have the dispute settled through arbitration shall submit claims in writing to the arbitrator as prescribed.

(6) On receipt of the claims referred to in sub-section (5), the arbitrator shall send a copy of such claims to the other party and provide an opportunity to such party to submit counter-claims in that respect.

(7) In conducting the proceeding referred to in this Section, the arbitrator may consult or discuss with any expert.

(8) Hearing shall be conducted at such date, time and place specified by the arbitrator, and the arbitration proceeding shall not sojourn for the sole reason that any party has remained absent or counter-claim has not been submitted.

(9) The arbitrator shall make award not later than thirty days from the date of completion of the hearing pursuant to sub-section (8).

(10) The arbitrator may exercise such powers as the court has under the prevailing laws in relation to the matters including examining the evidence, taking depositions of witnesses, making on-site inspections, in connection with the proceeding.

(11) Except as otherwise provided for in the agreement by the parties, other provisions relating to the arbitral proceeding shall be as determined by the arbitrator.

120. Power to form labour arbitration tribunal: (1) The Government of Nepal may form an independent labour arbitration tribunal for having mediation and arbitration with regard to the collective dispute.

(2) Where a labour arbitration tribunal is formed pursuant to sub-section (1), the labour arbitration tribunal shall conduct the mediation and arbitration proceedings referred to in this Chapter.

(3) Other provisions relating to the labour arbitration tribunal shall be as prescribed.

121. Right to strike for settlement of collective disputes: (1) The collective bargaining committee may, if any of the following circumstances exists, organize a strike for the settlement of any collective dispute:

- (a) If there exists no circumstance requiring compulsory arbitration pursuant to sub-section (1) of Section 119,
- (b) If the arbitrator fails to perform the arbitral functions,
- (c) If an arbitration panel could not be formed within twenty-one days from the date of application to the Ministry or decision is not made requiring arbitration,
- (d) If award is not given by the arbitrator within the prescribed time,
- (e) If the employer refuses to enforce the arbitral award or challenges such an award on legal grounds,
- (f) If, except where compulsory arbitration is to be made, any party disagrees with the arbitral award pursuant to sub-section (2) of Section 122.

(2) In order to make a strike pursuant to sub-section (1), a written notice along with the claims, demands, and also specifying the date from which the strike is to commence shall be submitted to the employer in advance of thirty days, and information thereof shall also be given to the local administration and the concerned Labour Office.

(3) Notwithstanding anything contained elsewhere in this Act, if the Ministry gives an order for the settlement of the dispute through arbitration pursuant to sub-section (2) of Section 119 after the notice on strike is given or the strike is commenced pursuant to sub-section (2), they shall postpone such a strike and participate in the arbitral process.

(4) Notwithstanding anything contained elsewhere in this Act, the labours deputed as sentries and guards for the security of the enterprise shall not be allowed to participate in the strike and do any act referred to in Section 125 during the time when they are assigned on duty.

122. Arbitral award and collective agreement to be binding: (1) If any collective dispute is settled through compulsory arbitration pursuant to sub-section (1) of Section 119, the arbitral award shall be binding on the concerned parties.

(2) If any party to any dispute referred to arbitration in pursuance of the order by the Ministry pursuant to sub-section (2) of Section 119 who is not satisfied with the arbitral award on the dispute fails to note down disagreement in writing to the arbitrator not later than five working days from the date of the award, such an award shall also ipso facto be binding on the concerned party after the expiration of that period.

(3) The collective agreement and arbitral award need to be registered in the Office for record and enforcement thereof.

(4) The collective agreement shall remain valid for two years from the date of its entry into force, if any, specified in the agreement itself and, failing the specification of such a date, from the date of signing of the agreement and from the date of the arbitral award, if any, made, and shall be valid as of law.

(5) Notwithstanding anything contained in sub-section (4), the provisions in the collective agreement or arbitral award shall continue to apply unless and until it is amended or repealed by another collective agreement or arbitral award.

123. Special provisions relating to the submission of collective claims, 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 goods or service providers providing similar nature of service or business as prescribed may form a collective bargaining committee as prescribed and submit collective bargaining claims, demands to the employers' association of the concerned group of industries.

(2) The manner of submitting claims, demands referred to in sub-section (1), procedure relating to collective bargaining and provisions relating to the agreement shall be as prescribed.

(3) In the case of the enterprise to which the collective agreement referred to in this Section is applicable, no collective claims, demands and agreement may be submitted and made pursuant to this Chapter.

(4) Notwithstanding anything contained in sub-section (4) of Section 122, the Ministry may issue an order that collective claims, demands and negotiations should be submitted and held within a specified time. In the event of issuance of such an order, it may happen earlier or later than the time specified in the same sub-section of the same Section.

124. Right to lock-outs: (1) Where a strike is organized or continued without giving a notice pursuant to this Act or the collective dispute could not be settled through the procedure referred to in this Act, the management may, by giving justifiable grounds, lock out the enterprise by obtaining approval of the Department.

(2) Before making a lock-out pursuant to sub-section (1), the manager shall issue a notice in advance of at least seven days, also specifying the date of lock-out, for information to the labours that if the strike is not ended the lock-out will be made.

(3) Notwithstanding anything contained in sub-sections (1) and (2), where there is a possibility of causing loss to the enterprise because of gherao, riot, physical unrest etc. by the labours during the period of strike, the management may lock out the enterprise. If the lock-out is so made, information along with the justification for making such lock-out shall be given to the Office or Department and the local administration not later than three days.

(4) On receipt of the notice pursuant to sub-section (3), the local administration shall immediately make necessary security arrangement in such a workplace.

