



# DECENT WORK CHECK

## **NEPAL** 2023

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## WageIndicator Foundation - [www.wageindicator.org](http://www.wageindicator.org)

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, serving as an online library for wage information, labour law, and career advice for workers/employees and employers. The WageIndicator websites and related communication activities reach millions of people monthly. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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## Bibliographical information

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# INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental Principles and Rights at Work and Core ILO Conventions, are practised, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects deemed necessary in attaining “decent work”. The work makes the abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and scores the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Finally, workers can compare their personal score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

A Decent Work Check is beneficial both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also helpful for researchers, labour rights organisations conducting surveys on the situation of rights at work and the general public wanting to know more about the world of work. For example, WageIndicator teams worldwide have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed – being a worker, self-employed, employee, employer, policymaker, labour inspector – there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer), and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work, especially the effective enforcement of legislation in financially constrained states, a rise in precarious employment and analysing the impact of regulatory regimes.

In 2023, the team aims to include at least 15 more countries, thus taking the number of countries with a Decent Work Check to 125!

*The text in this document was last updated in May 2023.*

# MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Constitution of Nepal, 2015
2. Nepal Labour Act, 2017
3. Nepal Labour Rules, 2018
4. The Right to Employment Act, 2018
5. Employee Provident Fund Act 2019
6. Trade Union (First Amendment) Act, 1998

# 01/13 WORK & WAGES

## **ILO Conventions**

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

**Nepal has ratified the Convention 131 only.**

### ***Summary of Provisions under ILO Conventions***

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

## Regulations on work and wages:

- Nepal Labour Act, 2017

### Minimum Wage

The primary legal instrument concerned with the fixation of minimum wage in the country is Labour Act 2017, where labour is defined as “a worker or an employee or a person employed with any job title who performs a physical or intellectual work for the employer”. The Ministry of Labour and Employment declares minimum wage rates on the recommendations of the permanent Minimum Wage Fixation Committee consisting of representatives from the Government of Nepal, trade unions and employers’ associations. The Committee is formed by the Ministry of Labour and Employment under article 107 of the Labour Act 2017. Where the Committee cannot come to a consensus, the Ministry can fix the minimum wage on its own. On recommendations of the Minimum Wage Fixation Committee, the Ministry sets the minimum wages for workers every two years. The grounds for the recommendation of the minimum remuneration are determined by the Committee, which can be used to recommend the minimum wage for workers applicable to the whole of Nepal or enterprises or industries of any specific sector or a specific sector of employment.

Under article 93 of Labour Law, the Government of Nepal has established the Labour Office. Labour inspectors are authorised to ensure the implementation of labour law, including minimum wage provisions. A worker paid less than the minimum wage may apply to the Labour office, which then obliges the employer to provide the two-fold amount of the

minimum wage to the worker for each day of violation.

Source: §88, 94 (a), 106-107, and 163 of the Nepal Labour Act, 2017

### Regular Pay

The Labour Act 2017 defines remuneration as “basic remuneration to which a labour is entitled, including an allowance”. Every worker is entitled to receive the remuneration and benefits from the date they start the work. The employer is obliged by law to pay remuneration following the provisions of the employment contract. The maximum wage period is one month. A worker engaged for less than one month must be paid the due wages within three days of the completion of work. Similarly, casual workers are to be paid immediately on completion of work. The law requires employers to pay wages at intervals of not more than one month between the dates for payment of remuneration.

Where a worker’s employment is terminated due to misconduct, the employer is liable to pay all amounts, including remuneration, not later than fifteen days of the termination of employment. No deduction can be made from workers’ wages except those authorised by the Labour Act. These include, among others, tax or fees levied under existing laws, a contribution for provident fund, insurance or other social security benefits, an amount for a specified service or facility provided by the employer to the worker; wage for absences; an amount for the book value of the goods lost or loss in cash caused wilfully or negligently or the amount equivalent to the production cost concerning the manufactured goods; an amount specified in the collective

agreement; membership fees charged by trade unions; and loan or payment made in advance to the worker by employer.

In case of dismissal or termination of the contract, the amount deductible under the law is deducted from any amount payable to such worker.

Source: §2, 34-35, 38 and 148 of the Nepal Labour Act, 2017



# 02/13 COMPENSATION

## ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

**Nepal has not ratified the above-mentioned Conventions.**

### *Summary of Provisions under ILO Conventions*

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter time (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

## Regulations on compensation:

- Nepal Labour Act, 2017
- Nepal Child Labour (Prohibition and Regulation) Act, 2000

## Overtime Compensation

The general working hours are 08 hours a day and 48 hours a week. The “hours of work” are defined as when the workers are at the employer’s disposal, excluding intervals for rest and meals. Overtime is the work performed on any day or week for more than the general or standard hours fixed under the Labour Act 2017, i.e., 8 hours a day and 48 hours a week. In addition, the work which the employer has caused any labour to perform without giving the substitute leave will also be considered overtime work. The maximum working hours, inclusive of overtime, may not exceed twelve hours a day and, on average, seventy-two hours per week in any year. Thus, the maximum overtime is four hours a day and 24 hours a week.

Compelling a worker to work more than working hours is prohibited under the law; however, if the non-performance of work is likely to harm any person’s life, safety, and health or a serious loss or damage to the employer, the concerned worker can be required to work overtime. For overtime hours, the employer must pay remuneration at a rate of 1.5 times (150%) the basic remuneration receivable during regular work hours. The legislation also allows the collective agreement to provide for certain benefits or provision of such benefits as mentioned in the employment contract if the worker is at the managerial

level, instead of the additional remuneration receivable for overtime work.

Source: §29, 30 and 31 of the Labour Act, 2017

## Night Work Compensation

No provision could be located in the Labour Act or Labour Rules referring to night work and its compensation.

## Compensatory Holidays / Rest Days

Labour Act 2017 of Nepal regulates the working hours in the country. The general working hours are 08 hours a day and 48 hours a week, with a half an hour rest break after five hours of continuous work. The rest breaks provided under the law are counted in working hours. The maximum working hours, including overtime, are 12 hours a day and 90 hours a week. The overtime hours cannot exceed four hours a day and 24 hours a week.

The Child Labour (Prohibition and Regulation) Act, 2000 defines a “Child” as a minor not having completed sixteen years. The law restricts children’s engagement in work between 6 pm to 6 am. The working hours for minors cannot exceed six hours a day and 36 hours a week, whether additional remuneration is paid to the worker or not. The child workers must be given a rest break of 30 minutes after three hours of continuous work. The rest breaks are counted as working hours. The weekly rest (one day per week) is fully paid.

