

# MINISTRY OF LABOUR AND HUMAN RESOURCES

## LABOUR AND EMPLOYMENT ACT, 2007

### REGULATION: FOREIGN WORKERS RECRUITMENT AGENTS

#### Introduction

The Ministry of Labour and Human Resources, in accordance with the powers conferred under the Labour and Employment Act, 2007 hereby promulgates the following regulation concerning Foreign Workers Recruitment Agents as applied to all employment agents falling within Chapter 13 of the Act.

#### Chapter 1

##### Preliminary

1. This regulation shall be called a Foreign Workers Recruitment *Agents Regulation, 2008*.
2. This regulation contains legal requirements that must be met by all Foreign Workers Recruitment Agents covered by Chapter 13 of the Labour and Employment Act, 2007 and that come under the inspectorial jurisdiction of the Department of Labour, Ministry of Labour and Human Resources.
3. This regulation replaces the Rules and Regulations Governing Employment Agencies in Bhutan that came into force on 1 August 2006.
4. This regulation shall come into force with effect from August 1, 2008

##### Purpose

5. The purpose of the regulation is to establish standards of conduct for the registration and operation of Foreign Workers Recruitment Agents operating in Bhutan, ensure the provision of quality services to employers, and ensure that Foreign Workers Recruitment Agents provide information as required on a regular basis to the Ministry of Labour and Human Resources.

## **Objectives of the regulation**

6. The specific objectives of this regulation are to
  - (a) elaborate the legal requirements for the registration and operation of Foreign Workers Recruitment agents in all parts of Bhutan
  - (b) protect foreign workers from unfair placement and employment practices
  - (c) indicate the reporting requirements and obligations of Foreign Workers Recruitment agents concerning labour market information
  - (d) indicate the circumstances in which the operation of Foreign Workers Recruitment agents will be suspended or prohibited.

## **Scope**

7. This regulation shall apply to all Foreign Workers Recruitment Agents as defined under the Labour and Employment Act 2007, including a person or entity, independent of the labour administration, who
  - (a) places foreign workers with employers resulting in the formation of a contract of employment between them, but without the Foreign Workers Recruitment Agents becoming a party to that contract,
  - (b) employs an employee with a view to making that employee available to a third person, and that third person assigns and supervises the execution of the employees tasks, but without the employee entering into a contract of employment with the third person.

## **Chapter 2**

### **Registration and re-registration**

8. A Foreign Workers Recruitment Agent shall not be permitted to operate until it has been registered with the Ministry of Labour and Human Resources and filed a signed Record of Understanding with the Chief Labour Administrator.
9. A Foreign Workers Recruitment Agent shall not be registered until its proprietor has
  - (a) completed a registration application form as posted on the Ministry website and submitted at to the Chief Labour Administrator, and

- (b) attended an interview process under the direction of the Chief Labour Administrator, and
  - (c) satisfied the Chief Labour Administrator that it has suitable and permanent physical premises from which to operate, and
  - (d) satisfied the Chief Labour Administrator of his or her competence and capacity to carry out the operations of a Recruitment Agent.
10. Before being formally registered with the Ministry of Labour and Human Resources the aspiring Recruitment Agent shall enter into a written Record of Understanding with the Ministry that testifies and confirms that the aspiring Recruitment Agent has
- (a) a knowledge and understanding of the Labour and Employment Act 2007, with particular emphasis on Chapter 13 relating to employment agents, and
  - (b) a knowledge and understanding of the regulations under the Act applying to employment agents, and
  - (c) a knowledge and understanding of the penalties and sanctions under the Act and regulations that apply to employment agents.
11. The Record of Understanding is presented in ANNEX 1.
12. An applicant for registration as a Recruitment Agent with the Ministry of Labour and Human Resources who satisfies all requirements of the Ministry and selected shall be issued with a Certificate of Registration, signed by the Chief Labour Administrator, within 30 calendar days of signing the Record of Understanding, and valid for a period of 2 years in the first instance.
13. An applicant for registration as an Recruitment Agent who, in the opinion of the Chief Labour Administrator, fails to satisfy the requirements for registration with the Ministry, shall have the right to appeal to the Minister within 15 calendar days from the date of receiving notice that the application for registration has failed. The Minister's decision shall be communicated to the applicant within a period of 15 calendar days.
14. The renewal of a Recruitment Agent's registration shall be determined by the Chief Labour Administrator based on the periodic reports and recommendations of labour inspectors, and the recommendation of the Chief Labour Officer.

15. The initial and subsequent renewal of an Recruitment Agent's registration shall be for a period of 2 years.
16. A Recruitment Agent's registration shall not be renewed if that agent is found to be in breach of the provisions of the Labour and Employment Act, 2007 and its regulations.
17. Registration of a Recruitment Agent with the Ministry of Labour and Human Resources shall be a necessary but not necessarily sufficient condition in support of the agent's application for the issue of a business license by the Ministry of Economic Affairs.
18. A person or entity who operates as a Recruitment Agent without a business license, without registering with the Ministry of Labour and Human Resources, or who fails to enter into a Record of Understanding, commits an offence.

### **Chapter 3**

#### **Staffing arrangements**

19. A Recruitment Agent shall not employ foreign workers in its office.
20. A Recruitment Agent shall ensure that his or her staff engaged in the registration and placement functions of that agent are competent and capable to perform their functions to an acceptable level as evidenced by previous experience, the completion of a training course conducted by the Ministry of Labour and Human Resources, or training provided by another institution acceptable to the Ministry.
21. A Recruitment Agent shall ensure that the provisions of the Labour and Employment Act, 2007 and its regulations are applied to all staff employed by that agent, concerning all aspects of working conditions and the working environment.