(5) The Department may at any time declare the lock-out of any enterprise illegal in case it appears to be unjustifiable or it is likely to disturb the peace and security of the country or it is contrary to the economic interest of the country.

(6) Notwithstanding anything contained elsewhere in this Section, no lock-out may be made in an enterprise that operates any essential service.

125. Picketing or assembly may be made: (1) With the objective of exerting pressure to have fulfilled the demands when the strike or lock-out is continuing, the labours may picket or assemble at the main entrance of the workplace or enterprise peacefully.

(2) In any circumstance other than the circumstance where strike or lockout, they may picket or assemble before or after the working hours or during the rest time without disturbing the work of the workplace or enterprise.

(3) Even in cases where picketing or assembly is made pursuant to sub-section (1), the labours may not do any act and action such as prohibiting others from entering or leaving the workplace or enterprise or causing any loss or damage to the workplace.

- 126. Employment contract not to be violated:** No labour shall be deemed to have violated the employment contract by the reason that he or she has made a strike, lock-out or picketing or made a complaint in accordance with the law, and during that period, the employment contract shall be deemed to continue to be effective.
- 127. Remuneration for strike or lock-out period:** (1) Any labour who makes a strike in a manner to be contrary to the prevailing law shall not be entitled to any remuneration for the period of such a strike.
- (2) Labours shall be entitled to full remuneration for the period of lock-out if such lock-out is made by the employer in a manner to be contrary to the prevailing law.
- (3) If the collective agreement contains any agreement in relation to the remuneration, the matter shall be governed accordingly; and failing such agreement to that effect, the labour shall get half the remuneration for the period of strike or lock-out made in fulfilment of the procedure of this Act.
- (4) If there arises any dispute as to whether any strike or lockout made in an enterprise is contrary to law or not, the Department shall conduct necessary inquiry and make decision not later than thirty-five days.
- 128. Prohibition on filing of case against loss:** (1) Where any financial loss is caused to the employer or labour because of a strike, picketing or lock-out made in fulfilment of the procedures referred to in this Act, no case may be filed in any court against any labour, collective bargaining committee, trade union or employer involved in such a strike, picketing or lock-out in relation to such a loss.
- (2) Notwithstanding anything contained in sub-section (1), if any person or group makes destruction or arson in the workplace or destruction of any property in any other manner or causes physical damage, the amount equivalent to the loss, damage may be recovered from such a person or group.
- 129. Collective bargaining or agreement to be made in good faith:** (1) The trade union or collective bargaining committee or employer shall, in making a collective bargaining or collective agreement, do so in good faith.
- (2) Other provisions relating to the collective bargaining or 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 each labour to observe discipline and fulfil duties referred to in this Act or the rules framed under this Act or the by-law.
- 131. Misconduct and punishment:** (1) If a labour commits the following misconduct, he or she may be reprimanded:
- (a) To remain absent from the work without having a leave sanctioned,
 - (b) To leave the workplace without obtaining permission of the management,
 - (c) To appear late in work frequently without obtaining permission,
 - (d) To disobey any order given in relation to the work by the employer or any employee superior in level to him or her,
 - (e) To commit such other misconduct as specified in the bye-law.
- (2) In the event of commission of any of the following misconducts, remuneration equal to a maximum of one day may be deducted:
- (a) To refuse to receive any letter or notice given by the employer or sentencing authority,
 - (b) To take part in an illegal strike or force others to do so or make delay or slow in work collectively,
 - (c) To cause loss or damage to the enterprise by decreasing the production or service recklessly or negligently,
 - (d) To make attempt to take benefits by submitting false documents,
 - (e) To not use the equipment provided by the employer if he or she is a labour responsible for using such equipment,
 - (f) To commit such other misconduct of similar nature as specified in the bye-law.
- (3) In the event of commission of any of the following misconducts, annual salary increment of one year may be withheld or promotion withheld for one year:
- (a) To take any property outside the enterprise without the permission of the competent person and use it or allow it to be used by any unauthorized person,

- (b) To make attempt to make embezzlement in the employer's transaction,
 - (c) To damage the employer's property recklessly or negligently,
 - (d) To stop the supply of food, water, telephone, electricity service or prevent movement within the workplace,
 - (e) To intentionally misuse, or cause loss or damage to any goods kept or provisions made for the benefit, safety or health of the labours,
 - (f) To commit such other misconduct of similar nature as specified in the by-law.
- (4) A labour may be dismissed from the service if he or she commits any of the following misconducts:
- (a) To batter or cause bodily injury to, or take hostage the employer, any labour, customer or any person concerned with the workplace with or without the use of arms or weapon, or cause unrest or destruction in the area of the enterprise,
 - (b) To take or give a bribe,
 - (c) To steal any one's property in the workplace,
 - (d) To make financial misappropriation in the enterprise,
 - (e) To intentionally cause damage to any property that belongs to or is in the custody or use of the employer,
 - (f) To remain absent from the work for more than thirty consecutive days without having a leave sanctioned,
 - (g) To do any act of divulging secrecy of any production technology related formula or confidential information of the enterprise or workplace where he or she is working with the intention of causing loss or damage to such an enterprise,
 - (h) To act in collaboration with a competitive employer in the similar nature of business of the enterprise or carry on any competitive business on his or her own or provide any secret information of the enterprise where he or she is employed to any competitive employer,
 - (i) To get convicted by the court of any criminal offense involving moral turpitude during the period of employment,
 - (j) To make and submit any fake educational certificate and other certificate for the purpose of appointment,

- (k) To consume narcotic substance or liquor during the working hours or come to the workplace upon consuming the same,
- (l) To get punished for more than two times for the misconduct pursuant to sub-sections (1), (2) and (3) within a period of three years,
- (m) To commit any misconduct if the prevailing law provides for the dismissal from service in the case of commission of such misconduct.