Source: §28 and 30 of the Labour Act, 2017; §9 of the Child Labour (Prohibition and Regulation) Act, 2000

## Weekend / Public Holiday Work Compensation

The labour law entitles a worker involved in a work that must be done continuously to get the substitute leave in consideration for having worked on any day of a weekly rest day or public holiday. Thus, it allows a compensatory rest day for work done on public holidays or weekly rest days. A worker who has been engaged in work on a day of a weekly rest day or public holiday is provided with the substitute leave within 21 days of the date of engagement in work. Under the law, no premium rate is prescribed for work performed on a weekly rest day and public holiday. There is no special provision for monetary compensation for workers who are engaged in work on a weekly rest day or a public holiday unless the work on such days is considered overtime work. In such a case, the worker shall receive 150% of the ordinary rate for working on a weekly rest day and public holidays.

Source: § 31 and 42 of the Labour Act, 2017

# 03/13 ANNUAL LEAVE & HOLIDAYS

## **ILO Conventions**

Convention 132 (1970) on Holidays with Pay Convention  
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.  
In addition, for several industries, different Conventions apply.

**Nepal has ratified the Conventions 14 only.**

### ***Summary of Provisions under ILO Conventions***

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

## Regulations on annual leave and holidays:

- Nepal Labour Code, 2017 (Loi N° 65-99 Relative au Code du Travail)
- Decree No.204426 of 29 December 2004 on Public Holidays
- Decree No. 204513 of 2004 on Weekly Rest

## Paid Vacation / Annual Leave

The Nepalese Labour Act uses “home leave” nomenclature for annual leave or annual vacations. Every worker is entitled to a home leave of one day for every 20 days worked (translates into 18 working days of annual leave per year). However, workers employed in educational institutes or those workers who get summer or winter holidays are not entitled to take home leave. Home leave is fully paid and can be accumulated for up to 90 days.

The duration of annual leave is not linked to the length of service. Similarly, minor workers are also eligible for the same leave as adult workers (18 days per year of service).

The law allows the accumulation of annual leave for up to 90 days. Thus, the workers may accumulate home or annual leave for five years. A worker whose accumulated leave exceeds the 90 days has the right to get paid instead of annual leave for the days over the 90 days. Similarly, the payment in place of annual leave is allowed in the event of contract termination or a worker’s death. In case of a worker’s death, the payment is made to the worker’s dependents.

Source: §43 & 49 of the Labour Act, 2017

## Pay on Public Holidays

The Labour Act 2017 stipulates paid public holidays for all workers. The number of annual paid public holidays is 13 for male workers. The number of public holidays is raised to 14 for women workers due to the inclusion of International Women’s Day. The public holidays in the case of an enterprise are to be as determined by its regulatory authority (if any) and as determined by the employer in the other situations.

The public holidays under Nepali Gazette 2077 (2020) have increased the number of public holidays to fifteen, which include Nepali New Year’s Day (1 April), May Day (International Labour Day), Buddha Jayanti (on the full moon day in the Buddhist month of Baishakh), Constitution Day (National day, 19 September), Dashain (5 days, start day depends on the moon), Tihar Vida (3 days, timings based on the new moon of the Hindu month Kartika), Mahashivaratri (based on the Hindu Lunar Calendar), International Women’s Day and Holi (also called Fagu Purnima and is celebrated on the last full moon day of the Hindu lunisolar calendar month).

The government has also decided to grant holidays to specific groups of people during festivals according to their cultures and religions.

Source: §41 of the Labour Act, 2017; Section 69 of Nepali Gazette 2077

## Weekly Rest Days

All workers are entitled to a weekly rest day (one day per week). The Labour Act also refers to substitute holidays for

workers engaged in work on a weekly rest day. Moreover, since legislation has fixed the daily and weekly working hours as 08 hours and 48 hours, respectively, it can be implied that the working days are six in Nepal. Therefore, the seventh day of the week is the weekly rest day.

Source: § 28, 40, and 42 of the Nepal Labour Act 2017

# 04/13 EMPLOYMENT SECURITY

## **ILO Conventions**

Convention 158 (1982) on employment termination

**Nepal has not ratified the Convention 158.**

### ***Summary of Provisions under ILO Convention***

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

## Regulations on employment security:

- Nepal Labour Code, 2017 (Loi N° 65-99 Relative au Code du Travail)

## Written Employment Particulars

The labour Act of Nepal prohibits a worker's employment without first entering into an employment contract. The employment contract is defined as "the letter of appointment given by the employer to the worker and an agreement between an employer and a worker regarding the service, conditions and benefits of employment. An employer must provide a new worker with an employment contract (a letter of appointment) in writing. An employer can employ labour verbally as well.

The employer must abide by the law and set remuneration, benefits to be received by the worker, conditions of employment and other matters beforehand in the employment contract. Along with that, the Labour Rules 2018 also describes mandatory disclosures to be made in the employment contract, which include; nature of Employment, job description and position, enterprise-level bylaws established under Section 108 of the Labour Act, 2017 to be an essential part of the contract, place, time and effective date of implementation of the contract, and other relevant employment terms. It can be implied from the above information that workers are provided with their employment contracts before they start working. However, there is no written employment contract requirement for employing casual workers (for seven days or less within a month).

Where a worker whose employment has been terminated requests for the experience certificate, the employer must provide such certificate, stating, among others, the period of service and designation of such worker.

Source: §2, 11, 12, 108 (bylaws), and 150 of the Labour Act, 2017; Rule 4 of the Nepal Labour Rules, 2018

## Fixed Term Contracts

The Labour Act 2017 does not regulate the use of fixed-term contracts, but it classifies the employment into following classes:

- Regular employment is the employment of any type, whatever other than Work-based employment, Time-based employment, and Casual employment.
- Work-based employment is defined as employment that the employer provides specifying any particular work or service for performance.
- Time-based employment refers to employment that the employer provides or has provided to the worker specifying a specific period that the labour has to offer any service or perform any work within that period.
- Casual employment is employment that the employer provides or has provided to the labour on the condition that the worker has to offer any service or perform any work for seven days or less within one month.
- Part-time employment means employment that the employer provides or has provided to the labour on the condition that the worker has to perform work in thirty-five hours or less than thirty-five hours in a week.



Under 2018 the Labour Rules, A worker is in regular employment if they continue working after completing time-based employment with the enterprise. If the period is not specified, a worker is said to be in regular work once employment exceeds one year.

It can be implied from the above that labour legislation does not prohibit hiring fixed-term contract workers for tasks of permanent nature.

Source: §10(1-5) of the Labour Act, 2017; §2 of the Labour Rules, 2018

## Probation Period

The probation period is regulated under the Labour Act. It stipulates a maximum probation period of six months. The employer may terminate employment due to the unsatisfactory performance of a worker. If the same employer employs a trainee after completing the training period (maximum one year), the probation period does not apply to such a worker.