### **Chapter 4**

#### **Premises**

22. A Recruitment Agent shall operate from the physical premises as stated in its registration recorded with the Ministry of Labour and Human Resources.
23. A Recruitment Agent shall notify the Chief Labour Administrator within a period of seven calendar days of any change in the physical location of the agent's operating premises.

24. A Recruitment Agent shall notify the Chief Labour Administrator within seven calendar days of ceasing to operate as Recruitment Agent, in which case the Ministry shall cancel the agent's registration forthwith.

## **Chapter 5**

### **Receipt of vacancy notice or job offer from an employer**

25. Employers and Recruitment Agent shall be notified from time to time the categories of foreign workers that may be recruited compulsorily through the Agents
26. On receipt of a job offer from an employer a Recruitment Agent shall apply for recruitment of foreign workers for the employers if the post does not fall in the list of occupations closed to foreign workers.

### **Contract between Recruitment Agent and Employer**

27. On receipt of a job offer from an employer, a Recruitment Agent shall prepare a written contract between the parties that contains
- (a) the names of the parties
  - (b) the physical address and contact numbers of the parties
  - (c) the location of the workplace in which the workers will be placed
  - (d) the number of workers to be placed
  - (e) the qualifications and skills required of the workers to be placed
  - (f) the terms and conditions of employment under which the workers will be employed, being not less than the minimum standards established by the Labour and Employment Act 2007 and its regulations, stating duration of employment, wages, allowances and benefits, hours of work, leave and holidays, probation period, termination, compensation for injuries and death, provision of protective clothing and equipment, handling of grievances and disputes,
  - (g) the fees payable by the employer to the Recruitment Agent
  - (h) the arrangements for the termination of the contract between the Recruitment Agent and the employer.
28. The Recruitment Agent shall retain a copy of this contract at the agent's operating premises and shall make it available on demand to a labour inspector.
29. A sample contract agreement between a Recruitment Agent and an employer is available at the Ministry of Labour and Human Resources' website.

## **Fees**

30. A Recruitment Agent shall be entitled to charge fees for placement services rendered as follows.
  - (a) The agent may charge up to 20% of the first month's basic salary for the placement of a foreign worker, such fee to be payable by the employer. The employer shall not be entitled to recoup this amount from the placed worker.
  - (b) An Agent shall not register a foreigner seeking job in Bhutan.
31. A Recruitment Agent shall maintain records of fees collected from an employer and shall report these fees in its quarterly report to the Ministry of Labour and Human Resources, as indicated in section 35 of this regulation.
32. A Recruitment Agent shall make its records of fees collected from employers available to a labour inspector on demand.

## **Information**

33. A Recruitment Agent shall submit the following information to the Chief Labour Administrator on a quarterly basis.
  - (a) The number of male and female foreign workers recruited during the 3-month period.
  - (b) The total amount of fees collected from employers during the 3-month period.
34. For the purpose of this regulation quarterly reports shall be submitted for the three-month periods ending 30 March, 30 June, 30 September, and 31 December. A Recruitment Agent shall submit each quarterly report within 14 calendar days from the end of each quarter.
35. A Recruitment Agent who fails to submit reports to the CLA as stipulated under sections 33 and 34 commits an offence.

## **Inspection by labour officers**

36. A labour inspector, with prior authority of the Chief Labour Administrator shall be entitled to enter at any reasonable time the premises of a Recruitment Agent to investigate and assess the employment agent's compliance with the Labour and Employment Act 2007 and its regulations with regard to;

- (a) the terms and conditions of employment and the working environment that apply to the employees of the Recruitment Agent;
  - (b) the arrangements entered into by the Recruitment Agent with employers;
  - (c) the information and reporting requirements of the Recruitment Agent.
37. A duly authorized labour inspector shall be entitled to interview the Recruitment Agent, employees of that agent, and employers using that agent's services, and examine and copy any documents relating to the Recruitment Agent's activities and operations.

### **Penalties and sanctions**

39. A Recruitment Agent found to be in violation of any section of this regulation shall be liable to
- (a) pay a fine of not less than Nu. 9,000 and not more than Nu. 54,000 depending on the severity of the offence, for each separate violation,
  - (b) cancellation of its registration with the Ministry of Labour and Human Resources
40. On receipt of evidence of a violation on the part of a Recruitment Agent, the Ministry of Labour and Human resources shall, at its discretion, recommend to the Ministry of Economic Affairs the cancellation of the agent's business license.

**ANNEX 1                      Record of Understanding**

It is hereby confirmed that I/We \_\_\_\_\_  
proprietor(s) and owner(s) of \_\_\_\_\_ Recruitment Agency  
of \_\_\_\_\_ am fully  
conversant with the Labour and Employment Act 2007 as it applies to  
Recruitment Agents, and the provisions of the Recruitment Agents  
Regulation under the Act.

I further acknowledge that I am fully aware of the penalties and  
sanctions to be applied against me for a breach of any provision of the  
Act and the Recruitment Agents Regulation.

Signature  
Chief Labour Administrator

Signature  
Foreign Workers Recruitment Agent  
Address:  
Contact No.

Date:

Date:

Signature of Witness: í í í í í í í í í í í í í í í

Address: í í í í í í í í í í í í í í í í í í í

Contact No: í í í í í í í í í í í í í í í í í í í

Date: í ...