132. Prohibition of sexual harassment: (1) No person shall commit, or cause to be committed, any such act, with the exertion of undue influence, as considered to be sexual harassment under the law in the workplace or in the course of work.

(2) The employer may, depending on the condition and gravity of the act, impose punishment to the extent of even dismissal from the service on the labour who commits sexual harassment.

(3) Where the employer or chief executive of any enterprise commits sexual harassment, the trade union, victim or any member of his or her family may file a complaint in accordance with the law.

133. Provisions relating to misconduct may be made in the bye-law: (1) Where specific punishment for specific type of misconduct has been prescribed by the respective regulatory bodies regulating banks or financial institutions, schools, telecom service providers, hospitals, air services, insurance services or enterprises of specific nature, provisions may be made in the bye-laws accordingly.

(2) Provisions may be made in the bye-law of an enterprise for dismissal from the service as per the collective agreement or with the approval of the Department in the event of commission of misconduct of a serious nature.

134. Power to suspend: (1) Where any labour is detained in accordance with law, such a labour shall *ipso facto* be suspended during that period and shall not be entitled to remuneration for that period.

Provided that if a labour who is detained upon a complaint filed by the employer himself or herself is proved to be innocent, he or she shall be entitled to the full remuneration for that period.

(2) Except in the cases referred to in sub-section (1), if it does not appear appropriate to keep on engaging in work a labour for whom the punishment referred to in sub-section (4) of Section 131 has been proposed or if there is a

possibility that he or she may destroy the evidence relating to the charge made against him or her or obstruct the investigation, the employer may suspend such a labour.

(3) While suspending any labour pursuant to sub-section (2), he or she may not be suspended generally for more than three months.

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

(4) The labour shall be entitled to half the remuneration during the period of suspension referred to in sub-section (2).

(5) Where a labour who has been suspended pursuant to sub-section (2) is acquitted of the allegation made against him or her, he or she shall be entitled to all such remuneration, and increment in salary if any, receivable by him or her that remains after deducting the amount of remuneration which he or she has received during the period of suspension.

(6) Except where any labour is held in detention upon first information report or complaint by the employer himself or herself, the employer may terminate the service of such a labour if the period of suspension referred to in sub-section (1) exceeds ninety days. The opportunity hearing need not be given to the concerned labour while so terminating the service.

135. Opportunity to be given to submit clarification: Prior to imposing punishment on any labour for misconduct, the authority imposing punishment shall provide such a labour with a notice giving opportunity to submit clarification within a period of seven days, and such a notice shall clearly state also the facts of commission of the misconduct and possible punishment imposable if it is proved.

136. Authority imposing punishment: (1) The power to impose punishment for misconduct shall be vested in its chief executive in the case of an enterprise.

(2) Notwithstanding anything contained in sub-section (1), if the bye-law empowers any managerial level labour to take final decision concerning the punishment imposable for any misconduct, such an authority shall have power to investigate and impose punishment.

137. Period for taking decision: (1) Where any labour is found to have committed misconduct, it is necessary to commence action within two months from the date of knowledge of the commission of such misconduct.

(2) A decision shall be taken within three months from the date of commencement of the action pursuant to sub-section (1).

138. Punishment may be remitted: (1) Nothing contained in this Chapter shall be deemed to bar the imposing of lesser punishment on any labour by proposing higher punishment.

(2) Where any enterprise has made a bye-law providing for lesser punishment than that imposable under this Chapter, the provision of the bye-law shall apply to the labours of such an enterprise.

Chapter-21

Provisions Relating to Termination of Employment

139. Security of employment: (1) Employment of any labour shall not be terminated in any condition except in accordance with this Act and the rules or bye-law framed under this Act.

(2) Proper and sufficient reason shall be given when terminating the employment.

140. Termination of time-based and work-based employment: Employment of a labour engaged in a time-based or work-based employment shall be terminated in the following circumstance:

(a) After the expiry of the time specified in the employment contract, in the case of the labour engaged in the time-based employment,

Provided that if the labour is in project-based employment and the period is extended or the period for the completion of such a work is extended on the basis of the nature of the work, the employment shall not terminate until that period.

(b) After the completion of the work specified in the employment contract in the case of a labour who is in work-based employment, or

Provided that if the labour is in project-based employment and the work is added or the period for the completion of such a work is extended on the basis of the nature of the work, the employment shall not terminate until that work remains.

(c) In the case of a labour in casual employment, at the will of the employer or labour.

141. Employment may be terminated voluntarily: (1) Any labour may, by submitting resignation in writing to the employer, terminate the employment.

(2) The employer shall accept the resignation submitted pursuant to sub-section (1) within fifteen days and give information thereof to the labour.

(3) Where the employer does not accept the resignation within the time-limit referred to in sub-section (2), such resignation shall be deemed to have been accepted *ipso facto* from the day following the day on which the time-limit expires.

(4) Notwithstanding anything contained elsewhere in this Section, the resignation submitted by a labour may be cancelled through mutual consent between the employer and the labour.

(5) If the labour continues working in the same enterprise even after the day on which his or her resignation is accepted and becomes effective, his or her resignation shall be deemed to have been cancelled.

142. Employment may be terminated on the ground of incompetence: (1) If, while evaluating the work performance of any labour pursuant to the provisions set forth in this Act or the rules and bye-law framed under this Act, the work performance of such a labour is found unsatisfactory or poor for three or more than three consecutive years, the employer may terminate the employment of such a labour.