Source: §13 and 18(4) of the Labour Act, 2017

## Notice Requirement

The employment contract can be terminated for a variety of reasons. For example, the employment contract of a time-based employee terminates on the expiry of the term specified in the contract. Similarly, the employment contract of a task or work-based employee terminates on completion of the task, as defined in the contract. There is also voluntary termination, where the worker can resign in writing to the

employer, which will be deemed to be approved upon expiry of 15 days with or without the employer's explicit approval.

The employment contract can be terminated based on poor performance where the employer is dissatisfied with the worker's performance consecutively for three or more years. The employment contract can also be terminated on medical grounds, on the recommendation of a medical practitioner, where the worker becomes incapable of working or the health condition requires long treatment, thus affecting the work of the enterprise. The employment contract is also terminated by compulsory retirement once a worker reaches the age of 58 years.

Workers could also be retrenched by giving 30 days prior notice specifying the reasons for retrenchment, the possible date of retrenchment and the number of employees to be retrenched. The notice must be served to the authorised trade union or Labour Relation Committee (if a trade union does not exist at the enterprise). Retrenchment can also be processed by informing the Labour Office in cases where trade union or Labour Relation Committee do not exist, or a consensus cannot be reached among the parties.

The Labour Act 2017 restricts employers and employees in termination of the employment relationship by requiring a written notice before contract termination. The notice requirement is not applicable in cases of gross misconduct. In other cases, the party initiating contract termination must observe the following minimum notice periods:

- One day if the period of employment is up to four weeks;
- Seven days if the period of employment ranges between four weeks to one year;
- 30 days if the period of employment exceeds one year

If either party fails to observe the above notice requirement, the Labour Act provides “payment instead of notice”. An employer may terminate the employment contract without observing notice by paying the amount equivalent to the notice period. If a worker ends a contract without following the notice requirement, the employer may deduct the amount equal to the required notice period from such worker’s wages/terminal benefits.

Source: §141-148 of the Labour Act, 2017

## Severance Pay

Severance pay or gratuity (the term used in Nepal) is regulated under the Labour Act 2017. Therefore, different kinds of terminal benefits are available to workers in the event of employment termination, depending on the reasons for contract termination, except in cases of gross misconduct.

In non-economic dismissals, a worker is entitled to gratuity. However, from the start of employment, the employer must deposit 8.33% of the worker’s monthly wages to the Social Security Fund. This is equivalent to a one-month salary for each year of service. If the employer has not deposited the amount with the Social Security Fund, the employer shall have to pay double the amount to the worker on termination of the contract.

As stipulated in the 2018 Rules, the gratuity payment also depends on the number of years before and after enacting new legislation in 2017. Before 4 September 2017 (19 Bhadra 2074), the gratuity is calculated in the following manner:

- 50% of the monthly wages for each year of service for seven years of service;
- 66.67% of the monthly wages for each year of service for 7-15 years of service; and
- 100% of the monthly wages for each service of service for more than 15 years of service

For the period of service after 4 September 2017, the employer must pay one-month wage per year of service (8.33% of monthly wages per month \* 12 months). According to the 2018 Labour Rules, before transferring the amount related to Provident Fund or Gratuity in Social Security Fund, the employer may pay such amount to the concerned worker in case of termination of employment or their family in case of death of the worker.

In case of economic dismissals or retrenchment, workers are entitled to one-month wages for each completed year of service. If the length of service is less than one year, the severance compensation is made on a proportionate basis. However, a worker is not entitled to severance pay in case of retrenchment if they are entitled to an unemployment allowance under the Social Security Act.

In the case of employment termination due to misconduct/disciplinary action or any other reason, the employer must pay all amounts, including the remuneration and benefits receivable by them at the time of such termination, to the labour

within 15 days of the termination of employment. Furthermore, as a result of the failure of the employer to provide the benefits mentioned above, the employer is obliged to pay remuneration to the worker as if they were in the service.

Other than gratuity (8.33% of basic monthly remuneration), severance compensation (one-month wages for each year of service), workers are also entitled to a provident fund (a lump sum of the amount collected and deposited with the Social Security Fund through an equal contribution of 10% each from worker and employer, available only to permanent workers) and leave encashment (accumulated annual and sick leave).

Source: §49, 52, 53, 145(7) and 148 of the Labour Act, 2017; Rule 23-24 of Labour Rules, 2018

# 05/13 FAMILY RESPONSIBILITIES

## **ILO Conventions**

Convention 156: Workers with Family Responsibilities Convention (1981) Recommendation 165: Workers with Family Responsibilities (1981)

**Nepal has not ratified both the Conventions 156 & 165.**

### ***Summary of Provisions under ILO Convention***

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

## Regulations on family responsibilities:

- Nepal Labour Code, 2017
- Right to Safe Motherhood and Reproductive Health Act, 2018 (2075) Nepal

## Paternity Leave

Labour Act requires the employer to provide a male worker with a paid paternity leave (maternity care leave) for up to fifteen days around the days of childbirth. If the wife dies before the completion of sixty days of delivery, the worker may take paid leave for the remaining period of maternity leave (maximum maternity leave is 14 weeks) from his employer.

Source: §45(6, 7) of Labour Act, 2017

## Parental Leave

There is no provision for parental leave in the Labour Act. However, under the Right to Safe Motherhood and Reproductive health of 2018, a pregnant worker can get leave without pay for a maximum period of up to one year on a doctor's recommendation.

Source: §13 of the Right to Safe Motherhood and Reproductive health, 2018

## Flexible Work Option for Parents / Work-Life Balance

No provision for flexible work options for workers with minor children and other family responsibilities is identified in Labour Act 2017. The legislation generally defines part-time work and its conditions. No worker can be employed in a part-time job without their consent.

Source: §19 of Labour Act, 2017

# 06/13 MATERNITY & WORK

## **ILO Conventions**

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

**Nepal has ratified the Convention 183 only.**

### ***Summary of Provisions under ILO Convention***

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

## Regulations on maternity and work:

- Nepal Labour Code, 2017
- Right to Safe Motherhood and Reproductive Health, 2018

## Free Medical Care

No medical assistance specific to prenatal, childbirth or post-natal care could be identified in the Labour Act 2017. However, the employer is obliged to make annual medical insurance of at least one hundred thousand rupees for each worker. The premium required for medical insurance is borne by employer and employee proportionally.

Medical benefits are provided through the Provident Fund, to which the employee must be currently contributing. Medical benefits are the employer's liability (essential medical services). There is no minimum qualifying period for such medical benefits. There are also medical benefits that are universal and for which there is also no minimum qualifying period. Medical benefits from the Provident Fund can grant up to 100,000 rupees or 50% of medical expenses, whichever is lower, for standard treatment.