(2) Prior to terminating the employment pursuant to sub-section (1), the work performance evaluation must have been made as set forth in this Act or the rules and bye-law framed under this Act.

(3) Prior to terminating the employment of any labour pursuant to this Section, the employer of any enterprise employing ten or more labours shall give a period of at least seven days to the concerned labour for clarification.

143. Employment may be terminated on the ground of health: (1) Where any labour becomes incapable of working as a result of physical or mental incapacitation or grievous hurt or injury or it affects the work because of a long time required for medical treatment, the employer may, on the basis of recommendation by a medical doctor, terminate the employment of such a labour.

(2) Notwithstanding anything contained in sub-section (1), the employment of any labour may not be terminated during the period he or she is undergoing treatment in a hospital because of any accident or occupational disease while performing the work specified by the employer or until one year from the date of commencement of his or her treatment at home if he or she is undergoing

treatment at home, and the employer shall provide full remuneration during such a period.

Provided that the employer shall not be required to provide remuneration if the labour is entitled to receive the remuneration facility from the Social Security Fund for the period of treatment.

(3) In the case of a labour who is not able to attend the work of the enterprise on the ground of medical treatment in the circumstance other than that set forth in sub-section (2), the employment of such a labour may not be terminated until six months.

Provided that this sub-section shall not be deemed to bar the removal from the service prior to that period if there is a clear recommendation by a medical doctor to the effect that the labour cannot return to the work.

(4) Notwithstanding anything contained in sub-section (1), in cases where the labour who is physically incapacitated or has sustained grievous hurt or injury can be engaged in any work suitable to the condition of his or her health, the employer shall engage such a labour in work.

144. Notice to be given: (1) Prior to terminating the employment relation in any circumstance except when employment is terminated upon action taken for misconduct, the employer or labour shall give a notice as follows to each other:

- (a) Prior to at least one day, in the case of employment for a maximum of four weeks,
- (b) Prior to at least seven days, in the case of employment for a period of four weeks to one year, and
- (c) Prior to at least thirty days, in the case of employment for a period of more than one year.

(2) Where the employer terminates employment without giving the notice referred to in sub-section (1), the employer shall pay the amount equal to the remuneration for the period requiring the notice to be given to the concerned labour.

(3) Where the labour terminates employment without giving a notice to the employer pursuant to sub-section (1), the employer may deduct the amount equal to the remuneration for the period requiring the notice to be so given from the remuneration payable to the concerned labour.

145. Retrenchment may be made: (1) Where an enterprise faces financial problems in its operation or the labours become redundant because of the merger of more than one enterprises or the enterprise needs to be closed down partially or completely because of any other reason, the employer may retrench the number of labours.

(2) When retrenching the labours pursuant to sub-section (1), the employer shall, in advance of at least thirty days before the date for retrenchment, give a notice, setting out the reason requiring retrenchment, possible date for retrenchment and probable number of labours to be retrenched to the Office and the authorised trade union, if any, of the enterprise or in the absence of such a union, to any trade union which is active in the enterprise or the labour relation committee.

(3) After giving the notice pursuant to sub Section (1), the employer shall hold discussion with the concerned trade union or the labour relation committee on the matters concerning the alternatives to the retrenchment of labours and the grounds and conditions for the selection of the labours for retrenchment, and the labours may be retrenched as per the agreement reached upon the discussion.

(4) Where the trade union or the labour relation committee does not want to hold discussion pursuant to sub-section (3) or no agreement is reached upon the discussion, the employer may, by giving information of that matter to the Office, retrench the labours.

(5) While retrenching the labours pursuant to this Section, retrenchment shall be made generally in the following order:

- (a) foreign labours,
- (b) those labours who have been awarded more punishments comparatively for misconduct,
- (c) labours whose standard of work performance is rather weak,
- (d) labours who have been appointed at the last out of the labours engaged in the same type of work.

Provided that if it is necessary to retrench the labours who were appointed earlier, instead of making retrenchment in the order so specified as to retrench those who have been

appointed at the last, retrenchment may be made by setting out the reason for the same.

(6) Notwithstanding anything contained in sub-section (5), except as otherwise agreed with the trade union, the office-bearers of the collective bargaining committee or the authorized trade union shall be retrenched last in the order of priority.

(7) While retrenching the number of labours, the employer shall pay a lump sum amount to be set by calculating at the rate of one month's basic remuneration for each year of his or her service as compensation to a labour who has completed the service period of at least one year.

Provided that if the service period is less than one year, he or she shall get the compensation proportionately.

(8) Notwithstanding anything contained in sub-section (7), the labour who is entitled to the unemployment allowance under the social security laws shall not receive the compensation pursuant to sub-section (7).

(9) Where any enterprise is required to close down the whole or any part of the enterprise in pursuance of the order of the Government of Nepal or Labour Court in accordance with law or any enterprise in the special economic zone is required to retrench its labours, the provisions of sub-sections (1), (2), (3) and (4) shall not be applicable.

(10) Notwithstanding anything contained elsewhere in this Section, the provision contained in this Section shall not be applicable to any employer who employs ten or less than ten labours and makes retrenchment of labours.

146. Resumption of operation: (1) Where, for any reason, the retrenchment of its labours has been made but the enterprise resumes its operation within two years or needs to supply additional labours, the preference for employment shall be given to the labours retrenched pursuant to Section 145.

(2) Notwithstanding anything contained in sub-section (1), any other persons may be employed if the labour who has been retrenched fail to appear in spite of the notice given to him or her as prescribed.

(3) Where the employer does not give notice or does not employ, the concerned labour may, not later than thirty-five days, make an application to the Labour Court.

(4) Other provisions relating to this matter shall be as prescribed.

- 147. Compulsory retirement:** Any labour who is in regular employment shall get compulsory retirement after completing the age of fifty-eight years.

Provided that if there is a need to make compulsory retirement at an age below the age of fifty-eight years for the work of a particular nature, provision to that effect may be made in the bye-law by obtaining approval from the Council as prescribed.

- 148. Payment of benefits:** (1) In the case of an employee of which employment is terminated because of misconduct or in any other manner whatsoever, the employer shall pay all amounts including the remuneration, benefits receivable by him or her at the time of such termination to the labour, not later than fifteen days of the termination of employment.

(2) The employer shall extend necessary assistance in the provision of such amount or benefits that is receivable by the labour from the Social Security Fund, insurance or other body.

(3) In the case of failure to pay such remuneration or benefits that is receivable by the labour within the period referred to in sub-section (1) or to extend assistance pursuant to sub-section (2), remuneration shall be paid to such a labour until the amount is paid as if he or she were in the service.

(4) Where the labour does not appear to receive the remuneration or benefits, the employer may make payment to the labour's account or deposit the same with the Office, directly.

(5) Other provisions relating to the deposit and payment of the amount referred to in sub-section (4) shall be as prescribed.

- 149. Labours to get first priority:** Notwithstanding anything contained in other prevailing law, in case of closure or liquidation of any enterprise, the remuneration or other benefits due and payable to the labours shall be paid with first priority.

Provided that where the insolvency law is applicable, it shall be dealt with accordingly.

- 150. To issue the certificate of experience:** Where the labour whose employment has been terminated requests for the certificate of experience, the employer shall give the certificate of work experience, stating, inter alia, the period of service and post of such a labour.

Chapter-22

Provisions Relating to Labour Court

151. Formation of Labour Court: (1) The Government of Nepal shall, by a notification in the Nepal Gazette, form a required number of labour courts.

(2) The jurisdiction and seat of the Labour Court to be formed pursuant to sub-section (1) shall be as specified in the same notice.

(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 the chairperson or member of the Labour Court.

(5) Except when a sitting judge of the High Court is appointed, the tenure of the chairperson and members of the Labour Court shall be four years.

(6) The conditions of service and facilities of the chairperson and members of the Labour Court shall be the same as that of the Judges of the High Court.

152. Majority decision to prevail: (1) The chairperson and members shall collectively exercise the jurisdiction of the Labour Court.

Provided that where the chairperson or any one member is absent, even the bench of two members may try and adjudicate cases.

(2) A decision of majority of members shall be deemed to be a decision of the Labour Court.

(3) If the two members constituting the bench hold different opinions, such opinions shall be submitted to the third member, and the opinion concurred by the third member shall be deemed to be a decision of the Labour Court. If the chairperson and member hold different opinions, the opinion of the chairperson shall be deemed to be a decision of the Labour Court.

153. Powers of Labour Court: The Labour Court may, in the course of deciding a case, exercise the following powers, in addition to the powers set forth in this Act or the rules framed under this Act:

(a) To examine witness, evidence,

(b) To take the defendant's statement equal to the note of defence, as per necessity,

- (c) To order any party who is not made party or opponent in the case, on the basis of application by such party or of the nature of the case, to appear in the course of hearing, and set as a party to the case if so required,
- (d) To inspect any place or workplace related to the dispute,
- (e) If the application made by any party to the case submitting that it is necessary to defer the case until any case sub-judice in the Labour Court is finally settled or to continue the same appears to be reasonable, notwithstanding the state of the case, to issue an interlocutory order to any party to the case to stop any act for a certain time or give continuity to any act being carried out, with or without fixing a period,
- (f) To uphold, withhold or alter any direction, decision or order given by the Office or the employer,
- (g) The Labour Court shall, in holding the proceeding of and adjudicating the case, have the powers as mentioned in the case of the matters set forth in this Act or the rules framed under this Act, and the same powers as the District Court may exercise, in the case of the other matters..

154. Proceeding against contempt of court: (1) The Labour Court may institute proceeding for its contempt.

(2) Where an act of contempt is established in the proceeding instituted pursuant to sub Section (1), the Labour Court may impose punishment of a fine not exceeding ten thousand rupees or imprisonment for a term not exceeding six months or both on the offender.

Provided that if the offender begs pardon to the satisfaction of the Labour Court, the Labour Court may forgive him or her or absolve him or her of the punishment if already determined or reduce such punishment or order not to execute the punishment subject to the compliance with such conditions as specified by the Labour Court, after deferring the punishment on such conditions.

155. Power to demand bank guarantee or deposit: If there is a possibility that one party will be entitled to receive any amount from the other party when the case running under this Act is adjudged and there is a likelihood of non-payment of such amount by such a party, the Labour Court may, for the execution of the

decision, require such a party to deposit the amount equivalent to that amount or furnish a bank guarantee covering that amount.

156. Power to order payment of interest: (1) Where judgment is made holding any party to the case liable to pay compensation or any other cash to the other party, payment of such compensation or cash shall be made not later than two months of the date of receipt of notice of the judgment or decision.

(2) In the event of failure to pay such compensation or cash within the period referred to in sub-section (1), an interest on such compensation or cash to be set by fifteen percent thereof shall be paid or recovered with effect from the date of judgment in the case.

157. Case may be compromised: (1) Notwithstanding the state of the proceeding of a case running in the Labour Court under this Act, the Labour Court may, on the basis of the application made by the concerned party, give permission to compromise or defer or withdraw such a case.

(2) When compromising or deferring or withdrawing the case pursuant to sub-section (1), no fine, royalty or fee of any kind shall be charged.