Source: §53 of the Labour Act, 2017; Nepal Employee Provident Fund Act, 2019

## No Harmful Work

The labour Act 2017 of Nepal restricts employers from engaging pregnant female workers in work that can harm their health. Law requires a pregnant worker to inform the employer through a medical report.

Upon receipt of this information, the employer has to engage the female worker

in the type of work that will not harm her health. This can be either changing shift, post, or job or sending her on leave. Any of the above actions should not be considered discrimination. Night work is generally not prohibited for women workers as employers must provide transportation to the women night workers. However, it is not clear if night work is not permitted for a pregnant worker

Source: §6(2b), 33, and 81 of the Labour Act 2017

## Maternity Leave

A pregnant worker is entitled to 14 weeks of maternity leave. The prenatal leave (before childbirth) is two weeks, while the compulsory post-natal leave (after childbirth) is six weeks. In addition, in the case of caesarean birth (surgery), on the recommendation of the specialist doctor, the worker has the right to an additional paid leave for a maximum of thirty days before or after conducting such surgery.

If a pregnant worker gives stillbirth (birth to a dead child) after seven months of pregnancy or suffers a miscarriage, she is entitled to 14 weeks of maternity leave.

After childbirth, if a certified physician recommends that the concerned female worker needs rest for her and her child's health, the employer is obliged to grant an unpaid leave of one month. The extended leave can also be adjusted against other leave (home leave, sick leave, etc.) and start after maternity leave.

Source: §45 of the Labour Act, 2017; §13 and 14 of the Right to Safe Motherhood and Reproductive health, 2018

## Income

Under the Labour Act, a pregnant worker is entitled to 60 days of fully paid maternity leave, and for the remaining period, it will be unpaid. However, the Right to Safe Motherhood and Reproductive health, 2018 requires a fully paid leave of 14 weeks.

The Labour Act requires employers to pay for maternity leave for 60 days. However, where a female worker is entitled to receive remuneration for maternity leave from the Social Security Fund, the employer is not required to pay the wage for such a period of leave.

Source: §45 & 47 of the Labour Act, 2017; §13(1) of the Right to Safe Motherhood and Reproductive health, 2018

## Protection from Dismissals

There is no specific provision of law concerning the protection of pregnant workers or workers on maternity/paternity leave from dismissal.

There is a general prohibition on the removal of workers without any reason in the Right to Employment Act 2018. The employee has the right to make an application, accompanied by the reason, to the concerned Employment Service Centre for the continuation of their engagement in the employment.

Source: §7 of the Right to Employment Act, 2018

## Right to Return to Same Position

There is no provision of law concerning the right of a worker returning from maternity leave to the same position.

## Nursing Breaks

The Right to Safe Motherhood and Reproductive Health Act, 2018 (2075) stipulates nursing arrangements at the workplace, but it does not explicitly provide any paid nursing breaks. According to the law, a governmental, non-governmental or private organisation or institution is obliged to make necessary arrangements for the women working in its office for breastfeeding during the office hours up to two years from childbirth.

Under the 2018 Labour Rules, employers must provide an additional rest period of half an hour to female employees who are pregnant or have a baby below three years for breastfeeding purposes. The rest period can be taken at once or in short intervals. The rest breaks are considered part of working hours.

Source: §13(3) of the Right to Safe Motherhood and Reproductive Health Act, 2018 (2075); §17 of the Labour Rules, 2018



# 07/13 HEALTH & SAFETY

## **ILO Conventions**

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

**Nepal has not ratified the Convention 81 & 155.**

### ***Summary of Provisions under ILO Conventions***

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

## Regulations on health and safety:

- Nepal Labour Code, 2017
- Nepal Labour Rules, 2018

## Employer Cares

The law requires employers to protect workers' health and safety. The duties of the employer are to ensure a safe environment by making appropriate safety and health guidelines at the workplace; make necessary rules for the use, operation, storing or shifting of chemical, physical or bio-degradable material or equipment; provide the necessary information, notice or training relating to the safety and health to the workers; provide essential training and knowledge in an appropriate language to the workers regarding equipment and use or operation of chemical, physical or biodegradable material; make proper arrangements for the safe entry and exit from the workplace; provide personal safety equipment to the workers etc.

An employer who employs 20 or more workers is required to set up a Safety and Health Committee (the "Committee"). The Committee is required to advise the employer on arrangements concerning the safety and health of the workers; evaluate the effectiveness of arrangements on the safety and health in the workplace; where the employer fails to take necessary action for health and safety, inform the Labour Office; review health and safety policy etc.

When there is a possibility of causing injury or risk or severe effect on people's health or causing damage to the property, the employer must give directions to have the work stopped immediately on receipt of such information.

The employer should make necessary arrangements to prevent contagious diseases in the workplace. For example, where a worker is suffering from any communicable disease, such a worker can be prohibited from being present in the workplace while medical treatment is ongoing.

Source: §69, 74, 76, 80 of the Labour Act, 2017

## Free Protection

There are several sections in the Labour Act that regulate the provision of personal protection equipment (PPE) to the worker employed. The law obliges an employer to make a safe environment for work by making appropriate safety and health arrangements at the workplace. It also requires employers to make provision for the use, operation, storing and transportation of chemical, physical or biological materials or equipment to ensure the safety and health of an employer. Regular eye examination and necessary protective equipment must be provided for the protection of a worker's eyes where there is a risk of injury to the eyes from particles or fragments thrown off in the course of the process or risk to the eyes by reason of exposure to harmful radiation or chemicals. It is the liability of the employer to make arrangements to protect employees from fire in the workplace. The law also obliges manufacturers, importers and suppliers to manufacture, import and supply equipment, product or material after proper research and experiment, which is to be used in the workplace from the viewpoint of safety and health.

For work that includes explosive or

inflammable dust, gas, etc., an employer must not engage workers in such work without providing and ensuring the use of personal safety equipment.

Employers are required to provide all Personal Protective Equipment to the workers. It further stipulates that any safety-related facility must be provided free of cost, and the employer cannot recover any cost from workers to provide such facilities.

Source: §69 and 72-76 of the Labour Act, 2017; Rule 34, 35 and 39 of the Nepal Labour Rules, 2018

## Training

An employer is obliged to provide practical and relevant training in health and safety for workers hired and to ensure professional health and safety for workers at the workplace. The employer is required to provide training in an appropriate language to the workers in relation to the use and operation of the equipment or chemical, physical or biological materials related to the work. In case of dangerous operations which may cause serious risk of bodily injury, poisoning or disease, it is the employer's responsibility to provide the periodic medical examination of persons employed in operation and prohibit the employment of persons not certified as fit for such employment. The workers employed in such processes and on dangerous machines must be sufficiently trained and supervised.