158. High Court to perform functions of Labour Court: (1) Notwithstanding anything contained elsewhere in this Chapter, the Government of Nepal may, by a notification in the Nepal Gazette, assign the functions of the Labour Court to any High Court upon specifying its jurisdiction.

(2) The High Court assigned pursuant to sub-section (1) may exercise all such powers as may be exercisable by the Labour Court pursuant to this Chapter while trying and adjudicating the case.

159. To forward the matter to the body having jurisdiction: In making a decision on a case filed in the Labour Court or the Office pursuant to this Act or the prevailing law that it has no jurisdiction, the Labour Court or Office shall appoint the date for appearance and send the parties, along with its case-file, to the concerned competent body for a decision.

160. Procedures of the cases: Other provisions relating to the procedures of the cases to be filed in the Labour Court shall be as prescribed.

161. Appeal to the Supreme Court: (1) Any party who is dissatisfied with the order or judgment made by the Labour Court in a case originally tried and adjudicated by the Labour Court may make an appeal to the Supreme Court within thirty-five days of the date of knowledge of such an order or judgment.

- (2) Any decision made on appeal by the Labour Court shall be final.

Chapter-23

Provisions Relating to Complaint, Punishment and Appeal

- 162. Right to make complaint:** Where any person, employer, labour or office-bearer acts in violation of this Act or the rules framed under this Act, the party who is aggrieved by such act or the concerned trade union with the written consent of the aggrieved party may make a complaint to the authority competent to make a decision pursuant to Section 163 or 164, not later than six months from the date of commission of such act.
- 163. Power of the Department or Office to decide:** (1) The Department may conduct necessary inquiry into a complaint made on any of the following matters and do as follows:
- (a) To issue necessary order subject to this Act and impose a fine not exceeding two hundred thousand rupees on any person that supplies labours without obtaining any license pursuant to this Act and any person that hires and employs labours through such a labour supplier,
 - (b) To impose, on the basis of the number of such labours, a fine not exceeding two hundred thousand rupees on any person who employs a foreigner without obtaining the labour permit pursuant to this Act, and an additional fine at the rate of five thousand rupees per person per month in case such a person continues to employ such a foreigner in spite of the punishment so imposed,
 - (c) To issue an order to maintain equality by imposing a fine not exceeding one hundred thousand rupees on any person who discriminates labours at the time of employing or during employment contrary to Chapter 2,
 - (d) To order a person who employs a labour without giving an appointment letter or without entering into an employment contract, to give an appoint letter or to enter into an employment contract upon imposing on such a person a fine not exceeding five hundred thousand rupees at the rate of ten thousand rupees per labour,

- (e) To take departmental action pursuant to the prevailing law against any inspector who causes loss or damage by committing any act recklessly or with ulterior motive pursuant to Chapter 15,
 - (f) To give necessary order in case any person exercises any unfair labour practice or makes transfer contrary to this Act to the detriment of the labour or performs any act, action relating to promotion contrary to the bye-law of the enterprise,
 - (g) To give necessary direction to the concerned Office in case it does not perform any act, action required to be performed by it within a certain period, pursuant to this Act and the rules framed under this Act, even within thirty days of the expiry of that period,
 - (h) To do necessary work for the settlement of a dispute, if any, arising between a labour supplier and a main employer as to the remuneration and benefits to be provided to labours.
- (2) The Office may make necessary inquiry into an application made on any of the following matters and do as follows:
- (a) To require the employer who employs a labour by paying remuneration below the minimum remuneration or deducts remuneration or benefits contrary to this Act or the rules framed under this Act to pay the deducted amount and a compensation not exceeding two times of such amount to the concerned labour,
 - (b) To impose a fine not exceeding twenty thousand rupees on any employer, labour or other person who hinders a government employee in the course of performance of his or her duties or submit false description or makes false statement or exerts or attempts to exert undue influence in any way,
 - (c) To impose a fine at the rate of ten thousand rupees per apprentice or trainee on an employer who engages any person as an apprentice or trainee contrary to this Act, issue an order to employ such an apprentice or trainee on regular employment and to pay the remuneration and benefits accordingly,
 - (d) To order recovering such compensation and damages that is two times higher than the compensation from the employer who does not deposit such amount of gratuity and of provident fund or contribute

such amount to the social security fund as may be receivable by the labour pursuant to this Act or the rules framed under this Act or pay medical expenses or make insurance for compensation,

- (e) To give direction to the employer who makes retrenchment contrary to this Act or in a discriminatory manner to refrain from doing so,
- (f) To give necessary direction to the employer who terminates the employment or prevents any labour from attending the work contrary to this Act or the rules or bye-law framed under this Act.

(3) Notwithstanding anything contained elsewhere in this Act, nothing shall be deemed to bar the making of an application by any labour to the employee to pursue the personal dispute settlement process and settle the dispute accordingly.

(4) Any complaint made to the Department or the Office shall be proceeded with and settled as prescribed.

164. Decision may be made by the Labour Court: (1) If any person engages any one in forced labour, the Labour Court may punish such a person with imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand rupees or both and require such person to pay remuneration, allowance and benefits including damages that is two times of such amount to the labour.

Provided that if any person takes another person outside Nepal and engages him or her in forced labour, it shall also order the recovery of expenses incurred in bringing that other person into Nepal.

(2) If any person dies or suffers grievous hurt as a result of violation, knowingly or recklessly, of any provision relating to occupational safety and health set forth in this Act or the rules framed under this Act or any person dies as or gets any of his or her bodily organ disabled or his or her physical or mental state becomes adversely affected a result of infection of occupational disease caused as a result of performance or non-performance of any act or any part of the body becomes disabled or physical or mental state, the person who commits such act shall be liable to the punishment, if any, provided for in the prevailing law and, failing such provision, to the punishment of imprisonment for a term not exceeding two years, and the Labour Court may require such person to pay appropriate compensation to the aggrieved person.

(3) Where a body corporate commits any offence punishable under this Act, such body shall be punished with the fine, and if imprisonment is also imposable for such offence, the chief executive of such body shall be imprisoned accordingly.

165. Appeal: (1) Any person who is not satisfied with any order or decision made by the Department or Office in accordance with this Act or the rules framed under this Act may make an appeal to the Labour Court within thirty-five days.

(2) Any labour who is not satisfied with any decision made by the employer to terminate employment or with punishment imposed with respect to misconduct may make an appeal to the Labour Court within thirty-five days of the date of receipt of a notice of that decision or punishment.

(3) Notwithstanding anything contained in sub-section (2), nothing shall be deemed to bar the making of appeal accordingly if the bye-law of any enterprise provides for internal appeal.

(4) The aggrieved party may make an appeal to the Labour Court within thirty-five days of the date of receipt of a notice of the decision made by the appeal hearing body or of the date of sixty days of the date on which appeal was made if such party does not receive a notice about the decision on appeal within that period.

166. Decisions to be executed: (1) After a decision or judgment made by the Labour Court pursuant to this Act has become final or the limitation for making appeal has expired, the concerned party shall execute such decision or judgment.

(2) The concerned party shall execute, in good faith, any agreement reached in respect of an individual or collective claim between a labour or trade union and the employer bilaterally or before the Office or any other body or authority or any arbitral award.

(3) Where the concerned party fails to execute the agreement or decision pursuant to sub-section (1) or (2), the other party may on his or her own or through the trade union or employers' association make an application to the Office for that purpose.

(4) On receipt of the application pursuant to sub-section (3), the Office shall write to the concerned employer or labour for the execution of such agreement, decision or judgment.

(5) If so asked pursuant to sub-section (4), the concerned employer or labour shall execute such an agreement, decision or judgment within fifteen days from the date of receipt of such direction.

167. Power of the Office to have execution of decisions: (1) Where the decision, judgment or agreement is not executed pursuant to Section 166, the concerned party may make an application to the Office.

(2) On receipt of the application pursuant to sub-section (1), the Office may cause such a decision, judgment or agreement to be executed by adopting any or all of the following measures vis-à-vis the employer, enterprise or labour who has to execute such decision, judgment or agreement:

- (a) To send a request to the concerned body or authority to withhold any immovable property or auction the property,
- (b) To send a request to freeze a bank account,
- (c) To send a request for the suspension or withholding of such concessions or facilities as may be enjoyable pursuant to the prevailing law,
- (d) To suspend the labour permit or license of the concerned party,
- (e) To make any other appropriate order.

(3) If so requested by the Office to do any act referred to in sub-section (2), the concerned body shall do accordingly.

(4) If the decision or judgment is not executed within three months from the date when the application was made pursuant to sub-section (1) or within fifteen days of the completion of the process referred to in sub-sections (2) and (3) or such a decision or judgment is challenged legally, a complaint may be made in the Labour Court for punishment pursuant to Section 168.

168. Power to impose punishment in the event of non-execution of judgment, compromise or agreement: (1) The Labour Court shall give a notice prescribing the time limit to the concerned party for the execution of any judgment on labour related matters made by the Labour Court or the Supreme Court.

(2) The Labour Court may impose the punishment with a fine not exceeding one hundred thousand rupees or with imprisonment for a term not exceeding one year on any employer or labour who fails to execute or delays or lingers the implementation of the order given by the Office for the execution of the order, judgment made by the Labour Court or arbitral award or understanding

or agreement entered into between the employer and the labour pursuant to this Act.

Provided that if the order, judgment, compromise, agreement or understanding is executed within the period prescribed by the Labour Court, the Labour Court may annul such punishment or give partial or full exemption from the enforcement of such punishment if already sentenced.

Chapter-24

Miscellaneous

169. Procedure relating to service of notice: (1) A process or notice sent by the employer to the labour or vice versa shall immediately be acknowledged and a receipt of such acknowledgment, provided.

(2) Where a process or notice could not be served in accordance with sub-section (1), such a process or notice shall be deemed to have been received by the concerned party if it is sent by registered courier or post to his or her address, with one copy thereof being posted at the workplace, and a memorandum being executed in witness of three persons, and information thereof is given to the Office.

Provided that in the case of the application or notice given by the labour, it is not required to post it at the workplace.

(3) Where any one refuses to accept such a process or notice, it may be sent through fax or email or other electronic means of communication to him or her. If so sent, such a process or notice shall be deemed to have been served except as otherwise proved.

(4) Where, in the case of any matter required to be informed by the employer collectively, such information shall be deemed to have been received by all the labours if the notice thereof is posted on the notice board of the workplace and written information thereof is given to the trade unions active in the enterprise.

170. Fixation of basic remuneration: (1) The basic remuneration of the labour on task-based employment shall be determined as prescribed.

Provided that if not so determined, the minimum remuneration fixed for the labours shall be regarded as the basic remuneration.

(2) In the case of labours on piece rate work, the rate of wage per piece shall be determined as prescribed on the basis of the minimum remuneration fixed pursuant to this Act.

171. Special provisions relating to managers and managerial level labours: (1) Notwithstanding anything contained elsewhere in this Act, nothing contained in this Act shall be deemed to bar the hiring of a managerial level labour working in the capacity of chief executive on time based employment, fixing of terms and benefits of service and termination of his or her service.

(2) The managers and managerial level labours are not allowed to submit collective demands or take part in collective bargaining or in a strike, on behalf of any trade union.