Source: §69 of the Labour Act 2017; § 39 of the Labour Rules 2018

## Labour Inspection System

The Labour Office, established under the Labour Act 2017 of Nepal, along with other functions, gives direction to the employer to provide the occupational safety and health standards and to observe or inspect the machine, tool, equipment, goods or material installed in the workplace, and examine whether or not they are of prescribed standards, and collect samples for testing.

The functions of the Labour Office are performed by its inspectors. The occupational safety and health inspector has the power to perform for and on behalf of the Office such function as inspection of the machinery and tools of the factor, occupational safety and health-related function and other technical functions. Labour inspectors have the right to enter any workplace to assess compliance with the law, to request registers and other documents and examine any worker employed within the preceding two months. They have the authority to require employers to remedy any breaches of the regulations on the prevention of occupational risks and to order the immediate cessation of work if the breach gives rise to serious and imminent danger to employees' health and safety.

The Labour Office can also seal or forbid the usage of equipment that is not appropriate to be used at the workplace. The inspector has to submit an inspection report to the Labour Office within fifteen days.

Source: §77, 83 & 93-101 of the Labour Act, 2017

# 08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

## **ILO Conventions**

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

**Nepal has not ratified the above-mentioned Conventions.**

### ***Summary of Provisions under ILO Conventions***

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

## Regulations on sick leave & Employment Injury Benefits:

- Nepal Labour Act, 2017
- Nepal Labour Rules, 2018
- Rights of Persons with Disabilities Act, 2017

## Income

The Labor Act 2017 is the legislator framework regulating sickness leaves and benefits. The employee is entitled to a paid sick leave of 12 days per year. The benefit is proportionally reduced for employees with less than one year of continuous employment. The employees are obliged to provide a medical certificate when they seek sick leave for more than three consecutive days. The employer is obliged by the law to provide 100 per cent of the employee's wage during the 12 days. Such benefits are applicable to currently employed persons who provide a medical certificate. Furthermore, where immediate sick leave is necessary because of a sudden illness, such a worker must immediately inform the employer through available means of communication.

Source: §44 of the Labour Act, 2017

## Job Security

Every worker is entitled to paid 12 days of sick leave annually. Sick leave and mourning leave, and maternity leave can be claimed as a matter of right. For any other leave, the approval of the manager is required.

The employer cannot terminate the employment of any work for six months in case such worker is not able to work on the

grounds of medical treatment. However, the employer will not be constrained to termination of the employment within the period of six months if there is a clear recommendation from the doctor about the inability of the worker to join the work again.

The employer is not to terminate the employment of any worker during the period they are undergoing medical treatment in the hospital because of an accident or occupational disease caused while performing the work or within one year from the date of commencement of treatment at home. The employer is to give full pay during the period of such treatment. That being said, the employer will not be required to pay such remuneration if the worker is entitled to receive the remuneration for the treatment period from the Social Security Fund.

The Rights of Persons with Disabilities Act, 2017 also stipulates job security in case of disability. Suppose an employee has become disabled and unable to perform functions of their previous post. In that case, the employer is liable to designate such workers to do another post's tasks carrying equal salary and facilities. In cases where it is not possible to designate such an employee to do the functions of another post, the employer is required to create another post suitable to such worker or maintain an additional post until such worker retires.

Except for disability, the law does not regulate the job security of sick workers explicitly; instead, it defines the employment period as the period during which an employee is employed with an employer where the period of leave taken for medical treatment in case of an accident during or while working for the employer

will also be considered as employment period.

Source: §20 (4) of the Labour Act 2017; §24 (7 & 8) of the Rights of Persons with Disabilities Act, 2017

## **Disability / Work Injury Benefit**

The Labour Act 2017 entitles an employee (member of the fund) who gets completely incapacitated mentally or physically due to an accident to accidental insurance equivalent to a lump sum of 700,000 rupees. In addition, the employee is entitled to a full work injury benefit (700,000 rupees<sup>0</sup> for a total (100%) assessed degree of disability. In case of an assessed degree of disability of less than 100% (partial disability), a percentage of the total permanent disability benefit is paid. An authorised doctor determines the disability percentage. There is no regulation provided in law for temporary disability. In case of the death of an employee, the dependent survivor is to be given a lump sum of 700,000 rupees.

Where the employer has not subscribed insurance policy for the workers as required or as a result of severe mistake or negligence, the sum insured could not be received by the concerned worker or the legal heir, the employer will pay an amount equivalent to the sum insured to the concerned worker or the legal heir.

Source: §55 and 56 of the Labour Act, 2017

# 09/13 SOCIAL SECURITY

## **ILO Conventions**

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions  
Employment Injury Benefits: Conventions 121 (1964),  
Invalidity, Old age and survivors' benefits: Convention 128(1967)  
Medical Care and Sickness Benefits: Convention 130 (1969)  
Unemployment Benefits: Convention 168 (1988).

**Nepal has not ratified the above-mentioned Conventions.**

### ***Summary of Provisions under ILO Conventions***

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give “due regard to the working ability of elderly persons” and “demographic, economic and social criteria, which shall be demonstrated statistically”. Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

## Regulations on social security:

- Labour Act, 2017
- Labour Rules, 2018
- Social Security Profile for Nepal, 2018
- Employee Provident Fund Act, 2019
- Right to Employment Act 2018

## Pension Rights

The Labour Act of Nepal sets a general compulsory retirement age for workers after completing 58 years. However, an enterprise can apply to the Central Labour Advisory Council, with basis and reasons, if it desires to fix the retirement age below 58 years for certain occupations or works of particular nature.

If any employee retires from service due to superannuation, the concerned office or employee records office is obliged to notify the Provident Fund in advance of six months of retirement, setting out the date on which the employee gets retirement.

The Provident Fund generally applies to government employees. There is a provision for voluntary coverage of firms that employ ten or more workers. The employees must pay the Provident Fund 10% of their monthly earnings, or their employer can deduct the equivalent amount from their payroll. Employer contributes a similar by a similar ratio (10%) for each employee. The old-age benefit is a lump sum of employer and employee contributions plus 6.75% annual interest. The amount for the provident fund deposited in the retirement fund or any other similar fund is transferred to the Social Security Fund.

The amount in the Provident Fund (a lump

sum of employer and employee contributions) can be paid to the worker on termination of employment for whatever reason or on retirement.