172. Entitlement to remuneration and other benefits: (1) Where a labour who is terminated from the employment is reinstated in employment by an order or decision of the Office or Department or Labour Court, such labour shall be entitled to receive the remuneration and other benefits from the employer for the period from the date of termination to the date of reinstatement.

(2) Nothing contained in this Act shall be deemed to bar the making of judgment enabling the labour to receive a reasonable amount as compensation in addition to the amount referred to in sub-section (1) from the employer, instead of reinstating such labour on the basis of the merits of the case.

173. Increment of insurance amount: On recommendation of the Council, the Government of Nepal may, by a notification in the Nepal Gazette, periodically increase the medical insurance and accidental insurance amount specified in this Act.

174. Delegation of authority: The Ministry or Department or Office may so delegate any or all of the powers conferred on it by this Act that such power is exercisable by any office or officer. If such delegation is made, a notice thereof shall be published in the Nepal Gazette.

175. Saving of acts done in good faith: No action shall be instituted against any labour inspector, occupational safety and health inspector or any officer or employer or labour deputed in inspection for the loss or damage, if any, caused to any person as a result of any act done or attempted to be done in good faith in the course of performing his or her duties.

Provided that such person shall be personally liable with respect to any act done knowingly or with bad intention.

- 176. Special powers of the Ministry:** If information is received that the party is compelled to suffer harassment because of failure to decide any application made to the Office or Department for a long time, except for the matter which is sub judice in the Labour Court under this Act or if it seems appropriate that such application is to be proceeded with by the Ministry because of the subject matter contained in the application being complex, nothing contained elsewhere in this Act shall be deemed to bar the Ministry from examining and deciding such application. The decision so made shall be deemed to be a decision made by the body of first instance, and the party who is not satisfied with such decision may make an appeal to the Labour Court.
- 177. Labour coordination committee:** (1) There shall be a central level labour coordination committee consisting of such members as prescribed, under the chairpersonship 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 labours engaged in permanent service at the time of commencement of this Act shall *ipso facto* be deemed to be the labours in regular employment pursuant to this Act.
- (2) The labours employed on contract, daily wage basis or otherwise at the time of commencement of this Act shall be required to make the employment contract pursuant to Chapter 3. Nothing contained in this Act shall be deemed to bar the making of adjustment of the remuneration and benefits receivable at the time of making such employment contract to the provident fund amount and other benefits payable pursuant to this Act not later than three months of the commencement of this Act.
- (3) Nothing contained in this Act shall be deemed to be prejudicial to the conditions of service and benefits of any labour who is receiving the benefits in excess of that set forth in the Act under the prevailing law or collective agreement at the time of the commencement of this Act.
- (4) For the purpose of sub-section (3), the benefits that remain after paying the benefits specified in the Act to the prescribed body shall be provided by adjusting the same in other headings.

(5) Where any judgment made by the Office, Labour Court or other court under the Labour Act, 1992 (2048) and Trade Union Act, 1992 (2049) before the commencement of this Act has not been executed and an application is made within one year of the date of the commencement of this Act, such a judgment, decision or order shall be executed or caused to be executed as if it were made in accordance with this Act.

(6) The welfare fund established under Section 37 of the Labour Act, 1992 (2048) and Section 13 of the Bonus Act, 1974 (2030) shall continue its operation until a separate law relating to social security is made.

(7) The Court in existence at the time of the commencement of this Act shall exist until the formation of the court pursuant to this Act.

179. This Act to prevail: The matters contained in this Act and the rules framed under this Act shall be governed by this Act and Regulation and the other matters, by the prevailing laws.

180. This Act not to apply: (1) The following matters shall be governed as follows:

(a) This Act shall not apply to the Nepal army, Nepal Police, Armed Police Force and National Investigation.

(b) The prevailing law relating to civil service shall apply in the case of the civil service.

(2) Where the prevailing law provides for the conditions and benefits of service in relation to the service established under a special law and the special economic zone, such service shall be governed accordingly.

(3) Where the prevailing law has no provision in relation to the remuneration, conditions and benefits of service of any labour, the provisions of this Act shall ipso facto apply in the case of the remuneration, conditions and benefits of service of such labour.

(4) When making any decision, order or judgment that this Act will not apply to any labour, such decision, order or judgment shall be made setting out, inter alia, which law provides for the rights and benefits conferred by this Act in the case of such labour.

(5) Where the employer of an enterprise to which the Working Journalists Act, 2051 applies executes the employment contract pursuant to this Act or any agreement thereby making applicable the provisions of this Act

between the employer and the labour of such enterprise, this Act shall also apply to such labour.

181. To frame and implement directives and procedures: (1) The Ministry may, for the purpose of implementation of this Act or the rules framed under this Act, frame and implement necessary directives and procedures.

(2) Employers' commodities associations or federations and trade union associations or federations may frame and implement codes of good labour practice on policy matters relating to the labour.

182. Powers to frame rules: (1) The Government of Nepal may frame necessary rules for the implementation of this Act.

(2) When framing rules pursuant to sub-section (1), separate rules may be framed in the case of businesses, services and industries of special nature or of the informal sector.

183. Repeal and saving: (1) The following Acts have been repealed:

- (a) The Labour Act, 1992 (2048),
- (b) The Industrial Apprenticeship and Training Act, 1983 (2039),
- (c) The Retirement Fund Act, 1986 (2042).

(2) The cases filed and sub judice under the Acts set forth in sub-section (1) shall be transferred to the Labour Court.

(3) Any acts and actions performed under the Acts set forth in sub-section (1) shall be deemed to have been performed under this Act.