Source: §52 and 147 of the Labour Act 2017; §73 of the Labour Rules 2018; §12, 14 15A and 15B (2) of Employee Provident Fund Act, 2019

## Dependents' / Survivors' Benefit

Under the Employee Provident Fund Act, 2019 of Nepal, in the case of a worker's death, their nominee or nominees are entitled to obtain the fund amounts according to the will. If, after the discontinuation of the service of an employee, the employee does not show up to get the refund of the Fund amount and even if the nominee does not show up to receive that amount until two years nine months, the employer is obliged to publish a notice. If no nominee shows up even after the notice, the heir will be entitled to get that amount as per the prevailing law relating to inheritance.

According to the Labour Act 2017, if a worker dies or gets completely incapacitated mentally or physically due to an accident, such a worker or their heir are entitled to get compensation equivalent to 100 per cent of the amount of insurance. A lump sum of total employee and employer contributions plus accrued interest deducting previous withdrawals are paid to a named survivor or legal heir. If there is more than one designated survivor, the amount is split equally. The benefits are paid through the state-administered provident fund. The survivor's benefit is paid to the survivors or legal heirs if the worker dies before withdrawing their entire account balance.



Source: § 52 and 55 of Labour Act 2017; § 15A of Employee Provident Fund Act, 2019 Nepal.

## Unemployment Benefits

Law requires Government to employ certain provisions. If the Government of Nepal is unable to provide the unemployed person listed in the Employment Service Center with minimum employment, it is obliged to pay a living allowance in a sum of fifty per cent of the amount equal to such minimum wages for 100 days as fixed by the Ministry in one fiscal year. Suppose an unemployed person gets employment only for the period of fewer than one hundred days in one fiscal year. In that case, only the amount equal to fifty per cent of the minimum wages fixed by the Ministry for the remaining period of one hundred days is to be provided as the livelihood allowance.

Source: §22(1, 2) of the Right to Employment Act 2018

## Invalidity Benefits

Personal accident insurance is paid by the Provident Fund for the partial or permanent disability or accidental death of the fund member. In contrast, Disability Pension is paid by social assistance at the age of 16 years or older, with the individual being assessed as blind or having lost the use of feet or hands.

Contribution rates for workers and employers to the Provident Fund are specified under the text on old age benefits/pension rights. The employees must pay the Provident Fund 10% of their monthly earnings, or their employer can deduct the equivalent amount from their

payroll. However, for social assistance in the form of disability pension, only Nepali citizens are eligible, and no amount is payable.

A lump sum of 200,000 rupees is paid for a total disability under personal accident insurance from the Provident Fund. For partial disability, a lump sum of 10,000 rupees to 25,000 rupees is paid according to the assessed degree of disability. For disability pension from social assistance, 2,000 rupees a month is paid for a total disability and 600 rupees a month for a partial disability.

According to the Labour Act 2017, if a worker dies or gets completely incapacitated mentally or physically due to an accident, such a worker or their heir are entitled to get compensation equivalent to 100 per cent of the amount of insurance.

Source: § 52 and 55(3) of Labour Act 2017; Social Security Profile for Nepal, 2018

# 10/13 FAIR TREATMENT

## ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Convention 190 (2019) is about elimination of violence and harassment in the world of work.

**Nepal has ratified the Conventions 100 and 111 only.**

### *Summary of Provisions under ILO Conventions*

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. This definition covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

## Regulations on fair treatment:

- Constitution of Nepal, 2015
- Nepal Labour Act, 2017
- Nepal Labour Rules, 2018
- Right to Employment Act, 2018
- The Sexual Harassment at Workplace Act 2017
- The Muluki Ain (General Code) 2019
- The Muluki Criminal (Code) Act 2017

## Equal Pay

Under the Constitution, the State must endeavour to ensure equality of opportunity for all citizens, who are deemed to be equal under the law. Article 18 (4) of the Constitution clarifies that any gender discrimination regarding remuneration for the same work and social security is prohibited.

Labour Act prohibits employers from making any discrimination between the workers in remuneration for an equal value of work on the ground of sex, where the work of equal value is to be determined on the basis of the nature of the concerned work, the time required for its performance, labour, skill and productivity.

Source: §18(4) of Nepal's Constitution of 2015; §7(1) of the Labour Act 2017

## Sexual Harassment

The primary legislative framework prohibiting sexual harassment in the workplace is the Sexual Harassment at Workplace Act 2017.

Under the Constitution of Nepal, any physical, mental, sexual or psychological or

any other kind of violence against women or oppression based on religious, social and cultural tradition and other practices are prohibited. It is punishable by law, where the victim is entitled to compensation. Constitution also prohibits sexual abuse of children.

Sexual Harassment at Workplace Act 2017 defines sexual harassment as “any employer is deemed to have sexually abused if he/she abuses his/her position, power, or authority, under any kind of pressure, influences any employee or client from attempting to touch body parts, using or displaying objects and materials related to sexual activity and pornography, showing sexual intent by gestures, writings, or speaking, and offering for sexual activity.”

A general prohibition and penalties on sexual harassment in the country can be located in “The Muluki Ain (General Code) 2019”. A person who harasses another with the intent of sexual intercourse is liable to the punishment of imprisonment for a term not exceeding one year and a fine of up to 10,000 Rupees. In addition, the victim of such an offence is entitled to reasonable compensation from the offender. Under section 224 of the Criminal Act 2017, for a person who commits a crime involving sexual harassment, the punishment is a prison term not exceeding three years and a fine of up to 30,000 rupees.

According to the Labour Act, no person is allowed to commit any act considered sexual harassment at the workplace or in the course of work. The employer may punish to the extent of even dismissal from the perpetrators of sexual harassment, depending on the condition and gravity of the act. In case the employer commits

sexual harassment, the trade union, victim, or any member of their family may file a complaint under the law.

The Sexual Harassment at Workplace Act abides employers to make necessary arrangements for the prevention of sexual misconduct, to alert employees and clients to prevent sexual harassment, take necessary corrective measures to prevent a recurrence, provide psychotherapy services to victims as required, and keep a compliant box at the workplace.

If a person is found guilty to have sexually harassed an employee, they are to be punished with imprisonment of up to six months and a fine of up to fifty thousand rupees or both, depending on the nature of the offence. The guilty person is bounded by law to compensate the victim an amount equivalent to the actual cost incurred in filing a complaint or defending a complaint, as well as physical and mental damage caused as a result of sexual harassment.

Source: §38(3) and 39(6) of Nepal's Constitution of 2015; § 132 of the Labour Act 2017; §4, 5, 12, and 13 of The Sexual Harassment at Workplace Act 2017; § chapter 13(1) and chapter 14 of The Muluki Ain (General Code) 2019; § 224 of the Muluki Criminal (Code) Act 2017

## Non-Discrimination

Under the Constitution, all citizens are equal before the law and are entitled to equal protection of the Law. It ensures no discrimination in the application of general laws, against any citizen, on the grounds of origin, religion, race, caste, tribe, sex, physical conditions, disability, health condition, marital status, pregnancy, economic condition, language or

geographical region, or ideology or any other such grounds. Therefore, discrimination on any of the above grounds is punishable, and victims are liable to compensation under the law.

Under the Right to Employment Act, except for a special provision made by the prevailing law for any particular class or community concerning the provision of employment to the unemployed, no person can discriminate against the other on the ground of origin, religion, colour, caste, ethnicity, sex, language, region, ideology or similar other bases.

The Right to Safe Motherhood and Reproductive Health Act 2018 defines discrimination extensively. It prohibits discrimination concerning access to the monthly services, including family planning, reproductive health, safe motherhood, safe abortion, emergency obstetric and new-born care, morbidity on the ground of one's origin, religion, colour, caste, ethnicity, sex, community, occupation, business, sexual and gender identity, physical or health condition, disability, marital status, pregnancy, ideology, state of being infected with or vulnerable to any disease or germ, state of morbidity, personal relationship or any other similar ground.

The Act relating to the Rights of Persons with Disabilities prohibits discrimination on disability. No employer is allowed to discriminate against persons with disabilities concerning employment. They are obligated to make provisions so that workers or employees with disabilities can work efficiently. The employer is prohibited from depriving any person of an opportunity for promotion or denying to make promotion solely based on disability. The Act does not allow the removal or

demotion of an employee based on disability.

Labour act 2017 ensures equality in employment opportunities by prohibiting discrimination on the ground of religion, colour, sex, caste, tribe, origin, language, ideological conviction or other similar grounds. In addition, the labour Rule describes the prohibition on discrimination between outsourced and permanent labours on the grounds of the facilities and benefits- apart from the remuneration and fees- provided to them.

Source: §18(1, 2, 3) of Nepal's Constitution of 2015; §6(1) of the Labour Act 2017; § Rule 33 of Labour Rules 2018; §29 of the Right to Safe Motherhood and Reproductive Health Act 2018; § 8 and 24 (3, 5, 6, 7) of the Act Relating to Rights of Persons with Disabilities 2017

## Equal Choice of Profession

The Constitution of Nepal encourages the participation of women in all spheres of national life. Women have the right to special opportunity in the spheres of education, health, employment and social security based on positive discrimination in the Constitution.

The Right to Employment Act entitles every citizen to choose employment according to their own volition/wish and qualification or capacity. No person can engage or employ any citizen in employment against their will or in employment that the said person does not choose or force or compel such person to engage in such employment.

However, the legislation of Nepal does not regulate any provisions regarding equal opportunities for women in choosing their

profession. According to Labour Rules, the female worker should not be made to lift or carry more than 45 kilograms.

Source: §38(5) of Nepal's Constitution of 2015; §4 of Right to Employment Act, 2018; Rule 42 of Labour Rules 2018

# 11/13 MINORS & YOUTH

## **ILO Conventions**

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

**Nepal has ratified both the Conventions 138 & 182.**

### ***Summary of Provisions under ILO Conventions***

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances.

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

## Regulations on minors and youth:

- Constitution of Nepal, 2015
- Nepal's Labour Act 2017
- Child Labour (Prohibition and Regulation) Act 2000 of Nepal
- Compulsory and Free Education Act, 2018

## Minimum Age for Employment

Labour Act 2017 prohibits the employment of children, but the primary legislative framework for child labour regulation is Child Labour (Prohibition and Regulation) Act, 2000. The minimum age for employment is 14. Children under 14 are restricted from work. According to law, before engaging a child as an employee in an enterprise, an approval in the form of a certificate of qualification has to be obtained from Labour Office that the child can work as a labourer. The enterprise is obliged to submit particulars of the child, including address, guardian name, date of engaging etc., to the Labour Office within fifteen days from the date of engaging in the work. The employer is obliged to follow the conditions imposed by the Labour office while approving to engage a child in work, regarding appropriate conditions to develop skills and qualifications of the child or providing education to the child. The employer is obliged by the law to submit an application at the Labour Office mentioning the nature of the child's work and age. The Labour Office requires a medical test of the child by a medical practitioner, who provides a qualification certificate with validity of one year, in the prescribed format regarding the child's fitness for the work.

The child is identified as a minor not having completed sixteen years under the law. The compulsory education age is set as 13 years

under article 6 of the Compulsory and Free Education Act, 2018.

Source: §5 of Labour Act 2017; § 3, 6, 7, 8 of the Child Labour (Prohibition and Regulation) Act 2000; §6 of the Compulsory and Free Education Act, 2018

## Minimum Age for Hazardous Work

The Minimum Age for Hazardous Work is set as 16 years in the Child Labour (Prohibition and Regulation) Act 2000, where the child is defined as a minor not having completed the age of 16 years. The law further says that no child is to be engaged in risky business or works which are defined under schedule 1 of the Act.

The law also prohibits hazardous work for children. Risky work is extensively defined under the law as works including; business relating to tourism, including tourism, residence, motel, hotel, casino, restaurant, bar, pub, resort, skiing, guiding, water rafting, cable car complex, Pony trekking, mountaineering, hot air ballooning, parasailing, golf course, polo, horse-riding; service-oriented business such as a workshop, laboratory, animal slaughterhouse, cold storage; public transport and construction business; works relating to manufacturing; works to be done having contact with chemical substances, cutting machines, underground works, mining, etc. The legislation restricts children from engaging in work for more than six hours in a day and more than thirty-six hours in a week, either with or without remuneration. The law prohibits night work for children (minimum 14 years old). No child may be engaged in work between 6 pm to 6 am.

Source: §3 (schedule 1) and 9 of the Child Labour (Prohibition and Regulation) Act 2000.



# 12/13 FORCED LABOUR

## **ILO Conventions**

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

**Nepal has ratified both Conventions 29 & 105.**

### ***Summary of Provisions under ILO Conventions***

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.



## Regulations on forced labour:

- Constitution of Nepal, 2015
- Nepal Labour Act, 2017
- Nepal Labour Rules, 2018

## Prohibition on Forced and Compulsory Labour

Forced labour is strictly prohibited by the Constitution of Nepal. Article 29 (sub-articles 3 and 4) of the Constitution Nepal read as follows: “No person shall be subjected to human trafficking or bonded labour, and such an act shall be punishable by law” and “No person should be subjected to forced labour”, respectively. Therefore, the offence related to forced labour is punishable under the Constitution of Nepal.

A general prohibition on forced labour is provided in the Labour Act 2017. It says that no one can employ any person in forced labour directly or indirectly. The Act defines forced labour as any work or service performed by any employee against their will due to a threat of taking any action having a financial, physical or mental impact if they do not perform such work or service.

Law prohibits forced child labour as well. The Child Labour (Prohibition and Regulation) Act restricts a child’s engagement as a labourer against their will by way of persuasion, misrepresentation, or by subjecting them to any influence or fear or threat or coercion or by any other means.

Source: §4, 3, and 5 of Constitution of Nepal; §4 and 164 of Labour Act 2017; § 3 (2) and 4 of the Child Labour (Prohibition and Regulation) Act 2000

## Freedom to Change Jobs and Right to Quit

There is an option of voluntary termination where the worker may submit a resignation in writing to the employer, which will be deemed to be approved after the expiry of 15 days with or without the employer’s approval.

Other than for termination of employment on the ground of misconduct, an employer or worker is required to serve a written notice to terminate employment. The length of the notice period is dependent on the length of employment, ranging from one day to thirty days.

For more information on this, please check under Employment Security

Source: § 141 and 144 of the Labour Act, 2017

## Inhumane Working Conditions

A worker cannot be employed to work more than eight hours a day and 48 hours a week. The rest time of half an hour every five hours also counts towards the working hours. Where the employer does require the worker to work overtime, the hours worked overtime should not exceed four hours a day and 24 hours a week. The maximum weekly working hours, inclusive of overtime, are thus 72 hours.

For more information on this, please refer to the section on working time.

Source: §28 and 30 of the Labour Act, 2017

# 13/13 TRADE UNION

## **ILO Conventions**

Freedom of association and protection of the right to organize: Convention 87 (1948)  
Right to Organize and Collective Bargaining: Convention 98 (1949)

**Nepal has ratified the Convention 98 only.**

### ***Summary of Provisions under ILO Conventions***

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

## Regulations on trade unions:

- Constitution of Nepal, 2015
- Nepal Labour Act 2017
- Nepal Labour Rules, 2018

## Freedom to Join and Form a Union

Nepal's Constitution guarantees the right to form associations or unions. Under article 34 of the Constitution, every citizen has the right to form associations or unions, participate in them, and organise collective bargaining. The Labour Act 2017 provides every employee with the right to form, acquire membership or involve in activities related to trade unions.

Trade Union (first Amendment) Act of Nepal entitles employees to constitute an enterprise Level Trade Union to protect and promote their occupational rights. Trade unions have the right to draw up their constitutions and rules, to elect their representatives in complete freedom, to take necessary action and implement necessary programs to achieve their objectives and to allow the workers to follow the decisions made by the enterprise level authorised trade union. The legislation provides for the establishment and formation of enterprise-level trade unions (at least ten members), trade union associations (at least 500 workers), and trade union federations (at least ten trade union associations).

Law requires a trade union to have at least twenty-five per cent of its members to employees of the enterprise.

Source: §34(3) of the Constitution of Nepal; §8 of Labour Act 2017; §3, 4(1, 2) and 9A of the Trade Union (first Amendment) Act 1998 of Nepal

## Freedom of Collective Bargaining

The right to collective bargaining is provided under the Constitution of Nepal. Article 3 provides the right to collective bargaining to employees. The right is regulated under article 116 of the Labour Act 2017. An enterprise employing ten or more workers must have a collective bargaining committee team consisting of negotiating representatives designated on behalf of the elected authorised trade union of the enterprise, a team of negotiating representatives nominated through mutual agreement of all the unions in the enterprise (if elections of a trade union are not being held timely) and in case of absence of both, a team of representatives supported with the signatures of more than sixty per cent of the labourers working in the enterprise.

The collective bargaining committee is obliged to submit collective claims or demands in writing to the employer on issues relating to the interest of the labours, except the issues mentioned under the subsection 3 of section 116 of the Labour Act (e.g., a matter which is contrary to the Constitution of Nepal and a matter which is not related to the enterprise). The Committee should consist of three to eleven members. It has the power to submit collective claims, enter into the agreement, file a case against any person or defend a case.

Source: §34(3) of the Constitution of Nepal; §116 of Labour Act 2017

## Right to Strike

The Labour Act recognises workers' right to strike for the settlement of any collective dispute if the arbitrator fails to perform the

arbitral functions, if the arbitration panel could not be formed within twenty-one days, or if the employer refuses to enforce the arbitral award or challenges it on the legal ground or any party disagrees with the arbitral award.

The Committee should submit a written notice containing claims and demands to the employer and Labour Office 30 days before the strike. Where a strike is organised or continued without giving notice or the collective dispute could not be settled through the procedure, as provided under the Labour Act, the management has the right to lock out the enterprise after giving a notice of seven days.

The law protects employees from dismissal on the grounds of commencing a strike. Participation in the strike is not considered an act in violation of the employment contract. During strikes or lockouts, no employer is allowed to terminate the employment contract. Employees are entitled to full remuneration during the period of a lockout if it is made by the employer.

The workers deputed as sentries and guards for the enterprise's security are not allowed to participate in the strike under law. Furthermore, workers are prohibited from causing any loss or damage to the workplace. If any person or group makes destruction in the workplace or destruction of any property and causes physical damage, the amount equivalent to the loss or damage may be recovered from such a person or group.

Source: §121, 125(3), 126, 127(2) and 128(2) of Labour Act, 2017

# QUESTIONNAIRE

## DECENTWORKCHECK.ORG

Check

DecentWorkCheck Nepal is a product of WageIndicator.org



National Regulation exists



National Regulation does not exist

## 01/13 Work &amp; Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

## 02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

## 03/13 Annual Leave &amp; Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

## 04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

## 05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

## 06/13 Maternity &amp; Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

\* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".





# DECENTWORKCHECK.ORG

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy<br><i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child   |  | <input type="checkbox"/> | <input type="checkbox"/> |





## 07/13 Health & Safety

- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |









## 08/13 Sick Leave & Employment Injury Benefits

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |    | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury                                       |   | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease     |  | <input type="checkbox"/> | <input type="checkbox"/> |

## 09/13 Social Security













- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |

## 10/13 Fair Treatment



- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination                                     |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Sex/Gender   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Race   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Colour   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Religion   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Political Opinion  |  | <input type="checkbox"/> | <input type="checkbox"/> |

\* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.




# DECENTWORKCHECK.ORG

	Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
	Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
	Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
	Age		<input type="checkbox"/>	<input type="checkbox"/>
	Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
	Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
	Language		<input type="checkbox"/>	<input type="checkbox"/>
	Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
	Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
	Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
	Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40	I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





## 11/13 Minors & Youth

41.	In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42.	In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

## 12/13 Forced Labour

43.	I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44.	My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45.	My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

## 13/13 Trade Union Rights

46.	I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47.	I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48.	My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49.	I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>



# DECENTWORKCHECK.ORG

## Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Nepal scored 43 times "YES" on 49 questions related to International Labour Standards

### If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

### If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

### If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.